

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 C.A.I., INC.;)
 ARNEL COMPANY, INC.;)
 ROY A. NELSON AS TRUSTEE OF)
 NELSON DANVERS REALTY TRUST;)
 and SARTORELLI REALTY, LLC,)
)
 Defendants.)

Civil No. 1:10-cv-10390-GAO

AMENDED COMPLAINT

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

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9607(a), against Defendants C.A.I., Inc. (“CAI”), Arnel Company, Inc. (“Arnel”), Roy A. Nelson as Trustee of the Nelson Danvers Realty Trust (“Nelson”), and Sartorelli Realty, LLC (“Sartorelli Realty”), jointly and severally, for the recovery of costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at or from the Danversport Superfund Site, located at 128R Water Street (a/k/a 126R Water Street), Danvers, Essex County, Massachusetts (“Site”). This action also seeks a declaration, pursuant to

Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants are jointly and severally liable for further response costs the United States may incur as a result of a release or threatened release of hazardous substances at or from the Site. This action further seeks civil penalties against CAI and Arnel, for violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) (the “General Duty Clause”), and injunctive relief and civil penalties against CAI, for failure to respond to an information request, in violation of Section 114 of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7414, with respect to a facility located at the Site, which CAI and Arnel jointly occupied, and which CAI used for the manufacture of, *inter alia*, inks, and Arnel used for the manufacture of, *inter alia*, paint products (“Danvers Facility”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); Section 113(b) of the CAA, 42 U.S.C. 7413(b); and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); Section 113(b) of the CAA, 42 U.S.C. 7413(b); and 28 U.S.C. § 1391(b) and (c) and 1395(a), because the events giving rise to claims alleged in this Complaint occurred in this judicial district, the Defendants are located in this District, and each Defendant resides(ed), is (was) located, or has (had) its principal place of business in this judicial district at all times relevant hereto.

4. Notice of commencement of this action has been given to the Commonwealth of Massachusetts pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

PARTIES

5. Plaintiff is the United States of America acting at the request of the Administrator of EPA. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the CAA, 42 U.S.C. § 7605, and 28 U.S.C. §§ 516 and 519.

6. Defendant CAI is a corporation organized in 1985 under the laws of the Commonwealth of Massachusetts.

7. Defendant CAI is a “person” within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607, and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

8. Defendant Arnel is a corporation organized in 1986 under the laws of the Commonwealth of Massachusetts.

9. Defendant Arnel is a “person” within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607, and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. Defendant Nelson is a resident of Topsfield, Massachusetts, and is the sole trustee of the Nelson Danvers Realty Trust, a nominee trust organized under the laws of the Commonwealth of Massachusetts.

11. Nelson is a “person” within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

12. Defendant Sartorelli Realty is a limited liability corporation organized under the laws of the Commonwealth of Massachusetts.

13. Sartorelli Realty is a “person” within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

GENERAL ALLEGATIONS

14. The Danversport Superfund Site is located in Danvers, Essex County, Massachusetts. The Site includes the area that is or was occupied by the Danvers Facility. The Site is bordered to the north by residential properties and Bates Street, to the east and south by Liberty Marina and the Waters River, and to the west by Water Street and industrial facilities.

15. CAI and Arnel operated the Danvers Facility at all times relevant hereto, including approximately the period 1985 or 1986 to 2006, for the manufacture of inks, stains, lacquers, coatings, adhesives, thinners, and/or paints (collectively, “inks and paint products”).

16. As part of their inks and paint products manufacturing activities at the Danvers Facility, Defendants CAI and/or Arnel produced, processed, handled and/or stored various flammable and/or reactive substances, including but not limited to, n-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, and nitrocellulose.

17. Flammable and/or reactive substances, including but not limited to, n-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, and nitrocellulose, were stored by CAI and/or Arnel at the Danvers Facility in drums, vats, totes, bulk above-ground and underground storage tanks, and other containers, for use during their manufacturing processes at the Danvers Facility.

