

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI**

BRIDGETON LANDFILL, LLC,)	
)	
Plaintiff,)	Case No. 4:18-cv-01800-PLC
)	
vs.)	<u>JURY TRIAL DEMANDED</u>
)	
MALLINCKRODT LLC,)	
Serve at:)	
CT Corporation System)	
120 South Central Ave.)	
Clayton, MO 63105)	
)	
EVERZINC USA INC.)	
Serve at:)	
CT Corporation System)	
120 South Central Ave.)	
Clayton, MO 63105)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff Bridgeton Landfill, LLC and for its First Amended Complaint against Defendants Mallinckrodt LLC and EverZinc USA Inc. states and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action arising from environmental contamination caused by Defendants Mallinckrodt LLC and EverZinc USA Inc. and by which Plaintiff seeks cost recovery, contribution and a declaratory judgment under Sections 107(a), 113(f) and 113(g)(2) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 (“CERCLA”).

2. West Lake Landfill Superfund Site (“West Lake Landfill”) is contaminated with “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. According to the United States Environmental Protection Agency (“EPA”), action to address the contamination is necessary to protect the public health and the environment.

4. Upon information and belief, Mallinckrodt LLC and EverZinc USA Inc. are covered persons as defined by Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), because they generated and/or arranged for disposal of hazardous substances they owned or possessed that were disposed of at the West Lake Landfill.

5. Bridgeton Landfill, LLC has incurred, and will continue to incur, significant response costs to investigate and otherwise respond to the hazardous substances contained at the West Lake Landfill.

6. Mallinckrodt LLC and EverZinc USA Inc. are responsible for the release or threatened release of hazardous substances at West Lake Landfill and, therefore, should bear the costs to respond to the resulting contamination.

7. By this action, Bridgeton Landfill, LLC seeks to recover from Mallinckrodt LLC and EverZinc USA Inc. the necessary costs of response that Plaintiff has incurred and will continue to incur in a manner consistent with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300, *et seq.*, caused by the release or threatened release of hazardous substances that have contaminated the West Lake Landfill.

8. Bridgeton Landfill, LLC also seeks a declaratory judgment that Mallinckrodt LLC and EverZinc USA Inc. are liable for future response costs or damages that will be binding on any subsequent actions to further recover response costs or damages.

PARTIES

9. Plaintiff Bridgeton Landfill, LLC (“Bridgeton”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Arizona.

10. Bridgeton is the successor to Rock Road Industries, Inc. and Laidlaw Waste Systems (Bridgeton), Inc.

11. Defendant Mallinckrodt LLC is a limited liability company organized and existing under the laws of the State of Delaware. Upon information and belief, Mallinckrodt LLC’s principal place of business is St. Louis, Missouri.

12. Defendant EverZinc USA Inc. is a corporation organized and existing under the laws of the State of New York. Upon information and belief, EverZinc USA Inc.’s principal place of business is Raleigh, North Carolina.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b) because Count I seeks relief under CERCLA § 107(a), 42 U.S.C. § 9607(a), and Count II seeks relief under CERCLA § 113(f), 42 U.S.C. § 9613(f). In addition, the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), authorize this Court to grant Bridgeton declaratory relief.

14. Venue is proper in this district under CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391 because the releases, threatened releases and damages at issue occurred in Bridgeton, Missouri, which is within this judicial district.

THE WEST LAKE LANDFILL SUPERFUND SITE

15. The West Lake Landfill Superfund Site (the “West Lake Landfill”) is an inactive solid waste disposal facility located at 13570 St. Charles Rock Road in Bridgeton, St. Louis County, Missouri.

16. From 1939 to 1988, limestone quarrying and crushing operations were conducted at the West Lake Landfill, resulting in two quarry pits.

17. Beginning in the early 1950s, portions of the unquarried areas were used for landfilling municipal solid waste, industrial solid waste and construction demolition/debris. Plaintiff first came into existence in 1962.

18. In 1973, two landfill areas at the West Lake Landfill became radiologically contaminated when soils mixed with uranium ore processing residues were transported to the West Lake Landfill and used as daily cover in the landfilling operation.

19. In 1990, EPA listed the West Lake Landfill on the Superfund National Priorities List.

20. EPA has found the West Lake Landfill is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. EPA has found Bridgeton is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. EPA has found Bridgeton is a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because Bridgeton is the “owner” and/or

“operator” of the West Lake Landfill, as defined by Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

23. EPA has concluded the contamination found at the West Lake Landfill includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. EPA has concluded there have been actual or threatened “releases” of hazardous substances from the West Lake Landfill as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

MALLINCKRODT ARRANGER LIABILITY

25. Upon information and belief, Mallinckrodt Chemical Works, a predecessor-in-interest to Mallinckrodt LLC, (both hereinafter referred to as “Mallinckrodt”) contracted with the U.S. government for various types of work related to the nuclear program.

