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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ASH GROVE CEMENT COMPANY, a
Delaware corporation,

 Plaintiff,

 v.

LONE STAR INDUSTRIES, INC., a Delaware
corporation,

 Defendant.

No.

COMPLAINT

JURY DEMAND

In and for its Complaint, plaintiff Ash Grove Cement Company (“Ash Grove”) hereby asserts, complains, and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a) for contribution and recovery of Ash Grove’s costs and damages incurred or to be incurred in connection with the Lower Duwamish Waterway Superfund Site (the “Site”) located in Seattle, Washington, and for declaratory relief under Section § 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2) and 28 U.S.C. §§ 2201 and 2202. This civil action also alleges claims for recovery under the State of Washington’s Model Toxics Control Act, chapter 70.105D RCW (“MTCA”), as well as common law contribution, nuisance, and trespass claims associated

1 with property damage resulting from environmental contamination and hazardous substances
2 released to, disposed of, or placed at and remaining at the Site which is the subject of this
3 action.

4 **THE PARTIES**

5 2. Plaintiff Ash Grove is a Delaware corporation licensed to do business in the
6 State of Washington.

7 3. Defendant Lone Star Industries, Inc. (“Lone Star”) is a Delaware corporation
8 which owned and operated a cement manufacturing and processing plant and associated
9 terminal located in Seattle, Washington which, for purposes of this Complaint, is within the
10 Lower Duwamish Waterway Superfund Site. On information and belief, Defendant Lone Star
11 is the successor by merger to, and succeeds to liabilities associated with, the former Lone Star
12 Cement Corporation, a Delaware corporation, formerly Lone Star Cement Corporation, a
13 Maine corporation, and the former Superior Portland Cement, Inc., a Washington corporation,
14 which leased, owned, and operated the cement manufacturing and processing plant and
15 associated terminal at relevant times herein. Lone Star was an “owner” or “operator” of a
16 “facility” at the time of disposal, within the meaning of Sections 101(9) and (20) and
17 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(2).

18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over the subject matter of this action and the
20 Defendant pursuant to 28 U.S.C. §§ 1331, and Sections 107 and 113 of CERCLA, 42 U.S.C.
21 §§ 9607 and 9613, and may issue declaratory judgment and injunctive and further relief under
22 28 U.S.C. §§ 2201 and 2202.

23 5. This Court has jurisdiction over the claims alleged under state law pursuant to
24 the doctrines of supplemental jurisdiction and pendent claim jurisdiction and 28
25 U.S.C. § 1367, because the claims alleged under state law are so related to claims in this
26 action over which this Court has original jurisdiction that they form part of the same case or
27 controversy under Article III of the United States Constitution.

1 Superior Portland Cement, Inc. used polychlorinated biphenyls (“PCBs”) and suspected PCB-
2 containing transformers and equipment at the Seattle Plant for use in connection with its
3 operations, and used miscellaneous cement processing materials that contributed to the Site
4 contamination and resulting property damage.

5 12. On information and belief, during Superior Portland Cement, Inc.’s term of
6 leasehold interest and ownership and its cement manufacturing and processing operations,
7 leaching of polycyclic aromatic hydrocarbons (“PAHs”) occurred from pilings attendant to
8 the docks installed in the Lower Duwamish Waterway, and adjacent to and as part of the
9 terminal operations at the Seattle Plant that contributed to the Site contamination and resulting
10 property damage.

11 13. On information and belief, pursuant to a Plan of Reorganization and
12 Agreement dated January 16, 1957, between Superior Portland Cement, Inc. and Lone Star
13 Cement Corporation, Superior Portland Cement, Inc. merged with and into Lone Star, and/or
14 Lone Star acquired Superior Portland Cement, Inc. subject to the plan of reorganization and
15 the issuance of Lone Star stock to the shareholders of Superior Portland Cement, Inc., with
16 Superior Portland Cement, Inc. being subsequently voluntarily dissolved.

