

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street  
PO Box 093  
Trenton, NJ 08625-0093  
Attorney for Plaintiffs

By: Brendan Ruane  
Deputy Attorney General  
(609) 984-5016

Gordon C. Rhea, Esq.  
Special Counsel to the Attorney General  
Richardson, Patrick, Westbrook & Brickman,  
L.L.C.  
1037 Chuck Dawley Boulevard, Building A  
Mt. Pleasant, SC 29464  
(843) 727-6501

John K. Dema, Esq.  
Special Counsel to the Attorney General  
Law Offices of John K. Dema, P.C.  
1236 Strand Street, Suite 103  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-5008  
(340) 773-6142

SUPERIOR COURT BERGEN COUNTY  
FILED

APR 19 2005



DEPUTY CLERK

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. L 2764-05

NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION and :  
THE ADMINISTRATOR OF THE NEW :  
JERSEY SPILL COMPENSATION FUND, :

Plaintiffs, :

v. :

HONEYWELL INTERNATIONAL, INC.; :  
QUEST DIAGNOSTICS, INC.; and :  
SUMITOMO MACHINERY :  
CORPORATION OF AMERICA, :

Defendants. :

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"), 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 ("the Defendants"), say:

#### STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of discharge of hazardous substances at the Allied Signal Teterboro site located in the Borough of Teterboro, Bergen County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Allied Signal Teterboro site, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Allied Signal Teterboro site.

#### THE PARTIES

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

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for damages to the natural resources of the State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the 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.

5. Defendant Honeywell International, Inc. ("Honeywell"), is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 101 Columbia Road, Morris Township, New Jersey 07962.

6. In 1983, Allied Company ("Allied") purchased the Bendix Corporation ("Bendix"), with the surviving entity being Allied.

7. In 1986, Allied merged with the Signal Companies, with the surviving entity being Allied Signal Corporation ("Allied Signal").

8. In 1999, defendant Honeywell merged with Allied Signal, with the surviving entity being Honeywell International, Inc.

9. Defendant Honeywell is the successor-in-interest to Bendix, Allied, and Allied Signal.

10. Defendant Quest Diagnostics Incorporated ("Quest"), f/k/a Corning Clinical Laboratories, Inc. and Metpath, Inc. ("Metpath"), is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at One Malcolm Avenue, Teterboro, New Jersey 07608.

11. Defendant Sumitomo Machinery Corporation of America ("Sumitomo") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 4200 Holland Blvd., Chesapeake, Virginia 23323.

### AFFECTED NATURAL RESOURCES

#### Ground Water

12. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

13. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

14. Ground water provides base flow to streams and other surface water bodies and influences surface water quality, wetland ecology, and the health of aquatic ecosystems.

15. Ground water also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

16. Ground water is also used for commercial, industrial and agricultural purposes.

17. There are more than 6,000 contaminated sites in New Jersey that have ground water confirmed to be contaminated with hazardous substances.

#### Surface Water

18. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

19. Surface water in New Jersey is also used for commercial, recreational, agricultural, and industrial uses, such as cooling water and electrical generation, boating, fishing, swimming, irrigation, and transportation of goods and services.

20. The tourist and recreation industries, which are vital to the economy of this State, depend on clean waters and beaches.

#### GENERAL ALLEGATIONS

21. The Allied Signal Teterboro site consists of approximately 101 acres of real property located on Route 46, Borough of Teterboro, Bergen County, this property being also known and designated as Block 202, Lots 1 through 4, on the Tax Map of the Borough of Teterboro ("the Allied Signal Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 005851.

22. The water table at the Site is relatively shallow and found at 2 to 5 feet with the ground water flowing toward the drainage channels located along the east and west boundaries of the Allied Signal Property.

23. Approximately 30 public supply wells are located within a 4 mile radius of the Allied Signal Property, which wells are, or may potentially be, affected by the contamination at the Site.

24. The Allied Signal Property is located within the Hackensack River Basin and surface water from the premises drains primarily to Berry's Creek, which empties into the Hackensack River.

25. The Hackensack River is used for recreation as well as maintenance and migration of fish and wildlife.

26. In 1937, Bendix purchased the Allied Signal Property, a large portion of which Bendix conveyed in 1941 to the United State Navy.

27. In 1968, Bendix reacquired the portion of the Allied Signal Property it conveyed in 1941 to the United States Navy from the United States.

