

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.3:22-cv-5002
	)	
PATRICIA R. WEST, RONALD WEST	)	
d/b/a RGW SALES & SERVICE, and RANDY C.	)	
PENDERGRAFT,	)	
	)	
Defendants.	)	

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint seeking access to properties owned and/or controlled by Defendants that are contaminated with mining waste (the “Properties”), and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9604(e). The Properties are part of the Oronogo/Duenweg Mining Belt Superfund Site, a large Superfund site that is contaminated with mining waste. The mining waste has high levels of lead, cadmium, and zinc, which are hazardous to human health and the environment. The United States Environmental Protection Agency (“EPA”) has completed cleanup of mining wastes on properties owned by others in the vicinity of the Properties. EPA was unable to clean up mining waste on the Properties because Defendants have refused, and continue to refuse, to allow EPA access. Defendants’

refusal to grant access prevents needed cleanup on the Properties and allows the wastes from the Properties to contaminate a downstream owner's previously-cleaned property, which is increasing the total cost of the cleanup. EPA is expressly authorized by CERCLA to access the Properties for the purposes sought in this Complaint. The United States therefore seeks an Order in Aid of Access, providing EPA and its representatives with access to the Properties so that EPA can sample and clean up hazardous mining waste on the Properties.

### **JURISDICTION AND VENUE**

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

3. Venue is proper in the Western District of Missouri pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the Properties are located within this judicial district and these claims arise in connection with releases or threatened releases that have occurred in this district.

### **DEFENDANTS**

4. Defendants own and/or control access to the Properties. Seven contiguous parcels of land are owned by Defendant Patricia West. Collectively, these parcels are referred to hereafter as the "West Property." Defendant Ronald West is the son of Defendant Patricia West and the late Robert G. West. Ronald West is the owner and operator of RGW Sales & Service, a privately held business located at 205 Ivy Road, Oronogo, Missouri 64855, on the West Property. Ronald West controls access to those portions of the West Property where his business is located.

5. Defendant Randy C. Pendergraft owns property at 302 Dewey Street, Oronogo, Missouri 64855, to the east of the West Property. This parcel is referred to hereafter as the

“Pendergraft Property.”

6. Patricia West, Ronald West, and Randy C. Pendergraft, are each individually a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **STATUTORY BACKGROUND**

7. CERCLA Section 104(a)(1), 42 U.S.C. § 9604(a)(1), provides that whenever there is a release or substantial threat of release into the environment of a hazardous substance, or of any pollutant or contaminant which may present an imminent and substantial endangerment to the public health or welfare, EPA “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 . . . or take any other response measure consistent with the national contingency plan” that EPA deems necessary to protect the public health or welfare or the environment. CERCLA Section 104(e)(4), 42 U.S.C. § 9604(e)(4), authorizes any officer, employee or representative designated under CERCLA Section 104(e)(1), 42 U.S.C. § 9604(e)(1), to inspect and obtain samples from any facility, establishment, or other place or property referred to in CERCLA Section 104(e)(3), 42 U.S.C. § 9604(e)(3), or from any location of any suspected hazardous substance or pollutant or contaminant.

8. CERCLA authorizes EPA employees and contractors to enter properties at reasonable times “where entry is needed to determine the need for response or the appropriate response or to effectuate a response action” under CERCLA. 42 U.S.C. § 9604(e)(3)(D).

9. CERCLA Section 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), provides that the United States may commence a civil action to compel compliance with a request for access. “Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance, pollutant, or contaminant,” the court “shall enjoin” interference with a

request by EPA for entry “unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 9604(e)(5)(B)(i).

## **FACTUAL ALLEGATIONS**

### **EPA’s Cleanup of the Oronogo/Duenweg Mining Belt Superfund Site**

10. The Properties are part of the Oronogo/Duenweg Mining Belt Superfund Site (the “Site”).

11. The Site comprises approximately 250 square miles and is located in Jasper County and Newton County, Missouri. The Site is in the Missouri portion of the Tri-State Mining District, which also includes portions of Kansas and Oklahoma. Historically, lead and zinc mining, milling and smelting operations generated about 150 million tons of mining wastes within the Site, of which no more than 14 million tons remain to be remediated.

12. On August 30, 1990, EPA placed the Oronogo/Duenweg Mining Belt Site on the National Priorities List. 55 Fed. Reg. 35502 (Aug. 30, 1990). The National Priorities List is the list of hazardous waste sites designated as “Superfund” sites under CERCLA, set forth at 40 C.F.R. Part 300, Appendix B.

13. EPA conducted a Remedial Investigation (“RI”) at the Site. The RI identified that the mining wastes contain concentrations of heavy metals, primarily cadmium, lead, and zinc, which are the contaminants of concern that cause unacceptable risk to human health and the environment. In addition, the RI identified contaminants of concern in the surface waters due to migration of mining wastes and hazardous substances into surface water bodies. The levels of contaminants of concern in surface waters at this Site cause unacceptable risk to aquatic life.

14. EPA issued a cleanup decision, called a Record of Decision (“ROD”), in September 2004, and a ROD Amendment on September 27, 2013, for Operable Unit One (OU1), which is the response action that requires cleanup of the mining wastes and contaminated surface waters at the Site. The mining wastes on the Properties are a portion of the wastes to be cleaned up under this decision. On May 22 and 25, 2016, EPA issued and published an Explanation of Significant Differences (“ESD”), which addresses certain techniques that may be used to implement cleanup under the ROD.

### **Descriptions of Defendants’ Properties**

15. The West Property consists of seven parcels that are identified in two quit-claim deeds and a corporation warranty deed. These deeds are recorded in (1) Book 1590, Page 1369 (1998), (2) Book 1233, page 648 (1980), and (3) Book 1371, Page 0241 (1989), respectively in the Jasper County Recorder of Deeds Office. The Pendergraft Property is identified in a Warranty Deed recorded in Book 1311, Page 1579 (July 1, 1986), in the Jasper County Recorder of Deeds Office.

16. The Properties are shown on the aerial photograph at Attachment A to the Complaint. Attachment A outlines the approximate boundaries of the West Property in red, and the approximate boundaries of the Pendergraft Property are outlined in green.

### **Cleanup Needed at the Properties**

17. The Properties were used in the past as a disposal area for mining wastes. About six acres of mining wastes are on the West Property. A much smaller area on the Pendergraft Property also contains mining wastes. Hazardous substances in the mining wastes including lead, zinc and cadmium are contained in the mining wastes and are released into the environmental from

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