

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND, by and through)
the RHODE ISLAND DEPARTMENT OF)
ENVIRONMENTAL MANAGEMENT)

Plaintiff,)

v.)

Civil Action No. _____

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., Envirote 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., Landry &)
Martin Oil Co., Inc., Larson Tool and Stamping Company, Louis)
M. Gerson Co., Inc., Mandeville Signs Inc., Microfibres, Inc. by)
Joseph M. DiOrio, Chapter 7 Bankruptcy Trustee, 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., United States Postal Service,)
 United States Department of Veteran Affairs, United)
 States Department of Defense, United States Department of)
 the Treasury (Internal Revenue Service), 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 State of Rhode Island (“State”), through the Department of Environmental Management (“RIDEM”), by authority of its duly appointed Director, Janet L. Coit, and through the undersigned attorney, hereby files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against the Defendants named in Paragraph 6 and 7 below pursuant to Sections 107(a) and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §§ 9607(a) and 9613(g), the Rhode Island Industrial Property Remediation and Reuse Act, RI Gen. Laws §§ 23-19.14-1 *et seq.*, the Rhode Island Groundwater Protection Act, R.I. Gen. Laws §§ 46-13.1-1 *et seq.*, the Rhode Island Water Pollution Act, R.I. Gen. Laws §§ 46-12-1 *et seq.*, and the common law of nuisance and strict liability. The State seeks to recover costs that have been and will be incurred by the State in connection with responses to 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. Finally, the State seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and R.I. Gen. Laws § 23-19.14-6, declaring that all the Defendants will be liable for any further response costs that the State 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. This Court has supplemental jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367.

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.

PARTIES

4. The Plaintiff, the Rhode Island Department of Environmental Management, maintains its principal office at 235 Promenade Street, Providence, Rhode Island 02908. The Director of RIDEM is the Rhode Island official designated to act on behalf of the public to recover all costs incurred by the State, associated with the removal or remedial action resulting from the release and threatened release of hazardous substances pursuant to R.I. Gen. Laws §§ 42-17.1-2, 23-19.14-6, and 42 U.S.C. § 9607(a)(4)(A).

5. Each of the Defendants is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and R.I. Gen. Laws §§ 23-19.14-3(h) and 46-12-1(13).

6. Defendants 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., Envirote 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., Landry & Martin Oil Co., Inc., Larson Tool and Stamping Company, Louis M. Gerson Co., Inc., Mandeville Signs Inc., Microfibres, Inc. by Joseph M. DiOrio, Chapter 7 Bankruptcy Trustee, 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., United States Postal Service, United States, Department of Veterans Affairs, United States Department of Defense; United States Department of the Treasury (Internal Revenue Service), 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”).

7. Defendants 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”).

8. Defendant Microfibres, Inc. 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. Joseph M. DiOrio is the Chapter 7 Bankruptcy Trustee of Microfibres, Inc. (“Microfibres”). This complaint does not violate the automatic stay set forth at Section 362 of the Bankruptcy Code because (a) Microfibres, through its Trustee, has consented to the filing of the complaint for the sole purpose of effectuating a settlement of this matter, (b) the complaint does not seek a money judgment against Microfibres, and (c) the complaint is being filed against Microfibres simply to allow the State to enter into a settlement with Microfibres, in which Microfibres will, pursuant to an allowed general unsecured claim filed by certain other potentially

responsible parties and approved by order of the Bankruptcy Court dated September 7, 2016, and depending on the priority of other claims against Microfibres' estate and the resultant availability of funds, if any, and subject to Bankruptcy court approval, make a payment to certain other potentially responsible parties at OU2 in accordance with such allowed claim held by such parties.

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. The United States Environmental Protection Agency ("EPA") listed 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 OU2 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 OU2 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. The State 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 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.

17. As a result of the release or threatened release of hazardous substances at and from OU2, the State may incur future costs for the removal and remedial action necessary to rectify the effects of said release as defined in R.I. Gen. Laws § 23-19.14 and Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The State may continue to incur these costs in connection with OU2.

18. The Response actions taken by the State and the resulting response costs incurred

by the State in connection with the OU2 are not inconsistent with the National Contingency Plan, as set forth in 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF

19. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 18 above, as if set for herein in their entirety.

20. 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 . . . or a State . . . not inconsistent with the national contingency plan. . . .

21. Each of the Generator Defendants, named in Paragraph 6, 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.

22. Each of the Transporter Defendants, named in Paragraph 7, 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.

23. Each Defendant is liable for costs or any remedial actions incurred by the State at OU2 under Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

24. The State has incurred Response Costs in responding to releases and threatened releases at OU2. The State will continue to incur Response Costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at OU2.

