

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,

Plaintiffs,

v.

TOWN OF SOUTH KINGSTOWN, R.I.,
and TOWN OF NARRAGANSETT, R.I.

Defendants.

RECEIVED

DEC 19 2002

Property of U.S. District Court
District of Rhode Island

CIVIL ACTION NO.

CA 02 535 ml

NOTICE OF LODGING OF CONSENT DECREE
AND OF DEFENDANTS' WAIVER OF SERVICE

Plaintiff, the United States of America, notifies the Court that it is herewith lodging the Consent Decree, which consent decree resolves the claims of the United States and the State of Rhode Island against the Towns of South Kingstown and Narragansett for past response costs and for the implementation of the source control remedy ("Operable Unit One") at the Rose Hill Landfill Superfund Site ("Site") in South Kingstown, R.I. The United States' claims are under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and the State's claims are under Section 107 of CERCLA, 42 U.S.C. § 9607, and R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14. Both the United States' and the State's claims concerning the Site are set forth in the complaint against the defendants in the above-captioned action, United States and State of Rhode Island v. Town of South Kingstown and Town of Narragansett, filed concomitantly with this notice of lodging.

The Consent Decree is being lodged in this case pending solicitation and consideration of public comments, as required by 28 C.F.R. § 50.7 and consistent with R.I.G.L. § 23-19.14-11. In accordance with Department of Justice policy, 28 C.F.R. § 50.7, and 42 U.S.C. § 9622(d), the Department of Justice will publish in the Federal Register a notice that this Consent Decree has been lodged with the Court. The notice will solicit public comments on the Consent Decree for a period of thirty (30) days from the date of publication. After the close of the comment period, the United States will evaluate any comments received and will advise the Court as to whether the United States requests that the Consent Decree be entered.

However, because opportunities for public comment are required, the United States respectfully requests that the Court take no action with respect to the lodged Consent Decree until the United States requests entry or otherwise advises the Court.

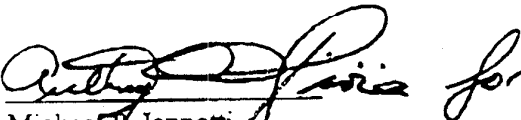
In the Consent Decree, at page 76, each of the defendants waives service of process in accordance with Rule 4 of the Federal Rules of Civil Procedure in regard to the Complaint filed concomitantly with the lodging of this Consent Decree.

Respectfully submitted,

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Dated: December 19, 2002

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UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

DEC 19 2002

UNITED STATES OF AMERICA and)
STATE OF RHODE ISLAND AND PROVIDENCE)
PLANTATIONS,)

RECEIVED

Plaintiffs,)

v.)

Civil Action No.

TOWN OF SOUTH KINGSTOWN, R.I.,)

and)

TOWN OF NARRAGANSETT, R.I.,)

Defendants.)

CA 02 335 MK

COMPLAINT

The United States of America ("United States"), by authority of the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Rhode Island and Providence Plantations ("State"), by authority of and on behalf of the Director of the Rhode Island Department of Environmental Management ("RIDEM"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14. By this action, the United States and the

State seek to recover costs which they have incurred and will incur to respond to the releases or threatened releases of hazardous substances at or from the Rose Hill Regional Landfill Superfund Site in South Kingstown, Washington County, Rhode Island (the "Rose Hill Landfill Site" or the "Site"). The United States and the State also seeks injunctive relief requiring the implementation of EPA's December 20, 1999 Record of Decision ("ROD") relating to the Rose Hill Landfill Site.

JURISDICTION AND VENUE

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

3. Pursuant to Sections 106 and 113(b) of CERCLA, 42 U.S.C. §§ 9606 and 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this district.

DEFENDANTS

4. Defendant Town of South Kingstown, R.I., is a municipality located in Rhode Island, which has an office at 180 High Street, Wakefield, R.I. 02879.

5. Defendant Town of Narragansett, R.I., is a municipality located in Rhode Island, which has an office at 25 Fifth Avenue, Narragansett, R.I. 02882.

6. Each of the defendants is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Defendants Town of South Kingstown and Town of Narragansett owned or operated the Rose Hill Landfill Site during a time period when CERCLA hazardous substances were disposed of at the Site.

