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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CAMDEN COUNTY  
DOCKET NO.

L-5911-06

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

Civil Action

COMPLAINT

Plaintiffs,

v.

IANNACO TIRE SUPPLY, INC.;  
KENNETH IANNACO; *1*  
MARIANNE IANNACO; *3*  
and "ABC CORPORATION 1" *X* (Name 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. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("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 they have incurred, and will incur, as a result of the discharge of hazardous substances at the Iannaco Tire Supply site in Winslow Township, Camden 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 Iannaco Tire Supply site. Further, the Plaintiffs seek an order compelling the Defendants restore any injured natural resource to its pre-discharge condition, and to perform, under plaintiff DEP's oversight, or to fund 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 Iannaco Tire Supply 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 Iannaco Tire Supply, Inc. is a corporation organized and existing under the laws of the State of New Jersey with a principal place of business located at 102 South White Horse Pike, Winslow Township, New Jersey 08089.

6. Defendant Kenneth Iannaco is an individual whose dwelling or usual place of abode is 19 N. Third Street, Waterford, New Jersey 08089.

7. Defendant Marianne Iannaco is an individual whose dwelling or usual place of abode is 19 N. Third Street, Waterford, New Jersey 08089.

8. Defendant "ABC Corporation 1," this name being fictitious, is an entity with an identity that cannot be

ascertained as of the filing of this Complaint, which is, or may be, a successor to, a predecessor of, or otherwise related to, defendant Iannaco Tire Supply, Inc.

AFFECTED NATURAL RESOURCE

Ground Water

9. 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.

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

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

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

13. 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.

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

### GENERAL ALLEGATIONS

15. The Iannaco Tire Supply site consists of approximately one acre of real property located at 102 White Horse Pike, Winslow Township, Camden County, this property being also known and designated as Block 4711, Lots 3, 7, 8, and 9 on the Tax Map of the Winslow Township (the "Iannaco Tire Supply 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. 002005.

16. From on or about January 11, 1980 through the present, defendants Kenneth and Marianne Iannaco have owned that portion of the Iannaco Tire Supply Property known and designated as Block 4711, Lot 3, on the Tax Map of Winslow Township, and, on or about February 1, 1990, acquired the remainder of the Iannaco Tire Supply Property, which they also presently own.

17. During the time that defendants Kenneth and Marianne Iannaco have owned the Iannaco Tire Supply Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included ethyl-benzene, toluene, xylenes, Methyl Tertiary Butyl Ether ("MTBE") and lead.

18. From 1980 until at least March 2003, defendant Iannaco Tire Supply operated a gasoline service station at the Iannaco Tire Supply Property, the operation of which involved the storage,

handling and dispensing 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 ethyl-benzene, toluene, xylenes, MTBE and lead.

19. On or about January 29, 1998, the owner of a property in the vicinity of the Iannaco Tire Supply Property notified plaintiff DEP that gasoline odors were emanating from his potable well.

20. Plaintiff DEP subsequently inspected the complainant's property and surrounding properties, including the Iannaco Tire Supply Property.

21. Believing that the contamination of the complainant's well was caused by the discharge of hazardous substances at the Iannaco Tire Supply Property, plaintiff DEP issued a directive to defendant Iannaco Tire Supply pursuant to N.J.S.A. 58:10-23.11f.a., directing defendant Iannaco Tire Supply to install a point-of-entry treatment system on the complainant's potable well, and to delineate the nature and extent of the contamination at the Site.

22. Defendant Iannaco Tire Supply complied with plaintiff's DEP directive and installed the point-of-entry treatment system on the complainant's well and undertook the delineation of the nature and extent of the contamination at the Site.

23. In April 1998, defendant Iannaco Tire Supply submitted a site investigation report to plaintiff DEP summarizing its sampling of ground water from a monitoring well on the Iannaco Tire Supply

Property, the results of which revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria, which substances included MTBE, ethylbenzene, toluene, xylene and lead.

24. In April 1999, defendant Iannaco Tire Supply completed a Remedial Investigation Report ("April 1999 RIR"), which stated that two additional monitoring wells were installed on the Iannaco Tire Supply Property, and that results from the sampling of ground water from three on-site monitoring wells revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria, which substances included xylene and lead.

25. In response to the April 1999 RIR, plaintiff DEP required defendant Iannaco Tire Supply to install a fourth monitoring well at the Site, which defendant Iannaco Tire Supply installed on or about January 12, 1999.

