

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.3:22-cv-5002
)	
PATRICIA R. WEST, RONALD WEST)	
d/b/a RGW SALES & SERVICE, and RANDY C.)	
PENDERGRAFT,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint seeking access to properties owned and/or controlled by Defendants that are contaminated with mining waste (the “Properties”), and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9604(e). The Properties are part of the Oronogo/Duenweg Mining Belt Superfund Site, a large Superfund site that is contaminated with mining waste. The mining waste has high levels of lead, cadmium, and zinc, which are hazardous to human health and the environment. The United States Environmental Protection Agency (“EPA”) has completed cleanup of mining wastes on properties owned by others in the vicinity of the Properties. EPA was unable to clean up mining waste on the Properties because Defendants have refused, and continue to refuse, to allow EPA access. Defendants’

refusal to grant access prevents needed cleanup on the Properties and allows the wastes from the Properties to contaminate a downstream owner's previously-cleaned property, which is increasing the total cost of the cleanup. EPA is expressly authorized by CERCLA to access the Properties for the purposes sought in this Complaint. The United States therefore seeks an Order in Aid of Access, providing EPA and its representatives with access to the Properties so that EPA can sample and clean up hazardous mining waste on the Properties.

JURISDICTION AND VENUE

2. This Court has exclusive jurisdiction over the subject matter of this action and personal jurisdiction over the Defendants under CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in the Western District of Missouri pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the Properties are located within this judicial district and these claims arise in connection with releases or threatened releases that have occurred in this district.

DEFENDANTS

4. Defendants own and/or control access to the Properties. Seven contiguous parcels of land are owned by Defendant Patricia West. Collectively, these parcels are referred to hereafter as the "West Property." Defendant Ronald West is the son of Defendant Patricia West and the late Robert G. West. Ronald West is the owner and operator of RGW Sales & Service, a privately held business located at 205 Ivy Road, Oronogo, Missouri 64855, on the West Property. Ronald West controls access to those portions of the West Property where his business is located.

5. Defendant Randy C. Pendergraft owns property at 302 Dewey Street, Oronogo, Missouri 64855, to the east of the West Property. This parcel is referred to hereafter as the

“Pendergraft Property.”

6. Patricia West, Ronald West, and Randy C. Pendergraft, are each individually a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY BACKGROUND

7. CERCLA Section 104(a)(1), 42 U.S.C. § 9604(a)(1), provides that whenever there is a release or substantial threat of release into the environment of a hazardous substance, or of any pollutant or contaminant which may present an imminent and substantial endangerment to the public health or welfare, EPA “is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant . . . or take any other response measure consistent with the national contingency plan” that EPA deems necessary to protect the public health or welfare or the environment. CERCLA Section 104(e)(4), 42 U.S.C. § 9604(e)(4), authorizes any officer, employee or representative designated under CERCLA Section 104(e)(1), 42 U.S.C. § 9604(e)(1), to inspect and obtain samples from any facility, establishment, or other place or property referred to in CERCLA Section 104(e)(3), 42 U.S.C. § 9604(e)(3), or from any location of any suspected hazardous substance or pollutant or contaminant.

8. CERCLA authorizes EPA employees and contractors to enter properties at reasonable times “where entry is needed to determine the need for response or the appropriate response or to effectuate a response action” under CERCLA. 42 U.S.C. § 9604(e)(3)(D).

9. CERCLA Section 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), provides that the United States may commence a civil action to compel compliance with a request for access. “Where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance, pollutant, or contaminant,” the court “shall enjoin” interference with a

request by EPA for entry “unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 9604(e)(5)(B)(i).

FACTUAL ALLEGATIONS

EPA’s Cleanup of the Oronogo/Duenweg Mining Belt Superfund Site

10. The Properties are part of the Oronogo/Duenweg Mining Belt Superfund Site (the “Site”).

11. The Site comprises approximately 250 square miles and is located in Jasper County and Newton County, Missouri. The Site is in the Missouri portion of the Tri-State Mining District, which also includes portions of Kansas and Oklahoma. Historically, lead and zinc mining, milling and smelting operations generated about 150 million tons of mining wastes within the Site, of which no more than 14 million tons remain to be remediated.

