IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EPA Region 5 Records Ctr.
274497

THE DOW CHEMICAL CO., et al., Plaintiffs, v. ACME WRECKING CO., INC., et al., Defendants.	Civil Action Nos. C-1-97-0307; C-1-97-0308 (Consolidated Actions) C-1-01-439 (Transferred Action) Judge Weber
THE DOW CHEMICAL CO., et al. Plaintiffs, v. SUN OIL COMPANY, d/b/a SUNOCO OIL CORP., et al., Defendants.	
UNITED STATES OF AMERICA, Plaintiff, v. AERONCA, INC., et al. Defendants.	

UNITED STATES' FIRST SET OF INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO CLARKE, INC.

Pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, Plaintiff, the United States of America, requests that Defendant Clarke, Inc. ("Clarke Inc.") (1) answer fully,

in writing and under oath, each of the following interrogatories, and serve such answers on the undersigned counsel for the United States within forty-five days, as provided for in the First Case Management Order ("First CMO") entered in the above-captioned action; and (2) produce the documents requested below, or in lieu thereof serve authentic copies of such documents on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO.

INSTRUCTIONS

A. Scope of Discovery (Location and Custody of Documents and Information). These interrogatories are directed to the above-named Defendant and cover all information in its possession, custody and control, including information in the possession, custody and control of its current or former officers or directors, employees, agents, servants, representatives, its attorneys, or other persons directly or indirectly employed or retained by it, or anyone else acting on its behalf or otherwise subject to its control, and any merged, consolidated, or acquired predecessor or successor, parent, subsidiary, division or affiliate.

B. Document no Longer in Possession. If any document requested is no longer in the possession, custody or control of defendant, state:

1. what was done with the document;
2. when such document was made;
3. the identity and address of the current custodian or the document;
4. the person who made the decision to transfer or dispose of the document; and
5. the reasons for the transfer or disposition.

C. Lack of Information. If you currently lack information to answer any Interrogatory completely, please state:

1. the responsive information currently available;
2. the responsive information currently unavailable;
3. efforts which you intend to make to secure the information currently unavailable; and
4. when you anticipate receiving the information currently unavailable.

D. Scope of Discovery (Time Period). Unless otherwise indicated, these discovery requests apply to the time period from January 1, 1955, to the date of your response, including any supplemental response required by Fed. R. Civ. P. 26(e).

E. Supplemental Responses. These interrogatories and requests for production are continuing; supplemental answers and documents must be filed pursuant to Fed. R. Civ. P. 26(e) between the date these discovery requests are answered and the trial of this action.

F. Identification of a "Communication." Whenever in these interrogatories or production requests there is a request to identify a "communication," state or identify:

1. the date of the communication;
2. the place where it occurred;
3. each person who originated, received, participated in or was present during such communication;
4. the type of communication (e.g., letter, memorandum, telegram, telephone conversation, etc.);
5. state the substance of the communication; and
6. each document relating or referring to, or comprising such communication.

G. Identification of a "Meeting." Whenever in these interrogatories or production requests there is a request to identify a "meeting," state or identify:

1. the date of the meeting;
2. the place of the meeting;
3. each person attending the meeting;
4. the substance of the meeting; and
5. each document relating or referring to the meeting.

H. Identification of a "Document." Whenever in these interrogatories or production requests there is a request to identify a "document," state or identify:

1. its date;
2. its author and signatory;
3. its addressee and all other persons receiving copies;
4. the type of document (e.g., letter, memorandum, contract, report, accounting record, etc.);
5. its title;
6. its substance;
7. its addressee and all other persons receiving copies;
8. its custodian;
9. its present or last known location; and
10. if the document was, but no longer is, in your possession or subject to your control, state where and in whose possession or control it is.

I. Identification of a Natural "Person." Whenever in these interrogatories or production requests there is a request to identify a "person," where the person is a natural person, state or identify the person's:

1. name;
2. present or last known home and business address and telephone number(s); and
3. occupation or profession and job title.

J. Identification of a Non-Natural "Person." Whenever in these interrogatories or production requests there is a request to identify a "person," where the person is not a natural person, but otherwise falls within the definition set forth in 42 U.S.C. § 9601(21), state or identify the person's:

1. name;

2. the form of its organization (corporation, partnership, etc.);
3. present or last known principal place of business;
4. telephone number; and
5. business.

K. Document Production in Lieu of Written Response. Whenever a full and complete answer to any interrogatory or part of an interrogatory is contained in a document or documents, the documents, if properly identified as answering a specific numbered interrogatory or part of an interrogatory, may be supplied in place of a written answer provided that the specific sections or pages from the document that are responsive to the interrogatory are identified.

L. Estimates. Interrogatories calling for numerical or chronological information shall be deemed, to the extent that precise figures or dates are not known, to call for estimates. In each instance that an estimate is given, it should be identified as such together with the source of information underlying the estimate.

M. Incomplete Response. If any interrogatory or production request cannot be answered fully, as full an answer as possible should be provided. State the reason for the inability to answer fully, and give any information, knowledge, or belief which the defendant has regarding the unanswered portion.

N. Deletions from Documents. Where anything has been deleted from a document produced in response to an interrogatory or production request:

1. specify the nature of the material deleted;
2. specify the reason for the deletion; and
3. identify the person responsible for the deletion.

O. Privilege as Applied to Interrogatory Response. Should you believe that any information requested by any of the following interrogatories is privileged, please identify such information, state the privilege asserted, and state the facts giving rise to such privilege.

P. Privilege as Applied to Document Production. If objection is made to producing any document, or any portion thereof, or to disclosing any information contained therein, in response to any interrogatory or production request on the basis of any claim of privilege, defendant is requested to specify in writing the nature of such information and documents, and the nature of the privilege claimed, so that the Court may rule on the propriety of the objection. In the case of documents, defendant should state:

1. the title of the document;
2. the nature of the document (e.g., interoffice memorandum, correspondence, report);
3. the author or sender;
4. the addressee;
5. the date of the document;
6. the name of each person to whom the original or a copy was shown or circulated;
7. the names appearing of any circulation list relating to the document;
8. the basis on which privilege is claimed; and

9. a summary statement of the subject matter of the document in sufficient detail to permit the court to rule on the propriety of the objection.

Q. Vague or Burdensome. Defendant may object to a particular interrogatory as vague or burdensome. Plaintiff cannot always determine in advance which interrogatories might truly be burdensome to defendant. It is anticipated that defendant will answer all interrogatories to the best of its ability and in good faith, preserving any bona fide objections if necessary. It is further anticipated that defendant will attempt to obtain clarification or delimiting of plaintiff's interrogatories from the undersigned (who stands ready and willing to do so) if the facts of the particular situation so require.

