

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

UNITED STATES OF AMERICA
and the STATE OF INDIANA,

Plaintiffs,

v.

ANDERSON PRODUCTS INC. D/B/A
ANCO PRODUCTS, INC.; B-D
INDUSTRIES, INC.; ELKHART PLATING
CORP.; FFP HOLDINGS, LLC; GASKA
TAPE INC.; HOLLAND METAL FAB, INC.;
AND WALERKO TOOL AND
ENGINEERING CORP.

Defendants.

CIVIL ACTION NO: 15-613

COMPLAINT

The United States of America (the “United States”), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (the “State”), by authority of the Indiana Attorney General and through the undersigned attorneys, acting at the request and on behalf of the Indiana Department of Environmental Management, pursuant to Ind. Code §§ 13-13-5-1(5), file this Complaint and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against Defendants pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, 42 U.S.C. §§ 9606 and 9607(a). The State of Indiana also brings this action pursuant to Ind. Code §§ 13-25-4-8 and 13-25-4-10.

2. The United States and the State seek to recover certain unreimbursed costs incurred and to be incurred for response activities undertaken in response to the release and threatened release of hazardous substances from facilities at and near the Lusher Street Groundwater Contamination Superfund Site (“Site”) located in the City of Elkhart, Elkhart County, Indiana. The Site includes two Operable Units (“OU”). Operable Unit 1 (“OU-1”) is the contaminated groundwater at the Site. This Complaint concerns certain response costs and response actions for the OU-1 groundwater contamination and associated soil vapor at the Site.

3. The United States also seeks injunctive relief requiring Defendants to take action to abate conditions in OU-1 that may present 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 of OU-1.

4. Finally, the United States and the State seek a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), declaring that Defendants are liable for any future response costs that the United States or the State may incur in connection with response activities relating to OU-1.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to Sections 113(b) and 113(e) of CERCLA, 42 U.S.C. §§ 9613(b) and 9613(e), and 28 U.S.C. §§ 1331, 1345, and 1367.

6. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this District and because the Site is located in this District.

DEFENDANTS

7. Defendant Anderson Products Inc. is a Minnesota corporation doing business in the State of Indiana as Anco Products, Inc., at 2500 South 17th Street, Elkhart, Indiana.

8. Defendant B-D Industries, Inc., is incorporated in the State of Indiana, with its principal place of business at 1715 Fieldhouse Avenue, Elkhart, Indiana.

9. Defendant Elkhart Plating Corp. is incorporated in the State of Indiana, with its principal place of business at 1913 South 14th Street, Elkhart, Indiana.

10. Defendant FFP Holdings, LLC, a limited liability company organized in the State of Ohio, formerly known as Flexible Foam Products, LLC, and Flexible Foam Products, Inc., operates at 1900 West Lusher Avenue, Elkhart, Indiana, and is also known as Flexible Foam Products and Flexible Foam.

11. Defendant Gaska Tape Inc. is incorporated in the State of Indiana with its principal place of business at 1810 West Lusher Avenue, Elkhart, Indiana.

12. Defendant Holland Metal Fab, Inc., is incorporated in the State of Indiana with its principal place of business at 1550 West Lusher Avenue, Elkhart, Indiana.

13. Defendant Walerko Tool and Engineering Corp. is incorporated in the State of Indiana with its principal place of business at 1935 West Lusher Avenue, Elkhart, Indiana.

GENERAL ALLEGATIONS

14. The Site consists of approximately 870 acres of mixed-use commercial, industrial, and residential properties, bordered approximately by the St. Joseph River to the north, State Road 19 (Nappanee Street) to the west, Hively Avenue to the south, and Oakland Avenue to the east in the City of Elkhart, Elkhart County, Indiana.

15. Industrial and commercial activity began at the Site in the 1950s and has included metal fabrication, etching, scrapping, cleaning, and plating, and the manufacture of corrugated containers, foam, tape, and plastic products. Chemicals used in these industrial and commercial processes include acetone, chloroform, toluene, methylene chloride, 1,1,1 trichloroethane (“TCA”), tetrachloroethene (“PCE”), and trichloroethene (“TCE”). These as well as other chemicals were discharged, deposited, dumped, leaked, or spilled at the Site, seeped into Site soils, and leached into the groundwater underneath the Site.

16. Sampling at the Site from 1987 through 2006 identified contamination in the soil and groundwater, including the presence of contaminants in residential and commercial/industrial wells.

17. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List (“NPL”), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 19, 2008, 73 Fed. Reg. 14,719.

18. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site in May 2009 pursuant to 40 C.F.R. § 300.430, after which it divided the Site into two Operable Units. In 2013, EPA evaluated the RI data and completed a Focused Feasibility Study (“FFS”) for OU-1. Based on the information collected during the RI and FFS, EPA selected an interim remedy to address groundwater and soil contamination, issuing an Interim Record of Decision (“ROD”) for OU-1 on September 16, 2014, on which the State has given its concurrence. The Interim ROD for OU-1 requires (a) homes within the groundwater area of concern (“AOC”) to be connected to the municipal water supply and (b) homes within the vapor intrusion AOC to have vapor mitigation systems installed. EPA anticipates selecting one or more additional remedial or other response actions at the Site in the future.

19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that certain parties are liable to the United States and the State for response costs incurred under CERCLA:

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 a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, 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 . . . ;
 - (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; . . . and
 - (C) the costs of any health assessment or health effects study carried out

under Section 9604(i) of [Title 42].

42 U.S.C. § 9607(a).

20. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides that in actions for recovery of costs, “the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

21. The Site is a “facility” and OU-1 is a “facility” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

22. Each of the Defendants listed in Paragraphs 7 through 13, above, is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

23. Each Defendant is a current and/or past “owner” and/or “operator” within the meaning of Sections 101(20) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a), of a production facility located within the Site.

