

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF BOULDER, COLORADO,  
HONEYWELL INTERNATIONAL, INC.,  
and  
TUSCO, INC.

Defendants.

**COMPLAINT**

The United States of America, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

**STATEMENT OF THE CASE**

1. This is a civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. § 9607(a), seeking to recover costs incurred by the United States in response to a release and threatened release of hazardous substances from the Hendrick Mining and Milling Superfund Site, also known as the Valmont Butte Site and referred to hereinafter as "the Site," located at North 63<sup>rd</sup>

Street and Valmont Road, approximately four miles east of the City of Boulder's central business district.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331(a), 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. § 1391(b) and (c), because the releases or threatened releases of hazardous substances that give rise to these claims occurred in the District of Colorado and because the Site is located in the District of Colorado.

### **SITE DESCRIPTION AND HISTORY**

4. The Site is located in the City of Boulder, Boulder County, Colorado. The Site consists of approximately 102 acres of real property currently owned by the City of Boulder, Colorado.

5. In approximately 1936, St. Joe Mining and Milling Company ("St. Joe") built the Valmont Mill at the Site to process fluorspar from mining operations in Left Hand Canyon in Boulder County. St. Joe operated at the Site property until the early 1940's.

6. In approximately 1941, General Chemical Company ("General Chemical") acquired the Site property. General Chemical was a wholly-owned subsidiary of Allied Chemical and Dye Corporation.

7. In 1947, General Chemical merged with Allied Chemical and Dye Corporation, with Allied Chemical and Dye as the surviving corporation.

8. Allied Chemical and Dye Corporation changed its name to Allied Chemical Corporation on or about April 28, 1958.

9. In approximately 1981, Allied Chemical Corporation changed its name to Allied Corporation.

10. In 1987, Allied Corporation and the Signal Companies, Inc. merged into Allied-Signal, Inc.

11. In 1999, Allied-Signal, Inc. changed its name to AlliedSignal, Inc.

12. In 1999, AlliedSignal, Inc. merged with Honeywell, Inc. and changed its name to Honeywell International, Inc.

13. Honeywell International Inc. is the successor to the CERCLA liabilities of General Chemical and AlliedSignal, Inc. with respect to the Site.

14. From approximately 1941 to approximately 1973, General Chemical and its successors operated the Valmont Mill to process fluorspar ore that they mined at the Burlington Mine in the Jamestown mining district in western Boulder County.

15. The fluorspar ore milled at the Site between approximately 1941 and 1973 contained naturally occurring radioactive materials and heavy metals, including but not limited to vanadium, lead chromium, arsenic, copper, zinc, selenium, and molybdenum.

16. During the time of operation of the Valmont Mill at the Site, approximately 400,000 cubic yards of tailings from the processing, including the radioactive materials, were disposed in two large tailing ponds located in the central portion of the Site.

17. In approximately 1971, the City of Boulder disposed of approximately 1,500 to 3,000 cubic yards of soil containing low concentrations of radium excavated from a housing construction site. This material was deposited into one of the tailings ponds at the Site.

18. In December 1976, Honeywell International, Inc. sold the property that is now the Site to Argentorado Mines, Inc., who in turn sold the Site property to Tusco, Inc. in approximately December 1976 or January 1977.

19. In approximately August 1977, Tusco, Inc. leased the Site to Cross Mining Company, a joint venture between Hendricks Milling Company (“Hendricks”) and Columbine Mineral Company, Inc. (“Columbine”).

20. In 1980, Columbine sold its interest in the joint venture to Caribou-Good Venture.

21. In 1980, Tusco, Inc. leased the Site to Hendricks-Good Milling Company, with Hendricks as the operator.

22. In 1983, Columbine merged into Tusco, Inc.

23. During its time of operation at the facility, from approximately 1977 to 1985, Hendricks extracted gold from ore mined from the Caribou Mine, west of Nederland, Colorado, using the reconfigured Valmont Mill.

24. Between 1977 and 1985, Hendricks processed approximately 75,000 tons of gold ore at the Valmont Mill and disposed of approximately 45,000 cubic yards of tailings in the tailings ponds at the Site.

25. The gold ore tailings disposed by Hendricks between 1977 and 1985 contained hazardous substances, including but not limited to arsenic and lead.

26. From approximately 1994 to 2000, Valmont Butte Corporation owned the Site property.

27. On or about September 5, 2000, the City of Boulder purchased the Site property.

28. Hazardous substances, including, but not limited to, lead, vanadium, chromium, arsenic, copper, zinc, selenium, and molybdenum were disposed at the Site. As a result of this activity, the Site became contaminated with various hazardous substances including, but not limited to, arsenic, lead, chromium, mercury, and barium, and elevated levels of radiation.

