

**FILED  
TEAM #4**

**AUG 01 2005**

**SUPERIOR COURT OF NJ  
COUNTY OF HUDSON  
CIVIL DIVISION #8**

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO. *L3883-05*

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

Plaintiffs,

v.

BASF CORPORATION, a Delaware  
Corporation,

Defendant.

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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 defendant ("the Defendant"), say:

### STATEMENT OF THE CASE

1. The 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 they have incurred, and will incur, as a result of the discharge of hazardous substances at the BASF site in the Town of Kearny, Hudson 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 BASF Kearny site, and to compel the Defendant 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 BASF Kearny 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. In addition, with the State being the trustee, for the benefit of its citizens, of all natural resources within its

jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

4. 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 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 BASF Corporation is a corporation organized under the laws of the State of Delaware with a principal place of business located at 100 Campus Drive, Florham Park, New Jersey.

6. In 1964, BASF Aktiengesellschaft ("BASF AG"), a corporation of the Federal Republic of Germany, acquired the assets of United Cork Companies, a New York corporation, with the surviving entity being Badische Products Corporation ("Badische Products"), also a New York corporation.

7. In January 1968, Badische Products merged with BASF Colors & Chemicals, thus becoming BASF Corporation, a New York corporation.

8. In December 1970, BASF Corporation merged with Wyandotte Chemical Corporation, thus becoming BASF Wyandotte Corporation, a Michigan corporation.

9. In December 1985, Badische Corp., a Delaware corporation, merged with BASF Wyandotte Corporation and several other companies to form Inmont Corporation, a Delaware corporation, and simultaneously changed the surviving entity's name to BASF Corporation, a Delaware corporation, the Defendant herein.

AFFECTED NATURAL RESOURCE

Groundwater

10. Groundwater 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.

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

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

13. Groundwater 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.

14. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

15. There are more than 6,000 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

#### GENERAL ALLEGATIONS

16. The BASF Kearny site consists of approximately 27 acres of real property located at 50 Central Avenue, Town of Kearny, Hudson County, this property being also known and designated as Block 288, Lots 1, 2, 3 and 3R, on the Tax Map of the Town of Kearny (the "BASF 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. 005818.

17. In 1964, Badische Products Corp. acquired title to that portion of the BASF Property otherwise known and designated as Block 288, Lots 2, 3, and 3R.

18. In December 1968, BASF Corporation, a New York corporation, acquired title to that portion of the BASF Property otherwise known and designated as Block 288, Lot 1, from the Town of Kearny.

19. In December 1982, Badische Corp. acquired title to the entire BASF Property.

20. As a result of mergers during December 1985, the Defendant became the owner of the BASF Property, and remains the owner as of the filing of this Complaint.

21. During the time the Defendant and its predecessors owned the BASF 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., including Bis(2-ethylhexyl) phthalate ("BEHP"), light, non-aqueous phase liquids ("LNAPLs"), benzene, ammonia, arsenic, lead and polychlorinated biphenals ("PCBs").

22. From approximately 1964 through 1990, the Defendant and its predecessors engaged in various manufacturing processes, which activities involved the production, handling and storage of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at and from the BASF Property within the meaning of N.J.S.A. 58:10-23.11b., including BEHP, LNAPLs, benzene, ammonia, arsenic, lead and PCBs.

23. Between March 1980 and May 1982, the United States Environmental Protection Agency ("USEPA") found that hazardous substances were discharging from the BASF Property to the Passaic River.

24. In September 1982, the USEPA issued an administrative order to Badische Corp. for discharging pollutants, including organic carbons and petroleum hydrocarbons, to the Passaic River at concentrations exceeding the parameters of Badische Corp.'s National Pollutant Discharge Elimination System ("NPDES") permit and Discharge to Surface Water ("DSW") permit, and ordered Badische Corp. to address the source of the discharges, and propose

solutions to correct the problems causing or otherwise contributing to the discharges.

25. Badische Corp. responded to the September 1982 administrative order by stating that the discharges directly resulted from an intense rainfall that caused thousands of gallons of storm water to discharge to the Passaic River from the BASF Property.

26. In October 1985, Badische Corp. reported to the USEPA that due to another intense rainfall, thousands of gallons of storm water containing pollutants, including DiButyl Phthalate, were discharged from the BASF Property to the Passaic River at concentrations exceeding the parameters of Badische Corp.'s NPDES and DSW permits, and that the Biological Oxygen Demand ("BOD") parameter set forth in Badische Corp.'s NPDES and DSW permits for the Passaic River was also exceeded.

27. In 1990, the Defendant filed an Initial Notice pursuant to the Environmental Cleanup Responsibility Act, now the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14, informing plaintiff DEP that it intended to cease all operations on the BASF Property by the end of 1990.

28. Beginning in 1993, the Defendant provided plaintiff DEP with soil and groundwater sampling results that revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the soils and

groundwater at the Site, including polynuclear aromatic hydrocarbons ("PAHS"), total petroleum hydrocarbons, DEHP, PCBs, LNAPLs, arsenic and other metals.

29. Since that time, the Defendant identified twenty-seven Areas of Concern ("AOC") at the BASF Property, which include anywhere hazardous substances are, or were, known or suspected of having been discharged, generated, manufactured, refined, transported, stored, handled, treated or disposed, or where hazardous substances may have migrated.

30. On March 5, 1997, plaintiff DEP approved the Defendant's Remedial Investigation Workplan, in which the Defendant proposed further soils sampling and continued groundwater investigations.

31. On September 24, 1999, plaintiff DEP approved the Defendant's Remedial Action Workplan, which primarily provided for in-situ bioremediation with institutional and engineering controls to address the remaining soils contamination, and either active remediation or natural attenuation of the groundwater contamination at the Site.

32. On June 28, 2001, plaintiff DEP approved the Defendant's plan to begin soil washing, an additional remediation activity, for the soils in those areas of the Site not undergoing bioremediation.

33. On April 7, 2005, plaintiff DEP and the Defendant entered into a Remediation Agreement pursuant to which the Defendant will continue remediating the Site under plaintiff DEP's oversight.



34. Although the Defendant has undertaken the remediation of the Site, the soils and groundwater contamination continues.

FIRST COUNT

Spill Act

35. Plaintiffs repeat each allegation of Paragraphs 1 through 34 above as though fully set forth in its entirety herein.

36. The Defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

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

38. Plaintiff Administrator may certify, for payment, valid claims against the Spill Fund concerning the Site, and, further, may approve other appropriations for the Site.

39. 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 BASF Property.

40. 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.

41. The Defendant is the discharger, or is the successor to the dischargers, of hazardous substances at the BASF Property, and

is liable, 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 BASF Property. N.J.S.A. 58:10-23.11g.c.(1).

42. The Defendant, as the owner of the BASF Property, or the successor to the owners of the BASF Property, at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable, 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 BASF Property. N.J.S.A. 58:10-23.11g.c.(1).

43. 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).

44. 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 Defendant to reimburse the Plaintiffs, 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 by the discharge of hazardous substances at the BASF Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, 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 by the discharge of hazardous substances at the BASF Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight,

any further cleanup of hazardous substances discharged at the BASF Property;

- d. Enter judgment against the Defendant, without regard to fault, compelling the Defendant 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 BASF 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 BASF 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

45. Plaintiffs repeat each allegation of Paragraphs 1 through 44 above as though fully set forth in its entirety herein.

46. Ground water is a natural resource of the State held in trust by the State.

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

48. The groundwater contamination 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 this natural resource.

49. As long as the ground water remains contaminated due to the Defendant's conduct, the public nuisance continues.

50. Until the ground water is restored to its pre-injury quality, quantity, function and value, the Defendant is 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 Defendant to reimburse the Plaintiffs 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 by the discharge of hazardous substances at the BASF Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant 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 by the discharge of hazardous substances at the BASF Property;

- c. Enter judgment against the Defendant compelling the Defendant to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the BASF Property;
- d. Enter judgment against the Defendant, compelling the Defendant 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 BASF 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 BASF 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

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

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

53. The Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the BASF Property.

54. As long as the ground water remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs 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 by the discharge of hazardous substances at the BASF Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant 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 by the discharge of hazardous substances at the BASF Property;
- c. Enter judgment against the Defendant compelling the Defendant to cease, under plaintiff DEP's oversight, the

trespass by performing any further cleanup of hazardous substances discharged at the BASF Property;

- d. Enter judgment against the Defendant, compelling the Defendant 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 BASF 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 BASF 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.

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

By: 

Jeffrey K. Gladden  
Deputy Attorney General

Dated: 7/29/05



DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Jeffrey K. Gladden, Deputy Attorney General, is 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 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).

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

By: 

Jeffrey K. Gladden  
Deputy Attorney General

Dated: 7/29/05

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