17 14. On or about April 1, 1957 Superior Portland Cement, Inc. transferred title to
18 the Seattle Plant to Lone Star. Thereafter, from 1957 to 1984, a period of approximately 27
19 years, Lone Star owned and operated the Seattle Plant including, without limitation, engaging
20 in cement manufacturing and processing at the property.

21 15. On information and belief, Lone Star’s operations of the Seattle Plant
22 constituted a mere continuation of the prior operations and business of Superior Portland
23 Cement, Inc. Lone Star is the successor by merger, mere continuation, or de facto merger to,
24 and succeeds to the liabilities of, the former Superior Portland Cement, Inc. (collectively
25 referred to as “Lone Star” for the remainder of the Complaint)

26 16. On information and belief, from 1931 to 1984 the Seattle Plant produced
27 clinker by the wet process method. In this manner, raw materials including limestone, clay,

1 sand, and iron ore were crushed then mixed into a slurry. Other additives such as vanillin
2 black liquor solids, calcium derivatives, and molasses were also added to the slurry to control
3 the quality of the cement set. The slurry was then pumped into one of two kilns and
4 processed to produce clinker. Clinker was then mixed with gypsum and ground in the finish
5 mill to the final cement product. Raw materials were unloaded from barges into piles on the
6 west end of the property. Over the years, additional clinker brought in by rail and barge to the
7 Seattle Plant. Clinker manufacture ceased in April 1984.

8 17. On information and belief, during Lone Star's term of ownership and its
9 cement manufacturing and processing operations following its acquisition in 1957, Lone Star
10 continued to use PCBs and suspected PCB-containing transformers and equipment at the
11 Seattle Plant for use in connection with its operations, and used miscellaneous cement
12 processing materials that contributed to the Site contamination and resulting property damage.

13 18. On information and belief, during Lone Star's term of ownership and its
14 cement manufacturing and processing operations following its acquisition in 1957, leaching
15 of PAHs occurred from pilings attendant to the docks installed in the Lower Duwamish
16 Waterway, and adjacent to and as part of the terminal operations at the Seattle Plant that
17 contributed to the Site contamination and resulting property damage.

18 19. On information and belief, Lone Star installed, maintained, and used an
19 unlined process water settling pond at the Seattle Plant and near the bank of the Lower
20 Duwamish Waterway, that on information and belief contributed to the disposal and release of
21 hazardous substances from the Seattle Plant to the property, sediments, and Lower Duwamish
22 Waterway, and contributed to the Site contamination and resulting property damage.

23 20. In 1984, Lone Star sold the Seattle Plant to Ash Grove, with the sale closing in
24 the name of Oregon Portland Cement Company, a then wholly owned subsidiary of Ash
25 Grove. Ash Grove is the current owner of the Seattle Plant.

26 21. Lone Star filed a Chapter 11 bankruptcy petition on or about December 10,
27 1990. On information and belief, Lone Star did not identify or include in its bankruptcy

1 schedules, its disclosure statement, or its plan of reorganization any of the claims that Ash
2 Grove asserts against Lone Star in this Complaint.

3 22. The Lower Duwamish Waterway Superfund Site is an approximately 5-mile
4 stretch of the Duwamish River that flows into Elliott Bay in Seattle, Washington. The Site
5 includes upland sources of contamination to the waterway. Historic industrial use of
6 hazardous substances, and/or various spills and other accidents involving such hazardous
7 substances, along the waterway have resulted in the release of hazardous substances into the
8 environment and have left the waterway and sediments contaminated with hazardous
9 substances and toxic chemicals, resulting in pollution and property damage.

10 23. In 2001, the United States Environmental Protection Agency (“EPA”) listed
11 the Lower Duwamish Waterway Superfund Site on EPA’s National Priorities List. In 2002,
12 the State of Washington Department of Ecology (“Ecology”) added the Site to the
13 Washington Hazardous Sites List. On information and belief, hazardous substances
14 associated with and released in the course of historical industrial operations, and/or involved
15 in various spills and other accidents, along the waterway have led to pollution and resulting
16 property damage in the waterway sediments that include, but are not necessarily limited to,
17 PCBs, dioxins/furans, carcinogenic polycyclic aromatic hydrocarbons (“cPAHs”), mercury
18 and other metals, and arsenic.

