



## **COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States, acting on behalf of the Regional Administrator of the U.S. Environmental Protection Agency (“EPA”), Region 2, alleges as follows:

### **NATURE OF THE ACTION**

1. This is a civil action against ISP Environmental Services Inc. (“IES”) and G-I Holdings Inc. (“G-I”) (collectively, “Defendants”) seeking, pursuant to Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9607(a) and 9613(g)(2), the recovery of unreimbursed response costs incurred, and to be incurred, in response to releases and threatened releases of hazardous substances into the environment at or from the LCP Chemicals, Inc. Superfund Site in Linden, Union County, New Jersey (the “Site” or “LCP Site”). The United States further seeks, pursuant to CERCLA Sections 106(b)(1) and 107(c)(3), 42 U.S.C. §§ 9606(b)(1) and 9607(c)(3), civil penalties and punitive damages for Defendant IES’s failure without sufficient cause to comply with a May 20, 2015, EPA Order directing IES to complete the remedial design of the remedy selected for the Site.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and over the Defendants under 28 U.S.C. §§ 1331, 1345, and 1355 and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases and threatened releases of

hazardous substances that gave rise to the claims in this Complaint occurred in this district, and because the Site is located in this district.

### **DEFENDANTS**

4. Defendant IES is a corporation organized under the laws of the State of Delaware, with its principal place of business in Covington, Kentucky. IES has offices located in Bridgewater, New Jersey.

5. Defendant G-I is a corporation organized under the laws of the State of Delaware, with its principal place of business in Parsippany, New Jersey.

### **STATUTORY BACKGROUND**

6. 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 such abatement and related enforcement activities, which are known as “response actions.” 42 U.S.C. §§ 9604(a) and 9601(25).

7. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

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.

8. 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.... The President may also . . . take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

By Executive Order 12580, dated January 23, 1987, the President's authority under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), has been delegated to the Administrator of EPA. The Administrator of EPA has redelegated his functions under Section 106(a) to the Regional Administrators of EPA, including the Regional Administrator of EPA Region 2, with the authority to redelegate such functions. The Regional Administrator of EPA Region 2 has redelegated his functions under Section 106(a) to the Director of the Superfund and Emergency Management Division, formerly known as the Emergency and Remedial Response Division, EPA Region 2.

9. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), provides in pertinent part:

Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

Under the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Act Improvement Act of 2015 (Section 701 of Pub. L. No. 114-74), and pursuant to EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the maximum amount of the civil penalties provided under Section 106(b)(1) of CERCLA was increased to \$37,500 for violations occurring before November 2, 2015, and \$62,689 for violations occurring after November 2, 2015 and assessed on or after January 12, 2022.

10. 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, or a State...not inconsistent with the national contingency plan . . . .

The term “owner or operator” is defined in Section 101(20)(A) of CERCLA, 42 U.S.C.

§ 9601(20)(A), in pertinent part as “in the case of an onshore facility or an offshore facility, any person owning or operating such facility . . . .”

11. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provides in pertinent part:

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure....

12. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides in pertinent part:

In any such action [for recovery of the costs referred to in section 9607]..., the court shall enter a 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.

13. Section 107(e)(1) of CERCLA, 42 U.S.C. § 9607(e)(1), provides in pertinent part:

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any...facility or from any person who may be liable for a release or threat of release under this section, to any other person

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