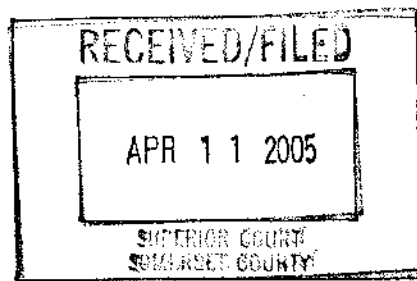


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By: Lauren Caruso Garofalo
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SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION - SOMERSET COUNTY
 DOCKET NO. L-1675-04

	:	
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
Plaintiffs,	:	<u>Civil Action</u>
v.	:	COMPLAINT/INTERVENTION
	:	
EXXONMOBIL CORPORATION, INC., AND STEM BROTHERS, INC.,	:	
Defendants.	:	

Plaintiffs/Intervenors 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

ExxonMobil Corporation, Inc., and Stem Brothers, Inc.,
(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 McFarland's Pitstop site in Bridgewater, Somerset 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 McFarland Pitstop 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 McFarland Pitstop 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 ExxonMobil Corporation, Inc., is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 800 Bell Street, Houston, Texas 77002.

6. Defendant Stem Brothers, is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 760 Frenchtown Road, P.O. Box T, Milford, New Jersey.

AFFECTED NATURAL RESOURCES

Ground Water

7. 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.

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

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

10. Groundwater 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. Groundwater 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 McFarland Pitstop site consists of approximately 588 acres of real property located on 555 West Union Avenue, Bridgewater, Somerset County, New Jersey, this property being also known and designated as Block 232, Lot 36, on the Tax Map of Bridgewater ("the McFarland 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. 018512.

14. From June 15, 1962 through September 4, 1980, Defendant ExxonMobil Corporation, Inc. owned the McFarland 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 methyl tertiary butyl ether ("MTBE"), methylene chloride, benzene, toluene, ethylbenzene, xylenes, tetrachloroethene, trichloroethene, DCE and lead.

15. From 1962 through 1977, Defendant ExxonMobil Corporation, Inc. also operated a service station at the McFarland Property and supplied the service station with gasoline during that time period, the operation of which involved the storage 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. and/or "not satisfactorily stored or contained" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2)., which substances include MTBE, methylene chloride, benzene, toluene, ethylbenzene, xylenes, tetrachloroethene, trichloroethene, DCE and lead.

16. In 1977, John McFarland, in his capacity as President of McFarland & Sons, Inc., began leasing the McFarland Property from Defendant ExxonMobil Corporation, Inc.

17. On September 4, 1980, Defendant ExxonMobil Corporation, Inc. transferred the McFarland Property to John McFarland. On July 11, 1989, John McFarland conveyed the McFarland Property to himself and his wife, June McFarland. June McFarland is the current owner of record of the McFarland Property.

18. In 1981, Defendant Stem Brothers, Inc., improperly installed three single-walled steel underground storage tanks ("USTs") at the McFarland Property.

19. This improper installation by Defendant Stem Brothers, Inc., resulted in improper storage or containment, within the meaning of N.J.S.A. 58:10-23.11f.b(2), causing certain "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., to be "discharged" there within the meaning of N.J.S.A. 58:10-23.11b, which substances include MTBE, methylene chloride, benzene, toluene, ethyl-benzene, xylenes, tetrachloroethene, trichloroethene, DCE and lead.

20. On various occasions from 1975, through 1992, gasoline tanks and related piping at the McFarland Property underwent several repairs and upgrades.

21. In 1993, floating product and gasoline-related contaminants were found in groundwater monitoring wells at the McFarland Property and vapor impacts were also evident nearby.

22. A total-phase extraction system was placed in operation at the McFarland Property in March 1997 to recover gasoline products and vapors.

23. In June 1997, three leaking USTs were removed and replaced with new tanks. Approximately 300 cubic yards of contaminated soil were also excavated at that time. Sewer lines in the area were vented for a time to disperse vapors, and gas venting systems were installed.

24. The McFarland Site was transferred to the Division of Publically Funded Site Remediation (DPFSR) in January 1999. DPFSR is continuing to evaluate the site.

25. On October 23, 1996 and June 9, 1997, the Bureau of Underground Storage Tanks (BUST), Division of Responsible Party Site Remediation (DRPSR), DEP, issued Spill Act directives to McFarland's Pitstop pursuant to N.J.S.A. 58:10-23.11f.a., directing them to perform the remedial investigation and remedial action, for the McFarland Site. Specifically, the directives required McFarland's Pitstop to take measures to protect potable well users in the area and to address the source of gasoline contamination.

26. The owners of the McFarland Property complied with the directives and undertook responsive activities under BUST oversight throughout 1997 and much of 1998. Most of the work completed by the McFarland Property owners was paid for with a loan from the New Jersey Economic Development Authority.

