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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA)	Civil Action No.:
)	
11 Plaintiff,)	COMPLAINT FOR INJUNCTIVE
)	RELIEF AND CIVIL PENALTIES
12 V.)	
)	
13 TITANIUM METALS CORPORATION)	
)	
14 Defendant.)	
15)	

16
17 Plaintiff United States of America, by authority of the Attorney General of the United
18 States and through the undersigned attorneys, acting at the request of the United States
19 Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

20 **NATURE OF THE CASE**

21 1. Plaintiff brings this civil action under Section 17 of the Toxic Substances Control Act
22 ("TSCA"), 15 U.S.C. §§ 2601-2692, 2616, and Section 3008 of the Resource Conservation and
23 Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901-6992k and 6928, against Titanium
24 Metals Corporation ("Timet" or "defendant").

25 2. This action is for injunctive relief for violations of TSCA Sections 6(e) and 15, 15
26 U.S.C. §§ 2605(e) and 2614, and regulations promulgated under TSCA Section 6(e), 40 C.F.R.
27 Part 761, pertaining to the illegal manufacture, disposal, and storage of polychlorinated biphenyls
28 ("PCBs"), and failure to clean up PCB waste, at the Henderson, Nevada titanium sponge

1 production facility (“Facility”) owned and operated by Timet.

2 3. This action is also for injunctive relief and penalties for violations of RCRA Sections
3 3002, 3004, 3005, 3006, and 3014, 42 U.S.C. §§ 6922, 6924, 6925, 6926, and 6935, their
4 implementing regulations, and state regulations adopted pursuant to the federally authorized
5 State of Nevada hazardous waste management requirements, pertaining to the treatment, storage,
6 disposal, placement, and handling of hazardous and non-hazardous waste at the Facility.

7 **JURISDICTION AND VENUE**

8 4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
9 §§ 1331, 1345, and 1355, Section 17 of TSCA, 15 U.S.C. § 2616, and Section 3008(a) of RCRA,
10 42 U.S.C. § 6928(a).

11 5. Venue is proper in this judicial district because the Facility is located in this district.

12 **DEFENDANT**

13 6. Timet, whose business address is 5430 LBJ Freeway, Suite 1700, Dallas, Texas
14 75240-2697, is a corporation organized under the laws of the State of Delaware. It has owned
15 and operated the Facility located in Henderson, Nevada since at least 1950.

16 7. Timet is a “person” within the meaning of that term as defined in 40 C.F.R. §761.3,
17 and RCRA Section 1004(15), 42 U.S.C. § 6903, and 40 C.F.R. § 260.10.

18 8. At all relevant times hereto, Timet was the “operator,” within the meaning of that term
19 as defined in 40 C.F.R. § 260.10, of the Facility.

20 9. At all relevant times hereto, Timet was a “generator” of “hazardous waste,” within the
21 meaning of those terms as defined in 40 C.F.R. § 260.10.

22 **BACKGROUND AND GENERAL ALLEGATIONS**

23 10. The Facility is a manufacturing plant in which certain chemical processes are
24 undertaken to manufacture titanium, which is sold for a variety of uses in industry. The
25 manufacturing process at the Facility results in the generation corrosive liquids, and for a period
26 of time, resulted in the generation of PCBs. The manufacture, handling, storage, and disposal of
27 these PCBs and corrosive liquids are the focus of the violations under TSCA and RCRA in this
28 case.

1
2 **RCRA Statutory Background**

3 11. RCRA Section 3008(a), 42 U.S.C. § 6928(a), authorizes a civil action in the United
4 States District Court for appropriate relief, including temporary or permanent injunction,
5 whenever on the basis of any information, the Administrator of EPA determines that any person
6 has violated or is in violation of any hazardous waste management requirements of RCRA.

7 12. RCRA provides that any person who violates any requirement of this subchapter
8 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each
9 such violation. Pursuant to Public Law 104-134, the amount of civil penalty is increased to
10 \$27,500 for each violation occurring on or after January 31, 1997 through March 15, 2004, to
11 \$32,500 per day for each violation occurring after March 15, 2004, through January 12, 2009,
12 and to \$37,500 per day for each violation occurring after January 12, 2009. *See* 40 C.F.R. § 19.4.