R. Singular/Plural. Words used in the plural shall also be taken to mean and include the singular. Words used in the singular shall also be taken to mean and include the plural.

S. "And" and "Or". The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

DEFINITIONS

Unless otherwise indicated, the following definitions shall apply to these discovery requests:

A. "Applicable Timeframe" means the period of time:
- -- beginning either on January 1, 1955, or one calendar year prior to the date on which you first arranged for disposal at the Site, or arranged with a transporter for transport for disposal at the Site, of any waste you owned or possessed (whichever is later); and
- -- ending on the date of your response to these discovery requests, including any supplemental response(s) required by Fed. R. Civ. P. 26(e).

B. "Chemical content," when referring to a substance includes, without limitation:
1. its chemical composition;
2. its state (e.g., solid, liquid, gaseous or any combination thereof);
3. the concentration of each element and compound in the substance;
4. its consistency and makeup, including without limitation, its common chemical name;
5. the volume, weight and common chemical name of each element and compound in such substance;
6. its elemental structure and its pH; and
7. the common term or code used in your shipping documents to identify each such substance.

C. "Clarke Inc." means Clarke, Inc., and each merged, consolidated, and acquired predecessor or successor (including sole proprietorships), parent, subsidiary, division, and affiliate, each past and present officer, director, employee, agent, servant, and representative of each such entity or individual, and each past and present attorney of each such entity or individual.

D. "Clarke Services" means Clarke Services, Inc., Clarke Sanitary Fill, Clarke's Complete Collection, and each merged, consolidated, and acquired predecessor or successor (including sole proprietorships), parent, subsidiary, division, and affiliate, each past and present officer, director, employee, agent, servant, and representative of each such entity or individual, and each past and present attorney of each such entity or individual.

E. "Contractor" means any person who acts as agent for, or on behalf or, any other person, whether or not for consideration, and includes subcontractors.

F. "Dick Clarke Co." means any business that Richard M. Clarke operated as a sole proprietorship (rather than a corporation) and includes all businesses -- operating under any name whatsoever -- that Richard M. Clarke operated where the business was not incorporated.

G. "Dispose of," "disposing" or "disposal" means to release, emit, discharge, deposit, inject, dump, pump, pour, empty, spill, store, leak, escape, leach, abandon, discard or place any substance so that it may enter the environment.

H. "Document" means all writings of any kind, including, without limitation, the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, notations of any conversations (including, without limitation, telephone calls, meetings, and other communications), bulletins, printed matter, computer printouts, teletypes, telefax, invoices, worksheets, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings and motion pictures), electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, recordings and computer memories), and all drafts, alterations, modifications, changes and amendments of any of the foregoing.

I. "Environment" means any surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

J. "Handle" or "handling" means the movement of any substance by any means.

K. "Hazardous substance" means any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14), pollutant or contaminant as defined in Section 101(33) of CERCLA, 42 U.S.C. { 9601(33), solid waste or hazardous waste as defined in Section 1004(5) and Section 1004(27) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6903(5) and 6903(27), contaminant as defined in Section 1401(6) of the Safe Drinking Water Act, 42 U.S.C. { 300f(6), or pollutant as that term is used in Section 301 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1311, and as that term is defined in Section 502(6) of that Act, 33 U.S.C. § 1362(6).

L. "Inspection" means the physical observation of any tangible matter.

M. "Person" shall have the meaning set forth in 42 U.S.C. § 9601(21).

N. "Release" has the meaning ascribed to that term by Section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(22).

O. Persons upon whom you "rely" for an Interrogatory answer means any and all of the following:

1. persons who are the source of the information upon which the answer is based; and

2. persons who have information which supports the answer.

P. "Refer to" or "refers to" means mentioning, discussing, making reference to or relating to in any way.

Q. "Relate to" or "relates to" means constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with or in any way pertaining to.

R. "Shipping document" means any shipping memo, bill of lading, purchase order, weigh ticket, disposal ticket, pick-up or delivery ticket, driver log, invoice, packing list, trip ticket, manifest, receiving report, shipping order and any similar shipping and transportation memorandum.

S. "Site" or "Skinner Site" means the Skinner Landfill Superfund Site located in Butler County, Ohio, in or near West Chester, Ohio, consisting of the approximately 67 acres of real property (and any buildings, structures and equipment) at that location formerly operated as a landfill and known generally as the Skinner Landfill. For the purpose of these discovery requests, the term "Site" includes both the Site as it has existed since August 1990 and the Site as it existed and operated before August 1990.

T. "Storage" or "storing" means the containment and/or keeping of a substance either on a temporary basis or for a period of years.

U. "Substance" means any liquid, semi-liquid, sludge, gaseous, solid, semi-solid, or other materials (including, without limitation, all residues in drums or other containers and all contact and non-contact water or process water employed in any chemical or industrial operation) that are, contain, or may contain chemicals or chemical, industrial, domestic or other by-products, test products, unused products, materials that may be recycled, mixtures, sewage, solid or hazardous waste, hazardous substances or a pollutant or a contaminant. "Substance" includes construction and demolition debris, waste and hazardous substances.

V. "Test" includes every sampling or analytical procedure (in situ or in a laboratory) to ascertain, characterize or measure the nature, type, amount, chemical content, chemical or physical properties or consistency of any substance.

W. "Treat," "treatment" or "treatment process" means any method, procedure or process by which a substance is treated, reduced in quantity, diluted, detoxified, neutralized, incinerated, recycled or mixed with other substances.

X. "Waste" means any "solid waste" as that term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(27), and includes any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities.

Y. "You" and "your" refers to Clarke Inc. and each merged, consolidated, and acquired predecessor or successor (including sole proprietorships), parent, subsidiary, division, and affiliate, each past and present officer, director, employee, agent, servant, and representative of each such entity or individual, and each past and present attorney of each such entity or individual.

INTERROGATORIES

1. For the Applicable Timeframe, for Clarke Inc. and any predecessor or successor businesses, in chronological order state:

(a) the nature of the business and any changes in the nature of the business operations, including the timeframes for any such changes;

(b) the locations that the business operated out of and the dates that the business operated out of each location;

(c) whether the business has been in continuous operation for the entire period, and if not, list the periods when operations ceased.

2. For the Applicable Timeframe, identify (as that term is defined in the "Definitions" Section) all persons who held shares in Clarke Inc. and any predecessor or successor businesses; the percentage of their shareholdings; and the timeframes in which they held their shares.

