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REC'D & FILED
SUPERIOR COURT
OF NEW JERSEY

AUG 19 2004

PASSAIC COUNTY

By: Carol Lynn DeMarco
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - PASSAIC COUNTY
DOCKET NO. PAS-L-3553-04

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	<u>Civil Action</u>
ADMINISTRATOR, NEW JERSEY	:	
SPILL COMPENSATION FUND,	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DOUGLAS REALTY, INC.;	:	
MADISON SPROCKET & GEAR, INC.;	:	
EMIL RIZZO; and	:	
FRED RIZZO,	:	
	:	
Defendants.	:	

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. 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 and 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 discharges of hazardous substances at the Madison Sprocket and Gear site located in Hawthorne Borough, Passaic County, New Jersey, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharges of hazardous substances at the Madison Sprocket and Gear 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 ("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 Douglas Realty, Inc. is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 275 Goffle Road, Hawthorne, New Jersey 07506.

6. Defendant Madison Sprocket and Gear, Inc. ("Madison Sprocket") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 275 Goffle Road, Hawthorne, New Jersey 07506.

7. Defendant Emil Rizzo is an individual whose dwelling or usual place of abode is 5 Lamring Drive, Fair Lawn, New Jersey 07410.

8. Defendant Fred Rizzo is an individual whose dwelling or usual place of abode is 1006 Clark Road, Franklin Lakes, New Jersey 07417.

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

AFFECTED NATURAL RESOURCES

Groundwater

10. 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.

11. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

12. 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.

13. 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.

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

Surface Water

15. A supply of approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

16. Surface water in New Jersey is also used for other commercial and industrial uses, such as cooling water and electrical generation, boating, fishing, swimming, and transportation of goods and services.

17. The tourist and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

GENERAL ALLEGATIONS

18. The Madison Sprocket and Gear facility consists of approximately 0.6 acres of real property located at 275 Goffle Road, Hawthorne Borough, Passaic County, this property being also known and designated as Block 48, Lot 6.01, on the Tax Map of Hawthorne Borough ("the Madison Sprocket 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. 013695.

19. Goffle Brook, a tributary of the Passaic River, passes approximately 45 feet from the Madison Sprocket Property boundary.

20. From 1964 through 1988, defendant Douglas Realty owned the Madison Sprocket Property.

21. Defendants Emil Rizzo and Frank Rizzo have owned the Madison Sprocket Property since 1988.

22. Defendant Madison Sprocket has operated a metal shop at the Madison Sprocket Property since 1946, the operation of which involves the storage and handling 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.

23. In 1988, defendant Madison Sprocket commenced a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a and N.J.A.C. 7:26E, during which defendant Madison Sprocket investigated the nature and extent of the contamination at the Site.

24. Between August 1988 and December 1990, defendant Madison Sprocket removed three, 18 to 20-year-old steel underground storage tanks and one fiberglass underground storage tank from the Madison Sprocket Property.

25. Sampling results from the remedial investigation revealed the presence of elevated concentrations of various hazardous substances in the soils, surface water and the groundwater at and underlying the Site, including Goffle Brook, which substances included benzene, toluene, ethylbenzene, xylenes and methyl tertiary butyl ether.

26. In December 2000, Madison Sprocket signed an Administrative Consent Order with plaintiff DEP for the remediation of the Site, which remediation primarily provides for the

investigation and cleanup of hazardous substances discharged at the Madison Sprocket Property.

27. Although defendant Madison Sprocket has undertaken the cleanup of hazardous substances from the soils, surface water and groundwater at and underlying the Site, the contamination continues.

FIRST COUNT

Spill Act

28. Plaintiffs repeat each allegation of Paragraphs 1 through 27 above as though fully set forth in its entirety herein.

29. Plaintiffs 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 by the discharges of hazardous substances at the Madison Sprocket Property.

30. 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.

31. Defendant Madison Sprocket, as the discharger of hazardous substances at the Madison Sprocket 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 by the discharges of hazardous substances at the Madison Sprocket Property. N.J.S.A. 58:10-23.11g.c.(1).

32. Defendants, Douglas Realty, Emil Rizzo and Fred Rizzo, as owners of the Madison Sprocket Property at the time hazardous substances were discharged there, 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 by the discharges of hazardous substances at the Madison Sprocket Property. N.J.S.A. 58:10-23.11g.c.(1).

33. 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).

34. 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 by the discharges of hazardous substances at the Madison Sprocket 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 by the discharges of hazardous substances at the Madison Sprocket 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 discharges of hazardous substances at the Madison Sprocket Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharges of hazardous substances at the Madison Sprocket 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

35. Plaintiffs repeat each allegation of Paragraphs 1 through 34 above as though fully set forth in its entirety herein.

36. Groundwater and surface water are natural resources of the State held in trust by the State.

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

38. The contamination of groundwater and surface water 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 these natural resources.

39. As long as the groundwater and surface water remain contaminated due to the Defendants' conduct, the public nuisance continues.

40. Until the groundwater and surface water are restored to their 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 and surface 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 by the discharges of hazardous substances at the Madison Sprocket 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 by

the discharges of hazardous substances at the Madison Sprocket Property;

- 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 discharges of hazardous substances at the Madison Sprocket Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharges of hazardous substances at the Madison Sprocket 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

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

42. Groundwater and surface water are natural resources of the State held in trust by the State for the benefit of the public.

43. The Defendants are liable for trespass, and continued trespass, since hazardous substances were first discharged at the Madison Sprocket Property.

44. As long as groundwater and surface water remain 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 by the discharges of hazardous substances at the Madison Sprocket 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 by the discharges of hazardous substances at the Madison Sprocket Property;
- 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 discharges of hazardous substances at the Madison Sprocket Property, by performing, under plaintiff DEP's

oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Madison Sprocket 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: 
Carol Lynn DeMarco
Deputy Attorney General

Dated: 8/18/04

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Carol Lynn DeMarco, 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-6537-03 T3. 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 or new issue, including claims to recover other cleanup and removal costs, later become 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: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 8/18/04