Case 6:17-cv-01028-RBD-DCI Document 1 Filed 06/07/17 Page 1 of 9 PageID 1

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2017 JUH - 7 AM 11: 51 UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA **ORLANDO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

٧.

JOHNSON CONTROLS, INC., IAP WORLD SERVICES, INC., and IAP WORLDWIDE SERVICES, INC.

Defendants.

Civil Action No. 6:17-CV-1028-ORL-370CI

COMPLAINT

1. The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the United States Air Force ("Air Force"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

2. This is a civil action against Defendants Johnson Controls, Inc. ("JCI"), IAP World Services, Inc. ("IAP World"), and IAP Worldwide Services, Inc. ("IAP Worldwide") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, in connection with the release or threatened release of hazardous substances at certain Installation Restoration Program ("IRP") sites at Cape Canaveral Air Force Station ("CCAFS" or "the Station") in Brevard County, Florida.

3. Plaintiff seeks recovery of costs incurred to conduct response activities in connection with releases or threatened releases of hazardous substances into the environment at or from certain IRP sites pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

4. Plaintiff also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring Defendants liable for any further response costs Plaintiff may incur in responding to releases or threatened releases of hazardous substances into the environment at or from certain IRP sites at CCAFS.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 (federal question), 1345 (United States as a plaintiff), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (jurisdiction; venue).

6. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 89(b) and 1391(b) (venue, generally) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) (jurisdiction; venue), because the releases and threatened releases at or from CCAFS giving rise to the claims herein occurred in Brevard County, Florida.

28 U.S.C. § 516 vests authority to bring this action in the United States
Department of Justice.

BACKGROUND

8. Constructed in 1940, CCAFS is a 1,325 acre station located on the northern tip of a barrier island on the Atlantic coast of Florida. CCAFS is bordered by the Atlantic Ocean to the east and Banana River to the West.

9. CCAFS is a detachment of Patrick Air Force Base and is the East Coast space launch facility for the Department of Defense ("DoD"). CCAFS has been used to test and launch rockets and missiles since 1949 for DoD and the National Aeronautics and Space Administration ("NASA").

10. CCAFS and a network of stations comprise the Eastern Test Range ("ETR"), a national range managed by the Air Force for the DoD. The ETR extends more than 10,000 miles from CCAFS through the South Atlantic and into the Indian Ocean. The primary

mission of the ETR is to support the testing and launching of rockets, missiles, space vehicles and payloads, and the Air Force contracts with companies, such as the Defendants, to perform duties that support this mission.

11. This complaint involves 12 known areas of contamination at CCAFS where Launch Base Support ("LBS") contractors operated to support operations of the Station. These 14 sites are currently undergoing response activities under the DoD IRP to clean up and remove hazardous substances released between the late 1950s and 1990s. These areas are designated by the Air Force as "IRP sites." Since 2002, restoration work at the 14 IRP sites has been performed pursuant to a Corrective Action Permit for CCAFS issued by the Florida Department of Environmental Protection ("FDEP") pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.*, and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L. 98-616. The Permit requires the Air Force to perform corrective action at hazardous waste sites at CCAFS.

12. The IRP sites include nine space launch complexes ("SLCs"), six of which are located along Intercontinental Ballistic Missile ("ICBM") Road, where missiles and rockets were launched. These are SLC 11, SLC 12, SLC 13, SLC 15, SLC 16, and SLC 19. ICBM Road runs parallel to the Atlantic coastline, and the SLCs sit between the road and the coastline, immediately adjacent to the ocean. There are three additional SLCs north and south of ICBM Road. These are SLC 17, SLC 37, and SLC 40. Other IRP sites are located in areas throughout CCAFS, including in the "Industrial Area," which is in the central area of CCAFS and borders the Banana River to the west. These are Explosive Safe Area 60, Facility 1251, Facility 1381, the Facility 38320 Area, and the Hangar K Area.

13. Ongoing environmental investigations beginning in the early 1980s have detected soil and groundwater contamination of hazardous substances used during the

operations at CCAFS, including polychlorinated biphenyls ("PCBs") and trichloroethylene ("TCE") released by LBS Contractors.

14. The hazardous substances contaminating the soil and/or groundwater at the 14 IRP sites include arsenic, benzo(a)pyrene, benzo(b)fluoranthene, bis(2-ethylhexyl)phthalate ("BEHP"), chloroform, 1,2-dichloroethene ("DCE"), dibenz(a,h)anthracene, dieldrin, Freon 113, indeno(1,2,3-cd)pyrene, lead, PCBs, tetrachloroethylene ("PCE"), TCE, vinyl chloride ("VC"), and other volatile organic compounds ("VOCs").

