

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. _____
MARIA MAUCERE,	)	
AYRA BROWN,	)	
JEAN THOEN, and	)	
CLARK B. SEIFERT,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint seeking access to the yards of three parcels of residential real property (“Three Properties”) located within the South Minneapolis Residential Soil Contamination Superfund Site (“Site”) in Minneapolis, Minnesota, and alleges as follows:

**Nature of Action**

1. The Three Properties that are the subject of this Complaint are located at 1318 23rd Street East, 1419 21st Street East, and 2609 22nd Street East, all in Minneapolis, Hennepin County, Minnesota. EPA seeks access to the Three Properties to clean up soil that is contaminated with arsenic at those locations.

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.

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