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U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
v.)	4:05CV00313 AGF
)	Civil Action No. _____
WESTINGHOUSE ELECTRIC COMPANY)	
LLC,)	COMPLAINT
)	
Defendant.)	

COMES NOW Plaintiff State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, Attorney General, and the Missouri Department of Natural Resources, by and through the Attorney General, and alleges as follows.

STATEMENT OF THE CASE

1. This is a civil action under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, the Missouri Hazardous Waste Management Law, § 260.350 *et seq.*, RSMo and the Missouri Clean Water Law, Chapter 644, RSMo. The State seeks injunctive relief requiring Westinghouse Electric Company LLC ("Westinghouse") to perform a Remedial Investigation/Feasibility Study ("RI/FS") for the former nuclear fuel processing plant located in Hematite, Missouri ("Hematite Site" or "Site"), to implement the remedy

selected as the result of the RI/FS process, and to perform any other actions resulting from releases or threatened releases of hazardous substances at the Site. The State also seeks to recover past response costs and future response costs to be incurred by the MDNR with respect to the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1331.

3. Venue is proper in this district under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the release or threatened release of hazardous substances that give rise to this complaint occurred in this district and because the Site is located in this district.

PARTIES

4. The Missouri Department of Natural Resources ("Department") is a duly authorized state agency created and granted certain powers under Section 640.010, RSMo (all references to RSMo are as amended). Its powers and duties generally relate to environmental protection and the conservation and management of natural resources.

5. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

6. Westinghouse is a Delaware Limited Liability Company with its principal place of business located at 4350 Northern Pike, Monroeville, Pennsylvania 15146.

7. Westinghouse is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

SITE BACKGROUND

8. The Hematite Site is located at 3300 State Road P, Hematite, Jefferson County, Missouri. The Site includes a number of buildings located in an approximately 10 acre area, and any area into which hazardous substances have migrated therefrom.

9. In 1956, Mallinckrodt Inc. ("Mallinckrodt") constructed the nuclear fuel development and processing plant at the Hematite Site. Mallinckrodt or its subsidiaries owned and operated the Site from July 1956 through May 31, 1961.

10. On May 31, 1961, Mallinckrodt and two other entities, Nuclear Development Corporation of America and Olin Mathieson Chemical Corporation, formed a joint venture corporation known as United Nuclear Corporation ("UNC"). UNC owned and operated the Hematite Site through June 1971.

11. On July 1, 1971, UNC and Gulf Oil Corporation ("Gulf") formed a joint venture corporation known as Gulf United Nuclear Fuel Corporation ("GUNFC"). GUNFC owned and operated the Hematite Site through December 1973.

12. On January 1, 1974, General Atomic Company ("GAC") acquired ownership of the Hematite Site.

13. On May 17, 1974, Combustion Engineering, Inc. ("CE") purchased the Hematite Site from GAC. CE owned and operated the Hematite Site through June 1999.

In June 1999, CE transferred the Hematite Site to its subsidiary, ABB Combustion Engineering Nuclear Power, Inc.

14. In April 2000, Westinghouse acquired the stock of ABB Combustion Engineering Nuclear Power, Inc. (then known as "ABB C-E Nuclear Power, Inc."), and subsequently merged it into Westinghouse.

15. Upon acquiring the Hematite Site, Westinghouse began the process of completing any work in progress, shutting down operations at the Site, and starting an environmental remediation and decommissioning of the Site. To date, Westinghouse has conducted its environmental remediation and decommissioning in cooperation with, and under the oversight of, the MDNR.

16. In April 1996, the Nuclear Regulatory Commission contacted the MDNR regarding the groundwater monitoring and sampling program at the facility, inquiring if MDNR was aware of the site and/or involved in the investigation of the groundwater contamination at the site. As a result, MDNR initiated an investigation of groundwater at the site and adjacent property. Sampling data and various agency reports were compiled, and the MDNR conducted field sampling to gather additional information.

17. In November 1996, MDNR's Geological Survey and Resource Assessment Division (previously known as the Division of Geology and Land Survey) completed a Report of Findings. The Report recommended (1) a full characterization of the alluvial and bedrock aquifer in the immediate vicinity of the site; (2) continued annual sampling of private drinking water wells in the area by the Missouri Department of Health and

Senior Services; (3) sampling for volatile organic compounds (VOCs) at all monitoring wells on a quarterly basis; (4) sampling for VOCs and radionuclides in sediment and surface water in Joachim Creek and its tributaries; (5) a complete characterization of the materials in on-site burial pits; and (6) the implementation of a long-term monitoring plan for groundwater, surface water and sediment.

18. On September 28, 2000, MDNR completed a Site Inspection at the Hematite Radioactive Site under a cooperative agreement with the EPA, which Site Inspection determined that additional investigation and action under CERCLA were warranted.

19. In December 2001, MDHSS' annual sampling of private drinking water wells in the vicinity of the facility found VOC contamination.

20. In the summer of 2002, Westinghouse retained Leggette, Brashears & Graham, Inc. (Leggette) to perform an interim hydrogeologic investigation to address findings that private drinking water wells in the vicinity of the site have VOC contamination. Leggette used the results of that investigation to prepare an Engineering Evaluation/Cost Analysis (EE/CA) to address off-site groundwater contamination.

21. In December 2003, the MDNR conditionally approved an RI/FS Work Plan submitted by Westinghouse for the Hematite Radioactive Site.

22. Contaminants discovered to date at the Site include uranium; plutonium; americium; neptunium; thorium; technetium-99 (Tc-99); and the elements formed by their decay; trichloroethene (TCE), tetrachloroethene (PCE); 1,1,1-trichloroethane (TCA); 1,2-

dichloroethene (1,2-DCE); 1,1-dichloroethene (1,1-DCE); 1,2-dichloroethane (1,2-DCA); 1,1-dichloroethane (1,1-DCA); and their breakdown products (including vinyl chloride.)

