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CIVIL DIVISION

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUNTERDON COUNTY
DOCKET NO. *HNT-L-000614-04*

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

Plaintiffs,

v.

HOLLAND SALES AND SERVICE,
INC., T/A HOLLAND S & S, T/A
HOLLAND TEXACO; and "ABC
CORPORATIONS" 1-10 (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 Holland Sales and Service, Inc.,

T/A Holland S & S, T/A Holland Texaco; and "ABC Corporations" 1-10 (Names Fictitious) (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 Holland Texaco gasoline service station site (hereinafter "Holland Texaco Site" or the "Site") located on County Route 519 in Holland Township (Milford), Hunterdon 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 Holland Texaco 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 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 Holland Sales and Service, Inc. is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 136 Bellis Road, Milford, New Jersey 08848.

6. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which were operators of businesses that contributed to the discharges at the Site.

AFFECTED NATURAL RESOURCE

Ground Water

7. 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.

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

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

10. 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.

11. 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.

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

GENERAL ALLEGATIONS

13. The Holland Texaco Site consists of approximately 1 acre of real property located at 1050 Milford-Warren Glen Road (County Route 519), Holland Township (Milford), Hunterdon County, New Jersey, this property being also known and designated as Block 6,

Lot 40, on the Tax Map of Holland Township (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. 010101.

14. From 1978 through the present Defendant Holland Sales and Service, Inc. 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 include methyl tertiary butyl ether (MTBE), 2-butanone, trichloroethene (TCE), benzene, toluene, ethylbenzene, and xylenes (total).

15. In 1989 ground water samples from an on-site potable well immediately adjacent to a seepage pit on the Property indicated contamination with trichloroethene (TCE), 1,3-dichlorobenzene, 1,2-dichloroethane, and trans-1,2-dichloroethene.

16. A new potable well on the Property was dug and ground water was sampled on February 1, 1996. Sampling of the well revealed TCE just below the Maximum Contaminant Level of 5 parts per billion.

17. In January 1992 three monitoring wells were installed around the underground storage tank field at the Property for an Environmental Assessment conducted for Kimber Petroleum Corporation, a potential purchaser and lessee of the Property. Ground water samples from these monitoring wells in January 1992

contained trichloroethene (TCE), benzene, toluene, ethylbenzene, xylenes (total), and methyl tertiary butyl ether ("MTBE") above ground water quality standards ("GWQS").

18. In February 1992, ground water samples from the three monitoring wells were found to be contaminated by benzene, toluene, xylenes (total) and MTBE above GWQS.

19. Soil samples collected by the DEP in September 1996 from the area of a historic seepage pit on the Property document a discharge of chlorinated solvents at this location.

20. On March 29, 1996, Plaintiff DEP issued a Spill Act directive ("March 1996 Directive") to the Defendant Holland Sales and Service, Inc. pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendant Holland Sales and Service, Inc. to supply alternate water to 1052 Milford-Warren Glen Road (Kitchen Magic) via the installation of a point of entry treatment system (POET system) by April 5, 1996 and to sample an additional nearby potable well by April 5, 1996.

21. On May 6, 1996, Plaintiff DEP issued a Spill Act directive ("May 1996 Directive") to the Defendant Holland Sales and Service, Inc. to supply alternate water supplies to 1056 Milford-Warren Glen Road (Lippincott Residence) via the installation of a POET system and sample three additional nearby wells by May 10, 1996. Additionally, Defendant Holland Sales and Service, Inc. was directed to conduct a site inspection at the Property to identify

any areas of concern that may be a source of trichloroethene (TCE) detected in both on-site potable wells.

22. The Defendant Holland Sales and Service, Inc. failed to comply with the March 1996 and May 1996 Directives, thus requiring Plaintiff DEP to perform the POET installation, site investigation and other remedial activities.

23. In 1996, Plaintiff DEP performed a preliminary assessment and site investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which Plaintiff DEP investigated the nature and extent of the contamination at and underlying the Site.

24. Sampling results 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.

25. Although Plaintiff DEP has initiated the preliminary assessment and site investigation of the Site, the groundwater and soil contamination continues.

FIRST COUNT

Spill Act

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

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

28. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Holland Texaco Site.

29. 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.

30. 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 Holland Texaco 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. The Defendants Holland Sales and Service, Inc. and ABC Corporations are the dischargers of hazardous substances at the Holland Texaco Site, 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 Holland Texaco Site. N.J.S.A. 58:10-23.11g.c.(1).

33. Defendant Holland Sales and Service, Inc., as the owner of the Property at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable 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 Holland Texaco Site. N.J.S.A. 58:10-23.11g.c.(1).

34. Defendants ABC Corporations, as the dischargers of hazardous substances at the Property, 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 discharges. N.J.S.A. 58:10-23.11g.c.(1).

35. 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).

36. 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.

37. Pursuant N.J.S.A. 58:10-23.11f, Plaintiff Administrator is authorized to bring an action in Superior Court for treble damages, based on the failure of Defendant Holland Sales and Service, Inc. to comply with the March 1996 Directive and May 1996 Directive.

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 Holland Texaco Site, 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 Holland Texaco Site;
- c. Order the Defendant Holland Sales and Service, Inc. to reimburse the Plaintiffs in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Site;
- d. Enter declaratory judgment against the Defendant Holland Sales and Service, Inc. in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur for the Site;
- e. 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 Holland Texaco Site, 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 Holland Texaco Site;

- f. Order the Defendants to pay Plaintiff DEP all penalties to which Plaintiff DEP is entitled;
- g. Award the Plaintiffs their costs and fees in this action; and
- h. 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.

40. The use, enjoyment and existence of uncontaminated natural resources is a right 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 use this natural resource.

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

43. 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 Holland Texaco Site, 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 Holland Texaco Site;
- c. 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 Holland Texaco Site, 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 Holland Texaco Site;

- 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 Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Holland Texaco Site.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs DEP and Administrator pray that this Court:

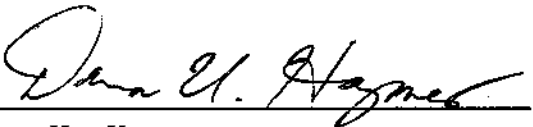
- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including

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 Holland Texaco Site, 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 Holland Texaco Site;
- c. 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 Holland Texaco Site, 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 Holland Texaco Site;
- 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 Plaintiffs

By: 
Dana U. Haymes
Deputy Attorney General

Dated: 12/29/04

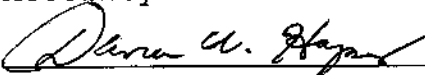
DESIGNATION OF TRIAL COUNSEL

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 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: 
Dana U. Haymes
Deputy Attorney General

Dated: 12/29/04