

BRETT L. TOLMAN (#8821), United States Attorney
DANIEL D. PRICE (#2646), Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT 84111
(801) 325-3234 (PHONE) (801) 524-6924 (FAX)
dai

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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BY D. MARK JONES, CLERK

DEPUTY CLERK

RACHEL JACOBSON (*Pro hac vice*)
Senior Attorney, Environmental Enforcement Section
United States Department of Justice
601 D Street, N.W., Room 6530
Washington, D.C. 20004
(202) 514-5474 (PHONE) (202) 616-6583 (FAX)
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Attorneys for the United States of America

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>UNITED STATES OF AMERICA <i>Plaintiff,</i></p> <p>vs.</p> <p>KENNECOTT UTAH COPPER CORPORATION, <i>Defendant.</i></p>	<p>Case No.</p> <p>COMPLAINT</p> <p>Case: 2:08cv00122 Assigned To : Campbell, Tena Assign. Date : 2/14/2008 Description: USA v. Kennecott Utah Copper Corporation</p>
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Plaintiff, the United States of America, by its undersigned attorneys, by the authority of the Attorney General of the United States, and at the request of the United States Department of the Interior, Fish and Wildlife Service ("FWS"), alleges as follows:

NATURE OF ACTION

1. This is a civil claim for natural resource damages brought pursuant to the

Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. §§ 9601 *et seq.* with respect to the release of hazardous substances from the Kennecott Utah Copper Corporation (“KUCC”) facility (“Site”) located near Magna, Utah, and the resulting injury to natural resources.

2. KUCC operates a smelter, refinery and mill tailings impoundment at the north end of its property located near Magna, Utah, on the south shore of Great Salt Lake, west of Salt Lake City, Utah. The KUCC facility has been used to process copper, gold and silver-bearing ores.

3. Releases of hazardous substances from the Site include, but are not limited to, selenium, copper, arsenic, lead, zinc, and cadmium. The releases of these hazardous substances have resulted in injury to natural resources, including migratory birds, and their supporting ecosystem which includes freshwater wildlife habitats, wetlands, marshes, mudflats, playas, riparian areas, sediments, and freshwater ponds, as well as adjacent upland areas. Groundwater contaminated by KUCC’s operations has been released from the Site through artesian springs into areas that serve as fish and wildlife habitats.

4. This Complaint seeks recovery of natural resource damages and compensation to the public for losses resulting from injury to natural resources resulting from releases of hazardous substances from the KUCC Site.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action and the parties hereto pursuant to Sections 106, 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9606, 9607 and 9613(b), and 28 U.S.C. §§ 1331, 1345, and 1367.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and

Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the KUCC facilities are located, the defendant resides, and the releases of hazardous substances which are the subject of this action occurred in this judicial district.

PLAINTIFF

7. Plaintiff is trustee for natural resources injured as a result of releases of hazardous substances pursuant to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A).

8. The President has designated the Secretary of the Interior as trustee for various natural resources. *See* Exec. Order No. 12,580, as amended by Exec. Order No. 12,077, 61 Fed. Reg. 45871 (Aug. 28, 1996); 40 C.F.R. § 300.600(b)(2). Federal trusteeship for the Site includes, but is not limited to, migratory birds and their supporting ecosystems and certain federally managed water resources.

DEFENDANT/PREDECESSORS-IN-INTEREST

9. Defendant KUCC is a corporation organized under the laws of Delaware and maintains corporate headquarters in Salt Lake City, Utah. KUCC is actively mining, milling, and smelting ore in the Oquirrh Mountains south of the Great Salt Lake. KUCC's operation principally includes: (i) a large open pit copper mine (the "Bingham mine") and associated waste rock dumps; (ii) a concentrator which processes ore from the Bingham pit; (iii) a smelter where copper anodes are produced from copper concentrate; (iv) a refinery that produces copper cathodes and precious metals including gold and silver; (v) a large tailings impoundment near the Great Salt Lake (the "North Tailings Facility") where tailings from the concentrator are slurried; (vi) conveyance systems connecting all the preceding facilities; and (vii) miscellaneous and ancillary facilities (historic, environmental response, or operation-related).

