UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

United States of America, Plaintiff, v. ACS Industries, Inc., Agfa Corporation, AIW Wind Down Corp., Alcatel-Lucent USA Inc., Alcoa Inc., American Optical Corporation, Analog Devices, Inc., Avnet, Inc., Ausimont Industries, Inc., BAE Systems Information and Electronic Systems Integration Inc., Benjamin Moore & Co., Benny's Inc., Benny's of Mass., Inc., Benny's of Rhode Island, Inc., BNS Co., Brigham and Women's Faulkner Hospital, Inc., Bull HN Information Systems, CAP, Inc., CBS Operations, Inc., City of Boston, Clean Harbors, Inc., Continental Tire the Americas, LLC, Corning Incorporated, Costa Inc., Cumberland Engineering Corp., CVS Pharmacy, Inc., Energizer Manufacturing, Inc., Envirite Corp., Flint Group US LLC, Fortifiber Corporation, Galego Equities, Inc., General Cable Industries, Inc., General Electric Company, Georgia-Pacific LLC, Handy & Harman Electronic Materials Corp., Handy & Harman Corp., Hasbro, Inc., Hindley Manufacturing Co., Inc., Hollingsworth & Vose Company, Honeywell International Inc., HP Inc., Huhtamaki, Inc., International Paper Company, Invensys Systems, Inc., IRG Mansfield, LLC, J. H. Lynch & Sons, Inc., Kaman Aerospace Corp., KIK Custom Products, Inc., Kmart Corporation, Landry & Martin Oil Co., Inc., Larson Tool and Stamping Company, Louis M. Gerson Co., Inc., Mandeville Signs Inc., Microfibres, Inc., Motorola Solutions, Inc., Mule Emergency Lighting, Inc., Murata Power Solutions, Inc., NSTAR Electric Company, Oce Imaging Supplies, Olin Corporation, Organic Dyestuffs Corporation, OSRAM Sylvania, Inc., Pentair Valves & Controls, LLC, Philips Electronics North America Corp., President and Fellows of Harvard College, Quest Diagnostics Incorporated, Raytheon Company, Rockwell Collins, Inc., Rohm and Haas Chemical LLC, Sears Roebuck & Co., Sequa Corporation, Shawmut Corporation, Sikorsky Aircraft Corporation, Standard Rubber Products, Inc., Supervalu Holdings, Inc., Teknor Apex Company, Texas Instruments Incorporated, Textron Inc., The Hilsinger Company, The Narragansett Electric Company, The Okonite Company, Inc.,	Civil Action No.

The Sherwin-Williams Company, The Stop & Shop Supermarket Company LLC, Thermo Fisher Scientific, Inc., Thomas & Betts Corporation, Tyco Electronics Corporation, Uniroyal, Inc., Valentine Tool & Stamping, Inc., Verizon New England, Inc., WestRock MWV, LLC, Wyman-Gordon Company, Zeneca, Inc., Allied Waste Industries, LLC, Allied Waste Services of Massachusetts, LLC, Browning-Ferris Industries, Inc., American Disposal Services of Missouri, Inc., Three R Transportation, Inc., Waste Management of Massachusetts, Inc., Waste Management Disposal Services of Massachusetts, Inc., and Waste Management of Rhode Island, Inc., Defendants.	

COMPLAINT

The United States of America ("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"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against the Defendants named in Paragraphs 4 and 5 below pursuant to Sections 106, 107(a) and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607(a) and 9613(g). The United States seeks to recover response costs that it has incurred in conducting response activities in connection with the release or threatened release of hazardous substances into the environment at or from the Second Operable Unit ("OU2") of the Peterson/Puritan, Inc. Superfund Site, located in Lincoln and Cumberland, Rhode Island, pursuant to Section 107(a) of

CERCLA, 42 U.S.C. § 9607(a). The United States further seeks injunctive relief, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring that the Defendants take action to abate conditions at or near OU2 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 at or from OU2. Finally, the United States seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that all the Defendants will be liable for any further response costs that the United States may incur as a result of a release or threatened release of hazardous substances into the environment at or from OU2.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 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 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. ACS Industries, Inc., Agfa Corporation, AIW Wind Down Corp., Alcatel-Lucent USA Inc., Alcoa Inc., American Optical Corporation, Analog Devices, Inc., Avnet, Inc., Ausimont Industries, Inc., BAE Systems Information and Electronic Systems Integration Inc., Benjamin Moore & Co., Benny's Inc., Benny's of Mass., Inc., Benny's of Rhode Island, Inc., BNS Co., Brigham and Women's Faulkner Hospital, Inc., Bull HN Information Systems, CAP, Inc., CBS Operations, Inc., City of Boston, Clean Harbors, Inc., Continental Tire the Americas,