12. On August 30, 1990, EPA placed the Oronogo/Duenweg Mining Belt Site on the National Priorities List. 55 Fed. Reg. 35502 (Aug. 30, 1990). The National Priorities List is the list of hazardous waste sites designated as “Superfund” sites under CERCLA, set forth at 40 C.F.R. Part 300, Appendix B.

13. EPA conducted a Remedial Investigation (“RI”) at the Site. The RI identified that the mining wastes contain concentrations of heavy metals, primarily cadmium, lead, and zinc, which are the contaminants of concern that cause unacceptable risk to human health and the environment. In addition, the RI identified contaminants of concern in the surface waters due to migration of mining wastes and hazardous substances into surface water bodies. The levels of contaminants of concern in surface waters at this Site cause unacceptable risk to aquatic life.

14. EPA issued a cleanup decision, called a Record of Decision (“ROD”), in September 2004, and a ROD Amendment on September 27, 2013, for Operable Unit One (OU1), which is the response action that requires cleanup of the mining wastes and contaminated surface waters at the Site. The mining wastes on the Properties are a portion of the wastes to be cleaned up under this decision. On May 22 and 25, 2016, EPA issued and published an Explanation of Significant Differences (“ESD”), which addresses certain techniques that may be used to implement cleanup under the ROD.

Descriptions of Defendants’ Properties

15. The West Property consists of seven parcels that are identified in two quit-claim deeds and a corporation warranty deed. These deeds are recorded in (1) Book 1590, Page 1369 (1998), (2) Book 1233, page 648 (1980), and (3) Book 1371, Page 0241 (1989), respectively in the Jasper County Recorder of Deeds Office. The Pendergraft Property is identified in a Warranty Deed recorded in Book 1311, Page 1579 (July 1, 1986), in the Jasper County Recorder of Deeds Office.

16. The Properties are shown on the aerial photograph at Attachment A to the Complaint. Attachment A outlines the approximate boundaries of the West Property in red, and the approximate boundaries of the Pendergraft Property are outlined in green.

Cleanup Needed at the Properties

17. The Properties were used in the past as a disposal area for mining wastes. About six acres of mining wastes are on the West Property. A much smaller area on the Pendergraft Property also contains mining wastes. Hazardous substances in the mining wastes including lead, zinc and cadmium are contained in the mining wastes and are released into the environmental from

the Properties. EPA estimates that about 150,000 cubic yards of such mining wastes are located on the Properties.

18. The mining wastes on the West Property are located primarily on undeveloped areas of that property. In addition, there are mining wastes adjacent to the residence on the West Property, and mining wastes also are located on the areas used by RGW Sales & Service, which includes a structure used for business, gravel parking areas, and a large gravel lot used for storage of autos and scrap metal.

19. The Properties are located in a residential area.

20. Samples of mining wastes collected from properties adjacent to the Properties contain contaminants of concern at levels that exceed the action levels EPA selected for the remedy. Those action levels are: 400 parts per million (ppm) lead; 6,400 ppm zinc; and 40 ppm cadmium. Mining wastes above these actions levels require cleanup. A series of samples collected in the vicinity of the Properties contain contaminants of concern in the following ranges:

<u>Contaminant</u>	<u>Concentration range (parts per million, or “ppm”)</u>
Lead	256 ppm – 6,000 ppm
Zinc	9,530 ppm – 40,700 ppm
Cadmium	61.9 ppm – 234 ppm

21. Based on the concentrations of contaminants in mining wastes found on adjacent properties, EPA believes that the mining wastes on the Properties will have similar concentrations of the contaminants of concern and will require cleanup.

22. Cleanup of mining wastes located on nearby properties has been completed. Those cleanup activities were conducted by EPA, or under its direction, in accordance with the OUI ROD, the ROD Amendment, and the ESD.

23. Mining wastes on the Properties are visible from nearby and adjacent properties. Cleanup of mining wastes on the Properties is needed to address the hazards posed by those wastes, including but not limited to the contamination of properties that have been cleaned up. Some of the mining wastes are along a creek that runs through the West Property and continues onto adjacent lands not owned by Defendants. Those mining wastes are uncovered and are subject to being transported downstream, especially during and after rainfall.

