

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

IMC EASTERN CORP. and ISLAND
TRANSPORTATION CORP.,

Defendants.

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COMPLAINT

Civil Action No. CV-

(**HURLEY, J.**

(_____, M.J.)

LINDSAY, M.J.

The United States of America, by authority of the Attorney General of the United States and the United States Attorney for the Eastern District of New York, through the undersigned counsel, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and avers as follows:

NATURE OF THIS ACTION

1. This is a civil action brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675.

2. The United States seeks to recover from defendants IMC Eastern Corporation ("IMC") and Island Transportation Corporation ("ITC") the response costs of removal activities incurred by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in connection with the release or threatened release of hazardous substances into the environment at or from an area known as the New Cassel/Hicksville Groundwater Contamination Superfund Site, located in the towns of Hempstead, North Hempstead, and Oyster Bay, in Nassau County, New York (the "Site"). The Site includes, among other areas, three

Operable Units (“OUs”). This Complaint demands certain response costs related to removal activities taken in connection with groundwater contamination at Operable Unit 1 (“OU1”) at the Site.

3. OU1 consists of contaminated groundwater at the Site and is located hydrologically downgradient from the New Cassel Industrial Area (“NCIA”) and south of Old Country Road. OU1 is located primarily in Salisbury, an unincorporated area of the town of Hempstead, New York, and in the hamlet of New Cassel in the town of North Hempstead, New York.

JURISDICTION AND VENUE

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

5. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b), 1391(c), and 1395, because the claims arose, and the threatened or actual release of hazardous substances occurred, in this district.

DEFENDANTS

6. Defendant IMC, formerly known as IMC Magnetism Corporation, is a domestic corporation organized under the laws of the State of New York.

7. Defendant IMC operated a facility and formerly conducted business at 570 Main Street, Westbury, New York (“570 Main Street”), a property within the NCIA, at times relevant to the allegations of this Complaint.

8. Defendant ITC is a domestic corporation organized under the laws of the State of New York.

9. Defendant ITC operated a facility and formerly conducted business at 299 Main Street, Westbury, New York (“299 Main Street”), a property within the NCIA, at times relevant to the allegations of this Complaint.

STATUTORY BACKGROUND

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

11. Under Section 101(25) of CERCLA, “[t]he terms ‘respond’ or ‘response’ means [*sic*] remove, removal, remedy, and remedial action; all such terms (including the terms ‘removal’ and ‘remedial action’) include enforcement activities related thereto.” 42 U.S.C. § 9601(25).

12. Under Section 104(a)(1) of CERCLA:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment

42 U.S.C. § 9604(a)(1).

13. For CERCLA response actions and enforcement purposes, the Administrator of the EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA and their delegates have been re-delegated this authority.

14. 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

15. Under Section 101(23) of CERCLA:

The terms 'remove' or 'removal' means [*sic*] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 9604(b) of this title, and any emergency assistance

which may be provided under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.].

42 U.S.C. § 9601(23).

GENERAL FACTUAL ALLEGATIONS

A. Site Background

16. The Site is an approximately six and one-half square mile area of widespread groundwater contamination, which includes residential, commercial, and industrial areas within the towns of North Hempstead, Hempstead, and Oyster Bay, in Nassau County, New York.

17. The Site is characterized by volatile organic compound (“VOC”) groundwater contamination that has affected or threatens to affect eleven public water supply wells, including four in the town of Hempstead, six in the hamlet of Hicksville (within the town of Oyster Bay), and one in the village of Westbury (within the town of North Hempstead).

18. The eleven public water supply wells pump water from the Nassau-Suffolk Aquifer system, specifically the Upper Glacial Aquifer and the underlying Magothy Formation and Matawan Group Aquifer. These aquifers are considered sole source aquifers under the Federal Safe Drinking Water Act because they supply at least fifty percent of the drinking water consumed in the area.

19. The NCIA is comprised of an approximately 170-acre industrial and commercial area. Until the installation of sewers beginning in the mid-1980s, many of the NCIA properties generally utilized on-property leaching pools and/or dry wells for the disposal of wastewater.

20. Defendant IMC was a tenant at 570 Main Street, a property located within the western portion of the NCIA, from 1953 through March 1992. During this time, defendant IMC manufactured and sold motors and air movers.