13 13. The State of Nevada is authorized under RCRA to implement hazardous waste
14 management requirements within the State of Nevada.

15 14. Nevada's hazardous waste management regulations incorporate the federal hazardous
16 waste management regulations by reference, at Nevada Administrative Code (NAC) § 444.8632.^{1/}

17 15. Under RCRA Section 3006, 42 U.S.C. § 6926, violations of the State of Nevada's
18 RCRA authorized hazardous waste management requirements are federally enforceable pursuant
19 to RCRA Section 3008(a), 42 U.S.C. § 6928(a).

20 16. RCRA Section 3004(u), 42 U.S.C. § 6924(u), authorizes the Administrator of EPA to
21 require corrective action for all releases of hazardous waste or constituents from any solid waste
22 management unit ("SWMU") at facilities that are subject to the RCRA permit requirement.

23 **TSCA Statutory Background**

24 17. Section 6(e) of TSCA and regulations promulgated under it, pertain to the regulation
25 of PCBs.

26
27
28 ^{1/} For ease of reference, this Complaint cites to the applicable federal regulations at 40 C.F.R.
Parts 260, 265, 268, 270, 273, and 279.

1 18. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail
2 or refuse to comply with Section 6(e) of TSCA or any rule promulgated thereunder.

3 19. TSCA Section 17(a), 15 U.S.C. § 2616(a), provides jurisdiction for the court to,
4 among other things, restrain any violation of prohibited acts under Section 15 of TSCA, 15
5 U.S.C. § 2614. The prohibited acts provision includes failure or refusal to comply with any
6 requirement under Section 6(e) of TSCA or the regulations promulgated thereunder.

7 **Facility Description**

8 20. The Facility includes titanium manufacturing production facilities, a waste water
9 treatment facility (“WWTF”), two surface impoundments (“HP-1 and HP-6”), a solid waste
10 landfill (“J-2 Landfill”), and research and development facilities.

11 21. The WWTF treats wastewater discharge from the production process. The WWTF
12 generates, among other things, brine which is to be discharged into two onsite surface
13 impoundments HP-1 and HP-6.

14 22. HP-1 surface impoundment is a 15 million gallon surface impoundment with
15 engineered synthetic liners and leak-detection system.

16 23. HP-1 was constructed and placed into service in 2005.

17 24. HP-1 was designed to serve as a storage pond for non-corrosive brines from the
18 WWTF, and for use during upset conditions. It has been used to hold process waste water and
19 solids from at least three upset events at the Facility in 2005 and 2007.

20 25. As a by-product of its manufacturing process, Timet manufactured PCBs found in
21 magnesium chloride dust at the Facility.

22 26. These PCBs in the magnesium chloride dust were manufactured without an
23 exemption under TSCA and disposed of in a trench located outside the manufacturing building,
24 (“Trench”) and in the J-2 Landfill, neither of which were permitted to accept PCBs.

25 27. Timet also owned and stored at least three out-of-use PCB transformers at the
26 Facility. The manner in which these transformers were stored, and the period of time for which
27 they were stored at the Facility violated TSCA.

28 **First Claim for Relief - Injunctive Relief Under TSCA**

Manufacture, Use, and Disposal of PCBs

1
2 28. The allegations in paragraphs 1 through 27 are incorporated herein by
3 reference.

4 29. Prior to May 2007, Timet manufactured PCBs without authority to do so.

5 30. In 2005 and 2006, PCBs at concentrations between 85 parts per million (“ppm”) and
6 1,430 ppm were found in magnesium chloride dust generated in the titanium production process
7 at the Facility.

8 31. In 2008, EPA took samples of dust attached to piping at the Facility, through which
9 magnesium chloride dust traveled, that showed PCB contamination at concentrations of 4 and 9.3
10 ppm.

