

FACTUAL ALLEGATIONS

(10) Between February 20, 1945 and December 22, 1976, USX was the "owner" and "operator" of a cement operation in and near Fairborn, Ohio.

(11) USX acquired the Fairborn cement manufacturing operation from Wabash Portland Cement Co. ("Wabash"), a now-dissolved Indiana corporation, which had owned and operated the business from approximately 1924 to 1945.

(12) On information and belief, USX is liable as a successor in interest to Wabash with respect to any storage, treatment, and/or disposal of hazardous substances that occurred at the Fairborn facilities prior to USX's acquisition of those facilities in 1945.

(13) USX's Fairborn cement operation included manufacturing, quarrying, and waste disposal activities.

(14) USX conducted its cement operation on property that includes areas known as "Landfill 1" (or the "A Tract Quarry") and "Landfill 2" (collectively, the "facilities"). Descriptions of these areas are attached to this Complaint as Exhibit A (the A Tract Quarry) and Exhibit B (Landfill 2).

(15) Plaintiff Southdown initiated a meeting with a representative from Defendant USX to attempt to settle this matter without litigation; USX, however, has denied any responsibility for or willingness to participate in the investigation and response to conditions at the facilities.

Allegations Regarding A Tract Quarry.

(16) The A Tract Quarry is approximately 180 acres in size.

(17) The A Tract Quarry is a "facility" as that term is defined in CERCLA Section 101(9), 42 U.S.C. § 9601(9).

(18) From 1945 until approximately 1970, USX removed limestone and clay from the A Tract Quarry to use in its cement manufacturing operations at Fairborn.

(19) From approximately 1945 until 1975, USX also used the A Tract Quarry for waste disposal purposes.

(20) From approximately 1945 until 1975, USX disposed of waste cement kiln dust ("CKD"), kiln brick, scrap metal, tires, trash, and other materials owned by it in the A Tract Quarry.

(21) USX disposed of up to 200 tons per day of CKD in the A Tract Quarry during the period of its ownership.

(22) During the period of its ownership, USX also stored explosives, including dynamite and ammonium nitrate, in the A Tract Quarry.

(23) During the period of its ownership, USX burned-old explosives in the A Tract Quarry.

(24) During the period of its ownership, USX burned trash in the A Tract Quarry.

(25) During the period of its ownership, USX used bulldozers to distribute and level the waste in the A Tract Quarry.

(26) SWPC bought the A Tract Quarry, along with certain other property, from USX on December 22, 1976.

(27) Since the time that Southdown acquired the A Tract Quarry in December 1976, Southdown has not operated the kilns at

the USX plant and conditions at the A Tract Quarry have remained virtually unchanged from the conditions left by USX.

(28) On June 12, 1991, the Ohio Environmental Protection Agency ("OEPA") and Clark County, Ohio, collected samples of surface water in a stream along the north side of the A Tract Quarry disposal area.

(29) The results from OEPA's and Clark County's June 1591 sampling showed that the stream exhibited pH levels and concentrations of metals in excess of the State of Ohio's surface water quality standards.

(30) Plaintiff Southdown contracted with Ground Water Associates, Inc. ("GWA") in August 1991 to evaluate surface and groundwater characteristics in the vicinity of the A Tract Quarry.

(31) GWA sampled three surface water bodies in or adjacent to the A Tract Quarry and installed ten monitoring wells on the property to collect groundwater samples from various locations upgradient and downgradient of the main disposal areas.

(32) In general, the surface and groundwater samples downgradient of the disposal areas show elevated pH levels and elevated concentrations of metals. The metals that have been detected include antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, and zinc. The upgradient wells generally show lower pH and metal concentration levels than the downgradient wells, and the upgradient surface water samples generally show lower pH and metal concentration levels than the downgradient surface water samples.

(33) Industry and government-sponsored studies show **that** antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, and zinc are typical constituents of CKD.

(34) Kiln bricks from the time period that USX disposed of them in the A Tract Quarry often contained chromium.

(35) Antimony, arsenic, chromium, lead, mercury, nickel, selenium, and zinc are hazardous substances under CERCLA. See 40 C.F.R. Table 302.4.

(36) On March 29, 1993, Southdown received a notice of intent to sue letter dated March 16, 1993, from the President of People Finders Financial and Environmental Research. The letter, which was also addressed to the President of the United States, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Regional Administrator for Region V of EPA, and the Director of OEPA, contains allegations about the hazardous nature of materials contained at the A Tract Quarry. The letter states that the organization will file a citizens' suit against Southdown and the other addressees of the letter after the sixty (60) day notice period has expired.

(37) OEPA is preparing to conduct a preliminary assessment of the A Tract Quarry to determine if the site warrants further governmental action. An OEPA official has informed Southdown that OEPA is placing the A Tract Quarry on its Master Sites List of sites requiring investigation and/or enforcement action due to the presence of hazardous substances.