25. The State's actions taken and to be taken at OU2 and the Response Costs incurred incident to those actions are not inconsistent with the National Contingency Plan promulgated by EPA under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R., Part 300.

26. The costs incurred by the State in connection with OU2 were and are for actions taken in response to the release or threatened release of hazardous substances at OU2.

27. The State has satisfied any and all conditions precedent to the undertaking of response actions, the incurrence of Response Costs, and the recovery of those costs under Section 107 of CERCLA, 42 U.S.C § 9607.

28. Under Section 107(a) of CERCLA, 42 U.S.C § 9607(a), each of the Defendants is jointly and severally liable to the State for all costs incurred and to be incurred by the State at OU2.

29. Pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A), the State may act on behalf of the public by instituting civil proceedings to recover all further response costs associated with removal or remedial actions that may be incurred by the State, not inconsistent with the National Contingency Plan.

SECOND CLAIM FOR RELIEF

30. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 29 above, as if set for herein in their entirety.

31. There were and are, within the meaning of R.I. Gen. Laws § 46-12-1(c), discharges of pollutants into the waters of the State at and from OU2.

32. Each Defendant is a “person” within the meaning of R.I. Gen. Laws § 42-12-1(13).

33. Each Defendant is liable under R.I. Gen. Laws § 46-12-5 for discharges of pollutants into the waters of the State from OU2.

34. Each Defendant is liable to the State for civil penalties and costs pursuant to R.I. Gen. Laws § 46-12-13.

THIRD CLAIM FOR RELIEF

35. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 34 above, as if set for herein in their entirety.

36. Each Defendant is a “person” within the meaning of R.I. Gen. Laws § 23-19.14-3(h) and a “responsible party” at OU2 within the meaning of §§ 23-19.14-3(m) and 23-19.14-6(a).

37. There has been and continues to be an actual or threatened “release” of “hazardous materials” at or from OU2 within the meaning of R.I. Gen. Laws § 23-19.14-3(c) and 3(j).

38. Each of the Generator Defendants, named in Paragraph 6, 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 within the meaning of R.I. Gen. Laws § 23-19.14-6, or is a successor in interest to such persons.

39. Each of the Transporter Defendants, named in Paragraph 7, accepted and transported hazardous substances to OU2 for disposal there within the meaning of R.I. Gen. Laws § 23-19.14-6, or is a successor in interest to such persons

40. Each Defendant is liable to the State for all costs incurred for removal or remedial action at OU2 pursuant to R.I. Gen. Laws § 23-19.14-6.

FOURTH CLAIM FOR RELIEF

41. Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 40 above, as if set for herein in their entirety.

42. Hazardous pollutants have been and are being released into the surrounding environment from OU2.

43. The contamination of soil, groundwater and surface water by these hazardous pollutants at OU2 constitutes an ongoing public nuisance that has impacted or threatens to impact public interests in maintaining salutary environmental conditions and protecting state resources and adjacent properties.

44. The State has sustained damages resulting from the contamination in groundwater at OU2.

45. Each Defendant is strictly liable to the State for damages resulting from the contamination of soils and groundwater at OU2 and the migration of that contamination to adjacent resources and properties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Rhode Island, respectfully requests that this Court:

1. Enter judgment in favor of the State 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 State, including enforcement costs and prejudgment interest, for response actions taken in connection with OU2;

2. Enter judgment in favor of the State holding each Defendant jointly and severally liable for discharges of pollutants into waters of the State pursuant to R.I. Gen Law § 46-12-5.

3. Enter judgment in favor of the State against the Defendants, with the exception of

Microfibres, jointly and severally in accordance with R.I. Gen. Laws § 46-12-13, awarding the State civil penalties and past and future response costs.

4. Enter Judgment in favor of the State holding that each Defendant is a responsible party pursuant to R.I. Gen. Laws § 23-19.14-6(a) and is jointly and severally liable for the actual or threatened release of hazardous material at OU2 pursuant to R.I. Gen. Laws § 23-19.14-6.

5. Enter Judgment in favor of the Sate against the Defendants, with the exception of Microfibres, in accordance with R.I. Gen. Laws § 23-19.14-6(b)(2) awarding the State its past and future costs.

6. Order the Defendants, Pursuant to R.I. Gen. Laws § 23-19.14-6, to perform all removal and remedial actions for OU2 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 by the EPA in the ROD;

7. Enter declaratory judgment in favor of the State and against the Defendants, pursuant to Section 107(a) and Section 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2), and R.I. Gen. Laws § 23-19.14-6 that that the Defendants are jointly and severally liable for all future response costs that may be incurred by the State in connection with OU2;

8. Award the State its costs and fees of this action; and

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

Respectfully submitted,
Janet L. Coit,
In her capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
By her attorney:

/s/ Christina A. Hoefsmit
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