



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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHEMICAL RECOVERY SYSTEMS, INC.,

Defendant.

JUDGE ALDRICH

Civil Action File No.
C80-1858

ANSWER TO PLAINTIFF'S
COMPLAINT FOR INJUNCTIVE
/ RELIEF AND RESTITUTION

NOW COMES Chemical Recovery Systems, Inc., by and through its Attorneys, MURPHY, BURNS & McINERNEY, P.C., Suite 4000 Campau Square Building, 180 Monroe, N.W., Grand Rapids, Michigan 49503, and through its additional Attorney, DAVID C. LONG, CO., L.P.A., 300 Fourth Street, P.O. Box 427, Elyria, Ohio 44036, and for Answer to Plaintiff's Complaint states as follows:

Introduction and Nature of Case

1. In answer to Paragraph 1, Defendant states that the averments statements and allegations in Paragraph 1 do not constitute statements of fact upon which the pleader relies in stating its cause of action but are rather statements of the nature of the relief demanded by Plaintiffs for the most part which Defendants can make no factual reply under the applicable rules of pleading. Nevertheless, Defendants deny any and all of the allegations contained in Paragraph 1, particularly those allegations that include either by reference or by statement, factual allegations. Defendant reserves the right to motion the Court pursuant to the Federal Rules to strike all of Plaintiff's Paragraph 1 based on its non-conformity with the applicable Federal Rules of pleading.

By way of further answer, Defendant specifically denies for lack of information any "investigation" conducted by the Plaintiff. In addition, Defendant admits that it has been engaged

in the recycling of certain chemicals but denies the general allegation that it has "been engaged in the handling storage treatment and disposal of hazardous waste". Further, Defendant denies that its activities have created a continued imminent and substantial endangerment to human health and the environment and that it employs "unsound practices" and that their practices represent a serious threat of pollution and actual pollution of the Black River.

Jurisdiction, Venue and Notice

2. In answer to Paragraph 2, the averments in the paragraph do not constitute statements of fact upon which the pleader relies in stating its cause of action but rather statements of the nature of venue which Defendants can make no factual reply thereto. Nevertheless, the Defendants deny that the Plaintiffs have properly invoked the jurisdiction of the Court.

3. In answer to Paragraph 3, Defendant admits that the site is located in Lorain County in the Northern District of Ohio, but specifically denies that venue is proper.

4. In answer to Paragraph 4, Defendant neither admits nor denies the allegations therein but leave Plaintiff to its strict proofs.

Defendant

5. In answer to Paragraph 5, Defendant denies that it was at all pertinent times the operator of the CRS site, all pertinent times encompassing a period of time prior to CRS's operation of the site. By way of further answer to Paragraph 5, Defendant admits that CRS is a corporation organized and incorporated under the laws of the State of Ohio, but neither admits nor denies that it is a "person" within the meaning of Section 1004(15) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6903(15), and leaves Plaintiff to its strict proofs.

The Site and its Operation

6. In answer to Paragraph 6, Defendant denies the allegations contained therein. By way of further answer, Defendant denies for want of specific knowledge concerning acreage, distance, navigability of waters, specific locations, and population, the allegations therein and leave Plaintiff to its strict proofs.

7. In answer to Paragraph 7, Defendant admits that there exists a "storm sewer" which allows water runoff from the surrounding area, outside the CRS property, to drain through and under the site and enter the Black River. By way of further answer, Defendant denies that there are "several ditches on the site" which collect runoff and drain into the Black River. In addition, Defendant specifically denies the allegations concerning soil condition for the reason that said allegations are untrue, inaccurate and hydrogeologically incorrect.

8. In answer to Paragraph 8, Defendant admits that during 1974 CRS commenced operations at the site in question, but specifically deny that the site in question has ever been used as a "storage yard" or facility for solvent waste. In addition, Defendant specifically denies that they are presently operating a solvent recovery facility and/or a storage yard for solvent waste at the CRS site.

9. In answer to Paragraph 9, Defendants denies that it currently operates any solvent recovery stills which are presently on its property. By way of further answer, Defendant neither admits nor denies the allegations concerning capacity of any such stills and leaves Plaintiff to its strict proofs.

10. In answer to Paragraph 10, Defendant denies each and every allegation therein for the reason that said allegations are incorrect and untrue.

11. In answer to Paragraph 11, Defendant denies that CRS is presently receiving any spent solvents. By way of further answer, Defendant denies that spent solvents were at any time transferred for distillation through "temporary rubber hosing" connected by radiator clamps. Further, Defendant denies that these transfer operations consistently resulted in contaminated solvents spilling onto the ground.

12. In answer to Paragraph 12, Defendant specifically denies any and all allegations therein for the reason that the same are inaccurate and untrue.

