

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

-----X	
UNITED STATES OF AMERICA	:
	:
Plaintiff,	:
	:
v.	:
	:
BEAZER EAST, INC.,	:
	:
Defendant.	:
-----X	

Civil Action No.

COMPLAINT

The United States, 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:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9606, 9607(a). By this action, the United States seeks to recover costs it has incurred and will incur in response to the release and threatened release of hazardous substances at or from the Cabot/Koppers Superfund Site, located in the City of Gainesville, Alachua County, Florida (the Site).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106, 107(a), and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(b), and pursuant to 42 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) and (c), because the releases and threatened releases of hazardous substances that give rise to the claims herein occurred in this District and Defendant is found in this District.

DEFENDANT

4. Beazer East, Inc. is a corporation organized under the laws of Delaware, and was formerly named Koppers Company, Inc. At the time it was named Koppers Company, Inc., the company operated a wood treating facility at the Site from 1954 until 1988 ("Koppers Facility"). On December 29, 1988, Koppers Company, Inc. sold the wood treating facility to Koppers Industries, Inc. The name of the corporation was changed from Koppers Company, Inc. to Beazer Materials and Services, Inc. in January 1989 and was again changed to Beazer East, Inc. - its current name - in April 1990.

5. Beazer East, Inc. is a person within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

FACTUAL BACKGROUND

6. The Cabot/Koppers Superfund Site is located in the City of Gainesville, Alachua County, Florida and includes two adjacent former industrial facilities and the areal extent of contamination emanating from those locations including soils, sediments, underlying aquifers and creeks. The Site is comprised of (1) the former Koppers Facility; (2) the former Cabot

Facility; (3) areas to the north, south, east, and west of the former Koppers Facility within the extent of soil contamination emanating from the Site; and 4) portions of Springstead Creek and Hogtown Creek, within the extent of sediment contamination emanating from the Site.

7. The Site sits atop a Surficial Aquifer, a confining layer of soil and sediment known as the Hawthorn Group and the deeper Floridan Aquifer. The Gainesville Regional Utility's Murphee well field and treatment facility is less than two and a half miles northeast of and downgradient of the Site. This wellfield draws 26 million gallons per day from the Floridan aquifer and provides the municipal water supply for the city and county. The Site also has two ditches that discharge to Springstead Creek which lies within the Hogtown Creek drainage basin.

8. The Koppers Facility was used to preserve wood utility poles and timbers. (1990 ROD at p. 1-8). The woodtreating process at the Koppers Facility resulted in releases of wood-treating contaminants related to chromated copper arsenic (CCA), pentachlorophenol (PCP) and creosote into two unlined open pond systems (Former North Lagoon and Former South Lagoon), a Drip Track (Former Drip Track), and a Process Area (Former Process Area) each of which is a source area for the Site contamination.

9. Cabot produced pine tars and charcoal at its facility ("the Cabot Facility") through the distillation of pine stumps. This process generated an estimated 6,000 gallons of crude wood oil and pitch per day.

10. Cabot also generated, as part of its operations, wastewater containing pyroligneous acid, which contains acetic acid, methanol, acetone and other chemicals, and disposed of those contaminants in three unlined lagoons at the Cabot Facility which are also source areas for the Site contamination.

11. The on-Site soil of the Koppers Facility was found to be contaminated with arsenic, carcinogenic polyaromatic hydrocarbons (PAHs), (expressed as benzo(a)pyrene toxic equivalents [BAP-TEQ]), and dioxins/furans (expressed as 2,3,7,8-tetrachlorodibenzo-p-dioxin toxic equivalents [TCDD-TEQ]) (expressed as benzo(a)pyrene toxic equivalents [BAP-TEQ] at levels above the Florida Soil Cleanup Target levels for direct exposure at a commercial/industrial site. The following contaminants of concern were also found in the on-Site soil of the Koppers Facility: CCA; PCP; Naphthalene; 2-Methylnaphthalene; Acenaphthene; Fluorene; Phenanthrene; Carbazole.

12. Off-site surface soil adjacent to the Site boundaries had concentrations of PAH's, arsenic and dioxins/furans in excess of the Florida Soil Cleanup Target levels for direct exposure in a residential and commercial/industrial area.

13. Each of the contaminants listed in Paragraphs 11 and 12 above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

14. The Site has two drainage ditches which discharge to the Hogtown Creek basin: the North Main Street ditch which flows to the north along the eastern boundary of the Cabot Facility and discharges into a tributary of Springstead Creek, which parallels the Site's northern boundary; and the ditch which runs through the Koppers Facility and also discharges into Springstead Creek at the Northern property boundary. Springstead Creek discharges in Hogtown Creek west-northwest of the Site. Hogtown Creek ultimately discharges directly into the Floridan Aquifer.

15. The following contaminants have been found in the sediment of the ditches leading to Springstead and Hogtown Creeks at levels above cleanup goals: anthracene; fluoroanthene; PCP; arsenic; chromium and copper.