24. Each of the production facilities owned and/or operated by Defendants is a “facility” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

25. At times relevant to this action, there have been “releases” and “threatened releases” —within the meaning of Sections 101(14), 101(22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), and 9607(a)—of “hazardous substances” from the facilities owned and/or operated by Defendants and into the environment at the Site. More specifically, there have been releases and threatened releases of acetone, chloroform, toluene, methylene chloride, TCA, PCE, and TCE, which are “hazardous substances” within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and 9707(a).

26. As a result of the releases or threatened releases of hazardous substances at and from the Site, the United States and the State have incurred and will continue to incur “response costs,” including oversight and enforcement costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in responding to the releases or threatened releases of hazardous substances at the Site. The United States and the State will continue to incur response costs in connection with the Site.

27. The above-described response costs relating to the Site were incurred by the United States and the State in a manner not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

28. Each Defendant is either a current owner and/or operator or a person who at the time of disposal of a hazardous substance owned and/or operated a facility at which such hazardous substances were disposed and from which there were releases of hazardous substances, or threatened releases of hazardous substances, into the environment which caused the incurrence of response costs within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

FIRST CLAIM FOR RELIEF

(Cost Recovery by the United States under CERCLA Sections 107 and 113(g)(2),
42 U.S.C. §§ 9607 and 9613(g)(2))

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. Pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), Defendants are jointly and severally liable to the United States for all costs of any response activities taken in connection with the Interim ROD at OU-1, as well as enforcement costs and prejudgment interest on such costs.

SECOND CLAIM FOR RELIEF

(Cost Recovery by the State under CERCLA Sections 107 and 113(g)(2), 42 U.S.C. §§ 9607 and 9613(g)(2), and Ind. Code §§ 13-25-4-8 and 13-25-4-10)

31. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

32. Pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), Defendants are jointly and severally liable to the State for the following response costs incurred and to be incurred by the State, as well as enforcement costs and prejudgment interest on such costs: (i) unreimbursed past response costs incurred at or in connection with response activities involving the Site; and (ii) all future response costs of any response activities taken in connection with the Interim ROD at OU-1. Pursuant to Ind. Code § 13-25-4-8, a person liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), is liable, in the same manner and to the same extent, to the State. Pursuant to Ind. Code § 13-25-4-10, the Commissioner of the Indiana Department of Environmental Management may proceed in the appropriate court to recover costs and damages for which a responsible person is liable to the State under CERCLA Section 107(a), 42 U.S.C. § 9607(a), or Ind. Code § 13-25-4-8.

THIRD CLAIM FOR RELIEF

(Cost Recovery by the State under Ind. Code §§ 13-25-4-8 and 13-25-4-10)

33. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

34. Pursuant to Ind. Code § 13-25-4-8, a person liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), is liable, in the same manner and to the same extent, to the State. Pursuant to Ind. Code § 13-25-4-10, the Commissioner of the Indiana Department of Environmental Management may proceed in the appropriate court to recover costs and damages for which a responsible person is liable to the State under CERCLA Section 107(a), 42 U.S.C. § 9607(a), or Ind. Code § 13-25-4-8. Pursuant to Ind. Code § 13-25-4-8 and CERCLA Section 107(a), 42 U.S.C. §§ 9607(a), Defendants are jointly and severally liable to the State for the following

response costs incurred and to be incurred by the State, as well as enforcement costs and prejudgment interest on such costs: (i) unreimbursed past response costs incurred at or in connection with response activities involving the Site; and (ii) all future response costs of any response activities taken in connection with the Interim ROD at OU-1.

FOURTH CLAIM FOR RELIEF

(Injunctive Relief under CERCLA Section 106, 42 U.S.C. § 9606)

35. Paragraphs 1 through 28 above are realleged and incorporated herein by reference.

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

[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 require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

37. For the matters addressed in this Complaint, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

38. EPA 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 or threatened releases of hazardous substances at or from OU-1.

39. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendants are subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from OU-1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs the United States of America and the State of Indiana respectfully request that this Court:

A. Enter judgment in favor of the United States and against the above-named Defendants, jointly and severally, for all costs of any response activities taken in connection with the Interim ROD at OU-1, as well as enforcement costs and prejudgment interest on such costs.

B. Enter judgment in favor of the State and against the above-named Defendants, jointly and severally, for any unreimbursed past response costs incurred at or in connection with response activities at the Site, including prejudgment interest on such costs;

C. Enter a declaratory judgment in favor of the United States and the State and against the above-named Defendants pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each and every Defendant is jointly and severally liable for future costs of any response activities taken in connection with the Interim ROD at OU-1;

D. Order the above-named Defendants to abate the conditions at OU-1 that may present an imminent and substantial endangerment to the public health or welfare or environment as identified in the Interim ROD;

E. Award the United States and the State their costs of this action; and

F. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES



THOMAS A. MARIANI, JR.

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Complaint in the matter of *United States and Indiana v. Anderson Products Inc., et al.*



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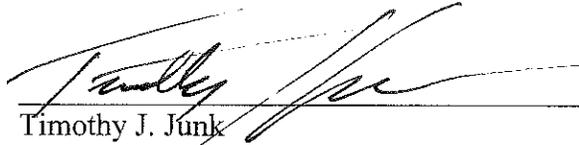
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FOR THE STATE OF INDIANA

GREGORY F. ZOELLER
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A handwritten signature in black ink, appearing to read 'Timothy J. Junk', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint was served on this date by first-class mail, postage prepaid, upon the following individuals:

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Dated: December 21, 2015

/s/ Ashleigh G. Morris