

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
BROADKILN SPORTSMAN CLUB, INC.,	)	
	)	
Defendant.	)	

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**COMPLAINT**

The United States of America, by authority of the Attorney General, and at the request of the Secretary of the United States Department of the Interior ("Interior") alleges as follows:

**STATEMENT OF THE CASE**

1. This is a civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), seeking to recover costs incurred by the United States in response to a release or threatened release of hazardous substances from the Broadkiln Sportsman Club, Inc., located in Sussex County, Delaware and areas where hazardous substances have come to be located, including the Prime Hook Wildlife Refuge. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, as to the defendant's liability for further response costs in any subsequent action to recover further response costs incurred at or in connection with the Facility.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331(a), 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. § 1391(b) and (c), because the releases or threatened releases of hazardous substances that give rise to these claims occurred in the District of Delaware and because the Facility is located in the District of Delaware.

## **FACILITY DESCRIPTION AND HISTORY**

4. The defendant Broadkilm Sportsman Club, Inc. (the "Club") owns approximately 13.23 acres of property (the "Club Property") adjacent to the Prime Hook National Wildlife Refuge (the "Refuge"), located northeast of Milton, in eastern Sussex County, Delaware. The Club Property is and has been used by the Club for recreation and target shooting since the early 1960s.

5. In 1998, the Club acquired title to the Club Property.

6. Between approximately 1962 and 1998, the Club operated a shooting range on the Club Property. As part of this operation, the Club used and deposited leaded ammunition at the Club Property and at the Refuge.

7. As a result, the Club Property and portions of the Refuge became contaminated with lead, which is a hazardous substance.

## **DEFENDANT**

8. Defendant the Club is a corporation organized under the laws of

Delaware. At relevant times, it operated and did business within this judicial district. Since approximately 1998, the Club has owned the approximately 13.23 acres that constitute the Club Property. From approximately 1962 until approximately 1998, the Club operated a shooting range there.

#### **RESPONSE ACTIONS TAKEN AT THE REFUGE**

9. In about 2000, the United States Fish and Wildlife Service, Department of the Interior (FWS), ordered the Club to discontinue shooting onto Refuge land. At the same time, FWS began to undertake FWS-funded efforts to delineate the magnitude and extent of soil contamination on the Refuge.

10. FWS's studies revealed that lead shotgun pellets had accumulated on the Refuge property throughout an area of about 22 acres downrange from the Club Property.

11. FWS undertook various response activities to mitigate the environmental risk presented by the presence of lead, including the threat presented to waterfowl and other birds. These activities included: excavating and removing contaminated soils and lead pellets within an area of the Refuge and regrading and re-seeding impacted soils.

12. As of February 2, 2006, FWS had incurred approximately \$1 million in response costs.

13. The United States expects to incur additional costs at the Refuge, including but not limited to, the cost of installing wells to monitor the migration of contaminated groundwater.

**FIRST CLAIM FOR RELIEF**  
**Response Costs**

14. Paragraphs 1 through 13 are re-alleged and incorporated herein by reference.

15. The Defendant is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. The Club Property, with areas of the Refuge where hazardous substances have come to be located, is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17. Lead is a "hazardous substance" as that term is defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because it is listed pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and it is listed at 40 C.F.R. Part 302.4.

18. There has been a "release" or "threatened release," of hazardous substances from the Club Property into the environment as defined by Sections 104(a), 107(a), 101(8), and 101(22) of CERCLA, 42 U.S.C. § 9604(a), 9607(a), 9601(8), and 9601(22), in that hazardous substances were discharged into the air over the Refuge and deposited in the soils and waters of the Refuge.

19. FWS has performed and is continuing to perform necessary or appropriate response actions at the Refuge in connection with the Club Property as authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

20. As a result of the release or threatened release of hazardous substances from the Club Property, the United States has incurred costs authorized by Section 104 of

CERCLA, 42 U.S.C. § 9604, and defined by Section 101(23) and 101(25) of CERCLA, 42 U.S.C. § 9601(23) and (25). These include, but are not limited to, response costs incurred and to be incurred for planning and performing response actions and for enforcement.

22. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. part 300, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

23. The United States will continue to incur response costs in connection with releases from the Club Property and the Refuge.

24. The Club is an “owner” and/or “operator” of the Club Property, as specified by Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). The Club is jointly and severally liable to the United States for the costs of the response actions the United States has taken or will take in connection with the contamination from the Club Property found at the Refuge.

**SECOND CLAIM FOR RELIEF**  
**Declaratory Judgment**

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States requests the Court to enter a declaratory judgment on liability for response costs or damages that will be binding in any subsequent action or actions to recover further response costs or damages.

**REQUEST FOR RELIEF**

WHEREFORE, the United States of America requests that this Court enter a judgment against Defendant as follows:

- A. Order the Defendant to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances from the Club Property;
- B. Enter a declaratory judgment on liability stating that Defendant will be liable for all future response costs incurred by the United States in connection with releases from the Club Property;
- C. Award Plaintiff its costs and disbursements in this action; and
- D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

UNITED STATES OF AMERICA

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