24. To perform the selected remedial actions on the Properties, it will be necessary for employees, agents, contractors, and other representatives of EPA to enter the Properties. The activities for which entry is required may include but are not limited to: sampling and laboratory analysis of mining wastes; removal of vegetation and soil; excavation and capping of mining wastes; filling/capping mining pits; contouring or armoring creek banks to mitigate further releases of mining wastes into the creek; revegetation of the disturbed areas; establishing long-term operation and maintenance of the capped areas, and occasional monitoring to verify that mining wastes left on the Properties remain secured.

25. The EPA estimates that the duration of the required entry and access will be approximately six months to conduct sampling, analysis, and cleanup actions. Following these activities, entry approximately once a year will be required to monitor capped wastes. If annual monitoring shows that further action is needed, then additional access rights would be needed to accomplish that.

Defendants' Denial of Access

26. EPA and its contractors have been ready to perform the cleanup actions on the Properties for several years but have been prevented from so doing due to Defendants' refusal to

grant access. EPA's efforts to obtain Defendants' consent to access the Properties have been extensive.

27. Throughout 2015, EPA representatives contacted and met with both Patricia West and Ronald West in an effort to obtain access to the Property. During this period, those Defendants refused to sign a voluntary access agreement.

28. Beginning in 2016, as EPA began preparations to clean up contaminated properties in the vicinity of the Properties (including the West Property), EPA renewed its efforts to obtain a consensual access agreement. These efforts included several meetings with Ronald West, at least one of which also was attended by Patricia West. EPA also corresponded with Patricia West, and EPA again provided voluntary access agreements, which Defendants again refused to sign.

29. After efforts to obtain a voluntary access agreement failed, EPA issued an Administrative Order to Patricia West on June 15, 2016, requiring her to provide EPA and its officers, employees, agents, contractors and other representatives full and unrestricted access at all reasonable times to the West Property, for the purpose of conducting response activities, including but not limited to performing the remedial action described in the ROD, Amended ROD and ESD.

30. The Administrative Order provides an opportunity for a conference with EPA. In response to the Administrative Order, Patricia West refused to meet with EPA and did not provide consent to access.

31. EPA and its representatives similarly have attempted on multiple occasions to obtain consent to access the Pendergraft Property, without success. On March 9 and 10, 2016, a representative of EPA's authorized contractor, Tri-State Engineering Company, met with Randy Pendergraft to obtain access for cleanup work. Mr. Pendergraft refused to consent to access. Beginning again in January 2020, EPA renewed its efforts to obtain access to the Pendergraft

Property by sending a letter to Randy Pendergraft. Mr. Pendergraft did not respond to this letter. EPA employees had telephone calls with Mr. Pendergraft in March and July of 2020 requesting access, which Mr. Pendergraft declined to grant. In August 2020, EPA sent Mr. Pendergraft a final letter again requesting access to the Pendergraft Property. The letter explained that EPA might seek access through a civil enforcement action if Mr. Pendergraft refused to grant access. EPA received no response to that letter. EPA employees called the Pendergraft residence several times in September 2020 regarding that letter, but the phone was disconnected each time after they introduced themselves.

32. Defendants' refusal to consent to access is preventing EPA's authorized cleanup activities on the Properties as set forth in the ROD, the Amended ROD, and the ESD.

33. Absent an order from this Court, EPA is unable to conduct cleanup activities on the Properties that are necessary to address threats to human health and the environment, including but not limited to ongoing releases of mine wastes from the West Property to other parcels downstream of the West Property.

34. Cleanup of mining wastes on the Properties will require that EPA access and remediate wastes on additional properties in addition to the West Property and the Pendergraft Property. The approximate boundaries of these additional properties are shown in yellow on Attachment A. EPA has obtained voluntary access agreements from the owners of all of these additional properties.

CLAIM FOR RELIEF

35. The United States re-alleges and incorporates by reference all of the preceding paragraphs.

36. The EPA seeks access to the Properties, which qualifies as a facility, establishment, or other place or property: (a) from which or to which a hazardous substance or pollutant or contaminant has been or may have been released; (b) where a further release of a hazardous substance is or may be threatened; and (c) where entry is needed to determine the need for response, or the appropriate response, or to effectuate a response action. CERCLA § 104(e)(3)(B)-(D), 42 U.S.C. § 9604(e)(3)(B)-(D).