16. PAHs and dioxin TEQs have been found in the sediment of Springstead and Hogtown Creeks at levels above cleanup goals.

17. The following contaminants have been found in the Surficial Aquifer underlying the Site at levels above Florida Groundwater Cleanup Target Levels (FGCTL): Naphthalene; Acenaphthene; 2-Methylnaphthalene; Dibenzofuran; Carbazole; Phenanthrene; Phenol; 2,4-Dimethylphenol; PCP; and Arsenic.

18. Contamination by creosote constituents and PAHs was found in the Hawthorn Group. The following contaminants have been found in the Hawthorn Group underlying the Site at levels above FGCTL: PCP; Phenols; Arsenic; Naphthalene.

19. Contamination by PAHs above FGCTL was found in the Floridan Aquifer.

20. Each of the contaminants listed in Paragraphs 17 through 21 above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. The contamination of soil, sediments and groundwater were and are "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601 (22), as well as the threat of continuing releases of hazardous substances, into the environment at and from the Site.

22. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601 because hazardous substances have come to be located there.

23. The Site has been the subject of several remedial investigations from 1980 up to the present time

24. In August of 1983, the Site was listed on the National Priorities List promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. part 300, App. B.

25. The initial Record of Decision (1990 ROD) for this Site was issued by EPA on September 27, 1990. In March 1991, EPA completed a consent decree with Cabot Carbon Corporation (Cabot) agreeing to the development of a remedial design (RD) for the Cabot Facility (southeast) portion of the Site (the Cabot CD) pursuant to the 1990 ROD.

26. In March 1991, EPA issued to Defendant a separate Unilateral Administrative Order (The 1991 Beazer UAO) requiring implementation of the remedial actions required under the 1990 ROD for the Koppers Facility portion of the Site. At that time, Cabot and Defendant began to pursue remediation independently and started developing separate Remedial Designs for the Cabot Facility and Koppers Facility portions of the Site.

27. In an April 1992 Consent Decree, Cabot agreed to develop the RD and implement the remedial action (RA) for the Cabot Facility portion of the Site (the 1992 Cabot CD). Cabot also performed some removal of contaminated sediments from the on-Site ditches leading to the creeks.

28. On April 28, 1994, EPA issued an amendment to the 1991 Beazer UAO, expanding the scope of Defendant's obligations to include an additional remedial investigation and feasibility study at the Koppers portion of the Site.

29. In September 1996, a Consent Decree (the 1996 Consent Decree) was entered between EPA, Beazer, CSX Transportation Inc., (CSX) and Koppers Inc. in the United States District Court for the Northern District of Florida to resolve Case No. 93-10136 filed by the United States against Beazer, CSX, and Koppers Inc. relating to the reimbursement of past response costs and payment of future oversight costs at the Koppers portion of the Site. Under the 1996 Consent Decree, the Defendant is obligated to, has been, and must continue to reimburse EPA's ongoing oversight costs associated with the Koppers Facility portion of the

Site.

30. At the Koppers Facility portion of the Site, data from studies conducted after issuance of the 1990 ROD revealed Site conditions that were not contemplated by the 1990 ROD or 1991 Beazer UAO. The 1991 Beazer UAO was subsequently amended in April 1994.

31. Pursuant to the 1994 Amendment to the 1991 Beazer UAO, Defendant conducted supplemental remedial investigations and prepared a Supplemental FS in 1997 which was revised in 1999. The data gathered during that process, in conjunction with data from two five-year reviews from the Site conducted in 2001 and 2006, were the basis of environmental investigation and interim measures completed through 2011.

32. EPA approved a Final Feasibility Study (FS) Report in May, 2010. EPA executed a subsequent Record of Decision amending the 1990 ROD in February of 2011 (the Amended ROD).

33. The components of the Site wide remedy have been defined under the Amended ROD as six operable units (OUs) for purposes of the remediation. OU-00 was a Site-wide operable unit created in the 1990 ROD which addressed the remediation of the surface soil and Surficial Aquifer at both the Cabot portion and the Koppers portion of the Site.

34. OU-00 has now been superseded by the operable units OU-1 through OU-5 pursuant to the Amended ROD. OU-1 is all remedial actions related to the former Cabot Facility and remediation of contaminated sediment in Hogtown and Springstead Creeks attributable to the former Cabot Facility. OU-2 is all remedial actions related to soil at the former Koppers Facility and the Surficial Aquifer underlying the former Koppers Facility. OU-3 is all remedial actions in the Hawthorn Group that are taken in response to conditions attributable to the former Koppers or Cabot Facilities, and OU-4 is all remedial actions in the Upper Floridan Aquifer that

are taken in response to conditions that are attributable to the former Koppers Facility. OU-5 is remediation of the areal extent of soil and sediment contamination attributable to the former Koppers Facility located offsite of the former Koppers Facility and remediation of contaminated sediment in Hogtown and Springstead Creeks attributable to the former Koppers Facility.