3. For the Applicable Timeframe, identify all officers and directors of Clarke Inc., and any predecessor or successor businesses, including their titles and the timeframes in which they held each such position.

4. For the Applicable Timeframe, identify all persons who operated, or assisted in the operation of, Clarke Inc., and any other predecessor or successor businesses.

5. For the Applicable Timeframe, identify each person employed by Clarke Inc. and any predecessor or successor businesses, including the dates of employment and the employee's responsibilities.

6. For the Applicable Timeframe, identify each person engaged as a contractor by Clarke Inc., and any predecessor or successor businesses, including the dates of service as a contractor and the contractor's responsibilities.

7. For the Applicable Timeframe, identify each person, employed or acting on behalf of Clarke Inc. or any predecessor or successor businesses, who negotiated or otherwise communicated or dealt with any other party regarding the handling, generation, treatment, transportation, storage or disposal of substances at or to the Skinner Site, and, with respect to each person identified, state the nature and purpose of those negotiations, communications or dealings.

8. For the Applicable Timeframe, describe each instance in which Clarke Inc. and any predecessor or successor businesses, directly or indirectly disposed of substances at, or, directly or indirectly, transported substances that ultimately were disposed of at, the Skinner Site, including, without limitation:

a) the date(s) that Clarke Inc. or any predecessor or successor businesses, received, transported or delivered such substance;

b) the identity and location of the person, business or facility from which each such substance was received;

c) if Clarke Inc. or any predecessor or successor businesses, did not deliver directly to the Skinner Site, identify the location where Clarke Inc. or any other predecessor or successor businesses, did deliver directly;

d) the chemical content of such substance;

e) the amount of such substance;

f) the trade name or common name of such substance;

g) the manner used to store and transport the substance, including the type(s) and labelling of container(s) used;

h) the identity of those individuals responsible for selecting, packing, dispatching or approving the shipment of such substance;

i) whether Clarke Inc. or any predecessor or successor businesses selected the Skinner Site as the place to take such substance; and

j) if Clarke Inc. and any predecessor or successor businesses, did not select the Skinner Site as the place to take such substance, please identify the person that did, and state the basis for that identification.

9. Identify and describe any and all tests or analyses performed on the substances identified in your Response 8. Include in your response:

a) a description of the nature of the tests or analyses;

b) the date(s) upon which such studies or analyses were conducted;

c) the identity of the persons who performed the tests or analyses;

d) the findings and conclusions of the tests or analyses; and

e) the identity of any reports or documents relating to such tests or analyses.

10. For the Applicable Timeframe, identify each business from which Clarke Inc. or any predecessor or successor businesses, hauled any substance of any kind to the Skinner Site.

11. For the Applicable Timeframe, identify each construction project for which Clarke Inc. or any predecessor or successor businesses, hauled any substance of any kind to the Skinner Site.

12. During the Applicable Timeframe, did Clarke Inc. or any predecessor or successor businesses, have any oral or written agreements relating to the Skinner Site with any person -- or any predecessor or successor in interest to any person -- listed as a plaintiff or defendant in the First Amended Complaint filed in the contribution case in the above-captioned action numbered C-1-97-0307/0308? (A copy of the First Amended Complaint in the contribution case is attached hereto.) If so, for each such agreement, please set forth:

a) the identities of the parties to each agreement;

b) the effective dates of each agreement;

c) the nature and substance of the agreement;

d) a listing of any benefits conferred or payments (including date of receipt, payor and amount) made or to be made pursuant to each such agreement; and

e) a listing of any benefits conferred or payments (including date of receipt, payor and amount) made or received, or to be made or received, pursuant to each such agreement.

13. Excluding the answer to Interrogatory Number 12, describe in detail all oral or written agreements between (1) Clarke Inc. and any other predecessor or successor businesses, and (2) any other party relating to the handling, generation, treatment, transportation, storage, or disposal of substances at or to the Skinner Site, including without limitation:

a) the identities of the parties to each agreement;

b) the effective dates of each agreement;

c) the nature and substance of the agreement;

d) a listing of any benefits conferred or payments (including date of receipt, payor and amount) made or to be made pursuant to each such agreement; and

e) a listing of any benefits conferred or payments (including date of receipt, payor and amount) made or received, or to be made or received, pursuant to each such agreement.

14. During the Applicable Timeframe, identify all communications and/or contacts between Richard M. Clarke and each of the following: Albert Skinner, Elsa Skinner Morgan, John Skinner, Ray Skinner, Gene Crow, Lloyd Gregory, Roger Ludwig, and Rodney Miller.

15. Excluding the answer to Interrogatory Number 14, during the Applicable Timeframe, identify all communications and/or contacts between any employee, agent, or contractor of Clarke Inc. and any predecessor or successor businesses, and each of the following: Albert Skinner, Elsa Skinner Morgan, John Skinner, Ray Skinner, Gene Crow, Lloyd Gregory, Roger Ludwig, and Rodney Miller.

16. Describe in detail the terms of the following transactions:

a) the incorporation of Clarke Inc.

17. Identify all annual reports and financial statements prepared and/or issued by Clarke Inc. and any predecessor or successor businesses, and for each such report and statement state who prepared them or approved them, and who presently possesses them. (Copies of all such reports and statements in lieu of an answer to this interrogatory will be sufficient.)

18. Describe all sources of income and the amount of such income of Clarke Inc. and any predecessor or successor businesses, for each year during the Applicable Timeframe.

19. State the total assets of Clarke Inc. and any predecessor or successor businesses, for each year during the Applicable Timeframe.

20. State whether Clarke Inc. has ever done business under any other name, sole proprietorship, partnership, corporation, or otherwise, and if so, identify each such name and entity, the dates of conduct of business under that name, and state whether: (1) if a corporation, it was registered as a corporation in any State for any purpose, and if so, in what State; (2) if a sole proprietorship, who owned it; and (3) if a partnership, who the partners were.

21. Does Clarke Inc. and any other predecessor or successor businesses, have any potential insurance coverage which may in whole or in part cover the claim(s) in this action?

22. If the answer to the previous interrogatory above is affirmative, please state for each such policy:

a) the name of the person insured;

b) the name and address of the insurance carrier(s);

c) the policy number or other identification number;

d) the effective dates of each policy; and

e) the nature and limits of the policy coverage.

23. Identify any permits or written or oral approvals from any federal, state or local governmental agency which were obtained by Clarke Inc. and any other predecessor or successor businesses, for the disposal, treatment, generation, storage or transport of hazardous substances.