18. N-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, and nitrocellulose are substances that may, as a result of their release, cause death, injury or property damage due to their toxicity, reactivity, flammability, volatility, or corrosivity.

19. N-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, and nitrocellulose are extremely hazardous substances within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

20. Defendants CAI and Arnel each occupied and shared areas within the Danvers Facility for their manufacturing operations.

21. The CAI production area of the Danvers Facility also contained an Arnel storage area that, at all times relevant hereto, contained n-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, nitrocellulose, or other extremely hazardous substances.

22. CAI and Arnel also shared a ventilation system in the Danvers Facility, which included, *inter alia*, dust collectors, exhaust fans, and an air intake system.

23. As part of CAI's operations in the Danvers Facility, CAI manufactured ink products containing two or more of the chemicals referenced in Paragraph 18, above, including heptane and other solvents, using multiple production mixing tanks sized to hold approximately 3,000 gallons. These chemicals sometimes remained in the active mixing process overnight.

24. The overnight mixing process described in Paragraph 23 occurred approximately once every two to four weeks, including the night of November 21-22, 2006.

25. During the night of November 21-22, 2006, at least one approximately 3,000-gallon production mixing tank was operating in the Danvers Facility.

26. During the early morning hours of November 22, 2006, an explosion and fire occurred at the Site.

27. The explosion and fire demolished the Danvers Facility, damaging nearby homes and businesses, and boats located at the adjacent marina.

28. Nearby residents were evacuated from their homes and several received treatment for injuries at nearby hospitals.

29. While the fire at the Site was being extinguished, the United States Coast Guard, acting under agreement with EPA, constructed a berm to prevent chemical runoff from the firefighting from reaching nearby river waters.

30. Drums and bulk containers formerly used at the Danvers Facility remained at the Site after the explosion and fire.

31. These remaining drums and bulk containers contained, among other substances, toluene, acetone, and nitrocellulose.

32. From November 22, 2006 to March 9, 2007, EPA performed a response action at the Site.

33. The response action by EPA included but was not limited to: (1) clearing debris that remained after the fire was extinguished; (2) conducting air monitoring; (3) installing erosion/siltation control devices; (4) collecting and staging the removal of drums, vats, totes and small containers containing hazardous substances; (5) transferring liquid hazardous substances from above-ground storage tanks, underground storage tanks, vats, totes and bulk tanks for transportation and disposal; (6) categorizing potentially hazardous materials and debris for disposal; (7) excavating soil from areas where materials had been staged; and (8) coordinating disposal of contaminated materials at facilities approved for disposal of hazardous waste.

34. These response activities were carried out pursuant to EPA's emergency response authority and pursuant to an EPA Action Memorandum signed by EPA on November 29, 2006.

35. The United States has incurred over \$2.7 million in response costs, and may incur additional response costs in the future, in connection with the Site.

36. By letter dated March 8, 2007, EPA notified the Defendants that they were potentially responsible parties with respect to the Site, and demanded reimbursement of response costs incurred in connection with EPA's response action at the Site.

37. The Defendants have failed to reimburse the United States for any response costs incurred in connection with the Site.

38. Upon information and belief, at all times relevant hereto, CAI and Arnel did not identify hazards which may result from accidental releases of extremely hazardous substances using appropriate hazard assessment techniques at the Danvers Facility.

39. Upon information and belief, at all times relevant hereto, CAI and Arnel did not identify hazards that could result when CAI left its production mixing tanks running overnight while the Danvers Facility was unattended.

40. Upon information and belief, at all times relevant hereto, CAI was required but failed to complete a process hazard analysis ("PHA") pursuant to the Occupational Safety and Health Administration's process safety management requirements, set forth in 29 C.F.R. § 1910.119.

41. Upon information and belief, at all times relevant hereto, the Danvers Facility did not have vapor or lower explosive limit ("LEL") detectors.

42. Upon information and belief, at all times relevant hereto, the Danvers Facility did not have automatic shut-off controls or safety interlocks that would prevent inadvertently shutting off the ventilation systems or overheating a batch of chemicals being processed at the facility.

