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

L-3652-06

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

Plaintiffs,

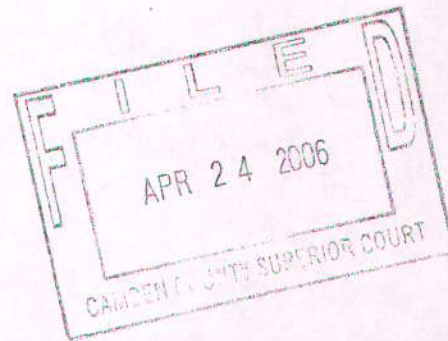
v.

CAMDEN PROPERTIES, 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 ("the Defendants"), say:



### 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 and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Camden Properties site in Camden City, 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 Camden Properties site. Further, the Plaintiffs seek an order compelling 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 Camden Properties 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 Camden Properties, Inc. is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 95 Fairmount Avenue, Philadelphia, Pennsylvania.

6. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which operated manufacturing facilities at the Camden Properties Property, including the underground storage tanks located there.

7. 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, one or more of the ABC Corporation defendants.

#### 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 other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

11. 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.

12. 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.

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



### GENERAL ALLEGATIONS

14. The Camden Properties site consists of approximately 13 acres of real property located on the northeast corner of River Road and East State Street, Camden City, Camden County, New Jersey, this property being also known and designated as Block 847, Lot 2, and Block 866, Lot 2, on the Tax Map of the City of Camden ("the Camden Properties 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. 024225.

15. From 1970 through the present, defendant Camden Properties has owned the Camden Properties 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 benzene, ethylbenzene, toluene and trichloroethylene, which substances have been visible as free-product.

16. From 1970 through 1993, one or more of the ABC Corporation defendants and/or one or more of the John Doe defendants operated a manufacturing facility at the Camden Properties Property, which activities involved the installation and/or maintenance and operation of underground storage tanks ("USTs").



17. During the time that one or more of the ABC Corporation defendants and/or one or more of the John Doe defendants operated a manufacturing facility at the Camden Properties 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 benzene, ethylbenzene, toluene and trichloroethylene.

18. In March 1993, defendant Camden Properties excavated three 5,000 gallon diesel-USTs and one 1,500 gallon gasoline UST at the Camden Properties Property.

19. Upon inspecting the integrity of the raised USTs, defendant Camden Properties observed that the gasoline UST had two holes measuring .5 and .75 inches respectively, and that one diesel UST had three holes, each measuring .25 inches.

20. Defendant Camden Properties subsequently arranged for the removal and off-site disposal of the three USTs, and sampled soils in the area from where the USTs were removed, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria, which substances included benzene, ethylbenzene, toluene and trichloroethylene.

21. Defendant Camden Properties later removed the contaminated soils from the excavated area, and stockpiled the soils at the Camden Properties Property for further sampling, disposal, and/or remediation.



22. In April 1993, defendant Camden Properties removed additional contaminated soils from the excavated area, during which activities ground water in the excavation was found to be contaminated with free-product.

23. Defendant Camden Properties arranged for contaminated soils and approximately 16,000 gallons of liquid to be pumped from the excavated area and disposed of off-site.

24. On May 6, 1993, defendant Camden Properties observed that ground water was again pooling in the excavation at a depth of approximately ten feet from the surface.

25. The Camden County Health Department, concerned with the conditions at the Camden Properties Property, subsequently requested that defendant Camden Properties immediately remove the contaminated ground water from the excavation.

26. Between May 19 and 21, 1993, defendant Camden Properties removed approximately 3,875 gallons of free-product and contaminated water from the excavation at the Camden Properties Property.

27. Defendant Camden Properties eventually discovered that the groundwater and soils contamination extended well beyond the former tank area, requiring further remediation.

28. During January and February 1994, defendant Camden Properties, in response to plaintiff DEP's direction, performed an Underground Storage Tank Closure Remedial Investigation at the



Camden Properties Property, the purpose of which was to identify and initiate corrective actions to ensure the proper closure of the USTs and to address any residual contamination.

29. On March 15, 1994, defendant Camden Properties submitted a Remedial Investigation Report ("RIR") to plaintiff DEP, in which defendant Camden Properties identified areas of soils and groundwater contamination at the Site, and recommended remedial alternatives to address the contamination.

