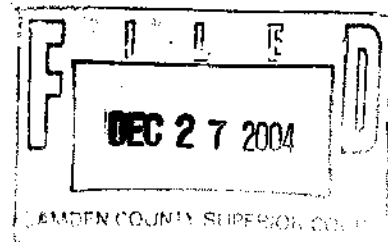


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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAMDEN COUNTY
DOCKET NO.

L 9129 04

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

Plaintiffs,

v.

CONCORD CHEMICAL COMPANY,
INC.;
"ABC CORPORATIONS" 1-20 (Names
Fictitious); and
"JOHN DOES" 1-5 (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 and/or the unsatisfactory storage or containment of hazardous substances at the Concord Chemical Company, Inc. site in Camden City, Camden County, that has contributed to the Camden City Parkside wellfield ("Parkside wellfield") contamination. 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 Concord Chemical Company, Inc. 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 Concord Chemical Company, Inc. 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 ("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 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 Concord Chemical Company, Inc. ("Concord Chemical") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 17th and Federal Streets, Camden City, New Jersey.

6. Defendants "ABC Corporations" 1-20, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, who may have owned and/or operated a site that may have contributed to the Parkside wellfield contamination.

7. Defendants "John Does" 1-5, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, who may have owned and/or operated a site that may have contributed to the Parkside wellfield contamination.

AFFECTED NATURAL RESOURCE

Ground Water

8. 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.

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

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

11. 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.

12. Ground water 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.

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

GENERAL ALLEGATIONS

14. The Concord Chemical Company, Inc. site consists of approximately .5 acres of real property located 17th and Federal Streets, Camden City, Camden County, New Jersey, this property being also known and designated as Block 1186, Lot 25, on the Tax Map of Camden City ("the Concord Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Concord Site").

15. From 1969 through the present defendant Concord Chemical has owned the Concord 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., which substances included trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), and 1,2 dichloroethane.

16. From 1969 through the present defendant Concord Chemical also operated a commercial soap manufacturing facility at the Concord 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 PCE.

17. On November 16, 1978, plaintiff DEP conducted a source evaluation of the Concord Property to inspect reports of chemical and oil spills. Plaintiff DEP observed a white greasy smelling liquid and a reddish oily liquid that was draining toward a storm sewer catch basin.

18. In 1980, plaintiff DEP sampled a production well at the Concord Property that revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, including TCE and PCE.

19. In January 2004, plaintiff DEP performed a facility inspection at the Concord Property, during which plaintiff DEP investigated the nature and extent of the contamination at and underlying the Site.

20. Sampling results from the investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and soils at and underlying the Site, including TCE and PCE.

21. The Parkside wellfield is located at Vesper & Park Boulevards, Camden City, Camden County, also designated as Block 1279, Lot 1A on the Tax Map of Camden City, which plaintiff DEP has designated as Site Remediation Program Interest No. 002743. The Parkside wellfield is also located approximately one mile southeast and downgradient of the Concord Property.

22. In 1988, routine sampling revealed that three supply wells, identified as wells nos. 13, 17 and 18 at the Parkside wellfield, were contaminated with chlorinated volatile organic compounds, including TCE, PCE, benzene and 1,2 dichloroethane.

23. Plaintiff DEP has determined that the discharge of hazardous substances at the Concord Property is a source of the Parkside wellfield contamination because of the proximity of the Property to the Parkside wellfield, the areas of concern at the Property, and the similarity of the contaminants found at the Property and in the Parkside wellfield.

FIRST COUNT

Spill Act

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

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

26. Plaintiff DEP has incurred, and will continue to incur, costs for the Parkside wellfield contamination, and may incur additional costs for the Concord Site.

27. Plaintiff Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund concerning the Parkside wellfield contamination, and, further, may

continue to approve other appropriations for the Parkside wellfield contamination and the Concord Site.

28. The Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost use 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 Concord Property.

29. The costs and damages the Plaintiffs have incurred for the Parkside wellfield contamination, and the costs the Plaintiffs may incur for the Concord Site, are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

30. Defendant Concord Chemical is the discharger of hazardous substances at the Concord Property, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use 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 Concord Property. N.J.S.A. 58:10-23.11g.c.(1).

31. Defendant Concord Chemical, as the owner of the Concord Property at the time hazardous substances were discharged there, also is a person otherwise 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 use 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 Concord Property. N.J.S.A. 58:10-23.11g.c.(1).

32. Defendants "ABC Corporations" 1-20, are entities who may have owned and/or operated a site 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 use 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. N.J.S.A. 58:10-23.11g.c.(1).

33. Defendants "John Does" 1-5, are individuals who may have owned and/or operated a site 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 use 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. N.J.S.A. 58:10-23.11g.c.(1).

34. 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).

35. 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 use 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 Concord Property, including the Parkside wellfield contamination, with applicable interest;

- b. Enter declaratory judgment against the Defendant, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use 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 Concord Property, including the Parkside wellfield contamination;
- c. Enter judgment against the Defendant, jointly and severally, 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 Concord 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 Concord Property, including the Parkside wellfield contamination;
- 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

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

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

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

39. 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.

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

41. 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 use 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 Concord Property, including the Parkside wellfield contamination, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use 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 Concord Property, including the Parkside wellfield contamination;
- 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 Concord 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 Concord Property, including the Parkside wellfield contamination;
- 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

42. Plaintiffs repeat each allegation of Paragraphs 1 through 41 above as though fully set forth in its entirety herein.

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

44. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Concord Property.

45. 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 use 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 Concord Property, including the Parkside wellfield contamination, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use 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 Concord Property, including the Parkside wellfield contamination;
- 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 Concord 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 Concord Property, including the Parkside wellfield contamination;
- d. Award the Plaintiffs their costs and fees in this action;
and

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

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

By: Jennifer Killough Herrera
Jennifer Killough Herrera
Deputy Attorney General

Dated: 12/22/04

DESIGNATION OF TRIAL COUNSEL


Pursuant to R. 4:25-4, the Court is advised that Jennifer Killough Herrera, 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 may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. A-006537-03T3. Otherwise, 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: _____


Jennifer Killough Herrera
Deputy Attorney General

Dated: 12/22/04