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Attorney for the State of Alaska  
Department of Environmental Conservation

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA, DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

Plaintiff,

v.

UNITED STATES OF AMERICA, ALASKA  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES, ALASKA  
DEPARTMENT OF EDUCATION AND  
EARLY DEVELOPMENT, KUSPUK  
SCHOOL DISTRICT, ALASCOM INC.,  
AT&T CORP., EXELIS ASI, INC., AND  
LOCKHEED MARTIN CORPORATION,

Defendants.

Case No. 3:16-cv-00040-JWS

**COMPLAINT**

Comes now the State of Alaska, Department of Environmental Conservation (ADEC),  
through the Office of the Attorney General, and alleges as follows:

## I. NATURE OF CASE

Pursuant to the provisions of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. §§ 9607, 9620(a)(4) and 9659, Alaska's Mini-CERCLA statute, AS 46.03.822, and AS 46.03.760, ADEC brings this action seeking reimbursement of past ADEC costs and a declaration of defendants' joint and several liability to ADEC for future costs. ADEC's costs arise from ADEC's evaluation, monitoring, investigation, response and/or oversight actions associated with polychlorinated biphenyl (PCB) contamination at the Joe Parent Vocational Education Center School (Joe Parent School) in Aniak, Alaska. ADEC also seeks appropriate injunctive relief under 42 U.S.C. §9659 and AS 46.03.765 and other law mandating defendants clean up the discharges of PCBs and further investigate trichloroethylene (TCE) at the Joe Parent School.

## PARTIES

1. Plaintiff is ADEC, a department of the State of Alaska.
2. Defendant United States is the United States of America, including all of its departments, agencies, and instrumentalities.
3. Defendant Alaska Department of Transportation and Public Facilities (DOTPF) is a department of the State of Alaska.
4. Defendant Alaska Department of Education and Early Development (DEED) is a department of the State of Alaska.
5. Defendant Kuspuk School District (KSD) is a school district organized under AS 14.12.010.

6. Defendant Alascom, Inc. (Alascom) and AT&T Corp. are Alaska corporations and, based on information and belief, are successors to RCA Alascom.

7. Defendant Exelis Arctic Services, Inc. (Exelis ASI) is a Delaware corporation and, based on information and belief, the new name of ITT Arctic Services, Inc.

8. Defendant Lockheed Martin Corporation (Lockheed Martin) is a Maryland corporation and, based on information and belief, successor in interest to RCA Service Company (RCA Service) for RCA Service's liabilities on the claims alleged herein.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this case pursuant to:

- a. 42 U.S.C. § 9613(b) (CERCLA jurisdiction);
- b. 28 U.S.C. § 1331 (federal question jurisdiction);
- c. 28 U.S.C. § 1367(a) (supplemental jurisdiction over pendant State claim);

and

- d. 28 U.S.C. § 1346 (United States as Defendant).

10. Venue for this case is proper pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the affected property is in and the events giving rise to this case occurred in the District.

11. Pursuant to 42 U.S.C. §6959(d) Plaintiff served a Notice of Intent to Sue on May 28, 2015, which is at least 60 days prior to the filing of this complaint.

### **ALLEGATIONS**

12. ADEC has incurred costs responding to discharges of materials containing PCBs into the environment in the vicinity of the Joe Parent School, which is located on the site of a

former U.S. Air Force White Alice Communications System (WACS) facility near the Village of Aniak (the Site).

13. The WACS was built on federally owned land in the 1950s to support the United States' Department of Defense's first-response system and to provide a reliable communications system over some of the most remote areas of Alaska for the benefit of the military and the public. The WACS was constructed between 1955 and 1958 and officially activated on January 14, 1958. The Aniak WACS facility, located on the Site, had generators and other electrical equipment, including large transformers containing PCBs. TCE was utilized at the Site in various cleaning operations.

14. The Site was owned by the United States and operated by Operations and Maintenance (O&M) contractors working for the United States. The United States contracted at various times with Federal Electric Company, ITT Arctic Services, Inc. (now known as Exelis ASI), and with RCA Service for O&M of the WACS facilities, including the Site. FEC operated the Site under contract to the United States from approximately 1958 until 1960. RCA Service operated the Site under contract to the United States from approximately 1960 to 1969. ITTASI operated the Site under contract to the United States from approximately 1969 until 1976. FEC, ITTASI and RCA Service are collectively referred to as the O&M contractors. RCA Alascom, a predecessor of Alascom, Inc., leased the Site and operated it between approximately 1976 and 1979.

15. On December 12, 1978, the Kuspuk School Board passed a resolution stating its desire to use the Site for educational purposes. In 1979, following deactivation and a formal declaration of excess by the United States, the Site was processed by the United States for

disposal. The United States entered into a license granting DEED occupancy rights to the Site beginning May 1, 1979, for the stated purpose of converting the Site to a school. Quantities of PCBs in transformers and TCE in containers remained at the Site when DEED received this license. KSD contracted for conversion of the Site to the school in 1979 and 1980. The State of Alaska, acting through DEED, funded the conversion work. Ultimately, in September 1981, the United States executed a release and transfer of the Site to the State of Alaska. The Site is owned by DOTPF. KSD has continued to operate a school at the Site since 1980.