DEFENDANTS

15. LBS contractors operated at the IRP sites by performing, pursuant to contract with the United States, certain day-to-day operation and maintenance ("O&M") functions, including operations concerning the handling and disposal of hazardous substances.

16. Beginning in or about December 1953, the Air Force entered into a series of multi-year O&M contracts with Pan American World Airways, Inc. ("PAWA"), as the LBS contractor of CCAFS and the ETR. The Aerospace Services Division ("ASD") of PAWA was responsible for the management and administration of the O&M contracts. PAWA was the LBS contractor for CCAFS from approximately December 1953 to January 1980.

17. On or about January 1, 1980, PAWA spun off ASD as a new, 100%-owned subsidiary, Pan Am World Services, Inc. ("PAWS"). As part of this corporate reorganization, PAWA transferred ASD, including all of its assets associated with the performance of the contract, to PAWS, and PAWA acquired the shares of PAWS held by PAWA executives.

18. On or about May 5, 1989, Defendant JCI, a corporation incorporated under the laws of Wisconsin, purchased the stock of PAWS from PAWA. PAWS changed its name to Johnson Controls World Services, Inc. ("JCWS") in January 1991. JCWS served as the LBS contractor under the O&M contracts from January 1991 until on or about August 21, 1998.

4 of 9

19. By a Stock Purchase Agreement dated December 17, 2004, JCI sold its shares in JCWS to Defendant IAP Worldwide Services, Inc., a corporation incorporated under the laws of Delaware. IAP Worldwide Services, Inc. changed the name of JCWS to IAP World Services, Inc. on or around March 30, 2005. Defendant IAP World Services, Inc. is a corporation incorporated under the laws of Florida. On information and belief, IAP Worldwide Services, Inc. directly owns 100% of IAP World Services, Inc.

20. JCI and/or IAP Worldwide and/or IAP World are successors-in-interest to the liabilities of PAWA, PAWS, and/or JCWS relating to the release of hazardous substances to the environment at CCAFS.

FACTS IN SUPPORT OF LIABILITY

Operations at Space Launch Complexes

21. PAWA, PAWS, and/or JCWS operated at SLC 11, SLC 12, SLC 13, SLC 15, SLC 16, SLC 17, SLC 19, and SLC 40 during a period when they disposed of hazardous substances to the environment.

22. Prior to launches, contractors responsible for launching the rockets ("launch contractors") cleaned the rockets by flushing the engines with amounts of TCE that varied based on the type of rocket being prepared for launch while the rocket stood on the launch pad. TCE would flow through the engine and onto the launch pad, and ultimately, onto the surrounding soils.

23. During the launches, up to 80 automated water nozzles directed approximately 50,000 gallons of deluge water at the launch pad and rocket engine to suppress the vibration, heat, and noise of the launch. The deluge water carried TCE, PCB-laden paint, and other debris through a deluge water system, which generally consisted of a flume trench that flowed into a concrete deluge basin, which ultimately led to an unlined, earthen percolation pond or drainage basin.

24. Pursuant to O&M contracts, the LBS Contractors, including PAWA, PAWS, and JCWS, operated and maintained the deluge water systems at the SLCs, including the water nozzles, the flume trenches, deluge basins, and earthen percolation ponds, as well as the grounds and pavements of all types at the SLCs. The operation and maintenance included the draining and cleaning of the deluge basins and earthen percolation ponds.

25. After the launches, PAWA, PAWS, and/or JCWS, sandblasted paint from structures damaged by the launch and then repainted the structures. At least until 1978, paint formulations used on launch structures included hazardous substances, such as lead and PCBs. The routine sandblasting dispersed paint particles, containing PCBs and lead, throughout surface soils at the SLCs. Failure to capture the sandblast media also resulted in an accumulation of grit and paint chips on the shoulders of flume trenches, in voids in the track foundation from the debris that rested on the tracks, and elsewhere. The contaminated grit and paint chips were swept up in the deluge waters discharged during launches and released to unlined, earthen percolation ponds at each SLC.

26. Pursuant to O&M Contracts, PAWA, PAWS, and JCWS maintained and prevented corrosion of all steel structures at CCAFS by similar means of sandblasting structures and reapplying protective paint on a monthly basis.

27. These operations performed by PAWA, PAWS, and/or JCWS resulted in the disposal of hazardous substances to the environment during their operations. Soil and groundwater sampling at SLC 11, SLC 12, SLC 13, SLC 15, SLC 16, SLC 17, SLC 19, and SLC 40 confirm the presence of hazardous substances, including PCBs, TCE, cis-1,2-DCE, VC, and/or lead.