11 32. EPA inspections revealed that PCBs were located in magnesium chloride dust
12 located in a Trench outside the Magnesium Recovery Building at the Facility and at least one
13 location in the J2 Landfill.

14 33. TSCA regulates PCBs in any by-product, intermediate, or impurity manufactured at
15 any point in a process. 40 C.F.R. § 761.1(b)(1).

16 34. PCBs in magnesium chloride dust are a by-product, intermediate, or impurity
17 manufactured during the titanium production process.

18 35. No person may manufacture PCBs for use within the United States without an
19 exemption. 40 C.F.R. § 761.20(b).

20 36. Timet did not obtain an exemption from EPA for the manufacture of PCBs in the
21 magnesium chloride dust.

22 37. Timet is in violation of TSCA Section 15(1), 15 U.S.C. § 2614(1), which makes it
23 unlawful for any person to fail or refuse to comply with Section 6(e) of TSCA, 15 U.S.C. §
24 2605(e), or any rule promulgated thereunder.

25 38. Timet is in violation of Section 6(e) of TSCA by manufacturing PCBs without an
26 exemption.

27 39. Timet has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614, and
28

1 40 C.F.R. Part 761.

2 40. Timet manufactured PCBs at the Facility in magnesium chloride dust in
3 concentrations in excess of 50 ppm.

4 41. Therefore, the magnesium chloride dust at the Facility was "PCB-contaminated" as
5 that term is defined at 40 C.F.R. § 761.3.

6 42. Timet released, spilled, or otherwise discharged PCB-contaminated magnesium
7 chloride dust in the Trench and in the J-2 Landfill.

8 43. Timet's release, spill, or otherwise discharge of PCB-contaminated magnesium
9 chloride dust at the Facility constitutes "disposal" of PCBs as that term is defined at 40 C.F.R. §§
10 761.3 and 761.50(a)(4).

11 44. The PCB-contaminated magnesium chloride dust that Timet released, spilled, or
12 otherwise discharged at the Facility constitutes "PCB remediation waste" as that term is defined
13 at 40 C.F.R. § 761.3.

14 45. Any person storing or disposing of PCB waste must do so in accordance with 40
15 C.F.R. Part 761, Subpart D. 40 C.F.R. § 761.50(a).

16 46. Pursuant to 40 C.F.R. Part 761, Subpart D, PCB remediation waste must be disposed
17 of in a chemical waste landfill authorized to receive PCBs or in an incinerator, as appropriate. 40
18 C.F.R. § 761.61.

19 47. Neither the Trench nor the J-2 Landfill, nor any other location at the Facility, is a
20 chemical waste landfill authorized to receive PCBs or an incinerator.

21 48. Consequently, Timet's disposal of PCB-contaminated magnesium chloride dust in the
22 Trench and the J-2 Landfill was not in accordance with 40 C.F.R. Part 761, Subpart C, as
23 required by 40 C.F.R. § 761.50(a).

24 49. Timet violated TSCA requirements for storage, disposal, and reuse of PCBs and
25 PCB items at concentrations of 50 ppm or greater.

26 50. Timet violated 40 C.F.R. §§ 761.65(b) and 761.205(c)(2) because TSCA requires
27 that generators of PCB waste notify EPA. Timet did not notify EPA of PCB waste activities
28

1 even though Timet was a generator of PCB waste, in the form of PCBs in magnesium chloride
2 dust.

3 51. Investigation has shown that PCBs were also being manufactured as a by-product of
4 operations at the Facility and that PCBs have been found in various locations at the Facility.

5 52. Sampling has reflected elevated levels of PCBs in the Trench and in the J-2 Landfill.

6 53. Until the disposal of the PCBs has been addressed, it is a continuing violation. If not
7 restrained, Timet's violations will continue.

8 54. TSCA Section 17(a), 15 U.S.C. § 2616(a) provides the Court with jurisdiction to
9 grant injunctive relief for a violation of Section 6(e) of TSCA.

