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MONMOUTH COUNTY

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION MONMOUTH COUNTY  
DOCKET NO. *L-4569-02*

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NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION and : Civil Action  
ACTING ADMINISTRATOR, NEW :  
JERSEY SPILL COMPENSATION : COMPLAINT  
FUND, :  
 :  
Plaintiffs, :  
 :  
v. :  
 :  
ALFRED STORER, individually; :  
and AL STORER TRUCKING, a sole :  
proprietorship, :  
 :  
Defendants. :

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Acting Administrator, New Jersey Spill Compensation Fund ("Administrator"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above named defendants, say:

### STATEMENT OF THE CASE

1. Plaintiffs DEP and Administrator bring this civil action pursuant to the Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, to recover the cleanup and removal costs they have incurred, and will incur, as a result of the discharge and unsatisfactory disposal of hazardous substances at 100 Amboy Avenue, Marlboro Township, Monmouth County, New Jersey (the "Site"). Plaintiff DEP further brings this action pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act (the "Sanitary Landfill Act"), N.J.S.A. 13:1E-100 to -116, for reimbursement of the damages it has incurred, and will incur, for the closure of the sanitary landfill facility located at the Site. Plaintiff DEP and Administrator also seek reimbursement under the Spill Act for the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

### THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

4. Defendant Al Storer Trucking is a sole proprietorship with a principal place of business at 100 Amboy Road, Marlboro, New Jersey.

5. Defendant, Alfred Storer is an individual whose dwelling or usual place of abode is 100 Amboy Road, Marlboro, New Jersey 07751.

6. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

#### GENERAL ALLEGATIONS

7. The Site comprises approximately ten acres of real property located at 100 Amboy Avenue, Marlboro, Monmouth County, New Jersey, this property being also known and designated as Block 172 Lots 35 and 37, Block 176 Lot 122, and Block 178 Lot 299 on the Tax Map of Marlboro Township, and all other areas where any hazardous substance discharged has become located.

8. In November 1971, when applying for a Certification to conduct a refuse disposal operation, Alfred Storer listed Al Storer

Trucking under the Trade Name section of the Certification, indicating that the refuse disposal operation would be conducted under that name.

9. From on or about the late 1960's through the 1970's, materials that were, or contained, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were not satisfactorily stored or contained at the Site within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were "discharged" within the meaning of N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10-23.11f.a.(1) and N.J.S.A. 58:10-23.11f.b.(3).

10. Drums containing hazardous substances remained at the Site until 1981 when complaints were made to DEP and to the Monmouth County Health Department of illegal dumping and storage of hazardous waste.

11. In January 1981, the Division of Criminal Justice and DEP obtained criminal search warrants to investigate the Site for alleged active disposal of hazardous and solid waste through storage or landfilling on the Site.

12. DEP inspected the Site on various occasions from January 1981 through October 1981 and observed that six hundred thirty eight drums were on the Site. Three hundred fifty four of the drums contained hazardous substances. Of the three hundred fifty four drums that contained hazardous substances, the contents of

approximately seventy five of the drums were discharged onto the lands of this State.

13. During the inspections, DEP also observed three plastic lined trenches which had between one hundred twenty and one hundred fifty drums staged in them.

14. Defendants used the material from the drums as a dust suppressant on the dirt roads of the property.

15. These inspections further revealed that paint obscured or obliterated the identification of the drums and the bottoms of the drums had started to rust away, therefore making identification by stamped numbers difficult or impossible.

16. Analysis of the drum samples taken in January 1981 revealed that several of the drums contained hazardous substances, including xylene and toluene.

17. On April 6, 1981 DEP issued a Notice of Prosecution to Alfred Storer, which assessed a fine of \$25,000 and ordered a cleanup of the Site.

18. On February 17, 1983, plaintiff DEP issued a directive ("Directive") to the defendant, Alfred Storer, pursuant to N.J.S.A. 58:10-23.11f.a., directing the defendant to fund the remedial action or to perform the remedial action under plaintiff DEP's oversight.

