

STATE OF MICHIGAN
IN THE 30th JUDICIAL CIRCUIT COURT
INGHAM COUNTY

MICHIGAN DEPARTMENT
OF NATURAL RESOURCES AND ENVIRONMENT,

Plaintiff,

File No. 10-1186 -CE

v

Honorable ~~JUDGE PAULA J. M. MANDERFIELD~~

STRAITS STEEL & WIRE COMPANY,

Defendant.

Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Attorney for Plaintiff
Michigan Department of Attorney General
Environment, Natural Resources,
and Environmental Quality Division
6th Floor, Williams Building
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

A civil action between the Plaintiff and another party arising out of the transaction or occurrence alleged in the Complaint has been previously filed in this Court, where it was given Docket No. 09-1658-CE and was assigned to Judge Draganchuk. That action is no longer pending.

COMPLAINT

1. This is a civil action brought under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq.*, to obtain injunctive relief to require the Defendant, Straits Steel & Wire Company (Straits), to implement response activities to address the release of hazardous substances at and emanating from (1) a former manufacturing plant property that it owns and

operated, and (2) a manufacturing plant that it owns and currently operates. The properties are adjacent to each other. Plaintiff seeks compliance with Parts 201 and 213 of the NREPA.

Plaintiff also seeks recovery of response activity costs and penalties under Parts 201 and 213 of the NREPA.

2. This Court has personal jurisdiction in this matter under MCL 600.711 and has subject matter jurisdiction pursuant to MCL 324.3115(1), MCL 324.20137(3), and MCL 324.11151(1).

3. Venue is proper in this Court under the Revised Judicature Act, MCL 600.1631; and pursuant to MCL 324.3115(1), MCL 324.20137(3), and MCL 324.11151(1).

PARTIES

4. Plaintiff, Michigan Department of Natural Resources and Environment (DNRE), is a principal department within the Executive Branch of the State of Michigan. Executive Order No. 2009-45 which took effect on January 17, 2010, abolished both the Michigan Department of Environmental Quality (MDEQ) and the Michigan Department of Natural Resources (DNR) and created the DNRE. The Executive Order transferred all the authority, powers, duties, functions, responsibilities, personnel, equipment, property, and budgetary resources from the DNR and MDEQ to the DNRE. All references in this Complaint will be to the DNRE.

5. Defendant, Straits Steel & Wire Company is a Michigan Corporation.

COMMON ALLEGATIONS

6. Straits owns a manufacturing plant located at 902 North Rowe Street, Ludington, Michigan and operated a metal plating business at the location since the 1940s. The business

included chromium plating of refrigerator racks. Chromium and cyanide were used by Straits at the 902 North Rowe Street property.

7. Chromium and cyanide contamination has been found in both the soil and groundwater at the 902 North Rowe Street property.

8. Straits also owns property at 902 North Harrison Street, Ludington, Michigan, which is adjacent to the 902 North Rowe Street property. Both the Ludington Plating Company (LPC) and Industrial Plating and Manufacturing Inc. (Industrial Plating) operated a wire plating facility at 902 North Harrison Street. Chromium, zinc, cyanide, and other metal plating materials were used in the wire plating operations at 902 North Harrison Street until 1984. The soil at 902 North Harrison Street and the groundwater at and emanating from 902 North Harrison Street is contaminated with cyanide, chromium, and trichloroethylene (TCE).

9. The property at 902 North Harrison Street was purchased by Straits in 1982 and is currently owned by Straits. Straits disposed of hazardous substances on the 902 North Harrison Street property after it acquired the property.

10. The plume of groundwater contamination from the 902 North Rowe Street property commingles with the contamination from 902 North Harrison Street.

11. DNRE began investigating the contamination in this area and undertook numerous soil borings, installed groundwater monitoring wells, and collected soil and groundwater samples. The work was undertaken to help define the extent of the contamination and to identify the sources. As a result of the investigation, DNRE identified three sources of contamination: the 902 North Rowe Street property, the 902 North Harrison Street property, and the former Handy Things property located at 814 North Rowe Street (hereinafter referred to as the "commingled plume area").

12. DNRE incurred over \$1,900,000.00 in investigation costs and other response activity costs for the commingled plume area through June 2007. Of these costs approximately \$700,000 is attributable to a removal action undertaken by DNRE at the 902 North Harrison Street property.

13. At the Handy Things property, Northrop Grumman Systems Corporation (NGSC) removed contaminated source soils and installed a groundwater pump and treat system for chlorinated solvents. On December 11, 2009 a Consent Decree was entered between the DNRE and Northrop Grumman System's Inc. to resolve Northrop's liability for the contamination at 814 North Rowe Street and for the commingled plume area.

14. On May 19, 2004, DNRE sent Straits a letter demanding that it undertake additional response activities at the 902 North Rowe Street and 902 North Harrison Street, including fully defining the nature and extent of contamination from the both properties and also to define the extent of the commingled plumes. In this letter, pursuant to Section 20114 of Part 201, the DNRE requested that Straits submit and implement a remedial action plan. DNRE also requested that Straits to reimburse it for the response activity costs incurred investigating the commingled plume area and the costs associated with 902 North Rowe Street and 902 North Harrison Street.

15. Straits has not diligently pursued response activities, has not submitted a remedial action plan, nor has it addressed the contamination as required by Part 201.