Operations at the non-SLC IRP Sites

28. At other IRP Sites, including Explosive Safe Area 60, Facility 1381, the Facility 38320 Area, and the Hangar K Area, the LBS Contractors' operations included the maintenance and operation of transformers, the use of acid dip tanks, and the application of solvents to clean and maintain metals, pipes, and precision equipment. These operations involved the use of PCBs, solvents such as TCE, Freon 113, acetone, hydrochloric acid, nitric acid, and other hazardous substances.

29. These operations performed by PAWA, PAWS, and/or JCWS resulted in the disposal of hazardous substances to the environment during the operations. Soil and groundwater sampling at Explosive Safe Area 60, Facility 1381, the Facility 38320 Area, and the Hangar K Area confirm the presence of hazardous substances, including PCBs, TCE, cis-1,-2 DCE, and VC.

LAW GOVERNING CERCLA LIABILITY

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. 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 -

(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, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substances, shall be liable for – all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan

. . .

CLAIM FOR RELIEF

32. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

33. PCBs, TCE, cis-1,2 DCE, VC, and lead and other substances found at the IRP

sites are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34. The hazardous substances found at each IRP site were released or threatened to be released into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. Each of SLC 11, SLC 12, SLC 13, SLC 15, SLC 16, SLC 17, SLC 19, SLC 40, Explosive Safe Area 60, Facility 1381, the Facility 38320 Area, and the Hangar K Area is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), because each is a place where hazardous substances have come to be located.

36. PAWA, PAWS, and/or JCWS were operators of the facilities listed in paragraph 35 at the time of disposal of hazardous substances, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

37. Johnson Controls, Inc. and/or IAP World Services, Inc. and/or IAP Worldwide Services, Inc. are liable as successors-in-interest to the liabilities of PAWA, PAWS, and/or JCWS arising under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

38. In undertaking response actions to address the release, threatened release, or disposal of hazardous substances at the Site, the Air Force has incurred and will continue to incur "response costs" as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

39. The Air Force's response actions taken at or in connection with the IRP sites discussed above and the costs incurred incident thereto were not inconsistent with the National Contingency Plan.

PRAYER FOR RELIEF

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

- Enter judgment in favor of the United States and against Defendants for response costs incurred by the United States relating to each of the facilities listed in paragraph 35, including enforcement costs and prejudgment interest, pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A); and
- Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g), in favor of the United States against Defendants, for all costs, including

enforcement costs, incurred in the future in connection with each of the facilities listed

in paragraph 35 plus interest; and

- 3. Award the United States its costs of this action; and
- 4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Jeffrey H. Wood Acting Assistant Attorney General Environment and Natural Resources Division U.S. Department of Justice Washington, D.C. 20530 Grabull Aller / LRH /s/ Gabriel Allen GABRIEL ALLEN Trial Attorney Georgia Bar No. 740737 U.S. Department of Justice Environment and Natural Resources Division Environmental Enforcement Section 301 Howard Street, Suite 1050 San Francisco, CA 94105 Tel: (415) 744-6469 Fax: (415) 744-6476 gabriel.allen@usdoj.gov MAN /s/ Lacy R. Harwell, Jr. LACY R. HARWELL, JR. Assistant United States Attorney Florida Bar No. 714623 400 N. Tampa Street Suite 3200 Tampa, FL 33602