21. Defendant IMC utilized numerous VOCs in its manufacturing processes, including tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), and 1,1,1-trichloroethane ("1,1,1-TCA").

22. In 1993, as part of a closure plan with the New York State Department of Environmental Conservation ("NYSDEC"), environmental contractors performed soil and sediment sampling on behalf of defendant IMC at 570 Main Street. The sampling identified VOC contamination, including PCE, TCE, and 1,1,1-TCA.

23. Between approximately September 1998 and September 1999, Defendant IMC, under NYSDEC supervision, conducted a remedial investigation to define the nature and extent of groundwater contamination at 570 Main Street. The remedial investigation revealed VOC contamination, including PCE, TCE, and 1,1,1-TCA, in groundwater samples collected at 570 Main Street.

24. Upon information and belief, PCE, TCE, and 1,1,1-TCA were released into the environment at 570 Main Street during the time of defendant IMC's operations there.

25. Defendant ITC was a tenant at 299 Main Street, a property located within the western portion of the NCIA, from approximately 1971 to approximately 1981. During this time, defendant ITC used the property to wash and repair its trucks and to refuel them with gasoline.

26. From at least 1971 to 1979, defendant ITC used TCE as part of its truck maintenance activities.

27. In 2000, an environmental contractor, under the supervision of NYSDEC, completed a remedial investigation of 299 Main Street. The remedial investigation revealed VOC contamination, including TCE, in groundwater samples collected at 299 Main Street.

28. In 2001, the same environmental contractor conducted a supplemental remedial investigation of 299 Main Street. The supplemental remedial investigation revealed TCE contamination in soil samples collected at 299 Main Street.

29. Upon information and belief, TCE was released into the environment at 299 Main Street during the time of defendant ITC's operations there.

B. Response/Removal Activities

30. In 1986, as part of a county-wide groundwater investigation, the Nassau County Department of Health identified extensive VOC groundwater contamination throughout the NCIA. In 1988, the NYSDEC listed the NCIA as a Class 2 site in the New York State Registry of Inactive Hazardous Waste Disposal Sites ("State Registry").

31. From 1994 to 1999, NYSDEC conducted preliminary site assessments and field investigations to identify the sources of contamination within the NCIA. Based on the findings of these assessments and investigations, seventeen individual facilities within the NCIA, including 299 Main Street and 590 Main Street, were listed as Class 2 sites on the State Registry between May 1995 and September 1999.

32. Meanwhile, from 1995 to 2000, NYSDEC conducted groundwater sampling at locations south of the NCIA, Old Country Road, and Grand Boulevard. In September 2000, NYSDEC completed and issued a remedial investigation/feasibility study ("RI/FS") for the geographic area designated by NYSDEC as OU3 (which EPA later designated during its investigation phase as EPA's OUI, the subject of this Complaint). NYSDEC's OU3

(EPA's OU1) is an area hydrologically downgradient from the NCIA and south of Old Country Road. NYSDEC determined in its RI/FS that the VOCs PCE, TCE, and 1,1,1-TCA were all present in groundwater within NYSDEC's OU3 (EPA's OU1) at levels above New York State standards, criteria, and guidance. NYSDEC also determined in its RI/FS that VOCs released from facilities within the NCIA had migrated in groundwater to areas downgradient of the NCIA, including to the area that would later be designated by EPA as OU1.

33. In 2003, NYSDEC selected a remedy under its state authorities to address the groundwater contamination for its OU3 (EPA's OU1), and subsequently it conducted pre-design investigations for the implementation of the selected remedy.

34. NYSDEC never implemented its selected remedy for its OU3 (EPA's OU1). Instead, by letter dated December 27, 2010, NYSDEC requested that EPA nominate the Site for inclusion on the National Priorities List ("NPL").

35. The NPL was established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is found at 40 C.F.R. Part 300, App. B. The NPL is a list of those sites at which there are releases or threatened releases of hazardous substances that EPA has ranked as having the highest priority for evaluation and response action, as necessary.