FACTUAL BACKGROUND

8. The Rose Hill Landfill Site is located in the Village of Peace Dale, in the Town of South Kingstown, in Rhode Island. The Site lies about five miles inland from Narragansett Bay and two miles north of Wakefield, Rhode Island. The Site is bordered by Rose Hill Road to the west, the Saugatucket River to the east, and residential private property to the north and south.

9. In 1967, the Town of South Kingstown began operation of the Solid Waste Area landfill at the Site. In 1973, the Town of Narragansett entered into an agreement with the Town of South Kingstown for joint use and operation of the landfill. In approximately 1977, the Towns began operation of the Bulky Waste Area landfill at the Site. Landfill operations at the Solid Waste Area ceased in approximately 1982, and landfill operations at the Bulky Waste Area ceased in approximately 1983. During the time period when the Towns operated the Rose Hill landfill facilities, municipal refuse and industrial refuse were disposed of at the Site. Among the refuse disposed of at the Site were wastes containing CERCLA hazardous substances.

10. In 1989, following preliminary assessments and site investigations, EPA listed the Rose Hill Landfill Site on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a list of hazardous waste sites nationwide that pose the greatest threat to public health, public welfare, or the environment. The National Priorities List is established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

11. Pursuant to its authority under Section 104 of CERCLA, 42 U.S.C. § 9604, during the 1990s EPA conducted a Remedial Investigation and Feasibility Study (the "RI/FS") for the Site. The RI/FS identified risks to human health from exposure to and inhalation of landfill gas and ingestion of contaminated groundwater and risks to the ecology of the Saugatucket River and Mitchell Brook from leachate production.

12. On December 20, 1999, EPA issued a Record of Decision for the First Operable Unit -- Source Control (the "ROD") for the Site, which was concurred in by RIDEM. The source control remedy for the Site consists of consolidation of the Bulky Waste Area landfill materials onto the Solid Waste Area landfill, leachate collection and management, construction of a multi-layer hazardous waste cap over the Solid Waste Area landfill and consolidated Bulky Waste Area materials, landfill gas collection and management, institutional controls, and operation, maintenance and monitoring.

13. The Rose Hill Landfill Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. There have been and continue to be "releases" and "threatened releases" of "hazardous substances" within the meaning of Sections 101(14), (22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), (22), and 9607(a), into the environment at and from the Rose Hill Landfill Site. CERCLA hazardous substances that have been released at and from the Rose Hill Landfill site include, but are not limited to, benzene, dichloroethene, tetrachloroethane, vinyl chloride, copper, lead, and manganese.

FIRST CLAIM FOR RELIEF

15. The statements and allegations set forth in paragraphs 1 through 14 are realleged and incorporated herein by reference.

16. As a result of the release or threatened release of hazardous substances at and from the Site, the United States has incurred "response costs" as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the release or threatened release of hazardous substances at and from the Rose Hill Landfill Site. The United States will continue to incur response costs in connection with the Site.

17. The response actions taken by the United States and the resulting response costs incurred by the United States in connection with the Rose Hill Landfill Site were not inconsistent

with the National Contingency Plan ("NCP") applicable at the time the response actions were taken.

18. 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,
- (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,
- (3) any 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. . . owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, . . . or sites selected by such person, 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

19. Each of the defendants Town of South Kingstown, R.I., and Town of Narragansett, R.I., is a person who, at the time of disposal of hazardous substances thereon, owned or operated the Rose Hill Landfill Site, which is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Each of the defendants is therefore liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for response costs incurred and to be

incurred by the United States in connection with the Rose Hill Landfill Site.

20. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants Town of South Kingstown, R.I., and Town of Narragansett, R.I., are jointly and severally liable to the United States for the response costs the United States has incurred in the past and will incur in the future relating to the Rose Hill Landfill Site.

SECOND CLAIM FOR RELIEF

21. The statements and allegations set forth in paragraphs 1 through 20 are realleged and incorporated herein by reference.

22. 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 . . . secure such relief as may be necessary to abate such danger or threat

23. The President, through his delegate, the Director, Office of Site Remediation and Restoration of EPA Region I, determined that there are actual or threatened releases of hazardous substances from the Rose Hill Landfill Site which may present an imminent and substantial endangerment to public health, welfare, or the environment.

24. 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 the danger or threat at the Site. The remedial actions selected by EPA in the December 20, 1999 ROD are necessary to abate the danger or threat at the Site.

25. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the defendants are liable to the United States to abate the danger or threat at the Site.