19. On March 2, 1983, the defendant, Alfred Storer, informed plaintiff DEP that he was financially unable to comply with the

Directive, thus requiring plaintiff DEP to perform the remedial action selected for the Site using public funds.

20. On March 16, 1984, the attorneys representing Freehold Cartage Inc., a company retained by Alfred Storer to clean up the property, wrote to DEP rescinding Freehold Cartage's offer to perform the remediation because Mr. Storer did not provide any evidence that he had sufficient funds available at that time, or any commitments to obtain the required funds in the future.

21. On March 26, 1988, plaintiff DEP issued an amended directive ("Directive") to the defendant, Alfred Storer, pursuant to N.J.S.A. 58:10-23.11f.a., directing the defendant to fund the remedial action and perform the remedial action under plaintiff DEP's oversight.

22. Between January 4, 1988 and February 8, 1988, DEP contracted to have work done at the Site, which consisted of locating, staging, overpacking, and sampling drums deposited onsite.

23. The drum sampling and soil sampling results conducted in 1988 revealed the presence of several hazardous substances such as, methylene chloride, toluene, xylenes, ethylbenzene, 1, 1-dichloroethene, naphthalene, arsenic, chromium, copper, lead, zinc, and PCBs.

24. From April 1989 through April 1990, S & W Waste Inc., DEP's contractor, removed approximately 600 drums and 160 cubic yards of visually stained soil from Block 172, Lots 35, 36, and 37.

25. DEP has incurred \$462,931.06 for the drum removal action.

26. On January 28, 1995, DEP awarded Marlboro Township a Hazardous Site Remediation Fund grant of \$260,058 to conduct a Preliminary Assessment/Site Investigation, including soil and ground water sampling, on Block 172, Lot 37 and Block 178 Lot 299.

27. On May 28, 1993, plaintiff Administrator filed a first priority lien (Docketed Judgment No. DJ-55470-93) against the real property comprising the Site and simultaneously filed a non-priority lien (Docketed Judgment No. DJ-55470-93) against all revenues and other real and personal property of the defendants pursuant to N.J.S.A. 58:10-23.11f and/or g.

28. On May 21, 1999, plaintiff Administrator filed an amended first priority lien (Docketed Judgment No. DJ-55470-93) against the real property comprising the Site.

#### FIRST COUNT

29. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 28 above as though fully set forth in its entirety herein.

30. Plaintiff DEP has incurred, and will continue to incur, costs concerning the Site.

31. Plaintiff Administrator has approved, and will continue to approve, other appropriations to remediate the Site.

32. The costs and damages plaintiffs DEP and Administrator have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

33. From on or about the late 1960's through the early 1970's, the defendant, Alfred Storer owned the real property comprising the Site, during which time he did not satisfactorily store or contain materials there that were, or contained, hazardous substances within the meaning of N.J.S.A. 58:10-23.11f.b.(2).

34. From on or about the late 1960's through the early 1970's, the defendant, Alfred Storer, operated a solid waste landfill at the Site, the operation of which involved the storage of materials that were, or contained, hazardous substances, which the defendant did not satisfactorily store or contain within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1) and N.J.S.A. 58:10-23.11f.b.(3).

35. From on or about the late 1960's through the early 1970's, the defendant, Alfred Storer, arranged for the transportation of materials to the Site that were, or contained, hazardous substances, certain of which were not satisfactorily stored or contained there within the meaning of N.J.S.A. 58:10-



23.11f.b.(2), and were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1) and N.J.S.A. 58:10-23.11f.b.(3).

36. As persons responsible for materials that were, or contained, hazardous substances, certain of which were discharged or not satisfactorily stored or contained at the Site, the defendants are liable, jointly and severally, without regard to fault, for all costs plaintiffs DEP and Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11.g.c.(1).

37. By failing to comply with the Directive, the defendant, Alfred Storer, is a person who is liable in an amount equal to three times the cleanup and removal costs plaintiffs DEP and Administrator have incurred, and will incur, for the Site. N.J.S.A. 58:10-23.11f.a(1).

38. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

39. As persons responsible for materials that were, or contained, hazardous substances, certain of which were discharged or not satisfactorily stored or contained at the Site, the

defendants are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred, and will incur, to restore or replace any natural resources of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

40. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs the plaintiffs have incurred for the Site, plus applicable interest;
- b. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for any cleanup and removal costs plaintiffs DEP and Administrator may incur for the Site;
- c. Order the defendant, Alfred Storer, to reimburse plaintiffs DEP Administrator, jointly and severally, without regard to fault, in an amount equal to three times the cleanup.

and removal costs plaintiffs DEP and Administrator have incurred for the Site;

d. Enter declaratory judgment against the defendant, Alfred Storer, jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs plaintiffs DEP and Administrator may incur for the Site;

e. Order the defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred for any natural resource of this State damaged or destroyed by the contamination at the Site, with applicable interest;

f. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Site;

g. Award plaintiffs DEP and Administrator their costs and fees in this action; and

h. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

41. The plaintiffs repeat each allegation of paragraph nos. 1 through 40 above as though fully set forth in its entirety herein.

42. From on or about the late 1960's through the early 1970's, materials that were, or contained, "solid wastes" within the meaning of N.J.S.A. 13:1E-3a., were "disposed of" at the Site within the meaning of N.J.S.A. 13:1E-3c.

43. Certain of the solid wastes disposed of at the Site were deposited on, or in, the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, thereby creating a "sanitary landfill facility" at the Site within the meaning of N.J.S.A. 13:1E-9q.

44. Each defendant is a person who "owned" and "operated" the sanitary landfill facility located at the Site within the meaning of N.J.S.A. 13:1E-102b.

45. Pursuant to N.J.S.A. 13:1E-103, the defendants are liable, jointly and severally, for the proper operation and closure of the sanitary landfill facility, as required by law, and for any damages, either direct or indirect, proximately resulting from the operation of the sanitary landfill facility at the Site.

46. Plaintiff DEP will, where possible, continue to restore and replace, or oversee the restoration or replacement of, any natural resource of this State that has been, or may be, damaged or destroyed by the operation and closure of the sanitary landfill facility at the Site.

47. Pursuant to N.J.S.A. 13:1E-9b. and d., plaintiff DEP may bring an action in the Superior Court for costs of any investigation, inspection or monitoring survey, and the reasonable costs of preparing and litigating the case, N.J.S.A. 13:1E-9d.(2); the costs of removing, correcting or terminating any adverse effects upon water and air quality, N.J.S.A. 13:1E-9d.(3); and for any other actual damages. N.J.S.A. 13:1E-9d.(4).

WHEREFORE, plaintiff New Jersey Department of Environmental Protection prays that this Court:

- a. Order the defendants to reimburse plaintiff DEP, jointly and severally, for all direct and indirect damages plaintiff DEP has incurred for the closure of the sanitary landfill facility at the Site, plus applicable interest;
- b. Enter declaratory judgment against the defendants, jointly and severally, for any direct and indirect damages plaintiff DEP may incur for closure of the sanitary landfill facility at the Site;
- c. Order the defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to

fault, for the past costs of removing, correcting or terminating any adverse effects upon water and air quality, and for any other past costs plaintiffs DEP and Administrator have incurred for any natural resource of this State damaged or destroyed by the operation and closure of the sanitary landfill facility at the Site;

d. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for future costs of removing, correcting or terminating any adverse effects upon water and air quality, and for any other future costs plaintiffs DEP and Administrator may incur for any natural resource of this State damaged or destroyed by the closure of the sanitary landfill facility at the Site;

e. Award plaintiff DEP its costs and fees in this action; and

f. Award plaintiff DEP such other relief as the Court deems appropriate.

DAVID SAMSON  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Melissa A. Silver  
Melissa A. Silver  
Deputy Attorney General

Dated:

9/18/02

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Melissa A. Silver, Deputy Attorney General, is hereby designated as trial counsel for plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to plaintiffs at this time, nor is any non-party known to plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

DAVID SAMSON  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Melissa A. Silver  
Melissa A. Silver  
Deputy Attorney General

Dated: 9/18/02