

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**68th STREET SITE WORK GROUP,**

**Plaintiff,**

v.

**Civil Case No.: SAG-20-3385**

**AIRGAS, INC., et al.,**

**Defendants.**

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**MEMORANDUM OPINION**

Plaintiff 68th Street Site Work Group (“Plaintiff”) filed suit against 156 Defendant companies (collectively, “Defendants”) under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), for the recovery of costs incurred and to be incurred in response to the release or threatened release of hazardous substances from the 68th Street Dump Superfund Alternative Site (“68th Street Site,” or “Site”). ECF 1. Plaintiff also seeks a declaration of each Defendant’s liability for future response costs to be incurred by Plaintiff (and its assignors) at the Site ECF 1. As of today, forty-five Defendants are actively litigating the case, following a number of voluntary dismissals and certain entries of default. Thirty-one of those remaining Defendants have filed motions to dismiss the Complaint, with several of those motions seeking summary judgment in the alternative. ECF 163 (Armacell, LLC); ECF 174 (Truist Financial Corporation); ECF 287 (Pabst Brewing Co.); ECF 384 (C&I Leasing, Inc.); ECF 386 (Cowan Systems, Inc.); ECF 411/452 (Lifoam Industries, LLC); ECF 425 (High’s of Baltimore, LLC); ECF 442 (Cloverland Dairy Limited Partnership); ECF 448 (“Certain Defendants” (American Sugar Refining, Inc.; Bob Bell Automotive Group, Inc.; Donohoe Real Estate Services; HMS Host Family Restaurants, Inc.; Len Stoler, Inc.; and Stella Maris Operating Corp.)); ECF

461 (The Rukert Terminals Corporation); ECF 478 (Alban Tractor Co., Inc.); ECF 479 (Crown Central LLC); ECF 480 (New Ridge Associates, Inc.); ECF 481 (Norris Automotive Holdings LLC); ECF 482/484 (The Victory Racing Plate Company); ECF 510 (Host Hotels and Resorts, Inc.); ECF 537 (Caraustar Industries, Inc.); ECF 539 (Greif, Inc.); ECF 549 (Heritage Chevrolet-Buick, Inc.); ECF 609 (Hilton Worldwide, Inc.); ECF 672 (Ridgeway Manor, Inc.); ECF 701 (Mattress Company of Delaware, LLC d/b/a Eclipse International); ECF 704 (Morgan Properties Management Company, LLC); ECF 767 (Airgas, Inc.); ECF 768 (Drug City Pharmacy, LLC); ECF 769 (Melibelle USA, Inc.). Plaintiffs opposed each motion, ECF 284, ECF 285, ECF 367, ECF 521, ECF 523, ECF 529, ECF 530, ECF 538, ECF 543, ECF 547, ECF 563-566, ECF 568, ECF 569, ECF 580, ECF 581, ECF 596, ECF 677, ECF 697, ECF 728, ECF 730, ECF 775-77, and most Defendants replied, ECF 363, ECF 368, ECF 460, ECF 555, ECF 570, ECF 579, ECF 583, ECF 587, ECF 593, ECF 599, ECF 621-625, ECF 636, ECF 639-641, ECF 698, ECF 742, ECF 747.

This Court held a telephonic hearing on a representative subset of the pending motions on July 13, 2021. Specifically, the hearing addressed ECF 163, ECF 287, ECF 384, ECF 448, and ECF 537. No hearing is necessary as to the remaining motions to dismiss.<sup>1</sup> *See* Loc. R. 105.6 (D. Md. 2021).

For the reasons stated below, Defendants' motions will be granted, with the precise disposition as to each motion detailed herein and in the accompanying order.

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<sup>1</sup> This memorandum opinion will address all substantive pending motions with three exceptions: ECF 515 (Defendant Schumacher & Seiler, Inc.'s Motion for Summary Judgment); ECF 688 (Defendant American Sugar Refining, Inc.'s Motion for Sanctions); and ECF 761 (Plaintiff's Motion for Fees and Costs). A memorandum opinion and order deciding ECF 761 will be issued along with this opinion, and ECF 515 and ECF 688 will be decided on a later date.

**I. Factual Background<sup>2</sup>**

Plaintiff 68th Street Site Work Group is an unincorporated association that consists of the following members: AAI Corporation; Acme Markets, Inc.; AK Steel Corporation; Browning-Ferris, Inc.; Black & Decker (U.S.) Inc.; Brunswick Corporation; ConAgra Grocery Products Company, LLC; Crown Cork & Seal Company, Inc.; CSX Realty Development, LLC; CSX Transportation, Inc.; Exxon Mobil Corporation; and Illinois Tool Works, Inc., on behalf of Signode and Vulcan-Hart. ECF 1 ¶ 27. These member entities have each assigned their claims in this case to the Work Group. ECF 1 ¶ 28. Plaintiff alleges that Defendants in this case are liable as potentially responsible parties (“PRPs”) for their generation and transportation, and/or their arranging for transportation, of materials containing hazardous substances for disposal and/or treatment at the 68th Street Site. ECF 1 ¶ 1.

