

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, STATE
OF NEW MEXICO, NEW MEXICO
ENVIRONMENT DEPARTMENT, and
NAVAJO NATION, a federally recognized
Indian Tribe,

Plaintiffs,

vs.

UNITED NUCLEAR CORPORATION,

Defendant.

COMPLAINT

The United States of America (“United States”), by 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 (the “EPA”), the State of New Mexico, the New Mexico Environment Department (“NMED”), and the Navajo Nation (together, “Plaintiffs”) file this Complaint and allege as follows:

STATEMENT OF THE CASE

1. The United States brings this civil action for recovery of costs and performance of response work under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (“CERCLA”), 42 U.S.C. §§ 9606 and 9607, with respect to two Superfund sites in New Mexico: the Northeast Church

Rock Mine Site (“NECR Site”) and the United Nuclear Corporation Mill Site (“UNC Site”) (together, the “NECR/UNC Site”).

2. Pursuant to Section 104(d)(4) of CERCLA, 42 U.S.C. § 9604(d)(4), the EPA, as the lead agency for the NECR/UNC Site pursuant to the National Contingency Plan (“NCP”), 40 C.F.R. § 300.5, is treating these noncontiguous sites as a single site for purposes of the response action that is the subject of this complaint. The United States seeks: (1) the implementation of a response action not inconsistent with the NCP, which is necessary to abate an imminent and substantial endangerment to the public health, welfare, and the environment posed by the presence of hazardous substances at the Mill and Mine Sites and (2) the recovery of response costs that the United States has incurred and will incur in responding to the release or threatened release of hazardous substances at and from the NECR/UNC Site into the environment.

3. The State of New Mexico and NMED bring this civil action under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the recovery of response costs the State and NMED have incurred and will incur in responding to the release or threatened release of hazardous substances at and from the NECR/UNC Site into the environment.

4. The Navajo Nation brings this civil action under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Sections 2501 and 2503 of the Navajo Nation CERCLA (“NNCERCLA”), 4 N.N.C. §§ 2501 and 2503, seeking the recovery of response costs it has incurred and will incur in responding to the release or threatened release of hazardous substances at and from the NECR/UNC Site into the environment.

5. The United States, the State of New Mexico, NMED, and the Navajo Nation also seek a declaratory judgment on liability for response costs that will be binding on any subsequent

action or actions to recover further response costs pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107(a) and 113(b), 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 2201.

7. The Court has supplemental jurisdiction with respect to the NNCERCLA claim under 28 U.S.C. § 1367, because the Navajo Nation's claims are so related to the claims in the United States' action that they form part of the same case or controversy.

8. The Court has jurisdiction over and may grant relief against non-defendant General Electric Company, a New York corporation ("GE"), to enable the Court to accord complete relief among the Parties, pursuant to the All Writs Act, 28 U.S.C. § 1651, and Fed. R. Civ. Proc. 19(a).

9. Venue is proper in this district pursuant to CERCLA Sections 106(a) and 113(b), 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. §§ 1391(b) and (c) because the events giving rise to this claim occurred in this district and because the NECR/UNC Site is located in this district.

PLAINTIFFS

10. Plaintiff the United States brings this action on behalf of the EPA.

11. Plaintiff the State of New Mexico brings this action on behalf of NMED.

12. Plaintiff the Navajo Nation is a federally recognized Indian tribe. The formal Navajo Nation Reservation covers over 27,000 square miles in Arizona, New Mexico, and Utah, and other Navajo land, including tribal trust and allotted land, extends beyond the borders of the

formal Reservation. The Nation's seat of government is located in Window Rock, Navajo Nation, Arizona.

DEFENDANT

13. United Nuclear Corporation ("UNC") is a Delaware corporation with its principal place of business in Gallup, New Mexico.

SITE DESCRIPTION

14. The NECR and UNC Sites are located in a "checkerboard" of Navajo Nation and private land in northwestern New Mexico, approximately 17 miles northeast of Gallup, near the intersection of State Highway 566 and Red Water Pond Road.

15. The NECR Site is a former uranium mine located on approximately 125 acres of land held in trust by the United States for the Navajo Nation. While the surface estate is owned by the United States in trust for the Navajo Nation, mineral rights are owned by Newmont Realty Corp., a subsidiary of Newmont Mining Corporation. UNC also owns patented mining claims on a portion of the NECR Site.

16. The NECR Site operated from 1967 to 1982 and served as the principal source of uranium ore for the mill on the UNC Site. Most of the mining area was operated by UNC under the terms of a mineral lease with the predecessors of what is now the Newmont Mining Corporation. Operations at the NECR Site left behind uranium-mine waste piles, several former waste storage ponds, former sand fill (mill tailings) storage areas, and a debris pile. Although the EPA has required performance of several interim response actions at the NECR Site, conditions there continue to present a risk of potential releases of hazardous substances to the air, surrounding soils, sediments, surface water and groundwater.