36. EPA placed the Site on the NPL on September 16, 2011.

37. EPA subsequently carried out a supplemental remedial investigation and feasibility study of OU1 in order to update NYSDEC's original RI/FS. In July 2013, EPA issued a Supplemental Remedial Investigation Technical Memorandum ("SRI") and Supplemental Feasibility Study Technical Memorandum ("SFS") (collectively, "SRI/SFS") for OU1. The SRI determined that three groundwater plumes exist at OU1, designated as the Eastern, Central, and Western plumes, which are characterized by high levels of chlorinated VOCs, primarily PCE,

TCE, and 1,1,1-TCA. Other contaminants found in the groundwater at OU1 include vinyl chloride, chloroform, cis-1,2-dichloroethene, 1,1-dichloroethene, 1,1-dichloroethane, and 1,1,2,2-tetrachloroethane.

38. The primary substances found in the three OU1 groundwater plumes – PCE, TCE, and 1,1,1-TCA – are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

39. The Western Plume is located within OU1, generally south of the NCIA and west of Mirabelle Avenue in Westbury, New York.

40. The respective releases of VOCs at 570 Main Street and 299 Main Street contribute to the Western Plume.

41. EPA also conducted a Human Health Risk Assessment (“HHRA”), which it concluded in May 2013. EPA determined that there are unacceptable future cancer and non-cancer risks to human health based on the presence of VOCs in the groundwater at OU1.

42. Based on EPA’s SRI and HHRA findings, EPA determined that there were releases or threats of releases of hazardous substances at OU1 and the Site, and that response activities were necessary at OU1 to address the risk posed by the releases and threats of releases of hazardous substances into the environment.

43. Further, based on information collected during the SRI/SFS, on September 30, 2013, EPA issued a Record of Decision for OU1 in which it selected an interim remedy to address groundwater contamination at OU1. The selected remedy includes, but is not limited to, a combination of in-situ treatment of groundwater, extraction of groundwater and ex-situ treatment, implementation of long-term groundwater monitoring, development of a site management plan, and implementation of institutional controls. The selected remedy is

considered an interim remedy because it only calls for active remediation of total VOCs above 100 micrograms per liter. EPA anticipates selecting one or more additional remedial or other response actions at the Site in the future.

44. The United States has incurred response costs in performing removal activities, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), at the Site.

45. By letters dated July 31, 2013, EPA notified defendants of their potential CERCLA liability in connection with the Site.

46. By letters dated July 23, 2014, EPA demanded payment from defendants of EPA's past response costs at the Site.

47. Neither defendant nor any other person or entity has reimbursed the United States for any of its response costs incurred at the Site.

48. OU1, the Western Plume, 570 Main Street, and 299 Main Street are individually and collectively "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

49. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of hazardous substances at or from OU1, the Western Plume, 570 Main Street, and 299 Main Street.

50. The United States has incurred costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at or from OU1, the Western Plume, 570 Main Street, and 299 Main Street.

51. The response actions taken and the response costs incurred by the United States related to removal activities at OU1 are not inconsistent with the National Oil and

Hazardous Substances Pollution Contingency Plan, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is codified at 40 C.F.R. Part 300.

CLAIMS FOR RELIEF

CLAIM I: COST RECOVERY AGAINST IMC EASTERN CORPORATION

52. Paragraphs 1 through 51 are re-alleged and incorporated herein.

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

54. Defendant IMC was an “operator,” within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), of 570 Main Street.

55. Defendant IMC is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as an operator of 570 Main Street at the time of disposal of hazardous substances there.

56. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendant IMC is jointly and severally liable to the United States for all response costs incurred related to removal activities not inconsistent with the National Contingency Plan in connection with OU1, the Western Plume, and 570 Main Street.

**CLAIM II: COST RECOVERY AGAINST
ISLAND TRANSPORTATION CORPORATION**

57. Paragraphs 1 through 56 are re-alleged and incorporated herein.

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

59. Defendant ITC was an “operator,” within the meaning of Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), of 299 Main Street.

60. Defendant ITC is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as an operator of 299 Main Street at the time of disposal of hazardous substances there.

61. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendant ITC is jointly and severally liable to the United States for all response costs incurred related to removal activities not inconsistent with the National Contingency Plan in connection with OU1, the Western Plume, and 299 Main Street.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States of America, prays that this Court:


A. Enter judgment against defendants IMC and ITC, jointly and severally, for all response costs incurred by the United States related to removal activities in connection with OU1 and its Western Plume, including interest, in an exact amount to be proven at trial;

B. Grant the United States such other relief as the Court deems just and proper.

Dated: Brooklyn, New York
July 2, 2018

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