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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF
AMERICA,

Plaintiff,

v.

KAANAPALI LAND, LLC,
and
OAHU SUGAR COMPANY,
LLC,

Defendants.

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 Department of Defense, Department of the Navy (“Navy”), Environmental Protection Agency (“EPA”), the Department of Interior (“DOI”), and the National Oceanic and Atmospheric Administration (“NOAA”), files this complaint and alleges as follows:

NATURE OF ACTION

This is a civil action brought against Kaanapali Land, LLC, and its wholly-owned bankrupt subsidiary, Oahu Sugar Company, LLC, pursuant to Sections 106

and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607, for the recovery of response costs associated with, and damages for injury to, destruction of, loss of, and loss of use of natural resources and their services resulting from the release and threat of a release of hazardous substances at and from the former Oahu Sugar pesticide and herbicide mixing facility (“Site”), a parcel of approximately 3.5 acres in size, which is part of the Pearl Harbor Naval Complex Superfund Site, and located at 21° 21' 44.7" north latitude and 157 ° 59' 23.7" west longitude, Waipio Peninsula, Waipahu, Hawaii.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C. §§ 1331, 1345, 1362, and 2201; and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

2. Venue is proper in this district pursuant to Section 106(a) of CERCLA, 42 U.S.C. §§ 9606(a), 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b).

DEFENDANTS

3. Defendant Kaanapali Land, LLC (“KLLLC”), is a publicly-traded Delaware limited liability company, with its principal place of business in Chicago,

Illinois. KLLLC is the reorganized entity resulting from the Joint Plan of Reorganization of Amfac Hawaii, LLC (now known as KLC Land Company, LLC), certain of its subsidiaries, and FHT Corporation under Chapter 11 of the Bankruptcy Code, dated June 11, 2002. KLLLC is the successor to the entity described in the General Allegations below as Old Oahu Sugar.

4. Defendant Oahu Sugar Company, LLC, also referred to herein as New Oahu Sugar, is a bankrupt wholly-owned subsidiary of KLLLC. New Oahu Sugar filed a petition for liquidation under Chapter 7 of the Bankruptcy Code in April 2005. The bankruptcy proceeding was closed on December 17, 2019.

5. The Defendants are “persons” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY BACKGROUND

6. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response actions.” 42 U.S.C. §§ 9604(a), 9601(25).

7. Under Section 104(a)(1) of CERCLA:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of

release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment

42 U.S.C. § 9604(a)(1).

8. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority, which has been further re-delegated to the Director of the Superfund Division.

9. Pursuant to Federal statutes, including Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), DOI, NOAA, and the Navy are trustees for natural resources injured as a result of releases of hazardous substances caused by Defendants at the Site.

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

(1) the owner or operator of . . . 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, . . . (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

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