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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE BOEING CO., a Delaware
Corporation, the LOCKHEED MARTIN
CORPORATION, a Maryland Corporation,
and the CITY OF MOSES LAKE, a
municipal corporation of the State of
Washington,
Defendants.

Civil Action No.
CV-10-457-LRS
COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and the Secretary of the United States Army, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for recovery of costs under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act

1 (“CERCLA”), 42 U.S.C. § 9607. The United States seeks to recover the
2 unreimbursed costs it has incurred in connection with the release and threatened
3 release of hazardous substances into the environment at the Moses Lake Wellfield
4 Superfund Site (the “Site”) near Moses Lake, Washington.

5 JURISDICTION AND VENUE

6 2. This Court has jurisdiction over the subject matter of this action, and
7 the defendant, pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113
8 of CERCLA, 42 U.S.C §§ 9607 and 9613.

9 3. Venue is proper in this District under Section and 113(b) of
10 CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims
11 arose, and the threatened and actual releases of hazardous substances occurred,
12 within this judicial district.

13 DEFENDANTS

14 4. Defendant City of Moses Lake, Washington (the “City”) is the current
15 owner and operator of portions of the Site within the meaning of Section 107(a)(1)
16 of CERCLA, 42 U.S.C. § 9607(a)(1), and owned and operated the wastewater
17 treatment system on the Site at the time of disposal of hazardous substances at the
18 Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2)

19 5. Defendant The Boeing Company (“Boeing”) is the current owner of
20 portions of the Site within the meaning of Section 107(a)(1) of CERCLA, 42
21 U.S.C. § 9607(a)(1), and owned and operated certain facilities on the Site at the
22 time of disposal of hazardous substances at the Site, within the meaning of Section
23 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2)

24 6. Defendant Lockheed Martin Corporation (“Lockheed”) owned and
25 operated the certain facilities on the Site at the time of disposal of hazardous
26 substances at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42
27 U.S.C. § 9607(a)(2).

1 program included a liquid oxygen generating (“LOX”) plant and a missile
2 assembly and maintenance shop (“MAMS”).

3 14. In or about 1968, Boeing purchased approximately 120 acres of
4 property on the Site, which includes a 3-place hangar and other facilities. Boeing
5 continues to own that facility and had conducted various activities at the Site since
6 1968.

7 15. On information and belief, the activities conducted by Boeing and
8 Lockheed at the Site included the use and disposal of trichloroethylene (“TCE”)
9 and/or chemicals containing TCE.

10 16. The City owns property within the Site, including a drinking water
11 system and a sewage treatment plant within the Site. The City acquired both of
12 these facilities from the Air Force by quit claim deed on June 1, 1967, and has
13 operated these facilities up to the present day. The sanitary sewage treatment plant
14 has collected, and collects, contaminated water from a variety of sources within
15 the Site. On information and belief, the treatment plant may have been a source of
16 TCE releases at the Site.

17 17. During 1988 and 1989, the State of Washington’s Department of
18 Ecology (“Ecology”) and the Washington State Department of Social and Health
19 Services (“DSHS”) sampled the Moses Lake Site well systems including the
20 Skyline Water System. In addition, in 1990 Ecology and Environment (“E&E”),
21 an EPA contractor completed a preliminary investigation for U.S. EPA.

22 18. EPA and the United States Army Corps of Engineers (“Corps”) have
23 undertaken response actions at the Site, including, but not limited to, a Remedial
24 Investigation/Feasibility Study (“RI/FS”).

25 19. Ecology and DSHS sampling, the E&E investigation, and the RI/FS
26 demonstrated that as a result of waste disposal, practices, the groundwater was
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1 contaminated with “hazardous substances” as that term is defined in Section
2 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3 20. Hazardous substances, including TCE, were found in the groundwater
4 at the Moses Lake Site.

5 21. Hazardous substances, including TCE, have been found in samples of
6 the soils within the Site.

