

1 Bradley J. Glass (022463)  
 2 Stuart S. Kimball (026681)  
 3 Kenneth N. Ralston (034022)  
 4 GALLAGHER & KENNEDY, P.A.  
 5 2575 East Camelback Road  
 6 Phoenix, Arizona 85016-9225  
 7 Telephone: (602) 530-8000  
 8 Facsimile: (602) 530-8500  
 9 Email: [brad.glass@gknet.com](mailto:brad.glass@gknet.com)  
 10 [stuart.kimball@gknet.com](mailto:stuart.kimball@gknet.com)  
 11 [ken.ralston@gknet.com](mailto:ken.ralston@gknet.com)  
 12 *Attorneys for Plaintiff*

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF ARIZONA

10 MORELAND PROPERTIES LLC, a  
11 Colorado Limited Liability Company,

No.

**COMPLAINT**

12 Plaintiff,

13 v.

14 THE GOODYEAR TIRE & RUBBER  
15 COMPANY, an Ohio Corporation, and  
16 GOODYEAR FARMS, INC., an Arizona  
17 Corporation,

Defendants.

18 Plaintiff Moreland Properties LLC’s (“Moreland”) alleges the following as its  
19 Complaint against Defendants Goodyear Tire and Rubber Company (“Goodyear”) and  
20 Goodyear Farms, Inc. (“Goodyear Farms”) (together, “Defendants”).

21 **PARTIES AND JURISDICTION**

22 1. Plaintiff Moreland is a Colorado limited liability company doing business in  
23 Maricopa County, Arizona.

24 2. Defendant Goodyear is an Ohio corporation doing business in Maricopa  
25 County, Arizona.

26 3. Defendant Goodyear Farms is an Arizona corporation doing business in  
27 Maricopa County, Arizona.

Gallagher & Kennedy, P.A.  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
(602) 530-8000

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1 4. All actions and conduct forming the basis of this litigation have occurred in  
2 Maricopa County, Arizona.

3 5. The property at issue is located within Maricopa County and is currently a  
4 vacant property at the northwest corner of McDowell Road and 159th Avenue, Maricopa  
5 County, Arizona (the "Site").

6 6. This action arises under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),  
7 as well as A.R.S. § 49-285. Alternatively, this action arises under Section 113(f) of  
8 CERCLA, 42 U.S.C. § 9613(f).

9 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
10 (federal question) and 1367(a) (same case or controversy) and 42 U.S.C. § 9613(b)  
11 (Section 113(b) of CERCLA).

12 8. Venue lies in the Phoenix Division of the United States District Court for  
13 the District of Arizona pursuant to 28 U.S.C. § 1391(b)(2) and 42 U.S.C. §§ 9607(a) and  
14 9613(b). The claims asserted in this Complaint arose in Maricopa County, Arizona; the  
15 releases and threatened releases of hazardous substances have occurred in Maricopa  
16 County, Arizona; and the response costs were incurred in Maricopa County, Arizona.

17 9. Pursuant to Section 113(l) of CERCLA, 42 U.S.C. § 9613(l), Moreland is  
18 providing copies of this Complaint to the Attorney General of the United States and to the  
19 Administrator of the Environmental Protection Agency contemporaneously with the filing  
20 of this Complaint.

21 **Factual Background**

22 10. Upon information and belief, Goodyear has owned thousands of acres of  
23 various properties in Arizona since 1916, including the currently vacant Site.

24 11. Upon information and belief, Goodyear owned and operated its properties,  
25 including the Site, through wholly-owned subsidiaries that have been entirely owned and  
26 controlled by Goodyear.

27

28

1           12.     Upon information and belief, Goodyear owned and operated its properties,  
2 including the Site, through its subsidiary Southwest Cotton Company since the 1910s.  
3 Southwest Cotton Company's name was changed to Goodyear Farms in 1943.

4           13.     On behalf of and at the direction of Goodyear, Goodyear Farms leased the  
5 Site during the 1970s and 1980s for use as an aerial pesticide and herbicide application  
6 airstrip with various associated operations, including, but not limited to, a hangar for  
7 fueling and maintenance facilities, a pesticide/herbicide mixing and storage area, and two  
8 burn areas.

9           14.     As a result of these activities, hazardous substances, including arsenic and  
10 toxaphene, were released and deposited at the Site during the time of Defendants'  
11 ownership and operation that resulted in soil contamination.

12           15.     Beginning in the 1980s, the Arizona Department of Environmental Quality  
13 ("ADEQ") conducted an inspection of the Site that triggered investigations to define the  
14 lateral and vertical extent of pesticide and arsenic soil contamination and to determine  
15 necessary remedial activities associated with the Site.

16           16.     Goodyear conducted environmental investigations and related remedial  
17 activities at the Site.

