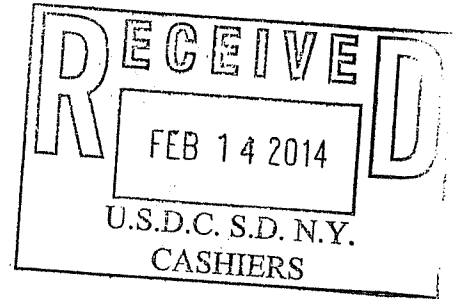


14 CV 09367

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.
----- x

No. 14 Civ. _____

COMPLAINT

The United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, by authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), for its complaint alleges on information and belief as follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States pursuant to Sections 104, 106, 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9607 and 9613, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 ("CERCLA"), for an injunction requiring Defendant to clean up the Shenandoah Road Groundwater Contamination Superfund Site located in East Fishkill, New York (the

“Shenandoah Site” or “Site”) in accordance with EPA’s September 30, 2012 Record of Decision (“2012 ROD”), and for the recovery of unreimbursed response costs incurred since May 1, 2004, and to be incurred in the future.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Defendants under 28 U.S.C. §§ 1331 and 1345 and Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b).

3. Venue is proper in this judicial district for the claims pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred in this district, and because the Shenandoah Site is located in the Southern District of New York.

DEFENDANT

4. International Business Machines Corporation (“IBM”) is a corporation incorporated in New York and whose principal place of business is 1 New Orchard Road, Armonk, New York, 10504-1722. IBM is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9621.

THE STATUTORY SCHEME

5. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response actions.” 42 U.S.C. §§ 9604(a), 9601(25).

6. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. . . .

7. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

8. Under Section 106 of CERCLA, 42 U.S.C. § 9606:

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. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

9. Under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3):

[A]ny person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . .

shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency

plan

GENERAL ALLEGATIONS

A. The Shenandoah Site

10. The Shenandoah Site is located within the Town of East Fishkill, Dutchess County, New York, in an area known as Shenandoah. The Shenandoah Site includes contamination located in over 60 residential wells on Shenandoah Road, Old Shenandoah Road, Seymour Lane, Burbank Road, Jackson Road, Townsend Road, Old Townsend Road, Jaycox Lane, Stone Ridge Lane, Griffin Lane, and East Hook Cross Road.

11. The source of the groundwater contamination is property located at 7 East Hook Cross Road, East Fishkill, New York (the "East Hook Property" or "Facility").

B. Industrial Cleaning Operation at the East Hook Property

12. Between approximately 1965 and 1975, IBM arranged with J. Manne, Inc. for the cleaning and repair of IBM's solder-laden computer chip racks at a commercial property located at the East Hook Property. The cleaning was performed with solvents, such as tetrachloroethene ("PCE"), supplied by IBM.

13. IBM had a contract with J. Manne, Inc., to repair and wash IBM's computer chip racks at the Facility.

14. IBM provided specifications on how to wash the racks.

15. IBM supplied the chemicals used in washing the racks, including PCE and nitric acid, and requested the building of a shed at the Facility to store the chemicals.

16. IBM also provided the Facility with equipment, and oversaw operations at the Facility. IBM representatives periodically visited the Facility.

17. J. Manne, Inc.'s cleaning and repair of the IBM racks generated waste materials, PCE, trichloroethene ("TCE"), lead, nitric acid, and sulfuric acid which were disposed in a septic tank and pit located at the East Hook Property.

18. IBM instructed employees at the Facility to dump PCE down the sink and gave instructions to dispose of nitric acid in the pit located at the East Hook Property.

C. Response Activities

19. EPA became involved at the Site in June 2000, when the New York State Department of Environmental Conservation ("NYSDEC") requested that EPA respond to contamination in residential wells.

20. In June 2000, EPA began delivery of bottled water to residences with contaminated wells and began installing water filtration systems at those residences.

21. In October 2000, EPA and NYSDEC identified the septic tank at the East Hook Property as a primary source of the groundwater contamination at the Shenandoah Site. On November 30, 2000, EPA commenced the removal of the septic tank and associated contaminated soil.

22. In December 2000, EPA determined that soil adjacent to the building located on the East Hook Property was contaminated with PCE, and that it was necessary to remove the building to excavate contaminated soil. In April 2001, EPA demolished the building, removed the construction debris, and removed the remaining soil contamination.

23. On May 16, 2001, IBM and EPA entered into Administrative Order on Consent, Index Number CERCLA-02-2001-2020 (the "Removal Order"), under which IBM performed certain removal activities authorized by EPA, including the completion of contaminated soil removal, maintenance of the residential well treatment systems,

implementation of a permanent water supply for the affected area, and construction of a source treatment and extraction system at the East Hook Property. IBM also reimbursed EPA for certain of the response costs incurred by EPA at the Site.