19 24. Based on its ownership of the Seattle Plant, EPA has identified Ash Grove as a
20 potentially responsible party under CERCLA with respect to the Site.

21 25. On information and belief, hazardous substances were disposed of and released
22 into the environment during and as part of Lone Star’s, and its predecessor Superior Portland
23 Cement, Inc.’s, ownership of and operations at the Seattle Plant, and said disposals and
24 releases are a source of contamination to the Seattle Plant and the Site and resulting property
25 damage.

26 26. Should any of Ash Grove’s claims against Lone Star be adjudged by the Court
27 to have been discharged in bankruptcy, such discharge does not bar the assertion of such

1 claims against Lone Star as nominal defendant for the purpose of establishing Lone Star's
2 liability and seeking satisfaction of such liability from Lone Star's insurers.

3 **FIRST CAUSE OF ACTION**

4 **(CERCLA Section 107(a) Cost Recovery Claim)**

5 27. Ash Grove realleges and incorporates by reference all preceding paragraphs as
6 if fully set forth herein.

7 28. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42
8 U.S.C. § 9601(9).

9 29. “Hazardous substances” within the meaning of Section 101(14) of CERCLA,
10 42 U.S.C. § 9601(14), were disposed of, placed, released, or otherwise became located at the
11 Site, at times relevant to this action, by Lone Star.

12 30. Lone Star is responsible for “releases” within the meaning of Section 101(22)
13 of CERCLA, 42 U.S.C. § 9601(22), at or from the Site at times relevant to this action.

14 31. Lone Star is a “person” within the meaning of Section 101(21) of CERCLA,
15 42 U.S.C. § 9601(21).

16 32. A person is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) if, at
17 the time of disposal, the person owned or operated a facility at which hazardous substances
18 were disposed of, 42 U.S.C. § 9607(a)(2), the person arranged, by contract or otherwise, with
19 a transporter for transport or disposal or treatment of hazardous substances owned or
20 possessed by such person, by any other party or entity, at any facility or incineration vessel
21 owned or operated by another party or entity and containing such hazardous substances, 42
22 U.S.C. § 9607(a)(3), or the person accepted any hazardous substances for transport to disposal
23 or treatment facilities, incineration vessels or sites selected by such person, from which there
24 is a release, or threatened release, which causes the incurrence of response costs, 42 U.S.C.
25 § 9607(a)(4).

26 33. Lone Star is a person who is liable for owning and/or operating a facility at or
27 from which hazardous substances were disposed under 42 U.S.C. § 9607(a)(2), for arranging

1 for transport or disposal of hazardous substances under 42 U.S.C. § 9607(a)(3), and for
2 transporting hazardous substances to the Site under 42 U.S.C. § 9607(a)(4).

3 34. As a result of Lone Star's, and its predecessor Superior Portland Cement,
4 Inc.'s, release or threatened release of hazardous substances and resulting property damage,
5 Ash Grove has undertaken response actions at the Site, and will undertake response actions in
6 the future. In performing these response actions, Ash Grove has incurred and will continue to
7 incur response costs at the Site.

8 35. Ash Grove is entitled to recovery of response costs and contribution from
9 Defendant Lone Star under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

10 **SECOND CAUSE OF ACTION**

11 **(MTCA Private Right of Action)**

12 36. Ash Grove realleges and incorporates by reference all preceding paragraphs as
13 if fully set forth herein.

14 37. The Site is a "facility" within the meaning of MTCA, RCW 70.105D.020(5).

15 38. "Hazardous substances" within the meaning of MTCA,
16 RCW 70.105D.020(10), were released into the environment by Lone Star at the Site.

17 39. Lone Star is responsible for "releases" within the meaning of MTCA,
18 RCW 70.105D.020(25), into the environment at the Site at times relevant to this action.

19 40. Lone Star is a "person" as defined by MTCA, RCW 70.105D.020(19).