16. Straits also had three underground storage tanks on its property at 902 North Rowe Street, Ludington, Michigan.

17. In 1990 Straits discovered a release of petroleum products from the tank when it removed the tanks. Straits reported the release to DNRE.

18. DNRE repeatedly requested additional data to confirm that the release from the underground storage tanks had been remediated. To date Straits has not produced data establishing that the release from the underground storage tanks has been remediated in accordance with Part 213 of the NREPA.

COUNT I – PART 201

19. Paragraphs 1 through 18 of this Complaint are restated and incorporated by reference.

20. The substances described above that have been detected in the soils and groundwater are "hazardous substances" under Section 20101(1)(t) of Part 201, MCL 324.20101(1)(t). Hazardous substances released by Straits at both 902 North Rowe Street and 902 North Harrison Street, including, but not limited to, chromium, nickel, zinc, copper, and cyanide, constitute a "release" or "threat of release" as those terms are defined in Sections 20101(1)(bb) and 20101(1)(o) of the NREPA, MCL 324.20101(1)(bb) and MCL 324.20101(1)(o).

21. At both 902 North Rowe Street and 902 North Harrison Street, these hazardous substances have been released into the environment in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of Part 201 or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA, and both properties constitute a "facility" as defined by Section 20101(o) of Part 201, MCL 324.20101(o).

22. Straits is the owner and operator of both facilities and is responsible for an activity causing a release or threat of release of hazardous substances at both facilities. Therefore, Straits is liable under Section 20126(1)(a) of the NREPA, MCL 324.20126(1)(a).

23. Section 20126a of the NREPA, MCL 324.20126a, provides in part:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

24. As a result of releases and threatened releases of hazardous substances by Straits, the State of Michigan (State) has incurred and is continuing to incur response activity costs at the facility.

25. Section 20137(1) of Part 201, MCL 324.20137(1), provides in part as follows:

In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to Section 20126a.

* * *

(d) A declaratory judgment on liability for future response costs and damages.

(e) A civil fine of not more than \$1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than \$10,000.00 for each day of violation of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part.

COUNT II-Part 213

26. Paragraphs 1 through 25 of the Complaint are re-alleged and incorporated herein by reference.

27. Section 21303(a) of the NREPA provides that, "[o]perator means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system and who is liable under part 201."

28. Under Section 21303(b) an "Owner means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including, but not limited to, a trust, vendor, vendee, lessor, or lessee and who is liable under part 201."

29. Straits is an owner and/or operator under Sections 21303(a) and (b), MCL 324.21303(a) and 21303(b), of the NREPA.

30. There have been "releases" from underground storage tanks at the property at 902 North Rowe Street within the meaning of Section 21303(e) of the NREPA, MCL 324.21303(e).

31. A confirmed release was reported on June 19, 1990.

32. The property at 902 North Rowe Street, Ludington, Michigan is a "site" within the meaning of Section 21303(f) of the NREPA, MCL 324.21303(f).

33. Based upon information and belief, Straits has not performed all the response activities as required under Part 213.

34. Section 21323(1) of the NREPA, MCL 324.21323(1) provides in pertinent part:

The attorney general may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the State for taking corrective action.

* * *

(d) A civil fine of not more than \$10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part a fine imposed under this subsection shall be based upon the seriousness of the violators and any good faith efforts by the violator to comply with the part or rule.

35. Straits is liable to the State for civil fines of up to \$10,000.00 for each day of noncompliance with the requirements under Part 213 of the NREPA.

COUNT III – PUBLIC NUISANCE

36. Paragraphs 1 through 35 are incorporated by reference.

37. A condition or activity that unreasonably interferes with public rights or threatens public welfare constitutes a public nuisance.

38. As set forth above, Straits has created a public nuisance.

39. The Attorney General may bring an action to abate a public nuisance, and this Court has the authority and jurisdiction to compel abatement of such a nuisance.

RELIEF REQUESTED

Plaintiff requests this Honorable Court to grant the following relief:

A. Hold Straits liable under Part 201 for the release of hazardous substances at both the 902 North Rowe Street and the 902 North Harrison Street facilities, which includes those areas where these releases have commingled with releases of hazardous substances from 814 North Rowe Street;

B. Hold Straits liable under Part 213 for the release of regulated substances from underground storage tanks at 902 North Rowe Street;

- C. Grant an injunction requiring Straits to undertake the appropriate response activities and corrective actions;
- D. Require Straits to pay Plaintiff's response activity costs incurred at or in relation to the release of hazardous substances at the 902 North Rowe Street facility and 902 North Harrison Street facility, which includes those areas where these releases have commingled with releases of hazardous substances from 814 North Rowe Street, plus statutory prejudgment interest;
- E. Order Straits to pay civil fines for violations of Parts 201 and 213;
- F. Enter a declaratory judgment that Straits is liable under Part 201 for all future costs lawfully incurred by the State in responding to the release or threat of release at the 902 North Rowe Street facility and 902 North Harrison Street facility;
- G. Order Straits to abate the public nuisance; and
- H. Grant Plaintiff further relief as the Court finds just and appropriate.

Respectfully submitted,

Mike Cox
Attorney General



Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
6th Floor, Williams Building
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48913
(517) 373-7540

Dated: September 30, 2010

LF:Industrial Plating/1993200084/Straits Complaint