#### **DEFENDANTS**

29. Defendant City of Boulder is a municipality organized under the laws of the State of Colorado.

30. Defendant Honeywell International, Inc. is a corporation organized under the laws of Delaware, and at relevant times did business within this judicial district.

31. Defendant Tusco, Inc. is a corporation organized under the laws of Nevada and at relevant times did business within this judicial district.

32. From approximately 1941 to 1976, Honeywell International and its predecessors in interest owned the real property that comprises the Site.

33. From approximately 1941 to 1976, Honeywell International and its predecessors operated the Valmont Mill at the Site and disposed of fluorspar tailings contaminated with hazardous substances, including, but not limited to, arsenic, lead, chromium, vanadium, copper, zinc, selenium and molybdenum at the Site.

34. From approximately 1976 to 1994, Tusco, Inc. owned the Site property and leased it to various entities, including but not limited to Hendricks Milling Company.

35. Since approximately September 5, 2000, the City of Boulder has owned the approximately 102 acres that constitute the Site.

#### **RESPONSE ACTIONS TAKEN AT THE SITE**

36. In response to residents' concerns, in August 2004 EPA began an investigation of the Site to determine the nature and extent of contamination at the Site.

37. EPA found that prairie dogs had burrowed into the tailings ponds and brought tailings to the surface, where lead was detected at concentrations as high as 3,296 parts per million. EPA found transformers contaminated with polychlorinated biphenyls ("PCBs") at the Site, as well as drums, oil tanks, batteries, scrap metal, containers, and other debris. In its January 2005 Analytical Results Report for Site Reassessment EPA concluded that although contamination was not migrating off-Site, radioactivity from fluorspar tailings, as well as lead and arsenic were contaminants of concern at the Site.

38. The City of Boulder has proposed to take action to clean up the Site pursuant to the Colorado Voluntary Cleanup Program.

39. As of June 30, 2010, EPA has incurred response costs of approximately \$519,669 for response action at the Site, and continues to incur costs for response action, including enforcement, in connection with the Site.

**CLAIM FOR RELIEF**  
**Response Costs**

40. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. The defendants are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

43. The substances identified in Paragraphs 15, 25, 27, 32 and 37 of this Complaint are "hazardous substances" as that term is defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and at 40 C.F.R. Part 302.4.

44. There has been a "release" or "threatened release," of hazardous substances from the Site into the environment as defined by Sections 104(a), 107(a), 101(8), and 101(22) of CERCLA, 42 U.S.C. §§ 9604(a), 9607(a), 9601(8), and 9601(22).

45. The City of Boulder is an “owner” and/or “operator” of the Site, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and is jointly and severally liable to the United States for the costs of the response actions EPA has taken or will take at the Site.

46. Defendant Honeywell International, Inc. is an “owner” and/or “operator” of the Site at the time of disposal, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and is jointly and severally liable to the United States for the costs of the response actions the EPA has taken at the Site.

47. Defendant Tusco, Inc. is an “owner” and/or “operator” of the Site at the time of disposal, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and is jointly and severally liable to the United States for the costs of the response actions the EPA has taken at the Site.

48. As a result of the release or threatened release of hazardous substances from the Site, the United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, as defined by Sections 101(23) and 101(25) of CERCLA, 42 U.S.C. §§ 9601(23) and (25).

49. EPA’s actions at the Site were “response” actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

50. The costs incurred by the United States in conducting the response actions at the Site were incurred in a manner not inconsistent with the National Contingency Plan promulgated at 40 C.F.R. Part 300, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.



51. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendants are liable to the United States for the payment of response costs incurred as a result of the response actions taken at the Site.

**REQUEST FOR RELIEF**

WHEREFORE, the United States of America requests that this Court enter a judgment against defendants as follows:

- A. Order the defendants to pay response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;
- B. Award the United States its costs and disbursements in this action; and
- C. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044-7611

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JS 44 (Rev. 12/11)

District of Colorado Form

# 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**

United States of America

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
U.S. Attorney's Office, 1225 17th Street, Suite 700  
Denver, CO 80202 (303) 454-0100

**DEFENDANTS**

City of Boulder, Colorado  
Honeywell, International, Inc., and  
Tusco, Inc.  
County of Residence of First Listed Defendant Boulder

(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

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

**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
- Appeal to District Judge from Magistrate Judgment

**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: cost recovery  AP Docket

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_ **JURY DEMAND:**  Yes  No

DATE: 12/7/11 SIGNATURE OF ATTORNEY OF RECORD: s/Stephen D. Taylor, Assistant U.S. Attorney

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service  
Or: "AP Docket"

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.