20 41. A person is liable under MTCA if, at the time of disposal, the person owned or
21 operated a facility at which hazardous substances were disposed of, RCW 70.105D.040(1)(b),
22 the person arranged, by contract or otherwise, with a transporter for transport or disposal or
23 treatment of hazardous substances owned or possessed by such person at a facility, or
24 otherwise generated hazardous wastes disposed of or treated at the facility,
25 RCW 70.105D.040(1)(c), or the person accepted any hazardous substances for transport to a
26 disposal, treatment, or other facility selected by such person, from which there is a release, or
27 threatened release for which remedial action is required, RCW 70.105D.040(1)(d).

1 42. Ash Grove has incurred and continues to incur remedial action costs and
2 related expenses due to the release of hazardous substances and resulting property damage at
3 and from the Seattle Plant during Lone Star's, and its predecessor Superior Portland Cement,
4 Inc.'s, ownership and operations.

5 43. Pursuant to MTCA, RCW 70.105D.040 and RCW 70.105D.080, Lone Star is
6 strictly liable for all remedial action costs associated with the Site.

7 44. Pursuant to MTCA, Ash Grove is entitled to contribution from Lone Star for
8 all remedial action costs Ash Grove has incurred or may incur in the future associated with
9 the Site.

10 45. Pursuant to MTCA, Ash Grove is entitled to recover from Lone Star the
11 remedial action costs Ash Grove has incurred and will incur associated with the Site,
12 including, but expressly not limited to, consultant fees, attorneys' fees, and other expenses
13 recoverable under MTCA.

14 **THIRD CAUSE OF ACTION**

15 **(Declaratory Judgment)**

16 46. Ash Grove realleges and incorporates by reference all preceding paragraphs as
17 if fully set forth herein.

18 47. An actual controversy within the jurisdiction of the Court exists between Ash
19 Grove and Lone Star.

20 48. Pursuant to both CERCLA and 28 U.S.C. §§ 2201 and 2202, Ash Grove is
21 entitled to a declaratory judgment that Lone Star is liable for response costs incurred and to be
22 incurred by Ash Grove in the future as a consequence of the release or threatened release of
23 hazardous substances at the Site and resulting property damage.

24 49. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), Lone Star
25 is liable for a "declaratory judgment on liability for response costs or damages that will be
26 binding on any subsequent action or actions to recover further response costs."
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1 50. Pursuant to both MTCA and chapter 7.24 RCW, Ash Grove is entitled to a
2 declaratory judgment that Lone Star is liable for remedial action costs incurred and to be
3 incurred by Ash Grove in the future as a consequence of the release or threatened release of
4 hazardous substances at the Site and resulting property damage.

5 **FOURTH CAUSE OF ACTION**
6 **(Common Law Contribution)**

7 51. Ash Grove realleges and incorporates by reference all preceding paragraphs as
8 if fully set forth herein.

9 52. Lone Star is liable in tort for any property damage or other harm to the Site
10 that occurred in connection with Lone Star’s, and its predecessor Superior Portland Cement,
11 Inc.’s, ownership of and operations at the Seattle Plant.

12 53. Ash Grove has paid costs associated with the investigation and cleaning up of
13 hazardous substances and other materials at the Site, and is likely to incur additional response
14 costs and remedial action costs, for which Lone Star is responsible.

15 54. Lone Star is liable for its equitable share of overall liability for the response
16 costs and remedial action costs incurred by or imposed on Ash Grove at the Site.

17 **FIFTH CAUSE OF ACTION**
18 **(Nuisance and Nuisance Per Se)**

19 55. Ash Grove realleges and incorporates by reference all preceding paragraphs as
20 if fully set forth herein.

21 56. The release of hazardous substances and other contaminants at the Site by
22 Lone Star has substantially and unreasonably interfered with, and continues to interfere with,
23 Ash Grove’s use and enjoyment of its property, and therefore constitutes the creation of both
24 a public and private nuisance.

