IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
M.A. HANNA PLASTICS GROUP, INC.,	:	
WILMINGTON ECONOMIC	:	
DEVELOPMENT CORPORATION,	:	
AND SIDNEY AND CAROL MAFFETT,	:	
	:	
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 ("hereinafter "EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), for the recovery of response costs incurred by the United States in responding to releases and/or threatened releases of hazardous substances at the 12th Street Dump Site in Wilmington, Delaware (the "12th Street Dump Site" or the "Site") into the environment, for which M.A. Hanna Plastics Group, Inc.; the Wilmington Economic Development Corporation; and Sidney and Carol Maffett ("Defendants") are liable.

2. The United States also seeks a declaration of the Defendants' liability for all response costs to be incurred in the future by the United States in connection with the 12th Street Site.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action and the parties hereto, pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases and/or threatened releases of hazardous substances that give rise to the United States' claims have occurred in this District.

THE 12th STREET DUMP SITE

5. The 12th Street Dump Site is located in Wilmington, Delaware, along the eastern bank of the Brandywine Creek, near the 12th Street ramp to Interstate 495. The Site includes, among other parcels, properties owned on the south side of 12th Street by Defendant Wilmington Economic Development Corporation and Defendants Sidney and Carol Maffett.

THE DEFENDANTS

6. Upon information and belief, M.A. Hanna Plastic Group, Inc. ("MA Hanna") is a corporation organized and existing under the laws of the State of Michigan. MA Hanna is a corporate successor to the Electric Hose and Rubber Company, which operated a manufacturing facility at the 12th Street Dump Site.

7. Upon information and belief, the Wilmington Economic Development Corporation ("WEDCO") is a corporation organized and existing under the laws of the States of

Delaware, with its principal place of business in Wilmington, Delaware. Defendant WEDCO owns property included within the 12th Street Dump Site ("WEDCO Parcel").

8. Upon information and belief, Sidney and Carol Maffett are individuals residing in the State of Delaware. Defendants Sidney and Carol Maffett own property within the 12th Street Dump Site ("Maffett Parcel").

GENERAL ALLEGATIONS

9. From approximately 1905 until approximately 1977, the Electric Hose & Rubber Company ("Electric Hose"), formerly the Chicago Electric Hose Company, operated a manufacturing facility on parcels of land it acquired along the banks of the Brandywine Creek at the location of what was to become the 12th Street Dump Site. Electric Hose manufactured, among other things, rubber hoses at this facility.

10. During all or a portion of the years it operated, Electric Hose disposed of waste hoses, drums, lead residues, and/or other debris from its manufacturing process on its parcels and neighboring parcels at the 12th Street Dump Site including the Maffett Parcel.

11. In or around February 1986, Electric Hose conveyed the parcels it owned at the 12th Street Dump Site to Defendant WEDCO.

12. On or about July 2, 1999, the Delaware Department of Natural Resources and Environmental Control ("DNREC") notified EPA of the presence of drums at the 12th Street Dump Site and requested that EPA conduct further investigation.

13. EPA collected samples from the Site in or around August 1999 and again in or around January 2000. Analysis of the samples revealed that Site soils were contaminated with

arsenic and lead, sediments in the Brandywine Creek were contaminated with lead, and ground water at the Site was contaminated with arsenic. Contamination was found on, among other properties, the WEDCO Parcel and the Maffett Parcel.

14. In or around March 2000, EPA initiated a cleanup at the Site under authority of Section 104 of CERCLA, 42 U.S.C. § 9604. The selected cleanup action included the removal and disposal of hazardous substances from sediment at the Site; removal and disposal of exposed and buried drums and other containers and their contents; removal and disposal of contaminated soil and debris to the extent necessary to install a soil cover over a portion of the contaminated soils; installation of a soil cover atop a portion of the contaminated soils; installation of a cover on the bank of the Brandywine Creek to prevent erosion of contaminated soil into the Creek; implementation of permanent erosion and sediment control measures; and activities intended to ensure the continued integrity of the covers and controls installed during the cleanup. Some or all of these actions were performed at the WEDCO Parcel and the Maffett Parcel.

15. During the cleanup, which focused on contaminated properties located south of 12th Street, EPA discovered that contamination was also present on parcels located north of 12th Street, although not at levels requiring immediate action. In or around January 2001, EPA commenced an Engineering Evaluation/Cost Analysis study to evaluate alternatives for potential future cleanup actions at the Site, including the parcels north of 12th Street. During the course of this investigation, additional samples were collected from surface soil, surface water, and sediments at the Site. This study was completed in or around June 2001.

16. In or around March 2002, DNREC contacted several parties, including the Defendants in this action, to discuss the performance of additional studies and/or cleanup actions

at the Site under the State's oversight. DNREC continues to work with some or all of such parties to secure performance of additional studies and/or cleanup actions.

17. EPA has incurred in excess of $3,663,532.06 in response costs for which it seeks reimbursement in connection with the 12th Street Dump Site.

CLAIMS FOR RELIEF

18. The allegations contained in paragraphs 1- 17 are realleged and incorporated herein by reference.

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

> 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,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, 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 . . .
>
> The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).

20. The 12th Street Dump Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. "Hazardous substances," as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including lead and arsenic, were disposed of at the 12th Street Dump Site.

22. There have been "releases," within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and/or substantial threats of release, of hazardous substances into the "environment," as defined at Section 101(8) of CERCLA, 42 U.S.C. § 9601(8), at or from the 12th Street Dump Site.

23. EPA has taken "response" actions at the 12th Street Dump Site, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has incurred, and continues to incur, costs in connection with such response actions.

24. The costs incurred by the United States in connection with the 12th Street Dump Site are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300.

25. The unreimbursed response costs incurred by EPA in connection with the 12th Street Dump Site to date are at least $3.6 million.

26. EPA will continue to incur response costs in connection with the 12th Street Dump Site.

27. CERCLA defines "person" to include, inter alia, "an individual, firm [or] corporation." 42 U.S.C. § 9601(21).

28. Defendant MA Hanna, as a corporate successor to the Electric Hose Company, is within the class of persons described in Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

29. Defendant Wilmington Economic Development Corporation is within the class of persons described in Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

30. Defendants Sidney and Carol Maffett are within the class of persons described in Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

31. The Defendants are liable to the United States for all response costs incurred, and to be incurred, by EPA in connection with the 12th Street Dump Site, including enforcement costs, and prejudgment interest on such costs.

PRAYER FOR RELIEF

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

1. Enter judgment in favor of the United States and against the Defendants for all response costs incurred by EPA in connection with the 12th Street Dump Site, and prejudgment interest on those costs;

2. Enter a declaratory judgment stating that the Defendants will be liable for all future response costs incurred by the EPA in connection with the 12th Street Dump Site; and

3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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