16. During the ownership and/or operation of the Site by each defendant, PCBs and TCE were released to the environment. These discharges contaminated soil and groundwater at the Site in violation of AS 46.03.710 and AS 46.03.745. These discharges were not immediately contained and cleaned up as required by AS 46.04.020, 18 AAC 75 and other predecessor statutes and regulations.

17. PCBs and TCE are substances listed as hazardous under both CERCLA and Alaska's Mini-CERCLA statute.

## **CLAIMS FOR RELIEF**

### **First Cause of Action**

#### **(Cost Recovery Under CERCLA)**

18. The allegations in paragraphs 1-17 are incorporated herein by reference.

19. On information and belief, each of the Defendants was (a) an owner, lessor, lessee, or operator of the Site, (b) a responsible agency for an owner, lessor, lessee, or operator, or (c) an arranger or transporter of hazardous substances during times that hazardous substances were released on the Site.

20. Each of the Defendants is a “person” under 42 U.S.C. §9601(21).

21. The Site is a “facility” under 42 U.S.C. § 9601(9).

22. Since 1999, ADEC has responded to the discovery of PCB contamination at the Site.

23. ADEC incurred costs of removal or remedial action not inconsistent with the national contingency plan as of September 30, 2014 in the amount of \$5,370,385.43, including legal fees and costs, by investigating and otherwise responding to the clean-up needs at the Site.

24. Each of the Defendants is strictly liable, jointly and severally, under 42 U.S.C. § 9607 to ADEC for the costs of investigation, response, removal, and remediation of the Site, including full reasonable attorneys’ fees and costs, incurred by ADEC because of releases of hazardous substances at the Site.

### **Second Cause of Action**

#### **(Cost Recovery Under AS 46.03.822)**

25. The allegations in paragraphs 1-24 are incorporated herein by reference.

26. On information and belief, each of the Defendants was (a) an owner, lessor, lessee, or operator of the Site, (b) a responsible agency or contractor for an owner, lessor, lessee, or operator, (c) the owner of one or more hazardous substances, including PCBs, or (d) an arranger or transporter of hazardous substances during times that hazardous substances were released on the Site.

27. Each of the Defendants is a “person” under AS 46.03.822(a).

28. The Site is a “facility” under AS 46.03.826(3).

29. ADEC was damaged by virtue of having incurred costs to date, including legal fees and costs, as of September 30, 2014 in the amount of \$5,370,385.43 to investigate and otherwise respond to the clean-up needs at the Site.

30. Each of the Defendants is strictly liable, jointly and severally, under AS 46.03.822(a) to ADEC for the foregoing damages, and the costs of investigation, response, removal, and remediation of the Site, including full reasonable attorneys' fees and costs incurred by ADEC because of releases of hazardous substances on the Site.

### **Third Cause of Action**

#### **(Injunctive Relief For Future Response Costs Under CERCLA and State law)**

31. The allegations in paragraphs 1-30 are incorporated herein by reference.

32. Because PCB contamination above cleanup levels remain at the site, Plaintiff ADEC will continue to incur response costs for cleanup, monitoring and other related activities in amounts to be proven.

33. Pursuant to AS 46.03.822, AS 46.03.763, 42 U.S.C. §§9659, 9607 and other laws, defendants are strictly liable, jointly and severally, for the full amount of actual expenses incurred by ADEC in the future as a result of the releases, including direct and indirect costs of response, containment, removal or remedial action, full reasonable attorneys' fees and costs and incidental administrative expenses incurred by ADEC.

### **Fourth Cause of Action**

#### **(Injunctive Relief Under 42 USC 9621(e)(2))**

34. The allegations in paragraphs 1- 33 are incorporated herein by reference.

35. 42 U.S.C. §9659(c) authorizes this court to enforce a standard, regulation, condition, requirement, or order and to order such action as may be necessary to correct the violation.

36. 42 U.S.C. § 9621(e)(2) provides that “[a] State may enforce any Federal or State standard, requirement, criteria, or limitation to which the remedial action is required to conform under this chapter in the United States district court for the district in which the facility is located.”

37. ADEC seeks declaratory and injunctive relief requiring the Defendants to respond to PCBs and TCE remaining in the environment at the Site pursuant to plans approved by ADEC.

#### **Fifth Cause of Action**

#### **(Injunctive Relief Under AS 46.03.765)**

38. The allegations in paragraphs 1 - 37 are incorporated herein by reference.

39. Each defendant’s violation of AS 46 and 18 AAC 75 is continuing.

40. AS 46.03.765 provides the court jurisdiction to enjoin a violation of AS 46.03.

41. ADEC seeks declaratory and injunctive relief requiring the Defendants to respond to PCBs and TCE remaining in the environment at the Aniak Facility pursuant to plans approved by ADEC.

WHEREFORE, Plaintiff having set forth the facts and laws noted above respectfully requests the following relief:

1. To adjudicate and decree that each defendant is liable to the State of Alaska, ADEC, for past and future hazardous substance response costs and to enter judgment in favor of plaintiff and against each defendant;
2. Injunctive relief requiring Defendants to complete future work to characterize and remediate the Site pursuant to work plans approved by ADEC;
3. An award to Plaintiff for its reasonable litigation costs and attorneys' fees for this action; and
4. Such other and further relief as the Court may deem justified.

DATED: February 8, 2016.

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