IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TERESA LeCLERCQ, AL LeCLERCQ, JAN MATISIAK, WALT MATISIAK, individually, and on behalf of all persons similarly situated, Plaintiffs, v. **THE LOCKFORMER COMPANY,** a division of **MET-COIL SYSTEMS CORPORATION,** a Delaware corporation; **MESTEK, INC.,** a Pennsylvania corporation, and, **HONEYWELL INTERNATIONAL, INC.,** a Delaware corporation, Defendants.	No. 00 C 7164 Judge Harry D. Leinenweber Magistrate Judge Schenkier **JURY TRIAL DEMANDED**

THIRD AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE, DECLARATORY AND OTHER RELIEF

Plaintiffs, TERESA LeCLERCQ, AL LeCLERCQ, WALT MATISIAK and JAN MATISIAK, individually, and on behalf of all others similarly situated, by and through their attorneys, SHAWN M. COLLINS, CHARLES J. CORRIGAN, EDWARD J. MANZKE and THE COLLINS LAW FIRM, P.C., of counsel, and NORMAN B. BERGER, MICHAEL D. HAYES, ANNE E. VINER and VARGA BERGER LEDSKY HAYES & CASEY, of counsel, for their Third Amended Complaint against Defendants, The Lockformer Company, a division of Met-Coil Systems Corporation, a Delaware corporation, Mestek, Inc., a Pennsylvania corporation (hereinafter referred to collectively as "the Lockformer Defendants") and HONEYWELL INTERNATIONAL, INC., a Delaware corporation, state and allege as follows:

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COMMON ALLEGATIONS

Nature of the Action

1. This is a class action brought by and on behalf of the owners and residents of more than 200[1] homes and properties located directly south, and directly hydrologically downgradient, of the Lockformer manufacturing facility in Lisle, DuPage County, Illinois. Plaintiffs, who rely exclusively on private wells as their source of water for their homes, recently discovered that the water in their homes, and on their properties, has been polluted with dangerous chemicals, including trichloroethylene ("TCE"), a known human carcinogen and mutagen, due to releases of hazardous chemicals from properties and facilities owned and operated by the Defendants. In some cases, the contamination discovered is at levels many times in excess of federal safe drinking water standards and has been present in Plaintiffs' wells for as many as twenty years. Furthermore, Defendants have known for at least fifteen years that hazardous chemicals were present on their property and posed a risk to Plaintiffs' health and property, but failed to alert Plaintiffs to these risks or to determine the scope of the contamination.

By this action, Plaintiffs seek to enjoin Defendants from allowing further contamination of Plaintiffs' properties, to require Defendants to abate the imminent and substantial health risk posed by the contamination, to require Defendants to fully investigate and remediate the contamination of their properties, to reimburse Plaintiffs for the costs they have incurred and will incur, and to recover compensatory and punitive damages for the injuries sustained by Plaintiffs.

[1] Plaintiffs respectfully acknowledge the Class identified by the Court in its Memorandum Opinion and Order of February 23, 2001. Plaintiffs however, reserve their right to seek enlargement of the Class as future information becomes available on the scope of the contamination alleged.

Plaintiffs

2. Plaintiffs, Al and Teresa LeClercq, are citizens of the State of Illinois and reside at 619 Reidy Road, in Lisle, Illinois. They own the property located at 619 Reidy Road.

3. Plaintiffs, Walt and Jan Matisiak, are citizens of the State of Illinois and reside at 603 Front Street, in Lisle, Illinois. They own the property located at 602 Front Street, 603 Front Street and 625 Front Street.

Defendants

4. Defendant, The Lockformer Company ("Lockformer"), existed as an Illinois corporation from approximately December 6, 1946, until approximately October 27, 2000, when it was merged into Defendant Met-Coil Systems Corporation ("Met-Coil"). The Lockformer Company is no longer an independent company, but is now a division of Met-Coil, which, upon information and belief, succeeded to the assets and liabilities of Lockformer.

5. At all relevant times, Lockformer owned, operated, and engaged in the metal fabrication and manufacturing business at a facility located at 711 Ogden Avenue, Lisle, Illinois (the "Lockformer Property"). The Lockformer Property is located directly north and hydrologically upgradient of the properties owned and/or inhabited by Plaintiffs.

6. On information and belief, Defendant, Met-Coil, is a Delaware corporation, with its principal place of business in Cedar Rapids, Iowa. At all relevant times prior to Lockformer's merger into Met-Coil, Met-Coil owned and operated Lockformer. Met-Coil itself owns property adjacent to the Lockformer Property, immediately west of 711 Ogden Avenue, Lisle, Illinois (the "Met-Coil Property"). The Met-Coil Property is also located directly north and hydrologically upgradient of the properties owned and/or inhabited by Plaintiffs.

7. On information and belief, Defendant, Mestek, Inc. ("Mestek'), is a Pennsylvania corporation, with its principal place of business in Westfield, Massachusetts. Since

approximately June of 2000, Mestek has owned or operated Lockformer and Met-Coil, and, based upon the statements of its counsel, Mestek directs and controls the environmental issues at the Lockformer and Met-Coil properties.

