

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION**

UNITED STATES OF
AMERICA

Plaintiffs,

v.

UNITED TECHNOLOGIES
COROPORATION,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action brought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act

("CERCLA"), 42 U.S.C. § 9606 and 9607, for remediation of, and for the recovery of response costs incurred or to be incurred by the United States in connection with, the Sixty One Industrial Park Site located at 5607 Highway 61 South in Memphis, Shelby County, Tennessee ("the Site").

2. Notice of the commencement of this action has been given to the State of Tennessee pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 9613(b).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), 42 U.S.C. § 9613(b).

DEFENDANT

5. Defendant United Technologies Corporation ("UTC") is a corporation under the laws of the State of Delaware.

6. UTC is the successor in interest to Ambac Industries, Inc. ("Ambac"), the former owner/operator of the Site. UTC acquired the assets and liabilities of Ambac Industries, Inc. ("Ambac") by merger of UTC Automotive, Inc. (then a subsidiary of UTC), with Ambac, in July 1978. From approximately 1960 to 1973, Ambac or Ambac's Pace Caribe Division

("Pace") owned the Site property and operated a facility on the Site that manufactured pyrotechnic and ordnance products and also an on-site metal plating operation. Ambac is a potentially responsible party by virtue of its former ownership of and operations at the Site.

GENERAL ALLEGATIONS

7. Sixty One Industrial Park Superfund Site (the "Site") comprises 78 acres of land located at 5607 Highway 61 South in Memphis, Shelby County, Tennessee.

8. The Site once housed numerous small buildings, five former wastewater lagoons, and a silo. The Site property is not presently used for any manufacturing purposes, and is surrounded by undeveloped land.

9. From the early 1960s until the early 1970s, Ambac and Pace manufactured pyrotechnic and ordnance products (flares, smoke signals, bombs, and ignition and detonation devices) on the Site. Pace also conducted an on-Site metal plating operation, beginning in the mid to late 1960s.

10. During the period of ownership and operation by Ambac and Pace, hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Site.

11. Among the hazardous substances disposed of from the operations

of Ambac and Pace are PCE, trichloroethylene (“TCE”), cis-1,2 DCE and other substances associated with metal plating, ordnance manufacturing, and metal recycling activities on the Site. These substances have been detected in sediments, groundwater, and surface water on the Site.

12. In 1973, Ambac sold the Site property to Sixty-One Industrial Park, Ltd., a Tennessee limited partnership, (“the Partnership”). The Partnership was formed by limited partnership agreement entered into by Bennie Lazarov, Sidney Lazarov and Herman Lazarov as general partners and several other members of the Lazarov family as limited partners, to buy and own the Site.

13. The Partnership conducted metal-salvage and machine-repair activities on the property until the early 1990s.

14. In 1978, UTC (then known as United Technologies Automotive Corporation) merged with Ambac, and conducted business at the Site.

15. In 1982, the Tennessee Department of Environment and Conservation began investigating the Site and notified EPA. In November 1993, EPA sampled drums and wastewater lagoons on the Site, and analysis of the samples detected antimony, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel and zinc in the onsite lagoons; and acetone, benzene, chloromethane, ethylbenzene, toluene, xylene, 2-methylnaphthalene and naphthalene in drums

stored in several areas of the Site.

16. In March 1994, the EPA Region 4 Emergency Response and Removal Branch conducted additional sampling of drums and the lagoons.

17. In March 1995, EPA issued a Unilateral Administrative Order (“UAO”) to UTC (then known as United Technologies Automotive Corporation Inc.), the Partnership, and other potentially responsible parties, to conduct a response action consisting of the removal of drums and containers containing hazardous substances, and contaminated soil at the Site.

18. In April 1996, United Technologies Automotive, Inc. entered into an Administrative Order on Consent (“AOC”) with EPA to implement the draining of the on-Site lagoons of liquid waste containing hazardous substances and the removal of solid waste containing hazardous substances, which had not been completed under the March 1995 UAO.

19. Following completion of the 1996 removal action, EPA conducted additional sampling, and detected elevated concentrations of hazardous substances in soil, groundwater, surface water, and sediment on or near the Site.

