

SUMMONS IN A CIVIL ACTION

United States District Court

DISTRICT

WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WAUSAU CHEMICAL CORP., ET AL.,

Defendants.

DOCKET NO. 87

88-C-919-C

TO: (NAME AND ADDRESS OF DEFENDANT)

City of Wausau

Gary L. Klingbeil, City Clerk

407 Grant Street

Wausau, WI 54401

YOU ARE HEREBY SUMMONED and required to serve upon

PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)

Michael J. McNulty, Attorney
Environmental Enforcement Section
U. S. Department of Justice
P. O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 633-4046

an answer to the complaint which is herewith served upon you, within 20
days after service of this summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

JOSEPH W. SKUPNIEWITZ

DATE

SEP 21 1988

(BY) DEPUTY CLERK

Sharon A. Hahn

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WAUSAU CHEMICAL CORPORATION,
JAMES CHERWINKA, THE CITY OF
WAUSAU, WISCONSIN, MARATHON
ELECTRIC MANUFACTURING
CORPORATION and WAUSAU ENERGY
CORPORATION,

Defendants.

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CIVIL ACTION NO. 87-C-919-C

U.S. DISTRICT COURT
OF WISCONSIN

AMENDED COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Amended Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("SARA"). This action seeks to recover costs incurred by plaintiff under Section 104 of CERCLA, 42 U.S.C. § 9604, in the implementation of certain

response measures at a site known as the Wausau Groundwater Contamination Site located in Wausau, Wisconsin.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 9607(a) and (c), and § 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), as the actual and threatened releases of hazardous substances that gave rise to this claim occurred in this district.

STATUTORY BACKGROUND

4. Section 104 of CERCLA, 42 U.S.C. § 9604, provides in part (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 ..., 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. When the President determines that such action will be done properly and promptly by the owner or operator of a facility or vessel or by any other responsible party, the President may allow such person to carry out the action, conduct the remedial investigation, or conduct the feasibility study in accordance with Section 122.

(B)(1) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and any other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substance, pollutants, or contaminants involved, and the extent of danger to the public health or welfare or the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

5. Presidential authority under Section 104 was delegated to the Administrator of the EPA by Executive Order 12316, 46 Fed. Reg. 42237 (August 14, 1981).

6. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in relevant part:

(a) 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 facility,

(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 or a state ... not inconsistent~~
with the National Contingency Plan; ...

7. The term "environment" is defined by Section 101(8) of CERCLA, 42 U.S.C. § 9601(8) as:

(B) Any surface water, groundwater, drinking water supply, land surface; or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

8. The term "hazardous substance" is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), as:

(A) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution or substance designated pursuant to Section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act....

9. The term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), as:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment....

10. The term "facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as:

(A) any building, structure, installation, equipment, pipe or pipeline (including any

pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

11. The term "disposal", as defined in Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), has the same meaning as provided in Section 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903, which states:

(3) the term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

12. The terms "owner" and "operator", as defined in Section 101(20) (A) of CERCLA, 42 U.S.C. § 9601(20) (A), mean:

(ii) in the case of an onshore facility ... any person owning or operating such facility, and (iii) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of state or local government, any person who owned, operated or otherwise controlled activities at such facility immediately beforehand. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility.

13. The term "person" is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), as:

an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

14. The terms "remove" or "removal" are defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), as:

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.

DESCRIPTION OF DEFENDANTS

15. Wausau Chemical Corporation ("WCC"), formerly known as Wausau Chemical Company, is a corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 2001 North River Drive, Wausau, Wisconsin.

16. WCC is, and at relevant times herein has been, involved in the business of bulk purchase, reclamation and resale of chemical solvents, including but not limited to the handling and distribution of tetrachloroethylene ("PCE"), xylene and toluene.

17. James Cherwinka is an individual resident of the State of Wisconsin who is and, at relevant times herein, was the President, Treasurer, Chief Executive Officer ("CEO") and

manager of WCC. As such, he directed and controlled the activities of WCC.

18. Wausau Energy Corporation ("Wausau Energy"), formerly known, inter alia, as Wausau Energy Company, is a corporation organized and existing under the laws of the State of Wisconsin with its principle place of business located at 901 East Thomas Street, Wausau, Wisconsin.

