

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	CIVIL ACTION NO.
STATE OF NEW YORK and ST. REGIS)	7:13-CV-337 [NAM/TWD]
MOHAWK TRIBE,)	
)	
Plaintiffs,)	
vs.)	
)	
ALCOA INC. and REYNOLDS METALS)	
CO.,)	
)	
Defendants.)	

COMPLAINT

1. The United States of America, by authority of the Attorney General, on behalf of the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration, and the United States Department of the Interior; the State of New York; and the St. Regis Mohawk Tribe (“Plaintiffs”) allege as follows:

NATURE OF THE CASE

2. This is a civil action for natural resource damages brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from the release of hazardous substances at or from the Alcoa, Inc. and Reynolds Metal Co. sites (“the Sites”) located near the Town of Massena, St. Lawrence County, New York.

JURISDICTION AND VENUE

3. 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 under 28 U.S.C. §§ 1331 and 1345. The Court has in personam jurisdiction over the Defendants and/or the Defendants have waived any objection to in personam jurisdiction.

4. Venue is proper in this District under Section 113(b) of CERCLA, 42 U.S.C. §

9613(b), and 28 U.S.C. § 1391, because the claims arose out of an actual or threatened release of hazardous substances that occurred within this judicial district.

PARTIES

5. Plaintiffs are Trustees for natural resources at or near the Sites under Section 107(f)(2) of CERCLA, 42 U.S.C. § 9607(f)(2), 40 C.F.R. § 300.600 et seq., and 43 C.F.R. Part 11.

6. Defendant Alcoa, Inc. (“Alcoa”) is a Pennsylvania corporation with its principal offices in Pittsburgh, Pennsylvania. Alcoa has owned and operated an aluminum product manufacturing facility located on the Alcoa Site since 1903.

7. Defendant Reynolds Metals Co. (“Reynolds”) is a Virginia corporation with its principle offices in Richmond, Virginia. Reynolds has owned and operated an aluminum product manufacturing facility located on the Reynolds Site since 1958.

8. In 2000, Alcoa acquired Reynolds and is the parent company of Reynolds.

THE SITES

9. The Alcoa Site (a/k/a Alcoa West) is a parcel of property in the Town of Massena, St. Lawrence County, New York, which consists of approximately 2,700 acres, and is bordered on the north by the St. Lawrence River, on the east by property owned by Conrail Corporation, on the southwest by the Massena Power Canal and on the southeast by the Grasse River.

10. The Reynolds Site (a/k/a Alcoa East) is a parcel of property in the Town of Massena, St. Lawrence County, New York, which consists of approximately 1,600 acres off Route 37 near the Massena-Cornwall International Bridge and adjacent river systems.

11. The Trustees have engaged in natural resource injury studies, damage assessments, and restoration planning relating to the Sites since 1991. In January 1991, the Trustees, Alcoa, Reynolds and General Motors Corp. (n/k/a Motors Liquidation Company, or “MLC”) entered into a funding agreement by which Alcoa, Reynolds and MLC agreed to provide funding for the performance of a natural resource assessment by the Trustees.

12. Investigations conducted by the United States Environmental Protection Agency (“EPA”), and an assessment conducted by the Trustees have detected hazardous substances in the sediments, soils, groundwater, and waters of the Sites, including but not limited to polycyclic aromatic hydrocarbons, polychlorinated biphenyls (“PCBs”), volatile organic compounds (“VOCs”), total dibenzofurans, cyanide and fluorides.

13. The Trustees have performed a Habitat Equivalency Analysis (“HEA”) together with other assessment measures at the Sites to determine the costs of restoration needed to compensate for natural resource injury, recreational fishing loss, and remedial injury to aquatic resources due to releases of hazardous substances from Alcoa, Reynolds and MLC’s facilities. The HEA determined that sediment, fish, birds, amphibians and mammals sustained ecological and remedial injuries from the hazardous substances released from the facilities. The recreational fishing assessment established the type and number of fishing trips lost as a result of the releases of hazardous substances from the facilities. These claims are joint by the Trustees. Further assessments determined that the release of hazardous substances from the facilities caused loss of cultural uses and impairment of natural resources of the Tribe.

14. The Trustees prepared a Restoration and Compensation Determination Plan and Environmental Assessment, which describes the natural resource injuries and associated losses and outlines proposed restoration projects.

15. On June 17, 2011, a settlement with MLC was entered resolving the Trustees natural resource damage claims as to the MLC Site located in Massena, New York. *In re: Motors Liquidation Company, et al*, Case No. 09-50026 (REG) (Bank. S.D.N.Y. June 17, 2011).

CLAIM FOR RELIEF

16. The allegations set forth in Paragraphs 1 through 15 are re-alleged and incorporated herein by reference.

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

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 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,

* * *

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;

* * *

18. At all times relevant to this action, there has been a "release" or a "threatened release" of "hazardous substances" into the environment at or from the Sites, 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).

19. The Sites are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. Each Defendant is a "persons" within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601(21).

21. Alcoa is an "owner" and "operator" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

22. Reynolds is an "owner" and "operator" of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

23. Each Defendant was an owner and/or operator of a facility at the time of disposal of hazardous substances at the Site within the meaning of 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

24. The release of hazardous substances into the environment at or from the Sites has resulted in injury to, destruction of, or loss of natural resources within the trusteeship of Plaintiffs.

25. The Plaintiffs have incurred and continue to incur costs related to the assessment

hazardous substances from the Sites.

26. Defendants are jointly and severally liable to Plaintiffs for natural resource damages resulting from Defendants' release of hazardous substances at or from the Sites pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Award Plaintiffs a judgment against Defendants, jointly and severally, for all damage for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, at or from the Sites;
2. Award Plaintiffs a judgment against Defendants, jointly and severally, for all costs of this action, including attorney's fees; and
3. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES

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3/26/13
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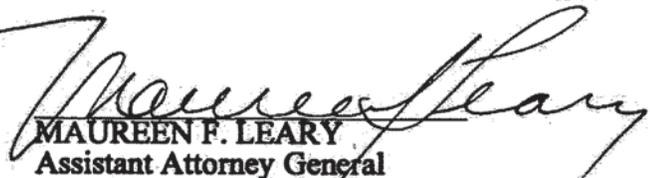
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FOR THE STATE OF NEW YORK

March 22, 2013
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