43. Upon information and belief, at all times relevant hereto, the Danvers Facility did not have high temperature alarms, designed to prevent process chemicals in the production mixing tanks and other areas of the facility from becoming dangerously overheated.

44. Upon information and belief, at all times relevant hereto, the Danvers Facility did not have sufficient means to ensure that flammable vapor and air mixtures would not accumulate above 25% of the LEL at all times when the facility's manufacturing processes were operational.

45. Upon information and belief, at all times relevant hereto, the production mixing tanks operated by CAI were not completely sealed and allowed chemical vapors to be emitted from them.

46. Upon information and belief, on numerous occasions, including the night of November 21-22, 2006, the Danvers Facility's ventilation system was not in operation while the facility's manufacturing processes, such as the ink production process in heated, unsealed mixing tanks, were in operation.

47. Upon information and belief, at all times relevant hereto, CAI and Arnel lacked operating procedures sufficient to design and maintain a safe Danvers Facility taking such steps as are necessary to prevent releases of extremely hazardous substances.

48. Upon information and belief, at all times relevant hereto, CAI lacked written procedures to ensure the safety of operating equipment containing flammable materials, such as heptane and other solvents, at the Danvers Facility to ensure safe conditions overnight while the facility was unattended.

49. Upon information and belief, at all times relevant hereto, Arnel lacked written procedures to ensure the safety of its flammable materials at the Danvers Facility when CAI left its production mixing tanks operating overnight while the facility was unattended.

50. Upon information and belief, at all times relevant hereto, CAI and Arnel lacked operating procedures sufficient to minimize the consequences of accidental releases of extremely hazardous substances at the Danvers Facility.

51. Upon information and belief, at all times relevant hereto, the Danvers Facility's processing areas were congested with equipment in a manner that would exacerbate the effects of a fire or explosion.

52. Upon information and belief, at all times relevant hereto, no portion of the Danvers Facility had blow-out (a/k/a blast) panels.

53. Upon information and belief, the Town of Danvers ("Town") has no record that CAI or Arnel applied for, or that the Town issued to CAI or Arnel, a license or permit, or license or permit renewal, current as of November 2006, for the storage of flammable liquids at the Danvers Facility.

54. Upon information and belief, the Town has no record that CAI or Arnel applied for, or that the Town issued to CAI or Arnel, a license or permit, or license or permit renewal, current as of November 2006, for the storage of flammable solids at the Danvers Facility.

55. Upon information and belief, the Town has no record that CAI or Arnel applied for, or that the Danvers Fire Department (or any other department, agency or instrumentality of the Town) issued to CAI or Arnel, a license or permit, or license or permit renewal, current as of November 2006, for the maintenance of underground flammable materials storage tanks at the Danvers Facility.

56. The process required to obtain each license, permit or renewal referenced in Paragraphs 53-55, if followed, would have involved the submission to local emergency response

officials of information regarding potential hazards present at the Danvers Facility at all times relevant hereto, including at and before the November 2006 explosion and fire.

57. Upon information and belief, at all times relevant hereto, the Danvers Facility contained sources of ignition, such as static electricity, electrical switches, fans, motors, and other devices and equipment not designed for use in the presence of flammable chemicals or vapor, or otherwise lacking effective ignition protection.

58. The November 22, 2006, explosion and fire at the Danvers Facility resulted in the release of numerous chemicals, including without limitation n-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, and nitrocellulose.

59. On December 22, 2009, EPA issued to CAI a request for information under Section 114 of the CAA, 42 U.S.C. § 7414 (“Information Request” or “Request”).

60. On December 24, 2009, CAI through counsel received the Information Request.

61. The Information Request contains 35 questions (“Questions”), which seek documents and information related to the Danvers Facility and the Site.

