

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|----------------------------|---|-----------|
| _____ |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil No. |
| v. |) | |
| |) | |
| PRECISION NATIONAL PLATING |) | |
| SERVICES, INC. , |) | |
| |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action for recovery of costs brought pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613, as amended; the United States seeks to recover costs it has incurred in connection with the facility known as the Precision National Plating Services Superfund Site, located 0.5 miles north of Clarks Summit, Lackawanna County, Pennsylvania (the "Site").

2. In addition, the United States seeks a judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that the Defendant is jointly and severally liable for any further response costs that the United States may incur as a result of releases or threatened releases of hazardous substances from the Site.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action and the parties hereto, pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANT

5. Defendant Precision National Plating Services, Inc., is incorporated under the laws of the State of Delaware, and does business at 198 Ackerly Road, Clarks Summit, Pennsylvania.

GENERAL ALLEGATIONS

A. The Site

6. The Site encompasses the facility located at 198 Ackerly Road in Clarks Summit, Lackawanna County, Pennsylvania, and the surrounding areas at which contamination originating from the facility is or may be located.

7. A chrome-plating facility was operated at the Site between 1956 and 1999.

8. In 1971, Precision National Corporation acquired ownership of the Site from

Nehall Corporation, and continued to operate the chrome-plating facility there. Precision national Corporation changed its name to Precision National Plating Services, Inc., in 1987.

9. Prior to 1970, chromium-contaminated wastewater from the chrome-plating plant was allowed to flow across a tile field and into an unlined lagoon located north of the chrome-plating plant.

10. In 1970, the facility began using an evaporation/distillation process to handle its chromium-contaminated wastewater. Wastewater was discharged to holding tanks where hexavalent chromium was precipitated to trivalent chromium.

11. A strip-tank and strip-tank drain were added to operations in 1976. The strip-tank drain was used as a conduit for spillage or overflows from the strip-tank. These overflows drained to the exterior of the plant building.

12. Disposal practices through the late 1970s allowed for chromium wastes to drain from the plant floor to the surface outside the plant and to flow to the north and west toward Ackerly Creek.

13. In February 1987, approximately 200 gallons of chromic-acid-contaminated cleaning solution was spilled at the facility. The spill followed a surface-drainage pathway along Ackerly Road and eventually discharged into Ackerly Creek.

14. As a result of the manufacturing operations and disposal practices described above, the Site became contaminated with hazardous substances, including total chromium and hexavalent chromium.

15. The Defendant ceased operations and decommissioned the chrome-plating facility in 1999.

B. Response Actions

16. During the 1970s, the Pennsylvania Department of Environmental Resources ("PADER") conducted sampling of Ackerly Creek, domestic drinking water wells, and surface waters down gradient from the Site.

17. PADER's sampling revealed elevated levels of chromium contamination in Ackerly Creek, home wells, and adjacent surface waters.

18. In 1987, The EPA performed a preliminary assessment of the facility and subsequently conducted a Site inspection in 1988.

19. Samples from the 1988 inspection revealed chromium contamination in soils, streams, monitoring wells, and domestic drinking water wells.

20. The primary contaminants of concern at the Site are total chromium and hexavalent chromium.

21. Between 1998 and 2001, the Agency for Toxic Substances and Disease Registry ("ATSDR") conducted nine health consultations regarding the contamination at the Site.

22. In 1991, EPA and the Defendant entered into an Administrative Order on Consent requiring the Defendant to provide an alternate water supply to one resident who lived near the Site.

23. In 1993 and 1994, EPA performed additional sampling and determined that chromium was still being released from the Site.

24. In 1995, EPA and the Defendant entered into an Administrative Order on Consent requiring the Defendant to perform an Engineering Evaluation/Cost Analysis for the Site.

25. In 1998, EPA issued a Unilateral Administrative Order, Docket No. III-98-069-DC, to the Defendant to perform a non-time-critical removal action at the Site. Work under this Order is ongoing.

26. On April 28, 2004, the United States filed a complaint alleging that Precision was liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for reimbursement of the United States' past response costs incurred in connection with the Site. At the same time, the United States lodged a Consent Decree, docketed as Civil Action No. 3:04-cv-936 ("2004 Decree"), resolving the allegations in the United States' complaint in exchange for reimbursement in the amount of \$800,000.00. In the 2004 Decree, the United States granted a covenant not to sue for certain costs, but reserved, among other things, its right to seek reimbursement of costs incurred or to be incurred by the United States in connection with the Site that were not within the definition of Past Response Costs, as defined in the 2004 Decree. On June 22, 2004, the Court entered the 2004 Decree. The case was closed the same day.

27. On September 8, 2006, EPA issued a Response Approval Summary, which formally compiled, confirmed, updated and documented EPA's selected response action and measures to be performed pursuant to the 1998 Order.

28. The United States has incurred at least \$1,032,429.79 in unreimbursed oversight and other response costs in connection with the Site, including pre-judgment interest.

CERCLA LIABILITY

29. The Site, including its surface and sub-surface soils and water, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. The substances contaminating the soils and waters at the Site are "hazardous

substances” within the meaning of Section 101(14), 42 U.S.C. § 9601(14).

31. There was a “release” or “threatened release” of hazardous substances into the environment at and from the Site, within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22), during the time relevant to this action.

32. Hazardous substances were “disposed” of at the Site, within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), during the time relevant to this action.

33. The Defendant has been the owner and operator of the Site, within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), since 1971.

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

35. The Defendant is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the current owner and operator of the Site.

36. The Defendant is further liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner and operator of the site at the time hazardous substances were disposed of thereon.

CLAIM FOR RELIEF

37. Paragraphs 1 through 36 are realleged and incorporated herein by reference.

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

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a . . . facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and] . . .

(3) . . .

(4) . . .

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 or an Indian tribe not inconsistent with the national contingency plan[.]

39. The United States has incurred response costs in connection with response actions, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), which were undertaken at the Site.

40. The costs incurred by the United States in connection with the Site are not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300, *et seq.*

41. On or about January 4, 2000, EPA issued a letter to the Defendant, demanding payment of EPA's unreimbursed costs at the Site. The demand initiated the accrual of prejudgment interest on those costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

42. The United States continues to incur response costs in connection with the Site.

43. As of August 18, 2007, the U.S. EPA had incurred unreimbursed response costs of approximately \$1,032,429.76.

44. The Department of Justice has also incurred unreimbursed response costs.

45. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

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

1. Award the United States a judgment against Defendant for all costs incurred by the United States in connection with the Site;
2. Award the United States a declaratory judgment on liability that will be binding in future actions by the United States to recover further costs in connection with the Site;
3. Award the United States its costs and fees in this action; and
4. Grant such other and further relief as is appropriate.

Respectfully submitted,

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JS44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE SEPARATE INSTRUCTION SHEET)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

PRECISION NATIONAL PLATING SERVICES, INC.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant LACKAWANNA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

DENNIS C. PFANNENSCHMIDT
United States Attorney's Office
228 Walnut Street, Suite 220
Harrisburg, PA 17108
717-221-4482

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- X 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

- (For Diversity Cases Only) (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF 1 DEF 1 Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Citizen of Another State 2 Incorporated and Principal of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 Foreign Nation 3 6 6

IV. NATURE OF SUIT Environmental Matters
(Refer to Instruction sheet)

Please insert Nature of Suit Code Sections 107 and 113(g)(2) of CERCLA

Please insert Description reimbursement of response costs to the release of hazardous substances

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Sections 107 and 113(g)(2) of CERCLA

reimbursement of response costs to the release of hazardous substances

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1,032,429.79

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10/24/08 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____