24. State whether Clarke Inc. and any other predecessor or successor businesses, ever provided information to the Ohio Environmental Protection Agency ("OEPA") concerning hazardous substances or the disposal, treatment, generation, storage or transport of hazardous substances at or to the Skinner Site, and if so:

a) state what information was provided to the OEPA;

b) identify any documents you filed with the OEPA;

c) state whether Richard M. Clarke personally prepared the documents for submission or supervised and directed their preparation;

d) state whether the information provided was based on Richard M. Clarke's own personal knowledge;

e) state whether the information that you provided or that was provided at your direction was accurate at the time of submission;

f) state whether the records submitted to the OEPA were kept in the regular and ordinary course of your business;

g) state whether the documents submitted were required by law to be kept and submitted;

h) state whether you have reviewed the information in the records of the OEPA to determine whether it accurately reflects your submissions;

i) state whether the information in the records of the OEPA is in fact accurate, and if you think it is inaccurate state what information is inaccurate and the basis on which you claim inaccuracy and state what information would be accurate which should be reflected in those records.

25. Identify each person you expect to call as an expert witness at the trial of this case, and for each state:

a) the witness' expertise and qualifications;

b) each field in which the witness may be offered as an expert;

c) the subject on which the witness is expected to testify;

d) the substance of the facts and opinions to which the witness is expected to testify;

e) a summary of the grounds for each such opinion offered;

f) identify each person with whom the witness consulted or talked regarding conditions at the site or regarding his testimony;

g) identify all documents which the witness reviewed, was given, or relies upon in formulating the opinions the witness may give at trial of this case; and

h) identify all publications authored in whole or in part by such witness.

26. Identify each person not identified in your Response to the previous interrogatory whom you plan to call as a witness at trial, and as to each state:

a) the subject matter of his testimony; and

b) the factual basis for that testimony.

27. Identify each person upon whom you expect to rely as an expert but do not plan to call as a witness at the trial of this case, and as to each state his area of expertise.

28. State each and every fact which forms the basis for your contention that the Amended Complaint fails to state a cause of action upon which relief can be granted. Identify each person having knowledge of the matters addressed in this Interrogatory and each document relating to the matters addressed in this Interrogatory.

29. State each and every fact which forms the basis for your contention that the United States' claims are barred by the applicable statutes of limitation. Identify each person having knowledge of the matters addressed in this Interrogatory and each document relating to the matters addressed in this Interrogatory.

30. State each and every fact which forms the basis for your contention that the United States' claims are barred by estoppel and laches. Identify each person having knowledge of the matters addressed in this Interrogatory and each document relating to the matters addressed in this Interrogatory.

31. State each and every fact which forms the basis for your contention that the United States' "damages" are the result of independent, superseding and intervening causes. Identify each person having knowledge of the matters addressed in this Interrogatory and each document relating to the matters addressed in this Interrogatory.

32. Identify the person(s) who gathered the documents in response to Plaintiff's request for information pursuant to 42 U.S.C. § 9604 and the First Request for Production of Documents set forth below.

33. Identify each person whom Clarke Inc. has interviewed to investigate the claims made against Clarke Inc. in these actions.

34. Did Clarke Inc. and any predecessor or successor businesses, have a document retention policy? If so, describe it, indicating how documents were/are organized and categorized for purposes of the policy, when the policy was instituted, and the length of time that each type of document is retained.

35. For each interrogatory, identify:

a) who provided the information upon which the Response is based;

b) whether that person has personal knowledge of the facts contained in the Response; and

c) if the answer to part (b) of this interrogatory is negative, please identify the source of the information.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Each document that is identified, referred to or used in any way in responding to the United States' First Set of Interrogatories to Clarke Inc.

2. Each document that refers or relates to any visit made to the Skinner Site by any person, including, without limitation, any officer, employee, agent or contractor of Clarke Inc. and any predecessor or successor businesses.

3. Each document referencing or relating to the Site, including but not limited to any documents relating to the ownership and operation of the Site, the acceptance or disposal of substances at the Site, and the conditions at the Site.

4. Each document that was produced, exchanged or received in discovery or introduced as evidence in any other litigation relating to the Site.

5. Each document referencing or regarding wastes generated, stored, collected, transported, disposed, treated, recycled or released to the environment by or on behalf of Clarke Inc. and any predecessor or successor businesses, during the Applicable Timeframe, including but not limited to any documents regarding the generation and source, chemical content, trade name or common name, volume, method of storage and/or transportation, and method and location of disposal of such wastes.

6. Each document relating or referring to the generation, handling, treatment, transport, storage, disposal or receipt by Clarke Inc. and any predecessor or successor businesses, of any substances which may have been disposed of at the Skinner Site including, without limitation, each contract, purchase order, invoice, shipping document, manifest, bill of lading, check, trip ticket and financial record.

7. Each document relating to the use, disposal, transport, storage or treatment of substances at the Site.

8. All contracts or other documents relating to business transacted between Clarke Inc. and any predecessor or successor businesses, and any other person which relate to the Skinner Site.

9. Each document that refers or relates to the Skinner Site, and which refers or relates to any communication between Clarke Inc. and any predecessor or successor businesses, and any other person who may have owned or possessed any substance that was consigned, accepted for transport, or delivered, directly or indirectly, to the Skinner Site, including, without limitation, the plaintiffs (other than the United States) and defendants in these consolidated actions.

10. Each permit, application, administrative order or document issued by or submitted to any local, state or federal agency that refers or relates to any substance that you received, consigned, accepted for transport, or delivered, directly or indirectly, which may have been disposed of at the Skinner Site, including, without limitation, all correspondence which refers or relates to each such permit, application, order or document.

11. Each document relating to communications between Clarke Inc. and any predecessor or successor businesses, and federal, state or local governments regarding the Site.

12. The financial records of Clarke Inc. and any predecessor or successor businesses, regardless of whether those records have been audited, including, without limitation:

a) Financial statements during the Applicable Timeframe;

b) Income tax returns during the Applicable Timeframe; and

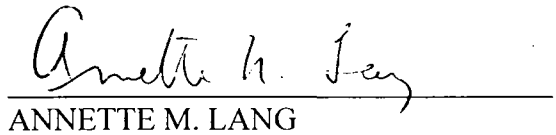
c) Any policies of insurance which <u>may</u> cover, in whole or in part, any claim(s) against you in this action.

