

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-1463

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNION CARBIDE CORP. and  
UMETCO MINERALS CORP.,

Defendants.

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**COMPLAINT**

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INTRODUCTION

1. This is a civil action by plaintiff the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), under Section 107(a) and 113(g)(2), of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9607(a), 9613(g)(2), against Union Carbide Corp. and Umetco Minerals Corp. (“Defendants”).

2. Plaintiff seeks to recover response costs EPA incurred in responding to releases and threats of releases of hazardous substances at or from the Uravan Uranium Project Superfund Site in the western portion of Montrose County, Colorado, approximately thirteen miles northwest of the town of Nucla, Colorado (“Site”).

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to

Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

#### DEFENDANTS

5. Defendant Union Carbide Corp. (“Union Carbide”) is a New York corporation. Defendant Union Carbide is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant Umetco Minerals Corp. (“Umetco”) is a Delaware corporation and a wholly owned subsidiary of Union Carbide. Defendant Umetco is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

#### RELEVANT FACTS

7. EPA proposed the Site for the National Priorities List (“NPL”) on October 15, 1984, and finalized the NPL listing on June 10, 1986. To date, two portions of the Site that were remediated have been deleted from the NPL. The remaining Site comprises a 700-acre area located in western Colorado in the western portion of Montrose County on Highway 141, approximately 13 miles northwest of the town of Nucla. It lies within the floor of the San Miguel River Valley and on two benches of Club Mesa.

8. The Site was the location of a radium-recovery plant that began operating in 1912. The Uravan mill was constructed at the Site between 1934 to 1936, and from about 1936 until 1984, the Site was operated as a uranium and vanadium processing facility. Operations at the

Site, including but not limited to the disposal of mill tailings, left a large volume of wastes that contaminated air, soil, and ground water at and near the facility, and in the San Miguel River, which is adjacent to the Site. The Site includes the former processing area, the former Town of Uravan (which housed workers for the facility), and the immediately surrounding area.

9. Defendant Union Carbide's subsidiary U.S. Vanadium Corporation purchased the Site in 1929. Union Carbide constructed the Uravan mill between about 1934 to 1936, and began vanadium processing in about 1936, and from that time operated the facility for vanadium and uranium processing under various licenses, including the current Colorado Radioactive Materials License SUA-673 from about 1947 until April 1984. Union Carbide added a uranium concentrating plant to the facility in 1941 to reclaim tailings from the vanadium mill. The vanadium plant was closed around 1945 to 1948, and around 1949 redesigned to process uranium. Union Carbide operated the mill for uranium processing from about 1949 to 1984. Union Carbide disposed of tailings from the mill in the San Miguel River until around 1940, when tailings were disposed of on-Site.

10. Defendant Umetco, a wholly-owned subsidiary of Union Carbide, acquired the Site property in 1984 and is the current owner and operator of the Site. Since April 1984, Umetco has operated and held the Colorado Radioactive Materials License SUA-673 for the Site.

11. The majority of the cleanup work at the Site was conducted by Umetco, with State oversight pursuant to a Consent Decree, incorporating a Remedial Action Plan, entered on February 23, 1987 by the U.S. District Court for the District of Colorado among the State of Colorado, Umetco, and Union Carbide. Neither the United States nor EPA is a party to the 1987 Consent Decree.

12. The 1987 Consent Decree did not provide for institutional controls to ensure long term protectiveness of the Site. On June 1, 2018, EPA selected a remedial action to be implemented at the Site, which is embodied in a final Record of Decision (“ROD”), on which the State provided its concurrence. The ROD included review by EPA of the cleanup work conducted under the 1987 Consent Decree and provides for institutional controls to address waste left in place at the Site to ensure long-term protectiveness of the Site.

13. As described above, EPA has incurred response costs to delete portions of the Site from the NPL, to review and oversee the work done under the 1987 Consent Decree, and to select long-term protections for the Site, not addressed by the 1987 Consent Decree, in its June 1, 2018 ROD.

14. EPA entered an Administrative Settlement under Section 122(h)(1) of CERCLA with Umetco on December 30, 2003, requiring a payment of \$125,000, to resolve Umetco’s liability for “Past NPL Deletion Costs” and “Future NPL Deletion Costs.” Union Carbide is not a party to that settlement agreement.

#### STATUTORY BACKGROUND

15. Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) & (b), provide that whenever any hazardous substance is released into the environment, or there is a substantial threat of a release, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance, and to undertake such investigations, monitoring, surveys, testing or other information gathering as necessary to identify the existence and extent of the releases and the extent of the danger to public health or welfare or to the environment.

16. 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 –

- (1) the owner or 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,

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shall be liable for –

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

17. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides: “In any such action described in this subsection, the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

#### GENERAL ALLEGATIONS

18. The Site and the places where hazardous substances released from the Site have come to be located constitutes a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including arsenic, molybdenum, vanadium, and uranium, have been disposed of, within the meaning of Section 101(29), 42 U.S.C. § 9601(29), at the Site by Union Carbide.

20. There have been, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from the Site.

21. As a result of the releases or threatened releases of hazardous substances at and from the Site, the United States incurred “response” costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened releases from the Site. The United States may continue to incur response costs in connection with the Site.

22. As of the date of this Complaint, the costs incurred by the United States pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in responding to releases or substantial threats of release of hazardous substances at the Site, which have not been reimbursed, total over \$1.2 million.

23. The response costs incurred by the United States were incurred in a manner not inconsistent with the National Contingency Plan. 40 C.F.R. Part 300.

CLAIM FOR RELIEF:  
JOINT AND SEVERAL LIABILITY FOR CERCLA RESPONSE COSTS

24. Paragraphs 1 through 23 are incorporated here.

25. Defendant Umetco is the current owner and operator of the Facility, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

26. Defendant Union Carbide was an owner and operator of the Facility 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).

27. Hazardous substances have been released at and from the Facility into the environment within the meaning of Sections 101 and 107 of CERCLA, 42 U.S.C. §§ 9601, 9607.

28. The United States’ actions in response to the release or threatened release of

hazardous substances from the Facility constitute “response” action as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), for which the United States has incurred costs.

29. Defendants are therefore jointly and severally liable under Section 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2), 9613(g)(2), for all costs incurred by the United States in response to releases and threatened releases of hazardous substances at and from the Site.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A. Enter an Order holding Defendants jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs incurred by EPA in response to releases and threats of releases hazardous substances at the Site;

B. Enter declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), holding Defendants jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all costs to be incurred in the future by EPA at the Site; and

C. Grant such other relief as the Court deems appropriate.

May 23, 2024

Respectfully submitted,

UNITED STATES OF AMERICA

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