

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
BAYER CROPSCIENCE INC.)	
and PHARMACIA CORPORATION,)	
)	
)	
Defendants.)	

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 Secretary of the United States Department of the Interior (“DOI”) and the Secretary of the United States Department of Commerce, through the National Oceanic and Atmospheric Administration (“NOAA”), in their capacity as natural resource trustees, files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil claim for natural resource damages brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), for damages for injury to, destruction of, or loss of natural resources at the Industri-plex Superfund Site in Woburn, Massachusetts (“Site”), including the reasonable costs of assessing such injury, destruction or loss, resulting from the release of hazardous substances from the Defendants’, or their predecessors’, manufacturing operations.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345. Venue is proper in the District Court of Massachusetts pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391, because the claims arose in this district and the release of hazardous substances occurred in this district. The Court has in personam jurisdiction over the Defendants and/or the Defendants have waived any objection to in personam jurisdiction.

DEFENDANTS

3. Pharmacia Corporation is incorporated under the laws of Delaware and has its principal place of business in Peapack, New Jersey.

4. Bayer CropScience Inc. is incorporated under the laws of New York and has its principal place of business in Greensboro, North Carolina.

GENERAL ALLEGATIONS

5. In 1853, Robert Eaton established the Woburn Chemical Works at what is now known as the First Operable Unit of the Industri-plex Superfund Site (“Industri-plex OU1”), located in Woburn, Massachusetts. In 1863, Eaton and others formed the Merrimac Chemical Company (“Merrimac”). From 1858-1890, Merrimac produced sulfuric acid and other related chemicals. Between 1899 and 1915, Merrimac became the leading U.S. producer of arsenic insecticides. In 1915, Merrimac organized a separate company which operated at the Site, called the New England Manufacturing Company (“NEMC”), a munitions manufacturer. NEMC produced organic chemicals including phenol, benzene, picric acid, toluene and trinitrotoluene (TNT). In November, 1929, Monsanto Company (“Old Monsanto”) purchased and merged with

Merrimac, which continued to operate at the Site as a division of Old Monsanto until 1931.

6. As a result of the manufacturing operations described in Paragraph 5, various hazardous substances were disposed of at the Site including, among others, arsenic.

7. In 2000, Old Monsanto changed its name to Pharmacia Corporation. Pharmacia Corporation is a successor-in-interest to Monsanto.

8. New England Chemical Company purchased the property formerly occupied by Merrimac and Old Monsanto in 1934 and constructed an animal hide glue manufacturing plant, commencing operations in 1935. Glue was made by extracting collagen from animal tissue or bones, including raw, salted or limed hides, hide fleshings or chrome tanned leather scraps. Consolidated Chemical Company purchased New England Chemical Company in 1936. Stauffer Chemical Company purchased Consolidated Chemical Company in the early 1960s. Stauffer Chemical Company continued glue manufacturing operations until 1969, when it completed equipment removal and vacated the Site.

9. As a result of the glue-making operations described in Paragraph 8, various hazardous substances were disposed of at the Site including, among others, chromium. The animal hides disposed of as a result of the glue-making operation have created reducing conditions that have rendered various hazardous substances at the Site more mobile including, among others, arsenic.

10. Stauffer Chemical Company, after a series of name changes, changed its name to Rhone-Poulenc Basic Chemicals Company in 1989. In 1992, Rhone-Poulenc Basic Chemicals Company merged into Rhone-Poulenc, Inc. Rhone-Poulenc, Inc., after a series of name changes, is now known as Bayer CropScience Inc. Bayer CropScience Inc. is a successor-in-interest to

Stauffer Chemical Company.

11. As a result of the manufacturing operations described above, the uplands at the manufacturing facilities, the Aberjona River and its associated wetlands, and the Mystic Lakes have been contaminated with hazardous substances including, among others, arsenic and chromium.

RESPONSE ACTIONS AT THE SITE

12. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, United States Environmental Protection Agency (“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. 40658-40673.

13. In 1986, EPA issued a Record of Decision for the First Operable Unit at the Site (“OU1 ROD”). The OU1 ROD addressed the contamination at approximately 245 acres located in the vicinity of the manufacturing operations conducted by the Defendants or their predecessors.

14. The OU1 ROD called for the construction of permeable protective caps over more than 100 acres of soils contaminated with heavy metals and animal wastes to prevent people from coming into contact with the contamination; construction of an impermeable protective cap and a gas (hydrogen sulfide) collection and treatment system over approximately 5 acres; establishment of institutional controls to preserve the continued effectiveness of the Industri-plex OU-1 remedy to protect human health and the environment; implementation of an interim groundwater remedy for groundwater hot spots of benzene and toluene contamination; and further investigations (known as the Groundwater/Surface Water Investigation Plan or “GSIP”)

of site-related contamination at and downstream of Industri-plex OU-1 along the Aberjona River to support a Second Operable Unit for the Site.

