

v. )  
JACKSON RESOURCES COMPANY, ) Case No. 2:20-cv-00537  
 )  
Defendant )  
 )  
 )  
 )

**COMPLAINT FOR: (1) RECOVERY OF RESPONSE COSTS AND DECLARATORY RELIEF UNDER CERCLA § 107(a), 42 U.S.C. §§ 9607(a) AND 9613(g); (2) “CITIZEN SUIT” PURSUANT TO RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A); (3) “CITIZEN SUIT” PURSUANT TO RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), FOR ABATEMENT OF AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO HEALTH OR THE ENVIRONMENT; (4) JUDICIAL ABATEMENT OF A PUBLIC NUISANCE; (5) JUDICIAL ABATEMENT OF A PRIVATE NUISANCE; (6) NEGLIGENCE; AND (7) STRICT LIABILITY**

Plaintiff, Rita Lovejoy (“Lovejoy”), by and through its undersigned counsel, makes the following allegations upon knowledge as to itself and upon information and belief as to all other matters:

*Nature of this Case*

1. Through its acts, omissions, violations of federal and state environmental and public health protection laws, and breaches of common law duties owed to Plaintiff and the public at large, Defendant, Jackson Resources Company (“Jackson Resources”) has caused the release of toxic, noxious, harmful and hazardous contaminants into the environment, and such contaminants have become present and threaten to become further present at, on, and under Plaintiff’s property (herein “Lovejoy Property”) and in soils, groundwater, and surface waters in the immediate

safe and comfortable use and enjoyment of her property, it also constitutes a condition that both presents and may present an imminent and substantial endangerment to human health and the environment, has already caused actual damage to the environment, and is a current and continuing hazard to human health and the environment and a serious public nuisance.

2. Accordingly, Plaintiff brings this action to, *inter alia*: **(a)** recover its costs of responding to releases hazardous substances (*i.e.*, “response costs”) incurred and to be incurred under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” or “federal Superfund Act”), 42 U.S.C. § 9607(a); **(b)** to obtain appropriate injunctive relief pursuant to section 7002(a)(1)(A) of the Resource Conservation and Recovery Act of 1976 (“RCRA” or “federal Hazardous Waste Management Act”), 42 U.S.C. § 6972(a)(1)(A) to compel compliance with the requirements of RCRA and to redress the consequences of past and on-going violations of RCRA; **(c)** pursuant to section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), to secure judicial abatement of an imminent and substantial endangerment to health or the environment that may be presented by the solid wastes and hazardous wastes at and emanating from the Jackson Facility as a result of its past and on-going acts and omissions, with authorization for Plaintiff to conduct appropriate oversight and monitoring of the defendant Jackson Resource’s compliance with this court’s orders herein; **(d)** to secure abatement of an on-going public nuisance, through an appropriate Judicial Public Nuisance Abatement Order (in the nature of an appropriate mandatory injunction) that is subject to

Resources, which nuisance conditions, as a direct and proximate result of Defendant's acts and omissions, have become present and threaten further to become present at, on, under, and in the vicinity of the real property owned by Plaintiff, with extremely adverse consequences to the environment, including Upper Mud Fork River; **(e)** to recover money damages, including an award of punitive damages, under the laws of private nuisance, negligence, and strict liability, for the harms to Plaintiff's property and to Plaintiff's property rights, including loss of reasonable use and enjoyment and loss of value; **(f)** to recover plaintiff's reasonable litigation costs, non-exclusively including plaintiff's attorney fees and costs, expert witness fees and costs and court costs incurred in obtaining such relief; **(g)** appropriate prejudgment interest; and **(h)** such other relief as this Court may deem necessary and appropriate, including all relief under Rule 54(c), Federal Rules of Civil Procedure.

### *Jurisdiction and Venue*

3. This Court has exclusive, original jurisdiction over the subject matter of Count I of this Complaint pursuant to CERCLA § 113(b), 42 U.S.C. § 9613(b), and original jurisdiction over the subject matter of Counts II and III of this Complaint pursuant to RCRA § 7002(a), 42 U.S.C. § 6972(a) and 28 U.S.C. § 1331. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's remaining causes of action because those claims are so related to Counts I, II, and III that they form the same case and controversy under Article III of the United States Constitution.

occurred in this judicial district, causing harmful impacts and endangerments to human health and the environment within this judicial district.

### *The Parties*

5. Plaintiff Lovejoy is a resident of Lincoln County, West Virginia and owner of property located at Upper Mud River and Palermo Road, Hamlin District, Lincoln County, West Virginia, within the Southern District of West Virginia.

6. Defendant Jackson Resources is a West Virginia Business Corporation with its principle place of business in Hamlin, Lincoln County, West Virginia, within the Southern District of West Virginia.

### *Facts Common to All Counts*

7. RCRA is the federal public law that creates the framework for the proper management of both hazardous and non-hazardous solid wastes, to assure adequate protection of public health and the environment. To accomplish these broad goals, Congress included within RCRA both regulatory and remedial provisions.

8. RCRA § 1004(27) broadly defines “solid waste” as follows:

The term “solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342

The term “hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

42 U.S.C. § 6903(5).

10. This matter also concerns the presence, within environmental media at and in the vicinity of the Lovejoy Property of wastes released into the environment at and from, and continuing to migrate from the Jackson Facility, which wastes meet the narrower *regulatory* definition of “hazardous waste” under RCRA. In addition to providing broad statutory definitions of both solid waste and hazardous waste for all purposes of RCRA, Congress, in RCRA § 3001(a), directed the Administrator of U.S. EPA:

to develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subtitle [*i.e.*, Subtitle C of RCRA, 42 USCS §§ 6921 – 6939a], taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.

42 U.S.C. § 6921(a). Thus, Congress authorized and required the Administrator of U.S. EPA to select from out of the universe of “hazardous wastes” congressionally-defined in RCRA § 1004(5) a subset of those wastes that the Administrator determined should be subject to the



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