62. The Questions request documents and information, including without limitation: any photographs or plans of the Danvers Facility, as it existed before the November 2006 explosion and fire; the identity of CAI employees at the time of the incident; the amounts and locations of chemicals stored at the facility; the nature of the manufacturing processes employed at the facility; any process hazard analyses performed by CAI for the facility; any prior history of chemical releases, or mechanical malfunctions or human errors that could have led to accidental chemical releases, at the facility; any administrative or mechanical safety controls at the facility; the adequacy of the facility’s ventilation system; any industry or regulatory safety standards CAI

followed at the facility; the type and location of any passive explosion or fire mitigation systems at the facility; any emergency planning or response plans at the facility; any investigations of the November 2006 incident; and any legal proceedings related to the November 2006 incident.

63. The Information Request directs CAI to respond to the Request within 30 days of CAI's receipt of the Request.

64. The Information Request notifies CAI that failure to respond fully and truthfully by the 30-day deadline to each Question in the Information Request might result in civil judicial enforcement action against CAI pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

65. CAI's response was due on or before Monday, January 25, 2010 (the first business day following the 30-day deadline).

66. CAI through counsel requested a 30-day extension of time in which to respond to the Information Request.

67. EPA granted an extension of time for CAI to respond to the Information Request, as follows:

a. EPA extended to February 8, 2010 the deadline for responses to Questions 7-19 and 28-30;

b. EPA extended to February 16, 2010 the deadline for responses to Questions 20-27 and 31-33; and

c. EPA extended to February 24, 2010 the deadline for responses to Questions 1-6 and 34-35.

68. By the first extended deadline of February 8, 2010, CAI failed to submit any response to any of the specific Questions in the Information Request.

69. By the second extended deadline of February 16, 2010, CAI again failed to submit any response to any of the specific Questions in the Information Request.

70. On February 19, 2010, EPA issued a Notice of Non-Compliance to CAI for its failure to submit responses to the Questions in the Information Request due by the extended deadlines of February 8 and February 16, 2010.

71. The Notice of Non-Compliance again notified CAI that failure to respond to the Information Request could result in a judicial enforcement action for penalties or injunctive relief, pursuant to Section 113 of the CAA.

72. By the third extended deadline of February 24, 2010, CAI again failed to submit any response to any of the specific Questions in the Information Request.

73. On March 2, 2010, EPA issued an Administrative Order to CAI for its failure to respond to the Information Request.

74. EPA's Administrative Order directed CAI to comply with the Information Request. The Administrative Order notified CAI that its failure to comply might lead EPA to request that the U.S. Department of Justice bring a civil action against CAI seeking injunctive relief and civil penalties under Section 113 of the CAA.

75. By letter dated March 10, 2010, CAI submitted to EPA a "Response of C.A.I. to Administrative Order" ("AO Response") in which CAI asserted that EPA lacked authority to issue the Information Request.

76. CAI's March 10, 2010 AO Response contains no substantive response to any of the Questions in the Information Request.

77. As of the date of filing of this Complaint, CAI has failed to submit any response to any of the specific Questions in the Information Request.

STATUTORY/REGULATORY BACKGROUND
(CERCLA Section 107(a) – Cost Recovery)

78. 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

. . . 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). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under sub-chapter A of chapter 98 of Title 26.

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

80. Chemicals at the Danvers Facility, including but not limited to, toluene, acetone, and nitrocellulose, are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

81. “Disposal” of hazardous substances includes discharging, depositing, dumping, spilling, leaking, or placing such substances into or on any land or water so that the substances or

any constituent thereof may enter the environment or be emitted into the air or discharged into any waters. 42 U.S.C. § 9601(29).

82. Hazardous substances were disposed of at the Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. § 9601(29).

83. There were “releases” and threatened “releases” of “hazardous substances” at or from the Site within the meaning of Sections 101(22) and (14) of CERCLA, 42 U.S.C. §§ 9601(22) and (14).

84. As a result of the release and threatened release of hazardous substances at or from the Site, EPA engaged in response actions and, together with the United States Department of Justice, has incurred and continues to incur response costs, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), not inconsistent with the National Contingency Plan.

STATUTORY/REGULATORY BACKGROUND
(CAA Section 112(r)(1) – General Duty Clause)

85. The CAA, 42 U.S.C. §§ 7401 *et seq.*, establishes a comprehensive scheme for air pollution prevention and control, as described in Section 101 of the CAA, 42 U.S.C. § 7401.