13. In answer to Paragraph 13, Defendant denies that there are "3200 additional 55-gallon drums" stored on the site and that they are partially filled with organic chemical wastes and liquid, sludge and solid forms. In further answer, Defendant denies the remaining allegations in Paragraph 13 and specifically denies that many of the drums are rusting, deteriorating and/or leaking. By way of further answer, Defendant affirmatively alleges that none of the drums are located within thirty yards of the river and that all drums are presently segregated by content and in the process of being labeled.

14. In answer to Paragraph 14, Defendant denies the allegations contained therein for the reasons that said allegations are untrue. By way of further answer, Defendant denies that the flash points referenced in Paragraph 14 are accurate as they apply to the waste solvent in question and specifically denies that there is unreasonable risk of or danger of fire as a result of Defendant's operations.

15. In answer to Paragraph 15, Defendant specifically denies the allegations therein.

16. In answer to Paragraph 16, Defendant specifically denies the allegations contained therein and by way of further answer affirmatively alleges that the sump in question is not

in a "poor state of repair" and cannot contain substantial quantities of waste chemicals.

17. In answer to Paragraph 17, Defendant deny the allegations contained therein. By way of further answer, Defendant states affirmatively that if contamination is reaching the Black River, the same is reaching the Black River through the storm sewer as alleged in Plaintiff's Paragraph 7 and the origin of any such contamination would be properties other than Defendant's property. By way of further answer to Paragraph 17, Defendant denies that there is a "leachage stream" from the bank of Defendant's property into the Black River, that stream being the storm sewer referred to in Plaintiff's Paragraph 7.

18. In answer to Paragraph 18, Defendant denies the allegations therein. By way of further answer, Defendant states that at one time, based on the recommendation of the Ohio Environmental Protection Agency, a canvas boom was utilized in the Black River adjacent to the site, however, the purpose of the boom was to evaluate the material coming from the underground drain sewer referred to in Plaintiff's Paragraph 7.

19. In answer to Paragraph 19, Defendant denies that any wastes are leaching from the CRS site by any means whatsoever, and by way of further answer to Paragraph 19, Defendant neither admits nor denies for lack of knowledge that the storm sewer acts as a conduit for discharging wastes from properties adjacent to or immediately surrounding the CRS site for the reason that Defendant has no control over these properties. By way of further answer, Defendant affirmatively alleges that if in fact wastes are leaching from the CRS site, that such wastes are originating from off the site and coming to Defendant's site through the storm sewer referred to in Plaintiff's Paragraph 7 and Paragraph 19.

20. In answer to Paragraph 20, Defendant denies the allegations therein.

Nature of the Hazard

21. In answer to Paragraph 21, Defendant specifically denies that "chemicals have been identified in soil, water, air and drum samples collected at the CRS site and/or in the Black River at levels sufficient to affect adversely human health and the environment". By way of further answer, Defendant affirmatively alleges that it has done nothing to affect adversely human health and affect adversely the environment. By way of further answer to the sub-paragraphs contained within Paragraph 21, Defendant is without sufficient information to form a belief as to the truth of the allegations of those sub-paragraphs and leaves Plaintiff to its strict proofs. In addition, Defendant admits that some of the chemicals described in the said sub-paragraphs may be toxic at certain levels of exposure, but Defendant denies the degree of toxicity alleged in Plaintiff's Complaint for the reasons that such allegations are for the most part untrue. By way of further answer, Defendant states that Plaintiff's allegations contained within the sub-paragraphs of Paragraph 21 concerning toxicity are inaccurate and misleading and not related to the subject matter of the lawsuit.

22. In answer to Paragraph 22, Defendant denies that a discharge of any kind from the CRS site into the Black River constitute a serious threat to the aquatic environment.

23. In answer to Paragraph 23, Defendant denies the allegations contained therein for the reason that said allegations are untrue.

24. In answer to Paragraph 24, Defendant denies that Plaintiffs have accurately ascertained the nature and extent of the contamination and hazards if any, described in Plaintiff's Complaint, and Defendant specifically denies that it was necessary for Plaintiff to expend any funds to inspect, sample and analyze soil, air and surface water as those apply to Defendant and Defendant's activities. In addition, by way of further answer, Defendant affirmatively alleges that if in fact

Plaintiff has conducted an inspection sampling and analysis, it has or should have ascertained that the allegations of Plaintiff's Complaint concerned property and persons other than Defendant.

First Claim for Relief

(Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(15)).

25. In answer to Paragraph 25, Defendant states that the allegations of Paragraph 25 constitute legal conclusions to which Defendant can make no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies any and all factual allegations or other allegations of Paragraph 25 for the reason that said allegations are untrue.

