

BURLINGTON COUNTY
SUPERIOR COURT
49 RANOCAS ROAD
MT HOLLY NJ 08060

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 518-2815
COURT HOURS

DATE: FEBRUARY 05, 2007
RE: N J DEPART OF ENVIRON PROTECTION VS HOEGANAES CORP
DOCKET: BUR L -000341 07

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON MARC M. BALDWIN

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002
AT: (609) 518-2815.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: LAUREN C. GAROFALO
ATTORNEY GENERAL
25 W MARKET STREET
PO BOX 112
TRENTON NJ 08625

JUAMP4

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

By: Lauren Caruso Garofalo
Deputy Attorney General
(609) 984-5016

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BURLINGTON COUNTY
DOCKET NO. *BUR L 341-07*

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

Plaintiffs,

v.

HOEGANAES CORPORATION

Defendant.

Civil Action

COMPLAINT

FILED & RECEIVED

2011 FEB -5 A 9:53

DEPUTY CLERK
SUPERIOR COURT
BURLINGTON COUNTY

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 Hoeganaes Corporation ("the Defendant"), says:

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 Hoeganaes Landfill site (hereinafter the "Hoeganaes Landfill Site" or the "Site") located on the north side of River Road (North Broad Street) at the intersection of Union Landing Road, Cinnaminson Township, Burlington 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 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.

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 Hoeganaes Corporation is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1001 Taylors Lane, Riverton, New Jersey 08077.

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 ground water contamination with hazardous substances.

GENERAL ALLEGATIONS

12. The Hoeganaes Landfill Site consists of approximately 34 acres of real property located on the north side of River Road (North Broad Street) at the intersection of Union Landing Road, Cinnaminson Township, Burlington County, New Jersey, this property being also known and designated as Block 307, Lots 2 and 2.01 on the Township of Cinnaminson Tax Map (the "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. 000387.

13. From 1950 through the present, the Defendant has owned 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 included lead, cadmium, chromium, iron, manganese, sulfate, sodium, total dissolved solids, and volatile organic contaminants.

14. From 1954 through 1997, the Defendant also operated a landfill at the Property, the operation of which involved the transport and land-filling of known inorganic waste materials from the Hoeganaes Corporation plant located on Taylors Lane in Cinnaminson, New Jersey. During this time, "hazardous substances" as defined in N.J.S.A. 58:10-23.11b were "discharged" at the Property, within the meaning of N.J.S.A. 58:10-23.11b, which substances included lead, cadmium, chromium, iron, manganese, sulfate, sodium, total dissolved solids, and volatile organic contaminants.

15. On May 25, 2004, defendant Hoeganaes Corporation submitted a Remedial Action Report to DEP, which summarized the closure of two land-filled areas and the implementation of a DEP-required ground water monitoring program.

16. The closure of the Phase I area of the landfill was started in 1992 and completed in 1993. The closure of the Phase II portion of the landfill was started in 1996 and completed in 1997.

17. A total of eleven permitted ground water monitoring wells and six piezometers are located around the perimeter of the landfill at locations both on and off-Site.

18. Sampling results from the monitoring wells revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Site, which substances include lead, cadmium, chromium, iron, manganese, sulfate, sodium, total dissolved solids, and volatile organic contaminants.

19. Although the Defendant has initiated remedial actions, the groundwater contamination continues.

FIRST COUNT

Spill Act

20. Plaintiffs repeat each allegation of paragraph nos. 1 through 19 above as though fully set forth in its entirety herein.

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

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

23. 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.

24. The 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.

25. 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.

26. The Defendant is the discharger of hazardous substances at the Property, and is liable 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 Property. N.J.S.A. 58:10-23.11g.c.(1).

27. The Defendant, as the owner of the Property at the time hazardous substances were discharged there, transporter of hazardous substances to the Property that were discharged there, and generator of hazardous substances that were discharged at the Property, is a person otherwise responsible for the discharged hazardous substances, and is liable 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 Property. N.J.S.A. 58:10-23.11g.c.(1).

28. 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).

29. 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, 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 Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, 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 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 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

30. Plaintiffs repeat each allegation of Paragraphs 1 through 29 above as though fully set forth in its entirety herein.

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

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

33. The ground water 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.

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

35. 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 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 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 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.

THIRD COUNT

Trespass

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

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

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

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

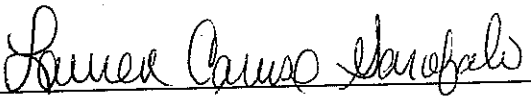
PRAYER FOR RELIEF

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 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 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 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.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Lauren Caruso Garofalo
Deputy Attorney General

Dated: February 2, 2007

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 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).

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: February 2, 2007

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, Deputy Attorney General

TELEPHONE NO.: 609-984-5016

COUNTY OF VENUE: Burlington County

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL

DOCKET NUMBER (When Available):

BWL L 341-07

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

DOCUMENT TYPE: Complaint

JURY DEMAND: YES 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: Hoeganaes Corporation

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

IS THIS A PROFESSIONAL MALPRACTICE CASE? YES 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.

DEPUTY CLERK
 SUPERIOR COURT
 BURLINGTON COUNTY
 201 FEB - 27
 FILED & RECEIVED
 9:54 AM

RELATED CASES PENDING? YES NO

IF YES, LIST DOCKET NUMBERS:

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of the same transaction or occurrence)?
 YES NO

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN
 NONE UNKNOWN

THIS 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 OTHER (explain) Regulatory
A CURRENT, PAST OR RECURRENT RELATIONSHIP?
 YES NO FAMILIAL BUSINESS

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

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 NO

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED? YES NO

IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE:

Lauren Caruso Garofalo