86. Congress enacted the CAA “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

87. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), was enacted to prevent the accidental release and to minimize the consequences of any such release of any listed substances or any other extremely hazardous substance.

88. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), also known as the “General Duty Clause,” provides in pertinent part:

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as Section 654 of Title 29 [29 U.S.C. § 654] to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

89. N-propyl alcohol, isopropyl alcohol, n-butyl acetate, acetone, toluene, methyl ethyl ketone, ethyl alcohol, propyl alcohol, butyl alcohol, ethyl acetate, heptane, and nitrocellulose, either alone or in the aggregate, are “extremely hazardous substances,” within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

90. The Danvers Facility was a building or structure from which an accidental release of an extremely hazardous substance may occur, and therefore, was a stationary source within the meaning of Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

91. At all times relevant hereto, the Danvers Facility was subject to the CAA General Duty Clause, 42 U.S.C. § 7412(r)(1).

92. At all times relevant hereto, CAI operated a stationary source within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

93. At all times relevant hereto, Arnel operated a stationary source within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

94. “Accidental release” is defined in Section 112(r)(2)(A) as an “unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.”

95. The release of extremely hazardous substances from the Danvers Facility as a result of and in connection with the November 22, 2006 fire and explosion at the Danvers Facility, constituted an “accidental release” within the meaning of Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

96. Section 114(a) of the CAA provides, in part:

For the purpose . . . [of] carrying out any provision of this chapter . . . the Administrator may require any person . . . who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter . . . on a one-time, periodic or continuous basis to . . . provide such . . . information as the Administrator may reasonably require

42 U.S.C. § 7414(a).

97. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes EPA to commence a civil judicial enforcement action for injunctive relief and civil penalties for violations of any requirement or prohibition of Subchapter I of the CAA, 42 U.S.C. §§ 7401-7515, including Sections 112(r) and 114(a), 42 U.S.C. §§ 7412(r), 7414(a).

FIRST CLAIM FOR RELIEF
(CERCLA Section 107(a) – Cost Recovery)

98. Paragraphs 1 through 97 of this Complaint are realleged and incorporated herein by reference.

99. Defendant Nelson, as Trustee, is an owner of the Danvers Facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

100. Defendant Nelson, as Trustee, was an owner of the Danvers Facility at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

101. Defendant Sartorelli Realty is an owner of the Danvers Facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

102. Defendant Sartorelli Realty was an owner of the Danvers Facility at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

103. Defendant Arnel was an operator of the Danvers Facility at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

104. Defendant CAI was an operator of the Danvers Facility at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

105. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendants CAI, Arnel, Nelson and Sartorelli Realty are jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with the Site, including without limitation, indirect, administrative, investigative, and enforcement costs.

106. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States is entitled to recover prejudgment interest on the response costs which it has incurred and may incur in connection with the Site.

107. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that defendants CAI, Arnel, Nelson, and Sartorelli Realty are jointly and severally liable for further response costs that will be binding in any subsequent action to recover further response costs in connection with the Site.

SECOND CLAIM FOR RELIEF

(CAA Section 112(r)(1) – General Duty Clause – Failure to Identify Hazards)

108. Paragraphs 1 through 107 of this Complaint are realleged and incorporated herein by reference.

109. CAI and Arnel were required, under Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to identify hazards, using appropriate hazard assessment techniques, which may result from the accidental release of an extremely hazardous substance at or from the Danvers Facility, such as that which occurred at the Danvers Facility on November 22, 2006.

110. Upon information and belief, at all times relevant hereto, CAI and Arnel failed to identify hazards, using appropriate hazard assessment techniques, which may have resulted from the accidental release of an extremely hazardous substance at or from the Danvers Facility.