8. On information and belief, Allied Signal Inc. ("Allied Signal"), existed as a Delaware corporation, authorized to transact business in Illinois until approximately 1999, when it was merged with Honeywell, Inc., and became Defendant Honeywell International, Inc. ("Honeywell"). On information and belief, Allied Signal is no longer an independent company, but is now a division of Defendant Honeywell, which succeeded to the assets and liabilities of Allied Signal. On information and belief, Defendant Honeywell is a Delaware corporation with its principal place of business in Morristown, New Jersey.

Jurisdiction and Venue

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1367, 42 U.S.C. § 9607(a) and 42 U.S.C. § 6972, because this case arises under the laws of the United States. The claims in Counts I and X are predicated upon and seek relief under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et. seq.* ("CERCLA"). The claims in Count II, Count III, Count IV and Count V are predicated upon and seek relief under the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6901 *et. seq.*

10. Additionally, this court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332(a)(1), based upon the diversity of citizenship of all parties and the amount in controversy exceeding the jurisdictional minimum of $75,000. Plaintiffs are citizens of the State of Illinois. Defendant Lockformer, a division of Met-Coil, is a citizen of Delaware and Iowa. Defendant Mestek is a citizen of Pennsylvania and Massachusetts. Defendant Honeywell is a citizen of Delaware and New Jersey.

11. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims in Counts VI through IX, which are so related to the claims in Count I, Count II, Count III, Count IV, Count V and Count X, that they form part of the same case or controversy.

12. Pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), venue is proper in this Court because this case arises out of actions which occurred within, and pertains to property located in, this judicial district.

GENERAL ALLEGATIONS OF FACT

Defendants' Manufacturing Operations and their Spillage and Release of TCE and Other Hazardous Wastes

13. Defendant Lockformer has operated a metal fabrication business at its facility on the Lockformer Property for over 30 years, beginning no later than 1968.

14. As part of its manufacturing operations, at all relevant times, Lockformer has maintained a metal degreasing operation on the Lockformer Property. Beginning in approximately 1968 and continuing through at least 1997, Lockformer's degreasing operation has included the use of a pitted vapor degreaser situated in a concrete tank pit or sump located within the facility building and approximately twelve feet below ground surface. This degreaser at all relevant times utilized chlorinated solvents, including trichloretheylene ("TCE"). For many years, beginning in or about 1968 and continuing through 1997, the TCE was stored in a 500-gallon rooftop storage tank located near the west wall of the Lockformer facility. On information and belief, the rooftop tank was owned and installed by Baran Blakeslee, a subsidiary of Allied Signal.

15. On a monthly basis from 1968 until at least 1992, when the rooftop TCE tank was filled, solvents, including TCE, would spill directly onto the ground at the Lockformer Property from an overflow pipe that runs from the roof top tank to the ground along the west side of the

building. During this timeframe, on information and belief, the exclusive supplier of TCE to Lockformer was Defendant Honeywell (formerly operating as Allied Signal).

16. From approximately 1968 until 1992, Allied Signal spilled TCE on the ground at the Lockformer property each time it refilled the rooftop TCE storage tank. At all relevant times, Lockformer knew or should have known of this conduct.

17. Additionally, from 1968 until at least 1997, chlorinated solvents, including TCE, were released into the ground around and beneath the Lockformer property through the pitted vapor degreaser, by use of the chlorinated solvents to clean the floor of the Lockformer facility, by discharge from the rooftop TCE tank, and by refilling of the rooftop TCE tank.

18. Defendants claimed to have discovered, for the first time in 1992, that the ground adjacent to the facility in the area of the overflow pipe was contaminated with chlorinated solvents, including TCE. Further, Defendants' investigation identified high levels of these same hazardous chemicals in soil borings from locations within the building and adjacent to the vapor degreaser pit. Ground water testing on the Lockformer property revealed levels of contamination that in some instances exceed by 10,000 times the United States Environmental Protection Agency ("EPA") standards for safe drinking water.

19. Defendants have never fully defined the extent of the contamination on and emanating from the Lockformer Property, nor have they determined the impact of the contamination on the surrounding properties, despite knowledge, for at least fifteen years, that TCE was regularly released on its property and the threat it posed to the safety of the general public.

Plaintiffs' Recent Discoveries of Defendants' Spillage and of the Contamination of their Properties

20. On August 28, 2000, the Village of Lisle held a Board of Trustees meeting concerning the Lockformer Defendants' request that the Village pass a ground water ordinance restricting the use of groundwater in the area so that the State of Illinois would issue a No Further Remediation Letter to Lockformer. This was Plaintiffs' first notice of the presence of spilled TCE on the Lockformer Defendants' property.

21. Plaintiffs thereafter undertook an investigation concerning the Lockformer Defendants' requested ground water ordinance, and for the first time discovered the history of the releases from the Lockformer facility. Plaintiffs retained an environmental consultant to review the matter. Based upon information from Lockformer and public documents, Plaintiffs and their consultant discovered that:

- there was a long history of spills and release of chlorinated solvents, specifically TCE, associated with the operations at the Lockformer facility;
- the scope of contamination and the impact to Plaintiffs' residences had not been investigated or determined; and,
- the geology in the area is such that the Lockformer Facility is located directly upgradient of Plaintiffs' residences, and within and above a groundwater aquifer used by many of the Plaintiffs as their domestic water supply source.