24. On June 14, 2001, the Shenandoah Site was placed on the National Priorities List, 40 C.F.R. Part 300, Appendix B.

25. In August 2001, EPA discovered a buried acid waste pit at the East Hook Property that contained elevated levels of hazardous substances, including lead and PCE. The contaminated soil from the waste pit was removed by IBM pursuant to the Removal Order.

26. In March 2002, EPA invited IBM to undertake a Remedial Investigation and Feasibility Study (“RI/FS”) at the Site. IBM subsequently entered into Administrative Order on Consent, Index Number CERCLA-02-2002-2025 (“the RI/FS Order”), pursuant to which IBM conducted the RI/FS at the Site and reimbursed EPA for certain costs of overseeing the work.

27. On September 30, 2012, EPA issued the 2012 ROD, in which it selected the following remedy:

- Continued operation and maintenance of the existing source extraction and treatment system to address the dense non-aqueous phase liquid source area;
- Natural attenuation of the groundwater plume through the processes of dispersion, dilution, degradation and sorption of volatile organic compounds (“VOCs”) in the groundwater plume in order to reduce VOC concentrations to federal and more stringent state maximum contaminant levels or standards;
- Maintenance of the four existing vapor mitigation systems, the continuation of the vapor intrusion monitoring program and the installation of additional mitigation systems if monitoring results demonstrate that they are warranted;
- Comprehensive monitoring program of groundwater, surface water and sediment;

- Institutional controls in the form of existing governmental controls consisting of local laws that limit exposure to contaminated groundwater by restricting the drilling of private wells and their use as a domestic supply within established public water districts, as well as proprietary institutional controls in the form of environmental easements and/or restrictive covenants placed on the Facility property to ensure that no construction or other invasive activities are conducted on the Facility which would interfere with existing remedial components, including the source extraction and treatment system; and
- Five year reviews after the initiation of remedial action to ensure that the remedy as selected is protective of human health and environment until cleanup standards are achieved.

28. EPA has incurred response costs that have not been reimbursed by IBM or any other Potentially Responsible Person (“PRP”) for the Site. EPA continues to accrue response costs at the Site.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 9607 and 42 U.S.C. § 9613(g)(2)

29. Paragraphs 1 through 28 are repeated and realleged as though fully set forth herein.

30. IBM is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. The commercial building, storage shed, septic tank and pit on the East Hook Property constitute a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

32. The cleaning and repair operations at the East Hook Property resulted in the disposal of waste materials, including PCE, TCE, lead, nitric acid, and sulfuric acid, that are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

33. The disposal of hazardous substances on the East Hook Property resulted in “releases” of hazardous substances within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. IBM is liable to the United States pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as a person who by contract, agreement, or otherwise arranged for the disposal or treatment at the Site of hazardous substances owned or possessed by such person.

35. EPA’s actions at the Shenandoah Site, as described in paragraphs 19 to 27 above, constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). In undertaking response actions to address the release or threat of release of hazardous substances at the Site, the United States incurred response costs in excess of \$6,000,000. The United States has outstanding response costs that have not been reimbursed by a PRP. The United States continues to incur response costs in connection with the Site.

36. The costs of the response actions taken and to be taken by the United States in connection with the Site are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300.

37. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), IBM is liable to the United States for the response costs incurred and to be incurred by the United States in connection with the Shenandoah Site.

38. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that IBM is jointly and severally liable for all future response costs incurred by the United States in connection with the Shenandoah Site.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 9606(a)

39. Paragraphs 1 through 28 are realleged and incorporated herein by reference. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

[W]hen 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. . . .

40. The President, through his delegate, the Regional Administrator of EPA Region 2, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release of hazardous substances or a threatened release of hazardous substances at or from the Site.

41. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate a danger or threat at the Site. In the 2012 ROD, EPA made determinations of the response actions necessary to abate a danger or threat with respect to groundwater, surface water, and sediment contamination at the Site.

42. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant is liable to perform the remedial actions identified in the 2012 ROD, which actions EPA has determined are necessary to abate a danger or threat with respect to groundwater, surface water, and sediment contamination at the Site.

PRAYER FOR RELIEF

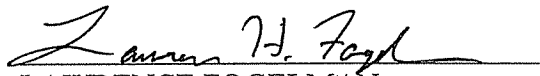
WHEREFORE, the United States prays that this Court:

1. Enter judgment against Defendant and in favor of the United States for all response costs incurred by the United States through the date of the judgment in connection with the Site, including enforcement costs and interest;
2. Enter a declaratory judgment against Defendant and in favor of the United States, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), providing that Defendant is jointly and severally liable to the United States for all response costs that will be incurred by the United States at the Site after the date of judgment;
3. Enter judgment against Defendant and in favor of the United States ordering Defendant to perform the response actions selected by EPA in the 2012 ROD in order to abate the conditions at the Site;
4. Award the United States the costs of this action; and

5. Grant such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 14, 2014

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Southern District of New York
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