

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ILLINOIS

_____	)	
UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 99-cv-063
PHARMACIA LLC	)	
(f/k/a MONSANTO CO.), SOLUTIA INC.,	)	
CERRO FLOW PRODUCTS LLC	)	
(f/k/a CERRO COPPER PRODUCTS INC.),	)	
and EXXONMOBIL OIL CORPORATION,	)	
	)	
Defendants.	)	
_____	)	

**THIRD AMENDED COMPLAINT**

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

**STATEMENT OF THE CASE**

1. This is a civil action for recovery of costs and performance of work under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (“CERCLA”), 42 U.S.C. §§ 9606 and 9607. The United States seeks: (1) the implementation of a response action not inconsistent with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300, which is necessary to abate imminent and substantial endangerment to the public health, welfare, and the environment posed by the

presence of hazardous substances at Sauget Area 1, Operable Unit 1 (the “Site”), in Cahokia and Sauget, St. Clair County, Illinois; and (2) recovery of response costs that the United States has incurred in responding to the release or threatened release of hazardous substances at and from the Site into the environment. 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 pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107(a) and 113(b), 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331, 1345, and 2201.

3. Venue is proper in this district pursuant to CERCLA Sections 106(a) and 113(b), 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c) because the events giving rise to this claim occurred in this district and because the Site is located in this district.

### **SITE DESCRIPTION**

4. The Sauget Area 1 Site consists of three closed landfills (Sites G, H, and I), two former surface impoundments (Site L), one flooded borrow pit (Site M), one filled borrow pit (Site N), and a stream known as Dead Creek and its Creek Segments (“CS”) A through F, and associated floodplain soils, stretching from the Alton & Southern Railroad at its northern end, flowing south through the Villages of Sauget and Cahokia for approximately 3.5 miles, including Borrow Pit Lake, and emptying into the Old Prairie du Pont Creek.

5. The Sauget Area 1 Site has been divided into two Operable Units (“OUs”): OU 1 consists of the soil, sediments, and surface water, while OU 2 consists of groundwater.

6. The Site is a “facility” and OU 1 is a “facility” within the meaning and scope of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

7. The Site is a Superfund Alternative Approach (“SAA”) agreement Site. A Site with an SAA agreement requires a long-term response or remedial action, and is eligible for, but is not listed on, the National Priorities List (“NPL”).

### **DEFENDANTS**

#### **Pharmacia and Solutia**

8. Pharmacia LLC (“Pharmacia”) is a Delaware limited liability company that is licensed to do business and transacts business in Illinois. Pharmacia’s principal place of business is located in New York, New York.

9. Solutia Inc. (“Solutia”) is a Delaware corporation that is licensed to do business and transacts business in Illinois. Solutia was incorporated on April 1, 1997.

10. From 1901 to 1997, Pharmacia Corporation (formerly known as Monsanto Ag Company) owned and operated what came to be known as the Queeny Plant located in St. Louis, Missouri. From 1917 to 1997, Pharmacia Corporation owned and operated what came to be known as the Krummrich Plant in Sauget, Illinois.

11. In 1997, Pharmacia spun-off its chemical manufacturing business that included the Queeny and Krummrich plants, to Solutia Inc. Solutia is the current owner of the Krummrich plant and associated real property. Solutia and Pharmacia entered into an indemnification agreement whereby Solutia assumed financial responsibility for certain existing environmental claims against Pharmacia, including claims under CERCLA with respect to, *inter alia*, the Sauget Area 1 Site.

12. In February 2000, Monsanto Ag Company was incorporated as a wholly-owned subsidiary of Pharmacia. In March 2000, Pharmacia merged with Pharmacia & Upjohn Inc. and changed its name to Pharmacia Corporation. In March 2000, Monsanto Ag Company changed its name to Monsanto Company (hereinafter “New Monsanto”). Pharmacia Corporation was purchased by Pfizer Inc. in April 2003 and is maintained as a wholly-owned subsidiary of Pfizer Inc. In 2012, Pharmacia Corporation converted to a limited liability company and changed its name to Pharmacia LLC.

13. Pursuant to the September 1, 2000 Separation Agreement between New Monsanto and Pharmacia, New Monsanto indemnified Pharmacia for certain liabilities, including environmental liabilities related to the Sauget Area 1 Site, to the extent that Solutia fails to pay, perform, or discharge those liabilities.

14. Solutia and Pharmacia stipulated to certain liabilities for past and future response costs within Sauget Area 1, as described in the Stipulation of Liability filed with this Court on October 3, 2003. (Dkt #555)

### **Cerro**

15. Cerro Flow Products LLC, formerly known as Cerro Copper Products, Inc. (“Cerro”), is a Delaware limited liability company that is licensed to do business and transacts business in Illinois.

16. From 1927 to 1998, Cerro owned and operated a secondary copper refinery in the Village of Sauget just outside of Sauget Area 1 that produced electrolytic copper, and copper and brass billets, tubing and piping. Cerro disposed of hazardous substances during some or all of this period in Dead Creek.

