

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

NORTH GEORGIA ELECTRIC MEMBERSHIP CORPORATION; 3M COMPANY; ADAMS-COLUMBIA ELECTRIC COOPERATIVE; AEROJET ROCKETDYNE HOLDINGS, INC.; AIR PRODUCTS AND CHEMICALS, INC.; AKERS NATIONAL ROLL COMPANY; ALCAN PRIMARY PRODUCTS CORPORATION; ALCOA INC.; AMERICAN BILTRITE INC.; APPALACHIAN POWER COMPANY; ARKEMA INC.; AUGUSTA UNIVERSITY; BAE SYSTEMS NORFOLK SHIP REPAIR INC.; BALTIMORE GAS & ELECTRIC COMPANY; BARNES AND POWELL ELECTRICAL COMPANY; BASF CORPORATION; BASSETT FURNITURE INDUSTRIES, INC.; BAYER CROPSCIENCE, INC.; BEDFORD RURAL ELECTRIC COOPERATIVE, INC.; TOWN OF BEDFORD; TOWN OF BLACKSTONE; BRAZOS ELECTRIC POWER COOPERATIVE, INC.; BUIST ELECTRIC; CAPE HATTERAS ELECTRIC MEMBERSHIP CORPORATION; CARGILL INCORPORATED; CARLISLE CONSTRUCTION MATERIALS, LLC; CARR & DUFF, INC.; CATERPILLAR INC.; CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC; CGX ENERGY, LLC; CHEMICAL PRODUCTS CORPORATION; CHEVRON MINING INC.; CHRISTUS HEALTH NORTHERN LOUISIANA; CLEVELAND ELECTRIC COMPANY; COHEN & GREEN SALVAGE COMPANY, INC.; CONOPCO, INC.; CONSOLIDATION COAL COMPANY; CONTINENTAL GRAIN COMPANY; COOPER TIRE & RUBBER COMPANY; CORNING INCORPORATED; DACCO, INCORPORATED; DELAWARE ELECTRIC COOPERATIVE, INC.; DONOVAN SPRING COMPANY, INC.; CITY OF DOVER; DRAVO CORP.; DUKE ENERGY PROGRESS, LLC; DUQUESNE LIGHT COMPANY; EAST CENTRAL REGIONAL HOSPITAL; EAST PENN MANUFACTURING CO.; EAST

KENTUCKY POWER COOPERATIVE; EATON CORPORATION; E.I. DU PONT DE NEMOURS AND COMPANY; EMMA L. BIXBY MEDICAL CENTER; ENDICOTT CLAY PRODUCTS COMPANY; ENTERGY ARKANSAS, INC.; ENVIRONMENTAL PROTECTION SERVICES, INC.; ERACHEM COMILOG, INC.; EXXONMOBIL OIL CORPORATION; FABRI-KAL CORPORATION; FIRELANDS ELECTRIC COOPERATIVE, INC.; FLORIDA POWER & LIGHT COMPANY; FLUIDYNE ENGINEERING CORP.; FMC CORPORATION; FOUR COUNTY ELECTRIC MEMBERSHIP CORPORATION; FRONTIER COMMUNICATIONS CORPORATION; FURMAN UNIVERSITY; G&S MOTOR EQUIPMENT CO., INC.; GENERAL ELECTRIC COMPANY; GENERAL EXTRUSIONS, INC.; GEORGIA-PACIFIC LLC; GGP-TRC, LLC; GRAFTECH INTERNATIONAL HOLDINGS INC.; GRAND HAVEN BOARD OF LIGHT AND POWER; GREEN CIRCLE GROWERS, INC.; GREEN MOUNTAIN POWER, INC.; GREENWOOD MILLS, INC.; GUAM POWER AUTHORITY; GUERNSEY-MUSKINGUM ELECTRIC COOPERATIVE, INC.; H&K GROUP, INC.; HANCOCK WOOD ELECTRIC COOPERATIVE, INC.; HARSCO CORP.; HAYNES INTERNATIONAL, INC.; HERCULES INCORPORATED; THE HERSHEY COMPANY; THE HILLSHIRE BRANDS COMPANY; HOLLADAY PROPERTY SERVICES MIDWEST, INC.; HONEYWELL; HUDSON LIGHT AND POWER DEPARTMENT; HUNTINGTON INGALLS INC.; HUNTSVILLE UTILITIES; IES COMMERCIAL, INC.; IMERYS CARBONATES USA, INC.; IMERYS FUSED MINERALS GREENEVILLE, INC.; INTERNATIONAL PAPER COMPANY; INTERTAPE POLYMER GROUP, INC.; J.C. BLAIR MEMORIAL HOSPITAL; JESSOP STEEL, LLC; JET ELECTRIC MOTOR COMPANY, INC.; KELLY ELECTRIC; KINGSPORT POWER COMPANY; KOCH INDUSTRIES; KRAFT HEINZ FOODS COMPANY; LACROSSE FOOTWEAR, INC.; LAFARGE MID-ATLANTIC, LLC; LEWIS ELECTRIC SUPPLY CO., INC.; TOWN OF LOUISBURG; MARTIN MARIETTA MATERIALS, INC.; MASS. ELECTRIC CONSTRUCTION CO.; MIDAMERICAN ENERGY COMPANY; MID-VALLEY PIPELINE COMPANY; MITTAL STEEL USA-LANCASHIRE COAL INC.; CITY

