

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. _____
v.)	
)	
DUNBAR ASPHALT PRODUCTS, INC.,)	
)	
Defendant)	
_____)	

COMPLAINT

Plaintiff, the United States of America (“United States”), by authority of the Attorney General and through the undersigned attorneys on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), file this Complaint and alleges as follows:

Statement of the Case

1. This is a civil action for injunctive relief and recovery of costs brought pursuant to Sections 106(a), 107(a), and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606(a), 9607(a), and 9613(g), against Dunbar Asphalt Products, Inc. (“Defendant”). Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States seeks injunctive relief to abate the release or threatened release of hazardous substances into the environment at or from Operable Unit 2 (“OU-2”) of the Sharon Steel Corporation (Farrell Works Disposal Area) Superfund Site (“the Site”), located in and near the City of Hermitage, Mercer County, Pennsylvania.

2. In addition, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States seeks to recover any response costs, which the United States has incurred or will incur as a result of releases or threatened releases of hazardous substances at OU-2. Pursuant to Section

113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks a judgment, declaring that the Defendant is liable for any future response costs to be incurred by the United States as a result of releases or threatened releases of hazardous substances from OU-2.

Jurisdiction and Venue

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

4. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b)(2), because the Site is located in this District, and the claims arose and the threatened and actual releases of hazardous substances giving rise to these claims have occurred in this District.

Defendant

5. Dunbar Asphalt Products, Inc. is a corporation organized under the laws of the Commonwealth of Pennsylvania.

6. Dunbar Asphalt Products, Inc. is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

General Allegations

7. The Site consists of approximately 325 acres and is located in and near the City of Hermitage, Mercer County, Pennsylvania, approximately 400 hundred feet east of the border separating Pennsylvania and Ohio. OU-2 encompasses approximately 30 acres of the entire Site.

8. Since 1994, Defendant has owned approximately 25 acres of OU-2 and currently operates an asphalt plant there.

9. From the early 1900s to 1992, Sharon Steel Corporation (“Sharon Steel”) manufactured various steel products at its Farrell Works plant northeast of the Site. During its ownership and

operation of the Site, Sharon Steel used the Site as a disposal area for several different types of slag and sludge from its steel-making operations. Wastes and byproducts of Sharon Steel's manufacturing process were transported on rail cars across the Shenango River, which borders the Site to the east. These wastes and byproducts were disposed of at the Site.

10. From approximately 1949 to 1981, millions of gallons of waste acids and oils were poured by Sharon Steel onto hot slag wastes, which were then disposed of at the Site. This practice caused heavy metals and other hazardous substances to leach into soils and groundwater at the Site. In 1981, Sharon Steel was ordered by the Pennsylvania Department of Environmental Protection ("PADEP") to cease the disposal of waste liquids in this manner. Sharon Steel complied with PADEP's orders, but continued to stockpile slag at the Site until December 1992.

11. Beginning in 1993, EPA conducted various investigations of the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and the National Contingency Plan, 40 C.F.R. Part 300. EPA's investigations revealed elevated levels of heavy metals, including, *inter alia*, manganese, aluminum, arsenic, barium, cadmium, chromium, cobalt, nickel, and vanadium, in surface and subsurface soils, sediments, and groundwater at the Site. These investigations also revealed elevated levels of polycyclic aromatic hydrocarbons and polychlorinated biphenyls at the Site.

12. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List on July 28, 1998.

13. In accordance with 40 C.F.R. § 300.430(e), EPA conducted a two-phase Remedial Investigation at the Site from 1999 through 2005.

14. In accordance with 40 C.F.R. § 300.430(e), EPA conducted a Feasibility Study for OU-2 in 2006 and 2007.

15. On December 19, 2013, EPA issued a Record of Decision ("ROD"), selecting an interim

CERCLA remedial action for OU-2.

16. On June 23, 2015, EPA issued an Explanation of Significant Differences (“ESD”) in accordance with 40 C.F.R. § 300.435(c)(2), modifying the selected interim remedial action.

Specific Allegations

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

18. The substances identified in Paragraphs 10 and 11 hereof are “hazardous substances” as that term is defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4 pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602.

19. At all times relevant to this action, there has been a “release” or a “threatened release” of “hazardous substances” into the environment at or from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

20. As a result of the release or threatened release of hazardous substances from the Site, the United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as defined by Sections 101(23), (24) and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24) and (25).

21. EPA’s actions relating to the Site were “response” actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

22. EPA’s response actions relating to the Site and the costs incurred by EPA for these actions were not inconsistent with the National Contingency Plan, promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

First Claim For Relief
(Cost Recovery Under Section 107 of CERCLA)

23. The foregoing Paragraphs are incorporated by reference as if fully stated herein.

24. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

* * *

(1) the owner and operator of a vessel or facility, . . .

* * *

shall be liable for - -

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

25. Defendant is within the class of persons described in Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), because Defendant owns approximately 25 acres of OU-2 and is liable to the United States for costs of response actions EPA has taken or will take at OU-2, including, *inter alia*, enforcement costs and interest authorized under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

Second Claim For Relief
(Injunctive Relief Under Section 106 of CERCLA)

26. The foregoing Paragraphs are incorporated by reference as if fully stated herein.

27. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides, in pertinent part, that:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or treat

28. The President, through his delegate, the Division Director of EPA Region III's Hazardous Site Cleanup Division, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at or from the Site.

29. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant is liable for

injunctive relief to abate the danger or threat presented by a release or a threatened release of hazardous substances into the environment at or from OU-2.

30. EPA has determined that the interim remedy for OU-2 selected in the ROD, as modified by the June 23, 2015 ESD, is necessary to abate the danger or threat at or from the Site.

31. Therefore, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant is liable to undertake the interim remedial action for OU-2 identified in the ROD, as modified by the ESD, which action EPA has determined is necessary to abate the danger or threat at or from the Site.

Third Claim For Relief
(Declaratory Judgment)

32. The foregoing Paragraphs are incorporated by reference as if fully stated herein.

33. The United States will continue to incur response costs at OU-2 for, *inter alia*, oversight of the performance and long-term monitoring of the interim remedial action and enforcement costs.

34. Defendant is subject to a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability for response costs or damages that will be binding on any subsequent actions to recover further response costs or damages.

Request For Relief

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter a judgment in favor of the United States and against Defendant, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for costs incurred and to be incurred by the United States, including enforcement costs and prejudgment interest, for response actions taken in connection with OU-2;
2. Order Defendant to abate the conditions at OU-2 that may present an imminent and

substantial endangerment to the public health or welfare or environment, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), by undertaking the interim remedial action selected in the ROD, as modified by the June 23, 2015 ESD;

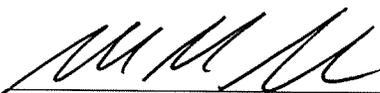
3. Enter a declaratory judgment in favor of the United States and against Defendant, pursuant to Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), that Defendant is liable for future response costs incurred by the United States in connection with OU-2;
4. Award the United States its costs of this action; and
5. Grant such other and further relief as the Court deems just and proper.

FOR THE UNITED STATES OF AMERICA:

8/3/15
Date


NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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8/31/15
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