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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. L-57662-04

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

Plaintiffs,

v.

GID ACQUISITION COMPANY;
HECON INDUSTRIES INC.;
HECON PROPERTIES INC.; and
"ABC CORPORATIONS" 1-20
(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 Hecon site in Eatontown Borough, 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 Hecon 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 Hecon 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 GID Acquisition Company ("GID"), is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 2 Campion Road, New Hartford, New York, 13413.

6. Defendant Hecon Industries, Inc., was a corporation organized under the laws of the State of New Jersey, with a last known place of business located at 25A Abe Voorhees Drive, Manasquan, New Jersey, 08736-3560.

7. On December 21, 1994, defendant Hecon Industries merged with Hecon Corporation (collectively, "Hecon Industries"), with the surviving entity being defendant Hecon Industries.

8. On January 1, 1999, defendant Hecon Industries merged with defendant GID, with the surviving entity being defendant GID.

9. Defendant Hecon Properties, Inc. ("Hecon Properties"), formerly known as Meridian Investments Corp., is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 5335 Avion Park Drive, Highland Heights, Ohio, 44143.

10. Defendants "ABC Corporations" 1-20, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which are the corporate successors to, or are otherwise related to, one or more of the Hecon Defendants.

AFFECTED NATURAL RESOURCE

Groundwater

11. 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.

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

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

14. 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.

15. 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.

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

GENERAL ALLEGATIONS

17. The Hecon site consists of approximately 10.5 acres of real property located at 15 Meridian Road, Eatontown Borough, Monmouth County, New Jersey, this property being also known and designated as Block 111, Lot 45, on the Borough of Eatontown's Tax Map (the "Hecon 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. 025824.

18. From April 1981 through March 1997, defendant Hecon Properties owned the Hecon Property.

19. In March 1997 defendant Hecon Properties sold the Hecon Property to Westcon Realty of New Jersey, Inc ("Westcon").

20. In December 1999, Westcon, then doing business as Dorami Realty of New Jersey, Inc., sold the Hecon Property to Monmouth

Center for Vocation Rehabilitation, Inc., a New Jersey Not for Profit corporation, which is the current owner of record.

21. From April 1981 through December 1994, Hecon Corporation operated a business involving the distribution and assembly of electronic component systems at the Hecon Property, which involved the storage and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., including trichlorotrifluoroethane ("Freon 113").

22. From December 1994 through March 1997, defendant Hecon Industries also operated a business involving the distribution and assembly of electronic component systems at the Hecon Property, involving the same processes as Hecon Corporation.

23. On or about November 1, 1983, an underground storage tank ruptured, "discharging" the fuel oil, a hazardous substance, within the meaning of N.J.S.A. 58:10-23.11b., onto the soils and into ground water at and underlying the Hecon Property.

24. In February 1984, the contractor that installed the ruptured underground storage tank initiated the remediation of the discharged hazardous substance under plaintiff DEP's oversight, which remediation primarily involved the installation of nine monitoring wells, two recovery wells and the weekly hand bailing of product from selected wells.

25. Between February 1984 and August 1987, the selected remediation yielded recovery of only approximately 500 gallons of the 8,000 gallons of fuel oil discharged at the Hecon Property.

26. In June 1987, one or more of the Hecon Defendants initiated a remedial investigation to determine the full nature and extent of the contamination at the Site, which investigation the Hecon Defendants completed in December 1987.

27. Sampling results from the remedial 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 benzene, ethylbenzene, xylene, chloroform, toluene, and various base neutral compounds.

28. In addition to the above listed contaminants, trace concentrations of Freon 113, a synthetic organic contaminant Hecon Corporation and defendant Hecon Industries used in their day-to-day operations, were detected in the ground water and soils at and underlying the Site.

29. On or about February 1988, defendant Hecon Properties entered into a contract of sale for the Hecon Property, which obligated one or more of the Hecon Defendants to comply with the former Environmental Cleanup and Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

30. In or around April 1988, for reasons not known to the Plaintiffs, the proposed sale of the Hecon Property was not completed.

31. In or about August 1991, one or more of the Hecon Defendants initiated the remediation of the Site pursuant to a remedial action work plan plaintiff DEP approved.

32. The remediation, which the Hecon Defendants performed under plaintiff DEP's oversight, primarily involved in-situ biological enhancement of contaminated soils through the use of a vapor extraction system, and the installation and operation of a groundwater treatment system.

33. On or about December 1, 1994, the merger of defendant Hecon Corp. and defendant Hecon Industries again triggered the Hecon Defendants' obligations under ISRA.

34. On or about December 15, 1994, plaintiff DEP issued a remediation in progress waiver to the Hecon Defendants, stating that no additional discharges had occurred at the Hecon Property since the 1983 underground storage tank discharge.

35. Notwithstanding the December 1994 waiver, the Hecon Defendants still were responsible for remediating the Site.

36. On or about February 1997, defendant Hecon Properties entered into a contract of sale for the Hecon Property, again triggering the Hecon Defendants' ISRA obligations.

37. On February 18, 1997, plaintiff DEP issued a second remediation in progress waiver to defendant Hecon Properties, stating that no additional discharges had occurred at the Hecon Property since the 1983 underground storage tank discharge.

38. On March 18, 1997, defendant Hecon Properties sold the Hecon Property to Westcon.

39. Although one or more of the Hecon Defendants has undertaken certain aspects of the remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

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

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

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

43. 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.

44. 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 Hecon Property.

45. 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.

46. Defendant Hecon Industries, as successor to Hecon Corp., the discharger or the person otherwise responsible for the discharge of hazardous substances at the Hecon Property, 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 Hecon Property. N.J.S.A. 58:10-23.11g.c.(1).

47. Defendant Hecon Properties, as the owner of the Hecon 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 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 Hecon Property. N.J.S.A. 58:10-23.11g.c.(1).

48. Defendants GID Acquisition Company and ABC Corporations 1-20, as the successors to one or more of the Hecon Defendants, 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 at the Hecon Property. N.J.S.A. 58:10-23.11g.c.(1).

49. 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).

50. 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 Hecon 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 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 Hecon 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 Hecon Property;

- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, 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 Hecon 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 Hecon Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

51. Plaintiffs repeat each allegation of Paragraphs 1 through 50 above as though fully set forth in its entirety herein.

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

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

54. 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.

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

56. 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 Hecon 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 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 Hecon Property;

- c. Enter judgment against the Defendants, compelling the Defendants to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Hecon 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 Hecon 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 Hecon Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

57. Plaintiffs repeat each allegation of Paragraphs 1 through 56 above as though fully set forth in its entirety herein.

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

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

60. 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 Hecon 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 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 Hecon Property;

- c. Enter judgment against the Defendants, compelling the Defendants to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Hecon 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 Hecon 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 Hecon Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By: 

Adam B. Lavinthal
Deputy Attorney General

Dated: 12/22/2004

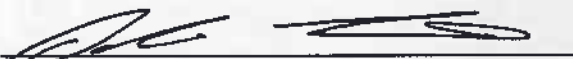
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Adam B. Lavinthal, 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 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
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Attorney for Plaintiffs

By: 
Adam B. Lavinthal
Deputy Attorney General

Dated: 12/22/2004