

CLERK'S OFFICE U.S. DIST. COURT
AT HARRISONBURG, VA
FILED

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

December 18, 2024

LAURA A. AUSTIN, CLERK
BY: S/K. Lokey
DEPUTY CLERK

UNITED STATES OF AMERICA and)
COMMONWEALTH OF VIRGINIA,)
SECRETARY OF NATURAL)
AND HISTORIC RESOURCES,)
)
Plaintiffs,)
)
v.)
)
FMC CORPORATION,)
)
Defendant.)
_____)

Civil Action No. 5:24-CR-108

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General, on behalf of the U.S. Department of the Interior (“DOI”) and the Commonwealth of Virginia, Secretary of Natural and Historic Resources (collectively “Plaintiffs”), by counsel, allege as follows:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action against FMC Corporation (“FMC”) under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a), the Virginia State Water Control Law, Va. Code §§ 62.1-44.5 and 62.1-44.32, and the Virginia Waste Management Act, Va. Code §§ 10.1-1400, et seq., for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at and from a site in Front Royal, Virginia, known as the Avtex Fibers, Inc. Site (the “Site”).

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 9607(a) and 9613(b) and 28 U.S.C. §§ 1331, 1345 and 1367(a).

3. Venue lies in this district and division pursuant to 42 U.S.C. § 9613(b), 28 U.S.C. § 1391(b)-(c), and W.D. Va. Gen. R. 2 because the releases, and damages alleged in the Complaint occurred within this district and division.

4. By certified letter posted on June 23, 2017, Plaintiffs gave notice of this action pursuant to Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1).

DEFENDANT

5. FMC is a Delaware corporation with its principal place of business at 2929 Walnut Street, Philadelphia, Pennsylvania, 19104.

6. At times relevant to these allegations, FMC was doing business in this judicial district and division.

STATUTORY FRAMEWORK

CERCLA

7. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in relevant part, that subject only to the defenses set forth in Section 107(b), 42 U.S.C. § 9607(b):

(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 ...

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 ... (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

8. “Facility” is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), to include “any building, structure, installation, equipment, pipe ..., well, pit, pond, lagoon,

impoundment, ditch, landfill, [or] storage container,” as well as “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.”

9. “Release” is defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), to include “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.”

10. “Disposal” is defined by Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), as having the same meaning as provided in Section 1004 of the Solid Waste Disposal Act. Section 1004(3) of the Solid Waste Disposal Act, 42 U.S.C. § 6903(3), defines “disposal” as “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

11. “Natural resources” is defined by Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), to include “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States ... [and] any State or local government.”

Virginia State Water Control Law

12. The Virginia State Water Control Law, Va. Code § 62.1-44.5, provides in pertinent part as follows:

[I]t shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances ; . . .
3. Otherwise alter the physical, chemical or biological properties of state waters

and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

13. The Virginia State Water Control Law, VA Code § 62.1-44.32, provides in pertinent part as follows:

Except as otherwise provided in this chapter, any person who violates any provision of this chapter, or who fails, neglects, or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

Virginia Waste Management Act

14. The Virginia Waste Management Act, Va. Code §§ 10.1-1400, et seq., provides in pertinent part as follows:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“Hazardous substance” means a substance listed under the federal Comprehensive Environmental Response Compensation and Liability Act, P.L. 96-510.

“Hazardous waste” means a solid waste or combination of solid waste that because of its quantity, concentration or physical, chemical, or infectious characteristics may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

15. The Virginia Waste Management Act, Va. Code §§ 10.1-1408.1, et seq., provides in pertinent part as follows: “No person shall dispose of solid waste in an open dump or dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the Director has not issued a permit and that is not otherwise exempt from permitting requirements.”

16. The Virginia Waste Management Act, Va. Code §§ 10,1-1455, et seq., provides in pertinent part as follows: “Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than \$32,500 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth.”

GENERAL ALLEGATIONS

17. The Site encompasses a 440-acre property and downstream areas where hazardous substances released from the property have come to be located. The Site is located in the town of Front Royal, Virginia, on the eastern shore of the South Fork Shenandoah River. It lies approximately two-and-a-half river miles upstream of the mainstem Shenandoah River, which is formed by the confluence of the South Fork Shenandoah River and the North Fork Shenandoah River. References in this Complaint to the “Shenandoah River” include the South Fork and mainstem of the Shenandoah River.