19. Wausau Energy is and at relevant times was engaged in the business of distribution of petroleum products from its location at 2102 Second Street, Wausau, Wisconsin. Wausau Energy owns or owned at relevant times, the property located at 2102 Second Street, Wausau, Wisconsin.

20. The City of Wausau is a municipal corporation organized and existing under the laws of the State of Wisconsin and located within Marathon County, Wisconsin.

21. The City of Wausau operated, owned or owns, in whole or part, real property containing an abandoned landfill known as the Old City/ Marathon Electric Landfill. This real property is located adjacent to the Marathon Electric Manufacturing Corporation foundry and the Wisconsin River.

22. Marathon Electric Manufacturing Corporation ("MEMCO"), formerly known as Marathon Electric Manufacturing Company, is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business located at 100 East Randolph Street, Wausau, Wisconsin.

23. MEMCO is and at relevant times was engaged in the business of manufacturing electric motors and generators and owns or owned real property in the City of Wausau, containing an abandoned landfill locally known as the Old City/ Marathon Electric Landfill which is located on MEMCO's property, adjacent to the MEMCO foundry and the Wisconsin River.

SITE DESCRIPTION

24. The Wausau Groundwater Contamination Site consists of the soils, subsoils, groundwater and surface water and encompasses the aquifer underlying the City of Wausau which serves the drinking water wells for area residents.

FACTUAL BACKGROUND

25. In the early 1970's, WCC had a spill of PCE at its plant. In June of 1975, the Wisconsin Department of Natural Resources ("WDNR") issued an order to WCC to identify and remove contaminated soil and groundwater on, around and beneath its property.

26. On or about February 15, 1983, approximately 135 gallons of PCE were released at the WCC plant located at 2001 North River Drive, Wausau, Wisconsin.

27. On or about December 19, 1983, approximately 800 gallons of PCE were released at the WCC plant located at 2001 North River Drive, Wausau, Wisconsin.

28. At various times, monitoring wells installed at the WCC plant have detected hazardous substances, including PCE, in the groundwater beneath the WCC plant.

29. Analyses of soil samples taken from the WCC premises have shown evidence of contamination with hazardous substances, including PCE.

30. Analyses of soil and groundwater samples taken from within, around and under the Old City/ Marathon Electric Landfill have shown evidence of contamination with hazardous substances, including trichloroethylene ("TCE").

31. Analyses of soil and groundwater samples taken from the MEMCO property have shown evidence of contamination with hazardous substances, including TCE.

32. Analyses of soil and groundwater samples taken from the Wausau Energy property at 2102 Second Street, Wausau, Wisconsin have shown evidence of contamination with hazardous substances including PCE and TCE.

33. Analyses of samples taken from groundwater in the Wausau Groundwater Contamination Site have shown evidence that the groundwater is contaminated with hazardous substances including PCE.

34. Analyses of water samples taken from the City of Wausau wells numbers 3,4, and 6 have shown evidence of contamination with hazardous substances including PCE and TCE.

35. Analyses of water samples taken from various taps within the City of Wausau have shown evidence of contamination with hazardous substances including PCE.

36. In June 1984, EPA initiated a removal action at the Wausau Groundwater Contamination Site which included the

installation of a Granular Activated Carbon system for treatment of contaminated groundwater. The costs associated with this removal are at least \$459,718.

37. In August 1987, EPA initiated a Remedial Investigation and Feasibility Study to determine the extent of contamination at the Wausau Groundwater Contamination Site and to explore remedial options for addressing such contamination. Phase I of the Remedial Investigation was completed in January 1988. Further work related to the Remedial Investigation and Feasibility Study is ongoing.

CLAIM FOR RELIEF

38. Plaintiff realleges all allegations contained in paragraphs 1 through 37 above as if fully rewritten herein.

39. WCC, James Cherwinka, MEMCO, the City of Wausau and Wausau Energy are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

40. The WCC property located at 2001 North River Drive, Wausau, Wisconsin is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) (hereinafter referred to as the "WCC facility").

