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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - WARREN COUNTY
DOCKET NO. L-37-06

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

Civil Action

COMPLAINT

v. :

TYCO ELECTRONICS CORPORATION; :
AFC CABLE SYSTEMS, INC.; :
NUJA REALTY CORPORATION; :
"ABC CORPORATIONS" 1-10 (Names :
Fictitious); and :
JOHN DOES 1-10 (Names Fictitious), :

Defendants.

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, N.J.S.A. 58:10-23.11 to -23.24 (“the Spill Act”), 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 Area Lighting site located in Hackettstown, Warren 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 Area Lighting site. Further, the Plaintiffs seek an order compelling 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 Area Lighting 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 any injury to the natural resources of this 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 AFC Cable Systems, Inc. ("AFC") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 272 Duchaine Boulevard, New Bedford, Massachusetts 02745.

6. Defendant AFC acquired Area Lighting Research, Inc. ("Area Lighting") in 1997, and is a corporate successor to Area Lighting.

7. Defendant AFC was subsequently acquired by Tyco Engineered Products and Services ("Tyco Engineered"), which is a subsidiary of Tyco International (US), Inc. (f.k.a Tyco International, Ltd.) ("Tyco International").

8. Defendant AFC remains a wholly owned subsidiary of Tyco Engineered.

9. Defendant Tyco Electronics Corporation ("Tyco Electronics") is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business located 449 Eisenhower Boulevard, Harrisburg, Pennsylvania 17111.

10. In 2000, defendant Tyco Electronics acquired the Area Lighting business and Area Lighting brand from defendant AFC, and is a corporate successor to Area Lighting.

11. Tyco International is the corporate parent of defendant Tyco Electronics, Tyco Engineered, and defendant AFC.

12. Defendant NUJA Realty Corporation (“NUJA”) is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 300 5th Avenue, Hackettstown, New Jersey 07840.

13. Defendants “ABC Corporations” 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, or are otherwise related to, defendants AFC, Tyco Electronics and NUJA, and/or their predecessors, including Area Lighting.

14. Defendants “John Does” 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, defendants AFC, Tyco Electronics and NUJA, one or more of the ABC Corporation Defendants, and/or their predecessors, including Area Lighting.

AFFECTED NATURAL RESOURCE

Ground Water

15. 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.

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

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

18. 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.

19. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

20. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

21. The Area Lighting site consists of approximately 6.87 acres of real property located at 550 Belmont Avenue and 60 Asbury Road, Hackettstown, Warren County, New Jersey, this property being also known and designated as Block 11, Lot 14 on the Tax Map of the Township of Independence, Warren County ("the Area Lighting Property"), and all other areas where any hazardous substance discharged there has become located (collectively, the "Area Lighting Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 024083.

22. The Area Lighting Property is located on the south side of Asbury Road in a mixed-use residential and agricultural area.

23. A deep bedrock aquifer and a shallow unconsolidated aquifer underlie the Area Lighting Site, and have historically been used as a source of potable water by area residents and farms.

24. Defendant NUJA acquired the Area Lighting Property in 1972, and as of the filing of this Complaint, remains the owner of record.

25. During the time defendant NUJA has owned the Area Lighting 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. 58:10-23.11b., which substances included trichloroethene ("TCE"), trichloroethane ("TCA"), volatile organic compounds ("VOCs"), 1,1 dichloroethene ("DCE"), and xylene.

26. Prior to 1962, the Area Lighting Property was used for agricultural purposes.

27. From 1962 through 2001, defendants AFC and Tyco Electronics, and their predecessor, Area Lighting, manufactured photoelectric devices and switches at the Area Lighting Property, which activities 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" at the Area Lighting Property within the meaning of N.J.S.A. 58:10-23.11b., which substances included TCE, TCA, VOCs, DCE, and xylene.

