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13 *Attorneys for Plaintiff Le Petomane XXVII, Inc., not*
14 *individually, but solely in its representative capacity*
as trustee of the Nevada Environmental Response
15 *Trust*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 LE PETOMANE XXVII, INC., an Illinois
corporation, not individually, but solely in its
19 representative capacity as trustee of the Nevada
Environmental Response Trust,

20 Plaintiff,

21 v.

22 AMERICAN PACIFIC CORPORATION, a
23 Nevada corporation,

24 Defendant.
25

Case No.:

COMPLAINT

JURY DEMAND

26 Plaintiff, Le Petomane XXVII, Inc., not individually, but solely in its representative
27 capacity as trustee of the Nevada Environmental Response Trust ("Trustee"), as and for its
28

1 Complaint against Defendant American Pacific Corporation (“AMPAC” or “Defendant”), alleges
2 and states as follows:

3 **Nature of the Action**

4 1. This action is brought under the provisions of the Comprehensive Environmental
5 Response, Compensation and Liability Act, as amended, 42 U.S.C §§ 9601 et seq. (“CERCLA”).
6 The Trustee on behalf of the Nevada Environmental Response Trust (“NERT”) seeks, among other
7 relief:

8 (a) recovery from AMPAC under CERCLA Section 107(a) of response costs expended, and
9 to be expended, by NERT with respect to the Weir Project, as defined herein;

10 (b) contribution from AMPAC under CERCLA Section 113(f) for response costs expended,
11 and to be expended, by NERT with respect to the Weir Project, as defined herein;

12 (c) contribution under Nevada Revised Statutes Section 17.225; and,

13 (d) compensatory relief for unjust enrichment.

14 2. In 2017, NERT was ordered by the Nevada Division of Environmental Protection
15 (“NDEP”) to undertake a removal action related to perchlorate in the Las Vegas Wash, a tributary
16 to Lake Mead, in connection with the Southern Nevada Water Authority’s (“SNWA”) construction
17 of two erosion control weirs in the Las Vegas Wash. To date, NERT has spent over \$36 million
18 (with work ongoing related to decommissioning and costs continuing to accrue) to build, operate,
19 and decommission the pumping and treatment facilities to treat the perchlorate in groundwater
20 associated with SNWA’s dewatering activities.

21 3. Subsequent to completing the removal action, NERT discovered that the vast
22 majority of the perchlorate treated by NERT as part of the removal action originates from a former
23 manufacturing site that was owned and operated by Defendant AMPAC and its corporate
24 predecessor, Pacific Engineering & Production Co. of Nevada (“PEPCON”). NERT has spent the
25 majority of the \$36 million to treat hazardous substances for which AMPAC is legally responsible.

26 4. By this action, NERT seeks to recover from AMPAC the response costs that NERT
27 incurred to treat AMPAC’s perchlorate. NERT also seeks a declaratory judgment that Defendant
28 is liable for future response decommissioning costs or damages.

The Parties

5. Plaintiff is the trustee of NERT, which is a trust that was established on February 14, 2011 in connection with the confirmation of Tronox LLC's (formerly known as Kerr-McGee Chemical LLC) ("Tronox") Chapter 11 bankruptcy filed in the U.S. Bankruptcy Court for the Southern District of New York, in January 2009. The Trustee is a corporation organized and existing under the laws of the State of Illinois with its headquarters and principal executive offices located in Chicago, Illinois, is the sole trustee of NERT and administers NERT under the terms of a written Trust Agreement.

6. NERT's primary purpose is to own Tronox's former chemical manufacturing facility located approximately 13 miles southeast of the City of Las Vegas in an unincorporated area of Clark County, Nevada ("Henderson Site") and to remediate certain environmental impacts at or migrating from the Henderson Site.

7. The Trustee brings this suit, not individually, but solely in its representative capacity as trustee of the Trust. The Trustee is a citizen of the State of Illinois and of no other state.

8. Defendant AMPAC, the corporate successor to PEPCON, is a corporation organized under the laws of the State of Nevada, with a principal place of business located at 10622 West 6400 North, Cedar City, Utah 84721. AMPAC is a citizen of the State of Nevada and of the State of Utah and no other state.

9. PEPCON formerly owned and, until 1988, operated a chemical manufacturing facility approximately one and a half miles west of the Henderson Site (the "AMPAC Site").