25 57. Lone Star’s, and its predecessor Superior Portland Cement, Inc.’s, actions and
26 omissions were the proximate cause of damages to Ash Grove, including, without limitation,
27

1 property damage, remedial action costs, response costs, remediation costs, diminished
2 property value, and interference with business operations.

3 58. The nuisance created by Lone Star is ongoing and continues to exist, has
4 caused damage and harm and continues to cause damage and harm to Ash Grove and to the
5 property it owns and possesses.

6 59. Lone Star is liable for all damages to Ash Grove proximately caused by the
7 creation and maintenance of the ongoing nuisance and for all actions necessary to abate the
8 nuisance.

9 **SIXTH CAUSE OF ACTION**

10 **(Trespass)**

11 60. Ash Grove realleges and incorporates by reference all preceding paragraphs as
12 if fully set forth herein.

13 61. Lone Star's operations caused hazardous substances to contaminate the
14 environment at the Site, thereby invading Ash Grove's interest in the exclusive use of its
15 property.

16 62. Ash Grove has not given permission for such contamination of its property.

17 63. Lone Star's, and its predecessor Superior Portland Cement, Inc.'s, trespass
18 caused damages to Ash Grove, including, without limitation, property damage, remedial
19 action costs, response costs, remediation costs, diminished property value, and interference
20 with business operations.

21 64. The presence of hazardous substances in the environment at the Site, and their
22 continued spreading, constitutes an ongoing and continuing trespass which has caused
23 damage and harm and continues to cause damage and harm to Ash Grove and to the property
24 it owns and possesses.

25 65. Lone Star is liable for all damages to Ash Grove proximately caused by the
26 continuing and ongoing trespass and for injunctive relief.

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DEMAND FOR JURY TRIAL

Plaintiff Ash Grove Cement Company requests and demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, having stated the above causes of action, Plaintiff Ash Grove Cement Company prays for judgment in its favor as follows:

A. For declaratory relief against Defendant Lone Star Industries, Inc. confirming that it is liable under CERCLA and MTCA and for all response costs and remedial action costs incurred and to be incurred by Ash Grove, including those resulting from the property damage at the Site;

B. For entry of judgment in favor of Ash Grove on its CERCLA cost recovery claim and contribution claim against Lone Star for all response costs incurred as of the date of judgment, and for an allocation of liability to Lone Star for response costs incurred and to be incurred by Ash Grove, including those resulting from the property damage at the Site;

C. For entry of judgment in favor of Ash Grove on its MTCA private right of action against Lone Star for all remedial action costs incurred as of the date of judgment, and for an allocation of liability to Lone Star for remedial action costs incurred and to be incurred by Ash Grove, including those resulting from the property damage at the Site;

D. For entry of judgment in favor of Ash Grove for prejudgment and other interest on the amounts recoverable pursuant to CERCLA, and as may otherwise be allowable pursuant to law or equity;

E. For entry of judgment in favor of Ash Grove for the amount of all costs incurred by Ash Grove in this action, including reasonable attorneys' fees and costs pursuant to RCW 70.105D.080, and as may otherwise be allowable pursuant to law or equity;

F. For entry of judgment in favor of Ash Grove for common law contribution against Lone Star for its equitable share of overall liability for the response costs and remedial

1 action costs incurred by and to be incurred by Ash Grove including those resulting from the
2 property damage at the Site;

3 G. For entry of an order and warrant of abatement and permanent injunction
4 requiring Lone Star to abate its nuisance and enjoining Lone Star from future trespass;

5 H. For judgment in favor of Ash Grove for damages caused by Lone Star's
6 nuisance and trespass; and

7 I. For such other and further relief as the Court deems just and equitable.

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9 DATED this 31st day of January 2014.

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/s/
Stephen J. Tan, WSBA No. 22756
Joseph A. Rehberger, WSBA No. 35556
CASCADIA LAW GROUP PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101
Telephone: (206) 292-6300
Fax: (206) 292-6301
Email: stan@cascadialaw.com
Email: jrehberger@cascadialaw.com

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Attorneys for Plaintiff Ash Grove Cement
Company

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