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OFFICE OF THE SUPERIOR COURT CLERK
CIVIL DIVISION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. *m011-2-1599-06*

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

Plaintiffs,

v.

LAB-VOLT SYSTEMS, INC.; "ABC
CORPORATIONS" 1-10 (Names
Fictitious); and "JOHN DOES"
1-10 (Names Fictitious),

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 (collectively, "the Defendants"), 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 Buck Engineering site located in Wall Township, Monmouth 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 Buck Engineering 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 Buck Engineering 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, 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 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 Lab-Volt Systems, Inc., formerly known as Buck Engineering Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 1710 and/or 1730 Route 34, Wall Township, New Jersey.

6. Buck Engineering Co., Inc. ("Buck Engineering"), changed its corporate name to Lab-Volt Systems, Inc., (collectively, "Lab-Volt"), by certificate of amendment filed in the Department of State of New Jersey on November 22, 1995.

7. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities, the identities of which cannot be ascertained as of the filing of this Complaint, certain of which

are corporate successors to, or are otherwise related to, defendant Lab-Volt, and/or its predecessors.

8. 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, defendant Lab-Volt, one or more of the ABC Corporation Defendants and/or their predecessors.

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 the 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 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

GENERAL ALLEGATIONS

15. The Buck Engineering site consists of approximately 116 acres of real property located at 1710 and 1730 Route 34, Wall Township, Monmouth County, New Jersey, this property being also known and designated as Block 942, Lots 37, 56 & 57 on the Tax Map of Wall Township ("the Buck Engineering 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. 016960.

16. The Buck Engineering Property is bordered to the north and east by undeveloped woodland, and to the west and south by industrial facilities.

17. By way of deed dated November 23, 1964, Michael Stavola, Inc., transferred Block 942, Lot 56 of the Buck Engineering Property to Buck Engineering Co., Inc.

18. In September of 1970, Buck Engineering acquired Block 942, Lot 57 of the Buck Engineering Property from the Brielle Marine and Industrial Equipment Company.

19. By way of deed dated November 10, 1970, James & Michael Company, a partnership, transferred Block 942, Lot 37 of the Property to Buck Engineering Co., Inc.

20. During the time that Buck Engineering, the predecessor to defendant Lab-Volt, owned the Buck Engineering 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 tetrachloroethylene, trichloroethylene, 1,1,1-trichloroethane, and 1,1-dichloroethylene.

21. From in or about 1970, or earlier, through 1991, Buck Engineering operated a facility that involved the manufacturing of a variety of items, including the fabrication of printed circuit board assemblies and supporting metal frameworks at the Buck Engineering Property, the operation of which involved the storage and handling 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 tetrachloroethylene, trichloroethylene, 1,1,1-trichloroethane, and 1,1-dichloroethylene.

22. On various occasions, during the period of time that operations were being conducted at the Buck Engineering Property,

plaintiff DEP inspected the Site and observed a variety of deficiencies, including stained sediment on the floors, stained soil, and drainage pipes discharging directly into the ground.

23. On or about July 8, 1991, Buck Engineering submitted a Sampling Plan Data Submission ("Cleanup Plan") for the Buck Engineering Property, during which Buck Engineering investigated the nature and extent of the contamination at the Site.

24. Sampling results from the Cleanup Plan revealed the presence of hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Site.

25. On or about January 24, 1991, Buck Engineering and plaintiff DEP entered into an Administrative Consent Order ("1991 ACO"), which permitted Buck Engineering to sell a portion of the Buck Engineering Property to Scoles Systems, Inc.

26. On or about January 30, 1992, plaintiff DEP approved the Cleanup Plan for the Site, which described the proposed remedial action.

27. The Cleanup Plan plaintiff DEP approved for the Site primarily provided for continued monitoring of the groundwater, as well as active remediation, in the event that the contamination of the groundwater did not decrease through the process of natural attenuation.

28. On or about March 12, 1992, Buck Engineering submitted a Cleanup Plan Progress Report, which revealed the presence of

various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Site.

29. Records submitted on behalf of Buck Engineering revealed that waste from a slop sink located on the Buck Engineering Property was discharged directly into the ground.

30. Records revealed that defendant routinely discharged hazardous substances directly into dry wells on the Buck Engineering Property, including discharges from metal cleaning vats inside the facility.

31. Records submitted on behalf of defendant, Lab-Volt, revealed that ground water contamination at the Site was attributed to an active dry well system that received waste degreasers from metal machining operations on the Buck Engineering Property. This subsurface disposal of hazardous substances ceased in May of 1991.

32. Records revealed that a sink in the photo room, where photographic chemicals were handled, as well as a sink in the wood shop, discharged directly outside into the ground.

33. On or about November 22, 1995, Buck Engineering changed its corporate name to Lab-Volt Systems, Inc., by certificate of amendment filed in the Department of State of New Jersey.

34. On December 7, 1999, plaintiff DEP issued a No Further Action Letter ("NFA") for the entire Site, to Buck Engineering and its successors.

35. Also on December 7, 1999, plaintiff DEP established a Classification Exception Area ("CEA") and a Well Restriction Area ("WRA"), for the Buck Engineering Property.

36. By way of deed dated June 1, 2001, Lab-Volt transferred Block 942, Lot 56 of the Buck Engineering Property to McDaniel Associates, L.L.C., a New Jersey Limited Liability Company.

37. By way of deed dated September 8, 2004, Lab-Volt transferred Block 942, Lots 37 & 57 of the Buck Engineering Property to Allaire Properties, L.L.C., a New Jersey Limited Liability Company.

38. Although the Defendants have initiated the remedial action for the Site, specifically natural attenuation, the groundwater remains contaminated.

FIRST COUNT

Spill Act

39. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 38 above as though fully set forth in its entirety herein.

40. The Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

41. 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 Buck Engineering Property.

42. 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.

43. The defendants Lab-Volt, one or more of the ABC Corporations, and/or one or more John Does, are the dischargers of hazardous substances at the Buck Engineering 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 Buck Engineering Property. N.J.S.A. 58:10-23.11g.c.(1).

44. The defendants, Lab-Volt, one or more of the ABC Corporations, and/or one or more John Does, as the owners of the Buck Engineering Property at the time hazardous substances were discharged there, 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 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 Buck Engineering Property. N.J.S.A. 58:10-23.11g.c.(1).

45. 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).

46. 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 Buck Engineering 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 Buck Engineering Property;
 - c. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Buck Engineering 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

47. Plaintiffs repeat each allegation of Paragraphs 1 through 46 above as though fully set forth in its entirety herein.

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

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

50. 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.

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

52. 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 Buck Engineering 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 Buck Engineering 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 Buck Engineering 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 Buck Engineering 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

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

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

55. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Buck Engineering Property.

56. As long as the ground water, remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

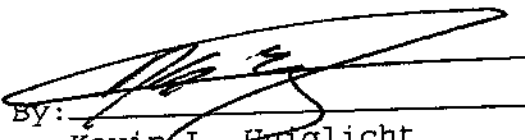
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- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Buck Engineering 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 Buck Engineering 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 Buck Engineering 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 Buck Engineering 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.

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

By: 
Kevin L. Uniglicht
Deputy Attorney General

Dated: 3/20/06

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Kevin L. Uniglicht, 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
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Kevin L. Uniglicht
Deputy Attorney General

Dated:

3/20/06