23. The area surrounding the Hematite Radioactive Site is primarily suburban/rural residential or agricultural. Groundwater is widely used as the primary source of household water for the community. The MDNR estimates that within four miles of the site at least 11,771 people are served by public wells and an estimated 978 people are served by private wells. The nearest private drinking water well is approximately one-half mile from historic manufacturing operations and disposal pits. There is a water supply well used for plant operations and consumption located in the manufacturing area. The nearest public water supply well is located approximately one-quarter mile from the manufacturing area.

24. Known impacts to the area include: Contamination of subsurface soils with hazardous constituents, including the elements Uranium, Thorium and Technetium and the elements formed by their decay, and the organic compounds Perchloroethylene, Trichloroethylene and their associated degradation products; contamination of groundwater under the Site with hazardous substances, including the radioactive elements Uranium and Technetium, and the organic compounds Perchloroethylene, Trichloroethylene and their associated degradation products; and contamination of groundwater used by nearby private water supply wells with hazardous substances, including Perchloroethylene, Trichloroethylene and their associated degradation products.

25.. In April 2002, Westinghouse entered into a letter agreement whereby Westinghouse agreed to reimburse the MDNR for its oversight costs and to perform site characterization pursuant to plans submitted to the MDNR for its approval.

26. In May 2003, Westinghouse prepared a Remedial Investigation/Feasibility Study Work Plan (the "RI/FS Work Plan"). Westinghouse submitted the RI/FS Work Plan to the MDNR for review and approval. After comments and revisions, the MDNR conditionally approved the RI/FS Work Plan.

27. Westinghouse has already conducted environmental response actions at the Hematite Site, including but not limited to the removal of materials contaminated with hazardous substances, actions in response to the presence of volatile organic compounds in the groundwater in the vicinity of a nearby residential neighborhood, and actions designed to gather data and information necessary to characterize the environmental conditions at the Site.

FIRST CLAIM FOR RELIEF

28. Paragraphs 1 through 27 are re-alleged and incorporated herein by reference.

29. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner and operator of a vessel or a facility . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, 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

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

31. There is a release or threatened release as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).of hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) at or from the Site.

32. The MDNR has incurred response costs responding to releases or threatened releases of hazardous substances at or from the Site. The MDNR will continue to incur response costs with respect to the Site.

33. The costs incurred by the MDNR in connection with the Site were for actions taken in response to the release or threatened release of hazardous substances from the Site.

34. The MDNR's response actions taken with respect to the Site, and the costs incurred incident to those action, were not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300 *et seq.*

35. The MDNR has satisfied any conditions precedent to the undertaking of response actions, the incurrence of response costs, and the recovery of those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

36. Westinghouse is the owner of the Site. Westinghouse is therefore a liable party under Section 107(a)(1) of CERCLA.

37. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Westinghouse is jointly and severally liable to the State for past costs incurred by the MDNR with respect to the Site and for future costs to be incurred by the MDNR with respect to the Site. The State seeks recovery of its past response costs incurred with respect to the Site and future response costs to be incurred with respect to the Site.

SECOND CLAIM FOR RELIEF

38. Paragraphs 1 through 37 are re-alleged and incorporated herein by reference.

39. The historical operations at the Site caused the disposal and release and/or threatened release of hazardous substances within the meaning of Sections 260.500(5) and 260.500(9), RSMo.

40. The releases of hazardous substances into the groundwater at the Site have resulted in a hazardous substance emergency within the meaning of Section 260.500(6), RSMo.

41. As owner of the Site, Westinghouse is a person having control over a hazardous substance involved in a hazardous substance emergency, within the meaning of Sections 260.500(8), 260.510(2) and 260.510(5), RSMo.

42. Pursuant to Section 260.510(2), RSMo, the MDNR is authorized to require Westinghouse to clean up the hazardous substance and take any reasonable actions necessary to end the hazardous substance emergency.

43. Pursuant to Section 260.510(5), RSMo, the MDNR is authorized to require Westinghouse to take such corrective actions as may be reasonably required to abate and prevent the recurrence of the hazardous substance emergency. In this action, the State is seeking to require Westinghouse to perform response actions at the Site.

44. Pursuant to Section 260.530(1), RSMo, Westinghouse is strictly liable to the State for past and future costs to be incurred by the MDNR with respect to the Site. The State seeks recovery of the past and future costs to be incurred by MDNR with respect to the Site.

THIRD CLAIM FOR RELIEF

45. Paragraphs 1 through 44 are re-alleged and incorporated herein by reference.

46. The historical operations at the Site caused discharge of radiological and chemical waste into the waters of the State of Missouri, resulting in pollution of the waters of the State of Missouri, within the meaning of Section 644.051 of the Missouri Clean Water Law, RSMo.

47. Pursuant to Section 644.056, RSMo the State is authorized to require Westinghouse to abate the pollution of the waters of the State of Missouri. In this

action, the State is seeking to require Westinghouse to perform an RI/FS and implement a remedy at the Site.

48. Pursuant to Section 644.096, RSMo, the State is authorized to bring a civil action against Westinghouse to recover damages incurred in connection with the pollution of the waters of the State of Missouri. In this action, the State seeks to recover the costs it will incur in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, the State respectfully requests that the Court:

1. Require Westinghouse to pay for past and future response costs that have been or are to be incurred by the MDNR with respect to the Hematite Site;
2. Order Westinghouse to perform the RI/FS, the implement the remedy, and perform any other necessary environmental response actions at the Hematite Site;
3. Award the State its costs; and
4. Grant such other and further relief as is appropriate.

Respectfully Submitted,
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