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UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION

ASARCO LLC, a Delaware
corporation,

Plaintiff,

v.

BRITISH PETROLEUM, PLC, a
United Kingdom Corporation,
AMERICAN CHEMET
CORPORATION, a Montana
Corporation,

Defendants.

Case No.: _____

CIVIL COMPLAINT

Plaintiff ASARCO LLC (“Asarco”) complains of Defendant and alleges:

NATURE OF THE ACTION

1. Over thirty years ago, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” and “SARA”), 42 U.S.C. §§ 9601-9675, to promote the cleanup of the environment after over 200 years of industrial development in the United States. Key to this cleanup scheme is that environmental remediation does not need to wait for final allocation of liability; settlements are favored and clean up often precedes allocation. Both governmental and private parties can seize the initiative to remediate a site; Congress has determined that those who first pay to clean up can later recover costs from other parties responsible for contamination at a site that have failed to act.

2. This is a civil action brought by Asarco pursuant to CERCLA for contribution and cost recovery against defendants for costs incurred by Asarco at the East Helena Site. Asarco has paid approximately \$114 million to settle all of its CERCLA-related liability at the Site. This settlement included costs to clean up and control contamination that cannot be associated with Asarco’s historic activities, but can only have come from defendants’ facilities.

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JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action, and this defendant, pursuant to 28 U.S.C. §§ 1331 and 1367(a), and Sections 107 and 113 of CERCLA, 42 U.S.C §§ 9607 and 9613.

4. Venue is proper in this judicial district pursuant to 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(b), and 28 U.S.C. §§ 1391(b) because the claims arose, and the threatened and/or actual releases of hazardous substances occurred within the District of Montana.

PLAINTIFF

5. Asarco is a limited liability company organized under the laws of the state of Delaware. Asarco owned and operated a historic smelting and refining facility in East Helena, Montana.

6. Asarco has taken responsibility for the cleanup of all of its known liabilities for any “releases” under CERCLA Section 107(a), *et seq.*, 42 U.S.C. § 9607(a), *et seq.*, for Asarco’s historic smelting operations at East Helena, and Asarco has settled all of its liability at the site with the United States (“EPA”) and the State of Montana.

DEFENDANT

7. Defendants British Petroleum, PLC (“BP”) is a United Kingdom corporation that has conducted metals processing, storage, transport and/or related

operations through facilities in or near the East Helena Site. BP is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2). BP is also a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

8. Defendant American Chemet Corporation (“AC”) is a Montana Corporation that has conducted metals processing, storage, transport and/or related operations through facilities in or near the East Helena Site. AC is an “owner,” “operator,” and/or “arranger” of a “facility” pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2). AC is also a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

SITE DESCRIPTION AND FACTUAL BACKGROUND

9. For more than a hundred years, Asarco, along with others, operated a metals refinery on in East Helena, Montana. Lead and zinc smelting and metals processing operations deposited lead, arsenic, copper, zinc, cadmium and some 15 other hazardous substances into the soil, surface water and groundwater of the Helena Valley. Asarco shut down its facility on April 4, 2001.

10. As a result of discovery of metals contamination in East Helena, the East Helena Superfund Site was added to the National Priorities List, or

“Superfund,” in 1984. East Helena Superfund Site includes Asarco’s former lead smelter that operated from 1888 until 2001, the town of East Helena, several residential subdivisions, and surrounding rural agricultural lands.

11. EPA’s CERCLA enforcement action against Asarco was pending on August 9, 2005, when Asarco filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).

12. EPA continued its enforcement action against Asarco by filing certain proofs of claim and initial submissions in Asarco bankruptcy case (the “Enforcement Action”). Alleging that Asarco was responsible for contamination at East Helena under CERCLA, EPA sought recovery from Asarco of the entire liability alleged for East Helena.

13. Asarco made two separate settlements in its bankruptcy concerning East Helena. It settled its liability to the United States for approximately \$13 million. It also provided \$100 million in cash to a trust for the benefit of the State of Montana, and gave Montana certain properties in the state. These settlements (collectively, “East Helena Settlements”) were approved by the Bankruptcy Court and United States District Court. These settlements were designed to be funded upon court approval of a plan of reorganization.

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