17. The UNC Site is a former uranium mill which operated from 1977 to 1982, generating mill tailings containing radionuclides and other hazardous substances. The mill processed uranium ore using a combination of crushing, grinding, and acid-leach solvent extraction methods. Milling produced an acidic slurry of ground rock and fluid tailings. Disposal of about 3.5 million tons of tailings took place in on-site impoundments. The UNC Site is located adjacent to the Navajo Nation on land owned by UNC in McKinley County, New Mexico in EPA Region 6.

18. The UNC Site is both a CERCLA National Priorities List (“NPL”) site pursuant to the NCP, 40 C.F.R. Part 300, Appendix B, and a mill regulated by the Nuclear Regulatory Commission (“NRC”). The UNC Site is undergoing closure pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (“UMTRCA”), Public Law 95-604. Under a 1988 Memorandum of Understanding between the EPA Region 6 and the NRC (“1988 MOU”), the NRC and the EPA Region 6 agreed that the NRC would take the lead to oversee UNC actions to address the tailings disposal area and to decommission the UNC mill, while the EPA Region 6 would oversee UNC’s CERCLA response actions with respect to groundwater outside the tailings disposal area.

STATUTORY BACKGROUND

I. CERCLA

19. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of abatement and related enforcement activities, which are known as “response” actions, 42 U.S.C. §§ 9604(a), 9601(25).

20. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of release, the President is authorized to act, consistent with the NCP, to remove or arrange for the removal of, and provide for remedial action relating to, such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the NCP that the President deems necessary to protect the public health or welfare or the environment.

21. The President has delegated his authority under Section 104 of CERCLA, 42 U.S.C. § 9604, to the Administrator of EPA to arrange for the cleanup of hazardous waste or to conduct investigations and studies as necessary to determine the need for, and extent of, such a cleanup. This authority has been re-delegated to the Director of the Superfund Division, EPA Region 6.

22. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat.

23. 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, (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, [and] (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . . shall be liable for — (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian Tribe . . . not inconsistent with the National Contingency Plan.

24. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), the term “facility” means (A) any building, structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

25. Under Section 101(22), of CERCLA, 42 U.S.C. § 9601(22), the term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

26. Under Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), the term “disposal” includes, among other things, the “discharge, deposit, injection, dumping, spilling, leaking, or placing” of wastes into or on any land or water so that such wastes or any constituent thereof “may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” 42 U.S.C. § 9601(29); 42 U.S.C. § 6903(3).

II. NNCERCLA

27. Section 2501(A) of NNCERCLA, 4 N.N.C. § 2501(A), provides in pertinent part:

Notwithstanding any other provisions or rule of law, and subject only to the defenses and limitations set forth in § 2502 of this Act, the following persons shall be liable for the costs and damages described in § 2503...:

1. The owner or operator of a site or vessel that is involved in a release or threatened release of any hazardous substance, pollutant, or contaminant;

28. Section 2501(A)(2) of NNCERCLA, 4 N.N.C. § 2501(A)(2), provides that "any person who at the time of disposal of any hazardous substance, pollutant or contaminant owned or operated any site at which such hazardous substance, pollutant or contaminant was disposed of" is subject to the same liability as the current owner or operator.

RESPONSE ACTIONS SO FAR AT THE NECR AND UNC SITES

29. The EPA has been actively involved in response actions at the NECR and UNC Sites since at least 1983, when the UNC mill was placed on the NPL. Following a series of removal actions at the NECR Site, in 2011 the EPA Regions 6 and 9 jointly issued an Action Memorandum (“2011 Action Memo”) selecting a non-time-critical removal action to address approximately one-million cubic yards of mine waste contaminated above residential health-based levels for uranium and radium-226 at the NECR Site by transferring approximately 96% of that waste to a repository at the nearby UNC Site.

30. The 2011 Action Memo also addressed the remaining approximately 4% of the waste, designated “principal threat wastes” or “PTWs.” PTWs are source materials considered to be highly toxic or highly mobile that generally cannot be contained in a reliable manner or would present a significant risk to human health or the environment should exposure occur.

31. At the NECR Site, all wastes containing either 200 picocuries per gram or more of radium-226 or 500 mg/kg or more of total uranium present a significant risk to human health and are considered PTWs. The 2011 Action Memorandum directed that PTWs from the Mine Site be sent to a licensed facility where they could be reprocessed to reclaim metals and radionuclides, or, if reprocessing was found not to be feasible, then to another appropriate licensed disposal facility.

