IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FIFTH DIVISION

UNITED STATES OF AMERICA, THE STATE OF MINNESOTA, and THE STATE OF WISCONSIN, Plaintiffs, v. XIK, LLC, HONEYWELL INTERNATIONAL, INC., and DOMTAR, INC., Defendants.	)	Case No.

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States, acting at the request and on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and the Department of the Interior ("DOI"), the State of Minnesota, by and through the Minnesota Department of Natural Resources ("MDNR") and the Minnesota Pollution Control Agency ("MPCA"), and the State of Wisconsin, by authority of the Attorney General of Wisconsin and acting on behalf of the Wisconsin Department of Natural Resources ("WDNR"), hereby file this Complaint and allege as follows:

NATURE OF ACTION

1. This is a civil action, brought by the United States, Minnesota, and Wisconsin (collectively, the "Plaintiffs") against XIK, LLC ("XIK"), Honeywell International, Inc. ("Honeywell"), and Domtar, Inc. ("Domtar") (collectively, the "Defendants"), under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for recovery of damages for injury to, loss of, or destruction of natural resources resulting from releases of hazardous substances. Each of the Defendants is responsible for historic releases of polycyclic aromatic hydrocarbons ("PAHs") into the environment at the St. Louis River / Interlake / Duluth Tar Superfund Site ("SLRIDT Site" or "Site") located in Duluth, Saint Louis County, Minnesota and Douglas County, Wisconsin. Releases of PAHs have resulted in injury to various natural resources -- including fish, birds, benthic invertebrates, and aquatic plants -- for which federal, state, and tribal agencies serve as trustees. Plaintiffs also seek to recover un-reimbursed costs of assessing such damages.

JURISDICTION AND VENUE

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

BACKGROUND ON THE SITE AND THE STATUTE

4. The SLRIDT Site is primarily located within the city of Duluth, Saint Louis County, Minnesota, on the north bank of the St. Louis River, approximately four miles upstream from Lake Superior. The Site includes approximately 255 acres of land and river embayments, wetlands, and former boat slips. A small portion of the Site (four acres) is located within Douglas County, Wisconsin. The SLRIDT Site was added to the National Priorities List ("NPL") in 1983 as a component of the St. Louis River Superfund Site. The Site was listed on the Permanent List of Priorities under the Minnesota Environmental Response and Liability Act ("MERLA") in 1984.

5. Facilities owned and operated by the Defendants discharged large amounts of PAH compounds to the River in connection with past industrial activity. PAH contamination was identified in sediments throughout the Site and in sufficient concentrations to cause injury to many types of natural resources, including sediment, vegetation, invertebrates, fish, and birds. In addition to ecological injuries, PAH contamination of natural resources has resulted in losses to recreational fishing services and tribal use services.

6. CERCLA § 107(f), 42 U.S.C. § 9607(f), authorizes duly-designated Federal and State natural resource trustees and trustees for Native American Tribes to recover natural resource damages ("NRD"), *i.e.* damages for any injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances, including the reasonable costs of assessing such injury. CERCLA § 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), imposes liability for such damages on certain classes of potentially

responsible parties ("PRPs"), including current owners and operators of a facility from which there has been a release of a hazardous substance, parties that owned or operated a facility at the time of disposal of a hazardous substance, and parties that arranged for disposal or treatment of a hazardous substance at a facility owned by another party or entity.

7. Under CERCLA, the term "natural resources" includes "land, fish, wildlife, biota, air, water . . . and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States [or] any State or local government . . . ." 42 U.S.C. § 9601(16).

8. Natural resources have been injured as a result of releases of hazardous substances – especially PAHs – into the environment at the Site.

9. The Secretary of the Interior (hereinafter included in "DOI") has been designated as a natural resource trustee for federal trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580, 52 Fed. Reg. 2923 (Jan. 23, 1987). DOI acts on behalf of the public as a trustee for natural resources, including threatened or endangered species, migratory birds, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See*, *e.g.*, 40 C.F.R. § 300.600.

10. The Administrator of NOAA (hereafter included in "NOAA") has been designated as a natural resource trustee for federal trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(A), 40 C.F.R. § 300.600, and Exec. Ord. No. 12,580,

52 Fed. Reg. 2923 (Jan. 23, 1987). NOAA acts on behalf of the public as a trustee for natural resources, including threatened or endangered species, other fish and aquatic life, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. *See*, *e.g.*, 40 C.F.R. § 300.600.

11. MDNR and MPCA have been designated as co-State natural resource trustees for Minnesota trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(B) and 40 C.F.R. § 300.605. MDNR and MPCA act on behalf of the public for natural resources, including their supporting ecosystems, within the boundaries of Minnesota or belonging to, managed by, or appertaining to Minnesota. 40 C.F.R. § 300.605.

12. WDNR has been designated as a State natural resource trustee for Wisconsin trust resources at and near the Site pursuant to 42 U.S.C. § 9607(f)(2)(B) and 40 C.F.R. § 300.605. WDNR acts on behalf of the public for natural resources, including their supporting ecosystems, within the boundaries of Wisconsin or belonging to, managed by, or appertaining to Wisconsin. 40 C.F.R. § 300.605.

13. Federal trusteeship over natural resources may overlap with that of States or Tribes or both. The National Contingency Plan ("NCP") directs that, where there are multiple trustees, the trustees should coordinate and cooperate in carrying out their responsibilities. 40 C.F.R. § 300.615(a).

14. NRD includes the costs of actions to restore, replace, or acquire the equivalent of the injured natural resources and the reasonable costs of assessing the injury and the associated damages. NRD may also include compensation for interim losses to

the public attributable to natural resource injuries from the onset of the injury through their repair or recovery to an uninjured state, adjusted for any mitigation of those injuries by response actions or early restoration actions, and any increase in injuries that may have occurred as a result of response actions.