18. From approximately 1940 until 1989, a fibers production plant (“Fibers Plant”) operated at the Site, producing rayon, polyester, and other fiber products. The Fibers Plant used zinc and carbon disulfide in the rayon manufacturing process.

19. The Fibers Plant generated a substantial amount of waste, including zinc sludge, waste viscose, and fly ash. An extensive system of sewers carried waste and chemicals from production areas to other areas of the Site, including waste disposal areas and a wastewater treatment plant. Several sewers, including those for conveying stormwater, discharged into the Shenandoah River.

20. Zinc sludge was placed in five earthen, unlined disposal basins at the Site (“sulfate basins”). Four of the five sulfate basins were located within the 100-year floodplain of the Shenandoah River. Zinc and other metals have been detected in the sulfate basins. The sulfate basins contained about 80 million pounds of zinc in 1988.

21. Waste viscose was placed in eleven earthen, unlined disposal basins at the Site (“viscose basins”). Carbon disulfide and zinc, among other metals and contaminants, were present in the viscose basins.

22. Carbon disulfide, zinc, and polychlorinated biphenyls (“PCBs”) were released from the Fibers Plant at the Site. These contaminants were released from production areas, industrial dryers, waste disposal basins and other waste dump sites, the sewer system, drainage ditches, the wastewater treatment plant, and other locations at the Site. Releases of these contaminants entered groundwater and the Shenandoah River directly, or migrated to groundwater and the Shenandoah River through surface water runoff, floods, the sewer system, drainage ditches and other conveyances, and seeps and other subsurface hydrological connections. Once released, zinc was transported to downstream locations via surface water flow and settled in river bottom sediments.

23. Exposure to zinc in sufficient concentrations can harm living organisms. Zinc does not degrade in the environment and bioconcentrates in aquatic organisms. Studies have shown effects on reproduction, growth, and survival of freshwater mollusks after exposure to high concentrations of zinc in water and sediment. Sediment resuspension and changes in solubility can result in continued exposure to zinc over time. As a result of releases of zinc from the Fibers Plant to the Shenandoah River, natural resources, including aquatic organisms and their habitat, have been injured.

24. Carbon disulfide has been found in residential groundwater wells across the Shenandoah River from the Site. A Remedial Investigation and Feasibility Study performed between 1986 and 1988 found that three of the viscose basins (viscose basin numbers 9, 10, and 11) were the primary source of groundwater contamination. Over the ensuing twenty-five years, numerous Time-Critical and Non-Time Critical Removal Actions were conducted to address threats to human health and the environment presented by contamination at the Site. In 1993 and 1994, the Environmental Protection Agency (“EPA”) and FMC conducted a Site-wide Remedial Investigation. EPA has issued five (5) Records of Decision and two (2) Explanations of Significant Differences. EPA issued the first Record of Decision in 1988 and the final Record of Decision on January 13, 2010.

25. FMC owned and operated the Fibers Plant from approximately 1963 until 1976. FMC dumped zinc sludge, waste viscose, and fly ash at the Site, including in sulfate basins, viscose basins, and the fly ash pile. During FMC’s ownership and operation of the Fibers Plant, carbon disulfide and zinc were released at and from the Fibers Plant. These contaminants entered groundwater and the Shenandoah River directly, or migrated into groundwater and the Shenandoah River. These contaminants impacted groundwater and aquatic resources under the trusteeship of the Plaintiffs.

26. The EPA placed the Avtex Fibers Plant on the National Priorities List in 1986. 51 Fed. Reg. 21,054, 21,091 (June 10, 1986). Pursuant to EPA’s authority under CERCLA, EPA or parties at the direction of EPA investigated contamination at the Site, took actions to respond to the release or threat of release of hazardous substances at the Site, and commenced cleanup. In 1999, the United States District Court for the Western District of Virginia approved a Consent Decree entered into by the United States and FMC (“1999 Decree”). *United States v. FMC*

Corp., No. 5:99-cv-00054 (W.D. Va. Oct. 21, 1999). The 1999 Decree required FMC, among other things, to implement certain actions at the Site to address and remedy the release or threat of release of hazardous substances and to reimburse EPA for certain response costs. Cleanup actions taken include closing and placing caps on waste disposal basins, treating contaminated groundwater, excavating toxic soils, and decontaminating and removing buildings and sewers. However, the implemented response actions have not addressed all of the injuries to natural resources.

27. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f) and 40 C.F.R. § 300.600, DOI is trustee for certain natural resources impacted by hazardous substances released from the Fibers Plant, including natural resources in the Shenandoah River.

28. Pursuant to Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), 40 C.F.R. § 300.605; and Virginia Executive Order 20 (2006), the Commonwealth of Virginia, Secretary of Natural and Historic Resources, is trustee for certain natural resources impacted by hazardous substances released or discharged from the Fibers Plant, including natural resources in the Shenandoah River.

29. Plaintiffs have incurred natural resource damage assessment costs and expenses related to releases from the Site.

30. Plaintiffs have incurred, and will continue to incur, costs for restoration, planning and implementation and monitoring [oversight] related to developing and implementing a restoration plan pursuant to CERCLA Section 111(i).

FIRST CLAIM FOR RELIEF: CERCLA SECTION 107(A)

31. Paragraphs 1-30 are realleged and incorporated by reference.

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

33. Carbon disulfide, zinc, and PCBs are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34. Hazardous substances were “disposed” of at the Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

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

36. FMC owned and operated the Fibers Plant at the time of disposal of certain hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

37. There have been “releases” of hazardous substances from the Fibers Plant, and therefore from a Facility, into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), including releases of hazardous substances which entered groundwater and the Shenandoah River.

38. Releases of hazardous substances from the Fibers Plant have caused injury to, destruction of, or loss of “natural resources” under the trusteeship of one or both Plaintiffs, including fish, wildlife, surface water (including the sediments suspended in water or lying on the bed), groundwater, and drinking water supplies within the meaning of Sections 101(16) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(16) and 9607(a).

39. Plaintiffs have incurred costs in assessing the injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances from the Fibers Plant within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

40. FMC is liable to Plaintiffs for damages resulting from the injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the releases of hazardous substances from the Fibers Plant pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

41. Plaintiffs have satisfied all required conditions precedent to the initiation of the action.

**SECOND CLAIM FOR RELIEF: VIRGINIA STATE WATER CONTROL LAW AND
THE VIRGINIA WASTE MANAGEMENT ACT**

42. Paragraphs 1-41 are realleged and incorporated by reference.

43. FMC is a “person” within the meaning of the Virginia State Water Control Law, Va. Code § 62.1-44.3., and the Virginia Waste Management Act Va. Code § 10.1-1400.

44. FMC discharged industrial waste, hazardous waste, and/or noxious and deleterious substances from the Site into state waters in violation of Va. Code § 62.1-44.5 and Va. Code § 10.1-1400 et seq.

45. The discharges by FMC otherwise altered the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses in violation of Va. Code § 62.1-44.5.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court:

(1) Enter a judgment in favor of Plaintiffs against FMC pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Virginia State Water Control Law, Va. Code §§ 62.1-44.5 and 62.1-44.32, and the Virginia Waste Management Act, Va. Code §§ 10.1-1400, et seq., for all damages for injury to, destruction of, or loss of natural resources resulting from the releases of

hazardous substances from the Fibers Plant, including the reasonable costs of assessing such injury, destruction, or loss resulting from those releases and discharges;

- (2) Award the Plaintiffs their costs of this action; and
- (3) Grant such other relief as this Court may deem appropriate.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

TODD KIM

Assistant Attorney General
Environmental and Natural Resources Division
U.S. Department of Justice

/s/ Jeanne T. Cohn

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

USA and Commonwealth of Virginia, Secretary of Natural and Historic Resources

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment A

DEFENDANTS

FMC Corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See Attachment A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☒ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 9607(a)

Brief description of cause:

Releases and disposals of hazardous substances at the fibers plant during FMC's ownership and operation.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/18/2024

SIGNATURE OF ATTORNEY OF RECORD

s/ John Sither

FOR OFFICE USE ONLY

RECEIPT # N/A

AMOUNT N/A

APPLYING IFP N/A

JUDGE Urbanski

MAG. JUDGE Hoppe

5:24-CV-108

Civil Cover Sheet – Attachment A

Section I.(a)(c) (Attorneys)

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