13. Each document filed by Clarke Inc. and any predecessor or successor businesses, with the Ohio Secretary of State.

14. Each document relating to or referencing the incorporation of Clarke Inc.

Respectfully submitted,

W. Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Div.
U.S. Department of Justice



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Chicago, Illinois 60604

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2002, I caused a true copy of the foregoing **UNITED STATES' FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO CLARKE INC.** to be served by first-class mail, postage prepaid upon the following counsel of record:

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Services, Inc., and
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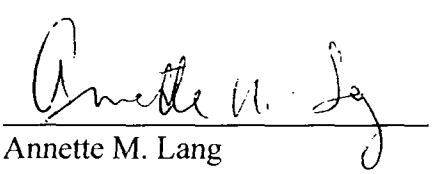


Annette M. Lang

FILED

SEP 12 1997

KENNETH J. MURPHY, Clerk
CINCINNATI, OHIO

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI, OHIO

THE DOW CHEMICAL COMPANY 2030 Dow Center Midland, MI 48674,	:	Civil Action Nos. 1-97-0307 Civil Action Nos. 1-97-0308 (consolidated cases)
and	:	
FORD MOTOR COMPANY Park Lane Towers East Suite 728 One Parklane Blvd. Dearborn, MI 48126,	:	**FIRST AMENDED COMPLAINT**
and	:	
GE AIRCRAFT ENGINES One Neuman Way MD T165A Cincinnati, OH 45215-6301,	:	
and	:	
MORTON INTERNATIONAL, INC. Morton International Building 100 North Riverside Plaza Randolph Street at the River Chicago, IL 60606-1596,	:	
and	:	
PPG INDUSTRIES, INC. One PPG Place 40 South Pittsburgh, PA 15272,	:	
and	:	

VELSICOL CHEMICAL CORPORATION :
2603 Corporate Avenue
Suite 100 :
Memphis, TN 38132,
Plaintiffs, :

v. :

ACME WRECKING CO., INC. :
3111 Syracuse Street
Cincinnati, OH 45206, :

and :

AERONCA, INC. :
1712 Germantown Road
Middletown, OH 45042-1716, :

and :

AMERICAN PREMIER UNDERWRITERS, INC. :
One East Fourth Street
Cincinnati, OH 45202, :

and :

AMERICAN STANDARD, INC. :
1466 Broadway
New York, NY 10036, :

and :

ANCHOR HOCKING CORPORATION :
P.O. Box 600
Lancaster, OH 43130-0600, :

and :

THE ANDREW JERGENS COMPANY :
2535 Spring Grove Avenue
Cincinnati, OH 45214-1773, :

and :

AVON PRODUCTS, INC. :
175 Progress Place
Cincinnati, OH 45246, :

and :

THE B. F. GOODRICH COMPANY :
4020 Kinross Lakes Parkway
Richfield, OH 44286, :

and :

CITY OF BLUE ASH :
4343 Cooper Road
Blue Ash, OH 45242-5699, :

and :

BROWNING-FERRIS INDUSTRIES :
OF OHIO, INC.
11563 Mosteller Road :
Sharonville, OH 45241,

:

and

:

BORDEN, INC.
630 Glendale-Milford Road :
Cincinnati, OH 45212-1105,

:

and

:

B. P. AMERICA, INC.
200 Public Square, 11-C :
Cleveland, OH 44114,

:

and

:

BUTLER COUNTY
130 High Street :
Hamilton, OH 45011,

:

and

:

CANADIAN OXY OFFSHORE :
PRODUCTION CO.
c/o Glenn Springs Holdings, Inc. :
P.O. Box 300
Tulsa, OK 74102, :

and :

CHAMPION INTERNATIONAL :
CORPORATION
One Champion Plaza :
Stamford, CT 06921,
:

and
:

CHEMICAL LEAMAN TANK LINES, INC.
P.O. Box 10 :
Ross, OH 45061-0010,
:

and
:

THE CINCINNATI ENQUIRER
312 Elm Street :
Cincinnati, OH 45202-2709,
:

and
:

CLARKE CONTAINER, INC.
2040 East Kemper Rd. :
Cincinnati, OH 45241-1804,
:

and
:

CLARKE SANITARY LANDFILL
9740 Cincinnati-Dayton Rd. :
West Chester, OH,
:

and
:

DICK CLARKE TRASH REMOVAL AND
DEMOLITION :
9740 Cincinnati-Dayton Rd.
West Chester, OH, :

and :

CLARKE'S COMPLETE COLLECTION :
9740 Cincinnati-Dayton Rd.
West Chester, OH, :

and :

CLARKE'S INCINERATORS, INC. :
2040 East Kemper Rd.
Cincinnati, OH 45241-1804, :

and :

CLARKE SERVICES, INC. :
9740 Cincinnati-Dayton Rd.
West Chester, OH, :

and :

CLERMONT WASTE COLLECTION INC. :
640 Sonny Lane
Cincinnati, OH 45244, :

and :

THE C.M. PAULA COMPANY :
7773 School Road
Cincinnati, OH 45249-1590, :

and :

COLUMBIAN CHEMICALS COMPANY :
c/o Glenn Springs Holdings, Inc.
P.O. Box 300 :
Tulsa, OK 74102,
:
and
:
CONSOLIDATED RAIL CORPORATION
2001 Market Street 16-A :
Two Commerce Square
Philadelphia, PA 19101-1416, :

and :

CYTEC INDUSTRIES, INC. :
Five Garret Mountain Plaza
West Paterson, NJ 07424, :

and :

THE DAVID HIRSCHBERG STEEL COMPANY :
211 Longworth Street
Lockland, OH 45215, :

and :

CITY OF DEER PARK :
4250 Matson Avenue
Deer Park, OH 45236, :

and :

E.I. DU PONT DE NEMOURS AND COMPANY :
D8068
1007 Market Street :
Wilmington, DE 19898,
:
and
:
CITY OF FAIRFIELD
C/O Mayor Robert J. Wolpert :
5350 Pleasant Avenue
Fairfield, OH 45014-3597, :

and :

FORMICA CORPORATION . :
10155 Reading Road
Cincinnati, OH 45241, :

and :

GENERAL MOTORS CORPORATION :
3044 W. Grand Boulevard
Room 12-149 :
Detroit, MI 48202,
and :

GEORGIA-PACIFIC CORPORATION :
4710 Dues Drive
Cincinnati, OH 45246, :

and :

VILLAGE OF GLENDALE :
Office of the Mayor
30 Village Square :
Glendale, OH 45246,
:

and
:

GLENN SPRINGS HOLDINGS, INC.
P.O. Box 300 :
Tulsa, OK 74102,
:

and
:

GLOBE VALVE COMPANY
P.O. Box 278 :
Delphi, IN 46923,
:

and
:

HENKEL CORPORATION
2200 Renaissance Blvd. :
Gulph Mills, PA 19406,
:

and
:

HILTON DAVIS COMPANY
2235 Langdon Farm Road :
Cincinnati, OH 45237,
:

and
:

INTERNATIONAL PAPER CORPORATION,
a/k/a MASONITE CORPORATION :
International Place I
6400 Poplar Avenue :
Memphis, TN 38197,
and :

JOHN F. BUSHELMAN CONSTRUCTION, INC. :
11980 Runyan Drive
Cincinnati, OH 45241, :

and :

JOHNSTON COCA-COLA BOTTLING :
GROUP , INC.
C/O Registered Agent :
CSC Lawyers Incorporating Service
16 East Broad Street :
Columbus, OH 43215,
:

and
:

JOHN J. WHITTON TRUCKING CO.
1478 Fitzpatrick Street :
Price Hill, OH 45204,
:

and
:

KING CONTAINER
7420 Jager Court :
Cincinnati, OH 45230,
:

and
:

KING CONTAINER SERVICES, INC.
2020 Stapleton Court :
Forest Park, OH 45240,
:

and
:

KING WRECKING
7420 Jager Court :
Cincinnati, OH 45230,
:

and
:

VILLAGE OF LINCOLN HEIGHTS
1201 Steffen Avenue :
Lincoln Heights, OH 45215,
:

and

LOCKHEED MARTIN CORPORATION :
7921 Southpark Plaza
Littleton, CO 80120, :

and :

CITY OF MASON :
c/o Cincinnati Commerce Center
600 Vine Street :
Cincinnati, OH 45202-2409,
:

and
:

CITY OF MADIERA
7141 Miami Avenue :
Cincinnati, OH 45243-2699,
:

and
:

MECCO, INC.
211 N. University Boulevard :
Middletown, OH 45042,
:

and
:

MILLENNIUM PETROCHEMICALS,
INC. :
7002 N. State Route 123
Franklin, OH 45005, :

and :

MOBIL OIL CORP. :
3225 Gallows Road, Room 4C912
Fairfax, VA 22037-0001, :

and :

MUNICIPALITY OF MONROE :
201 S. Main Street
Monroe, OH 45050, :

and :

MONSANTO COMPANY :
C/O Registered Agent
C.T. Corporation System :
815 Superior Ave., N.E.
Cleveland, OH 44114, :

and :

CITY OF MONTGOMERY :
10101 Montgomery Road
Montgomery, OH 45242, :

and :

MVM, INC. :
11997 Runyan Drive
Sharonville, OH 45241, :

and :

NEWELL CO. :
4000 Auburn Street
Rockford, IL 61101, :

and :

NEWBERRY CONSTRUCTION COMPANY :
10070 Windisch Road
West Chester, OH 45069, :

and :

OXY, USA, INC. :
c/o Glenn Springs Holdings, Inc.
P.O. Box 300 :
Tulsa, OK 74102,
:
and
:
THE PROCTER AND GAMBLE CO.
One Procter & Gamble Plaza :
Cincinnati, OH 45201,
and :

QUANTUM CHEMICAL CORPORATION, :
F/K/A NATIONAL DISTILLERS &
CHEMICALS CORP. :
P.O. Box 429549
Cincinnati, OH 45249, :

and :

QUEEN CITY BARREL COMPANY :
1937 South Street
Price Hill, OH 45204, :

and :

RALCORP HOLDINGS, INC. :
C/O Registered Agent
C.T. Corporation System :
815 Superior Avenue, N.E.
Cleveland, OH 44114, :

and :

CITY OF READING :
1000 Market Street
Reading, OH 45215, :

and :

RUMPKE SANITARY LANDFILL :
3882 Stuble Road
Groesbeck, OH 45251, :

and :

RUMPKE WASTE COLLECTION & :
DISPOSAL SYSTEMS
10795 Hughes Road :
Cincinnati, OH 45251,
:
and
:
RUMPKE COLLECTION & DISPOSAL
SYSTEM :
10795 Hughes Road
Cincinnati, OH 45251, :

and :

SEALY, INC. :
C/O Registered Agent
C.T. Corporation System :
815 Superior Avenue, N.E.
Cleveland, OH 44114, :

and :

SHELL OIL CO. :
910 Louisiana
One Shell Plaza, 47th Fl. :
Houston, TX 77002,
:
and
:
CITY OF SHARONVILLE
10900 Reading Road :
Sharonville, OH 45241,
:
and
:
SHELL CHEMICAL CO.
910 Louisiana :
One Shell Plaza, 47th Fl.
Houston, TX 77002, :

and :

CITY OF SILVERTON :
6860 Plainfield Road
Silverton, OH 45236-4095, :

and :

ELSA SKINNER-MORGAN :
8750 Cincinnati-Dayton Road
West Chester, OH 45069, :
and
:
STEELCRAFT MANUFACTURING COMPANY
9017 Blue Ash Road :
Cincinnati, OH 45242-6825,

and :

SUN OIL COMPANY d/b/a :
SUNOCO OIL CORP.
Legal, 17th Floor :
1801 Market St.
Philadelphia, PA 19103, :

and :

TEXACO, INC. :
1111 Bagby
Houston, TX 77210, :

and :

UNION CARBIDE CORP. :
1290 Hercules
Suite 202 :
Houston, TX 77058,
:
and
:
UNITED STATES AIR FORCE
Department of the Air Force :
1670 Air Force Pentagon
Washington, D.C. 20330-1678, :

and :

UNITED STATES INFORMATION AGENCY :
301 Fourth Street, S.W.
Washington, D.C. 20547, :

and :

UNITED STATES OF AMERICA :
10th St. & Constitution Ave., NW
Washington, D.C. 20530, :

and :

THE UNITED STATES DEPARTMENT OF DEFENSE
3E880 The Pentagon
Washington, D.C. 20301,

and

WILLIAM S. COHEN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF DEFENSE
3E880 The Pentagon
Washington, D.C. 20301,

and

THE UNITED STATES DEPARTMENT OF THE ARMY
104 Army Pentagon
Washington, D.C. 20310,

and

WATSON'S/J&J DISTRIBUTING CO.
c/o Corporate Statutory Services, Inc.
Cincinnati, OH 45202,

and

TOGO D. WEST, JR., IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE ARMY
104 Army Pentagon
Washington, D.C. 20310,

Defendants

FIRST AMENDED COMPLAINT

Plaintiffs, The Dow Chemical Company, Ford Motor Company, GE Aircraft Engines, Morton International, Inc., PPG Industries, Inc., and Velsicol Chemical Corporation, through their undersigned counsel, hereby allege.

PRELIMINARY STATEMENT

Plaintiffs' First Amended Complaint is filed pursuant to the leave granted Plaintiffs to add additional parties under paragraph 27 of the First Case Management Order of August 27, 1997 ("CMO"). By Order of June 3, 1997, the Court stayed the requirement of answering or otherwise responding to the original Complaint under Federal Rule of Civil Procedure 12. Paragraph 2 of the CMO of August 27th stayed the litigation altogether, including the requirement of answering or otherwise responding under Rule 12 to this First Amended Complaint, and directed all parties to participate in the Alternate Dispute Resolution ("ADR") process set forth in the CMO to attempt to settle disputed factual and legal issues at the Skinner Landfill Site. The new Defendants added in this First Amended Complaint are: City of Fairfield, Johnston Coca-Cola Bottling Group, Inc., Monsanto Company, Ralcorp Holdings, Inc., Sealy, Inc., United States Air Force and United States Information Agency.

INTRODUCTION

1. This action, which seeks relief with regard to a former landfill known as the Skinner Landfill, is brought pursuant to §§ 107 and 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9607, 9613. The new Defendants added in this First Amended Complaint are City of Fairfield, Johnston Coca-Cola Bottling Group, Inc., Monsanto Company, Ralcorp Holdings, Inc., Sealy, Inc., United States Air Force, and the United States Information Agency.

2. The Skinner Landfill Site (the "Site") is located in West Chester, an unincorporated area in Section 22 of Union Township, Butler County, Ohio. The Site, which occupies approximately 78 acres off the Cincinnati-Dayton Road, was operated from approximately 1934 to 1990 for the landfilling of a wide variety of materials. Materials deposited at the Site include demolition debris,

household and other municipal refuse, and a wide variety of chemical wastes, including paint wastes, ink wastes, creosote, pesticides, and other chemical wastes.

3. The United States Environmental Protection Agency ("EPA") placed the Site on the National Priorities List ("NPL") in September 1983 by publication in the Federal Register.

4. EPA subsequently performed a Phase I and Phase II Remedial Investigation to analyze the Site groundwater, surface water, soils and sediments. That investigation revealed the presence of numerous "hazardous substances," as that term is defined in §§ 101(14) of CERCLA, 42 U.S.C. § 9601(14), at the Site.

5. In April 1992, EPA made a Proposed Plan for remedial action at the Site available for public comment. Based on comments received at public meetings, EPA proposed implementing the first phase of the remedy, or an Interim Action Operable Unit ("Interim OU"). The Record of Decision ("ROD") for this Interim OU was signed by the Regional Administrator for EPA Region V on September 30, 1992. The Interim OU called for Site fencing, provision of an alternative water supply to potentially affected Site neighbors, and groundwater monitoring.

6. EPA issued a Unilateral Administrative Order ("UAO") in December 1992 to a group of potentially responsible parties ("PRPs"), including all the Plaintiffs to this action, to perform the actions set forth in the 1992 ROD. Pursuant to the UAO, a group of PRPs, including all the Plaintiffs to this action, performed the actions set forth in the 1992 ROD.

7. EPA then issued a ROD for the second and final phase of the remedy, or Operable Unit 2 ("OU2"), on June 4, 1993.

8. On March 29, 1994, a group of PRPs, including all the Plaintiffs to this action, signed an Administrative Order on Consent for Remedial Design, in which the PRPs agreed to fund all work

necessary to prepare a complete remedial design for the Site consistent with the remedy selected for OU2.

9. Certain PRPs, including all the Plaintiffs to this action, agreed among themselves to function as an organized entity called the Skinner Landfill PRP Group for the purpose of implementing the Administrative Order on Consent for Remedial Design.

10. The Remedial Design pursuant to the OU2 ROD was completed in June of 1996.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. §§ 1331, 1367, and 2201, and §§ 107 and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b).

12. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) and (c), and §§ 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), because the releases or threatened releases of hazardous substances that give rise to these claims occurred in this district and division, because the real property which is the subject of this action is located within this district and division, and because a substantial part of the events, acts or omissions giving rise to these claims occurred within this district and division.

13. This Court has pendent jurisdiction over Plaintiffs' common law claims for equitable restitution and equitable contribution

PARTIES

14. Plaintiffs, The Dow Chemical Company, Ford Motor Company, GE Aircraft Engines, Morton International, Inc., PPG Industries, Inc. and Velsicol Chemical Corporation, are each a "person" as defined under § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. Defendants are either individuals, corporations, or unincorporated businesses organized under the laws of the State of Ohio or the laws of a foreign state, municipal governments, or federal entities.

16. Each of the Defendants is a "person" as defined by § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Each of the Defendants is a person, or a successor-in-interest thereto, who arranged for the transport, disposal, or treatment of its waste, which waste was disposed of at the Site, or transported waste to the Site. Defendant Elsa Skinner is also the present owner and a former operator of the Site.

CLAIMS FOR RELIEF

COUNT I: CERCLA § 107 COST RECOVERY

18. Plaintiffs incorporate herein all of the allegations set forth above as if fully restated here.

19. Defendants are each "persons" within the meaning of § 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. The Site was at all relevant times hereto a "facility" within the meaning of § 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. Upon information and belief, materials used, handled, stored and disposed of at, and/or transported to, the Site, were or contained "hazardous substances" as defined in § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. A "release" or "threatened release" of hazardous substances from the Site has occurred and continues to occur, and at all times relevant hereto was occurring, within the meaning of § 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23. Upon information and belief, each Defendant or a predecessor-in-interest thereto, disposed, arranged for disposal or treatment, transported, accepted for transport, or arranged for the transport for disposal or treatment at the Site of "hazardous substances," within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Defendant Elsa Skinner is the "owner" of the Site and "owned and operated" the Site at the time of disposal of hazardous substances there, within the meaning of § 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

25. Plaintiffs have incurred costs in excess of $2 million, and continue to incur costs, in connection with actions taken in "response" to the release or threatened release of hazardous substances at the Site, within the meaning of § 101(25) of CERCLA, 42 U.S.C. § 9601(25), including, but not limited to, the costs of implementing the Unilateral Administrative Order, the Administrative Order On Consent for Remedial Design, and other administrative costs.

26. Plaintiffs' actions taken at the Site and the response costs incurred or to be incurred incident thereto, were necessary and undertaken in a manner consistent with the National Contingency Plan, which is promulgated pursuant to § 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300 et seq.

27. Plaintiffs have satisfied any and all conditions precedent to the undertaking of response actions, the incurrence of response costs, and the recovery of those costs under § 107(a) of CERCLA, 42 U.S.C. § 9607(a).

28. Pursuant to § 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable, jointly and severally, to Plaintiffs for all past, present and future response costs, including costs and prejudgment interest, incurred by Plaintiffs at the Site.