37. EPA has a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at the Properties.

38. CERCLA grants EPA authority to have access to the Site “for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.” CERCLA § 104(e)(1), 42 U.S.C. § 9604(e)(1).

39. CERCLA expressly authorizes the United States to initiate a judicial action to obtain a court order to compel compliance with an administrative order for access “where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance or pollutant or contaminant.” 42 U.S.C. § 9604(e)(5)(B).

40. Unless restrained by an order of the Court under Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), Defendants’ continued denial of entry and access will obstruct, impede or otherwise interfere with EPA’s statutory authority to enter the Properties to implement the selected remedial action under CERCLA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court to:

1. Issue an Order directing Defendants, and their agents, employees, representatives, or successors in interest to the Properties, to provide to EPA, its officers, employees, or representatives, with unimpeded entry and access to the Site at all reasonable times pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for the purposes of conducting response actions at the Site that EPA determines are needed (a) to take samples at the Properties; and (b) to take actions to implement the selected remedial actions if sampling results indicate that hazardous substances are present in the mining wastes above the action levels established by the selected remedial actions;
2. Enjoin Defendants, and their agents, employees, representatives, or successors in interest to the Properties, pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 104(e)(5), from obstructing, impeding, or otherwise interfering with entry and access, at reasonable times, to the Properties by EPA, its officers, employees or representatives for the purpose of taking the response actions in the previous paragraph; and
3. Grant such other and further relief as the Court finds just and appropriate.

UNITED STATES OF AMERICA

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COMPLAINT ATTACHMENT A

Map Key	Parcel Identifier	Ownership Information
1	108903130024017000	Robert G. West, Book 1590, Page 1369, 2.01 Acres
2	108903130024016000	Robert G and Patricia R West, Book 1233, Page 0648, 1.67 Acres
3	108903130024015000	Robert G and Patricia R West, Book 1371, Page 0241, 0.12 Acres
4	108903130024014000	Robert and Patricia West, Book 1371, Page 0241, 0.23 Acres
5	108903130024012000	Robert G and Patricia R West, Book 1371, Page 0241, 2.88 Acres
6	108903130024011000	Robert G. West, Book 1590, Page 1369, 1.65 Acres
7	108903130024010000	Robert and Patricia West, Book 1371, Page 0241, 0.30 Acres

Relevant West Parcels
 Relevant Pendergraft Parcel
 Relevant Neighboring Parcels



Complaint Attachment A Relevant Oronogo Parcels

NOTE: The Environmental Protection Agency does not guarantee the accuracy, completeness, or timeliness of the information shown, and shall not be liable for any injury or loss resulting from reliance upon the information shown.

Data Sources:
 Parcels, Jasper County Assessor, 2018
 Aerial Imagery, 2018

CJM 4/8/2021
 Map of Relevant Oronogo Parcels

JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

United States of America ;

County of Residence: Jasper County**Defendant(s):****First Listed Defendant:**

Patricia R. West ;

County of Residence: Jasper County**Additional Defendants(s):**

Ronald West d/b/a/ RGW Sales & Service ;

Randy C. Pendergraft ;

County Where Claim For Relief Arose: Jasper County**Plaintiff's Attorney(s):**

Senior Counsel Michael J. Zevenbergen (United States of America)

U.S. Department of Justice/ENRD/EES

7600 Sand Point Way, NE

Seattle, Washington 98115

Phone: 206-276-0037**Fax:** 206-526-6665**Email:** michael.zevenbergen@usdoj.gov**Defendant's Attorney(s):****Basis of Jurisdiction:** 1. U.S. Government Plaintiff**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** N/A**Defendant:** N/A**Origin:** 1. Original Proceeding**Nature of Suit:** 893 Environmental Matters**Cause of Action:** 42 U.S.C. § 9604(e) - a release or threat of a release of hazardous substances into the environment in which EPA is authorized to remove.**Requested in Complaint****Class Action:** Not filed as a Class Action**Monetary Demand (in Thousands):**

Jury Demand: No

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: /s/ Michael J. Zevenbergen

Date: 1/12/2022

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.