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) I. (a) PLAINTIFFS United States of America DEFENDANTS Johnson Controls, Inc., IAP World Services, Inc., and IAP Worldwide Services, Inc. (b) County of Residence of First Listed Plaintiff County of Residence of First Listed Defendant Milwaukee County, WI (EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY) IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. NOTE: (c) Attorneys (Firm Name, Address, and Telephone Number) Gabriel Allen, U.S. DOJ - ENRD - EES, 301 Howard Street, Suite 1050 Attomevs (If Known) Allison B. Rumsey, Arnold & Porter Kaye Scholer LLP, 601 Mass. San Francisco, California; 415.744.6469 Ave. NW, Washington, DC 20001-3743; Bill Pence, Baker Hostetler, Sun Trust Center, 200 S. Orange Ave., #2300, Orlando, FL 32801 II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) PTF and One Box for Defendant) #1 U.S. Government 3 Federal Question DEF DEP PTF Plaintiff (U.S. Government Not a Party) Citizen of This State **5** 1 O I Incorporated or Principal Place **5** 4 04 of Business In This State C 2 U.S. Government **3** 4 Diversity 3 2 3 2 Incorporated and Principal Place Citizen of Another State 3 5 3 5 Defendant (Indicate Cutizenship of Parties in Item 11!) of Business In Another State Citizen or Subject of a 03 3 Foreign Nation 36 36 Foreign Country NATURE OF SUIT (Place an "X" in One Box Only) IV. CONTRACT FORFEITURE/PENALTY BANKRUPTCY OTHER STATUTES D 110 Insurance PERSONAL INJURY PERSONAL INJURY 3 422 Appeal 28 USC 158 375 False Claims Act O 625 Drug Related Seizure D 120 Manuel D 310 Airplane 365 Personal Injury of Property 21 USC 881 3 423 Withdrawal 376 Qui Tam (3) USC [1] 130 Miller Act 315 Airplane Produce **Product Liability** 🗇 690 Other 28 USC 157 3729(a)) D 140 Negotiable Instrument Liability 3 400 State Reapportionment 367 Health Care/ CI 150 Recovery of Overpayment 🗇 320 Assault, Libel & Phannaceutical PROPERTY RIGHTS C 410 Antitrust & Enforcement of Judgmen Slander Personal Injury 3 820 Copyrights C 430 Banks and Banking D 131 Medicare Act 330 Federal Employers' Product Liability 3 450 Commerce 3 460 Deportation 3 830 Patent 7 152 Recovery of Defaulted Liability **368** Asbestos Personal 🗇 840 Trademark Student Loans CI 340 Marine Injury Product 3 470 Racketeer Influenced and (Excludes Veterans) CI 345 Marine Product SOCIAL SECURITY Liability LÁBÓR **Corrupt Organizations** I 153 Recovery of Overpayment Liability PERSONAL PROPERTY C 710 Fair Labor Standards J 480 Consumer Credit J 861 HIA (1395m) of Veteran's Benefits I 350 Motor Vehicle 🗇 370 Other Fraud 3 862 Black Lung (923) CI 490 Cable/Sat TV Act [7] 160 Stockholders' Suits D 355 Motor Vehicle 3 863 DIWC/DIWW (405(g)) 371 Truth in Lending 720 Labor/Management 3 850 Securities/Commodities' (7 190 Other Contract Product Liability 380 Other Personal Relations 3 864 SSID Title XVI Exchange 195 Contract Product Liability 7 360 Other Personal Property Damage 1 740 Railway Labor Act 3 890 Other Statutory Actions 3 865 RSI (405(g)) 196 Franchise □ 385 Property Damage 891 Agricultural Acts
893 Environmental Matters Injury 751 Family and Medical 362 Personal Injury Product Liability Leave Act Medical Malpractice 3 790 Other Labor Litigation 7 895 Freedom of Information REAL PROPERTY **CIVIL RIGHTS** PRISONER PETITIONS 791 Employee Retirement FEDERAL TAX SUITS Act 7 210 Land Condemnation 1 440 Other Civil Rights Habeas Corpus: Income Security Act D 870 Taxes (U.S. Plaintiff D 896 Arbitration CI 220 Foreclosure D 441 Voting 463 Alien Detainee or Defendant) D 899 Administrative Procedure O 230 Rent Lease & Ejectment 442 Employment 510 Motions to Vacate IRS-Third Party Act/Review or Appeal of C 240 Torts to Land C 443 Housing/ Sentence 26 USC 7609 Agency Decision C 245 Tort Product Liability Accommodations .7 530 General 950 Constitutionality of 290 All Other Real Property 445 Amer. w/Disabilities 535 Death Penalty IMMIGRATION State Statutes Employment Other: Cl 462 Naturalization Application D 446 Amer. w/Disabilities **π** 540 Mandanus & Other 465 Other Immigration Other D 550 Civil Rights Actions 3 448 Education 3 555 Prison Condition 3 560 Civil Detaince -Conditions of Confinement V. ORIGIN (Place an "X" in One Bax Only) Χı Original □ 2 Removed from Π 3 Remanded from □ 4 Reinstated or □ 5 Transferred from 06 Multidistrict Proceeding State Court Appellate Court Another District (specify) Reopened Litigation Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): CERCLA, 42 U.S.C. § 9607 VI. CAUSE OF ACTION Brief description of cause: Civil action in connection with the release or threatened release of hazardous substances at IRP sites in Brevard VII. REQUESTED IN п CHECK IF THIS IS A CLASS ACTION DEMAND S CHECK YES only if demanded in complaint: UNDER RULE 23, F.R.Cv.P. COMPLAINT: JURY DEMAND: 🖸 Yes XNO VIII. RELATED CASE(S) (See instructions): JUDGE Roy B. Dalton, Jr. IF ANY DOCKET NUMBER 6:16-cv-00716; US v EG&G SIGNATURE OF ATTORNEY OF RECORD DATE 06/06/2017 ÷ 4. Чл. -FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE