

Plaintiffs United States of America, by authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Montana (hereinafter the “State”), acting by and through the Montana Department of Environmental Quality (“MDEQ”), file this Complaint and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action under Sections 106, 107 and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. §§ 9606, 9607, and 9613(b), and Section 7003 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6973, for injunctive relief and recovery of response costs incurred by Plaintiffs in response to the release or threat of release of hazardous substances at the Lockwood Solvent Groundwater Plume Superfund Site (“Site”), located in Billings, Yellowstone County, Montana. Plaintiffs also seek a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), on liability that will be binding in future actions to recover further costs incurred at or in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), and 42 U.S.C. § 9613(b) because the Site is located within this judicial district and the claims arose in this district.

DEFENDANT

4. Defendant Soco West, Inc., formerly known as Brenntag West, Inc., is incorporated in the Delaware. Defendant owns a portion of the Site.

GENERAL ALLEGATIONS

5. In October 1986, Lockwood Water and Sewer District personnel discovered benzene and chlorinated solvents in water supply wells near the Site. This triggered investigations by MDEQ in an attempt to ascertain source areas of this contamination.

6. Based on an evaluation of ongoing site investigations, EPA placed the Site on the CERCLA National Priorities List on December 1, 2000. Primary contaminants of concern for the Site are tetrachloroethene ("PCE") and trichloroethene ("TCE"). In addition to PCE and TCE, the result of these investigations identified other contaminants of concern at the Site, including dichloroethene, vinyl chloride, and carbon tetrachloride.

7. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, EPA determined that actual or threatened releases of hazardous substances from the Site, if not addressed, may present an imminent and substantial endangerment to the public, health, welfare, or environment. In the summer of 2002, EPA initiated a Removal Action in response to groundwater contamination in the vicinity of the Site. EPA extended the public water supply line to the Lomond Lane area near the Site to connect 14 residences whose drinking water wells exhibited elevated levels of contaminants.

8. MDEQ completed a Remedial Investigation ("RI") Report in June 2003 and completed a Feasibility Study ("FS") Report in October 2004.

9. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA and MDEQ published notice of the completion of the FS and of the Proposed Plan for Remedial Action on November 14, 2004, in a major local newspaper of general circulation.

10. The decision by EPA and MDEQ on the Remedial Action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), signed by both the State and EPA on August 16, 2005. The Site spans approximately 580 acres.

11. The ROD identified two primary source areas for chlorinated solvent groundwater contamination at the Site, based on the results of surface and subsurface investigations: the Beall Source Area and the Brenntag Source Area. No other source areas were identified. For convenience, these two source areas were further broken down into three affected Areas (Areas A, B and C), geographic areas reflecting the source facility, the soil contamination within that facility and the groundwater contamination emanating from the source facility. Area A represented the portions of the Site within or downgradient of the Brenntag Source Area. Areas B and C represented portions of the Site within or downgradient of the Beall Source Area.

12. For purposes of investigation and remediation, EPA and MDEQ divided the Site into two Operable Units:

a. “OU 1” or “Beall OU 1” is the geographic area within Area B and Area C identified in the Record of Decision (Figure 4 of the ROD) where contaminated soil associated with the Beall property (Figure 6 of the ROD) and the groundwater plume(s) emanating from this source area (Figure 10 of the ROD) have come to be located, together with all areas in close proximity which are necessary for implementation of the Work within Areas B and C.

b. “OU 2” or “Soco OU 2” shall mean the geographic area within Area A identified in the Record of Decision (Figure 4 of the ROD) where contaminated soil associated with the Soco property (Figure 7 of the ROD) and the groundwater plume(s) emanating from this source area (Figure 10 of the ROD) have come to be located, together with all areas in close proximity which are necessary for implementation of the Work within Area A.

Operable Unit 1 (“OU 1”), for which the manufacturing facility operated by Beall Trailers, Inc. is the source, is not a subject of this Complaint.

13. From approximately 1972 to 2005, Brenntag West, Inc., and its predecessor, Dyce Chemical, operated a chemical re-packaging and distribution company on what is now the Brenntag Source Area, the source facility within Operable Unit 2 (“OU 2”). In or around 2005, Soco West succeeded to the ownership of this facility in OU 2.

14. Among other contaminants, hazardous substances, tetrachloroethene (“PCE”) and trichloroethene (“TCE”) have been found in soils and groundwater within and emanating from the Brenntag Source Area in OU 2.

15. The Remedy selected in the ROD for OU 2 includes, among other things, excavation and treatment of accessible contaminated soil; construction and operation of a soil vapor extraction system to treat inaccessible contaminated soils; in-situ chemical oxidation to treat contaminated soils and contaminated groundwater areas where contaminant sources are known or suspected; construction and operation of a treatment/containment barrier to treat contaminated groundwater throughout the saturated thickness (approximately 25 feet) and enhanced bioremediation systems to treat contaminated groundwater in OU 2 downgradient of the AS/SVE system and also downgradient of the treatment/containment barrier. The ROD also identifies certain site-wide responsibilities that are not specific to either OU.

PLAINTIFFS' FIRST CLAIM FOR RELIEF

(Section 107(a) of CERCLA, 42 U.S.C. § 9607(a))

16. Plaintiffs reallege and incorporate by reference paragraphs 1 through 15, above.

17. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as amended, provides in pertinent part that

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or 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 --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .

18. Hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, PCE and TCE, were disposed of at the Site.

19. The hazardous substances found at the Site in soil and groundwater, including, but not limited to PCE and TCE, were released, or there is a threat of their release, into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

20. The Brenntag Source Area is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. To protect the public health, welfare and the environment from the actual or threatened release of a hazardous substance into the environment from the Brenntag Source Area, the Administrator of EPA, pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and MDEQ have undertaken response activities with respect to the Site (and particularly within OU 2) which are not inconsistent with the NCP, including, among other things, extending a

public water supply line on Lomond Lane to connect 14 residences.

22. The United States and the State of Montana have incurred response costs in connection with the Site and within OU 2 under Section 104 of CERCLA, 42 U.S.C. § 9604, and continue to incur costs. These response costs were incurred in a manner not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

23. The Defendant is liable to the United States and the State under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as an owner of the facility for response costs incurred within OU 2 and for Site-wide responsibilities that are not specific to either OU.

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

24. Plaintiffs reallege and incorporate by reference paragraphs 1 through 23, above.

25. 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.

26. Because response work at the Site is ongoing, the United States and the State may incur additional response costs at or in connection with the Site in the future.

27. The response costs the United States and the State may incur at the Site in the future will not be inconsistent with the NCP.

28. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States and the State are entitled to a declaratory judgment that the Defendant is liable to the United States and the State under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs incurred by the United States and the State in connection with OU 2 and for

certain Site-wide responsibilities that are not specific to either OU.

UNITED STATES' THIRD CLAIM FOR RELIEF
(Section 106 of CERCLA, 42 U.S.C. § 9606)

29. Plaintiff United States of America realleges and incorporates by reference paragraphs 1 through 28 above.

30. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when 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 require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

31. By Executive Order 12850 dated January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

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

33. Substances found in the soils and groundwater at the Site, such as those substances identified in Paragraphs 6 and 14 above, are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34. The "hazardous substances" found at the Site were "released" or threatened to be "released" into the "environment" within the meaning of Sections 101(14), 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), and 9601(8), respectively, and these hazardous substances were disposed of at the Site within the meaning of Section 101(29) of CERCLA, 42

U.S.C. § 9601(29).

35. Defendant is a “person” within the meaning of Section 101(21) of CERCLA, 42

U.S.C. § 9601(21).

36. EPA determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of release or threatened releases of hazardous substances from the Site.

37. The Remedy selected by EPA and MDEQ for OU2 is as described in Paragraphs 11 and 15. The ROD also prescribes certain Site-wide responsibilities to be done that are not specific to either OU.

38. The Defendant is liable for the injunctive relief to which the United States and the State are entitled at the Site under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), including, but not limited to, such relief as may be necessary to abate the imminent and substantial endangerment to the public health or welfare or the environment caused by the release or threatened release of hazardous substances within OU 2.

UNITED STATES' FOURTH CLAIM FOR RELIEF

(Section 7003 of RCRA, 42 U.S.C. § 6973)

39. Plaintiff United States of America realleges and incorporates by reference paragraphs 1 through 38, above.

40. Section 7003 of RCRA, 42 U.S.C. § 6973, provides that:

. . . upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or

disposal facility) who has contributed to or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both.

41. "Hazardous waste" is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5),

as:

. . . a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may -

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

42. "Solid waste" is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), as:

. . . any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 . . .

43. Contaminants found at the Site are hazardous wastes as defined in 42 U.S.C. § 6903(5).

44. Hazardous wastes and solid wastes at the Site may present an imminent and substantial endangerment to health or the environment.

45. Defendant contributed to the handling, storage, treatment, transportation or disposal of hazardous wastes or solid wastes at the Site and is liable for contamination at the Site within the meaning of RCRA § 7003.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs United States and the State of Montana, request that the Court enter a judgment against Defendant, jointly and severally, as follows:

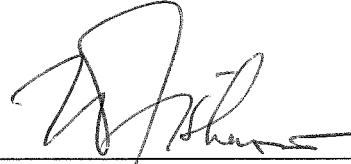
A. Order Defendant to perform the injunctive relief necessary to remedy conditions in connection with the release or threatened release of hazardous substances at the Site, including the remedial action selected by EPA and MDEQ in the ROD for OU 2;

B. Order Defendant to pay response costs incurred and to be incurred by the United States and Montana, including removal and remedial activities, investigations, planning, oversight, and enforcement actions in connection with OU 2 and for certain Site-wide responsibilities that are not specific to either OU, plus interest as provided by Section 107(a) of CERCLA;

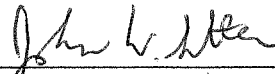
C. Enter a declaratory judgment as to Defendant's liability that will be binding in future actions to recover further response costs connected with the clean-up and response actions for OU 2 and for certain Site-wide responsibilities that are not specific to either OU;

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

Respectfully submitted,

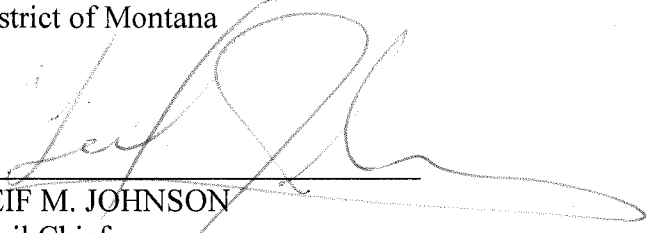


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