15. As required by CERCLA Section 301(c), 42 U.S.C. § 9651(c), DOI has promulgated regulations respecting the assessment of NRD and associated restoration activities. Those regulations are codified at 43 C.F.R. Part 11.

16. As expressly provided by CERCLA Section 107(c)(2), 42 U.S.C. § 9607(c)(2), any determination or assessment of damages made by a Federal or State trustee in accordance with DOI's NRD assessment regulations shall have the force and effect of a rebuttable presumption on behalf of the trustee in any judicial proceeding to recover such damages under CERCLA.

17. DOI, NOAA, MDNR, MPCA, WDNR, and certain Tribal Trustees – the Fond du Lac Band of Lake Superior Chippewa and the 1854 Authority, representing the Bios Forte Band and Grand Portage Band of Lake Superior Chippewa – have performed a variety of NRD assessment and restoration activities concerning the Site in accordance with DOI's NRD assessment regulations. The assessment activities have included preparation of a preassessment screen, issuance of an assessment plan, and completion of an injury determination phase and injury quantification phase. The October 2014 *Natural Resource Exposure and Injury Determination and Quantification Report* – prepared on behalf of the Trustees – focused on PAH-related injuries to natural resources associated with the SLRIDT Site and determined the resulting damages. The injured natural

resources included fish (*e.g.*, white sucker, yellow perch), birds (*e.g.*, tree swallows), benthic invertebrates, and aquatic plants.

18. The amounts recoverable in an action for NRD under CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), include statutory prejudgment interest on the damages.

ALLEGATIONS RELATING TO DEFENDANTS

General Allegations:

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

20. Each industrial facility located or formerly located at the Site is a "facility," within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

21. Each sewer system (including each sewer pipe) located or formerly located at the Site is a "facility," within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

22. The SLRIDT Site is a "facility," within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

23. PAHs are "hazardous substances," within the meaning of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a).

24. "Natural Resources" within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been and/or are being injured, lost, or destroyed as a result of the releases of hazardous substances at the Site.

25. Plaintiffs have incurred costs in assessing damages to natural resources resulting from the releases.

Allegations Concerning XIK:

26. One or more corporate predecessors of XIK – including Zenith Furnace Company and Interlake Iron Company – owned and/or operated industrial facilities (the "XIK Facilities") within the SLRIDT Site from approximately 1904 to 1961. XIK and its corporate predecessors are collectively referred to herein as "XIK."

27. The XIK Facilities discharged wastewater containing PAHs to the St. Louis River while the Facilities were owned and operated by XIK.

28. XIK, therefore, owned and operated a facility at the time of disposal of hazardous substances at that facility, and there were releases of hazardous substances from that facility to the environment at the Site.

29. In light of the foregoing, XIK is liable to Plaintiffs in this action under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

Allegations Concerning Domtar:

30. One or more corporate predecessors of Domtar – including Dominion Tar Company – owned and/or operated an industrial facility (the "Domtar Facility") within

the SLRIDT Site from approximately 1924 to 1948. Domtar and its corporate predecessors are collectively referred to herein as "Domtar."

31. The Domtar Facility discharged wastewater containing PAHs to the St. Louis River while the Facility was owned and operated by Domtar.

32. Domtar, therefore, owned and operated a facility at the time of disposal of hazardous substances at that facility, and there were releases of hazardous substances from that facility to the environment at the Site.

33. In light of the foregoing, Domtar is liable to Plaintiffs in this action under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

Allegations Concerning Honeywell:

34. One or more corporate predecessors of Honeywell – including Duluth Tar Company and Barrett Tar Company – owned and/or operated an industrial facility (the "Honeywell Facility") within the SLRIDT Site from approximately 1905 to 1924. Honeywell and its corporate predecessors are collectively referred to herein as "Honeywell."

35. The Honeywell Facility discharged wastewater containing PAHs to the St. Louis River while the Facility was owned and operated by Honeywell.

36. Honeywell, therefore, owned and operated a facility at the time of disposal of hazardous substances at that facility, and there were releases of hazardous substances from that facility to the environment at the Site.

37. In light of the foregoing, Honeywell is liable to Plaintiffs in this action under CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

FIRST CLAIM FOR RELIEF

38. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

39. Releases of PAHs into the environment at the Site have resulted in injury to, destruction of, or loss of natural resources under Federal trusteeship and of natural resources under State trusteeship. Federal and State trusteeships of injured natural resources at the Site overlap.

40. Plaintiffs have incurred reasonable costs of assessing the injury, destruction, or loss of natural resources resulting from releases of hazardous substances to the Site and into the environment at the Site.

41. Each of the Defendants is jointly and severally liable to the United States, the State of Minnesota, and the State of Wisconsin for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such damages and the injury, destruction, or loss resulting from releases of hazardous substances to the Site and into the environment at the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a judgment in favor of Plaintiffs and against the above-named Defendants, jointly and severally, for damages and all costs or expenses incurred by

Plaintiffs in the assessment or restoration of natural resources injured, lost or destroyed as a result of the release or threatened release of hazardous substances at the SLRIDT Site;

2. Enter a declaratory judgment in favor of Plaintiffs and against the above-named Defendants, pursuant to 28 U.S.C. § 2201, that the Defendants are jointly and severally liable for any future costs or expenses incurred by the United States in the restoration or replacement of natural resources damaged or destroyed as a result of the release or threatened release of hazardous substances at the SLRIDT Site, including natural resource damage assessment costs and costs of implementing natural resource restoration activities

3. Award Plaintiffs their costs of this action; and

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

For the United States of America

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