32. In 2013, the EPA Region 6 confirmed the selection of this response action by issuing a Record of Decision (the “2013 ROD”) selecting a remedy for the UNC Site that allowed transfer of the NECR Site wastes to the tailings disposal area at the UNC Site. Because the UNC Site is licensed by the NRC, implementation of the selected response action was contingent on the NRC approval of a UNC license amendment request (“LAR”) to allow the

mine waste to be placed within the footprint of the tailings-disposal area. From 2015 to 2018, UNC and its indirect parent company, GE, performed a remedial design of the response actions selected in the 2011 Action Memorandum and the 2013 ROD, under administrative orders on consent with the EPA. The EPA Regions led a design team that included State of New Mexico, the Navajo Nation, and community representatives.

33. With respect to the UNC Site, in 1988, the EPA issued a Record of Decision for Operable Unit No. 1 at the Site (groundwater contamination), and, in 1989, UNC and GE began remedial action to address groundwater contamination pursuant to an EPA Region 6 unilateral administrative order under CERCLA Section 106(b), 42 U.S.C. § 9606(b). Groundwater remediation continues in coordination with the EPA, the NRC, the NMED, and the Navajo Nation.

34. UNC submitted the LAR to the NRC on September 24, 2018. On February 15, 2023, the NRC approved the LAR. As a result of this approval, the EPA can now seek implementation of the combined response actions selected in the 2011 Action Memorandum and the 2013 ROD. Pursuant to the 2011 Action Memo and 2013 ROD, removal of mine waste at the NECR Site will reduce surface contamination to levels suitable for residential use. Technical studies performed under the EPA's oversight have demonstrated that placement of mine waste will also improve the cover on the UNC Site tailings-disposal area and enhance erosion-control features.

GENERAL ALLEGATIONS

35. UNC operated the NECR Site from 1967 to 1982. During its operation of the NECR Site, hazardous substances, including uranium and radium, were disposed of at the NECR Site.

36. UNC currently owns the UNC Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and owned the UNC Site at the time of disposal of hazardous substances, including uranium and radium at the UNC Site.

37. UNC operated the NECR and UNC Sites, within the meaning of CERCLA Section 101(20), 42 U.S.C. § 9601(20), and Section 2104(Z) of NNCERCLA, 4 N.N.C., at the time of disposal of hazardous substances, including uranium and radium, at the NECR and UNC and Sites.

38. UNC is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 2104(Z) of NNCERCLA, 4 N.N.C. § 2104(Z).

39. The NECR and UNC Sites are each a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). Pursuant to Section 104(d)(4) of CERCLA, 42 U.S.C. § 9604(d)(4), the EPA is treating these noncontiguous facilities as a single facility. Each of the NECR Site and the UNC Site constitutes a “site” within the meaning of NNCERCLA Section 2104(KK), 4 N.N.C. § 2104(KK).

40. 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), and Sections 2104(N) and 2104(DD) of NNCERCLA, 4 N.N.C. §§ 2104(N) and 2104(DD), of hazardous substances into the environment at and from the NECR and UNC Sites, including radium-226 and uranium.

41. “Hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and Section 2104(Q) of NNCERCLA, 4 N.N.C. § 2104(Q), including radium-226 and uranium, have been disposed of at the NECR/UNC Site.

42. Uranium and its decay product radium are present in soil and sediment at the NECR/UNC Site.

43. The United States, the State of New Mexico, NMED, and the Navajo Nation have taken “response actions,” within the meaning of Section 101(25), 42 U.S.C. § 9601(25), and, with respect to the Navajo Nation, 4 N.N.C. § 2104(GG), at the NECR/UNC Site. The United States, the State of New Mexico, NMED, and the Navajo Nation continue to take response actions in connection with the NECR/UNC Site.

44. As a result of the releases or threatened releases of hazardous substances at or from the NECR and UNC Sites, the United States, the State of New Mexico, NMED, and the Navajo Nation have incurred response costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and as used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). *See also* 4 N.N.C. §§ 2401, 2801(B)(2).

45. The EPA’s decision on the response action to be implemented for the NECR/UNC Site is embodied in a 2011 Action Memorandum and the 2013 ROD. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

FIRST CLAIM FOR RELIEF

By the United States

(Performance of Response Action Under Section 106(a) of CERCLA. 42 U.S.C. § 9606(a))

46. The allegations set forth in paragraphs 1-45 are realleged and incorporated herein by reference.

47. The 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 a release or threatened release of hazardous substances, including uranium and radium-226, at and from the NECR/UNC Site.

48. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate a danger or threat at the NECR/UNC Site.