22. Based on these discoveries, Plaintiffs' consultant recommended to Plaintiffs testing to analyze water samples from their homes. The tests showed that the groundwater aquifer used by the Plaintiffs as their domestic water supply source is contaminated with chlorinated solvents, including TCE. In most locations, the tests of tap water samples revealed the presence of these chemicals in excess of the maximum contamination level goal set by federal and state government.

23. As a result of these test results, on December 18, 19 and 20, 2000, the Illinois EPA ("IEPA") collected potable water samples from forty-eight (48) homes located directly south of Lockformer's manufacturing facility. Of the 48 potable water samples collected, thirty-four (34) samples showed the presence of TCE in excess of maximum contamination level goals.

24. Based upon the information reviewed and the initial test results, Plaintiffs' consultant has calculated that TCE from the Lockformer Defendants' properties migrated off those properties and into Plaintiffs' water source beginning at least twenty years ago.

25. Plaintiffs have disclosed the results of their tests to the Lockformer Defendants, and, based upon their consultant's observations and conclusions, have demanded that the Lockformer Defendants provide them with a permanent source of safe water to drink and use in their homes. However, these Defendants have refused to do this.

26. Plaintiffs' investigation has revealed that groundwater at, in, on and beneath their properties has been contaminated by various hazardous chemicals, including TCE. These hazardous substances released from the Defendants' properties appear to have migrated, and continue to migrate, in liquid and vapor form toward and into the homes owned and inhabited by Plaintiffs, contaminating, infiltrating and threatening the soil, groundwater, and domestic water supply in the area. Further, it appears Plaintiffs have been exposed for many years to potentially dangerous levels of these chemicals through ingestion, dermal exposure, and inhalation. Defendants have known for many years of the health threats to Plaintiffs and have intentionally and knowingly failed to notify Plaintiffs of these threats, or to perform investigation and remediation concerning such threats.

27. The releases and spills of hazardous substances from the Lockformer Property and the Met-Coil Property and the subsequent migration of such substances from both properties to the property of Plaintiffs were a result of Defendants' acts or omissions during their ownership

and operations, and occurred on a regular and frequent basis throughout a 30 year period of operation. On information and belief, Defendants' negligent acts and omissions causing the contamination include, but are not limited to, improper handling, storage, use, disposal, transportation, delivery, investigation and cleanup of the hazardous substances, and improper maintenance, installation and operation of equipment using TCE and other hazardous substances.

28. On information and belief, the releases and spills of hazardous substances from the Lockformer Property and the Met-Coil Property, and the subsequent migration of such substances which occurred in substantial part after Defendants became aware of the contamination, were a result of Defendants' willful and wanton conduct during at least part of their ownership and operations. On information and belief, Defendants' willful and wanton conduct includes, but is not limited to, failing to properly investigate and remediate the contamination on the Lockformer Defendants' property; failing, for at least eight years, to notify Plaintiffs of the groundwater contamination emanating from the Lockformer and Met-Coil properties; and falsely assuring the general public, including on August 28, 2000, that Plaintiffs' groundwater would not be affected by the contamination on the Lockformer and Met-Coil Properties.

The Hazardous Nature of TCE and Other Solvents Spilled and Released by Defendants

29. TCE and the other volatile organic compounds released by Defendants are dangerous substances, which have been linked to a variety of human illnesses, including cancer, and are severely destructive to the environment, including vegetation and wildlife. TCE exposure can cause among other things, liver and kidney damage, impaired heart function, impaired fetal development in pregnant women, convulsions, coma and death.

30. The release of these chemicals by Defendants present an imminent and substantial endangerment to Plaintiffs' health and the environment. They have not only threatened Plaintiffs' health and exposed them to injury and the fear of future injury, including increased cancer rate, but they have significantly and permanently damaged and diminished the value of Plaintiffs' properties.

The Harm to Plaintiffs Resulting from the Contamination

31. The contamination resulting from the releases has not been fully defined, but continues to damage and threaten Plaintiffs' health and property. Notwithstanding Defendants' knowledge of these releases, and the threats posed, the Defendants not only failed to apprise those affected concerning the releases, but wrongly and falsely assured Plaintiffs that their water supply would not be affected, and have refused to address the releases so as to mitigate the threats posed.

32. As a result of the multiple and ongoing releases and the Defendants' disregard for the threats posed to Plaintiffs, the Plaintiffs have been and continue to be injured.

33. As a result of the contamination, the value of the Plaintiffs' property has been substantially decreased, if not destroyed. In its polluted state, the Plaintiffs' property is likely not marketable and thus is potentially valueless and, at a minimum, is less marketable than it would be without the contamination. Further, this contamination, even if ultimately remediated, places a stigma upon the Plaintiffs' property, which negatively affects the fair market value of their property.

34. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of Defendants' negligent and reckless acts and failure to remediate the contamination resulting from such acts and omissions.

35. Plaintiffs' remedies at law are inadequate. The Plaintiffs' property value cannot be restored and their health will continue to be threatened, without full investigation and remediation of the contamination. The cost of such investigation and remediation will be substantial, but cannot be determined with certainty until the problem is fully investigated. If the contamination is not cleaned up, it will continue to spread, further threatening Plaintiffs' health and preventing full use and enjoyment of their properties.

