

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ILLINOIS TOOL WORKS, Inc.,)
)
 Defendant.)
 _____)

Case No. 12-1233-WDS/SCW

COMPLAINT

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 Solicitor of the United States Department of the Interior (“DOI”) and the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against Illinois Tools Works, Inc. (“Defendant”), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607.

2. The United States seeks to recover unreimbursed costs incurred for response activities undertaken in response to the release or threatened release of hazardous substances from facilities at and near Site 14 of the Miscellaneous Areas Operable Unit (“Site 14” or “the Site”) located at the Crab Orchard National Wildlife Refuge Site (the “Refuge”) near Marion, Illinois. 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 that the United States may incur in connection with response actions that may be performed at the Site pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

JURISDICTION AND VENUE

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

4. 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 claims arose and the threatened and actual releases of hazardous substances occurred in this district.

SITE BACKGROUND

5. During World War II, the Illinois Ordnance Plant ("IOP") was located on a portion of the area now occupied by the Refuge. In 1947, Congress established the Refuge, which encompasses over 40,000 acres located primarily in Williamson County, near Marion, Illinois. The enabling legislation assigned DOI, through the Fish and Wildlife Service ("FWS"), the responsibility of managing the area as a national wildlife refuge, with the additional mission of supporting private industrial activity in certain portions of the Refuge.

6. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, EPA placed the Refuge on the CERCLA National Priorities List in 1987, 52 Fed. Reg. 27,620, 27,631 (July 22, 1987). Since that time, seven operable units have been designated at the Refuge, including the Miscellaneous Areas Operable Unit ("MISCA OU").

7. Site 14 of the MISCA OU covers approximately 3.5 acres in the southeast part of the Refuge. During World War II, the land comprising Site 14 was part of a major munitions operation known as the IOP. The first industrial occupant of Site 14 was the Sherwin Williams Defense Corporation ("Sherwin Williams"), which operated the IOP under a contract with the predecessor agency to the Department of Defense. Sherwin Williams operated the painting portion of a bomb assembly line

called the “Group III Load Line” at Site 14. The Sherwin Williams operations included Building 3, to which the “Former Repour Building” was attached.

8. Diagraph Corporation, the predecessor to ITW, used the Site, including the Former Repour Building, from 1947 through 2010 to manufacture, package, and store inks, solvents, lubricants and other liquid manufacturing supplies.

9. DOI performed a Remedial Investigation/Baseline Risk Assessment (“RI”) of the MISCA OU between 1993 and 1995, and issued an RI report in 1996. DOI completed a Feasibility Study Report for the MISCA OU in August 2000. In 2001, a Record of Decision (“ROD”) was signed.

10. The ROD identified volatile organic compounds (“VOCs”) and metals including toluene, benzene, ethyl benzene, xylene, methylene chloride, lead, and chromium, among other contaminants of concern at Site 14. The highest levels of VOCs in soil and groundwater were located near the southwest corner of the Former Repour Building and in the drainage ditch nearby. The highest levels of metals contamination were located just outside the southwest corner of the Former Repour Building.

11. The remedy for Site 14 selected in the ROD included the removal of the Former Repour Building, excavation and removal of contaminated soil, and pumping and treating contaminated seepage water.

12. EPA issued a Unilateral Administrative Order (“UAO”) to Diagraph in August 2002. Diagraph performed remedial actions at Site 14 under the UAO, and in 2011 EPA confirmed that field work was complete.

13. The United States has incurred unreimbursed past costs in excess of \$2.79 million performing oversight of response actions associated with Site 14. DOI has incurred past oversight cleanup costs of more than \$2.4 million, paid for out of the Central Hazardous Materials Fund. EPA has incurred past oversight cleanup costs of more than \$390,000, paid for out of Superfund.

DEFENDANT

14. Illinois Tool Works, Inc. (“ITW”) is the successor corporation to Diagraph Corporation. Diagraph Corporation was merged and/or consolidated into ITW Inc. in 2002.

15. Diagraph is a leading supplier of inkjet coders, laser coders and automated labeling systems. At times relevant to this action, Diagraph operated the Site to manufacture, package, and store inks, solvents, lubricants and other liquid manufacturing supplies.

16. At times during the course of its operations at its facility on the Refuge, Diagraph generated waste materials containing VOCs and metals on Site 14.

CLAIM FOR RELIEF

(Cost Recovery by the United States Under CERCLA Section 107, 42 U.S.C. § 9607)

17. Paragraphs 1-16 are realleged and incorporated herein by reference.

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

19. Site 14 is a “facility,” within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9707(a).

20. VOCs and metals including toluene, benzene, ethyl benzene, xylene, methylene, chloride, lead, and chromium, among others, are “hazardous substances” within the meaning of CERCLA Section 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9707(a).

21. At times relevant to this action, there have been “releases” and “threatened releases” of “hazardous substances” from a “facility” into the environment of the Site, within the meaning of CERCLA Sections 101(9), 101(14), 101(22), 107(a), 42. U.S. C. §§ 9601(9), 9601(14), 9601(22), and 9607(a).

22. The United States has incurred “response costs” relating to the Site within the meaning of CERCLA, Section 101(25), 42 U.S.C. § 9601(25), in responding to the releases and threatened releases of hazardous substances into the environment at the Site.

23. The response costs related to the Site were incurred by the United States in a manner not inconsistent with the National Contingency Plan (“NCP”), which was promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

24. Pursuant to CERCLA Section 107(a)(2) and (3), 42 U.S.C. § 9607(a)(2) and (3), the Defendant is liable to the United States for response costs incurred and to be incurred by the United States in connection with Site 14, including enforcement costs, prejudgement interest on such costs, and, pursuant to CERCLA Sections 107(a) and 113(g)(2), 42 U.S.C. §§ 9607 and 9613(g)(2), and the Declaratory Judgment Act, 28 U.S.C. § 2201-2202, for all future costs of any response actions that may be performed at Site 14.

RELIEF SOUGHT

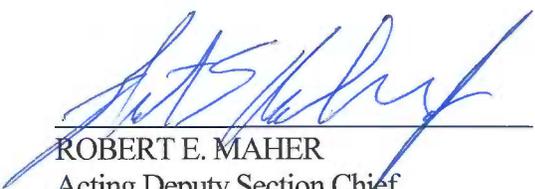
WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court grant the following relief:

1. Enter judgment in favor of the United States and against the above-named Defendant, for all response costs incurred by the United States, including prejudgement interest, for response actions in connection with Site 14, not inconsistent with the NCP;
2. Enter a declaratory judgment in favor of the United States and against the above-named Defendant pursuant to Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that the Defendant is liable for any unreimbursed future response costs that the United States incurs in connection with Site 14, not inconsistent with the NCP;
3. Award the United States its costs of this action; and

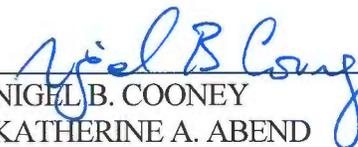
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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