(38) USX's activities at the A Tract Quarry constituted "disposal" of hazardous substances as that term is defined by CERCLA Section 101(22), 42 U.S.C. § 9601(22).

(39) USX's activities at the A Tract Quarry have resulted in a "release" or threat of a "release" of hazardous substances as that term is defined by CERCLA Section 101(29), 42 U.S.C. § 9601(29).

(40) Southdown has incurred costs of over \$116,000 to investigate the alleged release or threat of a release of hazardous substances from the A Tract Quarry.

(41) Southdown is continuing to investigate the characteristics of the A Tract Quarry and will take appropriate action to respond to threats to human health or the environment presented by the A Tract Quarry, if any.

(42) The actions that Southdown has taken and will take and the costs that Southdown has incurred and will incur are necessary and are consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Pt. 300, ("National Contingency Plan" or "NCP").

Allegations Regarding Landfill 2

(43) Landfill 2 is a parcel of approximately 11 acres located directly south of the former USX Fairborn, Ohio, cement manufacturing plant.

(44) Landfill 2 is a "facility" as that term is defined in CERCLA Section 101(9), 42 U.S.C. § 9601(9).

(45) On information and belief, during the period of its ownership, USX filled in two gravel pits that were located on the

Landfill 2 site with CXD, plant trash, and other material owned by USX.

(46) SWPC bought Landfill 2, along with certain other property, from USX on December 22, 1976.

(47) Visual inspection of Landfill 2 has revealed the presence of exposed CKD mounds up to 40 feet high, a 30-40 foot deep depression containing refractory bricks, CKD, rusted drums, and a black tar-like substance.

(48) Industry and government-sponsored studies show that antimony, arsenic, barium, chromium, lead, mercury, nickel, selenium, and zinc are typical constituents of CKD.

(49) Antimony, arsenic, chromium, lead, mercury, nickel, selenium, and zinc are hazardous substances under CERCLA. See 40 C.F.R. Table 302.4.

(50) On March 29, 1993, Southdown received a notice of intent to sue letter dated March 16, 1993, from the President of People Finders Financial and Environmental Research. The letter, which was also addressed to the President of the United States, the Administrator of EPA, the Regional Administrator for Region V of EPA, and the Director of OEPA, contains allegations about the hazardous nature of materials contained at Landfill 2. The letter states that the organization will file a citizens' suit against Southdown and the other addressees of the letter after the sixty (60) day notice period has expired.

(51) USX's activities at Landfill 2 constituted "disposal" of hazardous substances as that term is defined by CERCLA Section 101(22), 42 U.S.C. § 9601(22).

(52) USX's activities at Landfill 2 resulted in a "release" or threat of a "release" of hazardous substances as that term is defined by CERCLA Section 101(29), 42 U.S.C. § 9601(29).

(53) Southdown intends to investigate Landfill 2 to determine whether a release or threat of a release of a hazardous substance has or could result in a threat to human health or the environment. If appropriate, Southdown will respond to any such release or threat of a release in a manner consistent with the NCP.

(54) Since the time that Southdown acquired Landfill 2 in December 1976, conditions at Landfill 2 have remained virtually unchanged from the conditions left by USX.

FIRST CLAIM FOR RELIEF

(55) Paragraphs 1 through 54 are hereby incorporated by reference as though fully set forth herein.

(56) An actual controversy exists between Plaintiff and Defendant in that Plaintiff contends, and Defendant denies, that Defendant has responsibilities and legal liabilities under CERCLA for the costs that have been and will be incurred for activities performed in the investigation and remediation of hazardous substance contamination at the A Tract Quarry.

(57) Absent a judicial declaration setting forth the parties' rights and obligations with respect to these costs; a multiplicity of actions might result.

(58) Plaintiff therefore requests a judicial determination of the rights and obligations of the parties with regard to

hazardous substance contamination at the A Tract Quarry, setting forth the Defendant's liability to Plaintiff with respect to the costs that have been or will be incurred for the investigation and remediation of said contamination, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(q)(2), and 28 U.S.C. §§ 2201-02.

SECOND CLAIM FOR RELIEF

(59) Paragraphs 1 through 54 are hereby incorporated by reference as though fully set forth herein.

(60) An actual controversy exists between Plaintiff and Defendant in that Plaintiff contends, and Defendant denies, that Defendant has responsibilities and legal liabilities under CERCLA for the costs that have been and will be incurred for activities performed in the investigation and remediation of hazardous substance contamination at Landfill 2.

(61) Absent a judicial declaration setting forth the parties' rights and obligations with respect to these costs, a multiplicity of actions might result.

(62) Plaintiff therefore requests a judicial determination of the rights and obligations of the parties with regard to hazardous substance contamination at Landfill 2, setting forth the Defendant's liability to Plaintiff with respect to the costs that have been or will be incurred for the investigation and remediation of said contamination, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(q)(2), and 28 U.S.C. §§ 2201-02.

THIRD CLAIM FOR RELIEF

(63) Paragraphs 1 through 54 are hereby incorporated by reference as though fully set forth herein.
