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22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA**
24 **WESTERN DIVISION**

25 UNITED STATES OF AMERICA)
and STATE OF CALIFORNIA,) CIV. NO.:
26 DEPARTMENT OF TOXIC)
SUBSTANCES CONTROL,) COMPLAINT
)

1 Plaintiffs,)
2 v.)
3 AC Products, Inc.;)
4 A. G. Layne, Inc.;)
5 Alpha Corporation of Tennessee Inc.;)
6 Ashland Inc.;)
7 Atlantic Richfield Company;)
8 Baker Petrolite LLC;)
9 Cargill, Incorporated;)
10 Castrol Industrial North America Inc.;)
11 Chemcentral Corp.;)
12 Chemical Waste Management, Inc.;)
13 Chevron U.S.A. Inc.;)
14 Coral Chemical Company;)
15 D.A. Stuart Company;)
16 Dunn-Edwards Corporation;)
17 Engineered Polymer Solutions, Inc.;)
18 ExxonMobil Oil Corporation;)
19 Gallade Chemical, Inc.;)
20 Hasco Oil Company, Inc.;)
21 Houghton International, Inc.;)
22 J.H. Mitchell & Sons Distributors, Inc.;)
23 Lockheed-Martin Corporation;)
24 Lonza Inc.;)
25 Lubricating Specialties Company;)
26 Mathisen Oil Co., Inc.;)
 Pennzoil-Quaker State Company;)
 Penreco)
 PolyOne Corporation;)
 PPG Industries, Inc.;)
 PTM&W Industries Inc.;)
 Quaker Chemical Corporation;)
 Rathon Corp.;)
 Shell Chemical LP;)
 Shell Oil Company;)
 SOCO West, Inc.;)
 Southern California Edison;)
 Southern Counties Oil Co.;)
26

1 Sta-Lube LLC f/k/a Sta-Lube, Inc.;)
 2 Stuarts' Petroleum;)
 3 Texaco Downstream Properties Inc.;)
 4 The Boeing Company;)
 5 The Valspar Corporation;)
 6 Union Oil Company of California; and)
 7 Univar USA Inc.,)
 8 Defendants.)

8 The United States of America, by authority of the Attorney General of the
 9 United States and through the undersigned attorneys, acting at the request of the
 10 Administrator of the United States Environmental Protection Agency ("EPA"), and
 11 the State of California Department of Toxic Substances Control ("DTSC")
 12 (collectively referred to as "Plaintiffs") allege as follows:
 13

14 **STATEMENT OF THE ACTION**

15 1. This is a civil action by the United States of America for injunctive
 16 relief and recovery of costs under sections 106(a) and 107 of the Comprehensive
 17 Environmental Response, Compensation, and Liability Act ("CERCLA"),
 18 42 U.S.C. §§ 9606(a) and 9607.

19 2. This is also a civil action by DTSC for recovery of costs under
 20 section 107 of CERCLA, 42 U.S.C. § 9607.

21 3. Plaintiffs have incurred response costs and expect to continue to
 22 incur response costs in connection with actions taken in response to releases and/or
 23 threatened releases of hazardous substances at and/or from the Cooper Drum
 24
 25
 26

1 Company Superfund Site located in Los Angeles County, California (the "Site").

2 4. Plaintiffs also make a claim under Section 113(g)(2) of CERCLA,
3 42 U.S.C. § 9613(g)(2), for a declaratory judgment that each of the Defendants is
4 jointly and severally liable to Plaintiffs for future response costs incurred by
5 Plaintiffs in responding to releases and/or threatened releases of hazardous
6 substances at and/or from the Site.
7

8
9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction over the subject matter of this action,
11 and the parties to this action, pursuant to sections 106(a), 107(a) and 113(b) of
12 CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C.
13 §§ 1331 and 1345.
14

15 6. Venue is proper in this district under sections 106(a) and 113(b) of
16 CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b), because
17 the claims arose, and/or the threatened and actual releases of hazardous substances
18 occurred, within this judicial district.
19

20 **PLAINTIFFS**

21 7. Plaintiff, the United States of America, is acting at the request of
22 the EPA, an agency of the United States.
23

24 8. Plaintiff, the State of California Department of Toxic Substances
25 Control (DTSC) is a public agency of the State of California organized and
26

1 existing under and pursuant to sections 58000-58018 of the California Health and
2 Safety Code. DTSC is the state agency responsible under state law for determining
3 whether there has been a release and/or threatened release of a hazardous substance
4 into the environment, and for determining the actions to be taken in response
5 thereto.
6