36. A balancing of the equities favors Plaintiffs over Defendants, and Plaintiffs are reasonably likely to prevail at trial. Plaintiffs lack the resources to undertake the required investigation and cleanup. Defendants have the resources to perform the cleanup.

Class Allegations

37. Plaintiffs bring each of the claims in this action in their own names and on behalf of a class of all persons similarly situated ("the Class"), pursuant to Rule 23 of the Federal Rules of Civil Procedure.

38. The Class consists of all persons who own or reside in property that has been impacted, or a threat exists that it will be impacted, by chlorinated solvents released at or from the Lockformer and/or Met-Coil Properties. This property is located directly south of the Lockformer property and includes the property on the north and south sides of Front Street, Reidy Road, Hitchcock Avenue and Gamble Drive. This area is bounded to the West by Kingston Avenue, including any homes on the east side of Kingston Avenue and bounded to the east by Westview Lane including any homes on the eastside of Westview Lane.[2]

39. The Class is so numerous that joinder of all members is impractical. The number of homes in the affected area, which have been or may in the future be damaged by hazardous

[2] This area has been identified as the Class according to the Court's Memorandum Opinion and Order of February 23, 2001. Plaintiffs reserve the right to seek enlargement of the Class as future information concerning the area affected by the alleged contamination warrants.

substances released at or from the Lockformer and/or Met-Coil Properties, exceeds 400 homes, and, therefore, the number of class members also exceeds 400 people, and likely includes in excess of 800 people.

40. There are common questions of law and fact that affect the rights of each member of the Class, and the types of relief sought are common to the entire Class.

41. Plaintiffs' claims are typical of the claims of the Class. All are based upon the same factual and legal theories.

42. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

43. Plaintiffs have retained counsel who are competent and experienced in class litigation.

COUNT I

CERCLA COST RECOVERY, 42 U.S.C. § 9607(a)

44. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 44 of this Count I, as though fully set forth herein.

45. Defendants Lockformer, Met-Coil and Mestek are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

46. On information and belief, from approximately 1968 to the present, Defendants Lockformer, Met-Coil and Mestek were and continue to be "owners" and/or "operators" of a "facility" within the meaning of Sections 101(2), 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20), 9601(9), 9607(a). The "facility" includes both the Lockformer Property and the Met-Coil Property.

47. The substances, including TCE, used or stored at the facility were and are "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

48. During the past approximately 30 years of Defendants' operations at the Lockformer and Met-Coil properties, there have been and continue to be "releases" of hazardous substances into the environment, within the meaning of Section 101(2) of CERCLA, 42 U.S.C. § 9601(22). Defendants' acts and omissions at the facility caused such "releases." The hazardous substances released include, but are not limited to, TCE.

49. Defendants' release has migrated to Plaintiffs' wells and there is no other likely source for the hazardous substances released into the Plaintiffs' water supply.

50. Defendants Lockformer, Met-Coil and Mestek are, thus, strictly liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), because they are the current operators of the facility, and because they owned or operated the facility when hazardous substances were stored, used, disposed, or otherwise discharged thereon.

51. As a result of the releases of hazardous substances, Plaintiffs and the Class have incurred "response" costs within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. §§ 9601(23)-(25), including the retention of an environmental consulting firm to perform a preliminary investigation of the contamination of Plaintiffs' property. Plaintiffs have been advised by their environmental consultant that a more comprehensive investigation must be undertaken to determine the scope of the contamination on Plaintiffs' property and surrounding property. All such costs are necessary costs of response consistent with the National Contingency Plan. Plaintiffs will continue to incur such response costs in the future. Accordingly, Plaintiffs and the Class are entitled to full reimbursement from Defendants for all such costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

COUNT II

RCRA - § 6972(a)(1)(A)

52. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 52 of this Count II, as though fully set forth herein.

53. Defendants Lockformer, Met-Coil and Mestek are "persons" as defined in § 6903(15) of RCRA.

54. The TCE and other solvents released from the above ground storage tank and pitted vapor degreaser at the Lockformer manufacturing facility and the resulting contaminated media are solid wastes or hazardous wastes as defined in RCRA §§ 6903(5) and (27).

55. The violations and claims alleged in this Count II were caused by the failure of the Lockformer Defendants to comply with the corrective action standards, requirements and regulations effective under RCRA, Subchapter IX and Title 40, Chapter I, Section 280 of the Code of Federal Regulations. Such violations give rise to citizen civil action under §6972(a)(1)(A) of RCRA.

56. In accordance with § 6972(b) and 40 C.F.R. 254, Plaintiffs sent a letter by registered mail, return receipt requested, dated November 2, 2000, to Defendants Lockformer, Met-Coil and Mestek providing them with prior notice of the violations alleged and the claims made in this Count. Copies of the letters were also sent in like manner to the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), the Attorney General of the United States, the Regional Administrator for Region V of the U.S. EPA, and the Director of the Illinois Environmental Protection Agency, in accordance with 40 C.F.R. 254. These letters were received by the Lockformer Defendants more than 90 days prior to the filing of this Complaint. The Administrator of the United States Environmental Protection Agency has not commenced

any action of any kind against Defendants, including any action of the type specifically delineated and specified in § 7002(b)(1)(B) of RCRA. The State of Illinois, subsequent to the filing of this lawsuit, has commenced an action against Defendants, but such action was not of the type specifically delineated and specified in § 7002(b)(1)(B), and the State has not brought such action pursuant to any delegated RCRA authority and is not seeking to require compliance with any RCRA permit, RCRA standard, RCRA regulation, RCRA condition, RCRA requirement, RCRA prohibition or RCRA order. Hence, the State's action against Defendants is not a bar to Plaintiffs' citizen suit claims under RCRA § 6972(a)(1)(A).

