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SUPERIOR COURT BERGEN COUNTY

FILED

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. L-1589-06

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

Plaintiffs,

v.

BRIDGELAND WAREHOUSES, L.L.C.,

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 Bridgeland Warehouses, L.L.C. ("the Defendant"), says:

### STATEMENT OF THE CASE

1. The 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 they have incurred, and will incur, as a result of the discharge of hazardous substances at the Bridgeland Warehouses, L.L.C. site in Garfield, 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 Bridgeland Warehouses, L.L.C. 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 Bridgeland Warehouses, L.L.C. 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 injuries 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 Bridgeland Warehouses, L.L.C. is a limited liability company, organized and existing under the laws of the State of New Jersey, with a principal place of business located at Park 80 West, Plaza II, Saddle Brook, New Jersey 07663.

#### AFFECTED NATURAL RESOURCE

##### Ground Water

6. 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.

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

8. 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.

9. 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.

10. 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.

11. There are more than 6,000 contaminated sites in New Jersey confirmed as having groundwater contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

12. The Bridgeland Warehouses, L.L.C. site consists of approximately 37 acres of real property located at 174 Passaic Street, Garfield, Bergen County, New Jersey, this property being also known and designated as Block 18, Lot 25, on the Tax Map of Garfield ("the Bridgeland 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. 015887.

13. From 1968 through 2001, the Defendant owned the Bridgeland Property, during which time "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.

14. From 1968 through 2001, the Defendant also operated a warehousing facility and maintained underground storage tanks (USTs) at the Bridgeland Property, the operation of which involved the use 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.

15. A discharge was discovered during the UST removal activities in September 1989 and the NJDEP Spill Hotline was notified.

16. The UST removal and soil excavation activities at the Bridgeland site were concluded in the early part of February 1990.

17. A total of nine USTs were excavated and removed from the Bridgeland site. Additionally, 12,000 cubic yards of soils were excavated.

18. The Defendant performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Defendant investigated the nature and extent of the contamination at the Site.

19. 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 Site.

20. On December 16, 1996, plaintiff DEP approved a Remedial Action Workplan for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action, and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

21. The remedial action plaintiff DEP has approved for the Site primarily provided for a natural attenuation of ground water contamination and the establishment of a Classification Exception Area (CEA).

22. Although the Defendant has initiated the remedial investigation and remedial action for the Site, the groundwater contamination continues.

#### FIRST COUNT

##### Spill Act

23. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 22 above as though fully set forth in its entirety herein.

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

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

26. Plaintiff Administrator has or may approve other appropriations for the Site.

27. 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 Bridgeland Property.

28. 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.

29. The Defendant is the discharger of hazardous substances at the Bridgeland Property, and is liable 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 Bridgeland Property. N.J.S.A. 58:10-23.11g.c.(1).

30. The Defendant, as the owner of the Bridgeland Property at the time hazardous substances were discharged there is also a person in any way responsible for the discharged hazardous substances, and is liable 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 Bridgeland Property. N.J.S.A. 58:10-23.11g.c.(1).

31. 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).

32. Pursuant to N.J.S.A. 58:10-23.11g., 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, 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 Bridgeland 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 as a result of the discharge of hazardous substances at the Bridgeland Property;
- c. 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 Bridgeland 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 Bridgeland 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

33. Plaintiffs repeat each allegation of Paragraphs 1 through 32 above as though fully set forth in its entirety herein.

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

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

36. 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.

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

38. Until the ground water is restored to its pre-injury quality, 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 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 Bridgeland Property, with applicable interest;

- b. Enter declaratory judgment against the Defendant 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 Bridgeland Property;
- c. 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 Bridgeland 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 Bridgeland 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

39. Plaintiffs repeat each allegation of Paragraphs 1 through 38 above as though fully set forth in its entirety herein.

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

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

42. 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 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 Bridgeland Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant 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 Bridgeland Property;

- c. 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 Bridgeland 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 Bridgeland 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.

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ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Lauren Caruso Garofalo  
Lauren Caruso Garofalo  
Deputy Attorney General

Dated: 2/24/06

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Lauren Caruso Garofalo, 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).

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Attorney for Plaintiffs

By: Lauren Caruso Garofalo  
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Dated: 2/24/06