7 **DEFENDANTS**

8 9. Defendants AC Products, Inc.; A. G. Layne, Inc.; Alpha
9 Corporation of Tennessee Inc.; Ashland Inc.; Atlantic Richfield Company; Baker
10 Petrolite LLC; Cargill, Incorporated; Castrol Industrial North America Inc.;
11 Chemcentral Corp.; Chemical Waste Management, Inc.; Chevron U.S.A. Inc.; Coral
12 Chemical Company; D.A. Stuart Company; Dunn-Edwards Corporation;
13 Engineered Polymer Solutions, Inc.; ExxonMobil Oil Corporation; Gallade
14 Chemical, Inc.; Hasco Oil Company, Inc.; Houghton International, Inc.; J.H.
15 Mitchell & Sons Distributors, Inc.; Lockheed-Martin Corporation; Lonza Inc.;
16 Lubricating Specialties Company; Mathisen Oil Co., Inc.; Pennzoil-Quaker State
17 Company; Penreco; PolyOne Corporation; PPG Industries, Inc.; PTM&W
18 Industries Inc.; Quaker Chemical Corporation; Rathon Corp.; Shell Chemical LP;
19 Shell Oil Company; SOCO West, Inc.; Southern California Edison; Southern
20 Counties Oil Co.; Sta-Lube LLC f/k/a Sta-Lube, Inc.; Stuarts' Petroleum; Texaco
21 Downstream Properties Inc.; The Boeing Company; The Valspar Corporation;
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1 Union Oil Company of California; and Univar USA Inc. (collectively,
2 “Defendants”) are “persons” within the meaning of section 101(21) of CERCLA,
3 42 U.S.C. § 9601(21).
4

5 **GENERAL ALLEGATIONS**

6 10. The Site is approximately 2.4 acres in size and is located in South
7 Gate, a mixed commercial, industrial, residential area about ten miles southeast of
8 downtown Los Angeles. The Site is bordered by Atlantic Avenue to the west,
9 Rayo Avenue to the east, and the former Tweedy Elementary School to the south.
10 The Site was the location of the Cooper Drum Company, which operated a drum
11 reconditioning business from 1974 to approximately 1993.
12

13 11. Each Defendant had an ongoing business relationship with the
14 Cooper Drum Company during the time of its drum reconditioning operations at
15 the Site.
16

17 12. During the time of Cooper Drum Company’s drum reconditioning
18 operations at the Site, the business of each Defendant involved the use, storage
19 and/or processing of hazardous substances and/or solid wastes. The Cooper Drum
20 Company either picked up or accepted from each Defendant used 55-gallon drums
21 that contained residues of hazardous substances and/or solid wastes. As a result of
22 the acts of the Defendants at the Site, hazardous substances have been and continue
23 to be released and/or threatened to be released into the soil at and/or from the Site.
24
25
26

1 13. The drum reconditioning process at the Site consisted of flushing
2 and stripping the drums, repainting where necessary, and returning the drums to
3 their owners for reuse. Residual wastes flushed from the drums and wastes from
4 the reconditioning process were collected in open concrete pits and trenches,
5 resulting in contamination of the soils and groundwater beneath the Site.
6

7 14. During the time of Cooper Drum Company's drum reconditioning
8 operations at the Site, caustic fluids leaked from the on-Site trenches onto the
9 property of the Tweedy Elementary School, contaminating the soils. The Tweedy
10 Elementary School was closed in 1988 due to the concern that children could be
11 exposed to contamination.
12

13 15. In 1989, the Los Angeles Department of Health Services
14 ("LADHS") collected soil samples at the Site and found hazardous substances in
15 the soils, including volatile organic compounds ("VOCs"), petroleum byproducts
16 and polychlorinated biphenyls ("PCBs").
17

18 16. The Cooper Drum Company, under the direction of the LADHS,
19 removed contaminated soils from its property and from the property of the former
20 Tweedy Elementary School. Four monitoring wells were placed in the Gaspur
21 Aquifer, the uppermost aquifer beneath the Site, and VOCs were detected in the
22 Gaspur Aquifer.
23

24 //

1 17. From 1996 to 2002, EPA conducted a Remedial Investigation and
2 Feasibility Study (“RI/FS”) for the Site. In the RI/FS, EPA concluded that
3 substantial portions of the soil and groundwater beneath the Site have been
4 contaminated by VOCs, mainly chlorinated solvents such as trichloroethene
5 (“TCE”), tetrachloroethene (“PCE”), and isomers of dichloroethene (“DCE”) and
6 dichloroethane (“DCA”). Other contaminants of concern are 1,4-dioxane in
7 groundwater and polyaromatic hydrocarbons (“PAHs”), PCBs, and lead in the soil.
8
9

10 18. TCE, PCE, isomers of DCE and DCA; 1,4-dioxane, PAHs, PCBs,
11 and lead are among the Site-related chemicals used at the Defendants’ facilities
12 and transported to the Site in the course of the Defendants’ business dealings with
13 the Cooper Drum Company.
14

