

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. <u>7:16-cv-00721-MGL</u>
v.	)	
	)	
VIGINDUSTRIES INC.,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States, and at the request of Administrator of the United States Environmental Protection Agency (“EPA”), through the undersigned attorneys, files this Complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for injunctive relief and recovery of costs against Vigindustries Inc. (“Defendant”) pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. §§ 9606 and 9607(a).

2. The United States seeks (a) performance of response actions by Defendant at the International Mineral and Chemical Corporation Fertilizer Superfund Site (the “Site”), located in Spartanburg County, South Carolina, consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”); (b) reimbursement of response costs incurred by EPA and the Department of Justice related to the Site together with any accrued interest; and (c) a declaratory judgment of liability for response costs that will be incurred related to the Site.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action and Defendant, pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606(a), 9607(a), and 9613(b).

4. Venue is proper in this district pursuant to 42 U.S.C. §§ 9606(a) and 9613(b) and 28 U.S.C. § 1391(b) and (c), because the Site is located, the claims arose and the threatened and actual releases of hazardous substances that gave rise to these claims occurred, within this judicial district.

**DEFENDANT**

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

6. Defendant was formed in 1999 as a subsidiary of IMC Global Inc., or related companies, including International Mineral and Chemical Corporation and IMC Fertilizer Group – Rainbow Division (collectively, “IMC”). Upon formation, Defendant assumed a variety of environmental liabilities and obligations, including environmental liabilities and obligations for the Site.

7. In October 2004, IMC merged with Cargill Crop Nutrition to form The Mosaic Company (“Mosaic”).

8. After the merger, Defendant became a wholly-owned subsidiary of The Vigoro Corporation, which in turn is a wholly-owned subsidiary of Mosaic Global Holdings, Inc.

**GENERAL ALLEGATIONS**

9. The Site consists of a 40.83-acre parcel of land located at 515 North Street Extension in the Arkwright community just south of Spartanburg, South Carolina.

10. IMC owned and operated the Site from 1910 until 1987. During that period, the Site was used for nitrogen-phosphate-potassium fertilizer production. The primary operations at the Site were (a) a sulfuric acid production process that was constructed in 1947 and operated until 1970; (b) a superphosphate production process that continued until 1987; and (c) a fertilizer mixing operation that continued, with some process modifications, until 1987.

11. As part of the fertilizer production processes at the Site, IMC used many chemicals and raw materials, including elemental sulfur, phosphate rock, calcium sulfate, and zinc.

12. In 1986-1987, IMC ceased operations at the Site and sold the property.

13. Between 1910 and 1987, hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including a 24% zinc oxide by-product in the form of sludge with waste code K061, were disposed of at the Site.

14. In 1999, Defendant acquired title to the Site.

15. Defendant is the “owner” of the Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

16. On July 10, 2001, Defendant entered into an Administrative Order on Consent with EPA (Docket No. 01-3753-C) to conduct a Remedial Investigation and Feasibility Study for the Site pursuant to 40 C.F.R. § 300.430 (“RI/FS AOC”).

17. In July 2001, Defendant commenced the Remedial Investigation and Feasibility Study for the Site, pursuant to 40 C.F.R. § 300.430. The Remedial Investigation Report, dated April 2007, was approved by EPA on May 24, 2007. The Feasibility Study Report was dated February 2008.

18. On September 21, 2009, EPA entered into an Administrative Order on Consent For Removal Action, Docket No. CERCLA-04-2010-3751 (“Removal AOC”) with Defendant. The removal action consisted of excavation and offsite disposal of contaminated soils, use of a neutralization agent in the excavated area, installation of groundwater monitoring wells, and further investigation of surface water and groundwater contamination. The excavation, neutralization agents, and installation of monitoring well activities were completed on August 8, 2011. Groundwater monitoring performed subsequent to the completion of those activities revealed continued contamination at the Site.

19. Defendant conducted a Focused Feasibility Study, dated May 1, 2014, to evaluate remedies to address the groundwater contamination in the northeast area of the Site. EPA approved the Focused Feasibility Study on June 2, 2014.

20. On August 25, 2014, EPA issued a Record of Decision (“ROD”) selecting the remedial action for the Site. The selected remedy in the ROD includes the installation of infiltration galleries in the northeast area of the Site, application of neutralization chemicals to treat acidic subsurface soils, and the imposition of institutional controls, such as deed notices, land use restrictions, and engineered controls such as fencing, in order to restrict access to groundwater at the Site.

21. Arsenic, lead, fluoride, nitrate, benzene, cadmium, beryllium, selenium, thallium, vinyl chloride, zinc, and 2,4-dinitrotoluene are “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, App. A.

22. Each hazardous substance listed in Paragraph 20 has come to be located in the groundwater at the Site.

23. Substances identified in Paragraph 20, including fluoride and nitrate, are components of the raw materials used in fertilizer manufacturing processes.

24. There has been a “release” or a “threatened release” of “hazardous substances” into the environment at or from the Site, within the meaning of Sections 101(8), 101(14), 101(22), 104(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14), 9601(22), 9604(a), and 9607(a).

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

26. As a result of the release or threatened release of hazardous substances at or from the Site, the United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as defined by Sections 101(23), (24) and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24) and (25).

27. As stated in the ROD, EPA estimates that the remedial action for the Site will cost in excess of \$2 million.

28. EPA’s response actions taken at or in connection with the Site and the costs incurred incident thereto are not inconsistent with the NCP.

29. The United States will continue to incur response costs in connection with the Site.

**FIRST CLAIM FOR RELIEF**  
**(Injunctive Relief Under Section 106 of CERCLA)**

30. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

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

[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 . . . .

32. By Executive Order 12,580 of January 23, 1987, the President's functions under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), have been delegated to the Administrator of EPA.

33. The Administrator of EPA has re-delegated this authority to the Regional Administrators of EPA.

34. The Regional Administrator of EPA Region IV 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 or from the Site.

35. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Defendant is liable to the United States for injunctive relief to abate and remedy the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at or from the Site.

**SECOND CLAIM FOR RELIEF**  
**(Cost Recovery Under Section 107(a) of CERCLA)**

36. Paragraphs 1 through 29 are realleged and incorporated herein by reference.

37. 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, [and]

(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 . . . not inconsistent with the national contingency plan; . . . .

The amounts recoverable under this section shall include interest on the amounts recoverable under subparagraphs (A) through D. . . .

38. Pursuant to Section 107(a)(1), 42 U.S.C. § 9607(a)(1), Defendant is liable as the owner and/or operator of the Site.

39. Pursuant to Section 107(a)(2), 42 U.S.C. § 9607(a)(2), Defendant is also liable as the successor-in-interest to the owner and/or operator of the Site when disposal of hazardous substances occurred at the Site.

40. Defendant is liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for unrecovered response costs not inconsistent with the NCP incurred by the United States in connection with the Site.

41. Defendant is also liable for any applicable interest on the response costs incurred, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

42. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in pertinent part that in any action for recovery of costs, “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.”

43. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that Defendant is liable to the United States under

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all further response costs not inconsistent with the NCP incurred by the United States in connection with the Site.

**PRAYER FOR RELIEF**

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

A. Order Defendant to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or environment, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), by performing the remedy selected by EPA in the ROD;

B. Award the United States a judgment against Defendant, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs not inconsistent with the NCP incurred by the United States in connection with the Site, plus any accrued interest on the costs;

C. Award the United States a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendant is liable to the United States for all response costs not inconsistent with the NCP to be incurred by the United States in connection with the Site; and

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

Respectfully submitted,

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