THIRD CLAIM FOR RELIEF

26. The statements and allegations set forth in paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. As a result of the release or threatened release of hazardous substances or hazardous materials within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and R.I.G.L. 23-19.14-3, at and from the Rose Hill Landfill Site, the State has incurred costs of response that are recoverable under Section 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), and R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14, for actions taken in response to the release or threatened release of hazardous substances or hazardous materials at and from the Site. The State will continue to incur costs of response in connection with the Site.

28. The response actions taken by the State and the resulting costs of response incurred by the State in connection with the Rose Hill Landfill Site were not inconsistent with the National Contingency Plan ("NCP") applicable at the time the response actions were taken.

29. Pursuant to Section 107(a) of CERCLA, 42 U.S.C.

§ 9607(a), and R.I.G.L. Chapter 23-19.14-6, any person who at the time of disposal of any hazardous substance or hazardous material owned or operated the facility or the site is liable for the costs of response action relating to the facility or site incurred and to be incurred by the State.

30. Since each of the defendants Town of South Kingstown, R.I., and Town of Narragansett, R.I., is a person who owned or operated the Rose Hill Landfill Site at a time of disposal of hazardous substances thereon, each is liable to the State for the costs of response incurred and to be incurred by the State relating to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14.

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14, Defendants Town of South Kingstown, R.I., and Town of Narragansett, R.I., are jointly and severally liable to the State for the costs of response the State has incurred in the past and will incur in the future relating to the Rose Hill Landfill Site.

FOURTH CLAIM FOR RELIEF

32. The statements and allegations set forth in paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. Pursuant to R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14, with respect to a site which contains hazardous substances or hazardous materials, such as hazardous wastes, which present a hazard to the public health and safety or to the environment, the

Director of RIDEM is authorized to bring an action for injunctive relief to require the owner or operator of the site or the custodian of the wastes to take steps necessary to abate the conditions which constitute the hazard.

34. As a result of the disposal of hazardous substances or hazardous materials, such as hazardous wastes, at the Rose Hill Landfill Site, there are conditions at the Site which present a hazard to public health and safety or the environment. The remedial actions selected in the December 20, 1999 ROD, which was concurred in by RIDEM, are necessary to abate conditions which constitute a hazard at the Site.

35. Defendants Town of South Kingstown, R.I., and Town of Narragansett, R.I. are the owners or operators of the Rose Hill Landfill Site or the custodians of the wastes at the Site. Pursuant to R.I.G.L. Chapters 23-18.9, 23-19.1, and 23-19.14, the defendants are liable to the State for injunctive relief to abate the conditions which constitute a hazard at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Rhode Island and Providence Plantations, prays that this Court:

1. Enjoin the defendants, jointly and severally, to implement the response actions selected in the December 20, 1999 Record of Decision for the Site;

2. Order the defendants to reimburse the United States, jointly and severally, for the response costs incurred by the United States in connection with the Site, plus interest;

3. Order the defendants to reimburse the State, jointly and severally, for the response costs incurred by the State in connection with the Site, plus interest;

4. Award to the United States its costs and fees in this action;

5. Award to the State its costs and fees in this action;
and

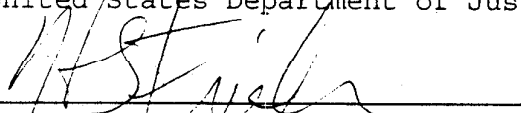
6. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

FOR THE UNITED STATES:




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United States Department of Justice



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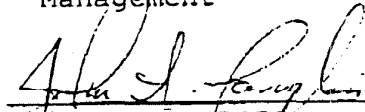


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Defendants.

CIVIL ACTION NO. 02-535 ml

CERTIFICATE OF SERVICE

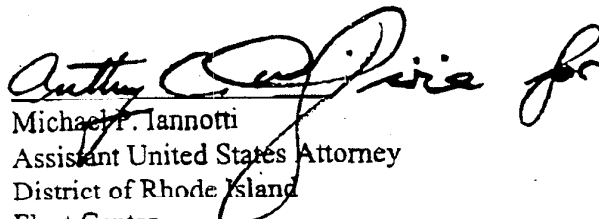
I hereby certify that I have this 19th day of December, 2002, caused to be mailed, first-class, postage prepaid, a copy of the Complaint and the Notice of Lodging of Consent Decree and of Defendants' Waiver of Service, with accompanying Consent Decree, to the counsel and representatives for the defendants, as well as to counsel for the State, at the following addresses:

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