The 68th Street Site is a mixed industrial, commercial, and residential area, encompassing 239 acres in the Rosedale neighborhood in Baltimore County, along the eastern border of Baltimore City. ECF 1 ¶ 4. The Site is an aggregate of seven landfills, which operated within the boundaries of what the United States Environmental Protection Agency (“EPA”) later designated as five Management Areas (A, B, D, E, and F). ECF 1 ¶¶ 5-11. Waste disposal activities were conducted at the Site from the 1950s through the early 1970s, and included the disposal of municipal, industrial, and commercial wastes. ECF 1 ¶ 6. Among the entities operating permitted landfills at the Site was Robb Tyler, Inc. (“Robb Tyler”). Management Area E of the 68th Street Site was the “original Robb Tyler Landfill,” which was permitted in 1953 and closed by 1956. ECF 1 ¶ 10. Robb Tyler was issued a refuse disposal permit for Management Area F in 1956, and

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<sup>2</sup> These facts are derived from Plaintiff’s Complaint, ECF 1, and, where appropriate, from evidence attached to the motions and related filings.

it operated the Island Landfill (a six-acre landfill within Management Area F) as a permitted landfill from 1960-1969. ECF 1 ¶ 11.

After several years of emergency response actions and site inspections, EPA proposed the 68th Street Site to the National Priorities List (“NPL”) in 1999, and again in 2003. ECF 1 ¶¶ 12-15; U.S. Env’t Prot. Agency, *Proposed National Priorities List (NPL) Sites – by State*, <https://www.epa.gov/superfund/proposed-national-priorities-list-npl-sites-state#MD>. The Site has not been finalized to the NPL, instead being evaluated under the Superfund Alternative Site process. U.S. Env’t Prot. Agency, *Superfund Site: 68th Street Dump/Industrial Enterprises*, <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0300338>. In April 2006, EPA entered into an Administrative Settlement Agreement and Order for Remedial Investigation and Feasibility Study with the members of the 68th Street Site Work Group. ECF 1 ¶ 16. Plaintiff alleges that it commenced the Investigation and Study shortly thereafter, in June 2006. ECF 1 ¶ 17. Plaintiff’s member entities completed the Remedial Investigation in May 2012, and the Feasibility Study in March 2013, and EPA issued its final Record of Decision for remedial actions at the Site in September 2013. ECF 1 ¶¶ 20-21.

In November 2017, this Court entered a Consent Decree for Remedial Design/Remedial Action (“Consent Decree”) between EPA and the State of Maryland, on the one hand, and a group of defendants (the “Settling Defendants”) on the other hand. *United States v. AAI Corp., et. al.*, Case No. 17-cv-2909-RDB, ECF 8 (D. Md. Nov. 29, 2017). The Settling Defendants included Settling Performing Defendants—who are the members of the 68th Street Site Work Group—and other Settling Non-Performing Defendants. ECF 1 ¶ 22. All of Plaintiff’s individual members are signatories to the Consent Decree. ECF 1 ¶ 29. Plaintiff itself (the 68th Street Site Work Group entity) is not a signatory.

Plaintiff filed its initial Complaint in November 2020, naming more than 150 Defendants (who were not Settling Defendants party to the Consent Decree) as potentially liable for more than \$4.8 million in past costs incurred by Plaintiff for response activities required by the Consent Decree. The Complaint seeks contribution, in addition to a declaration of each Defendant's liability for future response costs Plaintiff may incur. ECF 1 ¶ 1. Plaintiff alleges that each Defendant it named, "by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of waste containing hazardous substances at the 68th Street Site." *See, e.g.*, ECF 1 ¶ 30. Plaintiff alleges that each Defendant's respective waste streams contained, at minimum, the following fourteen hazardous substances: acetone, benzene, cadmium, dichloroethylene, lead, methyl ethyl ketone, methylene chloride, perchloroethylene, toluene, trichloroethane, trichloroethylene, vinyl chloride, xylene, and zinc. In instances where the only waste stream alleged is "general office waste"—such as with respect to Defendant Donohoe Real Estate Services—those fourteen substances make up the entirety of Plaintiff's allegations. *See, e.g.*, ECF 1 ¶ 347. For certain other Defendants, however, Plaintiff alleges that additional hazardous substances were disposed, including: arsenic, barium, chromium, copper, dichlorobenzene, ethyl benzene, manganese, mercury, and/or nickel. *See, e.g.*, ECF 1 ¶¶ 217; 691.

## **II. Legal Standards Governing the Motions in General**

### **A. Rule 12(b)(2) Motion to Dismiss**

Three Defendants, Armacell, LLC ("Armacell"), Pabst Brewing Co. ("Pabst"), and Caraustar Industries, Inc. ("Caraustar"), have filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(2), challenging this Court's personal jurisdiction over them. ECF 163, 287, 537. Under Rule 12(b)(2), the burden is "on the plaintiff ultimately to prove the existence of a ground

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