

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA)

and the)

STATE OF DELAWARE,)

Plaintiffs,)

v.)

Civil Action No. ____

HERCULES INCORPORATED)

CHAMPLAIN CABLE CORPORATION)

THE CHEMOURS COMPANY FC, LLC)

WASTE MANAGEMENT OF DELAWARE, INC.)

SC HOLDINGS, INC.)

CYTEC INDUSTRIES, INC.)

ZENECA INC.)

BAYER CROPSCIENCE INC.)

BP AMOCO CHEMICAL, INC.)

CHEVRON U.S.A. INC.)

CNA HOLDINGS LLC)

E.I. DU PONT DE NEMOURS AND COMPANY)

ESSCHEM, INC.)

FMC CORPORATION)

THE GOODYEAR TIRE & RUBBER COMPANY,)

HONEYWELL INTERNATIONAL INC.)

CLARIOS LLC)

KHLC, INC.)

M.A. HANNA PLASTIC GROUP, INC.)

NEW CASTLE COUNTY)

OCCIDENTAL CHEMICAL CORPORATION)

VERIZON DELAWARE LLC)

Defendants.)

COMPLAINT

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States, and at the request of and on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Delaware, by and through the Attorney General of Delaware and its undersigned attorneys, at the request of the Department of Natural Resources and Environmental Control (“DNREC”) (collectively, the “Agencies”), allege the following:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607(a), as amended (“CERCLA”), and 7 *Del.C.* § 9109, relating to the Delaware Sand and Gravel Superfund Site (“the Site”) located in New Castle County, Delaware. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, and 7 *Del.C.* § 9109, the Agencies seek injunctive relief requiring Defendants to remedy conditions that may pose an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at or from the Site. In addition, the United States seeks to recover unreimbursed costs incurred by it for activities undertaken in response to the release or threatened release of hazardous substances and related contamination at and from the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Finally, the Agencies seek a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that Defendants are liable for any future response costs that the United States and the State of Delaware may incur in connection with response actions that may be performed pertaining to the Site.

JURISDICTION AND VENUE

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

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened or actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Defendant Hercules Incorporated is a Delaware corporation that, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

5. Defendant Champlain Cable Corporation, formerly known as Haveg Industries, Inc., is a Delaware corporation which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

6. Defendant The Chemours Company FC, LLC (“Chemours”), a Delaware corporation, is a successor in interest to E.I. du Pont de Nemours & Co., Inc., which, at times relevant to this action, was engaged in the manufacture of chemicals in the State of Delaware.

7. Defendant Waste Management of Delaware, Inc., formerly known as Trash Removers, Inc., is a Delaware corporation that, at times relevant to this action, was engaged in the business of transporting and disposing of hazardous substances in the State of Delaware.

8. Defendant SC Holdings, Inc., a Pennsylvania corporation, is the successor in interest to SCA Services, Inc., which, at times relevant to this action, was engaged in the business of transporting and disposing of hazardous substances in the State of Delaware.

9. Defendant Cytec Industries, Inc., a Delaware corporation, is the successor in interest to American Cyanamid Company, which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Maryland.

10. Defendant Zeneca Inc., a Delaware corporation, is the successor in interest to ICI Americas, Inc., which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

11. Defendant Bayer CropScience Inc., a New York corporation, is the successor in interest to Stauffer Chemical Company, which, at times relevant to this action, was engaged in the business of chemical manufacturing in the State of Delaware.

12. Defendant BP Amoco Chemical Company, now known as INEOS US Chemicals Company, is a Delaware corporation that, at times relevant to this action, was engaged in the business of manufacturing petroleum products in the State of Pennsylvania.

13. Defendant Chevron U.S.A. Inc., a Pennsylvania corporation, is the successor in interest to Gulf Oil Corporation, which, at times relevant to this action, was engaged in the business of manufacturing petroleum and natural gas products in the State of Pennsylvania.

14. Defendant CNA Holdings LLC, a Delaware corporation, is the successor in interest to American Hoechst Corporation, which, at times relevant to this action, was engaged in the business of manufacturing chemicals in the State of Delaware.

15. Defendant E.I. du Pont de Nemours & Company is a Delaware corporation that, at times relevant to this action, was engaged in the manufacture of chemicals in the State of Delaware.

16. Defendant Esschem, Inc., a Delaware corporation, is the successor in interest to Sartomer Resins, Inc., which, at times relevant to this action, was engaged in the business of manufacturing dental resins in the State of Pennsylvania.

17. Defendant FMC Corporation is a Delaware corporation that, at times relevant to this action, owned and operated facilities in Marcus Hook, Pennsylvania and Newark, Delaware.