OF MONROE; THE NATIONAL LIME AND STONE COMPANY; NATIONAL RAILROAD PASSENGER CORPORATION; NEW HAMPSHIRE INSURANCE COMPANY; NIAGARA MOHAWK POWER CORPORATION; NORFOLK SOUTHERN RAILWAY COMPANY; NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; THE NORTH CAROLINA GRANITE CORPORATION; NORTH CAROLINA STATE UNIVERSITY; NOVARTIS CORPORATION; NUCOR CORPORATION; OCCIDENTAL CHEMICAL CORPORATION; ORBITAL ATK, INC.; OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA; PALMETTO ELECTRIC COOPERATIVE, INC.; PARKER HANNIFIN CORPORATION; PCS PHOSPHATE COMPANY, INC.; CITY OF PHILADELPHIA; PHILLIPS 66 COMPANY; PPL ELECTRIC UTILITIES CORPORATION; CITY OF RADFORD, VIRGINIA; RESIDUAL ENTERPRISES CORPORATION; RILEY POWER INC.; ROANOKE ELECTRIC STEEL CORPORATION; ROBERT BOSCH LLC; ROYAL STREET JUNK COMPANY, INC.; RUBBERMAID INC.; RUTHERFORD ELECTRIC MEMBERSHIP CORPORATION; CITY OF SAN ANTONIO, ACTING BY AND THROUGH CITY PUBLIC SERVICE BOARD a/k/a CPS ENERGY; SANTEE ELECTRIC COOPERATIVE, INC.; SEABROOK ENTERPRISES, INC.; SHIELDALLOY METALLURGICAL CORPORATION; SOUTH CAROLINA PUBLIC SERVICE AUTHORITY; SOUTH CENTRAL POWER COMPANY; SOUTHERN ALLOY CORPORATION; SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.; SUMTER ELECTRIC COOPERATIVE, INC.; SUNBELT TRANSFORMER, LTD.; TALLAHASSEE MEMORIAL HEALTHCARE, INC.; TOWN OF TARBORO; TIMKEN US LLC; TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC; TRAP ROCK INDUSTRIES, INC.; TREDEGAR FILM PRODUCTS CORPORATION; TRINITY INDUSTRIES, INC.; TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA; UNION CARBIDE CORPORATION; UNITED STATES PIPE AND FOUNDRY COMPANY, LLC; UNITED STATES STEEL CORPORATION; UNITIL ENERGY SYSTEMS, INC.;

THE UNIVERSITY OF NORTH CAROLINA AT
CHAPEL HILL; VEOLIA ENVIRONMENTAL
SERVICES NORTH AMERICA LLC; VILLANOVA
UNIVERSITY; VIRGINIA ELECTRIC & POWER
COMPANY; VULCAN CONSTRUCTION MATERIALS,
LLC; WARREN ELECTRIC COOPERATIVE, INC.;
WARTBURG COLLEGE; WEYERHAEUSER
COMPANY; WILLIAM PEACE UNIVERSITY; CITY OF
WINSTON-SALEM; and WOODSTREAM
CORPORATION,

Defendants.