28. In 1977, Bendix sold 22 acres located in the southwestern portion of the Allied Signal Property to defendant Quest's predecessor, Metpath, and to defendant Sumitomo, which parcel is know and otherwise designated as Block 202, Lots 1 through 3 ("Lots 1 through 3"), on the Tax Map of the Borough of Teterboro.

29. In 1980, Bendix sold approximately 8.7 acres more of the Allied Signal Property to Metpath.

30. In 1985, Bendix transferred approximately 71 acres of the Allied Signal Property to the defendant Honeywell's predecessor, the Allied Company, which parcel is known and designated as Block 202, Lot 4 ("Lot 4"), on the Tax Map of the Borough of Teterboro.

31. As of the filing of this Complaint, defendant Quest is the owner of record of the Lots 1 and 3 of the Allied Signal Property, while Allied Signal is the owner of record of Lots 2 and 4 of the Allied Signal Property.

32. During the time that defendants Allied Signal, Quest and Sumitomo, and their predecessors, owned their respective portions of the Allied Signal Property, hazardous substances, as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), which substances included petroleum hydrocarbons, vinyl chloride, trichloroethene, 1,1,2 trichloroethane, benzene, toluene, arsenic, radiologicals, and heavy metals.

33. Beginning in or around 1937, Bendix constructed a manufacturing facility on the Lot 4 portion of the Allied Signal Property, which Bendix began operating in 1938.

34. From 1938 through the present, defendant Honeywell and its predecessors, including Bendix, manufactured and assembled electronic instruments and guidance systems for aerospace and military applications.

35. From 1941 through 1968, Bendix operated a foundry for aluminum and magnesium castings for the United States Navy on the Lot 4 portion of the Allied Signal Property, while the United States Navy's sewage treatment facility and document incinerator were located on Lots 1 through 3 of the Allied Signal Property.

36. In 1980, the United States Environmental Protection Agency permitted Bendix to operate a RCRA treatment, storage and disposal ("TSD") facility on the Allied Signal Property, which while operating, maintained several surface and underground storage tanks that contained various hazardous substances, which substances included fuel oil, waste oil, solvents and cupric

chloride.

37. The manufacturing activities in which defendant Honeywell and its predecessors engaged on Lot 4 of the Allied Signal Property involved the generation, storage, handling and disposal of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included petroleum hydrocarbons, vinyl chloride, trichloroethene, 1,1,2 trichloroethane, benzene, arsenic, chloroform, radiologicals and heavy metals.

38. The 1985 merger of Allied and the Signal Companies, which formed Allied Signal triggered Allied Signal's obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

39. On July 31, 1986, Allied Signal signed an Administrative Consent Order ("ACO") pursuant to ECRA, requiring Allied Signal to submit to plaintiff DEP a Sampling Plan to determine the nature and extent of contamination of the Site, and to initiate and complete the Sampling Plan within 150 days of its submission.

40. In January 1990, Allied Signal submitted its Final ECRA Chemical Field Sampling and Analysis Plan to plaintiff DEP, which plan provided for soils testing in 13 areas of concern at the Allied Signal Property.

41. Plaintiff DEP conditionally approved Allied Signal's ECRA Chemical Field Sampling and Analysis Plan in February 1990, and required Allied Signal to propose a plan to remediate the Site.



42. Allied Signal subsequently sampled the affected media at the Site, the results of which revealed the presence of various hazardous substances in the sediments, soils and ground water, certain of which have migrated, or may migrate, to surface water, which substances include heavy metals and petroleum hydrocarbons in the sediments of the drainage ditches on the Allied Signal Property, radiological contaminants in the soils in the vicinity of a drainage ditch in the northern area of the Lots 1 through 3 of the Allied Signal Property, and petroleum hydrocarbons and various volatile organic compounds in the ground water.

43. Allied Signal submitted its Remedial Investigation Report ("RIR") to plaintiff DEP in April 2002, which presented the results of soil sampling conducted to delineate the extent of the contamination at the Site, and further included a proposal to develop a Remedial Action Work Plan ("RAWP").

44. In August 2002, based on plaintiff DEP's comments to the RIR, Allied Signal submitted its RAWP to plaintiff DEP, which Allied Signal amended in February of 2003.

45. The RAWP, which plaintiff DEP conditionally approved in December 2002, and, as amended, in September 2003, primarily provided for the excavation of contaminated soils and the construction and installation of an air sparge / soil vapor extraction system, which primarily provides for the removal the contaminant sources from the soils.

