

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
MOBILE DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:20-cv-602
v.	)	
	)	
OLIN CORPORATION and BASF	)	
CORPORATION	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States, and at the request of the 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 Olin Corporation and BASF Corporation (collectively “Defendants”) pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (“CERCLA”), 42 U.S.C. § 9606.

2. The United States seeks (a) performance of response actions by Defendants at Operable Unit 2 (“OU-2”) of the Olin McIntosh Superfund Site (“the Site”), located in Washington County, Alabama 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 interest; and (c) a declaratory judgment of liability for response costs that will be incurred related to OU-2 of the Site.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action and over Defendants, 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.

### **DEFENDANTS**

5. Defendant Olin Corporation (“Olin”), a Virginia corporation, is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Olin is the current “owner” and “operator” of the Site and was the “owner” and “operator” of the Site at the time of disposal of hazardous substances as those terms are defined in Sections 101(20) and 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1) and (2).

6. Defendant BASF Corporation (“BASF”), a Delaware corporation, is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). BASF is the current “owner” and “operator” of the Ciba-Geigy Plant as those terms are defined in Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(1).

### **GENERAL ALLEGATIONS**

7. The Site is located at 1638 Industrial Road in McIntosh, Washington County, Alabama.

8. EPA organized the Site into two operable units. Operable Unit 1 consists of the active production facility, Solid Waste Management Units, and the upland area of the Olin

property. OU-2 consists of the Olin Basin located east of the main Olin plant area and adjacent to the Tombigbee River, a floodplain and a wastewater ditch leading to the Basin.

9. OU-2 consists of approximately 220 acres of open ponded water and seasonally flooded wetland. Under base water flow (non-flooded stage) conditions, the open water portion of OU-2 consists of the 76-acre Olin Basin (the Basin), and the 4-acre Round Pond. Olin Basin and Round Pond drain into the Tombigbee River through an inlet channel at the south end of the Basin. OU-2 also includes a wastewater ditch (about 6,000 linear feet) that extends from the main plant to the Basin. This ditch formerly discharged into the southwest corner of the Basin, but currently discharges into the inlet channel to the Tombigbee River.

10. Olin owned and operated the Site from 1952 to the present as an active chemical production facility.

11. Between 1952 and 1984, Olin discharged wastewater containing mercury and hexachlorobenze (“HCB”) through a wastewater ditch into the Olin Basin which drains into the Tombigbee River. Natural forces, such as flooding and wind effects, spread the mercury and HCBs to other parts of the floodplain on the Site.

12. In 1984, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B.

13. From 1952 to 1970, Geigy Chemical Corporation owned the property immediately to the north of the Site (“the Ciba-Geigy Plant”) and operated a chemical production plant there.

14. In 1952, Geigy Chemical Corporation produced dichlorodiphenyl-trichloroethane (“DDT”) at the Ciba-Geigy Plant. Geigy’s production of DDT resulted in undesirable by-products dichlorodiphenyldichloroethane (“DDD”) and dichlorodiphenyldichloroethylene (“DDE”).

15. In the environment, DDT degrades into DDD and DDE.

16. BASF currently owns and operates the Ciba-Geigy Plant.

17. There have been, and continue to be, releases of DDT, DDD, and DDE at the Ciba-Geigy Plant.

18. Natural forces, such as flooding and wind effects, carry and have carried DDT, DDD, and DDE from the Ciba-Geigy Plant into OU-2.

19. EPA conducted investigations that uncovered Mercury, HCB, DDT, DDD, and DDE contamination in OU-2.

20. On April 23, 2014, EPA issued a Record of Decision (“ROD”) setting forth the Remedial Actions to be implemented at OU-2 of the Site. The major components of the remedy include a multi-layered cap, further sampling, institutional controls, construction monitoring, maintenance, and long-term monitoring.

21. The ROD is not inconsistent with CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

22. Mercury, HCB, DDT, DDD, and DDE are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

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

25. There have been and continue to be “releases” or “threatened releases” of “hazardous substances” into the environment from the Site, within the meaning of Sections 101(8), 101(14) and, 101(22), of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14) and, 9601(22).

26. There have been and continue to be “releases” or “threatened releases” of “hazardous substances” into the environment from the Ciba-Geigy Plant, within the meaning of Sections 101(8), 101(14) and, 101(22), of CERCLA, 42 U.S.C. §§ 9601(8), 9601(14) and, 9601(22).

27. As a result of these releases or threatened releases of hazardous substances, the United States has incurred and will incur 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).

28. As stated in the ROD, EPA estimates that the Remedial Design and Remedial Action for OU-2 of the Site will cost between \$13.4 and \$21.5 million to implement excluding EPA oversight costs.

**FIRST CLAIM FOR RELIEF**  
**(Injunctive Relief)**

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. 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 . . . .

31. The Regional Administrator of EPA Region 4, through delegated authority, 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 or threatened releases of hazardous substances into the environment at the Site.

32. Parties that are liable to the United States under Section 107 of CERCLA, 42 U.S.C. § 9607, may be ordered to abate such danger or threat. *See* Section 106(a) and (b)(2)(D) of CERCLA, 42 U.S.C. § 9606(a) and (b)(2)(D).

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