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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO.

L-3268-06

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

Plaintiffs,

v.

NESTLE USA, INC.,

Defendant.

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 defendant ("the Defendant"), 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 Nestle USA, Inc. site located in Monmouth 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 and to compel the Defendant 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 as a result of the discharges of hazardous substances at the Nestle USA, Inc. 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, 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 ("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 Nestle USA, Inc. ("Nestle") is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 800 North Brand Boulevard, Glendale California.

AFFECTED NATURAL RESOURCE

Groundwater

6. 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.

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

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

9. Groundwater 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. Groundwater 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 groundwater contamination with hazardous substances.

GENERAL ALLEGATIONS

12. The Nestle USA, Inc. site consists of approximately 40 acres of real property located at 61 Jerseyville Avenue, Freehold, Monmouth County, which property is also known and designated as Block 43, Lots 28, 29, 31 and 33, on the Tax Map of the Township of Freehold, and Block 93, Lots 2, 3, 4, 5 and 1.02 and Block 87, Lot 1.01 on the Tax Map of Freehold Borough ("the Nestle 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. 007030.

13. In approximately 1948, Nestle Company, Inc. purchased the Nestle Property.

14. In 1990, Nestle Foods Corporation, formerly known as Nestle Company, Inc., transferred the Nestle Property to Nestle/Hill Bros. Coffee Company.

15. Nestle/Hills Bros. Coffee Company is the predecessor to Nestle Beverage Company. In 1991, Nestle Beverage Company changed its name to Nestle USA - Beverage Division, Inc. In 2003, Nestle USA Beverage Division, Inc. merged with Nestle USA, Inc.

16. From approximately 1948 through the present, defendant Nestle USA, Inc. and/or its predecessor ("Nestle"), owned the Nestle 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.

17. From approximately 1948 through the present, defendant Nestle manufactured instant coffee and tea at the Nestle Property. The extraction of caffeine during the decaffeination process involved the use 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.

18. In the early 1980s an investigation of the Site was initiated in response to the detection of low levels of volatile organic compounds ("VOC") in the groundwater samples collected from various monitoring wells that had been installed on-site.

19. Sampling results revealed the presence of various hazardous substances, including methylene chloride, TCE and 1,2-

dichloroethylene at concentrations exceeding plaintiff DEP's cleanup criteria in the groundwater and soils at the Site.

20. In June 1988, plaintiff DEP conducted a remedial investigation of the Nestle Property pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the nature and extent of the contamination at the Nestle Property was investigated.

21. In June 1989, defendant Nestle installed a soil vapor extraction system at the Nestle Property that was used until May 1995 in order to address the soil contamination.

22. In or around 1991, defendant Nestle installed a pump and treat system to address the groundwater contamination at the Nestle Property.

23. On April 26, 1994, DEP entered into a Memorandum of Agreement with Nestle to conduct the remedial activities at the Site.

24. Although defendant Nestle has initiated the remediation of the Site, the ground water remains contaminated.

FIRST COUNT

Spill Act

25. Plaintiffs DEP and Administrator repeat each allegation of Paragraphs 1 through 24 above as though fully set forth in its entirety herein.

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

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

28. Plaintiff Administrator may certify for payment, valid claims made against the Spill Fund concerning the Site, and, further, may approve of the appropriations for the Site.

29. 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 Nestle 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 Nestle is the discharger of hazardous substances at the Nestle Property, and is liable, without regard to fault, 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 Nestle Property. N.J.S.A. 58:10-23.11g.c.(1).

32. Defendant Nestle, as the owner of the Nestle Property at the time hazardous substances were discharged there, is also a

person in any way responsible for the discharged hazardous substances, and is liable, without regard to fault, 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 Nestle 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 Defendant to reimburse the Plaintiffs, jointly and severally, without regard to fault, 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 Nestle Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, jointly and severally, without regard to fault, 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 Nestle Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, an further cleanup of hazardous substances discharged at the Nestle Property;
- d. Enter judgment against the Defendant, without regard to fault, 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 Nestle 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 Nestle Property;

- e. Award the Plaintiffs their costs and fees in this action; and
- f. 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 is a natural resource of the State held in trust by the State for the benefit of the public.

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

38. 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.

39. As long as the groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

40. Until the groundwater 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 groundwater.

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 Nestle 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 Nestle Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, an further cleanup of hazardous substances discharged at the Nestle Property;

- d. Enter judgment against the Defendant, without regard to fault, 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 Nestle 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 Nestle Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

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

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

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

44. As long as the groundwater 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 Nestle 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 Nestle Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, an further cleanup of hazardous substances discharged at the Nestle Property;

- d. Enter judgment against the Defendant, without regard to fault, 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 Nestle 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 Nestle Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: *Jennifer Killough Herrera*
Jennifer Killough Herrera
Deputy Attorney General

Dated: 7/19/06

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Jennifer Killough Herrera, 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 plaintiffs at this time, nor is 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).

ZULIMA V. FARBER
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Attorney for Plaintiffs

By: 

Jennifer Killough Herrera
Deputy Attorney General

Dated: 7/19/06