26. In May 2000, defendant Iannaco Tire Supply arranged for the removal of one diesel and three gasoline underground storage tanks ("USTs") from the Iannaco Tire Supply Property, and replaced them with three new USTs.

27. In the course of removing and replacing the USTs, defendant Iannaco Tire Supply excavated, removed and disposed of approximately 75 cubic yards of petroleum-contaminated soils from the Iannaco Tire Supply Property.

28. In August 2000, defendant Iannaco Tire Supply submitted to DEP an addendum to its April 1999 RIR, which described the May 2000 closure and removal activities, and stated that the USTs and related piping were found to be in good condition, suggesting that the soils and ground water contamination at the Site resulted from repeated spillage from overfills at the Iannaco Tire Supply Property.

29. In December 2000, defendant Iannaco Tire Supply submitted a second remedial investigation report to plaintiff DEP, which showed continuing decreases of contaminant concentrations in the ground water, except for tetrachloroethene and xylene, the concentrations of which still exceeded DEP's groundwater cleanup criteria.

30. In December 2000, defendant Iannaco Tire Supply also submitted a remedial action workplan to plaintiff DEP, which contained a proposed remediation plan for the ground water at the Site.

31. The remediation defendant Iannaco Tire Supply recommended, and which DEP approved, primarily provided for the natural attenuation of the contamination, and the designation of a Classification Exception Area and Well Restriction Area, which would exclude the designated area from use as a potable water source, and restrict the installation of new potable wells.



32. Defendant Iannaco Tire Supply later established a 12.44-acre Classification Exception Area and Well Restriction Area, with an estimated duration of 6.2 years, i.e., until March 15, 2008.

33. Although defendant Iannaco Tire Supply has initiated the remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

34. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 33 above, as though fully set forth in its entirety herein.

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

36. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Iannaco Tire Supply Property.

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

38. The Plaintiffs 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 Iannaco Tire Supply Property.

39. 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.

40. Defendants Iannaco Tire Supply and ABC Corporation 1 are the dischargers of hazardous substances at the Iannaco Tire Supply Property, 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 Iannaco Tire Supply Property. N.J.S.A. 58:10-23.11g.c.(1).

41. Defendants Kenneth and Marianne Iannaco, as the owners of the Iannaco Tire Supply Property at the time hazardous substances were discharged there, are persons in any way 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 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 Iannaco Tire Supply Property. N.J.S.A. 58:10-23.11g.c.(1).

42. 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).

43. 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 Iannaco Tire Supply 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 Iannaco Tire Supply Property;
- c. Enter judgment against defendant Iannaco Tire Supply, compelling defendant Iannaco Tire Supply to continue to perform any further cleanup of hazardous substances discharged at the Iannaco Tire Supply Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to restore any injured natural resource to its pre-discharge condition, and 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 Iannaco Tire Supply 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 Iannaco Tire Supply 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

44. Plaintiffs repeat each allegation of paragraph nos. 1 through 43 above as though fully set forth in its entirety herein.

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

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

47. 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.

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

49. 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 as a result of the discharge of hazardous substances at the Iannaco Tire Supply 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 as a result of the discharge of hazardous substances at the Iannaco Tire Supply Property;
- c. Enter judgment against defendant Iannaco Tire Supply, compelling defendant Iannaco Tire Supply to abate the nuisance by performing any further cleanup of hazardous substances discharged at the Iannaco Tire Supply Property under plaintiff DEP's oversight;

- d. Enter judgment against the Defendants compelling the Defendants to restore any injured natural resource to its pre-discharge condition, and 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 Iannaco Tire Supply 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 Iannaco Tire Supply 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

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

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

52. Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Iannaco Tire Supply Property.

53. 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 as a result of the discharge of hazardous substances at the Iannaco Tire Supply 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 as a result of the discharge of hazardous substances at the Iannaco Tire Supply Property;
- c. Enter judgment against defendant Iannaco Tire Supply, compelling defendant Iannaco Tire Supply to cease the trespass by performing any further cleanup of hazardous



substances discharged at the Property under plaintiff  
DEP's oversight;

- d. Enter judgment against the Defendants, compelling the Defendants to restore any injured natural resource to its pre-discharge condition, and 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 Iannaco Tire Supply 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 Iannaco Tire Supply 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.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Edward Devine  
Edward Devine  
Deputy Attorney General

Dated: August 8, 2006

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Edward Devine, 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).

ZULIMA V. FARBER  
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Attorney for Plaintiffs

By: Edward Devine  
Edward Devine  
Deputy Attorney General

Dated: August 8, 2006  
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