

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS DIVISION

----- X	
UNITED STATES OF AMERICA	:
and STATE OF ILLINOIS,	:
	:
Plaintiffs,	:
	:
v.	:
	:
XTRA INTERMODAL, INC. and X-L-CO., INC.,	:
	:
Defendants.	:
----- X	

Civil No. \_\_\_\_\_

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States, acting at the request and on behalf of the U.S. Environmental Protection Agency (“EPA”), and the State of Illinois (the “State”), by authority of the Illinois Attorney General, acting at the request and on behalf of the Illinois Department of Natural Resources (“IDNR”), through the undersigned attorneys, file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought by the United States and the State (collectively, the “Plaintiffs”) against Defendants XTRA Intermodal, Inc. (“XTRA Intermodal”) and X-L-Co., Inc. (“X-L-Co.”) 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. The Plaintiffs seek several forms of relief relating to releases and threatened releases of hazardous substances from facilities at the Old American Zinc Plant Superfund Site in Fairmont City and Washington Park, St. Clair and Madison Counties, Illinois (the “Site”). The United States alleges that the Defendants are liable for injunctive relief and reimbursement of response

costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Site pursuant to CERCLA Sections 106 and 107(a)(4)(A), 42 U.S.C. §§ 9606 and 9607(a)(4)(A). The State alleges that the Defendants are liable for damages for injury to, loss of, or destruction of natural resources resulting from releases of hazardous substances at the Site pursuant to CERCLA Sections 107(a)(4)(C) and 107(f), 42 U.S.C. §§ 9607(a)(4)(C) and 9607(f).

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) and (e) of CERCLA, 42 U.S.C. §§ 9613(b) and (e), and 28 U.S.C. §§ 1331 and 1345.

3. 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 releases of hazardous substances occurred in this district.

### BACKGROUND ON THE SITE AND THE STATUTE

#### The Site

4. The Site consists of an approximately 132-acre Facility Area where former zinc smelting operations were conducted, and areas surrounding the Facility Area where elevated concentrations of metals associated with the historic smelter operations were found in various media. Historic operations at the Site resulted in the release or threat of release of hazardous substances, including lead, cadmium, zinc, arsenic, and manganese, into soils, sediments, and groundwater at the Site.

5. In approximately 1911, Granby Mining & Smelting (“Granby”) constructed a smelter in the Facility Area and operated the smelter from approximately 1912 until 1916.

6. The American Zinc Company of Illinois (“American Zinc”) purchased the smelter from Granby in 1916 and operated the smelter until at least the 1950s. The smelter produced slab zinc, zinc carbonate, cadmium, lead and sulfuric acid.

7. A by-product of American Zinc’s operations was slag or “clinker” that was consolidated by American Zinc in piles in certain portions of the Facility Area.

8. American Zinc – later known as Azcon Corporation (“Azcon”) – retained ownership of the Facility Area at the Site until 1979, when it was purchased by X-L-Co.

9. X-L-Co. transferred ownership of the Facility Area to XTRA Intermodal in 1995.

10. XTRA Intermodal continues to own the Facility Area.

#### Response Activities at the Site

11. Pursuant to CERCLA, EPA may take “response” actions in response to the release and threatened release of hazardous substances at and from facilities, including contaminated sites.

12. CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), authorizes the United States and states to recover costs that they incur in response to the release and threatened release of hazardous substances, to the extent such costs are not inconsistent with the National Contingency Plan (“NCP”). The statute imposes liability for such costs on certain classes of potentially responsible parties (“PRPs”), including current owners and operators of a facility from which there has been a release of a hazardous substance and parties that owned or operated a facility at the time of disposal of a hazardous substance.

13. Under CERCLA Section 106(a), 42 U.S.C. § 9606(a), when EPA 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, EPA may: (i) seek the assistance of the U.S. Department of Justice to secure court-ordered relief

as may be necessary to abate such danger or threat; and (ii) take other actions including issuing such orders as may be necessary to protect public health and welfare and the environment.

14. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to CERCLA Section 104, 42 U.S.C. § 9604, and will undertake additional response actions in the future. Response actions taken and to be taken at the Site include excavation of contaminated soils inside and outside of the Facility Area, consolidation of excavated soil on the facility property, and capping the consolidated contaminated soil with a 24-inch soil barrier layer and 12-inch vegetation cover system.

15. In accordance with the NCP, a remedial investigation and feasibility study for the Site were performed between 2005 and 2012.

16. EPA selected a final cleanup remedy for the Site in a Record of Decision issued in September 2012.

17. In performing response actions at the Site, EPA has incurred and will continue to incur response costs in connection with response actions at the Site. EPA incurred these costs in a manner not inconsistent with the NCP.

#### Natural Resource Damage Assessment and Restoration Activities

18. In addition to being liable for payment of response costs and performance of response actions, PRPs at a site are liable for damages for any injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances, including the reasonable costs of assessing such injury, under CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C). Pursuant to CERCLA § 107(f), 42 U.S.C. § 9607(f), duly-designated federal and state natural resource trustees (and Native American Tribes) are authorized to recover such natural resource damages (“NRD”).

19. Under CERCLA, the term “natural resources” includes “land, fish, wildlife, biota, air, water . . . and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States [or] any State or local government,” 42 U.S.C. § 9601(16).

20. Natural resources have been injured, and natural resources will continue to be injured, as a result of releases of hazardous substances into the environment at the Site.

21. The Governor of Illinois has designated IDNR to act as the State Trustee for Natural Resources impacted by the release of hazardous substance at or from the Site pursuant to 42 U.S.C. § 9607(f)(2)(A) and 40 C.F.R. § 300.605. IDNR acts on behalf of the public for natural resources, including their supporting ecosystems, within the boundary of the State or belonging to, managed by, or appertaining to such State. 40 C.F.R. § 300.605

22. IDNR has been involved in various NRD assessment activities relating to the Site. IDNR has incurred and will continue to incur assessment costs associated with NRD assessment activities relating to the Site. Federal Trustees for natural resources at and near the Site were advised of IDNR’s NRD assessment activities.

23. NRD may include compensation for interim losses to the public attributable to natural resource injuries from the onset of the release through their repair or recovery to an uninjured state, adjusted for any mitigation of those injuries by response actions or early restoration actions, and any increase in injuries that may have occurred as a result of response actions. NRD also include the costs of actions to restore, replace, or acquire the equivalent of the injured natural resources and the reasonable costs of assessing the injury and the associated damages.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.