Jurisdiction and Venue

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), and 9613(b) (CERCLA grant of jurisdiction); 28 U.S.C. § 1367 (Supplemental Jurisdiction); and 28 U.S.C. § 1332 (Diversity Jurisdiction) in that this is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. A trust "has the citizenship of its trustee or trustees." *Johnson v. Col. Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). The Trustee is the Plaintiff.

1 11. The Trustee is an Illinois corporation with its headquarters in Chicago, Illinois;
2 because its “nerve center” is in Illinois, it is a citizen of that state for diversity purposes.

3 12. AMPAC is a Nevada corporation with its headquarters in Cedar City, Utah; and
4 because its “nerve center” is in Utah, it is a citizen of that state for diversity purposes.

5 13. Section 1332(a)(2) “provides district courts with original jurisdiction of all civil
6 actions where the matter in controversy exceeds the sum or value of \$75,000 and is between citizens
7 of a state and citizens or subjects of a foreign state.” *JPMorgan Chase Bank v. Traffic Stream (BVI)*
8 *Infrastructure Ltd.*, 536 U.S. 88, 91 (2002) (internal quotation marks and ellipses omitted).
9 Therefore, the parties are citizens of different states for purposes of diversity. This action is of a
10 civil nature involving, exclusive of interest and costs, a sum in excess of \$75,000.00. Every issue
11 of law and fact in this action is wholly between a plaintiff who is a citizen of a state that is different
12 from the state of which a defendant is a citizen.

13 14. Because of the federal question jurisdiction, this Court also has supplemental
14 jurisdiction pursuant to 28 U.S.C. § 1367(a)-(b) over the state law claims asserted against the
15 defendant, regardless of the amount in controversy.

16 15. This Court has general personal jurisdiction over AMPAC because it is organized
17 and exists under Nevada’s corporate laws, *i.e.*, Nevada Revised Statutes Title 7.

18 16. This Court also has specific personal jurisdiction over AMPAC because it has
19 purposefully availed itself of the laws and protections of this forum by conducting business here
20 by registering with the Nevada Secretary of State as a corporation.

21 17. Under these circumstances, the exercise of jurisdiction over AMPAC would be
22 reasonable.

23 18. Venue lies in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. §
24 9613(b), and 28 U.S.C. § 1391(b), because the properties at issue are located within this judicial
25 district, the releases or threatened releases of solid or hazardous wastes or hazardous substances or
26 materials occurred in this judicial district, a substantial part of the events or omissions giving rise
27 to the claim occurred in this district, and a substantial part of the property that is the subject of the
28 action is situated in this district.

19. Venue lies in the unofficial Southern Division of this Court.

Factual Background

A. Historic Operations, Contaminants, and Environmental Response Activities at the AMPAC Site

20. The PEPCON facility was built near Henderson, Nevada in or about 1958. In 1997, PEPCON merged with, and into AMPAC Development Company, which changed its name to AMPAC, Inc. In 1998, AMPAC, Inc. merged with, and into American Pacific Corporation.

21. From approximately 1958 through 1988, perchlorate was produced at the AMPAC Site. Operations at the AMPAC Site terminated on or about May 4, 1988.

22. During the time PEPCON and AMPAC owned and operated the AMPAC Site, spills and releases of hazardous substances at the AMPAC Site contaminated soil and groundwater at, and beneath the AMPAC Site. Perchlorate contamination in groundwater has been identified at, and emanating from the AMPAC Site.

23. AMPAC installed and operated a perchlorate remediation system to remove perchlorate from groundwater migrating from the AMPAC Site.

24. Notwithstanding the treatment system installed and operated by AMPAC, not all of AMPAC's perchlorate in groundwater is captured by the treatment system and continues to migrate to the north into the Las Vegas Wash.

B. Historic Operations, Contaminants, and Environmental Response Activities at the Tronox Henderson Site

25. The Henderson Site was developed in 1942 by the U.S. government as a magnesium production plant in support of the World War II effort. Perchlorate was produced at the Henderson Site beginning in 1952 and ending in 1998.

26. Tronox, the former owner of the Henderson Site, began investigating potential environmental impacts in July 1981 from both current and historic operations.

27. In the late 1990s, Tronox installed a seep water collection system adjacent to the Las Vegas Wash to mitigate the discharge of perchlorate into the Las Vegas Wash and a treatment system to treat the collected perchlorate-impacted groundwater.

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