57. Pursuant to RCRA § 6972(b)(2)(F), Plaintiffs will serve a copy of this Amended Class Action Complaint on the Attorney General of the United States and the Administrator of the U.S. EPA.

58. This Court has jurisdiction pursuant to § 6972(a) of RCRA to order the Defendants to take any actions necessary to abate the conditions which present an imminent and substantial endangerment to health or the environment and to refrain from taking any actions in violation of RCRA and the regulations promulgated pursuant thereto, and to impose any appropriate civil penalties.

COUNT III

RCRA - § 6972(a)(1)(B)

59. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 59 of this Count III, as though fully set forth herein.

60. Defendants Lockformer Met-Coil and Mestek are "persons" as defined in § 6903(15) of RCRA.

61. The TCE and other solvents released from the above ground storage tank and pitted vapor degreaser at the Lockformer manufacturing facility and the resulting contaminated media are solid wastes or hazardous wastes as defined in RCRA §§ 6903(5) and (27).

62. Defendants Lockformer, Met-Coil and Mestek have engaged in the handling, storage, treatment, transportation or disposal of solid wastes or hazardous wastes in a manner which has contributed to and is contributing to the contamination of the Lockformer Property, the Met-Coil Property and the Plaintiffs' properties. Specifically, the Defendants' handling and storage of TCE and other solvents and the leaking of such products into the environment, constituting improper disposal of solid or hazardous wastes, have and continue to present an imminent and substantial endangerment to health and the environment by polluting or threatening to pollute the soil, surface water, groundwater, and air at, in, on, beneath and around the Lockformer Property and the Met-Coil Property. As contributors to this hazardous condition, Defendants Lockformer, Met-Coil and Mestek are subject to suit pursuant to § 6972(a)(1)(B) of RCRA.

63. In accordance with § 6972(b) and 40 C.F.R. 254, Plaintiffs sent a letter by registered mail, return receipt requested, dated November 2, 2000, to Defendants Lockformer, Met-Coil and Mestek providing them with prior notice of the violations alleged and the claims made in this Count. Copies of the letters were also sent in like manner to the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), the Attorney General of the United States, the Regional Administrator for Region V of the U.S. EPA, and the Director of the Illinois Environmental Protection Agency in accordance with 40 C.F.R. 254. These letters were received by the Lockformer Defendants more than 90 days prior to the filing of this Complaint. The Administrator of the United States Protection Agency has not commenced any action against the Lockformer Defendants, including any action of the type specifically delineated and

specified in § 7002(b)(2)(B) of RCRA. The State of Illinois, subsequent to the filing of this lawsuit, has commenced an action against Defendants, but such action was not of the type specifically delineated and specified in § 7002(b)(2)(C) of RCRA. Hence, the State's action against Defendants is not a bar to Plaintiffs' citizen suits claims under RCRA § 6972(a)(1)(B).

64. Pursuant to RCRA § 6972(b)(2)(F), Plaintiffs will serve a copy of this Complaint on the Attorney General of the United States and the Administrator of the U.S. EPA.

65. This Court has jurisdiction pursuant to § 6972(a) of RCRA to order the Defendants to take any actions necessary to abate the conditions which present an imminent and substantial endangerment to health or the environment and to refrain from taking any actions in violation of RCRA and the regulations promulgated pursuant thereto, and to impose any appropriate civil penalties.

COUNT IV

RCRA - § 6972(a)(1)(A)

66. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 66 of this Count IV, as though fully set forth herein.

67. Defendant Honeywell is a "person" as defined in § 6903(15) of RCRA.

68. The underground degreasing sump, the TCE storage tank and the associating piping referenced in paragraphs 14-18 were inter-connected and worked together as a single, unified degreasing system (hereinafter the "Degreasing System"). Given its underground characteristics, the Degreasing System was an "underground storage tank" (within the meaning of RCRA Section 9001(1), 42 U.S.C. §6991(1), and 40 C.F.R. §280.12), subject to regulation under RCRA, Subchapter IX and Title 40, Chapter I, Section 280 of the Code of Federal Regulation. Honeywell owned and/or operated the Degreasing System. The TCE and other

solvents released from the Degreasing System onto the Lockformer Property and the resulting contaminated media are solid wastes or hazardous wastes as defined in RCRA §§6903(5) and (27).

69. The violations and claims alleged in this Count IV were caused by the failure of Defendant Honeywell to comply with the following standards, requirements and regulations effective under RCRA, Subchapter IX and Title 40, Chapter I, Section 280 of the Code of Federal Regulations: Section 280.30 (requiring spill and overflow control); Sections 280.40, 280.42-44 (requiring release detection, such as secondary containment); Section 280.50-53 (requiring release reporting, investigation and confirmation); and Section 280.60-67 (requiring release response and corrective action).