LLC, Corning Incorporated, Costa Inc., Cumberland Engineering Corp., CVS Pharmacy, Inc., Energizer Manufacturing, Inc., Envirite Corp., Flint Group US LLC, Fortifiber Corporation, Galego Equities, Inc., General Cable Industries, Inc., General Electric Company, Georgia-Pacific LLC, Handy & Harman Electronic Materials Corp., Handy & Harman Corp., Hasbro, Inc., Hindley Manufacturing Co., Inc., Hollingsworth & Vose Company, Honeywell International Inc., HP Inc., Huhtamaki, Inc., International Paper Company, Invensys Systems, Inc., IRG Mansfield, LLC, J. H. Lynch & Sons, Inc., Kaman Aerospace Corp., KIK Custom Products, Inc., Kmart Corporation, Landry & Martin Oil Co., Inc., Larson Tool and Stamping Company, Louis M. Gerson Co., Inc., Mandeville Signs Inc., Microfibres, Inc., Motorola Solutions, Inc., Mule Emergency Lighting, Inc., Murata Power Solutions, Inc., NSTAR Electric Company, Oce Imaging Supplies, Olin Corporation, Organic Dyestuffs Corporation, OSRAM Sylvania, Inc., Pentair Valves & Controls, LLC, Philips Electronics North America Corp., President and Fellows of Harvard College, Quest Diagnostics Incorporated, Raytheon Company, Rockwell Collins, Inc., Rohm and Haas Chemical LLC, Sears Roebuck & Co., Sequa Corporation, Shawmut Corporation, Sikorsky Aircraft Corporation, Standard Rubber Products, Inc., Supervalu Holdings, Inc., Teknor Apex Company, Texas Instruments Incorporated, Textron Inc., The Hilsinger Company, The Narragansett Electric Company, The Okonite Company, Inc., The Sherwin-Williams Company, The Stop & Shop Supermarket Company LLC, Thermo Fisher Scientific, Inc., Thomas & Betts Corporation, Tyco Electronics Corporation, Uniroyal, Inc., Valentine Tool & Stamping, Inc., Verizon New England, Inc., WestRock MWV, LLC, Wyman-Gordon Company, and Zeneca, Inc. are each companies that owned or possessed hazardous substances and by contract, agreement, or otherwise, arranged for disposal or treatment, or

arranged with a transporter for transport for disposal or treatment, of such hazardous substances, which came to be located at OU2 or are their successor entities (hereinafter the "Generator Defendants").

5. Allied Waste Industries, LLC, Allied Waste Services of Massachusetts, LLC, Browning-Ferris Industries, Inc., American Disposal Services of Missouri, Inc., Clean Harbors, Inc., Three R Transportation, Inc., Waste Management of Massachusetts, Inc., Waste Management Disposal Services of Massachusetts, Inc., and Waste Management of Rhode Island, Inc. are each companies that accepted waste, which contained hazardous substances, for transport to OU2 for disposal or are their successor entities (hereinafter the "Transporter Defendants").

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

7. Defendant Microfibres, Inc. ("Microfibres") has filed a petition for relief under Chapter 7 of the Bankruptcy Code in a case pending in the United States Bankruptcy Court for the District of Rhode Island, No. 16-10154. This complaint does not violate the automatic stay set forth at Section 362 of the Bankruptcy Code because (a) Microfibres has consented to the filing of the complaint, (b) the complaint does not seek a money judgment against Microfibres, and (c) the complaint is being filed against Microfibres simply to allow the United States to enter into this settlement with Microfibres, pursuant to which Mircrofibres will make a payment to certain potentially responsible parties at the Site in accordance with an allowed claim held by such parties approved by the Bankruptcy Court on September 7, 2016.

8. Defendant KMart Corporation ("Kmart") entered into a Settlement Agreement with the United States in In re Kmart Corporation, No. 02-02474 (Bankr. N.D. Ill.), which was approved by the Bankruptcy Court on July 15, 2003. Pursuant to that agreement, the United States may enter into a settlement with Kmart with respect to the liability of Kmart at OU2, but the United States may not seek an injunction against Kmart under Section 106 of CERCLA with respect to the Site. Therefore, this complaint does not seek such relief against Kmart.