35. All remedial actions for OU-1 required by the 1990 ROD are to be completed by Cabot pursuant to the 1992 Cabot CD.

36. Also under the 1990 ROD, remedial actions for OU-00 were conducted by Defendant pursuant to the 1991 Beazer UAO and 1994 amendments thereto. Contaminated groundwater from the Surficial Aquifer was (and continues to be) extracted, pre-treated, and discharged to the publicly owned treatment works. However, EPA determined from the subsequent studies that further remediation was needed in OU-1 and OU-2 and that the hydrogeologic units comprising OU-3 and OU-4 also needed to be remediated. Further, EPA has determined that some off-Site soil and sediment comprising OU-5 need to be remediated.

37. The Amended ROD provides for a remedy which includes the following: (A) For on-Site soil: Establishment of an on-Site soil consolidation area that includes a single continuous vertical barrier wall extending 65 feet deep encircling all four principal contaminant source areas from the land surface to the Hawthorn Group middle clay; Establishment of a low permeability cap/cover over the consolidation area to protect against rain infiltration and contaminant migration; In-Situ biogeochemical stabilization of the former Process Area and South Lagoon source areas within the vertical barrier wall boundaries; In-Situ solidification/stabilization of the former North Lagoon and Drip Track source areas within the vertical barrier wall boundaries; (B) For on-Site groundwater contamination: Use existing Hawthorn Group monitoring wells as treatment injection points for chemical oxidation and/or stabilization solutions and continue to

monitor the concentration of contaminants to ensure that contamination stays on-Site;

(C) For off-Site soil: Excavation of soil that exceeds clean up goals based on current land use and removal of impacted soil to the on-Site soil consolidation area; Institutional controls in the form of a Site property deed restriction to protect accessibility and use of the land; (D) For surface water and sediment in Hogtown and Springstead Creeks: Excavation of contaminated sediment and removal to the on-Site soil consolidation area or disposal offsite; Monitored natural attenuation; (E) For the upper Floridan Aquifer: Continuation and expansion of the existing groundwater extraction and treatment system, including installation of additional groundwater extraction wells if needed; continued monitoring and collection of groundwater samples; and institutional controls to prevent extraction of contaminated water from the upper Floridan aquifer for potable use.

38. The Amended ROD is not inconsistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

39. The United States has incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan in responding to the release or threatened release of hazardous substances at and from the Site, within the meaning of Section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601(23), (24), and (25).

FIRST CLAIM FOR RELIEF

40. The statements and allegations set forth in Paragraph 1 through 39 above are realleged and incorporated herein.

41. Section 107(a) of CERCLA provides, in pertinent part:

(1) the owner and operator of a vessel or a facility;

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . 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. . . .

42. Defendant is the current owner of a portion of the Site at which hazardous substances have been disposed, and also owned and operated a portion of the Site at the time of disposal of hazardous substances, and is, therefore, liable to the United States for all response costs, including the costs of removal and remedial actions to be incurred in the future by the United States with respect to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

43. Section 113(g)(2) of CERCLA pertains to actions for recovery of costs under Section 107 of CERCLA, 42 U.S.C. § 9607, and provides in pertinent part:

In any such action described in this subsection, 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.

44. The Defendant is liable for 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, pursuant to 42 U.S.C. § 9613(g)(2).

SECOND CLAIM FOR RELIEF

45. The statements and allegations set forth in Paragraph 1 through 39 above are realleged and incorporated herein.

46. 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.

47. By Executive Order 12580 of January 23, 1987, the President's functions under 106(a) of CERCLA, 42 U.S.C. 9606(a), have been delegated to the Administrator of EPA.

48. 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 or threatened releases of hazardous substances from the Site.

49. EPA has determined that the remedy selected in the Amended ROD is necessary to abate the danger or threat at the Site.

50. The Defendant is liable to undertake the remedial action identified in the entire Amended ROD, which actions EPA has determined are necessary to abate the danger or threat at the Site.

PRAAYER FOR RELIEF

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

1. Order the Defendant to perform the remedial action at the Cabot/Koppers Superfund Site selected by EPA in the Amended ROD dated February 2011;

2. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2) in favor of the United States against Defendant, for all further response costs which may be incurred by the United States for response actions relating to the Cabot/Koppers Superfund Site, and

3. Grant the United States such other relief as this Court may deem appropriate.

Respectfully submitted,

/s/ Cheryl L. Smout
CHERYL L. SMOUT
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

PAMELA C. MARSH
United States Attorney

/s/ Pamela A. Moine
PAMELA A. MOINE
Assistant United States Attorney
Florida Bar Number 588180
21 E. Garden Street, Suite 400
Pensacola, Florida 32502
(850) 444-4000