10 **Second Claim for Relief - Civil Penalties and Injunctive Relief Under RCRA**
11 **Treatment, Storage, or Disposal of Hazardous Waste without a Permit**

12 55. The allegations in paragraphs 1 through 54 are incorporated herein by reference.

13 56. RCRA requires owners and operators of hazardous waste management units to have
14 permits for the treatment, storage, and disposal of any hazardous waste during the active life of
15 the unit. 40 C.F.R. § 270.1(c).

16 57. Timet is an "operator" and "owner" as those terms are defined at 40 C.F.R. § 260.10
17 because it is the person responsible for the overall operation of the facility and the person who
18 owns the facility.

19 58. The surface impoundment, HP-1, is a hazardous waste management unit under
20 RCRA because it is a "contiguous area of land on or in which hazardous waste is placed, or the
21 largest area in which there is a significant likelihood of mixing hazardous waste constituents in
22 the same area." 40 C.F.R. § 260.10.

23 59. Inspection and sampling showed that while most waste water at the Facility passes
24 through the WWTF, some corrosive waste water is directed into HP-1 without being treated in
25 the WWTF. The waste water is corrosive, with a pH lower than two (2).

26 60. The corrosive waste water is a hazardous waste under RCRA because it is solid
27 waste, as defined at 40 C.F.R. § 261.2, that exhibits any of the characteristics of a hazardous
28 waste, including corrosivity. 40 C.F.R. § 270.2, 261.3, 261.20, and 261.22. A solid waste

1 exhibits the characteristic of corrosivity if a representative sample of the waste is aqueous and
2 has a pH less than or equal to two (2) .

3 61. Timet has no permit to dispose of, store, or treat hazardous waste in HP-1.

4 62. By routing corrosive waste water directly to HP-1, Timet disposes of a hazardous
5 waste without a permit in violation of Section 2003(a) of RCRA, 42 U.S.C. § 6925(a), and 40
6 C.F.R. § 270.1(c).

7 63. The hazardous waste was stored without a permit in HP-1, in at least 2007, 2008, and
8 2009 in violation of 40 C.F.R. 270.1(c).

9 64. The hazardous waste is also treated without a permit in HP-1 in violation of 40
10 C.F.R. § 270.1(c).

11 65. Any method, technique, activity, or process designed to change the character or
12 composition of hazardous waste to render such waste nonhazardous is treatment under RCRA.
13 42 U.S.C. § 6903.

14 66. Timet monitors the pH of HP-1 and takes action to modify the pH when the pH
15 reading falls below two (2).

16 67. Timet has therefore treated the corrosive contents of HP-1 in violation of Section
17 3005(a) of RCRA, 42 U.S.C. § 6925(a) and 40 C.F.R. § 270.1(c).

18 68. Under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Timet is
19 subject to an injunction and to civil penalties not to exceed \$25,000 per day for each violation
20 which occurred prior to January 31, 1997, \$27,500 per day for each violation which occurred on
21 or after January 31, 1997, \$32,500 per day for each violation which occurred after March 15,
22 2004, and \$37,500 per day for each violation which occurred after January 12, 2009. *See* 40
23 C.F.R. § 19.4.

24 **Third Claim for Relief - Corrective Action Under RCRA Section 3004(u),**
25 **42 U.S.C. § 6924(u)**

26 69. Paragraphs 1 through 68 are incorporated herein by reference.

27 70. The Facility is subject to the RCRA permit requirement because Timet managed
28 hazardous waste in HP-1.

1 71. HP-1 is a solid waste management unit for the purposes of Section 3004(u) of RCRA
2 because it is a unit at a facility from which hazardous constituents might migrate.

3 72. Corrosive liquid such as waste water deposited into HP-1 is a hazardous waste.

4 73. EPA has identified hazardous constituents, including PCBs, in various locations
5 throughout the Facility including but not limited to HP-1, the J-2 Landfill, the Trench, as well as
6 in piping.

7 74. Parts of the Facility are solid waste management units for the purposes of Section
8 3004(u) because they are units at a facility from which hazardous constituents, including PCBs,
9 might migrate.