49. The EPA determined in the 2011 Action Memorandum and the 2013 ROD to abate the dangers and/or threats caused by contaminants in and on the NECR/UNC Site.

50. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Defendant is liable to perform the response actions identified in the 2011 Action Memorandum and the 2013 ROD for the Mine and Mill Sites which are necessary to abate the endangerment to the public health or welfare or the environment at the Site.

SECOND CLAIM FOR RELIEF

**By the United States, the State of New Mexico, NMED, and the Navajo Nation
(Reimbursement of Response Costs Under Section 107(a) of CERCLA 42 U.S.C
9607(a))**

51. The allegations set forth in Paragraphs 1-45 are realleged and incorporated herein.

52. The Defendant is liable for response costs at the NECR/UNC Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C 9607(a).

53. In response to the release or threatened release of hazardous substances at or from the NECR/UNC Site the United States, the State of New Mexico, NMED, and the Navajo Nation have incurred response costs for which they have not been reimbursed by Defendant or any other party. The United States, the State of New Mexico, the NMED, and the Navajo Nation continue to incur response costs, including but not limited to the costs of this enforcement action. The United States', the State of New Mexico's, the NMED's, and the Navajo Nation's activities related to the NECR/UNC Site and the costs incurred incident to such actions are not inconsistent with the NCP, 40 C.F.R Part 300, as promulgated under Section 105(a) of CERCLA, 42 U.S.C § 9605(a).

54. Pursuant to Section 107(a) of CERCLA, 42 U.S.C § 9607(a), the United States, the State of New Mexico, the NMED, and the Navajo Nation are entitled to recover interest on the response costs that they have incurred at the NECR Site, the UNC Site, or both, at the rate that is specified for interest on investments of the Hazardous Substances Superfund established under subchapter of chapter 98 of title 26 of the United States Code.

55. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Defendant is liable to the United States, the State of New Mexico, the NMED, and the Navajo Nation for all response costs that the United States, the State of New Mexico, the NMED, and the Navajo Nation, have incurred and will incur with respect to the NECR Site, the UNC Site, or both, including prejudgment interest.

56. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C § 9613(g)(2), the United States, the State of New Mexico, the NMED, and the Navajo Nation are entitled to declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

THIRD CLAIM FOR RELIEF

By the Navajo Nation

(Reimbursement of Response Costs Under NNCERCLA §§ 2501 and 2503)

57. The allegations set forth in Paragraphs 1-45 are realleged and incorporated herein.

58. To protect the public health, welfare and the environment from the actual or threatened release of uranium, radium-226, and other hazardous substances from the NECR/UNC Site into the environment, the Navajo Nation, including NNEPA, the Navajo Nation Department of Justice (“NNDOJ”), and their contractors, has taken “response” actions at certain of the Mine Sites, within the meaning of NNCERCLA Section 2104(GG), 4 N.N.C. § 2104(GG), as authorized by NNCERCLA Section 2401, 4 N.N.C. § 2401, and has incurred

response costs not inconsistent with the NCP, *see* NNCERCLA § 2801(B)(2), 4 N.N.C § 2801(B)(2).

59. To date, Defendant has not reimbursed the Navajo Nation for any of the response costs incurred in connection with the Mine Sites.

60. Pursuant to Sections 2501 and 2503 of NNCERCLA, 4 N.N.C. §§ 2501 and 2503, Defendants are jointly and severally liable for all response costs incurred and to be incurred by the Navajo Nation with respect to the Mine Sites, including enforcement costs and prejudgment interest on such costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

A. Order the Defendant to perform the remedial actions for the remedies selected in the 2011 Action Memorandum and the 2013 ROD for the Mine and Mill Sites;

B. Enter judgment in favor of the United States, the State of New Mexico, the NMED, and the Navajo Nation pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding the Defendant liable for all unreimbursed response costs incurred by the United States, the State of New Mexico, the NMED, and the Navajo Nation in connection with the Site, including enforcement costs and prejudgment interest;

C. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a declaratory judgment of liability in favor of the United States, the State of New Mexico, the NMED, and the Navajo Nation and against the Defendant that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Site;

D. Enter judgment pursuant to Sections 2501 and 2503 of NNCERCLA, 4 N.N.C. §§ 2501 and 2503, in favor of the Navajo Nation holding the Defendant liable for all unreimbursed response past response costs and all future response costs that may be incurred by the Navajo Nation in connection with the NECR/UNC Site, including enforcement costs and prejudgment interest;

E. Award the United States, the State of New Mexico, the NMED, and the Navajo Nation their costs and fees in this action; and

F. Award such other relief as this Court deems just and proper.

FOR THE UNITED STATES OF AMERICA

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