18           17.     In April 2002, Goodyear prepared a site assessment report and corrective  
19 action plan ("CAP") to address the elevated levels of soils contaminated with toxaphene  
20 and arsenic and to clean-up Goodyear's properties, including the Site, to the non-  
21 residential/commercial land use soil remediation levels ("SRLs") established by  
22 A.R.S. § 49-152 and Ariz. Admin. Code R18-7-205.

23           18.     In February and March 2003, Goodyear excavated 4,100 tons of  
24 contaminated soils, stockpiled these soils on-site, profiled them for hazardous waste  
25 characterization, and transported them to a landfill for disposal

26           19.     Upon information and belief, after this work was completed, Goodyear  
27 pursued a Declaration of Environmental Use Restriction ("DEUR") from ADEQ for its  
28 properties, including the Site, by submitting a formal request to ADEQ.

1           20. A DEUR is an institutional control recorded by the property owner, which  
2 restricts future land use to non-residential activities because on-site soil contamination is  
3 above the applicable residential use SRLs and at or below the non-residential use SRLs.  
4 *See* A.R.S. § 49-152 and Ariz. Admin. Code R18-7-205.

5           21. A DEUR ensures that current and future property owners are aware of the  
6 level of soil contamination at a property so that the owners can take appropriate actions to  
7 prevent or mitigate additional contamination and limit future use of the property to  
8 specific use activities.

9           22. A DEUR is perpetual unless formally released by ADEQ pursuant to  
10 A.R.S. § 49-152(D).

11           23. A DEUR is a covenant that runs with and burdens the land and binds  
12 successive owners pursuant to A.R.S. § 49-152(F).

13           24. ADEQ approved a DEUR for Goodyear's properties, including the Site, in  
14 September 23, 2004 ("Goodyear Farms DEUR").

15           25. Thereafter, Goodyear Farms, on behalf of or at the direction of Goodyear,  
16 recorded the Goodyear Farms DEUR, which declared representing that the maximum  
17 residual soil concentrations on certain Goodyear properties, including the Site, were 13  
18 milligram per kilogram (mg/kg) of toxaphene and 10 mg/kg of arsenic.

19           26. ADEQ has not released the Goodyear Farms DEUR and it is still in effect at  
20 the Site.

21           27. The Goodyear Farms DEUR publicly declared and represented that the  
22 residual soil concentrations at the Site were at or below the applicable non-residential use  
23 SRLs that would allow the Site to be developed for non-residential uses in the future by  
24 Goodyear Farms or any subsequent owner.

25           28. The Goodyear Farms DEUR identified the hazardous substance arsenic even  
26 though Goodyear's reported residual concentrations after its remediation allegedly were  
27 below the arsenic residential and non-residential use SRL of 10 mg/kg.  
28

1           29.     Since the Goodyear Farms DEUR was recorded, the Site has remained  
2 vacant and has not been developed.

3           30.     Moreland purchased the Site in 2010 and relied on Defendants' public  
4 declarations and representations in the Goodyear Farms DEUR that the Site had been fully  
5 investigated, characterized, and remediated to allow future non-residential development  
6 and use of the Site.

7           31.     Moreland hired Synergy Environmental LLC ("Synergy") in 2017 to  
8 conduct limited site characterization work, which found the following ranges of residual  
9 soil concentrations: <0.40 to 20.5 mg/kg of toxaphene and 5.05 to 135 mg/kg of arsenic.

10          32.     When Synergy completed its work, it determined that the residual soil  
11 concentrations at the Site may exceed the applicable non-residential use SRLs in direct  
12 contradiction to the representations included in the Goodyear Farms DEUR, and,  
13 therefore, may prohibit any development of the Site as a matter of Arizona law pursuant to  
14 A.R.S. § 49-152.

15          33.     Moreland then voluntarily reached out to ADEQ, which had approved the  
16 Goodyear Farms DEUR, to find out additional information regarding the Site and  
17 investigate how Moreland's investigatory sampling results contradicted the represented  
18 residual soil concentrations in the Goodyear Farms DEUR.

19          34.     After discussions with ADEQ, Moreland elected to voluntarily characterize  
20 and remediate the soil contamination at the Site.

21          35.     On March 15, 2019, Moreland entered into a voluntary administrative  
22 agreement with ADEQ that required Moreland to prepare and implement a remedial  
23 action plan that would accurately characterize and remediate the soil contamination at the  
24 Site to meet the applicable non-residential use SRLs that are protective of public health  
25 and the environment.

26          36.     Moreland complied with the applicable public notices for the voluntary  
27 administrative agreement and informed neighbors of the pending remedial action work in  
28 accordance with state law. Moreland responded to public comments and obtained ADEQ

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