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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SUSSEX COUNTY
DOCKET NO. **SSX-L-284-04**

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

Plaintiffs,

v.

BOB BALDWIN'S TRANSPORTATION,
INC.;
CHEVRON TEXACO PETROLEUM
COMPANY;
PEET BLOKKER, INC.; and
ROBERT E. BALDWIN,

Defendants.

Civil Action

COMPLAINT

RECEIVED & FILED
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Sussex County Law Division

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 Bob Baldwin's Transportation,

Inc., Chevron Texaco Petroleum Company, Peet Blokker, Inc. and Robert E. Baldwin (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 they have incurred, and will incur, as a result of the discharges and/or unsatisfactory storage or containment of hazardous substances at two sites in Vernon Township, Sussex County, that have contributed to the Omega Drive well contamination. Plaintiffs also seek reimbursement for 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 discharges of hazardous substances at the two Vernon Township sites, 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 two Vernon Township sites.

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 Bob Baldwin's Transportation, Inc. ("Baldwin's Transportation") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 5 Omega Drive, Vernon Township, New Jersey.

6. Defendant Chevron Texaco Petroleum Company ("Chevron Texaco") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 2613 Camino Ramon, San Ramon, CA 94583.

7. Defendant Peet Blokker, Inc. ("Peet Blokker") is a corporation organized under the laws of the State of New Jersey,

with a principal place of business located at 1 Valley Street, Hawthorne, NJ 07506.

8. Defendant Robert E. Baldwin is an individual whose dwelling or usual place of abode is 5 Prices Switch Road, Vernon, NJ 07462.

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

AFFECTED NATURAL RESOURCE

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.

GENERAL ALLEGATIONS

15. The Robert Baldwin site consists of approximately 17 acres of real property located off of Omega and Theta Drives, Vernon Township, Sussex County, New Jersey, this property being also known and designated as Block 141, Lots 12, 12.06 and 12.07, and Block 141.01, Lot 1 and Block 141.02, Lot 1, on the Tax Map of Vernon Township ("the Baldwin Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Baldwin Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 000510.

16. From September 1959 through the present, defendant Robert Baldwin has owned the Baldwin Property.

17. Beginning in 1969, defendant Baldwin's Transportation operated a fuel oil distribution business and retail gasoline service station at the Baldwin Property, the operation of which involved the 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.

18. From August 3 through August 8, 1989, defendant Robert Baldwin removed and replaced five underground storage tanks from the Baldwin Property, which removal activities plaintiff DEP inspected on August 3, 1989.

19. On various occasions between February 1990 and April 1997, plaintiff DEP inspected the Baldwin Property, and observed several areas of concern, including underground tank systems, floor drains in the maintenance garage, uncontrolled discharges of potentially contaminated runoff to a storm drain system, and visibly stained soils resulting from spills of petroleum products.

20. Sampling results from plaintiff DEP's investigations revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and groundwater at and underlying the Baldwin Site, including 1,1-dichloroethene, 1,2 dichloroethene, benzene, methyl tertiary butyl ether ("MTBE"), and xylene.

21. On November 5, 2001, defendant Robert Baldwin entered into an Administrative Consent Order with plaintiff DEP to address the is currently addressing the contamination at the Baldwin Site.

22. Although defendant Robert Baldwin is addressing the contamination at the Baldwin Site under plaintiff DEP's oversight, the groundwater contamination continues.

23. The Peet Blokker sites consists of approximately .60 acres of real property located on the corner of Route 94 and Church

Street, Vernon Township, Sussex County, New Jersey, this property being also known and designated as Block 141, Lot 8, on the Tax Map of Vernon Township ("the Blokker Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Blokker Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 032992.

24. From October 1960 through the present, defendant Peet Blokker has owned the Blokker Property.

25. Between September 9, 1960 and October 14, 1980, defendant Chevron Texaco, or its predecessor, leased the Blokker Property, and from 1960 until approximately 1966, defendant Chevron Texaco's predecessor operated a gasoline service station there, the operation of which involved the 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.

26. On various occasions from the late 1980s through March 1998, plaintiff DEP inspected the Blokker Property and observed several areas of concern, including a 500 gallon underground fuel oil tank, a floor drain system in the maintenance building, a septic system, several storage areas, and staining near a drum storage area inside the maintenance building.

27. Sampling results from plaintiff DEP's investigations revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and groundwater at

and underlying the Blokker Site, including benzene, ethylbenzene, toluene and xylene.

