

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, and )  
STATE OF OHIO, ex. rel., Michael )  
DeWine, Ohio Attorney General, )

Plaintiffs, )

v. )

RUTGERS ORGANICS CORPORATION, )

Defendant. )  
)  
)  
)  
\_\_\_\_\_ )

CIVIL ACTION NO.

**COMPLAINT**

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States, and at the request of and on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”) and the Secretary of the U.S. Department of the Interior (acting through the U.S. Fish and Wildlife Service, or “FWS”), and the State of Ohio, ex. rel., Michael DeWine, Ohio Attorney General, at the request of the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) (collectively “Plaintiffs”), allege the following:

**STATEMENT OF THE CASE**

1. This is a civil action brought pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (“CERCLA”), and Section 311 of the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act” (“CWA”), 33 U.S.C. § 1321), against Rutgers Organics

Corporation (the “Defendant”). The United States and the State seek: (1) recovery of unreimbursed costs incurred for response activities undertaken at the Nease Chemical Superfund Site in Columbiana and Mahoning Counties, Ohio (“Site”); (2) injunctive relief to remedy conditions that may pose an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened release of hazardous substances into the environment at or from the Site; and (3) damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, controlled by, or appertaining to the United States and the State of Ohio, resulting from releases of hazardous substances to portions of a neighboring property referred to as the Former Crane-Deming Property, the Site’s underlying ground water aquifers, Feeder Creek, portions of Middle Fork Little Beaver Creek, and supporting ecosystems, where natural resources have been affected directly or indirectly by the release of hazardous substances from the former Nease Chemical facility (the “Assessment Area”), including the reasonable costs of assessing such injury, destruction, or loss.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 9613(b), 33 U.S.C. § 1321(n), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Northern District of Ohio pursuant to 42 U.S.C. § 9613(b), 28 U.S.C. § 1391(b) and Local Rule 3.8(b) because the threatened and actual releases of hazardous substances, and resulting injuries that are the subject of this action, occurred in this district.

### **PLAINTIFFS**

4. Plaintiff is the United States of America, on behalf of the Administrator of the U.S. EPA and the Secretary of the U.S. Department of the Interior, acting through the FWS.

Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Executive Order 12580, and the National Contingency Plan (“NCP”), 40 C.F.R. § 300.600, the Secretary of the Interior, acting through the FWS, has been delegated authority to act as Federal Trustee for certain natural resources, including those impacted by the releases of hazardous substances into or within the Assessment Area.

5. Plaintiff is the State of Ohio (“State”), on behalf of the Ohio EPA. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), and 40 C.F.R. § 300.605, the Governor of the State has designated Ohio EPA as State Trustee for natural resources, including those impacted by the releases of hazardous substances into or within the Assessment Area.

### **DEFENDANT**

6. Defendant Rutgers Organics Corporation is a corporation organized under the laws of Pennsylvania.

7. Defendant is the current owner of the Site, from which there has been a release, or a threatened release, of a hazardous substance which has caused the incurrence of response costs.

8. At all relevant times, Defendant and/or its predecessor, Nease Chemical Company, owned and/or operated the Site, from which there has been a release, or a threatened release, of a hazardous substance which has caused the incurrence of response costs.

9. The Defendant is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

### **GENERAL ALLEGATIONS**

10. The Nease Chemical Superfund Site is located about two and a half miles northwest of Salem, Ohio. The Site includes the former Nease Chemical facility property, which covers about 44 acres and contains five former wastewater treatment ponds and areas of

contaminated soil. The former facility property is bounded by small light-industrial operations along Allen Road to the east and northeast, residential homes along State Route 14, and wooded areas and pasture lands to the north. The Salem Wastewater Treatment Plant is situated approximately 2,400 feet east of the former facility area.

11. Runoff from the former Nease facility property migrates to the main surface water body in the area, the Middle Fork Little Beaver Creek, located about 1,800 feet east of the former facility property. The Middle Fork Little Beaver Creek originates upstream of the former facility area in Salem, Ohio, and flows north for about five miles, turns and flows eastward and then southeastward. The runoff migrates to the Middle Fork Little Beaver Creek primarily via a tributary of the Middle Fork Little Beaver Creek, known as “Feeder Creek,” that runs through the former facility property and joins the Middle Fork Little Beaver Creek at approximately River Mile (“RM”) 37.6.

12. Contaminated groundwater is located under the former facility property and migrates towards the east, beneath the adjacent industrial property (often shown in Site documents as the “Crane-Deming Company”), and to the southeast. The former Crane-Deming facility also has some contaminated soil in areas on the west side of the building where shallow groundwater seeps to the surface.

13. From 1961 until 1973, a portion of the Site was owned and operated by the Nease Chemical Company as a chemical manufacturing plant producing specialty chemicals such as pesticides, fire retardants, household cleaning compounds and chemical intermediates used in agricultural, pharmaceutical and other chemical products. Some wastes from the plant processes were put into 55-gallon drums, which were buried on-site. Five unlined ponds (designated Ponds 1, 2, 3, 4 and 7) were used for the treatment and storage of process wastewater. After settling in

the ponds, neutralized liquids were discharged to the Salem Wastewater Treatment Plant from the late 1960s to 1973. Following notification by Ohio EPA of wastewater violations, Nease Chemical Company agreed in a Consent Judgment in 1973 to discontinue manufacturing operations at the facility until such time as it obtained a new wastewater permit from Ohio EPA. Subsequent to the Consent Judgment, Nease decided to close the facility. Nease neutralized and removed water in the various ponds to the Salem Wastewater Treatment Plant and filled/graded the ponds by December 31, 1975. In addition, Nease removed the majority of buildings and manufacturing equipment during decommissioning activities. Only one building remains at the former manufacturing facility, which currently houses a groundwater treatment system.

14. The Nease Chemical Site was listed on the National Priorities List (“NPL”) pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on September 8, 1983. 48 Fed. Reg. 40658. The NPL lists sites throughout the United States that, because of releases or threatened releases of hazardous substances, pose a significant threat to human health and the environment.

15. On December 30, 1977, the assets of Nease Chemical Company (including the non-operational Salem facility) were acquired and the company merged with Ruetgers Chemicals, Inc. to form Ruetgers-Nease Chemical Company, Inc. (now known as Rutgers Organics Corporation or “ROC”).

16. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, ROC (at the time known as Ruetgers-Nease Chemical Company), Ohio EPA, and EPA signed an Administrative Order on Consent in January 1988 (effective February 26, 1988) requiring ROC to conduct a Remedial Investigation and Feasibility Study for the Site pursuant to 40 C.F.R. § 300.430.

17. EPA has divided the Site into three Operable Units (“OU”s) for purposes of

CERCLA cleanup: OU 1 includes a long-term removal action to mitigate the further migration of contamination; OU 2 includes the Former Nease Property, the areal extent of soil contamination adjacent to the Former Nease Property, and the areal extent of groundwater contamination; and OU 3 includes Feeder Creek and the contaminated stretch of the Middle Fork Little Beaver Creek and its floodplains.

18. ROC completed the Remedial Investigation Report, Nease Site, Salem, Ohio for the Site in June 1996, the Feasibility Study for Operable Unit 2, Nease Chemical Company, Salem, Ohio in February 2005, and the Feasibility Study for Operable Unit 3, Nease Chemical Company, Salem, Ohio in June 2008. In addition, in 2004, ROC completed the Endangerment Assessment for the Nease Chemical Company Salem, Ohio Site, which includes the human health and ecological risk assessments for the Site.

19. The decisions by EPA on the remedial actions to be implemented for OU 2 and OU 3 at the Site are embodied in a final Record of Decision (“ROD”) for OU 2, executed on September 29, 2005, a final ROD for OU 3 executed on September 24, 2008, respectively, and an Explanation of Significant Differences (“ESD”) for OU 2, issued on August 26, 2011, to all of which the State has given its concurrence.

20. At relevant times, numerous hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and in Section 311(a)(14) of CWA, 33 U.S.C. § 1321(a)(14), including chlorinated benzene compounds, chlorinated ethenes, mirex, photomirex, and kepone, as well as other synthetic pesticides, have been detected in soil, ground water, surface water, sediments, flood plain/wetland areas, as well as biota in the Middle Fork Little Beaver Creek. Site-related contamination has been detected from RM 36.7 of the Middle Fork Little Beaver Creek, where Feeder Creek enters the Middle Fork Little Beaver Creek, downstream to RM 1.9.

21. In 1987, the Ohio Department of Health (“ODH”) issued a “do not eat fish” consumption advisory for all fish, based on Mirex contamination, for the Middle Fork Little Beaver Creek; the advisory was modified in 2003 and in 2007 based on additional fish fillet data. Fish consumption advisories in 2007 included other contaminants, such as mercury and PCBs that are unrelated to the Site. However, Mirex was still detected in the Middle Fork Little Beaver Creek above unrestricted consumption levels. In 1988, ODH issued a contact advisory warning against wading and swimming in the Middle Fork Little Beaver Creek; the advisory was in place until February 2011, when it was rescinded after an additional evaluation was performed. Hazardous substances above the CWA and Ohio Water Quality standards have been detected in Feeder Creek. Releases of volatile organic compounds have contaminated ground water above drinking water standards, including the maximum contaminant levels.

22. As a result of releases of hazardous substances to the Assessment Area, natural resources of the United States and the State, including but not limited to floodplain soils, sediments, surface and ground water and biota such as fish, invertebrates, migratory birds, and their supporting ecosystems, have been injured. Pursuant to 43 C.F.R. Part 11, the FWS and Ohio EPA (collectively, the “Trustees”) initiated an assessment of injuries to natural resources resulting from the releases of hazardous substances into or within the Assessment Area and concluded that natural resources had been injured as a result of releases of hazardous substances into the Assessment Area.

23. Plaintiffs have incurred costs in connection with the assessment of such injuries, destruction, or losses.

24. The Site is a “facility” within the meaning and scope of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

25. At times relevant to this action, there have been “releases” or threats of “releases,” within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. § 9601(22) and § 9607(a), of hazardous substances into the environment at and from the Site.

26. The United States and the State have taken response actions, within the meaning of Section 101(25), 42 U.S.C. § 9601(25), at the Site, including but not limited to providing oversight in the field and managing contractor personnel. The United States and the State continue to take response actions in connection with the Site.

**FIRST CLAIM FOR RELIEF**  
**(Response Costs under CERCLA § 107(a), 42 U.S.C. § 9607(a))**

27. The allegations contained in Paragraphs 1-26 are realleged and incorporated by reference herein.

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

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

- (1) the owner and operator of a vessel or a facility, [and/or]
- (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--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

29. The actions taken by the United States and the State in connection with the Site constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with which the United States and the State have incurred response costs.



30. Defendant is a member of the class of liable parties described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

31. As a result of releases and/or threatened releases of hazardous substances at the Site, the United States and the State have incurred response costs, which each seeks to recover through this action. The Plaintiffs have expended and will continue to expend funds for planning, legal, and other activities necessary or appropriate to plan and direct response actions, to recover the costs of response actions, and for enforcement purposes, which they also seek to recover through this action. These response costs were incurred by the Plaintiffs in a manner not inconsistent with the NCP, 40 C.F.R. Part 300.

32. The Defendant is liable to the United States and the State for all response costs incurred and to be incurred by the United States and the State in connection with the Site, including enforcement costs and prejudgment interest on such costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

**SECOND CLAIM FOR RELIEF**  
**(Injunctive Relief under CERCLA Section 106, 42 U.S.C. § 9606)**

33. Paragraphs 1-26 are realleged and incorporated herein by reference.

34. U.S. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Site.

35. The Defendant is liable for the injunctive relief to which Plaintiff, the United States of America, is entitled at the Site under CERCLA Section 106(a), 42 U.S.C. § 9606(a), including, but not limited to, such relief as may be necessary to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Site.

**THIRD CLAIM FOR RELIEF**

**(Natural Resource Damages under CERCLA Section 107, 42 U.S.C. § 9607)**

36. Paragraphs 1-26 are realleged and incorporated herein by reference.

37. The releases of hazardous substances referred to in Paragraph 22 resulted in injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and the State, within the meaning of Sections 101(16) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(16) and 9607(a). As a result of the release of hazardous substances, the United States and the State have incurred reasonable costs in assessing such injuries, destruction or losses.

38. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable for damages, including costs of restoration, for injuries, destruction, or loss of natural resources resulting from releases of hazardous substances into the Assessment Area, including injuries to floodplain soils, sediments, surface and ground waters and biota such as fish, invertebrates, migratory birds, and their supporting ecosystems, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and the State, as well as for the reasonable costs of assessing such injuries, destruction or loss.

39. The United States and the State have satisfied all required conditions precedent to the initiation of this action.

**FOURTH CLAIM FOR RELIEF**

**(Natural Resource Damages Under CWA Section 311, 33 U.S.C. § 1321)**

40. Paragraphs 1-26 are realleged and incorporated herein by reference.

41. The Middle Fork Little Beaver Creek is a navigable water of the United States.

42. Feeder Creek is a navigable water of the United States.

43. The facility described in Paragraphs 10 to 13, above, is an “onshore facility” within the meaning of Section 311 of the CWA, 33 U.S.C. § 1321.

44. Hazardous substances within the meaning of Section 311 of the CWA, 33 U.S.C. § 1321, have been discharged into navigable waters of the United States or adjoining shorelines from the facility described in Paragraphs 10 to 13, above.

45. As a result of discharges of hazardous substances from the onshore facility described above, the United States and the State have incurred and will continue to incur costs related to the restoration or replacement of damaged or destroyed natural resources for which the United States and the State are each a trustee or co-trustee. Such resources may include floodplain soils, sediments, surface and ground water and biota such as fish, invertebrates, migratory birds and other such “natural resources” as that term is used in Section 311(f) of the CWA, 33 U.S.C. § 1321(f).

46. Defendant and/or its predecessor owned and/or operated one or more such onshore facilities when hazardous substances were discharged from such facilities into navigable waters of the United States or adjoining shorelines.

47. Pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f), the Defendant is liable to the United States and the State for the costs incurred by the United States and the State in restoration or replacement of natural resources in the Assessment Area, damaged or destroyed as a result of the discharge of hazardous substances from the on-shore facility described above, in violation of Section 311(b) of the CWA, 33 U.S.C. § 1321(b).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, the United States of America and the State, pray that this Court:

1. Enter judgment in favor of the United States and the State against the Defendant for all costs, including prejudgment interest, incurred by the United States and the State for response actions in connection with the Site and not otherwise reimbursed;
2. Order the Defendant to perform the injunctive relief necessary to remedy conditions in connection with the release or threatened release of hazardous substances at the Site, including the remedial actions selected by EPA in the OU 2 ROD, OU 2 ESD, and OU 3 ROD;
3. Enter a judgment in favor of the United States and the State against the Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the full value of all damages for injury to, destruction of, or loss of natural resources in the Assessment Area, including all reasonable costs of assessing such injury, destruction, or loss, all costs of restoring, replacing, and/or acquiring the equivalent of those injured, destroyed, or lost natural resources and the services they provide, and all past, present, and future diminution in value of those resources pending restoration or replacement, resulting from releases of hazardous substances into the Assessment Area;
5. Enter a judgment in favor of the United States and the State against the Defendant pursuant to Section 311(f) of the CWA, 33 U.S.C. § 1321(f), for the full value of all costs incurred by the Plaintiffs in the restoration or replacement of natural resources damaged or destroyed as a result of discharges of hazardous substances into Feeder Creek and Middle Fork Little Beaver Creek, in violation of Section 311(b) of the CWA, 33 U.S.C. § 1321(b);

6. Award the United States and the State their costs of this action; and
7. Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

**FOR THE UNITED STATES OF AMERICA**

s/ John C. Cruden  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

s/ Arnold S. Rosenthal  
ARNOLD S. ROSENTHAL  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-3446  
[arnold.rosenthal@usdoj.gov](mailto:arnold.rosenthal@usdoj.gov)

CAROLE S. RENDONE  
United States Attorney  
Assistant United States Attorney  
Northern District of Ohio  
U.S. Department of Justice

s/ Steven J. Paffilas  
STEVEN J. PAFFILAS  
Assistant U.S. Attorney  
United States Courthouse  
801 West Superior Avenue  
Suite 400  
Cleveland, OH 44113  
216-622-3698  
Fax 216-522-2404

**FOR THE STATE OF OHIO**

MICHAEL DEWINE  
OHIO ATTORNEY GENERAL

s/ Timothy J. Kern (per consent of parties)

TIMOTHY J. KERN

Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

(614) 466-5261

Timothy.Kern@OhioAttorneyGeneral.gov

*Trial Attorney for Plaintiff State of Ohio*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2016, the foregoing Complaint was served on counsel for the Defendant via email:

Heidi B. Friedman|  
Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1291

s/ Arnold S. Rosenthal  
Arnold S. Rosenthal  
Attorney for Plaintiff United States of America