

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY
(Paducah Division)**

UNITED STATES OF AMERICA,

Plaintiff,

V.

Civil Action No. 5:20-cv-154-TBR

GOODRICH CORPORATION (f.k.a. B.F. Goodrich Corporation); WESTLAKE VINYLs, INC.; and POLYONE CORPORATION,

Defendants.

COMPLAINT

The United States of America (“United States”), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA” or “Plaintiff”), and allege as follows:

STATEMENT OF THE ACTION

1. This is a civil action by the United States of America for injunctive relief and recovery of response costs incurred or to be incurred under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C.

§§ 9606(a) and 9607(a), related to the releases and threatened releases of hazardous substances at the B.F. Goodrich Superfund Site in Calvert City, Marshall County, Kentucky (the “Site”).

2. This civil action also seeks a declaratory judgment under section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each Defendant is jointly and severally liable to the United States for future response costs that it incurs that is not inconsistent with the NCP in responding to releases and threatened releases of hazardous substances at, beneath, and/or related to the Site.

3. The United States has incurred response costs and expects to continue to incur response costs in connection with actions taken in response to releases and/or threatened releases of hazardous substances at the Site.

4. Goodrich Corporation, (formerly The B.F. Goodrich Company), Westlake Vinyls, Incorporated, and PolyOne Corporation are among the parties the Plaintiff has determined to be potentially responsible parties (PRPs) for the Site.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action and over Defendants under 28 U.S.C. §§ 1331, 1367, and 1345; CERCLA Sections 106, 107, and 113(b), 42 U.S.C. §§ 9606, 9607, and 9613(b).

6. Venue is proper in this district under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), because the claims arose, and/or the threatened and actual releases of hazardous substances occurred, in the Western District of Kentucky.

PLAINTIFF

7. The Plaintiff the United States of America is acting at the request of EPA, an agency of the United States.

DEFENDANTS

8. The defendants to this action (collectively “Defendants”) are the Goodrich Corporation (“Goodrich”), Westlake Vinyls Incorporated (“Westlake”), and PolyOne Corporation (“PolyOne”).

9. Goodrich was a New York corporation with its principal place of business in Charlotte, North Carolina. In 2011, Goodrich was acquired by United Technologies Corporation (“UTC”). In April 2020, UTC merged with the Raytheon Corporation to form Raytheon Technologies.

10. Westlake is a Delaware corporation with its principal place of business in Houston, Texas.

11. PolyOne is an Ohio corporation with its principal place of business in Avon Lake, Ohio.

12. Each of the Defendants is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE SITE

Background of Chemical Operations

13. Goodrich Corporation acquired farmland in Calvert, City, Kentucky in 1951 to construct and operate a chemical manufacturing facility.

14. In the 1950s, Goodrich constructed its initial chemical manufacturing plants at the Site.

15. Goodrich initiated operations at the Site in 1953, with the production of vinyl chloride monomer (“VCM”) through a reaction of acetylene and hydrogen chloride.

16. In the 1960s, Goodrich built additional chemical processing plants at the Site and switched from using an acetylene-based VCM production to an ethylene-based VCM production (“EDC”).

17. In the 1960s through the 1980s, Goodrich continued to expand its chemical processing operations and make changes to its processes, including

building a chlorine plant, shutting down its acrylonitrile plant, and installing wastewater ponds to eliminate waste discharge.

18. In 1990, Goodrich sold its EDC facilities to Westlake Monomers Corporation, which upon information and belief is now a part of Westlake Vinyl.

19. In 1997, Goodrich sold its chlorine and ethylene plants to Westlake CA&O Corporation, which upon information and belief is now a part of Westlake Vinyl.

20. In 2007, Goodrich transferred title of its remaining property at the Site (comprised entirely of non-manufacturing areas) to PolyOne Corporation.

Disposal of Hazardous Substances

21. Until 2009, the Kentucky Department of Environmental Protection (KDEP) managed most of the environmental response for the Site under the Resource Conservation and Recovery Act (RCRA). Prior to 2009, the Superfund response only focused on the B.F. Goodrich landfill and burn pit area adjacent to the operating plant area which had been added to the National Priorities List (NPL) in 1984.¹ As EPA and KDEP's understanding of the magnitude of contamination

¹ The Airco Site, adjacent to the B.F. Goodrich Site (landfill and burn pit area), also was listed on the NPL in 1984, and due to the shared history and adjacent location of these Sites, the PRPs addressed both Sites under one ROD in 1988.

increased, in 2009, KDEP requested that the EPA expand the scope of the Superfund response, specifically by expanding the NPL listing to include the rest of the B.F. Goodrich (now owned by Westlake Vinyls, Incorporated) operating plant area previously managed by KDEP under RCRA.