30. On July 22, 1994, plaintiff DEP informed defendant Camden Properties that the March 1994 RIR was deficient, and informed defendant Camden Properties that additional monitoring wells, and groundwater sampling were necessary, and that defendant Camden Properties should submit a Remedial Action Workplan ("RAW") outlining the proposed alternative for remediating the contamination.

31. In January 1995, defendant Camden Properties submitted its proposed RAW to plaintiff DEP for consideration, which plaintiff DEP found deficient.

32. From October 1995 through December 1996, defendant Camden Properties submitted supplemental RIRs to plaintiff DEP for consideration, each of which plaintiff DEP considered deficient.

33. In May 1997, plaintiff DEP approved a RAW for the Site, which primarily provided for quarterly groundwater monitoring and



the construction, operation and maintenance of a recovery system to remove the free-product from the ground water.

34. Defendant Camden Properties continues to submit semi-annual Remedial Action Progress Reports to plaintiff DEP, which reports document the results of groundwater sampling and product recovery.

35. In June 1998, defendant Camden Properties established a Classification Exception Area ("CEA") and Well Restriction Area ("WRA") for the Site, which plaintiff DEP approved.

36. The CEA and WRA for the Site, which place restrictions on the use of the ground water in the designated areas, are to last for an indeterminate number of years.

37. Although defendant Camden Properties has initiated the remediation of the Site, the groundwater and soils contamination continues.

#### FIRST COUNT

##### Spill Act

38. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 37 above as though fully set forth in its entirety herein.

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

40. Plaintiff DEP has incurred, and will continue to incur,



costs as a result of the discharge of hazardous substances at the Camden Properties Property.

41. 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.

42. 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 Camden Properties Property.

43. 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.

44. The Defendants are the dischargers of hazardous substances at the Camden Properties 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 Camden Properties Property. N.J.S.A. 58:10-23.11g.c.(1).



45. Defendant Camden Properties, as the owner of the Camden Properties Property at the time hazardous substances were discharged there, also is a person in any way 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 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 Camden Properties Property. N.J.S.A. 58:10-23.11g.c.(1).

46. 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).

47. 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 Camden Properties 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 Camden Properties Property;
- c. Enter judgment against defendant Camden Properties, compelling defendant Camden Properties to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Camden Properties Property;
- d. 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 Camden Properties 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 Camden Properties Property;
- e. Award the Plaintiffs their costs and fees in this action;
  - f. Award the Plaintiffs such other relief as this Court deems appropriate.

#### SECOND COUNT

##### Public Nuisance

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

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

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

51. 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.

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



53. 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 Camden Properties 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 Camden Properties Property;
- c. Enter judgment against defendant Camden Properties, compelling defendant Camden Properties to abate the nuisance by performing any further cleanup of hazardous



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

- d. 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 Camden Properties 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 Camden Properties Property;
- e. Award the Plaintiffs their costs and fees in this action;
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

### THIRD COUNT

#### Trespass

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

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

56. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Camden Properties Property.



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

PRAYER FOR RELIEF

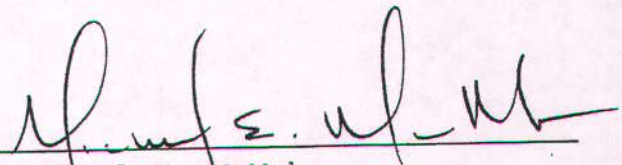
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- 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 Camden Properties 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 Camden Properties Property;
- c. Enter judgment against defendant Camden Properties, compelling defendant Camden Properties to cease the trespass by performing any further cleanup of hazardous substances discharged at the Camden Properties Property under plaintiff DEP's oversight;



- d. 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 Camden Properties 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 Camden Properties Property;
- e. Award the Plaintiffs their costs and fees in this action;
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By:   
Michael E. McMahon  
Deputy Attorney General

Dated: April 20, 2006

DESIGNATION OF TRIAL COUNSEL

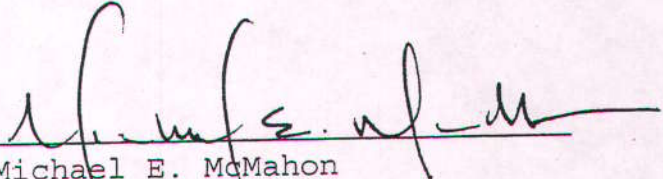
Pursuant to R. 4:25-4, the Court is advised that Michael E. McMahon, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.



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:   
Michael E. McMahon  
Deputy Attorney General

Dated: April 20, 2006