20. In April 2001, EPA issued a Final Expanded Site Inspection Report, which assessed conditions at the Site. Analytical results in the Report of on-site surface soil, sediment and groundwater samples collected during the

Inspection detected hazardous substances, including but not limited to PCE, TCE, 1,1 Dichloroethene, and vinyl chloride. These hazardous substances are still present on the Site above action levels.

21. Based on the data collected during the Expanded Site Inspection, EPA determined that response action, specifically a Remedial Investigation and Feasibility Study ("RI/FS"), was required at the Site for protection of human health and the environment.

22. In January 2004, UTC entered into an AOC with EPA to conduct an RI/FS for the Site.

23. The RI sample results indicate that contaminants of potential concern in groundwater are primarily chlorinated compounds, PCE, TCE, cis-1,2, DCE, and VC). TCE is the most widespread.

24. Based on the RI/FS relating to the Site, and on the Record of Decision ("ROD") signed on September 26, 2008, the Regional Administrator, Region 4, EPA, determined that certain response actions are necessary to address the release or threatened release of hazardous substances at the Site and the resulting harm or threat of harm to the public health, welfare, or the environment.

25. To date, the United States has incurred substantial costs for

response actions taken at the Site, of which at least \$444,819.21 remains outstanding. The United States continues to incur response costs, including the cost of enforcement.

FIRST CLAIM FOR RELIEF -- COST RECOVERY

(CERCLA Section 107, 42 U.S.C. § 9607)

26. Paragraphs 1 through 26 are incorporated herein by reference.

27. There have been “releases,” “threatened releases” and “disposals” of hazardous substances at or from the Site, as those terms are defined in Sections 101(29) and 101(22) of CERCLA, 42 U.S.C. §§ 9601 (29) and (22).

28. PCE, TCE, cis-1,2 DCE are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. At the time hazardous substances were released or disposed of at the Site, Ambac was an “owner” and/or “operator” within the meaning of Section 101(20) and a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §§ 9601(20) and (21).

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

31. EPA has undertaken various activities to control site access and to assess and respond to environmental harm and risks at the Site. These actions

taken by EPA in response to releases and/or threatened releases of hazardous substances at or from the Site constitute “response” actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and are not inconsistent with the National contingency Plan (“NCP”), 40 C.F.R. Part 300.

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

33. The Defendant UTC is liable to the United States, as the successor in interest to Ambac (past owner/operator of the Site at the time of disposal of hazardous substances), for all response costs, including the costs of removal and remedial actions, incurred and to be incurred by the United States with respect to the Site and including all costs of enforcement and interest, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

SECOND CLAIM FOR RELIEF - INJUNCTIVE RELIEF

(CERCLA Section 106, 42 U.S.C. § 9606)

34. Paragraphs 1 through 26 are incorporated herein by reference.

35. The Regional Administrator of EPA Region 4, acting pursuant to

his delegated authority, has determined that there is an imminent and substantial endangerment to the public health or welfare or the environment because of the actual or threatened release of hazardous substances from the Site.

36. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant UTC is subject to injunctive relief to abate and remedy the imminent and substantial endangerment to public health or welfare or the environment presented by the Site and the effects of actual or threatened releases of hazardous substances from the Site.

37. The results of the RI/FS indicate that completion of the Remedial Design Remedial Action at the Site is still necessary to protect public health and the environment.

38. EPA has issued a ROD that selects the remedy for the Site.

39. Completion of the requested remedial response is necessary to protect public health and the environment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

a. Enter judgment against defendant in favor of the United States for all previously un-reimbursed costs incurred by the United States in response to the release or threatened release of hazardous substances at the Site, plus

interest, which costs are currently in excess of \$444,819.21;

b. Issue an injunction requiring the defendant to undertake the actions required by the ROD; and

c. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

ELLEN MAHAN
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P. O. Box 7611
Washington, D.C. 20044-7611

LARRY J. LAURENZI
Acting United States Attorney
Western District of Tennessee

By:

HARRIETT MILLER HALMON
Assistant United State Attorney
Western District of Tennessee
Tennessee Bar No. 05320

QUENTIN C. PAIR
Bar No. 151266 (District of Columbia)
W.D. Tenn. Admitted Pro Hac Vice
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P. O. Box 7611
Washington, D.C. 20044-7611

OF COUNSEL:

ROLANDO E. BASCUMBE,
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303