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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA
Plaintiff,

Civil Action No.

v.

COMPLAINT

AMERICAN CHEMET CORPORATION,
Defendant.

The United States of America, by its undersigned attorneys, by the authority of the Attorney General of the United States, and at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges that:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a), and for a declaration of Defendant's

liability for all future response costs to be incurred by the United States in connection with the release or threatened release of hazardous substances into the environment at and from the East Helena Superfund Site located in East Helena, Lewis and Clark County, Montana (the “Site” or “Facility”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Sections 106,107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. § 1391 (b), because the release or threatened release of hazardous substances occurred in this district and because the Site is located in this district.

DEFENDANT

4. American Chemet Corporation (“ACC”) is a corporation organized under the laws of Montana. ACC owns part of the Site and owned and operated a facility located within the Site at the time of the disposal of hazardous substances there.

GENERAL ALLEGATIONS

5. ACC is the current owner of part of the Site located at 1 Smelter Road, East Helena, Montana, adjacent to the northwest side of the ASARCO lead smelter complex and immediately south of U.S. Highway 12.

6. Since 1962, ACC has owned and operated a lead and zinc smelter and manufactured metal-based chemicals at that Facility, located within the Site and adjacent to the ASARCO lead smelter in East Helena, Montana.

7. Lead and zinc are “hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), that were disposed of at the Site and have come to be located at the Site.

8. The primary chemicals of concern at the Site are lead in soils and, to a lesser extent, arsenic. Selenium and arsenic are the primary contaminants in groundwater.

9. Air particulate emissions from the ASARCO operations and from the ACC operations constituted releases of lead into the environment at the Site.

10. In 1989, a “Record of Decision (“1989 ROD”) for the East Helena Smelter Site Process Ponds OU” addressed, among other things, the sources of selenium and arsenic leaching into groundwater from the ASARCO property.

11. Soil samples at the Site have shown the presence of lead. Lead is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

12. Lead in Site soils was addressed by a 2009 Record of Decision (2009 ROD) for “East Helena Superfund Site, Operable Unit No. 2, Residential Soils and Undeveloped Lands.”

13. As a result of the release or threatened release of hazardous substances at and from the Site, the United States has incurred “response costs,” as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a). The United States will continue to incur costs in connection with the Site.

14. The response actions taken by the United States, and the resulting response costs incurred by the United States, in connection with the Site are not inconsistent with the National Contingency Plan, as set forth in 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

15. Paragraphs 1-14 are realleged and incorporated herein by reference.

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

- (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, . . .

(4) . . . 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 . . . not inconsistent with the national contingency plan[.]

17. Section 113(g)(2)(B) of CERCLA, 42, U.S.C. § 9613(g)(2) provides:

. . . In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], 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.

18. The Site is a location where hazardous substances have been deposited, stored, disposed of, placed or otherwise come to be located, and thus is a "facility" within the meaning of Sections 107(a)(2) and (3) and 101(9), 42 U.S.C. §§ 9607(a)(2) and (3) and 9601(9).

19. There were "releases" and "threatened releases" of hazardous substances, " within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), at the Site.

20. The materials disposed and released at the Site are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

22. Defendant ACC is the owner of a facility, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and was the owner and operator of the facility, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and, therefore, is liable for all costs of removal and remedial actions to be incurred not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.

23. In response to the releases at the Site, EPA has taken response actions at or in connection with the Site under authority granted in Section 104 of CERCLA, 42 U.S.C. § 9604.

24. As a result of EPA's response actions, the United States has incurred response costs related to the release or threatened release of hazardous substances at the Site, and the United States has and will continue to incur such costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

25. The response costs incurred by the United States at the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

26. The defendant is jointly and severally liable to the United States for all response costs to be incurred by the United States in connection with the Site, including enforcement costs.

SECOND CLAIM FOR RELIEF

27. Paragraphs 1-26 are realleged and incorporated herein by reference.

28. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in relevant 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 . . . secure such relief as may be necessary to abate such danger or threat[.]

29. The President, through his delegate, the Regional Administrator of EPA Region 8, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of hazardous substances at and from the Site.

30. Section 106(a) authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

31. EPA has determined that the remedy selected in the 1989 ROD and 2009 ROD are necessary to abate the danger or threat at the Site.

32. Defendant ACC is liable to undertake the remedial actions identified in the 1987 and 2009 RODs, which actions EPA has determined are necessary to abate the danger or threat at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, requests that this Court grant the following relief:

1. Order Defendant ACC to perform the remedial actions for the East Helena Superfund Site selected by EPA in the 1989 ROD and the 2009 ROD;
2. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the defendant is liable, jointly and severally, for all future costs incurred by the United States for response actions in connection with the Site;
3. Award the United States the costs of this action, including its costs of attorney time; and,
4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

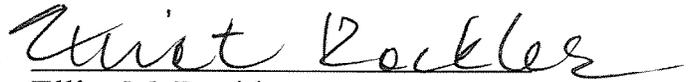
U.S. DEPARTMENT OF JUSTICE

ENVIRONMENT AND NATURAL
RESOURCES DIVISION



Nathaniel Douglas

Deputy Section Chief
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A handwritten signature in black ink, appearing to read "Elliot Rockler". The signature is written in a cursive style with a horizontal line underneath it.

Elliot M. Rockler

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