10. KUCC and its corporate predecessors have had extensive mining operations in the historic Bingham Canyon mining district, which has now been subsumed into the Bingham mine, since the beginning of the 20th century. The corporate history of KUCC is as follows.

11. Utah Copper Corporation ("Utah Copper") was first incorporated in Colorado in 1903 and reorganized in 1904 as a New Jersey corporation. In 1910 Boston Consolidated Mining Company merged into Utah Copper Company.

12. Kennecott Copper Corporation ("Kennecott Copper NY") was incorporated in New York in 1915 as a holding company for the Guggenheim family's copper properties. Kennecott Copper NY acquired 25% of Utah Copper stock on December 14, 1915, and increased its holdings to 76% in April 1923, through a stock exchange. In 1936, Kennecott Copper NY organized the Copper Corporation of Utah, which on November 9, 1936, acquired Utah Copper by merger. Later that month Kennecott Copper NY acquired all of the remaining stock of Utah Copper, making Utah Copper a wholly owned subsidiary of Kennecott Copper NY.

13. Utah Copper was dissolved in 1946 and its assets were transferred to Kennecott Copper NY. In 1947 the Utah Copper Division was officially organized as an operating division of Kennecott Copper NY. The Utah Copper Division of Kennecott Copper NY continued Utah Copper's operations into the future even as the corporation's name was changed, a merger occurred, and the assets of the Utah Copper Division were transferred and assigned as follows.

a. Kennecott Copper NY's name was changed to Kennecott Corporation in 1980.

b. Kennecott Copper NY, then known as Kennecott Corporation, merged with a subsidiary of The Standard Oil Company of Ohio ("SOHIO") in 1981. As a result of the

merger Kennecott Copper NY, then known as Kennecott Corporation, became a wholly owned subsidiary of SOHIO.

c. On December 17, 1986, another Kennecott Corporation was organized under the laws of Delaware as a subsidiary of SOHIO ("Kennecott DE").

d. On December 31, 1986, Kennecott Copper NY, then known as Kennecott Corporation, changed its name to Kennecott Mining Corporation.

e. On May 1, 1987, the Utah Copper Division's Bingham Canyon assets were transferred from Kennecott Copper NY, then known as Kennecott Mining Corporation, to Kennecott DE. Kennecott DE assumed all liabilities of Kennecott Copper NY (then known as Kennecott Mining Corporation) "which may have arisen or which may arise from the operation of the Bingham Canyon open pit mine and related facilities."

f. On May 11, 1987, Kennecott Copper NY, then known as Kennecott Mining Corporation, changed its name to Industrial Holdings Corporation.

g. The British Petroleum Company PLC ("BP") acquired SOHIO in 1987 and formed BP Minerals America. Kennecott DE's Utah Copper Division then became Kennecott Utah Copper, an operating division of BP Minerals America.

14. RTZ Corporation PLC ("RTZ") purchased SOHIO's mineral division, including Kennecott Utah Copper, in 1989. The purchase was completed in a series of steps.

a. Usever, Inc. ("Usever") was incorporated in Delaware as a subsidiary of RTZ on March 7, 1989. Usever was to act as the parent of numerous subsidiary companies which would receive various assets and stock from SOHIO. One such subsidiary was Gazelle Corporation ("Gazelle"), also a Delaware corporation.

b. In June 1989, Kennecott DE transferred the Bingham Canyon real property assets of Kennecott Utah Copper to SOHIO, Kennecott DE's parent corporation. SOHIO then assigned those real properties to Gazelle. The remaining Bingham Canyon assets, including real, personal or mixed, tangible or intangible property, were conveyed directly from Kennecott DE to Gazelle pursuant to a Comprehensive Bill of Sale dated June 30, 1989. Kennecott DE changed its name to Service Station Holdings, Inc. on July 1, 1989.

c. On June 30, 1989, Usever changed its name to Kennecott Corporation. On that same day, Gazelle changed its name to Kennecott Utah Copper Corporation, which is the named defendant in this action ("KUCC"). Gazelle is a wholly-owned subsidiary of Kennecott Corporation, which in turn is a wholly-owned subsidiary of RTZ Corporation PLC.