26. Upon information and belief, Mallinckrodt’s contractual obligations included refining uranium compounds and metal between 1942 and 1966.

27. Upon information and belief, Mallinckrodt owned and operated the Destrehan Street facility at the St. Louis Downtown Site, and in certain years operated the St. Louis Airport Storage Site (“SLAPS”).

28. Upon information and belief, Mallinckrodt refined uranium compounds at the Destrehan Street facility from approximately 1942-1957, resulting in residues and other materials.

29. The residues and other materials contained hazardous substances as defined by CERCLA Section 101(14), 42 U.S.C. § 9601(14).

30. Upon information and belief, from approximately March 1946 through 1957, Mallinckrodt arranged for disposal of the residues and other materials by transferring them from the Destrehan Street facility to SLAPS.

31. Upon information and belief, between approximately May 1966 and December 1966, the residues and other materials were moved by truck from SLAPS to the Hazelwood Interim Storage Site, also known as the Latty Avenue Site.

32. Upon information and belief, the residues and other materials were transported from the Latty Avenue Site and disposed of at the West Lake Landfill.

33. Upon information and belief, Mallinckrodt, therefore, generated and arranged for disposal of hazardous substances it owned or possessed, and those wastes were disposed of at the West Lake Landfill.

EVERZINC ARRANGER LIABILITY

34. On January 22, 1926, African Metals Corporation was incorporated under the laws of the State of New York.

35. On January 2, 1981, African Metals Corporation changed its name to Afrimet-Indussa Inc.

36. On September 28, 1989, Afrimet-Indussa Inc. changed its name to Sogem-Afrimet Inc.

37. On August 18, 1998, Sogem-Afrimet Inc. changed its name to Sogem USA Inc.

38. On September 7, 2001, Sogem USA Inc. changed its name to Umicore Marketing Services USA Inc.

39. On November 28, 2016, Umicore Marketing Services USA Inc. changed its name to EverZinc USA Inc.

40. Upon information and belief, in 1944, African Metals Corporation, a predecessor-in-interest to EverZinc USA Inc. (both hereinafter referred to as “EverZinc”), agreed to provide the Combined Development Trust, acting as the agent of the governments of the United States of America and the United Kingdom, with uranium ore and ore concentrates as part of the Manhattan Project.

41. Upon information and belief, EverZinc obtained and delivered radioactive ores to the United States, which were refined by Mallinckrodt in the St. Louis, Missouri area.

42. Upon information and belief, EverZinc retained ownership of the non-uranium constituents of the ores.

43. Upon information and belief, Mallinckrodt generated wastes containing hazardous substances at its Destrehan Street facility that were owned by EverZinc.

44. The wastes contained hazardous substances as defined by CERCLA Section 101(14), 42 U.S.C. § 9601(14).

45. Upon information and belief, in the mid-1950’s, EverZinc relinquished its ownership of the wastes.

46. From approximately March 1946 through 1957, the wastes were transferred from the Destrehan Street facility to SLAPS.

47. Upon information and belief, between approximately May 1966 and December 1966, the wastes were moved by truck from SLAPS to the Hazelwood Interim Storage Site, also known as the Latty Avenue Site.

48. Upon information and belief, the wastes were transported from the Latty Avenue Site and disposed of at the West Lake Landfill.

49. Upon information and belief, EverZinc, therefore, arranged for disposal of hazardous substances it owned or possessed, and those wastes were disposed of at the West Lake Landfill.

**BRIDGETON'S RESPONSE ACTIONS AND
NCP-COMPLIANT RESPONSE COSTS**

50. EPA has concluded the contamination found at the West Lake Landfill includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

51. EPA has concluded there have been actual or threatened "releases" of hazardous substances from the West Lake Landfill as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

52. EPA has compelled parties, including Bridgeton, to incur responses costs in undertaking response, investigation and removal activities at the West Lake Landfill.

53. EPA has directed that additional work in the form of remedial actions will be required at the West Lake Landfill Site.

54. Bridgeton has incurred and will continue to incur costs to investigate and otherwise respond to the hazardous substances contained at the West Lake Landfill.