70. In accordance with § 6972(b) and 40 C.F.R. 254, Plaintiffs sent a letter by registered mail, return receipt requested, dated February 27, 2001, to Defendant Honeywell providing Honeywell with prior notice of the violations alleged and the claims made in this Count. Copies of the letter were also sent in like manner to the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), the Attorney General of the United States, the Regional Administrator for Region V of the U.S. EPA, and the Director of the Illinois Environmental Protection Agency, in accordance with 40 C.F.R. 254. This letter was received by Honeywell more than 90 days prior to the filing of this Complaint. The Administrator of the United States Environmental Protection Agency has not commenced any action against Honeywell, including any action of the type specifically delineated and specified in §7002(b)(1)(B) of RCRA. The State of Illinois, subsequent to the filing of this lawsuit, has commenced an action against Honeywell, but such action was not of the type specifically delineated and specified in § 7002(b)(1)(B) of RCRA, and the State has not brought such action pursuant to any delegated RCRA authority and is not seeking to require compliance with any

RCRA permit, RCRA standard, RCRA regulation, RCRA condition, RCRA requirement, RCRA prohibition or RCRA order. Hence, the State's action against Defendant Honeywell is not a bar to Plaintiffs' citizen suit claims under RCRA § 6792(a)(1)(A).

71. Pursuant to RCRA § 6972(b)(2)(F), Plaintiffs will serve a copy of this Amended Class Action Complaint on the Attorney General of the United States and the Administrator of the U.S. EPA.

72. This Court has jurisdiction pursuant to § 6972(a) of RCRA to order the Defendants to take any actions necessary to abate the conditions which present an imminent and substantial endangerment to health or the environment and to refrain from taking any actions in violation of RCRA and the regulations promulgated pursuant thereto, and to impose any appropriate civil penalties.

COUNT V

RCRA - § 6972(a)(1)(B)

73. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 73 of this Count V, as though fully set forth herein.

74. Defendant Honeywell is a "person" as defined in § 6903(15) of RCRA.

75. The TCE and other solvents released from the above ground storage tank and pitted vapor degreaser at the Lockformer manufacturing facility and the resulting contaminated media are solid wastes or hazardous wastes as defined in RCRA §§ 6903(5) and (27).

76. Defendant Honeywell has engaged in the handling, storage, treatment, transportation or disposal of solid wastes or hazardous wastes in a manner which has contributed to and is contributing to the contamination of the Lockformer Property, the Met-Coil Property and the Plaintiffs' properties. Specifically, the Defendant's transportation, delivery, handling

and storage of TCE and other solvents and the leaking of such products into the environment, constituting improper disposal of solid or hazardous wastes, have and continue to present an imminent and substantial endangerment to health and the environment by polluting or threatening to pollute the soil, surface water, groundwater, and air at, in, on, beneath and around the Lockformer Property and the Met-Coil Property. As contributors to this hazardous condition, Defendant Honeywell is subject to suit pursuant to § 6972(a)(1)(B) of RCRA.

77. In accordance with § 6972 (b) and 40 C.F.R. 254, Plaintiffs sent a letter by registered mail, return receipt requested, dated February 27, 2001, to Defendant Honeywell providing it with prior notice of the violations alleged and the claims made in this Count. Copies of the letter were also sent in like manner to the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), the Attorney General of the United States, the Regional Administrator for Region V of the U.S. EPA, and the Director of the Illinois Environmental Protection Agency in accordance with 40 C.F.R. 254. This letter was received by Defendant Honeywell more than 90 days prior to the filing of this Complaint. The Administrator of the United States Environmental Protection Agency has not commenced any action against Honeywell, including any action specifically delineated and specified in § 7002(b)(2)(B) of RCRA. The State of Illinois, subsequent to the filing of this lawsuit, has commenced an action against Defendant Honeywell, but such action was not of the type specifically delineated and specified in § 7002(b)(2)(C) of RCRA. Hence, the State's action against Defendant Honeywell is not a bar to Plaintiffs' citizen suits claims under RCRA § 6972(a)(1)(B).

78. Pursuant to RCRA § 6972(b)(2)(F), Plaintiffs will serve a copy of this Complaint on the Attorney General of the United States and the Administrator of the U.S. EPA.

79. This Court has jurisdiction pursuant to § 6972(a) of RCRA to order the Defendant to take any actions necessary to abate the conditions which present an imminent and substantial

endangerment to health or the environment and to refrain from taking any actions in violation of RCRA and the regulations promulgated pursuant thereto, and to impose any appropriate civil penalties.

COUNT VI

NEGLIGENCE

80. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 80 of this Count VI, as though fully set forth herein.

81. Defendants Lockformer, Met-Coil, Mestek and Honeywell had a duty to Plaintiffs and the Class not to permit or allow hazardous substances at the Lockformer Property and the Met-Coil Property to invade adjacent residential properties. Defendants also had a duty to promptly respond to any releases of contaminants in a manner which would prevent further migration of the contaminants.

