

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	Civil Action No. _____
)	
HONEYWELL INTERNATIONAL, INC.,)	
and MACK TRUCKS, INC.,)	
)	
Defendants.)	

COMPLAINT

The United States of America, 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 Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action seeking recovery of response costs under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”), 42 U.S.C. § 9607(a), and a declaration of Defendants’ liability, pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), for all future response costs to be incurred by the United States in connection with the Elkton Farm Firehole Site located in Elkton, Cecil County, Maryland (the “Site”).

JURISDICTION AND VENUE

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

9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANTS

4. Defendant Honeywell International, Inc. (“Honeywell”) is a Delaware corporation.

5. Defendant Mack Trucks, Inc. (“Mack DE”) is a Delaware corporation.

6. Defendants are each “persons,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Defendants are both successors in interest to an entity that owned or operated the Site at the time of disposal of hazardous substances, pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

GENERAL ALLEGATIONS

Site Background

8. The Site consists of approximately 55 acres located two miles northwest of Elkton, Maryland, south of Zeitler Road. It is in the northwest corner of the former Triumph Fusee and Fireworks Company (“Triumph”) facility, which operated from 1933 to 1946.

9. Triumph was incorporated in Maryland in 1933 and acquired the Site property in 1942. Triumph owned and operated the Site until 1946. During this period, Triumph used the Site for the burning and disposal of waste explosives materials. The burning and disposal of waste explosive materials were concentrated into two large trench-like areas (the “fireholes”), which held high concentrations of Munitions and Explosives of Concern (“MEC”).

10. From 1946 until 1997, the Site property had various owners and was used as a farm.

11. In 1997, MARVA, LLC, acquired the Site property and continued in ownership until 2006. During its ownership, MARVA leased the Site to a farmer who tilled and dragged the surface, for the purpose of cultivating crops, and who thereby scattered materials containing hazardous substances and further released hazardous substances at the Site by spreading MEC and discarded military munitions.

12. In 2006, Herron 393 purchased the Site and entered into a Windfall Lien Agreement with EPA. Subsequently, Herron 393 agreed to perform some of the cleanup work at the Site in lieu of making cash payments as provided by the Windfall Lien Agreement. In 2009, Herron 393 filed for Chapter 11 bankruptcy protection.

Response Actions

13. On or about September 15, 2004, the Maryland Department of Environment submitted information to EPA that the Site contained hazardous substances.

14. On or about September 25, 2005, EPA issued an Action Memorandum that selected a removal action to address the contamination at the Site. EPA divided the Site work into two phases. The first phase consisted of surface assessment and removal. The second phase addressed the firehole pits, where munitions were destroyed.

15. EPA Region 3 initiated removal activities at the Site in 2006, with assistance from the U.S. Army Corps of Engineers (“USACE”).

16. USACE contractors performed magnetometer surveys of the Site surface for the purpose of detecting MEC and munitions debris (“MD”) and transporting it off-Site for disposal.

17. USACE found asbestos containing material (“ACM”), in addition to lead, mercury, arsenic, trichloroethylene (“TCE”), polychlorinated biphenyls (“PCBs”) (in the form of Aroclor 1254), and 2,4,6-trinitrotoluene (“TNT”).

18. In May 2007, EPA took over the performance of response activities at the Site. EPA initiated an exploratory line-trenching operation to collect more information and confirm the depth and area of MEC-containing soils. This work continued until August 2008, when Herron 393, LLC, agreed to complete the work under the terms of a Windfall Lien Agreement.

19. Detected contaminants at the Site included: ACM, lead, mercury, arsenic, TCE, PCBs (in the form of Aroclor 1254), and TNT. All such contaminants were generated by Triumph’s disposal of waste munitions and explosives at the Site.

20. The contaminants listed in paragraph 19, above, are “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and listed in 40 CFR § 302.4.

21. On June 22, 2011, EPA sent a General Notice Letter and Information Request pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to Honeywell.

22. On January 19, 2012, EPA served a General Notice Letter and Information Request on Mack DE.

23. As of January 18, 2017, the United States had incurred approximately \$18,989,707.85 in response costs in connection with the Site, not including prejudgment interest.

24. The United States has incurred and will continue to incur costs of removal actions not inconsistent with the National Contingency Plan in responding to the release or threatened release of hazardous substances at and from the Site, within the meaning of Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25).