111. Upon information and belief, CAI and Arnel each failed to use appropriate assessment techniques to identify hazards from one or more of the following conditions at the Danvers Facility: (a) an operator inadvertently leaving a steam valve on one of the facility's production mixing tanks open; (b) flammable vapors escaping from production mixing tanks and accumulating in the facility's operating areas; (c) lack of automated safety controls and vapor detectors during unattended operations; (d) lack of equipment or procedures to ensure that flammable vapors never reached 25% of the LEL; (e) lack of blow-out (a/k/a blast) panels or other passive mitigation systems in an environment where large quantities of flammable materials were used; (f) the presence at the facility of sources of ignition that lacked effective protection for use near flammable materials; and (g) lack of compliance with local fire and safety permitting or licensing requirements.

112. As a result of their failures to identify hazards which may have resulted from the accidental release of an extremely hazardous substance at or from the Danvers Facility using

appropriate hazard assessment techniques, CAI and Arnel violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

113. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by 28 U.S.C. § 2461 and 31 U.S.C. § 3701 (*see* 69 Fed. Reg. 7121 (2004) and 73 Fed. Reg. 75,340 (2008)), CAI and Arnel are liable for assessment of a civil penalty of up to \$27,500 per day for each violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), occurring between January 30, 1997 and March 15, 2004, up to \$32,500 per day for violations occurring from March 16, 2004 through January 12, 2009, and \$37,500 per day for violations occurring after January 12, 2009.

THIRD CLAIM FOR RELIEF

(CAA Section 112(r)(1) – General Duty Clause – Failure to Design and Maintain a Safe Facility)

114. Paragraphs 1 through 113 of this Complaint are realleged and incorporated herein by reference.

115. CAI and Arnel were required, under Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe Danvers Facility taking such steps as were necessary to prevent a release of an extremely hazardous substance at or from the Danvers Facility, such as that which occurred at the Danvers Facility on November 22, 2006.

116. Upon information and belief, at all times relevant hereto, CAI and Arnel failed to design and maintain a safe Danvers Facility, taking such steps as were necessary to prevent a release of an extremely hazardous substance at or from the Danvers Facility.

117. Upon information and belief, CAI failed to prepare written procedures and checklists for ensuring the safe operation of equipment used to handle flammable materials at the Danvers Facility.

118. Upon information and belief, at all times relevant hereto, CAI failed to install or maintain mechanical controls at the Danvers Facility designed to prevent releases of flammable vapor, such as LEL detectors, automatic shut-down devices, and high temperature alarms.

119. Upon information and belief, at all times relevant hereto, Arnel failed to install or maintain mechanical controls at the Danvers Facility designed to prevent releases of flammable vapor, such as LEL detectors.

120. Upon information and belief, at all times relevant hereto, CAI failed to seal the production mixing tanks in the Danvers Facility in a manner that would prevent releases of chemical vapors from the mixing tanks into the facility's operating area during the tanks' operation.

121. Upon information and belief, CAI failed to ventilate the production mixing tanks in the Danvers Facility in a manner sufficient to prevent releases of chemical vapors from the mixing tanks into the facility's operating area during the tanks' operation, on multiple occasions including the night of the November 22, 2006 explosion and fire.

122. Upon information and belief, any written procedures and checklists prepared by Arnel did not contain measures to safeguard Arnel's flammable materials during those times when the facility was left unattended, with its ventilation system off, while CAI's production mixing tanks were operating.

123. As a result of their failure to design and maintain a safe Danvers Facility, CAI and Arnel violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

124. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by 28 U.S.C. § 2461 and 31 U.S.C. § 3701 (*see* 69 Fed. Reg. 7121 (2004) and 73 Fed. Reg. 75,340 (2008)), CAI and Arnel are liable for assessment of a civil penalty of up to \$27,500 per day for

each violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), occurring between January 30, 1997 and March 15, 2004, up to \$32,500 per day for violations occurring from March 16, 2004 through January 12, 2009, and \$37,500 per day for violations occurring after January 12, 2009.

FOURTH CLAIM FOR RELIEF

(CAA Section 112(r)(1) – General Duty Clause – Failure to Minimize Consequences)

125. Paragraphs 1 through 124 of this Complaint are realleged and incorporated herein by reference.

126. CAI and Arnel were required, under Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to minimize the consequences of an accidental release of an extremely hazardous substance at or from the Danvers Facility such as that which occurred at the Danvers Facility on November 22, 2006.