55. The costs Bridgeton has incurred and will continue to incur to investigate and respond to contamination at the West Lake Landfill are "response" costs as that term is used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

56. The response costs Bridgeton has incurred and will continue to incur to investigate and respond to contamination at the West Lake Landfill are “necessary costs of response” as that phrase is used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

57. The response costs Bridgeton has incurred and will continue to incur to investigate and respond to contamination at the West Lake Landfill are consistent with the NCP as that phrase is used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

COUNT I
COST RECOVERY UNDER CERCLA 42 U.S.C. § 9607(a)

58. Plaintiff repeats and re-alleges Paragraphs 1 through 57 above, as though fully set forth herein.

59. Mallinckrodt is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

60. Upon information and belief, Mallinckrodt is a covered person within the meaning of Section 107(a)(3), 42 U.S.C. § 9607(a)(3). Upon information and belief, Mallinckrodt generated residues and other materials containing hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Upon information and belief, Mallinckrodt, by contract, agreement or otherwise, arranged for disposal of hazardous substances it owned or possessed that were disposed of at the West Lake Landfill.

61. EverZinc is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

62. Upon information and belief, EverZinc is a covered person within the meaning of Section 107(a)(3), 42 U.S.C. § 9607(a)(3). Upon information and belief,

EverZinc, by contract, agreement or otherwise, arranged for disposal of hazardous substances it owned or possessed that were disposed of at the West Lake Landfill.

63. The West Lake Landfill is a “facility” as the term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

64. Bridgeton is the “owner” and/or “operator” of the West Lake Landfill as defined by Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

65. There have been actual or threatened “releases” of hazardous substances from the West Lake Landfill as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

66. Bridgeton has undertaken response actions at the West Lake Landfill to respond to the release or threatened release of hazardous substances.

67. The costs Bridgeton has incurred and will continue to incur while undertaking response actions at the West Lake Landfill are “response” costs as that term is used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

68. Bridgeton’s past and future response costs are “necessary costs of response” as that phrase is used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

69. Bridgeton’s past and future response costs have been and will be incurred, to the extent necessary, in substantial compliance with the National Contingency Plan (“NCP”).

70. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Mallinckrodt is jointly and severally liable to Plaintiff, in whole or in part, for any

necessary costs of response for the West Lake Landfill that Bridgeton has incurred or will incur in the future in substantial compliance with the NCP.

71. To date, Mallinckrodt has not reimbursed Bridgeton for any of the response costs incurred in connection with the West Lake Landfill.

72. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), EverZinc is jointly and severally liable to Plaintiff, in whole or in part, for any necessary costs of response for the West Lake Landfill that Bridgeton has incurred or will incur in the future in substantial compliance with the NCP.

73. To date, EverZinc has not reimbursed Bridgeton for any of the response costs incurred in connection with the West Lake Landfill.

74. Notice of this action is being provided to the Administrator of the Environmental Protection Agency and the United States Attorney General, pursuant to 42 U.S.C. § 9613(l).

COUNT II
CLAIM FOR CONTRIBUTION UNDER CERCLA, 42 U.S.C. § 9613(f)

75. Bridgeton repeats and re-alleges Paragraphs 1 through 74 above, as though fully set forth herein.

76. Mallinckrodt is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

77. Upon information and belief, Mallinckrodt is a covered person within the meaning of Section 107(a)(3), 42 U.S.C. § 9607(a)(3). Upon information and belief, Mallinckrodt generated residues and other materials containing hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Upon information and belief, Mallinckrodt, by contract, agreement or otherwise, arranged for disposal of

hazardous substances it owned or possessed that were disposed of at the West Lake Landfill.

78. EverZinc is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

79. Upon information and belief, EverZinc is a covered person within the meaning of Section 107(a)(3), 42 U.S.C. § 9607(a)(3). Upon information and belief, EverZinc, by contract, agreement or otherwise, arranged for disposal of hazardous substances it owned or possessed that were disposed of at the West Lake Landfill.

80. The West Lake Landfill is a “facility” as the term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

81. Bridgeton is the “owner” and/or “operator” of the West Lake Landfill as defined by Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

82. There have been actual or threatened “releases” of hazardous substances from the West Lake Landfill as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

83. Bridgeton has entered into various agreements with the United States to perform response actions at the West Lake Landfill that could be deemed settlements under which Bridgeton may be deemed to have resolved certain of its liability for contamination at the West Lake Landfill.

84. The costs for which Bridgeton is liable under the various agreements with the United States constitute necessary costs of response incurred in a manner consistent with the NCP under 42 U.S.C. § 9607(a)(4)(B) to remediate hazardous substances. These costs, which include but are not limited to millions of dollars that Bridgeton has already

expended to address the contamination contributed to the West Lake Landfill by Mallinckrodt and EverZinc, represent more than Bridgeton's allocable share of costs related to their releases or disposal of hazardous substances at the West Lake Landfill.