Corporate Successorship

25. Triumph's corporate history is as follows:
- a. In 1945, Triumph changed its name to Triumph Industries, Inc.
 - b. In 1946, Triumph Industries, Inc. changed its name to NOMA Electric Corporation.
 - c. In 1949, NOMA Electric Corporation merged into NOMA Electric Corporation, a New York corporation.
 - d. In 1953, NOMA Electric Corporation, a New York corporation, changed its name to Northeast Capital Corporation, a New York corporation.
 - e. In 1959, Northeast Capital Corporation merged into Mack Trucks, Inc., a New York corporation (hereinafter "Mack NY").
 - f. In 1967, Mack NY merged into Signal Oil and Gas Company, a Delaware corporation. As a result of the 1967 merger, Mack DE became a subsidiary of Signal Oil and Gas Company.
 - a. In 1968, Signal Oil and Gas Company changed its name to Signal Companies, Inc.
 - j. In 1985, Signal Companies, Inc., merged with Allied Corporation, a New York corporation, and became Allied-Signal, Inc., a New York corporation.
 - k. In 1993, Allied-Signal, Inc., changed its name to AlliedSignal, Inc.
 - l. In 1999, AlliedSignal, Inc., merged into Defendant Honeywell International, Inc.

26. As a result, Defendant Honeywell is a corporate successor to Triumph, through a series of mergers.

27. Mack DE is also a successor in interest to Triumph's CERCLA liability: before Mack NY merged into Signal Oil and Gas Company in 1967, it transferred assets, liabilities and operations to Defendant Mack DE.

CLAIM FOR RELIEF

Cost Recovery

28. Paragraphs 1-27 are realleged and incorporated herein by reference.

29. Section 107(a) of CERCLA provides, in pertinent part:

(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 . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, 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. . . .

42 U.S.C. § 9607(a).

30. Section 113(g)(2) of CERCLA pertains to actions for recovery of costs under Section 107 of CERCLA, 42 U.S.C. § 9607, and provides in pertinent part: In any such action described in this subsection, 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. 42 U.S.C. § 9613(g)(2).

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

32. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including asbestos-containing material, lead, mercury, arsenic, TCE, PCBs

(in the form of Aroclor 1254), and TNT, were found at the Site.

33. There were “releases” or the threat of “releases” of hazardous substances into the environment at the Site, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. Triumph owned and operated the Site from 1942 to 1946, when there was a “disposal,” within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), of hazardous substances, resulting from the Triumph facility activities on the Site surface.

35. Each defendant is a successor in interest to Triumph’s liabilities under CERCLA.

36. The United States has incurred costs for a “response,” as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in investigating the release or threatened release of hazardous substances at the Site and removing the hazardous substances found there.

37. The response costs incurred by the United States at the Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

38. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each defendant is jointly and severally liable to the United States for all response costs incurred by the United States in connection with the Site, including enforcement costs and interest on response costs for which a demand for payment has been made.

39. Defendants are liable for 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, pursuant to 42 U.S.C. § 9613(g)(2).

PRAYER FOR RELIEF

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

1. Enter judgment in favor of the United States and against Defendants, jointly and severally, for all response costs incurred by the United States, including prejudgment interest, for response actions in connection with the Site;
2. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are jointly and severally liable for all future response costs incurred by the United States for response actions in connection with the Site;
3. Award the United States the costs of this action, including its costs of attorney time;
4. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

UNITED STATES DEPARTMENT OF JUSTICE

JEFFREY H. WOOD

Acting Assistant Attorney General

Environment and Natural Resources Division

/s/ Stacy Coleman _____

STACY D. COLEMAN

Environmental Enforcement Section

Environment & Natural Resources Division

United States Department of Justice

999 18th Street, South Terrace, Suite 320

Denver, Colorado 80202

Telephone: (303) 844-7240

E-mail: Stacy.Coleman@usdoj.gov

ROBERT K. HUR
United States Attorney
District of Maryland

By: /s/_____
Tarra DeShields (Bar No. 07749)
Assistant United States Attorney
36 South Charles Street, 4th Floor
Baltimore, MD 21201
Telephone: (410) 209-4800
E-mail: Tarra.Deshields@usdoj.gov