28. On April 15, 1992 and April 27, 1992, the Warren County Health Department sampled potable wells in the vicinity of the Area Lighting Property, the results of which revealed the presence of TCE and other hazardous substances above New Jersey Safe Drinking Water Standards in the ground water from eight residential wells in the vicinity of the Area Lighting Property.

29. On April 16, 1992, plaintiff DEP issued a Notice of Violation ("NOV") to Area Lighting for the suspected discharges of hazardous substances at the Area Lighting Property pursuant to N.J.S.A. 58:10-23.11.c.

30. On April 17, 1992, plaintiff DEP investigated the Area Lighting Site, and determined that the Area Lighting Property was the likely source of the contamination detected in the residential potable wells.

31. Additional sampling was performed at 233 surrounding residential wells in April 1992, the results of which revealed that the ground water from 40 wells was contaminated with VOCs.

32. On April 29, 1992, plaintiff DEP issued a Spill Act directive ("Directive") to Area Lighting pursuant to N.J.S.A. 58:10-23.11f.a., directing Area Lighting to investigate the nature and extent of the contamination at the Area Lighting Site.

33. Area Lighting entered into a Memorandum of Agreement ("MOA") with plaintiff DEP in December 1992, pursuant to which Area Lighting agreed to perform a site investigation, including installing monitoring wells for sampling the ground water at the Area Lighting Site.

34. In December 1994, plaintiff DEP issued a Directive and Notice to Insurers to defendant NUJA and Area Lighting pursuant to N.J.S.A. 58:10-23.11f.a., directing defendant NUJA and Area Lighting remediate the Area Lighting Site.

35. From 1992 through 2001, defendants AFC and Tyco Electronics, and their predecessor, Area Lighting, performed the remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E to determine the nature and extent of the contamination at the Area Lighting Site.

36. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Area Lighting Site, which hazardous substances included TCE, TCA, VOCs, DCE, xylene and dense non-aqueous phase liquids ("DNAPL").

37. By 1994, Area Lighting had also connected approximately 20 residences to the public water supply.

38. Area Lighting submitted its Supplemental Remedial Investigation and Remedial Action Workplan to plaintiff DEP in January 1996, which plaintiff DEP subsequently approved.

39. The remediation plaintiff DEP has approved for the Area Lighting Site primarily provides for the installation of point of entry treatment ("POET") systems on certain of the affected potable wells in the vicinity of the Area Lighting Property, the connection of certain residences to the public water system, the operation of a soil vapor extraction ("SVE") system to treat the contaminated soils that are a source of the groundwater contamination, continued groundwater monitoring, and the establishment of a Classification Exception Area ("CEA") for the Area Lighting Site, which would exclude the designated ground water for use as a potable water source.

40. By letter dated February 6, 1997, plaintiff DEP approved the CEA for the Area Lighting Site, which CEA has a duration of 22 years, with the aerial extent defined as the radial distance of 2,000 feet from Monitor Well I located at latitude North 40 degrees, 51 minutes, 50.5 seconds, and longitude West 74 degrees, 51 minutes, 39.5 seconds, in Independence Township.

41. Defendant Tyco Electronics is performing the remediation plaintiff DEP has selected for the Area Lighting Site, under plaintiff DEP's oversight.

42. Although the defendant Tyco Electronics and/or its predecessors, including Area Lighting, have initiated the remediation of the Area Lighting Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

43. Plaintiffs DEP and Administrator repeat each allegation of Paragraph 1 through 42 above as though fully set forth in its entirety herein.

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

45. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Area Lighting Property.

46. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Area Lighting Site, and, further, has approved, or may approve, other appropriations for the Area Lighting Site.

47. The Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, 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 Area Lighting Property.

