

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 21-cv-1681
PHARMACIA LLC (formerly known as)	
MONSANTO CO.) and SOLUTIA INC.,)	
)	
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”), files this Complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought by the United States for recovery of costs and performance of work pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (“CERCLA”), 42 U.S.C. §§ 9606 and 9607. The United States seeks: (1) the implementation of a response action not inconsistent with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300, which is necessary to abate an imminent and substantial endangerment to the public health, welfare, or the environment posed by the presence of hazardous substances at Sauget Area 2, Sites O, Q, R, and S, Operable Unit 1 (the “Site”), in Cahokia and Sauget, St. Clair County, Illinois; and

(2) recovery of response costs that the United States has incurred in responding to the release or threatened release of hazardous substances at and from the Site into the environment. The United States also seeks a judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 2201.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the events giving rise to this claim occurred in this district and because the Site is located in this district.

SITE DESCRIPTION

4. Sauget Area 2 is a Superfund site that is located on the eastern side of the Mississippi River directly opposite St. Louis, Missouri, and within the boundaries of the City of East St. Louis and the Villages of Cahokia and Sauget, Illinois. Sauget Area 2 consists of five inactive disposal areas (Sites O, P, Q, R and S) covering approximately 200 acres situated within a floodplain of the Mississippi River called the American Bottoms.

5. EPA has divided Sauget Area 2 into two Operable Units (“OUs”): OU 1 consists of the soil, sediments, and surface water, while OU 2 consists of groundwater.

6. Sauget Area 2 is a “facility” within the meaning and scope of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

7. Sauget Area 2 is a Superfund Alternative Approach (“SAA”) agreement Site. A site with an SAA agreement requires a long-term response or remedial action, and is eligible for, but is not listed on, the National Priorities List (“NPL”).

DEFENDANTS

8. Pharmacia LLC (“Pharmacia”) is a Delaware limited liability company that is licensed to do business and transacts business in Illinois. Pharmacia’s principal place of business is located in New York, New York.

9. Solutia Inc. (“Solutia”) is a Delaware corporation that is licensed to do business and transacts business in Illinois. Solutia was incorporated on April 1, 1997 and is a wholly-owned subsidiary of Pharmacia.

10. Pharmacia and Solutia are “persons” within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

STATUTORY BACKGROUND

11. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of abatement and related enforcement activities, which are known as “response” actions, 42 U.S.C. §§ 9604(a), 9601(25).

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

[W]hen 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 . . .

13. 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 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, [and]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

* * *

shall be liable for —

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the National Contingency Plan . . .

GENERAL ALLEGATIONS

14. The area around Sauget Area 2 contains various industrial facilities, including the W.G. Krummrich plant and the Clayton Chemical facility. From 1901 to 1997, Pharmacia Corporation (formerly known as Monsanto Ag Company) owned and operated the Queeny plant located in St. Louis, Missouri. From 1917 to 1997, Pharmacia Corporation owned and operated the Krummrich plant.

15. In 1997, Pharmacia spun-off its chemical manufacturing business that included the Queeny and Krummrich plants, to Solutia Inc. Solutia is the current owner of the Krummrich plant and associated real property. Solutia and Pharmacia entered into an indemnification agreement whereby Solutia assumed financial responsibility for certain existing environmental

claims against Pharmacia, including claims under CERCLA with respect to, inter alia, Sauget Area 2.

16. In February 2000, Monsanto Ag Company was incorporated as a wholly-owned subsidiary of Pharmacia. In March 2000, Pharmacia merged with Pharmacia & Upjohn Inc. and changed its name to Pharmacia Corporation. In March 2000, Monsanto Ag Company changed its name to Monsanto Company (hereinafter “New Monsanto”). Pharmacia Corporation was purchased by Pfizer Inc. in April 2003 and is maintained as a wholly-owned subsidiary of Pfizer Inc.

17. Monsanto sent wastewater from its Krummrich plant to the Village of Sauget’s Wastewater Treatment Plant that disposed of sludge on Site O and sent contaminated wastes to Site S. Monsanto also arranged to have solid and liquid hazardous wastes deposited on Sites R and Q from both its Krummrich and Queeny plants. In addition, Solutia currently owns Site R.

18. At times relevant to this action, there have been “releases” or threats of “releases,” within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. § 9601(22) and § 9607(a), of hazardous substances into the environment at and from the Site.

19. “Hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Site.

20. The United States has taken “response actions,” within the meaning of Section 101(25), 42 U.S.C. § 9601(25), at the Site, including but not limited to providing oversight in the field and managing contractor personnel. The United States continues to take response actions in connection with the Site.

21. EPA's decision on the remedial action to be implemented for OU1 at the Site is embodied in a final Record of Decision ("ROD") executed on December 16, 2013. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

FIRST CLAIM FOR RELIEF
(Performance of Response Action under Section 106(a)
of CERCLA, 42 U.S.C. § 9606(a))

22. The allegations set forth in Paragraphs 1-21 are realleged and incorporated herein by reference.

23. The Director of the Superfund Division of EPA Region 5 has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of hazardous substances into the environment, including polychlorinated biphenyls, at and from the Site.

24. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate a danger or threat at the Site.

25. EPA selected in the OU 1 ROD a remedy to abate the dangers and/or threats caused by hazardous substances in and on the Site.

26. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Defendants are subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at or from the Site.

SECOND CLAIM FOR RELIEF
(Reimbursement of Response Costs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a))

27. The allegations set forth in Paragraphs 1-21 are realleged and incorporated herein.

28. In response to the release or threatened release of hazardous substances at or from the Site, the United States has incurred response costs for which it has not been reimbursed by

Defendants or any other party. The United States continues to incur response costs, including but not limited to the costs of this enforcement action.

29. The United States' activities related to the Site and the costs incurred incident to such actions are not inconsistent with the NCP, 40 C.F.R Part 300, as promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

30. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States is entitled to recover interest on the response costs that it has incurred at the Site, at the rate that is specified for interest on investments of the Hazardous Substances Superfund established under subchapter A of chapter 98 of title 26 of the United States Code (26 U.S.C. § 9507).

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the Defendants is jointly and severally liable to the United States for all unreimbursed response costs incurred by the United States in connection with the Site, including prejudgment interest.

32. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), each of the Defendants is jointly and severally liable to the United States for any further response costs that the United States incurs in connection with the Site.

PRAYER FOR RELIEF

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

A. Order the Defendants to perform the remedial actions for the remedies selected in the Sauget Area 2 Superfund Site Operable Unit 1 ROD for Sites O, Q, R, and S;

B. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding the Defendants jointly and severally liable for all

unreimbursed response costs incurred by the United States in connection with the Site, including enforcement costs and prejudgment interest;

C. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a declaratory judgment of joint and several liability in favor of the United States and against the Defendants that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Site;

D. Award the United States its costs and fees in this action; and

E. Award such other relief as this Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division

/s/ Michael J. Zoeller
MICHAEL J. ZOELLER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 305-1478
michael.zoeller@usdoj.gov

STEVEN D. WEINHOFET
United States Attorney
Southern District of Illinois

/s/ Nathan E. Wyatt (by consent)

NATHAN E. WYATT

Chief, Civil Division

United States Attorney's Office

Southern District of Illinois

Nine Executive Dr.

Fairview Heights, IL 62208

(618) 628-3700

nathan.wyatt@usdoj.gov

OF COUNSEL:

THOMAS J. MARTIN

Associate Regional Counsel

U.S. Environmental Protection Agency

Region 5

77 West Jackson Blvd.

Chicago, IL 60604