18. Defendant The Goodyear Tire & Rubber Company, an Ohio corporation, is the successor in interest to Motor Wheel Corporation, which, at times relevant to this action, was engaged in the business of manufacturing wheels and rims for automobiles and light trucks in the State of Delaware.

19. Defendant Honeywell International Inc., a Delaware corporation, is the successor in interest to Allied-Signal Inc., which, at times relevant to this action, was engaged in the business of chemical manufacturing in North Claymont, Delaware and Marcus Hook, Pennsylvania.

20. Defendant Clarios LLC, a Delaware corporation, is the successor in interest to the Johnson Controls Battery Group, Inc., formerly known as Globe Union, Inc., which, at times relevant to this action, was engaged in the business of manufacturing batteries in the State of Delaware.

21. Defendant KHLC, Inc., a Delaware corporation, is the successor in interest to Ludlow Corporation, which, at times relevant to this action, was engaged in the business of textile manufacturing in the State of Delaware.

22. Defendant M.A. Hanna Plastic Group, Inc., a Michigan corporation, is the successor in interest to Cadillac Plastic Group, Inc., the successor to Electric Hose & Rubber,

Co., which at times relevant to this action, owned and operated a facility in Wilmington, Delaware.

23. Defendant New Castle County is a political subdivision of the State of Delaware that operated a municipal landfill adjacent to the Site, and since 1977 has owned a parcel that includes a portion of the Site property.

24. Defendant Occidental Chemical Corporation (“Occidental”) is a New York corporation that, at times relevant to this action, was engaged in the business of manufacturing chemicals. Occidental is the successor in interest to Diamond Shamrock Chemical Corporation, which manufactured chemicals in the State of Delaware.

25. Defendant Verizon Delaware LLC, a Delaware corporation, is the successor in interest to The Diamond State Telephone Company, the successor to the Bell Telephone Company, which at times relevant to this action, was engaged in the business of manufacturing telecommunications equipment, including outside plant equipment, in the State of Delaware.

26. Each of the defendants referenced above, or their predecessors in interest, either 1) was an owner of facility from which hazardous substances were released; 2) 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 defendant or predecessor at the Site; or 3) accepted hazardous substances for transport to disposal or treatment facilities, within the meaning of Section 107(a)(3) & (4) of CERCLA, 42 U.S.C. § 9607(a)(1), (3) & (4).

GENERAL ALLEGATIONS

27. The Site is a former sand and gravel quarry spreading over approximately 27 acres. Sometime after quarrying operations ceased, the Site was operated as a privately owned waste landfill until 1976.

28. During the time of its operation as a landfill, liquid and solid wastes and other hazardous substances were disposed of at the Site. This includes approximately 550,000 cubic yards of industrial and municipal wastes and construction rubble, and approximately 15,000 drums containing liquids and sludge from chemical production, manufacturing and petroleum refining processes, which were found on the Site after the landfill's closure.

29. Hazardous substances, including benzene, ethylbenzene, xylenes, bis(2-chloroethyl)ether ("BCEE") and 1,4-dioxane, have been detected in soils at the Site. A plume of groundwater contaminants extends from beneath a portion of the Site known as the Drum Disposal Area through an aquifer (known as the Upper Potomac Aquifer) southward toward a well field operated by the Artesian Water Company that lies nearly one mile downgradient.

30. Groundwater contaminants of concern at the Site are benzene, ethylbenzene, xylenes, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,4-dioxane, BCEE, naphthalene, N,N-dimethylaniline, arsenic, cobalt, iron and manganese. Among these contaminants, BCEE, 1,4-dioxane and manganese are of particular concern due to their mobility, persistence and potential impact on public water supply wells. Groundwater samples collected from the Upper Potomac Aquifer beneath the Site in 2013 contained BCEE at concentrations up to 690 micrograms per liter ($\mu\text{g/L}$), 1,4-dioxane at concentrations up to 2,800 $\mu\text{g/L}$, and manganese at concentrations up to 12,800 $\mu\text{g/L}$.

31. Groundwater monitoring data also indicates that 1,2-dichloroethane and dissolved metals, primarily iron, manganese and cobalt, are being discharged into the Upper Potomac Aquifer under the Site from sources beneath the Army Creek Landfill, a former municipal waste disposal operation operated by New Castle County located adjacent to the Site's western border.

32. After being notified by DNREC of likely soil and groundwater contamination at the Site in or about November 1979, EPA conducted inspections, monitoring, evaluations, assessments, sampling, analysis, and other removal actions at the Site. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40650.

33. In 1988, EPA selected a remedy for the Site in a Record of Decision. The remedy was modified by a Record of Decision amendment in 1993 ("1993 ROD Amendment") and an Explanation of Significant Differences in 2003. Among other things, the remedy, as modified, included a slurry-wall containment system with in-situ soil treatment by soil vapor extraction and bioventing at the Drum Disposal Area.