85. Bridgeton is entitled to contribution from Mallinckrodt under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for Mallinckrodt's equitable share of all costs and damages incurred by Bridgeton that exceeds Bridgeton's equitable share of the costs for which Bridgeton is liable under its various agreements with the United States that could be deemed settlement agreements.

86. Bridgeton is entitled to contribution from EverZinc under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for EverZinc's equitable share of all costs and damages incurred by Bridgeton that exceeds Bridgeton's equitable share of the costs for which Bridgeton is liable under its various agreements with the United States that could be deemed settlement agreements.

87. Notice of this action is being provided to the Administrator of the Environmental Protection Agency and the United States Attorney General, pursuant to 42 U.S.C. § 9613(l).

COUNT III
DECLARATORY JUDGMENT UNDER FEDERAL LAW

88. Bridgeton repeats and re-alleges Paragraphs 1 through 87 above, as though fully set forth herein.

89. An actual and substantial controversy has arisen between Bridgeton, Mallinckrodt and EverZinc regarding their respective rights and obligations for the response costs that have been incurred and the response costs that will be incurred to respond to the releases of hazardous substances at the West Lake Landfill.

90. Until such time as remediation of the West Lake Landfill is complete, additional response costs will be needed to respond to the contamination at the site.

91. Pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, and CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), Bridgeton is entitled to a declaratory judgment holding Mallinckrodt jointly and severally liable to Bridgeton under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for past and future response costs incurred by Bridgeton in connection with the West Lake Landfill.

92. Pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, and CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), Bridgeton is entitled to a declaratory judgment holding Mallinckrodt liable under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for contribution for Mallinckrodt's equitable share of all costs and damages incurred by Plaintiffs that are deemed resolved under settlement agreements between Bridgeton and the United States.

93. Pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, and CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), Bridgeton is entitled to a declaratory judgment holding EverZinc jointly and severally liable to Bridgeton under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for past and future response costs incurred by Bridgeton in connection with the West Lake Landfill.

94. Pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, and CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), Bridgeton is entitled to a declaratory judgment holding EverZinc liable under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for contribution for EverZinc's equitable share of all costs and damages

incurred by Plaintiffs that are deemed resolved under settlement agreements between Bridgeton and the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bridgeton Landfill, LLC demands judgment in its favor and against Defendants Mallinckrodt LLC and EverZinc USA Inc., to the extent authorized by law, as follows:

A. AS TO COUNT I, for recovery of all response costs incurred in connection with the West Lake Landfill consistent with the National Contingency Plan, including pre-judgment interest thereon as allowed by law;

B. AS TO COUNT II, for contribution for all costs and damages incurred by Bridgeton, including pre-judgment interest thereon as allowed by law, that exceed Bridgeton's equitable share of the costs for which Bridgeton is liable under any settlement agreements with the United States;

C. AS TO COUNT III, for a judicial declaration that Mallinckrodt is jointly and severally liable for all response costs incurred and to be incurred in connection with the West Lake Landfill consistent with the National Contingency Plan, such judgment to be binding on any subsequent action or actions to recover further response costs or damages;

D. AS TO COUNT III, for a judicial declaration that Mallinckrodt is liable for its equitable share of all costs and damages incurred by Bridgeton, including pre-judgment interest thereon as allowed by law, that exceed Bridgeton's equitable share of the costs for which Bridgeton is liable under any settlement agreements with the United States;

E. AS TO COUNT III, for a judicial declaration that EverZinc is jointly and severally liable for all response costs incurred and to be incurred in connection with the West Lake Landfill consistent with the National Contingency Plan, such judgment to be binding on any subsequent action or actions to recover further response costs or damages;

F. AS TO COUNT III, for a judicial declaration that EverZinc is liable for its equitable share of all costs and damages incurred by Bridgeton, including pre-judgment interest thereon as allowed by law, that exceed Bridgeton's equitable share of the costs for which Bridgeton is liable under any settlement agreements with the United States;

G. AS TO COUNTS I AND II, for attorneys' fees, to the extent provided for by law;

H. AS TO ALL COUNTS, for all costs and expenses incurred in this action, to the extent provided for by law;

I. AS TO ALL COUNTS, for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 1, 2018

LATHROP GAGE LLP

By: /s/ William G. Beck

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BRIDGETON LANDFILL, LLC

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

Bridgeton Landfill, LLC

Plaintiff

v.

Mallinckrodt LLC and EverZinc USA Inc.

Defendant

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Civil Action No. 4:18-cv-01800

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* EverZinc USA Inc.
c/o CT Corporation System
120 South Central Ave.
Clayton, MO 63105

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

William G. Beck
Jessica E. Merrigan
Lathrop Gage LLP
2345 Grand Blvd.
Kansas City, MO 64108

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 4:18-cv-01800

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: