

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
MICHAEL COSOLA)	
)	
Defendant.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607 and 9613, against Defendant Michael Cosola. The United States seeks to recover costs incurred in response to the release or threatened release of hazardous substances into the environment at or from the Twin Cities Iron and Metal Site located in Bristol, Virginia (“Site”). The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendant is jointly and severally liable for any future response costs incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

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

3. Venue is proper in this judicial district under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391, because the releases or threatened releases that give rise to the claims occurred in this district and because the Site is located in this district.

DEFENDANT

4. Defendant Michael Cosola is the current owner of the Site property.

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

**LAW GOVERNING CLAIMS FOR RELIEF UNDER
SECTION 107 OF CERCLA**

6. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, and provide for remedial action relating to, such hazardous substance. The President’s authority under Section 104 has been delegated to EPA.

7. Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), provides that subject only to the defenses set forth in Section 107(b), “the owner and operator of a vessel or a facility... 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 “all costs of removal or remedial action incurred by the United States Government... not inconsistent with the national contingency plan.”

8. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides that in any 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.”

GENERAL ALLEGATIONS

9. The Site is located in Bristol, Virginia and includes approximately 12 acres of land alongside 950-1000 Fairview Street, which are generally designated by the following tax parcel numbers: Parcels 29-9-1A, 29-9-1B, 29-9-6, 29-9-7A, and 29-9-7B. The Site is bordered by Beaver Creek to the west and south and by residential and commercial properties to the north and east. The Site includes portions of Beaver Creek.

10. Defendant Michael Cosola acquired the Site property on May 24, 2012, and continues to own the property.

11. From 1975 to 2000, the Site was owned and operated as a scrap yard by Poor Charlie and Company and its predecessors Raleigh Junk Company and Robert Corporation (collectively referred to as “Poor Charlie”). Poor Charlie accepted batteries and transformers for disposal at the Site.

12. As a result of Poor Charlie’s operations and disposal practices at the Site, the Site is contaminated with lead and PCBs.

13. Two removal actions have been conducted at the Site. The first took place from 1995-1997 under an Administrative Order by Consent (“AOC”) between EPA and Poor Charlie. Pursuant to the AOC, Poor Charlie excavated and disposed of soil contaminated by lead and PCBs. This removal action did not address contamination at the portion of the Site located near Beaver Creek. The United States does not seek to recover costs associated with the 1995-1997 removal action as part of this Complaint.

14. In October of 2008, the Virginia Department of Environmental Quality requested that EPA evaluate the source of elevated concentrations of PCBs detected in Beaver Creek in the vicinity of the Site. While evaluating Site conditions with the owner, EPA's On-Scene Coordinator ("OSC") observed battery casings, transformer parts, and other debris comprising a steeply sloped embankment alongside the banks of Beaver Creek. The OSC also observed battery casings and other debris upon the sewer easement at the base of the embankment, the banks of Beaver Creek, and within Beaver Creek. The OSC also observed soil containing battery casings and debris eroding into Beaver Creek.

15. Soil and sediment samples at the Site revealed elevated concentrations of PCBs and lead. Lead was detected at concentrations up to 172,000 mg/kg in the exposed surface soils at the Site based on XRF screening technology. Laboratory analytical results of soil and sediment samples confirm concentrations of lead up to 149,000 mg/kg in the soil and up to 677 mg/kg in the sediment of Beaver Creek. Laboratory analytical results for PCBs indicated PCB concentrations of up to 66 mg/kg in the Site soil and 2 mg/kg in Beaver Creek sediment.

16. PCBs and lead are each hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. On September 15, 2009, EPA issued an Action Memorandum, in which it determined that threatened releases of hazardous substances from the Site posed an imminent and substantial endangerment to the public health, welfare, or the environment and that a removal action was required.

18. EPA mobilized to the Site to begin the second removal action in October of 2009 (the "Second Removal Action"). As part of the Second Removal Action, EPA removed over 5,500 tons of contaminated soil from the Site, backfilled the excavated areas with clean fill, and

hydroseeded the Site to prevent erosion. EPA left some contamination in place, covered by at least two feet of clean fill. Orange hi-vis fencing and geo-tech liner were left in place beneath the fill over the known areas of contaminated soils.

19. On March 26, 2013, EPA approved a Modification to the Scope of Work (“Modification”) for the Site based on its determination that a post removal site control measure was necessary at the Site to maintain the integrity of the Second Removal Action and to prevent exposure to the contamination that remains at depth on the Site. Specifically, the Modification included the following use limitation for the Site: “Any future activity on the Covered Areas of the property delineated on the Site Map should be performed with the proper precautions to prevent any release of the lead contaminated soil there, and to prevent human exposure to the lead contaminated soil.”

20. The contamination left in place at the Site continues to pose a threatened release of hazardous substances unless the use limitations contained in the Modification are complied with by current and future Site owners and operators.

21. The United States has incurred, and continues to incur, unreimbursed costs relating to the Second Removal Action at the Site. As of May 28, 2016, EPA has incurred at least \$3,401,833.31 in unreimbursed response costs.

CLAIM FOR RELIEF

22. The allegations of Paragraphs 1 through 21 are realleged and incorporated herein by reference.

23. Defendant is the current owner of the Site property, within the meaning of Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1).

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

25. The Site is contaminated by “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. There have been “releases” or “threatened releases” of “hazardous substances” from the Site within the meaning of Sections 101(14), 101(22) and 107(a), 42 U.S.C. §§ 9601(14), 9601(22), and 9607(a).

27. As a result of releases or threatened releases of hazardous substances at the Site, the United States has incurred unreimbursed response costs, and continues to incur response costs, within the meaning of Section 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a).

28. The response actions taken and response costs incurred at the Site were not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. Part 300.

29. Pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), Defendant is jointly and severally liable for all unreimbursed response costs, plus accrued interest, incurred and to be incurred by the United States in connection with the Site.

30. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that the Defendant is jointly and severally liable for all future response costs incurred by the United States in connection with the Site.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff the United States respectfully requests that the Court:

1. Order the Defendant jointly and severally to reimburse the United States for all response costs incurred and to be incurred in connection with the Site, including interest thereon;
2. Enter a declaratory judgment that the Defendant is liable for all future response costs, including interest, to be incurred by the United States for response actions in connection with the Site;
3. Award the United States the costs of this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA



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