27. In August 1998, the McFarland Property owner submitted a proposal for additional response activities with a request for an additional loan of \$938,000, which request was denied.

28. In December 1998, McFarland informed plaintiff DEP that they were unable to comply with the Directive, thus requiring plaintiff DEP to transfer the site to the DPFSR in January 1999.

29. Although Plaintiff DEP and McFarland's Pitstop have initiated the remediation, for the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

30. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 29 above as though fully set forth in its entirety herein.

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

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

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

34. 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 McFarland Property.

35. 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.

36. Defendant ExxonMobil Corporation, Inc., is a discharger of hazardous substances at the McFarland Property, 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 McFarland Property. N.J.S.A. 58:10-23.11g.c.(1).

37. Defendant Stem Brothers, Inc., as the installer of USTs at the McFarland Property, also 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 McFarland Property. N.J.S.A. 58:10-23.11g.c.(1).

38. 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).

39. 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 McFarland 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 McFarland Property;
- c. 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 McFarland 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 McFarland 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

40. Plaintiffs repeat each allegation of Paragraphs 1 through 39 above as though fully set forth in its entirety herein.

41. Groundwater is a natural resource of the State held in trust by the State.

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

43. 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.

44. As long as the groundwater remains contaminated due to the Defendants' conduct, the public nuisance continues.

45. Until the groundwater 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 groundwater.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order 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 McFarland Property, with applicable interest;
- b. Enter declaratory judgment against 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 McFarland Property;
- c. Enter judgment against Defendants, compelling these 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 McFarland 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 McFarland 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

46. Plaintiffs repeat each allegation of Paragraphs 1 through 45 above as though fully set forth in its entirety herein.

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

48. Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the McFarland Property.

49. As long as the groundwater remains contaminated, Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order 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 McFarland Property, with applicable interest;
- b. Enter declaratory judgment against 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 McFarland Property;

- c. Enter judgment against Defendants, compelling these 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 McFarland 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 McFarland 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.

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

By: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: 4/11/05

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 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
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: 4/11/05

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, Deputy Attorney General

TELEPHONE NO.: 609-984-0214

COUNTY OF VENUE: Somerset County

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL

DOCKET NUMBER (When Available): L-1675-04

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

DOCUMENT TYPE: Complaint/Intervention

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: New Jersey Department of Environmental Protection and The Administrator of the New Jersey Spill Compensation Fund v. ExxonMobil Corporation, Inc. and Stem Brothers, Inc.

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.

RELATED CASES PENDING? YES NO

IF YES, LIST DOCKET NUMBERS: New Jersey Society for Environmental, Economic Development, et al v. Bradley M. Campbell, et al., A-6537-03 T3

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

THE INFORMATION PROVIDED ON THIS FORM SHALL BE REVERSED IF THE COURT

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 RELATIONSHIP:
RECURRENT RELATIONSHIP?

YES NO FAMILIAL BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE 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 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

CASE TYPES (Choose one and enter the number of case type in appropriate space on the reverse side.)

TRACK I - 150 Days' Discovery

151 NAME CHANGE
 175 FORFEITURE
 302 TENANCY
 399 REAL PROPERTY
 502 BOOK ACCOUNT
 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
 506 PIP COVERAGE
 510 UM OR UIM CLAIM
 511 ACTION ON NEGOTIABLE INSTRUMENT
 512 LEMON LAW
 599 CONTRACT/COMMERCIAL TRANSACTION
 801 SUMMARY ACTION
 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

TRACK II - 300 Days' Discovery

305 CONSTRUCTION
 509 EMPLOYMENT (OTHER THAN CEPA OR LAD)
 602 ASSAULT AND BATTERY
 603 AUTO NEGLIGENCE - PERSONAL INJURY
 605 PERSONAL INJURY
 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
 699 TORT - OTHER

TRACK III - 450 Days' Discovery

005 CIVIL RIGHTS
 301 CONDEMNATION
 604 MEDICAL MALPRACTICE
 606 PRODUCT LIABILITY
 607 PROFESSIONAL MALPRACTICE
 608 TOXIC TORT
 609 DEFAMATION
 616 WHISTLE BLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
 617 INVERSE CONDEMNATION
 618 LAW AGAINST DISCRIMINATION (LAD) CASES

TRACK IV - Active Case Management by Individual Judge/450 Days' Discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
 303 MT. LAUREL
 508 COMPLEX COMMERCIAL
 613 REPETITIVE STRESS SYNDROME
 701 ACTIONS IN LIEU OF PREROGATIVE WRIT

Mass Tort (Track IV)

240 REDUX/PHEN-FEN (formerly "DIET DRUG")	264 PPA
246 REZULIN	601 ASBESTOS
247 PROPULSID	619 VIOXX
248 CIBA GEIGY	

999 OTHER (Briefly describe nature of action) _____

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

<input type="checkbox"/> Verbal Threshold	<input type="checkbox"/> Putative Class Action	<input type="checkbox"/> Title S9
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