34. On June 14, 1995, this Court entered a Remedial Design/Remedial Action Consent Decree ("1995 Consent Decree"), which resolved the claims of a complaint brought by the United States and the State of Delaware in 1989 (Civ. No. 89-562-SLR). The 1995 Consent Decree required the settling defendants to install the slurry wall and implement other elements of the remedy set forth in the 1988 Record of Decision, as amended by the 1993 ROD Amendment.

35. In a Five-Year Review Report for the Site, dated September 21, 2005, EPA concluded that the slurry wall remedy at the Drum Disposal Area of the Site was not functioning as designed due to gaps in the native clay unit that furnishes the base of the slurry-wall

containment system. In the next Five-Year Review Report for the Site, dated September 16, 2010, EPA concluded that additional response actions were required due to the failure of the constructed remedy to meet performance standards at the Drum Disposal Area, and recommended the performance of a feasibility study to develop a comprehensive source control and groundwater remediation strategy.

36. A group of defendants known as the DS&G Remedial Trust completed a Supplemental Site Characterization Report-Revision 2 (“SSCR”) in January 2016, and thereafter completed a Feasibility Study – Revision 1 (“FS”) in May 2016.

37. Based on the findings of the SSCR and FS, EPA amended the remedy set forth in the original 1988 Record of Decision, as amended by the 1993 ROD Amendment. The Amended Record of Decision issued on December 12, 2017 sets out various response actions aimed at controlling and reducing groundwater contamination at the Site.

FIRST CLAIM FOR RELIEF
(Response Costs Under CERCLA Section 107(a))

38. The allegations contained in Paragraphs 1-37 are re-alleged and incorporated by reference herein.

39. 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,
- (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, and

- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities . . . or sites selected by such person, . . .

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

40. The disposal of wastes at the Site constitutes a release of hazardous substances within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

41. The actions taken by the United States and the State of Delaware in connection with the Site constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and the United States and the State of Delaware have incurred response costs in connection with such response actions.

42. Defendants are liable under CERCLA Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) for the response costs incurred by the United States and the State of Delaware.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment Under CERCLA Section 113(g)(2))

43. The allegations contained in Paragraphs 1-42 are re-alleged and incorporated by reference herein.

44. CERCLA Subsection 113(g)(2), 42 U.S.C. § 9613(g)(2), specifies that in any action for recovery of costs under CERCLA Section 107, 42 U.S.C. § 9607, “the court shall enter a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recover further response costs”

45. The United States and the State of Delaware will continue to incur response costs associated with the Site, including governmental enforcement costs that are recoverable as response costs under CERCLA.

46. The United States and the State of Delaware are entitled to entry of a declaratory judgment that Defendants are jointly and severally liable to the United States and the State of Delaware for future response costs incurred by the United States and the State of Delaware in connection with the Site, to the extent that such costs are incurred in a manner not inconsistent with the National Contingency Plan.

THIRD CLAIM FOR RELIEF
(Injunctive Relief Under CERCLA Section 106)

47. The allegations contained in Paragraphs 1-46 are re-alleged and incorporated herein by reference.

48. U.S. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Site.

49. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), 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 and from the Site.

FOURTH CLAIM FOR RELIEF
(Injunctive Relief Under 7 Del.C. § 9109)

50. The allegations contained in Paragraphs 1-499 are re-alleged and incorporated herein by reference.

51. The State of Delaware has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Site.

52. 7 *Del. C* § 9109(b) provides, “Whenever the Secretary determines that there exists an imminent danger that requires immediate remedy to protect public health or welfare or the environment, the Secretary may seek such injunctive relief or issue an order without prior notice or opportunity to submit a proposed settlement agreement.” Accordingly, 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 and from the Site.

PRAYER FOR RELIEF

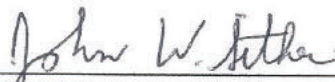
WHEREFORE, Plaintiffs, the United States of America and State of Delaware, pray that this Court:

1. Enter judgment in favor of the United States and the State of Delaware and against the Defendants for all costs, including prejudgment interest, incurred by the United States and the State of Delaware for response actions and natural resource damages and assessment costs in connection with the Site and not otherwise reimbursed;
2. Enter a declaratory judgment that the Defendants are liable for all future response costs and natural resource damages and assessment costs incurred by the United States and the State of Delaware in connection with the Site;
3. Enter a declaratory judgment that the Defendants are liable for injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Site;

4. Award the United States and the State of Delaware their costs of this action; and
Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

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A handwritten signature in blue ink, appearing to read "Kayli Spalter", is written over a horizontal line.

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