SITE DESCRIPTION AND HISTORY

15. In 1986 the State of Utah filed a complaint in the United States District Court for the District of Utah (Civil Action No. 86-C-0902G) seeking natural resource damages for injuries to the groundwater impaired by releases of hazardous substances from the past mining operations at or near the Bingham mine and the past diversion of the flow of Bingham Creek by KUCC or its corporate predecessors. That action was resolved by a consent decree ("Utah NRD CD") among the State and its Trustee for the State's natural resources, the Salt Lake County Water Conservancy District which intervened in that action, and KUCC. The Utah NRD CD was approved and entered by the Court on August 21, 1995.

16. In the early 1990's the Environmental Protection Agency ("EPA") began a phased process for addressing environmental cleanup at the more extensive KUCC mining and mineral processing operations, which were divided into North and South Zones, each containing several

operable units. There have been four Records of Decision (RODs) completed by EPA and approved by the State of Utah for the Kennecott North and South Zone sites. The fourth and final ROD, issued by EPA on September 26, 2002, covers the entire North Zone and all remaining operable units in the South Zone including Pine Canyon, Tooele County mine drainage, and the Precipitation Plant. The final ROD addresses, inter alia, the smelter and refinery area, the area of the old waste water treatment plant sludge ponds, and the tailings ponds located at the north end of the KUCC property. KUCC is implementing the remedy for the North Zone as set forth in the final ROD.

CERCLA CLAIM

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

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (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,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport

to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for

(5) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; . . .

18. The Site, including its wetlands, surface and sub-surface soils, and water, is a "facility," within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

19. The substances contaminating natural resources at the Site are "hazardous substances," within the meaning of Sections 101(14), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9604(a), and 9607(a).

20. There was a "release" or "threatened release" of hazardous substances into the environment at and from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

21. Hazardous substances were "disposed" of at the Site, within the meaning of Sections 101(14), 101(29) and 107(a) of CERCLA, 42 U.S.C. § § 9601(14), 9601(29) and 9607(a).

22. At all times relevant to this Complaint, KUCC and one or more of its corporate predecessors owned and operated the Site within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

23. KUCC and one or more of its corporate predecessors are "persons," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24. KUCC and one or more of its corporate predecessors are liable under Section 107(a)(2), as the owner and operator of the Site at the time hazardous substances were disposed of thereon.

25. KUCC is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as a current owner and operator of the Site.

26. The release of hazardous substances from the Site owned and operated by KUCC and one or more of its corporate predecessors caused injury to, destruction of, and loss of natural resources at the Site, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

27. The United States has incurred and continues to incur costs related to the assessment of the loss of natural resources resulting from the release of hazardous substances at the Site.

28. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607(a), Defendant KUCC is liable to Plaintiff the United States for damages for injury to, destruction of, and loss of natural resources and services resulting from the release of hazardous substances at or from the Site, including the loss of use and costs of restoration, replacement, or acquisition of equivalent resources and for the costs of assessing such injury and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Enter a judgment against Defendant Kennecott Utah Copper Corporation for liability to the United States pursuant to CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), for all damages for injury to, destruction of, and loss of natural resources at the Site including the unreimbursed past, present, and future costs of assessing such damages, the cost of restoring, replacing, and/or acquiring the equivalent of those injured resources and the services they provide, and the past, present, and future diminution in value of those resources pending restoration or replacement, in an amount to be proven at trial;
- (2) Enter a judgment against Defendant Kennecott Utah Copper Corporation in favor of the United States for all costs of this action, including attorney's fees; and
- (3) Award the United States such other and further relief as this Court may deem appropriate.

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Assistant Attorney General
Environment and Natural Resources Division

~~RACHEL JACOBSON (*Pro hac vice*)~~
Senior Attorney, Environmental Enforcement
Section

United States Department of Justice
601 D Street, N.W., Room 6530
Washington, D.C. 20004
(202) 514-5474 (PHONE)
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BRETT L. TOLMAN (#8821), United States
Attorney

DANIEL D. PRICE (#2646), Assistant United
States Attorney

185 South State Street, Suite 400
Salt Lake City, UT 84111
(801) 325-3234 (PHONE)
(801) 524-6924 (FAX)

OF COUNSEL:

Dana Jacobson, United States Department of the Interior