GENERAL ALLEGATIONS

9. The contamination at OU2 resulted from the disposal of waste at a landfill known as the J.M. Mills Landfill, which was located adjacent to the Blackstone River. OU2 includes several parcels of land, including the former J. M. Mills Landfill, the Nunes Parcel, and an unnamed island (Unnamed Island); all of which contain waste deposits and were owned and operated by Joseph and Linda Marszalkowski through their business J. M. Mills, Inc. during the time of disposal as a single landfill facility.

10. Disposal activities at OU2 occurred from approximately 1954 to 1986 during which time assorted hazardous substances including, but not limited to, benzene, PCBs, and lead, were disposed of at OU2. During this time, the landfill accepted more than 2.1 million cubic yards of waste for disposal, resulting in contamination of the soil, groundwater, surface water, and sediments.

11. EPA placed the Site on the National Priorities List ("NPL") in September, 1983. The NPL was established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is found at 40 C.F.R. Part 300, Appendix B. The NPL is a list of those sites at which there are releases of hazardous substances, and which EPA has ranked as having the highest priority for

remediation or other response action among all nationally identified releases, based on relative risk or danger to public health, welfare, or the environment.

12. On September 8, 2015, EPA issued a Record of Decision ("ROD") that selected a remedy for OU2. The selected remedy addresses contaminated floodplain soils, sediment, and groundwater within OU 2 and follows a presumptive containment approach for addressing the large volumes of waste, including hazardous waste, disposed of in both landfills and associated debris fields within the OU 2 boundary and immediate floodplain of the Blackstone River. The remedy includes the J. M. Mills Landfill, the Nunes Parcel, the "Unnamed Island" (all of which operated for a time as a single landfill and disposal Facility), and any other areas where contamination from the landfill operations came to be located.

13. OU2 is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. At all times relevant to this action, there has been a "release" or "threatened release" of "hazardous substances" into the environment at or from OU2, 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).

15. EPA has incurred and will continue to incur "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for actions taken in response to the release or threatened release of hazardous substances at or from OU2.

16. EPA's response actions taken at or in connection with OU2 and the costs incurred incident thereto were not inconsistent with the National Contingency Plan, which was

promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

(**Cost Recovery by EPA**)

17. Paragraphs 1 through 16 are realleged and incorporated herein by reference.

18. 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 . . .
>
> (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 ... at any facility [a "generator" of hazardous substances] . . . .
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities [a "transporter"of hazardous substances]...
>
> 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. . . .

19. Each of the Generator Defendants, named in Paragraph 4, is within the class of liable persons described in Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), because each arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at OU2 of hazardous substances that they owned or possessed, or is a successor in interest to such persons.

20. Each of the Transporter Defendants, named in Paragraph 5, is within the class of liable persons described in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), because each

accepted and transported hazardous substances to OU2 for disposal there, or is a successor in interest to such persons.

21. Pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A), each of the Defendants is jointly and severally liable to the United States for all response costs incurred or that will be incurred by the United States in connection with OU2, including enforcement costs and prejudgment interest on such response costs.

SECOND CLAIM FOR RELIEF

(Injunctive Relief Under Section 106 of CERCLA)

22. Paragraphs 1-21 are realleged and incorporated herein by reference.

23. 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 threat . . . .

24. The President, through his delegate, the Regional Administrator of EPA Region I, 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 OU2.

25. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), each of the Defendants is jointly and severally 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 OU2.

26. EPA has determined that the remedy selected in the ROD is necessary to abate the danger or threat at or from OU2.

27. Therefore, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), each of the Defendants is jointly and severally liable to undertake the remedial action identified in the ROD, which action EPA has determined is necessary to abate the danger or threat at or from OU2.

PRAYER FOR RELIEF

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

1. Enter judgment in favor of the United States and against the Defendants, with the exception of Microfibres, jointly and severally, pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A), for all costs incurred by the United States, including enforcement costs and prejudgment interest, for response actions taken in connection with OU2;

2. Order the Defendants, with the exception of Kmart, to abate the conditions at OU2 that may present an imminent and substantial endangerment to the public health or welfare or the environment by undertaking the remedy selected in the ROD;

3. Enter a declaratory judgment of liability in favor of the United States and against the Defendants, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding on any subsequent action or actions to recover further response costs;

5. Award the United States its costs of this action; and

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

Respectfully submitted,

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