17. Cerro formerly owned or currently owns property within Sites G and I.

18. Cerro stipulated to certain liabilities for past and future response costs within Sauget Area 1, as described in the Stipulation of Liability filed with this Court on October 3, 2003. (Dkt #555).

**ExxonMobil**

19. ExxonMobil Oil Corporation (“ExxonMobil”) is a New York corporation that is licensed to do business and transacts business in Illinois.

20. ExxonMobil’s predecessor, Mobil Oil Corporation, owned and operated a refinery near Sauget Area 1 from 1917 to 1970, at which it produced gasoline, kerosene, fuel oils and residual fuels. Mobil disposed or arranged for the disposal of hazardous wastes at Sites G, H and I. In 1999, Mobil Oil’s corporate parent merged with Exxon Corporation.

21. ExxonMobil stipulated to certain liabilities for past and future response costs within Sauget Area 1, as described in the Stipulation of Liability filed with this Court on October 3, 2003. (Dkt #555).

22. Pharmacia, Solutia, Cerro, and ExxonMobil are each “persons” within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

**STATUTORY BACKGROUND**

23. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants, and for funding the costs of abatement and related enforcement activities, which are known as “response” actions, 42 U.S.C. §§ 9604(a), 9601(25).

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

[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 . . .

25. 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, [and]
- (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,

\* \* \*

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 . . .

### **GENERAL ALLEGATIONS**

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

27. At times relevant to this action, there have been “releases” or threats of “releases,” within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. § 9601(22) and § 9607(a), of hazardous substances into the environment at and from OU 1 at the Site.

28. “Hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at Sauget Area 1 OU 1.

29. The United States has taken “response actions,” within the meaning of Section 101(25), 42 U.S.C. § 9601(25), at OU 1, including but not limited to providing oversight in the field and managing contractor personnel. The United States continues to take response actions in connection with Sauget Area 1.

30. EPA’s decision on the remedial action to be implemented for OU 1 at the Site is embodied in a final Record of Decision (“ROD”) executed on September 24, 2013. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

**FIRST CLAIM FOR RELIEF**  
**(Performance of Response Action Under Section 106(a) of CERCLA. 42 U.S.C. § 9606(a))**

31. The allegations set forth in paragraphs 1-30 are realleged and incorporated herein by reference.

32. The Director of the Superfund Division of EPA Region 5 has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of hazardous substances, including PCBs, at and from the Site.

33. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate a danger or threat at the Site.

34. EPA selected in the OU 1 ROD a remedy to abate the dangers and/or threats caused by contaminants in Sauget Area 1 OU 1.

35. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the Defendants are liable to perform the remedies identified in the Sauget Area 1 OU1 ROD which are necessary to abate the endangerment to the public health or welfare or the environment at the Site.

**SECOND CLAIM FOR RELIEF**  
**(Reimbursement of Response Costs Under Section 107(a) of CERCLA 42 U.S.C 9607(a))**

36. The allegations set forth in Paragraphs 1-30 are realleged and incorporated herein.

37. Each of the Defendants is liable for response costs at Sauget Area 1, pursuant to Section 107(a) of CERCLA 42 U.S.C 9607(a).

38. In response to the release or threatened release of hazardous substances at or from the Site the United States has incurred at least \$475,000 in costs as of March 31, 2015, for which it has not been reimbursed by Defendants or any other party. The United States continues to incur response costs, including but not limited to the costs of this enforcement action.

39. The United States' activities related to the Site and the costs incurred incident to such actions are not inconsistent with the NCP, 40 C.F.R Part 300, as promulgated under Section 105(a) of CERCLA, 42 U.S.C § 9605(a).

40. Pursuant to Section 107(a) of CERCLA, 42 U.S.C § 9607(a), the United States is entitled to recover interest on the response costs that it has incurred at the Site, at the rate that is specified for interest on investments of the Hazardous Substances Superfund established under subchapter of chapter 98 of title 26 of the United States code.

41. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the Defendants are jointly and severally liable to the United States for all response costs that the United States has incurred and will incur with respect to the Site, including prejudgment interest.

42. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C § 9613(g)(2), the United States is entitled to 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.

**PRAYER FOR RELIEF**

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

A. Order the Defendants to perform the remedial actions for the remedies selected in the Sauget Area 1 Superfund Site Operable Unit 1 ROD;

B. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding the Defendants jointly and severally liable for all unreimbursed response costs incurred by the United States in connection with the Sauget Area 1 OU 1 Site, including enforcement costs and prejudgment interest;

C. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), enter a declaratory judgment of joint and several liability in favor of the United States and against the Defendants that will be binding on any subsequent action or actions to recover further response costs or damages in connection with the Sauget Area 1 OU 1 Site;

D. Award the United States its costs and fees in this action; and

E. Award such other relief as this Court deems just and proper.

Respectfully submitted,

**FOR THE UNITED STATES OF AMERICA:**

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