

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

RECEIVED & FILED
SUPERIOR COURT OF NEW JERSEY
12/19/05
PASSAIC COUNTY

By: Brendan Ruane
Deputy Attorney General
(609) 984-5016

Gordon C. Rhea, Esq.
Special Counsel to the Attorney General
Richardson, Patrick, Westbrook & Brickman, L.L.C.
1037 Chuck Dawley Boulevard, Building A
Mt. Pleasant, SC 29464
(843) 727-6501

John K. Dema, Esq.
Special Counsel to the Attorney General
Law Offices of John K. Dema, P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-5008
(340) 773-6142

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

L-1685-05

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

Plaintiffs,

v.

SAINT-GOBAIN PERFORMANCE
PLASTICS CORPORATION;
CHEMPLAST, INC.;
JOSEPH L. MUSCARELLE, INC.;
"ABC CROPORATIONS" 1-10 (Names
Fictitious); and
"JOHN DOES" 1-5 (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 ("the Defendants"), say:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of discharges of hazardous substances at the Chemplast, Inc. site located in Wayne Township, Passaic 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 Chemplast, Inc. 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 resources that has been, or may be, injured as a result of the discharge of hazardous substances at the Chemplast, 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 and protect 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 the 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 Chemplast, Inc. ("Chemplast") is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 150 Dey Road, Wayne, New Jersey 07470.

6. In 1982, defendant Chemplast merged with Saint-Gobain Performance Plastics Corporation ("SG Plastics (Delaware)"), a corporation organized and existing under the laws of Delaware with its principal place of business located at 150 Dey Road, Wayne, New Jersey 07470. SG Plastics (Delaware), formerly known as Norton Performance Plastics Corporation ("Norton Plastics"), was the surviving entity of the merger.

7. On February 29, 2000, SG Plastics (Delaware) merged into Defendant Saint-Gobain Performance Plastics Corporation ("SG Plastics"), a corporation organized and existing under the laws of the State of California with its principal place of business located at I-295 and Harmony Road, Mickelton, New Jersey 08056.

8. Defendant SG Plastics is the successor-in-interest to defendant Chemplast and its predecessors, SG Plastics (Delaware), and Norton Plastics.

9. Defendant Joseph L. Muscarelle, Inc. ("Muscarelle") is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 99 West Essex Street, Maywood, NJ 07607.

10. 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 whom are corporate successors to, or are otherwise related to, defendants Chemplast, SG Plastics (and its predecessors), and/or Muscarelle.

11. Defendants "John Does" 1-5, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, principals, and/or shareholders of defendants Chemplast, SG Plastics (and its predecessors), Muscarelle, and/or one or more of the ABC Corporations Defendants.

AFFECTED NATURAL RESOURCE

Ground Water

12. 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.

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

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

15. 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.

16. Ground water is also used for commercial, industrial, and agricultural purposes.

17. There are more than 6,000 contaminated sites in New Jersey that have ground water confirmed to be contaminated with hazardous substances.

GENERAL ALLEGATIONS

18. The Chemplast, Inc. site consists of approximately 20.5 acres of real property located at 150 Dey Road, Wayne Township, Passaic County, New Jersey, this property being known and designated as 604, Lot 17 (formerly Block 178, Lot 1), on the Tax Map of Wayne Township, ("the Chemplast 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. 004469.

19. In 1962 or 1963, defendant Muscarelle purchased the Chemplast Property, which it conveyed in 1976 to defendant Chemplast, which, as of the filing of this Complaint, still owns.

20. During the time that defendants Muscarelle and Chemplast owned the Chemplast Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, were "discharged" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), which substances include trichloroethene, dichloroethane, petroleum hydrocarbons, polyaromatic hydrocarbons, and metals.

21. From 1963 to present, defendants Chemplast, SG Plastics, and their predecessors conducted precision plastic manufacturing at the Chemplast Property, which activities involved the generation, storage, handling, and disposal 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, which substances included trichloroethene, dichloroethane, petroleum hydrocarbons, polyaromatic hydrocarbons, and metals.

22. On May 24, 1990, defendant Chemplast entered into an Administrative Consent Order with plaintiff DEP requiring, in part, defendant Chemplast to investigate and remediate the contamination at the Site pursuant to the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14, in order to facilitate defendant Chemplast's merger with the Saint-Gobain entities.

23. On June 22, 1990, defendant Chemplast submitted its Phase I Sample Plan for Environmental Evaluation of the Site to plaintiff DEP, in which defendant Chemplast described its plan to investigate the nature and extent of the contamination at the Site for the purpose of formulating a remediation plan.

24. Sampling results from defendant Chemplast's investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, soils, and other receptors at the Site, which substances included trichloroethane, tetrachloroethene, methylene chloride, and petroleum hydrocarbons.

25. The initial phases of the remediation defendant Chemplast undertook involved the excavation and removal of contaminated soils from the Chemplast Property, the installation of numerous monitoring wells for sampling ground water and the delineation of the contaminant plumes.

26. In 1991, defendant Chemplast submitted the Phase II and Phase III Sampling and Cleanup Reports to plaintiff DEP, which, in relevant part, provided for further soils and groundwater sampling in additional areas of concern plaintiff DEP identified.