22. After the Defendants completed the Remedial Investigation/Feasibility Study (RI/FS) for the Site in 2017, the EPA Administrator signed the Record of Decision (ROD) for this Site on September 5, 2018. The capital value of the work under ROD is valued at approximately \$108 million. The remedy requires the installation of a three-mile containment wall around the perimeter of the facility, down to bedrock to prevent further migration of contaminated groundwater to the Tennessee River; recovery of EDC non-aqueous phase liquid (NAPL) from the source zone beneath the river; and monitored natural attenuation of groundwater with some groundwater extraction and treatment.

23. On October 1, 2018, the EPA issued Special Notice Letters (SNLs) to the three PRPs, Goodrich, PolyOne and Westlake, to initiate the negotiation of the Remedial Design (RD) through the execution of an Administrative Order on Consent (AOC).

GENERAL ALLEGATIONS

24. Releases of hazardous substances have occurred at the Site and continue to occur at the Site since manufacturing operations began in the 1950s. These releases have been associated directly with the manufacturing facilities at the Site, ancillary features of the manufacturing facilities (i.e. process sewers and chemical storage and transfer areas), and historical waste disposal practices. Current releases of hazardous substances continue as the historically released hazardous substances migrate into the soil, groundwater, and surface water, including the Tennessee River. The hazardous substances identified in the RI are chlorinated volatile organic compounds, EDC, benzene, naphthalene and mercury which are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. In overseeing the work at the Site the United States has incurred response costs and will incur additional response costs in the future.

26. The response costs incurred and to be incurred by the United States are not inconsistent with the National Contingency Plan, which is codified at 40 C.F.R. Part 300. The United States’ response actions include, but are not limited to, the oversight of the investigation of the Site and will include oversight of the performance of the Remedial Action.

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

28. There were and are “releases” and threatened “releases” of hazardous substances at and from the Site into the environment, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the Site poses threats or potential threats to human health and/or the environment.

29. Goodrich is liable under CERCLA as the former owner and operator of the Site at the time of disposal of hazardous substances at the Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

30. Westlake is liable under CERCLA as the current owner and operator of a portion of the Site defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

31. PolyOne is liable under CERCLA as the current owner and operator of a portion of the Site (including the landfill along the eastern perimeter; the RCRA closure cell; and Ponds 1A and 2) as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

FIRST CLAIM FOR RELIEF

32. Paragraphs 1-26 are realleged and incorporated herein by reference.

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

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

34. By Executive Order 12580 of January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), were delegated to the Administrator of EPA.

35. The United States has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release and threatened release of hazardous substances from the Site.

36. Under Section 106 of CERCLA, 42 U.S.C. § 9606, Defendants are liable for any remedial injunctive relief which may be required at the Site.

SECOND CLAIM FOR RELIEF

37. Paragraphs 1-31 are realleged and incorporated herein by reference.

38. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . .

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan... .

39. Defendants are liable under Section 107(a) of CERCLA, 42 U.S.C. §§ 9607(a)(2), as a person who currently owns a portion of the Site or as a person which owned or operated a facility at the time at which hazardous substances were disposed of.

40. The United States has incurred and will continue to incur costs not inconsistent with the National Contingency Plan to respond to the release or threatened release of hazardous substances at the Site, or of hazardous substances

which came to be located at the Site, within the meaning of sections 101(23), 101(24), and 101(25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25).

41. The United States is entitled to a declaratory judgment on liability against Defendants, under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding in any subsequent action to recover further response costs incurred by the United States in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully request that the Court enter:

1. An order under Section 106 of CERCLA, 42 U.S.C. § 9606, requiring Defendants to perform certain response actions that are necessary to abate the danger or threat of a release of hazardous substances at or from the Site;

2. A declaratory judgment, under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), of Defendants' liability, which will be binding in any subsequent action against Defendants seeking to recover further response costs incurred by the United States in connection with the Site; and

5. An order granting such other relief as the Court deems appropriate.

FOR THE UNITED STATES OF AMERICA

Respectfully submitted,

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Date

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