26. In answer to Paragraph 26, the allegations of Paragraph 26 constitute legal conclusions to which Defendant can make no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies the allegations of Paragraph 26 particularly those allegations which concern the CRS site and any leaching or leaking taking place therein or thereon, for the reason that such allegations are untrue.

27. In answer to Paragraph 27, Defendant denies the allegations therein for the reason that such allegations are untrue.

28. In answer to Paragraph 28, the allegations of Paragraph 28 constitute legal conclusions to which Defendant can make no factual reply under the applicable rule of pleading. Nevertheless, Defendant denies the allegations of Paragraph 28 for the reason that such allegations are untrue.

Second Claim for Relief

29. In Answer to Paragraph 29, Defendant hereby incorporates the answers heretofore set forth, Paragraphs 1 through 23, as if set forth fully herein.

30. In answer to Paragraph 30, the allegations of Paragraph 30 constitute legal conclusions to which Defendant can make no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies any allegations contained therein for the reason that such allegations are untrue.

31. In answer to Paragraph 31, the allegations of Paragraph 31 constitute legal conclusions to which Defendant can make no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies any factual allegations contained in Paragraph 31, for the reason that such allegations are untrue.

32. In answer to Paragraph 32, Defendant admits that there have been discharges from the storm sewer site referred to in Plaintiff's Complaint, Paragraph 7, however, Defendant neither admits nor denies that the discharges were pollutants, and specifically denies that discharges were "from the CRS facility" into the Black River.

33. In answer to Paragraph 33, the allegations of Paragraph 33 constitute legal conclusions to which Defendant can make no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies any factual allegations contained in Paragraph 33, for the reason the such allegations are untrue.

34. In answer to Paragraph 34, the allegations of Paragraph 34 constitute legal conclusions to which Defendant can make no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies any factual allegations contained in Paragraph 34, for the reason that such allegations are untrue.

35. In answer to Paragraph 35, the allegations of Paragraph 35 constitute legal conclusions to which Defendant canmake no factual reply under the applicable rules of pleading. Nevertheless, Defendant denies any factual allegations contained in Paragraph 35, for the reason that such allegations are untrue.

Third Claim for Relief

36. In answer to Paragraph 36, Defendant hereby incorporates the answers heretofore set forth Paragraph 1 through 24, and 25 through 35, as if set forth fully herein.

37. In answer to Paragraph 36, Defendant neither admits nor denies the allegations contained therein, but by way of further answer, affirmatively asserts that if an investigation has been undertaken by the Plaintiff, that investigation has or should have revealed that Defendant CRS has not been responsible for any damage or danger caused by the above described disposal of hazardous wastes. By way of further answer, Defendant specifically denies that Defendant has caused damage or danger to the environment and specifically states that the EPA if they have expended an excess of \$25,000 have done so negligently, unreasonably and that these expenses were unnecessary particularly since the conclusions drawn from the alleged investigations were incorrect both factually and technologically. Defendant by way of further answer to Paragraph 37, specifically denies Plaintiff's right to recoup from Defendant any funds supposedly expended.

Relief Requested

WHEREFORE, Defendant respectfully prays that this Honorable Court grant a Judgment of No Cause of Action in its favor and against Plaintiff and for costs, fees, and expenses incurred herein.

Further, Defendant prays that this Honorable Court deny the equitable relief requested by Plaintiff herein.

AFFIRMATIVE DEFENSES

NOW COMES Defendant, by and through its attorneys, and asserts the following Affirmative Defenses and hereby requests a reply thereto:

1. That Plaintiff is estopped from proceeding in the above entitled action because of their own contributory, - comparative negligence.

2. That the above entitled action is barred by the doctrine of laches and the applicable statute of limitations.

3. That Plaintiff has not joined the necessary parties for complete relief and adjudication and the parties necessary for the convenient administration of justice.

4. That Plaintiff is not entitled to proceed with the action, both legal and equitable since they have not yet exhausted their administrative remedies.

5. That the allegations and subject matter of Plaintiff's Complaint have been previously litigated and resolved, after notice of the same to Plaintiff, thus rendering the issues raised by Plaintiff's Complaint res judicata.

6. That Defendant reserves the right to file additional affirmative defenses upon completion of discovery.

Dated: November 20, 1980

Respectfully submitted:

MURPHY, BURNS & McINERNEY, P.C.
Attorneys for Defendant

By Richard A. Stevens
FOR Gary J. McInerney

BUSINESS ADDRESS:
4000 Campau Square Building
180 Monroe, N.W.
Grand Rapids, MI 49503

Phone: (616) 458-5005

By Richard A. Stevens
Richard A. Stevens

BUSINESS ADDRESS:
300 Fourth Street
P.O. Box 427
Elyria, Ohio 44036

Phone: (216) 323-3331

By Richard A. Stevens
FOR David C. Long