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”), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced pursuant to Sections 106(a), 106(b)(1), and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606(a), 9606(b)(1) and 9607(a). The United States seeks to require the Defendants to perform a remedial design and remedial action (“RD/RA”) to address an imminent and substantial endangerment to the public health, public welfare or the environment in connection with the release or threatened release of hazardous substances into the environment at the Ward Transformer Superfund Site in Raleigh, North Carolina (the “Site”).

2. The United States also seeks recovery of costs incurred, and a declaratory judgment of liability for costs that will be incurred, for response activities undertaken at the Site.

3. The United States also seeks civil penalties from Defendant Carr & Duff, Inc. (“Carr & Duff”), for its failure to timely comply with an EPA order to perform remedial work at the Site.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action, and Defendants, pursuant to Sections 106(a), (b); 107(a); and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), (b); 9607(a); and 9613(b), and under 28 U.S.C. §§ 1331, 1345, and 1355.

5. Venue is proper in this District under 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/or actual releases of hazardous substances occurred, within this District.

DEFENDANTS

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

GENERAL ALLEGATIONS

7. The Site, located on Mt. Herman Road near the Raleigh-Durham International Airport in Raleigh, North Carolina, encompasses a former electrical transformer repair, reconditioning, and sales facility (“Ward Facility”) once owned and/or operated by Ward Transformer Company, Inc. and Ward Transformer Sales and Service, Inc. (collectively, “Ward”). The Site also encompasses adjacent parcels once owned by Ward and surface waters downgradient from the Ward Facility, including four unnamed tributaries to Little Brier Creek; Little Brier Creek; Brier Creek Reservoir; Brier Creek; Lake Crabtree; and Lower Crabtree Creek.

8. From approximately 1964 to 2005, Ward repaired, reconditioned, and sold

electrical transformers at the Ward Facility.

9. At times relevant to this Complaint, each Defendant (or one or more of its corporate predecessors) 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 each such Defendant (or its predecessor) at the Site, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3), by sending to the Ward Facility electrical transformers for repair, reconditioning or resale.

10. These transformers contained dielectric fluid, or “oil,” that was used as an insulating and cooling medium. The oil and components in many of these transformers contained polychlorinated biphenyls (“PCBs”).

11. Ward’s repairs of transformers typically involved taking apart the transformers and rebuilding or replacing some or all of the internal components, including the gaskets, bushings, gauges, coils, and oil.

12. Whenever it removed oil from transformers, Ward poured or pumped the oil into above-ground storage tanks, drums, or other storage containers. Ward then poured or pumped this used oil back into transformers for reuse or disposed of it.

13. At the time of the transactions alleged herein, leaks and spills of oil from transformers routinely occurred in conjunction with the handling of transformers containing PCBs.

14. Releases of oil contaminated with PCBs occurred during Ward’s repair of transformers, during the pumping or pouring of oil from transformers into storage containers; the removal of the oil-coated coil assembly from transformers; the removal of oil-coated bushings and gaskets; the incineration of oil-soaked cellulose material contained in the old coils; and the

storage of leaking transformers.

15. In 1978, sampling by EPA and the North Carolina Department of Environment and Natural Resources (“NCDENR”) detected PCB contamination in the soil at the Ward Facility, in the water and sediment of the Ward Facility’s stormwater lagoon, and in surface water and sediment downgradient from the Ward Facility.

16. Further sampling by NCDENR performed between 1994 and 1997 detected PCB contamination in surface soils at the Ward Facility, on the adjacent parcels, and along the surface water pathway downgradient from the Ward Facility.

17. In April 2003, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register. 68 Fed. Reg. 23,077 (Apr. 30, 2003).

18. A Remedial Investigation concluded by EPA in September 2004 confirmed PCB contamination of soil and sediments at the Ward Facility, PCB contamination of soil on adjacent parcels, and PCB contamination of sediment in surface waters downstream from the Ward Facility.

