

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BLACKSBURG COUNTRY CLUB, INC.

Defendant.

Civ. No. 7:12-CV-00087

COMPLAINT

The United States of America, by authority of the Attorney General through his undersigned attorneys, and at the request and on behalf of the United States Department of the Interior ("DOI"), acting through the 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 releases of hazardous substances ("Release") caused by Defendant Blacksburg Country Club, Inc. ("BCC") at and from BCC's golf course in Blacksburg, Virginia on or about July 9, 2007.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this claim pursuant to 28

U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b), because the Release and the resulting damages took place within this judicial district.

PARTIES

4. Pursuant to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), Plaintiff United States is a trustee for natural resources injured as a result of the Release.

5. Defendant Blacksburg Country Club, Inc. is a non-profit corporation organized under the laws of the Commonwealth of Virginia with its principal place of business located on Clubhouse Road in Blacksburg, Virginia.

GENERAL ALLEGATIONS

6. The President has designated the Secretary of the Interior as the 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). The trusteeship of the Secretary of the Interior includes, but is not limited to, the following natural resources and their supporting ecosystems: threatened and endangered species, migratory birds, certain anadromous fish and certain federally managed water resources.

7. The Regional Director of the FWS, Region 5, has been designated by the Secretary of the Interior as the authorized official for natural resource damage assessment activities relating to the Release.

8. BCC operates a golf course for recreational use by its members and guests. On or about July 9, 2007, a BCC employee discharged three chemical herbicides into the North Fork of the Roanoke River while filling a 150 gallon sprayer. The three herbicides were Chipco

Signature (dry fungicide), Syngenta Daconil ZN (liquid fungicide), and Syngenta Primo Maxx (liquid plant growth inhibitor), each of which contains hazardous substances.

9. The July 9, 2007 release of hazardous substances resulted in injury and/or damage to natural resources under the trusteeship of DOI and FWS; namely, the death of an estimated 169 Roanoke logperch, a federally endangered species. As a result of the Release, DOI has incurred expenses responding to and assessing the injury to natural resources and will incur additional such expenses in the future.

10. Under Section 107 of CERCLA, 42 U.S.C. § 9607, and 43 C.F.R. Part 11, the Secretary of the Interior, in his role as a natural resource trustee, is entitled to recover damages for injury to natural resources, including (1) the cost to restore, replace, or acquire the equivalent of such natural resources; (2) the compensable value of lost services resulting from the injury to resources; and (3) the reasonable cost of assessing injury to the natural resources and the resulting damages.

CLAIM FOR RELIEF
Natural Resource Damages Under CERCLA

11. The allegations set forth in paragraphs 1 through 10 are re-alleged and incorporated herein by reference.

12. 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, . . .

(4) . . . 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 -

(C) 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; . . .

13. Defendant BCC is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

14. The golf course owned and operated by BCC from which hazardous substances were released on or about July 9, 2007, is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

15. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were “released” from the facility into the “environment” within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (8).

16. Defendant BCC is within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

17. The release of hazardous substances from the facility operated by BCC caused injury to, destruction of, and loss of natural resources, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

18. The natural resources that have been injured, destroyed, or lost as a result of the Release of hazardous substances from Defendant BCC’s facility include “natural resources” as that term is defined in 42 U.S.C. § 9601(16), for which the United States is a trustee.

19. The United States has incurred and continues to incur costs related to the assessment of the loss of natural resources for which the United States is a trustee, resulting from the Release of hazardous substances by BCC.

20. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607(a), Defendant BCC is jointly and severally liable to the United States for damages for injury to, destruction of, and loss of natural resources for which DOI is a trustee, including the loss of use and costs of restoration, replacement, or acquisition of equivalent resources resulting from the Release of hazardous substances from the facility operated by Defendant BCC, and for the United States' unreimbursed costs of assessing such injury and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Enter a judgment against BCC, 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 within the trusteeship of the United States resulting from the July 9, 2007 release of hazardous substances by BCC, 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 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 BCC 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,

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