COUNT II: CERCLA § 113 CONTRIBUTION

29. Plaintiffs incorporate herein all of the allegations set forth above as if fully restated here.

30. Any person who has or will incur response costs may seek contribution from any other person who is liable or potentially liable under § 107(a) of CERCLA, 42 U.S.C. § 9607(a).

31. Defendants are strictly liable for response costs at the Site under § 107(a) of CERCLA, 42 U.S.C. § 9607(a).

32. Plaintiffs are entitled to contribution from Defendants under § 113(f) of CERCLA, 42 U.S.C. § 9613(f), for each Defendant's equitable share of all past and future response costs and damages incurred by Plaintiffs and for the response actions associated with the Site.

COUNT III: DECLARATORY RELIEF

33. Plaintiffs incorporate herein all of the allegations set forth above as if fully restated here.

34. An actual, substantial, and justiciable controversy exists between Defendants and Plaintiffs regarding their respective rights and obligations for the response costs that have been and will be incurred in connection with the release and/or threatened release of hazardous substances at the Site.

35. Plaintiffs seek a declaratory judgment against Defendants under § 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding Defendants jointly and severally liable for response costs incurred and to be incurred by Plaintiffs at the Site that will be binding in any subsequent action to recover further response costs or damages.

36. Pursuant to § 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration from this court that Defendants are liable to Plaintiffs, jointly

and severally, for all, or Defendants' equitable share of, the response costs and damages incurred or to be incurred by Plaintiffs at the Site.

COUNT IV: EQUITABLE RESTITUTION

37. Plaintiffs incorporate herein all of the averments set forth above as if fully restated here.

38. To date, Plaintiffs have incurred response costs, including but not limited to the costs of implementing the Unilateral Administrative Order and the Administrative Order on Consent for Remedial Design, and other expenses, including, but not limited to attorneys' fees, experts' fees and administrative costs, of over $2 million.

39. By expending over $2 million for these activities, Plaintiffs unofficiously conferred a benefit upon Defendants in the amount of at least $2 million.

40 Retention by Defendants of this benefit in excess of $2 million would be contrary to fundamental principles of justice and equity and would unjustly enrich Defendants.

41. Plaintiffs are entitled to a judgment against Defendants for equitable restitution in the amount of each Defendant's equitable portion of the over $2 million in incurred costs.

COUNT V: EQUITABLE CONTRIBUTION

42. Plaintiffs incorporate herein all of the averments set forth above as if fully restated here.

43. The obligation to expend at least $2 million in costs and expenses associated with the Site, and to continue to expend money to respond to contamination at the Site is a common legal obligation owed by Plaintiffs and Defendants

44. Defendants have failed and continue to fail to contribute their equitable portion of the costs and expenses paid and to be paid by Plaintiffs.

45. Defendants have breached their obligations with respect to the Site and are liable to Plaintiffs to pay their pro rata share of the resulting liability.

46. Consistent with fundamental principles of justice and equity, Plaintiffs have a right of contribution, arising under state common law and/or statutory law.

47. Plaintiffs are entitled to contribution from Defendants in the amount of each Defendant's equitable portion of the costs incurred and to be incurred by Plaintiffs at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Enter a judgment against Defendants that Defendants are jointly and severally liable under § 107 of CERCLA, 42 U.S.C. § 9607, for all response costs and damages Plaintiffs have incurred in connection with the release and/or threatened release of hazardous substances at, onto, or from the Site in an amount according to the proof at trial, plus attorney's fees, costs, and prejudgment interest;

B. In the alternative, enter a judgment against Defendants, pursuant to § 113(f) of CERCLA, 42 U.S.C. § 9613(f), for their fair, equitable, and proportionate contribution for all response costs and damages that Plaintiffs have incurred in connection with the release and/or threatened release of hazardous substances at, onto, or from the Site in an amount according to the proof at trial, plus attorney's fees, costs, and prejudgment interest;

C. Enter a declaratory judgment that Defendants are jointly and severally liable under § 107 of CERCLA, 42 U.S.C. § 9607 and under 28 U.S.C. § 2201, for all future response costs and damages resulting from the release and/or threatened release of hazardous substances at, onto, or from the Site, including attorney's fees, costs and prejudgment interest;

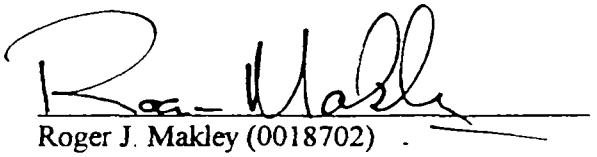
D. In the alternative, enter a declaratory judgment against Defendants, pursuant to § 113(f) of CERCLA, 42 U.S.C. § 9613(f) and 28 U.S.C. § 2201, for their fair, equitable and proportionate share of all future response costs and damages resulting from the release and/or threatened release of hazardous substances at, onto, or from the Site, including attorney's fees, costs and prejudgment interest;

E. Enter a judgment that Defendants are liable for equitable restitution in the amount of each Defendant's equitable portion of the response costs incurred by Plaintiffs at the Site.

F. Enter a judgment against Defendants for their equitable portion of the costs incurred and to be incurred by Plaintiffs at the Site.

G. Enter a judgment against Defendants for Plaintiffs' costs, attorney's fees, and interest, and such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,



Roger J. Makley (0018702)
Trial Attorney
33 West First Street, Suite 600
Dayton, Ohio 45402
Telephone: (937) 223-8177

ATTORNEY FOR PLAINTIFFS

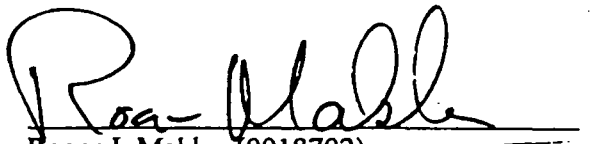
Of Counsel:

Karl S. Bourdeau
Beveridge & Diamond, P.C.
1350 I Street, N.W.
Suite 700
Washington, DC 20005
(202) 789-6019
(202) 789-6041

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable to a jury.

Respectfully submitted,



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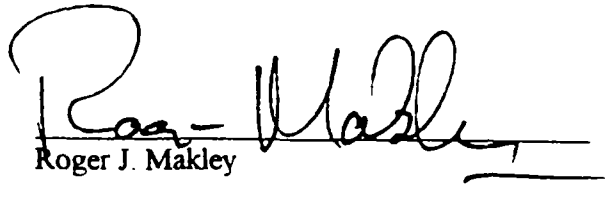

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