82. All Defendants have breached these duties by their negligent acts and omissions in operating and maintaining their facility; maintaining their equipment; installing their equipment; their handling, storage, use and disposal of hazardous substances; and their failure to promptly and effectively address such contamination to prevent further migration of the contaminants.

83. Defendants' breach of their duties to Plaintiffs and the Class have caused substantial injury and damage to Plaintiffs and the Class in the form of damages to their property.

COUNT VII

PRIVATE NUISANCE

84. Plaintiffs, individually and on behalf of the Class defined herein, repeat, reallege and incorporate by reference paragraphs 1 though 43 of the Common Allegations as paragraph 84 of this Count VII, as though fully set forth herein.

85. On information and belief, the contamination of the soils and groundwater at, in, on or beneath Lockformer Property, the Met-Coil Property, and residential properties adjacent to and in the area of said properties occurred and persists because of all Defendants' negligent acts and omissions including, *inter alia*: their operation and maintenance of their facility and equipment; their handling, storage, use and disposal of hazardous substances; and/or their negligent and reckless disregard in failing to promptly and effectively address such contamination to prevent further migration of the contaminants.

86. Defendants' contamination of the soils and groundwater and their failure to address such contamination constituted an unreasonable, unwarranted and unlawful use of the Lockformer Property and the Met-Coil Property and have substantially interfered with Plaintiffs' reasonable use, development and enjoyment of their properties.

87. As alleged above, Plaintiffs have incurred substantial damage as a result of Defendants' creation and maintenance of such contamination, constituting a private nuisance.

COUNT VIII

TRESPASS

88. Plaintiffs, individually and on behalf of the Class as defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 88 of this Count VIII, as though fully set forth herein.

89. All Defendants had a duty not to permit or allow hazardous substances transported to, used or stored at the Lockformer Property and Met-Coil Property to invade adjacent residential properties. Defendants also had a duty not to allow the continuance of this wrongful trespass. Defendants have breached these duties by their wrongful acts and omissions resulting in the contamination and failure to take action to prevent further migration of the contamination.

90. Defendants' wrongful acts and omissions have resulted in releases of contaminants from the Lockformer Property and Met-Coil Property into the environment and the migration of such contaminants at, in, on or beneath other properties in the area, without consent of the Plaintiffs or Class members.

91. The invasion of the adjacent real property exclusively possessed by Plaintiffs and the Class, by contamination released by Defendants, was due to unreasonable, unwarranted, and unlawful conduct of Defendants and constitutes a wrongful trespass upon the land owned by Plaintiffs and Class members.

92. As a result of Defendants' wrongful trespass, the lawful rights of Plaintiffs' and the Class to use and enjoy their property have been substantially interfered with, and Plaintiffs and the Class have been damaged.

COUNT IX

WILFULL AND WANTON MISCONDUCT

93. Plaintiffs, individually and on behalf of the Class as defined herein, repeat, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as Paragraph 93 of this Count IX, as though fully set forth herein.

94. Defendants Lockformer, Met-Coil, Mestek and Honeywell have acted in a wanton and willful manner and in reckless indifference to the safety of Plaintiffs' health and property, and to the safety of the general public, in one or more of the following ways:

(a) Defendants allowed and caused hazardous chlorinated solvents to routinely and frequently spill onto the ground over the course of over twenty years without appropriate safeguards to prevent or remedy such releases;

(b) Defendants used a vapor degreaser that was set in a concrete pit which allowed hazardous chlorinated solvents to escape to the ground of the Lockformer and Met-Coil properties, and to then migrate to property owned by Plaintiffs and the Class;

(c) Defendants used hazardous chlorinated solvents to clean the floors of its facility;

(d) Defendants stored its hazardous chlorinated solvents in a tank which was not equipped with safeguards to prevent the release, discharge, spillage or escape of said substances;

(e) Defendants stored its hazardous chlorinated solvents in a tank which was improperly installed and maintained in a manner which allowed the release, discharge, spillage or escape of said substances when Defendants knew that their improper installation and maintenance of their tank was causing the release, discharge, spillage or escape of hazardous chlorinated solvents into the environment;

(f) Defendants failed, for at least fifteen years, to determine the impact of the contamination on their property on the private water wells used by Plaintiffs and members of the Class, when Defendants knew or should have known of the likelihood that these private water wells were contaminated; and

(g) Defendants assured the general public, including Plaintiffs and the Class, that private wells would not be contaminated when Defendants knew or should have known that such assurances were false.

95. As a direct and proximate result of the willful, wanton and reckless acts and/or omissions of all Defendants, Plaintiffs and the Class have sustained damages.

COUNT X

CERCLA COST RECOVERY, 42 U.S.C. §9607(a)

96. Plaintiffs, individually and on behalf of the Class defined herein, reallege and incorporate by reference paragraphs 1 through 43 of the Common Allegations as paragraph 96 of this Count X, as though fully set forth herein.

97. Defendant Honeywell is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

98. On information and belief, Honeywell owned and/or operated certain "facilities" within the meaning of Sections 101(9), 101(20) and 107(a) of CERCLA, 42 U.S.C. §§9601(9), 9601(20), and 9607(a). The "facilities" include Honeywell's tanker trucks used to deliver TCE to the Lockformer Property, as well as the storage tank component of the degreasing system.