15. In 1989, the United States District Court for the District of Massachusetts approved a Consent Decree entered into by the Defendants in this action (or their predecessors) as well as a number of other parties (“1989 Decree”). The 1989 Decree required the settling defendants to implement the remedy set forth in the OU1 ROD and to reimburse the United States and the Commonwealth of Massachusetts for certain costs incurred in connection with the Site.

16. The Wells G&H Superfund Site consists of approximately 330 acres situated in East Woburn, Massachusetts, and is located approximately 1 mile downstream of Industri-plex OU-1 along the Aberjona River. The Wells G&H Superfund Site was placed on the National Priorities List on September 8, 1983. 48 Fed. Reg. 40658-40673.

17. Operable Unit 3 of the Wells G&H Superfund Site was known as the Aberjona River Study and required the investigation of the surface water and sediment contamination along the river and its associated wetlands. In 2002, EPA announced its plan to merge the Aberjona River Study into Industri-plex OU-2 in order to establish one comprehensive cleanup plan for the Aberjona River and associated wetlands.

18. On January 31, 2006, EPA issued a Record of Decision for Industri-plex OU2 (“OU2 ROD”). The OU2 ROD established a final groundwater remedy for the Site, and addressed downstream migration of contamination from Industri-plex OU1 and the contamination’s impact on downstream areas. The OU2 ROD set forth the following remedy for Industri-plex OU2: dredging and off-site disposal of contaminated sediments; use of a portion of

the Halls Brook Holding Area Pond as a sediment retention area that intercepts contaminated groundwater plumes; construction of permeable and impermeable caps to prevent soil contamination, groundwater plume discharge, and sediment contamination, respectively, from migrating downstream and potentially impacting components of the remedy; establishing institutional controls to restrict contact with contaminated soils, groundwater, or deeper interior wetland sediments with concentrations above performance standards; compensation of any loss of wetland functions associated with the selected remedy; long-term monitoring of the groundwater, surface water, and sediments; and, if necessary, in-situ enhanced bioremediation of groundwater plumes at the West Hide Pile.

19. On November 24, 2008, the United States District Court for the District of Massachusetts approved a Consent Decree entered into by the Defendants in this action that requires the Defendants to implement the OU2 Remedy and to reimburse EPA for certain response costs.

CLAIM FOR RELIEF

20. The allegations set forth in Paragraphs 1 through 19 are re-alleged and incorporated herein by reference.

21. Each defendant is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

23. Each defendant or its predecessor was an owner and/or operator of a manufacturing facility at the Site at the time of the disposal of hazardous substances at the Site within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

24. Arsenic and chromium are hazardous substances within the meaning of Sections 101(14), 104, and 107 of CERCLA, 42 U.S.C. §§ 9601(14), 9604, and 9607.

25. At all times relevant to this action, "natural resources" within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been and/or are being "injured, lost, or destroyed" as a result of the "release" of "hazardous substances" at or from the Site, within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), and 9607(a).

26. DOI and NOAA are trustees for natural resources injured, destroyed or lost as a result of releases of hazardous substances at the Site pursuant to Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A). *See* Exec. Order No. 12,580, as amended by Exec. Order No. 12,077, 61 Fed. Reg. 45871 (Aug. 28, 1996); 40 C.F.R. § 300.600(b)(2).

27. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly and severally liable for damages for injury to, destruction of, or loss of natural resources at the Site, including the reasonable costs of assessing such injury, destruction, or loss, resulting from the releases of hazardous substances at the Site.

28. DOI and NOAA have incurred and continue to incur costs related to the assessment of the loss of natural resources for which they are Trustees resulting from the releases of hazardous substances at or from the Site.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully request that this Court:

- (1) Enter a judgment in favor of the United States against each Defendant, jointly and severally, for liability pursuant to Section 107(a)(4)(c) of CERCLA, 42 U.S.C. § 9607(a)(4)(c), for all damages for injury to, destruction of, and loss of natural resources within the trusteeship of the United States, resulting from the releases of hazardous substances at the Site, including the unreimbursed past, present, and future costs of assessing such damages;
- (2) Enter a judgment in favor of the United States against Defendants, jointly and severally, for all costs of this action, including attorney's fees; and
- (3) Award the United States such other and further relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DONALD G. FRANKEL^v
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458
617-450-0442

CARMEN M. ORTIZ
United States Attorney
District of Massachusetts

GEORGE B. HENDERSON, II
Assistant United States Attorney
United States Attorney's Office
U.S. Courthouse
One Courthouse Way
Suite 9200
Boston, MA 02210

OF COUNSEL:

MARK BARASH
MARCIA GITTES
Office of the Regional Solicitor
Northeast Region
United States Department of the Interior
One Gateway Center
Suite 612
Newton, MA 02458

GWENDOLYN McCARTHY
Regional Attorney for Natural Resources
U.S. Department of Commerce
NOAA Office of General Counsel
55 Great Republic Drive
Gloucester, MA 01913