

1. The Plaintiffs brings 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 site in Bridgewater Township, Somerset 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 Egan Machinery Co. site (hereinafter the "Egan Machinery Site" or the "Site") and to compel 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.

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 Kvaerner U.S., Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 440 U.S. Highway 22, Bridgewater, NJ 08807.

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 the 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 that have confirmed groundwater contamination with hazardous substances.

GENERAL ALLEGATIONS

12. The Site consists of approximately 4.75 acres of real property located at 550 Central Avenue, Bridgewater Township, Somerset County, New Jersey, this property being also known and designated as Lot 3, Block 1 on the Borough of Somerville Tax Map and Lot 33, Block 316 (formerly Lot 1, Block 5239), Lot 3, Block 316 (formerly Lot 3, Block 5236) and Lot 4, Block 316 (formerly Lot 4, Block 5236) on the Bridgewater Township Tax Map (the "Property") and all other areas where any hazardous substance discharged there has become located, which Plaintiff DEP has designated as Site Remediation Program Interest No. 023300.

13. Frank W. Egan and Company was incorporated on September 29, 1952.

14. Frank W. Egan and Company acquired the Property in four parcels between 1954 through 1966. At the time of acquisition the parcels were undeveloped.

15. Frank W. Egan and Company changed its name to Egan Machinery Company on or about June 23, 1969.

16. On or about December 31, 1979, Egan Machinery Company merged with Leeson Corporation, a Massachusetts Corporation. Leeson Corporation was the surviving corporation.

17. On or about April 1, 1981, Leeson Corporation, a Massachusetts Corporation, transferred its manufacturing business to its parent John Brown Industries, LTD., a Delaware Corporation.

18. On or about April 1, 1981, John Brown Industries, LTD., a Delaware Corporation, changed its name to Leeson Corporation.

19. On or about April 1, 1981, Leeson Corporation, a Massachusetts Corporation, changed its name to Leeson Holdings, Inc.

20. On or about September 4, 1981, Leeson Holdings, Inc., a Massachusetts Corporation, sold the Property to Leeson Corporation, a Delaware Corporation.

21. From 1954 to September 4, 1981, Leeson Holdings, Inc. owned the Property and from 1954 to April 1, 1981 Leeson Holdings, Inc. operated a manufacturing business on the 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 include cis-1,2-Dichloroethylene, tetrachloroethylene, antimony, beryllium, cadmium, chromium, lead, nickel, polychlorinated biphenols (PCBs) and petroleum hydrocarbons.

22. From September 4, 1981 to the present Leeson Corporation has owned the Property, and from April 1, 1981 to May 15, 1994 Leeson Corporation operated a manufacturing business on the 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 include cis-1,2-Dichloroethylene, tetrachloroethylene, antimony, beryllium, cadmium, chromium, lead, nickel, polychlorinated biphenols (PCBs) and petroleum hydrocarbons.

23. Both Leeson Corporation and Leeson Holdings, Inc. have been merged with Kvaerner U.S., Inc.

24. On December 18, 2002, after conducting extensive investigative and remedial activities on the Site, Kvaerner U.S., Inc. was issued a No Further Action Letter and Covenant Not To Sue by the DEP. The No Further Action Letter and Covenant Not To Sue is subject to a Classification Exception Area ("CEA") and Well Restriction Area ("WRA") which remain on Block 316, Lot 33 (formerly Block 5239, Lot 1) of the property, and extend off the property in a southerly direction.

25. The CEA and WRA are required as institutional controls because concentrations of contaminants in the groundwater remain above the NJDEP Ground Water Quality Standards, N.J.A.C. 7:9-6 et seq.

26. The area of the CEA and WRA is 7.9153 acres.

27. The duration of the CEA and WRA is indeterminate.

28. All designated ground water uses within the area of the CEA and WRA are suspended for their duration. Pursuant to N.J.A.C. 7:9-6.4, "designated use" means a present or potential use of ground water within a ground water classification area as determined by N.J.A.C. 7:9-6.5. Pursuant to N.J.A.C. 7:9-6.5, the groundwater under the Property is designated as Class II-A. The primary designated use of Class II-A ground water is potable water; secondary uses include agricultural and industrial water.

FIRST COUNT

Spill Act

29. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 28 above as though fully set forth in its entirety herein.

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

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

32. Plaintiff Administrator may certify for payment valid claims made against the Spill Fund concerning the Site, and, further, may approve other appropriations for the Site.

33. 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 Property.

34. 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.

35. The Defendant, as the successor to the owners and operators of the Egan Machinery Property at the time hazardous substances were discharged there, 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 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 Egan Machinery Property. N.J.S.A. 58:10-23.11g.c.(1).

36. 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).

37. 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 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 Egan Machinery Property, 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 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 Egan Machinery Property.

- c. Enter judgement 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 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 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

38. Plaintiffs repeat each allegation of Paragraphs 1 through 37 above as though fully set forth in its entirety herein.

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

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

41. 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.

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

43. 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 Egan Machinery 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 Egan Machinery 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 Egan Machinery 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 Egan Machinery 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

44. Plaintiffs repeat each allegation of Paragraphs 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 Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the Egan Machinery Property.

47. As long as the ground water remains contaminated, the Defendant's trespass continues.

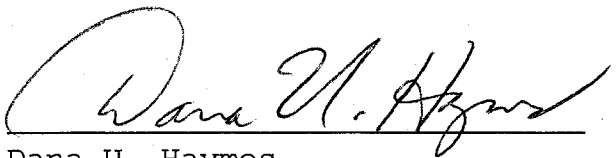
PRAYER FOR RELIEF

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- 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 Egan Machinery 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 Egan Machinery 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 Egan Machinery 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.

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

By: 
Dana U. Haymes
Deputy Attorney General

Dated: 1/12/06

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Dana U. Haymes, 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 Plaintiff at this time, nor is any non-party known to the Plaintiff 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 Plaintiff, 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 Plaintiff

By: *Dana U. Haymes*
Dana U. Haymes
Deputy Attorney General

Dated:

1/12/06