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SEP 10 2002

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 JUDGE DEL PIREORE
 DEPUTY CLERK OF SUPERIOR COURT

By: Mark D. Oshinskie
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SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION - MERCER COUNTY
 DOCKET NO. *L-2933-02*

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

Plaintiffs,

v.

EXXON/MOBIL CORP., SUN
 REFINING AND MARKETING COMPANY;
 CONSUMERS OIL; DELAWARE
 PETROLEUM COMPANY, INC.; ARCO
 PETROLEUM COMPANY; and RICHARD:
 NIEDT,

Defendants.

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Acting Administrator, New Jersey Spill Compensation Fund ("Administrator"), 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, say:

STATEMENT OF THE CASE

1. Plaintiffs DEP and Administrator bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, to recover the cleanup and removal costs they have incurred, and will incur, as a result of the discharge and/or unsatisfactory storage or containment of hazardous substances at the Hillwood Lakes site located in Ewing Township, Mercer County, New Jersey (the "Hillwood Lakes site" or the "Site"). Plaintiffs DEP and Administrator also seek reimbursement under the Spill Act for the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site. Plaintiffs further seek penalties for noncompliance with Directives to perform remedial investigations at the 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. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("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.

4. Defendant Delaware Petroleum Company is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at P.O. Box 8667, Trenton, NJ 08650.

5. Defendant Consumers Oil Company is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 1739 Lambert Road, Ewingville, New Jersey.

6. Defendant Exxon/Mobil Corporation is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 220 Commerce Drive, Fort Washington, Pennsylvania, 19034.

7. Defendant Sun Refining and Marketing Company is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 1801 Market Street, Philadelphia, Pennsylvania, 19103.

8. Defendant ARCO Petroleum Company is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 1801 E. Sepulveda Blvd., Carson, CA 90745.

9. Defendant Richard Niedt is an individual whose dwelling or usual place of abode is 110 Alexander Drive, Trenton, New Jersey, 08638.

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

GENERAL ALLEGATIONS

11. The Hillwood Lakes site ("the Site") comprises approximately 43 acres of real property located at the corner of State Route 31 and Ewingville Road, Ewing Township, Mercer County, New Jersey, and all other areas where any hazardous substance discharged there has become located.

12. There are, and have been, three retail gasoline stations within the Site, hereinafter designated as Sub-site 1, Sub-site 2 and Sub-site 3. All three retail gasoline stations store and dispense gasoline which is a mixture of "hazardous substances" including, but not limited to, benzene, toluene, xylene, ethyl benzene, MTBE and TBA. These sub-sites are surrounded by a considerably larger area, "the Site," to which contamination has spread.

13. In April, 1987, materials that were, or contained, "hazardous substances," including benzene, toluene, xylene, ethyl benzene, MTBE and TBA, as defined in N.J.S.A. 58:10-23.11b., were found to have been "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10-23.11f.a.(1) when several

of these contaminants, specifically benzene, toluene, ethylbenzene, MTBE and TBA, were detected in the potable wells at six residences within the Site.

14. From April, 1987, through 1989, the defendants performed two partial investigations of various portions of their sub-sites pursuant to N.J.S.A. 58:10-23.11f.a. regarding the nature and extent of contamination by the discharged hazardous substances.

15. Sampling results from the remedial investigation and DEP sampling revealed the presence of various hazardous substances, including toluene, ethylbenzene, MTBE and TBA, exceeding plaintiff DEP's cleanup criteria in the groundwater and soils at, and underlying, the sub-sites and throughout the Site.

16. On various dates since these data were collected, plaintiff DEP has requested that the defendants perform various investigatory measures to delineate the horizontal and vertical extent of contamination in soil and groundwater beyond these sub-sites and to remove any residual contamination.

17. On March 8, 1990, plaintiff DEP issued a Directive ("Directive") to the defendants pursuant to N.J.S.A. 58:10-23.11f.a., directing the defendants to perform the remedial action under plaintiff DEP's oversight.

18. On December 27, 1999, DEP issued another Field Directive requesting that the defendants conduct sampling in the Hilltop Road area.

19. While the defendants have performed some of the requested work, a considerable amount of the work remains incomplete.

20. DEP has sealed contaminated potable wells and installed a water line to replace the wells contaminated by the discharge, and also those wells, in the DEP's judgment, that may have been in jeopardy of becoming contaminated.

FIRST COUNT

21. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 20 above as though fully set forth in its entirety herein.

22. Plaintiff DEP has incurred, and will continue to incur, costs concerning the Site, including an expenditure of \$259,259.57 to install a water line and to seal wells in the affected area.

