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UNITED STATES DISTRICT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs. KLICKITAT COUNTY PORT DISTRICT NO. 1, Defendant.	No: UNITED STATES' COMPLAINT

The United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

I. NATURE OF ACTION

1.1 This is a civil action brought by the United States against the Klickitat County Port District No. 1 ("Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980

("CERCLA"), 42 U.S.C. § 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9607.

1.2 The United States seeks to recover response costs it incurred in conducting a removal of hazardous substances at the Recycled Aluminum Metals Company Aluminum Waste Disposal Superfund Site ("Site") located in the Dallesport Industrial Park in Klickitat County, Washington.

1.3 Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, the United States also seeks a declaratory judgment on liability for response costs that will be binding in any subsequent action to recover further response costs incurred with respect to the Site.

II. JURISDICTION AND VENUE

2.1 The United States re-allages and incorporates by reference paragraphs 1.1 through 1.3 of this Complaint.

2.2 The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and 42 U.S.C. § 9613(b).

2.3 The Court has personal jurisdiction over the Defendant.

2.4 Venue is proper in the Eastern District of Washington pursuant to 28 U.S.C. § 1391(b), (c), § 1395(a), and 42 U.S.C. § 9613(b).

III. THE DEFENDANT

3.1 The United States re-allages and incorporates by reference paragraphs 1.1 through 2.4 of this Complaint.

3.2 Defendant Port of Klickitat District No. 1 is a Port District entity is located in the Eastern District of Washington and was created pursuant to Title 53 of the Revised Code of Washington, RCW 53.04.010.

3.3 Since 1970, the Defendant has been the owner of the Site within the meaning of Sections 101(20) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20), 9607(a).

IV. ENVIRONMENTAL STATUTORY SCHEME

4.1 The United States re-allages and incorporates by reference paragraphs 1.1 through 3.3 of this Complaint.

4.2 CERCLA was enacted in 1980 to provide a comprehensive mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response actions." 42 U.S.C. §§ 9604(a), 9601(25).

4.3 Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

> Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . .

4.4 For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

4.5 Under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3):

(1) The owner and operator of a vessel or a facility, [and]

> (2) any person who at the time of disposal of any hazardous substances owned or operated any facility at which such hazardous substances were disposed of
>
> . . . .
>
> shall be liable for—
>
> (A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan . . .

4.6 CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), specifies that in any action for recovery of costs under CERCLA Section 107, 42 U.S.C. § 9607, "the court shall enter a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs . . . ."

4.7 CERCLA Section 107(a) provides that the United States is entitled to interest on recoverable amounts from "the later of (ii) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned." 42 U.S.C. § 9607(a).

V. FACTUAL ALLEGATIONS SUPPORTING THE UNITED STATES' CLAIMS

5.1 The United States re-allages and incorporates by reference paragraphs 1.1 through 4.7 of this Complaint.

5.2 The Site consists of approximately 1.5 acres which was formally an unlined landfill at the Dallesport Industrial Park in Klickitat County, Washington.

5.3 From 1979 through 1993, Defendant leased the Site to Robert A. Barnes, Inc. ("Barnes") and later to Barnes' wholly owned subsidiary corporation, Recycled Aluminum Metals Co. ("RAMCO").

5.4 From 1979 through 1993, Barnes and later RAMCO operated an aluminum reclamation facility at the Site at which they extracted aluminum from various aluminum smelter waste products. The reclamation process generated several waste streams including salt cake, baghouse dust and spent pot lining. These wastes contained various hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including aluminum, sodium, potassium, chromium, cobalt, copper, iron, manganese, vanadium, cyanide, polycyclic aromatic hydrocarbons, nickel and zinc.

5.5 From 1979 until sometime in 1991, Barnes and later RAMCO, disposed of the wastes containing the hazardous substances in the unlined landfill at the Site within the meaning of Sections 101(29) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(29), 9607(a)(2).

5.6 The hazardous substances disposed of at the Site have resulted in the release of, and threatened the release of, hazardous substances into the environment, specifically to the soils, groundwater and surface water at and in the vicinity of the Site. Such hazardous substances include ammonia produced by the landfill waste when wet as well as nitrates, sodium, chloride, fluoride, and hydrogen cyanide.

5.7 EPA has incurred over $2.1 million in responding to the releases and threats of releases of hazardous substances at the Site. Specifically, EPA investigated contamination at the Site and removed and disposed of the hazardous waste found at the Site.

5.8 On February 28, 2013, EPA made a demand in writing to Defendant for the costs of removal incurred at the Site.

VI. FIRST CLAIM FOR RELIEF
Recovery of Removal Costs Under Section 107(a) of CERCLA

6.1 The United States re-allages and incorporates by reference paragraphs

1.1 through 5.8 of this Complaint.

6.2 Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6.3 The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6.4 Hazardous substances were disposed of at the Site within the meaning of Sections 101(14) and (29) of CERCLA, 42 U.S.C. § 9601(14), (29).

6.5 Defendant is the current owner of the Site and was the owner of the Site at the time that hazardous substances were disposed of there within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

6.6 There have been releases and threatened releases of hazardous substances within the meaning of Sections 101(22) and 101(14) of CERCLA, 42 U.S.C. §§ 9601(14), (22), at the Site.

6.7 The United States has incurred "costs of removal" within the meaning of Sections 101(23) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(23), 9607(a), in responding to the releases or threatened releases of hazardous substances at the Site.

6.8 The United States' costs of removal related to the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.

6.9 Under Section 107(a)(1) and (2) of CERCLA, 42 U.S. C. § 9607(a)(1) and (2), Defendant, as the current owner of a facility at which hazardous substances have been released, and as the owner of a facility at the time the disposal of hazardous substances occurred, is liable for all costs of removal incurred by the United States not inconsistent with the National Contingency Plan, plus interest from February 28, 2013.

VII. SECOND CLAIM FOR RELIEF
Declaratory Judgment of Liability for Future Response Costs Pursuant to Section 113(g)(2) of CERCLA

7.1 The United States re-allages and incorporates by reference paragraphs 1.1 through 6.9 of this Complaint.

7.2 Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), specifies that in any action for recovery of costs under Section 107 of CERCLA, 42 U.S.C. § 9607, "the court shall enter a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs . . ."

7.3 The United States will continue to incur response costs associated with the Site, including enforcement costs that are recoverable as response costs under CERCLA. 42 U.S.C. § 9601(25).

7.4 The United States is entitled to entry of a declaratory judgment that Defendant is liable for future response costs incurred by the United States in connection with the Site, to the extent that such costs are incurred in a manner not inconsistent with the National Contingency Plan.

VIII. PRAYER FOR RELIEF

8.1 The United States re-allages and incorporates by reference paragraphs 1.1 through 7.4 of this Complaint.

8.2 WHEREFORE, the United States respectfully requests that this Court:

(1) Enter a judgment in favor of the United States against Defendant, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs of removal incurred by EPA at the Site plus Interest accruing from February 28, 2013;

(2) Enter a judgment in favor of the United States against Defendant, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for all future response costs incurred at the Site;

(3) Enter a judgment in favor of the United States against Defendant for all costs of this action, including attorney's fees; and

(4) Award the United States such other and further relief as this Court may deem appropriate.

RESPECTFULLY SUBMITTED this 30th\ day of March, 2015.

FOR THE UNITED STATES:

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