46. In August 2003, defendant Honeywell initiated the remedial activities called for in the RAWP, which activities are ongoing.

47. From August 13, 2003 through September 29, 2003, defendant Honeywell excavated approximately 5,646 cubic yards of soils from Areas of Concern 8 and 10.

48. As of the filing of this Complaint, plaintiff DEP is considering whether or not a Classification Exception Area ("CEA"), which excludes designated ground water from use as a potable water source, will be required for the Site and, if so, what will be its extent and duration.

49. Although defendant Honeywell and its predecessor, Allied Signal, have initiated the remediation of the Site, the ground water, soils, and surface water remain contaminated.

### FIRST COUNT

#### Spill Act

50. Plaintiffs repeat each allegation of Paragraphs 1 through 49 above as though fully set forth in its entirety herein.

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

52. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Allied Signal Property.

53. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, and may continue to approve, other appropriations for the Site.

54. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost use, existence value damages, and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Allied Signal Property.

55. The costs and damages the Plaintiffs 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.

56. Defendant Honeywell is a discharger, and the successor-in-interest to the dischargers, of hazardous substances at the Allied Signal Property, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Allied Signal Property. N.J.S.A. 58:10-23.11g.c.

57. Defendants Honeywell, Quest and Sumitomo, as the owners, or as successors-in-interest to the owners, of some or all of the Allied Signal Property at the time hazardous substances were discharged there, also are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Allied Signal Property. N.J.S.A. 58:10-23.11g.c.(1).

58. 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 injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); 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); for natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

59. 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 the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Allied Signal Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Allied Signal Property;
- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Allied Signal Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Allied Signal Property;

- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

60. Plaintiffs repeat each allegation of Paragraphs 1 through 59 above as though fully set forth in its entirety herein.

61. Ground water and surface water are natural resources of the State held in trust by the State.

62. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

63. The contamination of ground water and surface water at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

64. As long as ground water and/or surface water remain contaminated due to the Defendants' conduct, the public nuisance continues.

65. Until the ground water and surface water are restored to their pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water and surface water.

PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs

and damages, including lost use, existence value damages and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Allied Signal Property, with applicable interest;

b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Allied Signal Property;

c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Allied Signal Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Allied Signal Property;

d. Award the Plaintiffs their costs and fees in this action; and

e. Award the Plaintiffs such other relief as this Court deems appropriate.

### THIRD COUNT

#### Trespass

66. Plaintiffs repeat each allegation of Paragraphs 1 through 65 above as though fully set forth in its entirety herein.

67. Ground water and surface water are natural resources of the State held in trust by the State for the benefit of the public.

68. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Site by Defendant Honeywell and its predecessors.

69. As long as ground water and/or surface water remain contaminated, the Defendants' trespass continues.

#### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Allied Signal Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost use, existence value damages and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Allied Signal Property;
- c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Allied Signal Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge

of hazardous substances at the Allied Signal Property;

- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

RICHARDSON, PATRICK, WESTBROOK  
& BRICKMAN, L.L.C.  
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.  
Attorneys for Plaintiffs

By: Gordon C. Rhea  
Gordon C. Rhea, Esq.  
Special Counsel to the Attorney General

By: John K. Dema  
John K. Dema, Esq.  
Special Counsel to the Attorney General

Dated:

Dated:

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW  
JERSEY  
Attorney for Plaintiffs

By: Brendan Ruane  
Brendan Ruane  
Deputy Attorney General

Dated: 3/27/05

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema and Scott E. Kauff, Special Counsel to the Attorney General, are hereby designated as trial counsel for the



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 may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. A-6537-03T3. Otherwise, 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 the Plaintiffs at this time, nor is any non-party known to the 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 or new issue, including claims to recover other cleanup and removal costs, later becomes known to the 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).

RICHARDSON, PATRICK, WESTBROOK  
& BRICKMAN, L.L.C.  
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.  
Attorneys for Plaintiffs

By: Gordon C. Rhea  
Gordon C. Rhea, Esq.  
Special Counsel to the Attorney General

By: John K. Dema  
John K. Dema, Esq.  
Special Counsel to the Attorney General

Dated:

Dated:

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW  
JERSEY  
Attorney for Plaintiffs

By: *Brendan Ruane*  
Brendan Ruane  
Deputy Attorney General

Dated: *3/27/05*