10 75. RCRA Section 3004(u), 42 U.S.C. § 6924(u), authorizes the Administrator of EPA to
11 require corrective action for all releases of hazardous waste or constituents from any SWMU at
12 facilities that are subject to the RCRA permit requirement.

13 76. Pursuant to Section 3004(u) of RCRA, the United States is entitled to injunctive
14 relief requiring Timet to fully characterize and cleanup hazardous waste or constituents at the
15 Facility.

16 **Fourth Claim for Relief - Civil Penalty and Injunctive Relief Under RCRA**
17 **Land Disposal Restriction Violation**

18 77. Paragraphs 1 through 76 are incorporated herein by reference.

19 78. RCRA Section 3004(d), 42 U.S.C. § 6924(d), and 40 C.F.R. § 268.40(a) prohibit the
20 land disposal of RCRA corrosive hazardous waste without prior treatment to meet RCRA land
21 disposal restriction (“LDR”) treatment standards.

22 79. RCRA defines “land disposal” as placement in or on the land, including placement in
23 a surface impoundment.

24 80. Timet’s October 18, 2005 discharge of corrosive wastewater into HP-1 was disposal
25 of a RCRA corrosive hazardous waste without prior treatment into a surface impoundment and is
26 therefore subject to RCRA land disposal restrictions.

27 81. The LDR requirements call for treatment of corrosive hazardous wastes prior to land
28 disposal. 40 C.F.R. § 268.40(a) and (e).

1 82. Timet's discharge of RCRA corrosive hazardous waste to HP-1 violated LDR
2 requirements. Section 3004(d) of RCRA, 42 U.S.C. § 6924(d), and 40 C.F.R. § 268.40(a) and
3 (e).

4 83. Under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Timet is
5 subject to an injunction and to civil penalties not to exceed \$25,000 per day for each violation
6 which occurred prior to January 31, 1997, \$27,500 per day for each violation which occurred on
7 or after January 31, 1997, \$32,500 per day for each violation which occurred after March 15,
8 2004, and \$37,500 per day for each violation which occurred after January 12, 2009. *See* 40
9 C.F.R. § 19.4.

10 **Fifth Claim for Relief - Civil Penalties and Injunctive Relief Under RCRA**
11 **Freeboard Level Violation**

12 84. Paragraphs 1 through 83 are incorporated herein by reference.

13 85. RCRA requires that the owners and operators of facilities who use surface
14 impoundments to treat, store, or dispose of hazardous waste to ensure that the freeboard level in
15 the surface impoundment is at least two (2) feet as required by 40 C.F.R. § 265.221(f).

16 86. 40 C.F.R. § 264.221(f) requires that surface impoundment must be designed and
17 maintained in a manner to avoid overtopping resulting from normal or abnormal operations, over
18 filling, wind and wave action, rainfall, and other factors.

19 87. 40 C.F.R. § 264.222(a) requires that a surface impoundment must maintain 60 cm
20 (two feet) of freeboard to prevent overtopping.

21 88. On October 18, 2005, EPA inspectors observed the discharge of hazardous waste into
22 the HP-1 surface impoundment. EPA inspectors also observed that the freeboard level in the HP-
23 1 surface impoundment was less than two (2) feet.

24 89. Timet failed to maintain the freeboard level required in the HP-1 surface
25 impoundment.

26 90. Timet, the owner and operator of the Facility, uses the HP-1 impoundment for
27 treatment, storage, and disposal of hazardous wastes during conditions involving the upset of
28 routine wastewater management activities. HP-1 is therefore subject to the design, operation,

1 notification, monitoring, and inspection requirements for surface impoundments used to treat,
2 store, or dispose of hazardous waste. 40 C.F.R. § 265.220.

3 91. Because on at least one occasion the freeboard level in HP-1 was less than two (2)
4 feet, Timet violated the freeboard level requirement under RCRA.