23. Plaintiff Administrator has certified, and will continue to certify, for payment, valid claims made against the Spill Fund concerning the Site and, further, has approved, and will continue to approve, other appropriations to remediate the Site.

24. Plaintiffs DEP and Administrator have also incurred, and will continue to incur, damages, including reasonable assessment costs, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

25. The costs and damages plaintiffs DEP and Administrator have incurred, and will incur, including any claims paid from the

Spill Fund, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

26. Prior to 1976, Sunoco owned the first set of gasoline tanks that were abandoned in place, circa 1966, and were later shown to have discharged at the time Richard Niedt removed them in May or June, 1989. When the Site was sold to Richard Niedt in October, 1976, the Bill of Sale did not transfer the first set of gasoline tanks. From 1976 through at least 1994, the defendant Richard Niedt has owned and operated the real property comprising the Sun Station within the Site ("Sub-site 1"), during which time hazardous substances within the meaning of N.J.S.A. 58:10-23.11f.b.(2), including, but not limited to benzene, toluene, ethylbenzene, xylene, MTBE and TBA, were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1). On May 19, 1987, .19 feet of free product was detected in a monitoring well on the Site.

27. From at least as early as January 1, 1988, through February 7, 2000, the defendant Exxon/Mobil, or its corporate predecessors, owned the real property comprising the Mobil Station within the Site ("Sub-site 2"), during which time materials that were, or contained, hazardous substances within the meaning of N.J.S.A. 58:10-23.11f.a(1), including but not limited to benzene, toluene, ethylbenzene, xylene, MTBE and TBA, were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1). On January 13, 1988,

benzene, toluene and xylene were detected in a monitoring well on-site.

28. From November 15, 1984 through the present, the defendants ARCO, Consumers Oil and Delaware Petroleum operated a retail gasoline station within the Site("sub-site 3"), the operation of which involved the storage and distribution of materials that were, or contained, hazardous substances, including but not limited to benzene, toluene, ethylbenzene, MTBE and TBA, which were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1). These substances were detected in on-site monitoring wells in November, 1989. :

29. As persons responsible for materials that were, or contained, hazardous substances, including but not limited to benzene, toluene, ethylbenzene, MTBE and TBA, which were not satisfactorily stored or contained and discharged at their sub-site, the defendants are liable, jointly and severally, without regard to fault, for all costs plaintiffs DEP and Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11.g.c.(1).

30. By failing to comply with the March 8, 1990 and December 27, 1999 Directives, the defendants are also persons who, pursuant to N.J.S.A. 58:10-23.11f.a(1), are liable in an amount equal to three times the cleanup and removal costs plaintiffs DEP and Administrator have incurred, and will incur, for the site.

31. As persons responsible for materials that were, or contained, hazardous substances, including but not limited to benzene, toluene, ethylbenzene, xylene, MTBE and TBA, which were not satisfactorily stored or contained and were discharged at the Site, the defendants are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

32. 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 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); and for any other unreimbursed costs plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

33. 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.

34. The discharge/unsatisfactory storage or containment of hazardous substances, including benzene, toluene, ethylbenzene, xylene, MTBE and TBA, at the sub-sites is also a violation of the

Spill Act, for which a penalty of not more than \$50,000 per day may be assessed pursuant to N.J.S.A. 58:10-23.11u.d. Further, each day the violation continues is a separate violation.

35. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(c) and N.J.S.A. 58:10-23.11u.d., plaintiff DEP may bring a summary action in the Superior Court against anyone who violates a provision of the Spill Act, for a civil penalty.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

a. Order the defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs the plaintiffs have incurred for the Site, with applicable interest;

b. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for any cleanup and removal costs plaintiffs DEP and Administrator may incur for the Site;

c. Order the defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs plaintiffs DEP and Administrator have incurred for the Site;

d. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, in an amount equal

to three times any cleanup and removal costs plaintiffs DEP and Administrator may incur for the Site.

e. Order the defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred for any natural resource of this State damaged or destroyed by the contamination at the Site, with applicable interest;

f. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Site;

g. Order the defendants to pay plaintiff DEP all penalties to which plaintiff DEP is entitled;

h. Award plaintiffs DEP and Administrator their costs and fees in this action; and

i. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Mark Oshinskie
Mark D. Oshinskie
Deputy Attorney General

Dated:

9/5/02

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark D. Oshinskie, Deputy Attorney General, is hereby designated as trial counsel for 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 plaintiffs at this time, nor is there 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).

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Mark Oshinskie
Mark D. Oshinskie
Deputy Attorney General

Dated:

9/5/02