99. TCE is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C.§ 9601(14).

100. Upon information and belief, during Honeywell's ownership and/or operation of the "facilities" referenced in paragraph 98, there were "disposals" and "releases" of TCE (within the meaning of 42 U.S.C. §§6903(3), 9601(29) and 9601(22)) from both the Honeywell tanker trucks and the storage tank component of the degreasing system via spillage and leaks from same onto the ground at the Lockformer Property.

101. The "disposals" and "releases" referenced in the preceding paragraph have migrated to Plaintiff's wells.

102. Defendant Honeywell is thus strictly liable under Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), because it owned and/or operated the facilities referenced in paragraph 98 above at such times when hazardous substances were released and disposed of from Honeywell's facilities onto the Lockformer Property.

103. As a result of the above alleged disposals and releases of hazardous substances, Plaintiffs and the Class have incurred necessary costs of response that are consistent with the national contingency plan (within the meaning of 42 U.S.C. §9607(a)), and will continue to incur such costs in the future.

Relief Requested as to All Counts

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and in favor of the Class and against Defendants, and pray:

A. that the Court certify Plaintiffs' action as a Class action on behalf of all others similarly situated, appoint Plaintiffs' counsel as counsel for the Class, and order that Notice be given to the Class of this action;

B. that the Court declare that Defendants are liable under Section 107(a) of CERCLA for the response costs incurred by Plaintiffs and the Class in connection with the release of hazardous substances, including pre-judgment interests on such costs;

C. that the Court award Plaintiffs and the Class judgment for all response costs including pre-judgment interest, incurred by Plaintiffs and the Class as of the trial of this matter; and, such other and further relief as the Court deems proper;

D. that the Court preliminarily and permanently restrain and enjoin Defendants from continuing to permit the continued presence of solid or hazardous waste contamination at, in, on, beneath, or adjacent to their properties which may present an imminent and substantial endangerment to health or the environment as contemplated by RCRA § 6972, and require that Defendants immediately investigate and remedy such contamination;

E. that the Court declare that the Lockformer Defendants are liable for the costs of restoration of the Plaintiffs' properties associated with remedying the solid or hazardous waste contamination at, in, on, beneath or adjacent to Plaintiffs' properties as contemplated by RCRA § 6972;

F. that the Court impose appropriate civil penalties against Defendants pursuant to RCRA § 6972(a);

G. that the Court award Plaintiffs their costs of litigation (including reasonable attorneys' and expert witness fees), as authorized by RCRA § 6972(e);

H. that the Court award Plaintiffs and the Class compensatory, punitive and other appropriate damages in an amount to be determined by the evidence at trial;

I. that the Court immediately order Defendants to provide a safe domestic water supply to the Plaintiffs and the Class;

J. that the Court preliminarily and permanently enjoin Defendants from further spillage or release of hazardous chlorinated solvents on the Lockformer and Met-Coil Properties;

K. that the Court order expedited discovery to determine the nature, extent and full scope of the contamination;

L. that the Court disgorge Defendants of the profits and benefits Defendants have enjoyed from their failure to determined the full extent of contamination on all property that it does not owned and restoring any such contaminated property to its pre-contaminated condition;

M. that the Court award Plaintiffs and the Class punitive damages in an amount sufficient to deter Defendants and other companies and/or individuals who are similarly situated from acting in a similar manner;

N. that the Court award attorney's fees to Plaintiffs and the Class, and;

O. that the Court award Plaintiffs and the Class their costs of suit and such other and further relief as the Court deems just and proper.

Jury Trial Demanded

Plaintiffs request trial by jury on all issues so triable.

Dated: September 21, 2001

Respectfully submitted,

TERESA LeCLERCQ, AL LeCLERCQ, JAN MATISIAK, WALT MATISIAK, individually, and on behalf of all persons similarly situated

By: _____
One of Their Attorneys

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TERESA LeCLERCQ, *et al.*)	
)	No. 00 C 7164
Plaintiffs,)	
v.)	
)	
THE LOCKFORMER COMPANY, *et al.*)	The Honorable Harry D. Leinenweber
)	
Defendants.)	

NOTICE OF FILING

To:

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PLEASE TAKE NOTICE that on this 7th day of September, 2001, I caused to be filed, via U.S. Regular Mail, with the Clerk of the Court of the United States District Court, Northern District of Illinois, Eastern Division, Chicago, Illinois, Plaintiffs' **THIRD AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE, DECLARATORY AND OTHER RELIEF,** and hereby serve upon you a copy of the same.

Dated: September 21, 2001

Respectfully submitted,

TERESA LeCLERCQ, AL LeCLERCQ, JAN MATISIAK and WALT MATISIAK, individually, and on behalf of all persons similarly situated

By: _____
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the **PLAINTIFFS' THIRD AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE, DECLARATORY AND OTHER RELIEF** was sent to the following counsel of record via U.S. Regular Mail on September 21, 2001:

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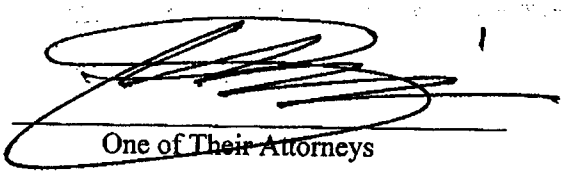
By: 
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