5 92. Under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Timet is
6 subject to an injunction and to civil penalties not to exceed \$25,000 per day for each violation
7 which occurred prior to January 31, 1997, \$27,500 per day for each violation which occurred on
8 or after January 31, 1997, \$32,500 per day for each violation which occurred after March 15,
9 2004, and \$37,500 per day for each violation which occurred after January 12, 2009. *See* 40
10 C.F.R. § 19.4.

11 **Sixth Claim for Relief - Civil Penalties Under RCRA**
12 **Failure to Label or Mark Used Oil Containers**

13 93. Paragraphs 1 through 92 are incorporated herein by reference.

14 94. RCRA requires that generators of used oil clearly label or mark containers and
15 above-ground tanks used to store used oil with the words, "Used Oil." 40 C.F.R. § 279.22(c).

16 95. On September 15, 2005, EPA inspectors observed four containers of used oil at the
17 Facility that were not properly labeled or marked with the words Used Oil, in violation of 40
18 C.F.R. § 279.22(c).

19 96. Timet generated used oil at the Facility and stored the used oil in containers.

20 97. Timet violated 40 C.F.R. § 279.22 by failing to label or mark containers of used oil.

21 98. Under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Timet is subject to civil
22 penalties not to exceed \$25,000 per day for each violation which occurred prior to January 31,
23 1997, \$27,500 per day for each violation which occurred on or after January 31, 1997, \$32,500
24 per day for each violation which occurred after March 15, 2004, and \$37,500 per day for each
25 violation which occurred after January 12, 2009. *See* 40 C.F.R. § 19.4.

26 **Seventh Claim for Relief - Civil Penalties Under RCRA**
27 **Failure to Label or Mark Universal Waste Container**

28 99. Paragraphs 1 through 98 are incorporated herein by reference

1 100. RCRA requires that both small quantity and large quantity handlers of universal
2 waste lamps must clearly label or mark each lamp or each container or package containing such
3 lamps with the words, "Universal Waste-Lamp(s)," "Waste Lamp(s)," or "Used Lamp(s)." 40
4 C.F.R. § 273.14(e) and 273.34(a).

5 101. Timet handled universal waste lamps at the Facility.

6 102. Timet failed to properly label or mark a container of universal waste lamps.

7 103. On September 15, 2005, Timet had a container of universal waste lamps at the
8 Facility that was not marked or labeled with "Universal Waste-Lamp(s)," "Waste Lamp(s)," or
9 "Used Lamp(s)."

10 104. Under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Timet is subject to civil
11 penalties not to exceed \$25,000 per day for each violation which occurred prior to January 31,
12 1997, \$27,500 per day for each violation which occurred on or after January 31, 1997, \$32,500
13 per day for each violation which occurred after March 15, 2004, and \$37,500 per day for each
14 violation which occurred after January 12, 2009. *See* 40 C.F.R. § 19.4.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff requests that this Court:

- 17 1. Issue an injunction ordering defendant to comply fully with TSCA and RCRA;
- 18 2. Issue an injunction ordering defendant to complete a facility-wide investigation to
19 determine where PCBs were released and to clean-up and properly dispose of all PCB
20 remediation waste in accordance with the requirements of TSCA;
- 21 3. Issue an injunction ordering defendant to complete corrective action for all releases of
22 PCBs from a solid waste management unit at the Facility;
- 23 4. Enter judgment in favor of the United States against defendant for a civil penalty for
24 violations of RCRA not to exceed \$25,000 per day for each violation which occurred prior to
25 January 31, 1997, \$27,500 per day for each violation which occurred on or after January 31,
26 1997, \$32,500 per day for each violation which occurred after March 15, 2004, and \$37,500 per
27 day for each violation which occurred after January 12, 2009.

- 1 5. Award the United States prejudgment interest and costs of suit incurred herein; and
2 6. Grant such other and further relief as the Court deems appropriate.

3 FOR THE UNITED STATES OF AMERICA

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5 Dated: May __, 2013

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9 Environment & Natural Resources Division
10 U.S. Department of Justice

11 _____
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