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

L 531-06

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
	:	<u>Civil Action</u>
Plaintiffs,	:	COMPLAINT
	:	
v.	:	
GENERAL CHEMICAL CORPORATION,	:	
Defendant.	:	

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 General Chemical Corporation ("the Defendant") says:

JAN - 4 2006

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 Essex Industrial Chemical ("Essex Industrial") site in Newark City, Essex 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 Essex Industrial 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 Essex Industrial 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 General Chemical Corporation is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 90 East Halsey Road, Parsippany, New Jersey, 07054.

6. Defendant General Chemical Corporation ("General Chemical") is the successor corporation to Peridot Chemicals (New Jersey) Inc., ("Peridot") and Peridot is the successor corporation to Essex Industrial Chemicals Incorporated. On or about December 22, 1989, Peridot acquired Essex Industrial Chemicals, Inc. from the Dow Chemical Company's subsidiary Essex Chemical Corporation. On March 31, 1998, Peridot merged with and into General Chemical Corporation.

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

AFFECTED NATURAL RESOURCE

Groundwater

8. Groundwater 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 groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

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

11. Groundwater 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. Groundwater is a unique resource that supports the State's tourism industry and is also used for commercial, industrial and agricultural purposes, all of 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 Essex Industrial site consists of approximately 4.65 acres of real property located at 330-352 Doremus Avenue, Newark City, Essex County, New Jersey, this property being also known and designated as Block 5070, Lots 3 and 3.01 and 5 and 5.01, on the City of Newark's Tax Map (the "Essex Industrial 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. G000012766.

15. From approximately 1956 through 1989, Defendant's predecessor Essex Chemical Corporation owned the Essex Industrial Property and manufactured industrial chemicals, including sulfuric acid, oleum, liquified sulfur dioxide and aluminum sulfate, warehoused chromium and phosphate chemicals and operated a magnesium oxide regeneration facility for the Philadelphia Electric Company (PECO). These operations 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.

16. In 1989, Defendant's predecessor Peridot purchased all of the assets of Essex Chemical Corporation, including the Essex Industrial Property, and maintained control over the ownership and operations at the Essex Industrial site. Defendant's predecessor Peridot also manufactured industrial chemicals, including sulfuric

acid, oleum, aluminum sulfate and stored liquified sulfur dioxide for off-site distribution. These operations 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.

17. In 1998, Defendant's predecessor Peridot merged with and into Defendant General Chemical Corporation.

18. Defendant General Chemical has owned and operated at the Essex Industrial Property since 1989, 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.

19. 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 time Defendant investigated the nature and extent of the contamination at the Site.

20. In April 1991, a Phase II ECRA Sampling was conducted. During this sampling episode, twelve monitoring wells were installed.

21. Groundwater sampling results revealed arsenic, cadmium, chromium, lead, copper, 1,1,1-Trichloroethane, nickel and zinc above the NJDEP Groundwater Quality Standards.

22. On October 13, 1992, 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 was the most appropriate alternative for the Site.

23. The remedial action plaintiff DEP approved for the Site primarily addressed the impacted soil and ground water quality, through excavations and groundwater monitoring.

24. On June 30, 1997, Plaintiff issued a No Further Action Letter for the entire site to Defendant's predecessor, Peridot.

25. In July 2000, Plaintiff declared a Classification Exception Area/Well Restriction Area for all constituents above the NJDEP Ground Water Quality Standards at the Site.

26. Although the Defendant has undertaken certain aspects of the remediation of this Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

27. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 26 above as though fully set forth in its entirety herein.

28. 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 Essex Industrial Property.

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

costs as a result of the discharge of hazardous substances at the Essex Industrial Property.

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

31. 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.

32. Defendant General Chemical, as the discharger of hazardous substances at the Essex Industrial Property, is liable, 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 Essex Industrial Property. N.J.S.A. 58:10-23.11g.c.(1).

33. Defendant General Chemical, as the successor to the owner of the Essex Industrial Property at the time hazardous substances were discharged there, is a person in any way responsible for the discharged hazardous substances, and is liable, 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 Essex Industrial Property. 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 Defendant to reimburse the Plaintiffs, 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 Essex Industrial Property, with applicable interest;

- b. Enter declaratory judgment against the Defendant, 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 Essex Industrial Property;
- 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 Essex Industrial 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 Essex Industrial 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

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

37. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

38. The use, enjoyment and existence of uncontaminated natural resources are rights 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 groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

41. Until the groundwater 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 groundwater.

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 Essex Industrial 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 Essex Industrial Property;
- 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 Essex Industrial 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 Essex Industrial 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

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

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

44. The Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the Essex Industrial Property.

45. As long as the groundwater 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 Essex Industrial 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 Essex Industrial Property;
- c. Award the Plaintiffs their costs and fees in this action; and
- d. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: 12/30/05

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.

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 plaintiffs at this time, nor is any non-party known to 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 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: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: 12/30/05

CIVIL CASE INFORMATION STATEMENT

(CIS)

Use for initial pleadings (not motions) under R. 4:5-1.

Pleadings will be rejected for filing under R. 1:5-6(c) if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG/CK NO.:

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME: Lauren Caruso Garofalo, DAG

TELEPHONE NO.: 609-984-0214

COUNTY OF VENUE: Essex County

L 531-06

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL

DOCKET NUMBER (When Available):

OFFICE ADDRESS:
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

DOCUMENT TYPE: Complaint

JURY DEMAND: YES X NO

NAME OF PARTY (e.g., John Doe, Plaintiff):
New Jersey Department of Environmental Protection and The Administrator of the New Jersey Spill Compensation Fund

CAPTION: New Jersey Department of Environmental Protection and The Administrator of the New Jersey Spill Compensation Fund v. General Chemical Corporation

CASE TYPE NUMBER
(See reverse side for listing): 156

IS THIS A PROFESSIONAL MALPRACTICE CASE? YES X NO

If You Have Checked "Yes," See N.J.S.A. 2A:53A-27 and Applicable Case Law Regarding Your Obligation to File an Affidavit of Merit.

RELATED CASES PENDING? YES X NO

IF YES, LIST DOCKET NUMBERS:

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of the same transaction or occurrence)?

 YES X NO

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN

 NONE UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO THE PARTIES HAVE IF YES, IS THAT EMPLOYER-EMPLOYEE FRIEND-NEIGHBOR X OTHER (explain) Regulatory
A CURRENT, PAST OR RELATIONSHIP:
RECURRENT RELATIONSHIP?

 X YES NO FAMILIAL BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE X YES NO FOR PAYMENT OF FEES BY THE LOSING PARTY?

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION.

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?

 YES X NO

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED? YES X NO

IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE:

Lauren Caruso Garofalo