15 19. TCE, PCE, isomers of DCE and DCA; 1,4-dioxane, PAHs, PCBs,
16 and lead are hazardous substances as defined in section 101(14) of CERCLA,
17 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, App. A.
18

19 20. The resulting groundwater contamination has generally migrated
20 from the Site in a southerly direction through the Gaspur Aquifer. The
21 groundwater in the Gaspur Aquifer is designated as a potential drinking water
22 source in the Los Angeles Regional Water Quality Control Board’s Water Quality
23 Control Plan. Several deeper groundwater aquifers contiguous to and beneath the
24 Site are currently used for domestic purposes, including drinking water, and are
25
26

1 presently endangered by Site contaminants migrating laterally and vertically from
2 the shallow aquifer towards and into the deeper aquifers.

3
4 21. Pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, EPA
5 placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300,
6 Appendix B, in June 2001. 66 Fed. Reg. 32,235 (June 14, 2001).

7
8 22. Pursuant to section 117 of CERCLA, 42 U.S.C. § 9617, EPA
9 published notice of the completion of the RI/FS and of EPA's proposed plan for
10 remedial action on June 11, 2002, in the *Long Beach Press-Telegram*, and held a
11 public meeting on the RI/FS and proposed plan on June 27, 2002. EPA executed
12 the Record of Decision for the Site on September 27, 2002 ("ROD").

13
14 23. The remedial action called for in the ROD addresses contaminated
15 soil and groundwater. Dual phase extraction was selected for treatment of VOCs
16 in soil and perched groundwater. The ROD provides for excavation and off-Site
17 disposal of other non-VOC contaminants in soils, including semi-volatile organic
18 compounds, PCBs and lead, or, where excavation is not feasible, the imposition of
19 institutional controls to prevent exposure. The ROD prescribes extraction and
20 treatment of groundwater for containment and remediation. Chemical in situ
21 treatment is also prescribed to enhance the treatment of VOCs in groundwater and
22 to reduce the potential for other VOC plumes in the vicinity to impact the Site.

23
24 //

1 24. The ROD is consistent with CERCLA and the National
2 Contingency Plan, 40 C.F.R. Part 300.

3 25. TCE, PCE, isomers of DCE and DCA; 1,4-dioxane, PAHs, PCBs,
4 and lead each have come to be located at the Site.

5 26. There were and are “releases” and threatened “releases” of
6 hazardous substances from the Site within the meaning of section 101(22) of
7 CERCLA, 42 U.S.C. § 9601(22), into the environment at and from the Site, and
8 the Site poses numerous threats to human health and the environment.
9

10 27. The Site is a “facility” within the meaning of section 101(9) of
11 CERCLA, 42 U.S.C. § 9601(9) and a “site” within the meaning of Health and
12 Safety Code Section 25323.9.
13

14 28. Plaintiffs have incurred costs for “response” as that term is defined
15 in section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and Health and Safety Code
16 section 25323.3, in taking actions related to the release and/or threatened release of
17 hazardous substances at, around, and/or beneath the Site. The Plaintiffs’ response
18 actions include, but are not limited to, the following activities: investigation;
19 removal/remediation actions; enforcement/cost recovery; oversight; public
20 participation; production of written reports and decision documents.
21

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23 //

FIRST CLAIM FOR RELIEF

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

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

In addition to any other action taken by a State or local government, when 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.

31. By Executive Order 12580 of January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), were delegated to the Administrator of EPA.

32. 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 the release and threatened releases of hazardous substances from the Site.

1 by such person, from which there is a release, or a threatened release
2 which causes the incurrence of response costs, of a hazardous
3 substance, shall be liable for --
4

5 (A) all costs of removal or remedial action incurred by the United
6 States Government or a State . . . not inconsistent with the national
7 contingency plan . . .
8

9 36. Each Defendant is a person who by contract, agreement, or
10 otherwise arranged for disposal or treatment, or arranged with a transporter for
11 transport for disposal or treatment, of hazardous substances owned or possessed by
12 such person, by any party or entity, at the Site within the meaning of section
13 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
14

15 37. Plaintiffs have incurred and will continue to incur costs of removal
16 and remedial actions not inconsistent with the National Contingency Plan to
17 respond to the release or threatened release of hazardous substances at and from
18 the Site, within the meaning of sections 101(23), (24) and (25) of CERCLA,
19 42 U.S.C. §§ 9601(23), (24) and (25).
20

21 38. Defendants are jointly and severally liable to Plaintiffs for all
22 response costs, including the costs of removal and remedial actions incurred in the
23 past by Plaintiffs with respect to the Site, plus interest on the response costs,
24 pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
25
26

