

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,)		
and the COMMONWEALTH OF)		
PENNSYLVANIA DEPARTMENT OF)		
ENVIRONMENTAL PROTECTION)		
)		
Plaintiffs,)		
)	Civil Action No.	
v.)		
)	Judge	
Cast Parts, Inc., Energy Control Systems, Inc.,)		
Gutierrez Machine Corporation, Kirschbaum-Krupp)	ELECTRONICALLY FILED	
Metal Corporation, K&K Metal Recycling, LLC.,)		
Lavigne Manufacturing Co., M.J. Metal, Inc.,)		
Marshalltown Company, Metal Mart International,)		
Inc., Middletown Aerospace Corporation,)		
Mid-State Investment Company, Mid-State Machine)		
Company, LLC, National Machine Company,)		
Premco, Inc., Rolls-Royce Corporation,)		
Black & Decker (U.S.) Inc., Johns Hopkins)		
University, Johns Hopkins University Applied)		
Physics Laboratory, LLC, Winter's Performance)		
Products)		
)		
)		
Defendants.)		
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COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") and the Commonwealth of Pennsylvania Department of Environmental Protection ("PADEP") by and through the undersigned Assistant Counsel (collectively "Plaintiffs") file this Complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9606 and 9607, and Section 507 of the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, 35 P.S. §§ 6020.101-6020.1305 ("HSCA"), for the recovery of costs incurred by the Plaintiffs in response to the release or threat of release of hazardous substances at the Remacor, Inc. Superfund Site in West Pittsburg, Lawrence County, Pennsylvania ("Site"). The United States also seeks a declaratory judgment establishing Defendants' liability for any response costs that may be incurred by EPA in the future that will be binding in any subsequent action by the United States against Defendants to recover such further response costs pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action 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, 1345, and 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this District, and because the Site is located in this District.

DEFENDANTS

4. Cast Parts, Inc. is a Delaware Corporation with its principal place of business in Pomona, California.

5. Energy Control Systems, Inc. is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

6. Gutierrez Machine Corporation is a Pennsylvania Corporation with its principal place of business in Athens, Pennsylvania.

7. Lavigne Manufacturing Company is a Rhode Island Corporation with its principal place of business in Cranston, Rhode Island.

8. K & K Metal Recycling, LLC (fka Kirschbaum-Krupp Metal Recycling, LLC) is a Minnestoa Limited Liability Company with its principal place of business in Minneapolis, Minnesota.

9. Kirschbaum-Krupp Metal Company was incorporated in Minnesota in 1980 with its principal place of business in Minneapolis, Minnesota. Kirschbaum-Krupp Metal Company involuntarily dissolved in 2008.

10. MJ Metal, Inc., is a Connecticut corporation with its principal place of business in Bridgeport, Connecticut.

11. Marshalltown Company is an Iowa corporation with its principal place of business in Marshalltown, Iowa.

12. Metal Mart International, Inc., is a California corporation with its principal place of business in Commerce, California.

13. Middleton Aerospace Corporation is a Delaware corporation with its principal place of business in Haverhill, Massachusetts.

14. Mid-State Investment Company LLC (fka Mid-State Machine Company) is a North Carolina corporation with its principal place of business in Mount Ulna, North Carolina.

15. National Machine Company is an Ohio corporation with its principal place of business in Stow, Ohio.

16. Premco, Inc., is a Massachusetts corporation with its principal place of business in Hingham, Massachusetts.

17. Rolls-Royce Corporation is a Delaware corporation with its principal place of business in Indianapolis, Indiana.

18. Black & Decker, (U.S.) Inc. is a Maryland corporation with its principal place of business in New Britain, Connecticut.

19. The Johns Hopkins University is a graduate and undergraduate research university based in Baltimore, Maryland and the Johns Hopkins University Applied Physics Laboratory LLC, is a non-profit university-affiliated research center located in Laurel, Maryland.

20. Winter's Performance Products, Inc., is a Pennsylvania corporation with its principal place of business in York, Pennsylvania.

SITE DESCRIPTION AND FACTUAL BACKGROUND

21. The Site consists of approximately 45 acres located in West Pittsburg, Pennsylvania.

22. From approximately 1975 through October 2006, Reactive Metals and Alloys Corporation through several related parties, including Remacor, Inc., ("Remacor Entities" or "Remacor") operated a rare earth mineral and magnesium processing facility at the Site.

23. Remacor accepted magnesium fines, turnings, shavings and some solid magnesium scrap (“magnesium waste”) from its customers, including the Defendants listed in paragraph 4 through 20.

24. The Remacor Entities then processed magnesium waste for use in the production of desulfurization reagent for the steel industry.

25. Remacor’s operations generated process wastes which were improperly stored or disposed of at the Site.

26. Magnesium waste material sent to the Site by Remacor customers, including the Defendants listed in paragraph 4 through 19, were also mislabeled and improperly stored.

27. PADEP inspection reports show that the process waste and shipped magnesium wastes were left exposed to rain, snow and often without lids. They were also mislabeled, and remained onsite for over a year, in violation of Pennsylvania hazardous waste regulations.