41. The MEMCO property located at 100 East Randolph Street, Wausau, Wisconsin is a "facility" as that term is defined is Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) (hereinafter referred to as the "Marathon Electric facility").

42. The Old City/ Marathon Electric Landfill located on and under the Marathon Electric facility is a "facility"

within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

43. The Wausau Energy property located at 2102 Second Street, Wausau, Wisconsin is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) (hereinafter referred to as the "Wausau Energy facility").

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

45. There have been "releases" or "threatened releases" of "hazardous substances" into the environment at the WCC facility, the MEMCO facility, the Old City/ Marathon Electric Landfill, the Wausau Energy facility and into the Wausau Groundwater Contamination Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

46. WCC is, was at the time of EPA's response actions, and was at the time of the disposal of hazardous substances at the WCC facility, the owner and operator of the WCC facility which is within the Wausau Groundwater Contamination Site.

47. James Cherwinka is, was at the time of EPA's response action, and was at the time of release of hazardous substances at the WCC facility, the president, CEO and manager of WCC and controlled and directed its operation and as a result, is and was an owner and operator of the WCC facility which is within the Wausau Groundwater Contamination Site.

48. Marathon Electric is, was at the time of EPA's response action, and was at the time of release of hazardous substances at the MEMCO facility and the Old City/ Marathon Electric Landfill, the owner or operator of the MEMCO facility and the Old City/ Marathon Electric Landfill which is within the Wausau Groundwater Contamination Site.

49. The City of Wausau was at the time of release of hazardous substances at the Old City/ Marathon Electric Landfill, the owner or operator of the Old City/ Marathon Electric Landfill which is within the Wausau Groundwater Contamination Site.

50. Wausau Energy is, was at the time of EPA's response action, and was at the time of release of hazardous substances at the Wausau Energy facility, the owner or operator of the Wausau Energy facility which is within the Wausau Groundwater Contamination Site.

51. "Releases" or "threatened releases" of "hazardous substances" into the Wausau Groundwater Contamination Site, from the WCC facility, the MEMCO facility, the Old City/ Marathon Electric Landfill and the Wausau Energy facility caused the incurrence of "response costs", including related administrative, investigative and enforcement costs, as those terms are defined in Sections 101(22), (14) and (25), 42 U.S.C. § 9601(22), (14) and (25).

52. The response costs incurred by the United States at the Wausau Groundwater Contamination Site were incurred in a

manner not inconsistent with the National Contingency Plan, 40 C.F.R. § 300.00 et seq.

53. The United States has satisfied any condition precedent to the undertaking of response costs and to the recovery of those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

54. Pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), WCC and James Cherwinka as owners or operators of the WCC facility, MEMCO as owner or operator of the MEMCO facility and the Old City/ Marathon Electric Landfill, the City of Wausau as past or present owner or operator of the Old City/ Marathon Electric Landfill and Wausau Energy as the owner or operator of the Wausau Energy facility are jointly and severally liable for all response costs incurred by the United States at the Wausau Groundwater Contamination Site, and including the costs of the removal action and for the Remedial Investigation and Feasibility Study, and including related administrative, investigative and enforcement costs.

55. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607, as amended by SARA, the United States is entitled to recover interest on the response costs which it has incurred.

56. Pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9607, as amended by SARA, the Court should enter a declaratory judgment that defendants are liable for all future response costs incurred by the United States at the Wausau Groundwater Contamination Site.


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

(A) Enter judgment against the defendants, and each of them, jointly and severally, for response costs, including administrative, investigative and enforcement costs, and including interest on all response costs, incurred by the United States under CERCLA, 42 U.S.C. § 9601 et seq., in connection with the Wausau Groundwater Contamination Site;

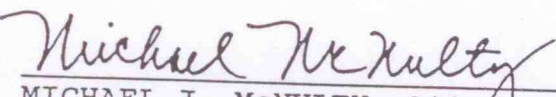
(B) Enter a declaratory judgment that defendants are liable for all future response costs incurred by the United States at the Wausau Groundwater Contamination Site;

(C) Award such other relief as this Court may deem necessary and appropriate.


Respectfully submitted,



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