

2. This is a civil action brought by the United States pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9604(e), against individuals with ownership interests in those properties: Defendants Maria Maucere, Ayra Brown, Jean Thoen, and Clark B. Seifert (collectively, the “Defendants”). EPA has been unable to obtain consent for access to remediate remaining contaminated areas in the yards of the Three Properties. Through this action, the United States seeks orders (“Access Orders”) providing EPA and its designated representatives with a right of access to the Three Properties for the purpose of excavating the contaminated soil and replacing it with clean soil, conducting confirmatory soil sampling, preparing for and disposing of the contaminated soil off-site, restoring each property through placement of sod and replacement of landscaping removed during the excavation, maintaining the grass and landscaping for a period of 30 days, and conducting other associated activities.

Jurisdiction and Venue

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

4. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the release or threatened release of a hazardous substance or substances that gives rise to this claim occurred and is occurring in this district and the Three Properties are located within this district.

Defendants

5. David Zeleznikar is the owner of record for 1318 23rd Street East, according to Hennepin County Assessor records. Mr. Zeleznikar died in 2013 and transferred the property upon his death to Maria Maucere and Ayra Brown, as joint tenants.

6. Jean Thoen is the owner of record for 1419 21st Street East, according to Hennepin County Assessor records.

7. Clark B. Seifert et al. is the owner of record for 2609 22nd Street East, according to Hennepin County Assessor records.

Statutory Background

8. CERCLA Section 104, 42 U.S.C. § 9604, grants EPA broad authority to obtain access to property for its employees and authorized representatives to identify and address potential releases or threatened releases of hazardous substances.

9. CERCLA Section 104(e) provides in pertinent part:

(e) Information gathering and access

(1) Action authorized

Any officer, employee, or representative of the President . . . is authorized to take action under paragraph (2), (3), or (4) (or any combination thereof) at a vessel, facility, establishment, place, property, or location The authority of paragraphs (3) and (4) may be exercised only if there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant. The authority of this subsection may be exercised only for the purposes of determining the need for response, or choosing or taking any response action under this subchapter, or otherwise enforcing the provisions of this subchapter.

* * *

(3) Entry

Any officer, employee, or representative described in paragraph (1) is authorized to enter at reasonable times any of the following:

(A) Any vessel, facility, establishment, or other place or property where any hazardous substance or pollutant or contaminant may be or has been generated, stored, treated, disposed of, or transported from.

(B) Any vessel, facility, establishment, or other place or property from which or to which a hazardous substance or pollutant or contaminant has been or may have been released.

(C) Any vessel, facility, establishment, or other place or property where such release is or may be threatened.

(D) Any vessel, facility, establishment, or other place or property where entry is needed to determine the need for response or the appropriate response or to effectuate a response action under this subchapter.

42 U.S.C. § 9604(e) (emphasis added).

10. CERCLA Section 104(e)(4), 42 U.S.C. § 9604(e)(4), also authorizes any officer, employee or representative designated under CERCLA Section 104(e)(1), 42 U.S.C. § 9604(e)(1), to inspect and obtain samples from any facility, establishment, or other place or property referred to in CERCLA Section 104(e)(3), 42 U.S.C. § 9604(e)(3), or from any location of any suspected hazardous substance or pollutant or contaminant.

11. CERCLA Section 104(a)(1), 42 U.S.C. § 9604(a)(1), provides that whenever there is a release or substantial threat of release of a hazardous substance into the environment, EPA “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 . . . or take any other response measure consistent with the national contingency plan” that EPA deems necessary to protect the public health or welfare or the environment.

12. CERCLA Section 104(e)(5)(B), 42 U.S.C. § 9604(e)(5)(B), provides that the United States may commence a civil action either to compel compliance with a request for access or to compel compliance with an administrative order for access. The statute provides that, where there is a reasonable basis to believe there may be a release or threat of a release of a hazardous substance, pollutant, or contaminant, the court “shall enjoin” interference with an EPA request or order for entry “unless under the circumstances of the case the demand for entry or inspection is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 9604(e)(5)(B)(i).

13. CERCLA Section 104(e)(6), 42 U.S.C. § 9604(e)(6), provides that nothing in CERCLA Section 104(e) shall preclude EPA from securing access in any other lawful manner.

General Allegations

14. Paragraphs 1 through 13 are re-alleged and incorporated herein by reference.

The Site

15. The Three Properties are located within the 1,480 acre South Minneapolis Residential Soil Contamination Superfund Site, which is located in the area surrounding the former CMC Heartland property (also known as the Heartland Lite Yard property) at Hiawatha Avenue and 28th Street in Minneapolis.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.