48. The costs and damages the Plaintiffs have incurred, and will incur, for the Area Lighting Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

49. Defendants Tyco Electronics, AFC, the ABC Corporation defendants, and/or the John Doe defendants, are the dischargers, or the successors-in-interest to the dischargers, of hazardous substances at the Area Lighting Property, and are liable, jointly and severally, without

regard to fault, for all cleanup and removal costs and damages, including lost value 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 as a result of the discharge of hazardous substances at the Area Lighting Property. N.J.S.A. 58:10-23.11g.c.(1).

50. Defendant NUJA, as the owner of the Area Lighting Property at the time hazardous substances were discharged there, is a person in any way responsible for the discharged hazardous substances, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value 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 as a result of the discharge of hazardous substances at the Area Lighting Property. N.J.S.A. 58:10-23.11g.c.(1).

51. 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); 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).

52. 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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Area Lighting 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Area Lighting Property;
- c. Enter judgment against defendant Tyco Electronics, compelling it to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Area Lighting Property;
- d. 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 Area Lighting 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 as a result of the discharge of hazardous substances at the Area Lighting Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

53. Plaintiffs repeat each allegation of Paragraphs 1 through 52 above as though fully set forth in its entirety herein.

54. Ground water is a natural resource of the State held in trust by the State for the benefit of the public

55. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

56. The groundwater contamination at the Area Lighting 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 this natural resource.

57. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

58. Until the ground water is restored to its 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.

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 restitution for unjust enrichment, lost value 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 Area Lighting Property, with

applicable interest;

b. Enter declaratory judgment against the Defendants, for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value 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 Area Lighting Property;

c. Enter judgment against defendant Tyco Electronics, compelling it to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Area Lighting Property;

d. 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 Area Lighting 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 Area Lighting Property;

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

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

THIRD COUNT

Trespass

59. Plaintiffs repeat each allegation of Paragraphs 1 through 58 above as though fully set forth in its entirety herein.

60. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

61. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Area Lighting Property.

62. As long as the ground water remains 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 restitution for unjust enrichment, lost value 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 Area Lighting Property, with applicable interest;

b. Enter declaratory judgment against the Defendants, for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value 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 Area Lighting Property;

c. Enter judgment against defendant Tyco Electronics, compelling it to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Area Lighting Property;


d. 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 Area Lighting Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further

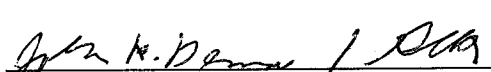
plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Area Lighting Property;

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

RICHARDSON, PATRICK, WESTBROOK
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Attorneys for Plaintiffs

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

By: 
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Special Counsel to the Attorney General

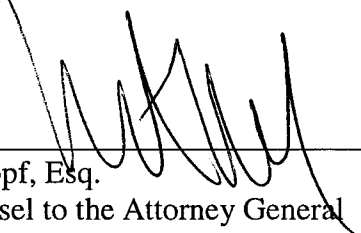
By: 
John K. Dema, Esq.
Special Counsel to the Attorney General


Dated: January 12, 2006

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Deputy Attorney General

Dated: **January 13, 2006**

Dated: 1/24/06

DESIGNATION OF TRIAL COUNSEL

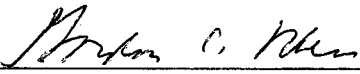
Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, Barry A. Knopf, Leonard Kaufmann, Matthew Thiesing, and Scott E. Kauff, Special Counsel to the Attorney General, are hereby designated as trial counsel for the Plaintiffs in this action.

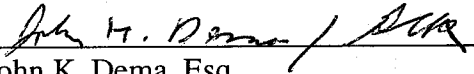
CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action 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).

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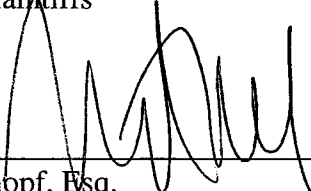
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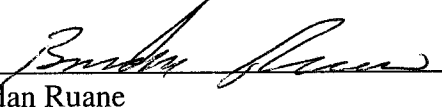
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Dated: January 13, 2006

Dated: 1/24/06