27. In September 1995, defendant Chemplast submitted the Supplemental Remedial Investigation and Remedial Alternative Analysis report to plaintiff DEP, at which time defendant

Chemplast noted that it had not sufficiently delineated the nature and extent of the groundwater contamination, and, thus, could not begin remediating the contaminated ground water.

28. In July 2000, defendant Chemplast submitted the Remedial Action Workplan to plaintiff DEP, in which defendant Chemplast described the selected remedial alternatives for the Site, which included continued monitoring of the ground water, further excavating contaminated soils, and implementing air sparging/soil vapor extraction to remove contaminant source materials from the soils.

29. In April 2001, plaintiff DEP approved a Classification Exception Area ("CEA"), which excludes designated ground water from use as a potable water source, and a Well Restriction Area ("WRA"), which excludes the installation and use of potable wells, for the Site.

30. The CEA and WRA, which include the Chemplast Property and properties in the immediate vicinity, extend to a vertical depth of 25 feet, and are expected to continue until at least 2019. The designation of the CEA excludes the designated ground water from use as Class II-A potable water due to the contamination.

31. On June 10, 2002, defendant Chemplast activated an air sparge/soil vapor extraction remediation system consisting of 12 "IAS" wells and 10 vapor monitoring points as part of the remediation plaintiff DEP approved for the Site, which system defendants Chemplast and/or Saint-Gobain have continued to operate to the present.

32. As of the date of the filing of this Complaint, the expected remediation completion date has yet to be determined.

33. Although defendants Chemplast and Saint-Gobain have initiated the remediation of the Site, the groundwater and soils contamination continues.

FIRST COUNT

Spill Act

34. Plaintiffs repeat each allegation of Paragraphs 1 through 33 above as though fully set forth in its entirety herein.

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

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

37. Plaintiff Administrator may 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.

38. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost use, existence value damages, and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Chemplast Property.

39. 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.

40. Defendants Chemplast and SG Plastics, as dischargers, or successors-in-interest to dischargers, of hazardous substances at the Chemplast Property, are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use, existence value damages, 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 discharge of hazardous substances at the Chemplast Property. N.J.S.A. 58:10-23.11g.c.(1).

41. Defendants Chemplast and Muscarelle, as the owners of the Chemplast Property at the time hazardous substances were discharged there, also 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, existence value damages, 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 discharge of hazardous substances at the Chemplast Property. N.J.S.A. 58:10-23.11g.c.(1).

42. 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); for 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).

43. 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, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the

discharge of hazardous substances at the Chemplast 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, existence value damages, and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Chemplast 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 Chemplast 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 by the discharge of hazardous substances at the Chemplast 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

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 resources of the State held in trust by the State.

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

47. The contamination of ground 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.

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

49. 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 lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Chemplast Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Chemplast 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 Chemplast 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 by the discharge of hazardous substances at the Chemplast 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

50. Plaintiffs repeat each allegation of Paragraphs 1 through 49 above as though fully set forth in its entirety herein.

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

52. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Site by defendants Chemplast, SG Plastics and/or their predecessors.

53. As long as 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 lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs have incurred for any natural

resource of this State injured by the discharge of hazardous substances at the Chemplast Property, with applicable interest;

b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost use, existence value damages, and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Chemplast 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 discharge of hazardous substances at the 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 by the discharge of hazardous substances at the Chemplast 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.

RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, L.L.C.
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.
Attorneys for Plaintiffs

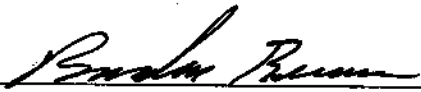
By: Gordon C. Rhea
Gordon C. Rhea, Esq.
Special Counsel to the Attorney General

By: John K. Dema
John K. Dema, Esq.
Special Counsel to the Attorney General

Dated:

Dated:

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

By: 
Brendan Ruane
Deputy Attorney General

Dated: 3/27/05

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema and Scott E. Kauff, Special Counsel to the Attorney General, are 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-6537-03T3. 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 or new issue, including claims to recover other cleanup and

removal costs, 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).

RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, L.L.C.
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.
Attorneys for Plaintiffs

By: Gordon C. Rhea
Gordon C. Rhea, Esq.
Special Counsel to the Attorney General

By: John K. Dema
John K. Dema, Esq.
Special Counsel to the Attorney General

Dated:

Dated:

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

By: Brendan Ruane
Brendan Ruane
Deputy Attorney General

Dated: 3/27/05

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: Brendan Ruane,
Deputy Attorney General

TELEPHONE NO.:
(609) 984-5016

COUNTY OF VENUE: Passaic

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL

DOCKET NUMBER (When Available): N/A

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 & Administrator, New Jersey
Spill Compensation Fund (Plaintiffs)

CAPTION: New Jersey Department of Environmental Protection
& the Administrator of the New Jersey Spill Compensation
Fund v. Saint-Gobain Performance Plastics Corp., et al.

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: A-6537-03T3

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 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)
A CURRENT, PAST OR RELATIONSHIP: Regulatory

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.

RECEIVED & FILED
SUPERIOR COURT OF NEW JERSEY
12/19/23
PASSAIC COUNTY

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:

Brendan Ruane