7 22. There were and are “releases” within the meaning of Section 101(22)
8 of CERCLA, 42 U.S.C. § 9601(22), as well as the threat of continuing releases, of
9 hazardous substances into the environment at and from the Site.

10 CLAIM FOR RELIEF
11 (Claim for Recovery of Response Costs)

12 23. The allegations of the foregoing paragraphs are incorporated herein
13 by reference.

14 24. The releases or threatened releases of hazardous substances at the
15 Moses Lake Site have caused the United States to incur response costs as defined
16 by Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a),
17 in connection with the Site.

18 25. The costs of the response actions taken by the United States in
19 connection with the Site are not inconsistent with the National Contingency Plan,
20 40 C.F.R. Part 300.

21 26. As of August xx, 2005, EPA and the United States Army Corps have
22 incurred response costs for the Site in excess of \$18,000,000.

23 27. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
24 Defendants are jointly and severally liable to the United States for the response
25 costs incurred by the United States in connection with the Site.

26 28. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),
27 Defendants are liable for a “declaratory judgment on liability for response costs . . .
28

1 . that will be binding on any subsequent action or actions to recover further
2 response costs.”

3 PRAYER FOR RELIEF

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

6 1. Award the United States a judgment against Defenants, for all costs
7 incurred by the United States through August xx, 2005, in connection with the
8 Moses Lake Wellfield Superfund Site, plus interest;

9 2. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),
10 enter a “declaratory judgment on liability for response costs . . . that will be
11 binding on any subsequent action or actions to recover further response costs.”

12 3. Grant such other and further relief as this Court deems appropriate.

13 Respectfully submitted,

14 IGNACIA S. MORENO
15 Assistant Attorney General
16 Environment and Natural Resources
17 Division

18 /s Michael J. Zevenbergen
19 MICHAEL J. ZEVENBERGEN
20 Senior Counsel
21 Environmental Enforcement Section
22 United States Department of Justice
23 c/o NOAA/Damage Assessment
24 7600 Sand Point Way, NE
25 Seattle, WA 98115
26 (206) 526-6607
27 Facsimile: (206) 526-6665

28 Attorneys for United States of America

24 Dated: December 23, 2010

Certificate of Service

Pursuant to Fed. R. Civ. 5(d), I certify that on December 23, 2010, I caused true and correct copies of the UNITED STATES' COMPLAINT to be served, in the manner specified below, on:

Linda R. Larson
Marten Law Group PLLC
1191 Second Avenue, Suite
Seattle, Washington 98101-3099
llarson@martenlaw.com

- Via Hand Delivery
- Via E-mail
- Via First-Class mail, postage pre-paid
- Via Overnight Mail
- Notice of electronic filing using CM/ECF

Mark William Schneider, Esq.
Eric S. Merrifield, Esq.
Perkins Coie – Seattle
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
mwschneider@perkinscoie.com
emerrifield@perkinscoie.com

- Via Hand Delivery
- Via E-mail
- Via First-Class mail, postage pre-paid
- Via Overnight Mail
- Notice of electronic filing using CM/ECF

Robert Loewen, Esq.
Sarah Mayhew Schlosser, Esq.
Gibson, Dunn & Crutcher LLP - CA
3161 Michelson Drive
Irvine, CA 92612
RLoewen@gibsondunn.com
Sschlosser@gibsondunn.com

- Via Hand Delivery
- Via E-mail
- Via First-Class mail, postage pre-paid
- Via Overnight Mail
- Notice of electronic filing using CM/ECF

Michael L. Dunning
Assistant Attorney General
2425 Bristol Court S.W.
P.O. Box 40117
Olympia, WA 98504-0117
MichaelD@ATG.WA.gov

- Via Hand Delivery
- Via E-mail
- Via First-Class mail, postage pre-paid
- Via Overnight Mail
- Notice of electronic filing using CM/ECF

/s Michael J. Zevenbergen
MICHAEL J. ZEVENBERGEN