**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW HAMPSHIRE**

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| STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES<br><br>Plaintiff<br><br>v.<br><br>MCCORD CORP.,<br><br>Defendant. | ) | Civil No. _____ |

**COMPLAINT**

Plaintiff, the State of New Hampshire Department of Environmental Services ("Department"), by and through its attorney, the New Hampshire Office of the Attorney General (collectively, the "State of New Hampshire" or "State"), hereby files this complaint against Defendant McCord Corporation ("McCord") and alleges as follows:

**NATURE OF THE ACTION**

1. For many years, automobile parts were manufactured at the Collins & Aikman Plant (Former) Superfund Site located in Farmington, New Hampshire (the "Site"). Between the 1960s and 1970s, McCord operated the facility at the Site. Specifically, McCord's manager of safety and ecology played a key role in decisions about waste management, environmental compliance, and plant expansion at the Site. Moreover, McCord denied and later approved the construction of certain wastewater treatment features at the Site.

2. The manufacturing process and plant design at the Site caused groundwater at the Site to be contaminated with volatile organic compounds ("VOCs"). *Fireman's Fund Ins. Co. v. Ex-Cell-O Corp.*, 750 F. Supp. 1340, 1351 (E.D. Mich. 1990).

3. The VOCs found in the groundwater at the Site can harm human health and the environment in a variety of different ways and are consequently designated hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA").

4. The State brings this civil action against McCord under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 & 9613 as well as New Hampshire Revised Statutes Annotated ch. 147-A and 147-B, to recover the costs the State has incurred by responding to releases and threatened releases of hazardous wastes and hazardous substances into the environment at or from the Site. The State also seeks a declaratory judgment that McCord is liable for costs that the State will continue to incur by responding to and remediating the Site.

## JURISDICTION

5. This Court has jurisdiction over the subject matter of this action and over the parties to this action. 42 U.S.C. §§ 9607 & 9613(b); 28 U.S.C. §§ 1331, 1345, and 1367.

6. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) & 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred in this district, and because the Site is located in this district.

## DEFENDANT

7. Defendant McCord Corporation is incorporated under Michigan law. McCord is hereinafter referred to as "McCord Michigan" or "McCord."

8. Defendant McCord is currently headquartered in Troy, Michigan.

## STATUTORY BACKGROUND

9. Congress enacted CERLCA in 1980 to provide a comprehensive governmental mechanism for remediating hazardous substances and funding such remediation and related enforcement activities, which are known as "response actions." 42 U.S.C. §§ 9604(a), 9601(25).

10. Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section… (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,…shall be liable for (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe…not inconsistent with the National Contingency Plan.

11. In actions for cost recovery, Section 113(g)(2) of CERCLA requires the district court to enter a declaratory judgment "on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages." 42 U.S.C. § 9613(g)(2).

12. New Hampshire Revised Statutes Annotated ch. 147-A, "Hazardous Waste Management," and ch. 147-B, "Hazardous Waste Cleanup Fund," were both enacted in 1981.

13. RSA 147-A:9 provides for strict liability of:

> any owner, operator, generator, or transporter who causes or suffers the treatment, storage, transportation or disposal of hazardous waste in violation of RSA 147-A or rules adopted or permits issued under RSA 147-A…[and] shall be strictly liable for costs directly or indirectly resulting from the violation relating to: (a) Containment of hazardous wastes; (b) Necessary cleanup and restoration of the site and the surrounding environment; and (c) Removal of the hazardous wastes.

14. RSA 147-B:10, I provides, in pertinent part, that:

> [s]ubject only to the defenses set forth in RSA 147-B:10-a and the exclusions and limitations set forth in RSA 147-B:10, IV and V, any person who: (a) Owns or operates a facility; (b) Owned or operated a facility at the time hazardous waste or hazardous materials were disposed

> there…shall be strictly liable for all costs incurred by the state in responding a release or threatened release of hazardous waste or hazardous material at or from the facility as specified in paragraph II.

15. RSA 147-B:10, II continues that:

> [c]osts recoverable by the state under paragraph I shall include all costs relating to: (a) Containment of the hazardous wastes or hazardous materials. (b) Necessary cleanup and restoration of the site and the surrounding environment. (c) Removal of the hazardous wastes or hazardous materials. (d) Such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous waste or hazardous material; or to mitigate damage to the public health or welfare that may otherwise result from a release or threat of release.

16. Under CERCLA, an "owner or operator" of an onshore facility is "any person owning or operating such facility." 42 U.S.C. § 9601(20)(A)(ii).

17. The Supreme Court of the United States has explained that in the context of CERCLA, "an operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations." *United States v. Bestfoods*, 524 U.S. 51, 66-67 (1998). This theory of direct liability is distinct from derivative operator liability whereby a parent company can be liable for the actions of a subsidiary under a theory of veil piercing. *Id*. at 64-65.

18. In *Bestfoods*, the Court recognized a number of circumstances in which a parent company can be liable as an operator under CERCLA:

> [(1)] when the parent operates the facility in the stead of its subsidiary or alongside the subsidiary in some sort of joint venture;…[(2) when] a dual officer or director might depart so far from the norms of parental influence exercised through dual officeholding as to serve the parent, even when ostensibly acting on behalf of the subsidiary in operating the facility…[and (3) when] an agent of the parent with no hat to wear but the parent's hat might manage or direct activities at the facility.

*Id*. at 71.

## GENERAL ALLEGATIONS

### Description and History of the Site

19. The Site includes two parcels located south of New Hampshire Route 11: (i) a 96.34-acre parcel located on Davidson Drive, identified by the Town of Farmington Tax Assessor's office as Map R31, Lot 34; and (ii) a 10-acre parcel located at 56 Davidson Drive, identified by the Town of Farmington Tax Assessor's office as Map R36, Lot 2. Collectively, these parcels are referred to as the former Collins and Aikman Automotive Interiors, Inc. property.

20. The Site also includes approximately 166 acres affected by the Site-related groundwater contaminate plume, and extends across the north side of Route 11. The affected area north of Route 11 is roughly bounded by NH Route 11, NH Route 53 (Main Street) to the east, and Pokamoonshine Brook to the north/northwest.

21. From at least 1966 to approximately 2006, Davidson Rubber Company, Inc. ("Davidson Rubber") manufactured instrument panels, bumpers, fascias, and other automobile parts at a plant located at the Site (hereinafter referred to as "the Farmington Plant").

22. Manufacturing processes conducted at the Farmington Plant included polyurethane foam molding; construction, washing, and painting of polyvinyl chloride ("PVC") shells, and assembly of finished parts.

23. Solvents used at the Farmington Plant included acetone, isopropyl alcohol, methylene chloride, methyl isobutyl ketone, methyl ethyl ketone, tetrachloroethene (also called perchlorethylene, or "PCE"), toluene, trichloroethene ("TCE"), and xylene.

24. Waste generated during manufacturing operations at the Farmington Plant, included, without limitation, the following:

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