28. The poor storage and disposal practices of process wastes and shipped magnesium wastes at the Site led to spills, leaks, runoff into nearby rivers, and chemical fires at the Site.

29. In 2005 a serious fire caused by improperly stored magnesium waste destroyed the main processing building leaving Remacor with no ability to process the shipped magnesium waste.

30. After the fire when Remacor lost its waste processing abilities, Remacor continued to accept magnesium waste, stockpiling over 6 million pounds.

31. EPA and PADEP conducted an emergency removal action at the Site beginning in September 15, 2006, removing 6,017,825 pounds of hazardous magnesium waste. The emergency removal action consisted primarily of site security and characterization, and the

stabilization, repackaging, transportation, removal and disposal of hazardous magnesium waste and other solid wastes at the Site.

32. PADEP is investigating the Site for potential future remedial actions and possible listing on the National Priorities List.

GENERAL ALLEGATIONS

33. Each Defendant listed in paragraph 4 to 19 is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and Section 103 of HSCA, 35 P.S. § 6020.103.

34. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 103 of HSCA, 35 P.S. § 6020.103.

35. There was a "release" or a threat of a "release," within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and Section 103 of HSCA, 35 P.S. § 6020.103, of hazardous substances into the environment at and from the Site.

36. The EPA and PADEP have undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and Section 501 of HSCA, 35 P.S. § 6020.501, and may undertake response actions in the future.

37. The United States and PADEP have incurred and are continuing to incur response costs in connection with the release and threatened release of hazardous substances at the Site.

38. The United States' response actions and the PADEP's response actions taken with respect to the Site and the costs incurred related to those actions are not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300 et seq.

FIRST CLAIM FOR RELIEF
(Section 107 of CERCLA, 42 U.S.C. § 9607)

39. The allegations of Paragraphs 1 to 38 are realleged and incorporated herein by reference.

40. Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), provides that “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, by any other party or entity, at any facility ...owned or operated by another party or entity and containing such hazardous substances . . . shall be liable for” all costs of removal or remedial action incurred by the United States not inconsistent with the National Contingency Plan.

41. Each of the defendants is a person, or a successor in interest to a 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, which were disposed of at the Site. As such these entities arranged for disposal of hazardous substances at a facility from which there is a release; and they are liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

42. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendants are jointly and severally liable to the United States and the PADEP for past costs incurred by the United States and PADEP with regard to the Site through the date of filing of this complaint.

SECOND CLAIM FOR RELIEF
(Section 113 of CERCLA, 42 U.S.C. § 9613)

43. The allegations of Paragraphs 1 to 43 are realleged and incorporated herein by reference.

44. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides, in part:

In any such action . . . [for recovery of the costs referred to in section 9607 of this title], 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.

45. Because the Site is being investigated for future remedial work, the United States may incur additional response costs at or in connection with the Site in the future.

46. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States and PADEP are entitled to a declaratory judgment that Defendants are liable to the United States and PADEP under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for any response costs that may be incurred by the United States or PADEP in the future.

THIRD CLAIM FOR RELIEF
(Hazardous Site Cleanup Act, 35 P.S. §§ 6020, *et seq.*)

47. Paragraphs 1-46 are realleged and incorporated herein by reference.

48. Section 701(a)(1) of the HSCA, 35 P.S. § 6020.701(a)(2), provides, in part, that a person shall be responsible for a release or threatened release of a hazardous substance from a site when . . . [th]e person generates, owns or possesses a hazardous substance and arranges by contract, agreement or otherwise for the disposal, treatment or transport for disposal or treatment of the hazardous substance.

49. Section 702(a) of the HSCA, 35 P.S. § 6020.702(a), provides, in part, that:

Any person allowing such a release [of a hazardous substance] . . . shall be liable for the response costs caused by the release or the violation.

50. Section 507(a) of HSCA, 35 P.S. § 6020.507(a), provides, in part, that:

A responsible person under section 701 . . . shall be liable for the response costs The department . . . which undertakes . . . a response action may recover those response costs ... in an action in equity brought before a court of competent jurisdiction.

51. Pursuant to Section 507 of HSCA, 35 P.S. § 6020.507, PADEP is entitled to recover from Defendants any response costs incurred by PADEP with respect to the release and threatened release of hazardous substances at or from the Site.

52. The Defendants are liable to PADEP for payment of all response costs incurred or to be incurred by PADEP at the Site pursuant to Sections 701 and 702 of HSCA, 35 P.S. §§ 6020.701-6020.702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter a judgment holding Defendants jointly and severally liable for all unreimbursed costs incurred by the United States and PADEP in response to the release and threat of release of hazardous substances at the Site, including pre-judgment interest;


B. Enter a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and Section 507 of HSCA, 35 P.S. §6020.507, establishing Defendants' liability for any response costs that may be incurred by the United States and/or the PADEP in the future,

that will be binding in any subsequent action by the United States and/or PADEP against Defendants to recover such further response costs;

- C. Award the United States and PADEP their costs and disbursements in this action;
and
- D. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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