19. In September 2005, EPA entered into an Administrative Settlement Agreement and Order on Consent (“AOC”) with nine potentially responsible parties for the performance of a time-critical removal action at what is now known as Operable Unit 2 of the Site, which consists of the Ward Facility and adjacent properties. Pursuant to the AOC, the nine parties removed contaminated soil and sediment from the Ward Facility and adjacent properties, and are currently performing a Remedial Investigation and Feasibility Study for Operable Unit 2.

20. In September 2008, EPA issued a final Record of Decision (“ROD”) setting forth the remedy to be implemented at Operable Unit 1 of the Site, which consists of groundwater and

downstream surface waters. The ROD calls for, *inter alia*, (1) continuation or enhancement of existing North Carolina fish advisories and signs; (2) implementation of educational and community outreach programs; (3) pre-excavation sampling of sediment and floodplain soil; (4) performance of a pre-excavation endangered mussel evaluation study; (5) excavation and off-site disposal of sediment and soil from three tributaries to Little Brier Creek and from lower Brier Creek; (6) restoration of the Site and streams to pre-remediation conditions; (7) implementation of monitored natural recovery in Brier Creek Reservoir, Lake Crabtree, and Lower Crabtree Creek; (8) periodic monitoring of sediment and aquatic biota; (9) implementation of institutional controls; and (10) performance of Five-Year Reviews.

21. On September 29, 2011, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA issued a Unilateral Administrative Order (“2011 UAO”) to 23 potentially responsible parties, including Carr & Duff, ordering them to develop the remedial design and perform the remedial action for the Operable Unit 1 remedy set forth in the ROD.

22. Carr & Duff failed or refused to comply with the 2011 UAO until late 2015.

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

24. PCBs have come to be located at the Site.

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

26. There has been a “release,” or a threatened “release,” of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the environment at or from the Site.

27. As set forth in the 2011 UAO, EPA has determined that the release or threatened

release of hazardous substances at or from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

28. EPA has incurred more than \$3.9 million in costs, and will continue to incur costs, of removal and/or remedial actions within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25), not inconsistent with the National Contingency Plan, to respond to the release or threatened release of hazardous substances at or from the Site.

FIRST CLAIM FOR RELIEF

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

(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, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . .

. . . 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

31. Each Defendant (or corporate predecessor) arranged for disposal or treatment of hazardous substances (PCBs) owned or possessed by such Defendant (or corporate predecessor) by another entity at the Site, which was owned or operated by another entity and which contained such hazardous substances.

32. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are

jointly and severally liable to the United States for all response costs, including the costs of removal and/or remedial actions, incurred by the United States in connection with the Site, plus accrued interest on the costs.

33. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in pertinent part that in any action for recovery of costs, “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.”

34. The United States is entitled to a declaratory judgment on liability against Defendants, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action to recover further response costs incurred by the United States in connection with the Site.

SECOND CLAIM FOR RELIEF

35. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

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

37. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), each Defendant is subject to injunctive relief to abate the danger presented by the releases or threatened releases.

THIRD CLAIM FOR RELIEF

38. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

39. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), provides:

Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States

district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

40. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701 note, and EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75,340 (Dec. 11, 2008), the maximum civil penalty for noncompliance with a Section 106(b) administrative order occurring on or after January 13, 2009, is \$37,500 per day of noncompliance. 40 C.F.R. § 19.4.

41. Pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), Carr & Duff is subject to civil penalties of up to \$37,500 for each day in which it failed to comply with the 2011 UAO.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Order the Defendants to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment;
2. Award the United States a judgment against Defendants jointly and severally for all response costs incurred by the United States in connection with the Site, plus accrued interest on the costs;
3. Award the United States a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), of Defendants' joint and several liability, which will be binding on any subsequent action against Defendants seeking to recover further response costs incurred by the United States in connection with the Site;

4. Award the United States a judgment against Defendant Carr & Duff for civil penalties of up to \$37,500 per day for each day in which it failed to comply with the 2011 UAO; and

5. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

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Environment and Natural Resources Division

/s/ Lori Jonas

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