127. Upon information and belief, at all times relevant hereto, CAI and Arnel failed to minimize the consequences of an accidental release of an extremely hazardous substance at or from the Danvers Facility. Neither Arnel nor CAI had sufficient safety measures in place, such as a passive mitigation system, effective ventilation while production processes were running, automatic shut-down devices, a vapor detection system, and an uncongested production area.

128. A passive mitigation system could include, but need not be limited to, vapor detection alarms or blow-out (a/k/a blast) panels, to lessen the force and mitigate the effects of an explosion such as that which occurred on November 22, 2006.

129. As a result of their failure to minimize the consequences of an accidental release, CAI and Arnel violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

130. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by 28 U.S.C. § 2461 and 31 U.S.C. § 3701 (*see* 69 Fed. Reg. 7121 (2004) and 73 Fed. Reg. 75,340 (2008)), CAI and Arnel are liable for assessment of a civil penalty of up to \$27,500 per day for each violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), occurring between January 30, 1997 and March 15, 2004, up to \$32,500 per day for violations occurring from March 16, 2004 through January 12, 2009, and \$37,500 per day for violations occurring after January 12, 2009.

FIFTH CLAIM FOR RELIEF
(CAA Section 114 – Failure to Respond to Information Request)

131. Paragraphs 1 through 130 of this Complaint are realleged and incorporated herein by reference.

132. Section 114(a) of the CAA requires any person who EPA believes may have information necessary for carrying out any provision of the CAA to provide such information as EPA may reasonably require. 42 U.S.C. § 7414(a).

133. The purposes set forth in CAA Section 114(a) include “carrying out any provision of this chapter [*i.e.*, the CAA].” Provisions of the CAA include, among others, CAA Section 112(r)(1) (the General Duty Clause) and CAA Section 113(a)(3) (regarding enforcement of CAA Subchapter I requirements, including the General Duty Clause).

134. Accordingly, a permissible purpose for issuing an information request under CAA Section 114(a) is for EPA to determine compliance with, and to enforce, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

135. CAI is a person that EPA believes may have information regarding the Danvers Facility for the information-gathering purposes set forth in Section 114(a) of the CAA, 42 U.S.C. § 7414(a).

136. These purposes include, without limitation: determining the nature and extent of CAI's compliance or noncompliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) at the Danvers Facility; and enforcing CAA Section 112(r)(1).

137. The Information Request seeks relevant and reasonable information for such lawful purposes under Sections 112(r)(1) and 113(a) of the CAA, 42 U.S.C. §§ 7412(r)(1), 7413(a).

138. CAI is strictly liable under Section 114(a) for its failure to provide EPA, in whole or in part, the documents and information requested in the Information Request.

139. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), as amended by 28 U.S.C. § 2461 and 31 U.S.C. § 3701, CAI's failure to respond fully and completely to the Information Request entitles the United States to injunctive relief requiring that CAI substantively respond to EPA's Information Request and to a civil penalty of up to \$37,500 per day for each violation of Section 114(a) of the CAA, 42 U.S.C. § 7414(a).

PRAYER FOR RELIEF

WHEREFORE, the United States requests that this Court:

A. Enter a judgment, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), that the Defendants are jointly and severally liable for, and order reimbursement of, all costs

incurred by the United States in connection with EPA's response action at the Site, including enforcement costs and interest;

B. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants are jointly and severally liable, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs to be incurred by the United States in connection with the Site, including enforcement costs and interest;

C. Enter a judgment for civil penalties, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), against Defendants CAI and Arnel for violations of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1);

D. Enter an order compelling Defendant CAI to comply with EPA's Information Request by responding to each request for information and documents in each Question fully and completely as specified in a Court order;

E. Enter a judgment for civil penalties, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), against Defendant CAI, for violations of Sections 114 of the CAA, 42 U.S.C. § 7414; and

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

Respectfully Submitted,

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