28. On October 8, 1998, defendant Peet Blokker entered into a Memorandum of Agreement with plaintiff DEP to address the contamination at the Blokker Site, which, pursuant to N.J.A.C. 7:26C-3, defendant Peet Blokker can unilaterally terminate at any time.

29. Although defendant Peet Blokker is addressing the contamination at the Blokker Site under plaintiff DEP's oversight, the groundwater contamination continues.

30. The Omega Drive wells, which are operated by a private purveyor, are located off of Omega and Theta Drives in Vernon Township, Sussex County, on that portion of the Baldwin Property designated as Block 141.02, Lot 1, on the Tax Map of Vernon Township, which plaintiff DEP has designated as Site Remediation Program Interest No. 55825.

31. The Omega Drive wells also are located approximately 500 feet north-northwest of the Blokker Property.

32. On various occasions between November 1987 and August 1989, plaintiff DEP inspected the two Omega Drive public water supply wells.

33. Sampling results from plaintiff DEP's investigations revealed the presence of various hazardous substances in the groundwater being extracted from the Omega Drive wells exceeding

plaintiff DEP's cleanup criteria, including 1,2-dichloroethane, MTBE, benzene, toluene, xylene and ethylbenzene.

34. Plaintiff DEP has determined that the discharges of hazardous substances at the Baldwin Property and Blokker Property are sources of the Omega Drive contamination because of the proximity of both properties to the Omega Drive wells, the areas of concern at each property, and the similarity of the contaminants found at each property and in the Omega Drive wells.

FIRST COUNT

Spill Act

35. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 34 above as though fully set forth in its entirety herein.

36. Plaintiff DEP has incurred, and will continue to incur, costs for the Omega Drive well contamination, and may incur costs for the Baldwin Site and the Blokker Site.

37. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Baldwin Site and the Blokker Site, including for the Omega Drive well contamination, and, further, has approved, and will continue to approve, other appropriations for the Omega Drive well contamination and, further, may approve other appropriations for the Baldwin Site and the Blokker Site.

38. The Plaintiffs have also incurred, and will continue to incur, 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 Baldwin and Blokker Sites.

39. The costs and damages the Plaintiffs have incurred for the Omega Drive well contamination, and the costs the Plaintiffs may incur for the Baldwin Site and Blokker Site, are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

40. Defendant Baldwin's Transportation and defendant Chevron Texaco, or its predecessor, as dischargers of hazardous substances, 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 Baldwin Property and the Blokker Property, including the Omega Drive well contamination. N.J.S.A. 58:10-23.11g.c.(1).

41. Defendant Robert Baldwin, as owner of the Baldwin Property, and Defendant Peet Blokker, as owner of the Blokker Property, at the time hazardous substances were discharged at 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 Baldwin Property and the Blokker Property, including the Omega Drive well contamination. 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); 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 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination, 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination;
- c. Enter judgment against defendant Peet Blokker, compelling defendant Peet Blokker to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Blokker Property;
- d. 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 Baldwin Property and Blokker 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination;

- 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

44. Plaintiffs repeat each allegation of Paragraphs 1 through 43 above as though fully set forth in its entirety herein.

45. Groundwater is a natural resource 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 groundwater at the Baldwin Site and the Blokker Site, including the Omega Drive well contamination, 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.

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

49. 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 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination, 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 Baldwin

Property and Blokker Property, including the Omega Drive well contamination;

- c. Enter judgment against defendant Peet Blokker, compelling defendant Peet Blokker to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Blokker Property;
- d. 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 Baldwin Property and Blokker 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination;
- 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

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

51. Groundwater 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 hazardous substances were discharged at the Baldwin Property and Blokker Property.

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

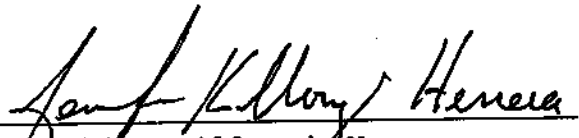
- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Baldwin Property and Blókker Property, including the Omega Drive well contamination, 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination;

- c. Enter judgment against defendant Peet Blokker, compelling defendant Peet Blokker to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Blokker Property;
 - d. 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 Baldwin Property and Blokker 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 Baldwin Property and Blokker Property, including the Omega Drive well contamination;
 - e. Award the Plaintiffs their costs and fees in this action;
- and

f. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By: 
Jennifer Killough Herrera
Deputy Attorney General

Dated: 5/20/04

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 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. MER-L-343-04. 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: *Jennifer Killough Herrera*
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Dated: 5/20/04