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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO. L-286-06

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

Plaintiffs,

v.

PARKER-HANNIFIN CORPORATION;
"ABC CORPORATIONS" 1-10 (Names
Fictitious); and "JOHN DOES"
1-10 (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 (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 Parker Seals site in North Brunswick, Middlesex 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 Parker Seals 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 Parker Seals 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 damage 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 ("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 Parker-Hannifin Corporation is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 6035 Parkland Boulevard, Cleveland, Ohio. Parker Seals Gasket is a division of Parker-Hannifin Corporation.

6. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities, the identities of which cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, or are otherwise related to, defendant Parker-Hannifin Corporation and/or their predecessors.

7. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained

as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, defendants Parker-Hannifin Corporation, one or more of the ABC Corporation Defendants and/or their predecessors.

AFFECTED NATURAL RESOURCE

Ground Water

8. 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.

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

10. Ground water 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.

11. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

12. Ground water 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.

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

GENERAL ALLEGATIONS

14. The Parker Seals Property consists of approximately 10.85 acres, of real property located at 601 Nassau Street, North Brunswick, Middlesex County, New Jersey, this property being also known and designated as Block 194, Lots 30.01 and 31, on the Tax Map of the Township of North Brunswick ("the Parker Seals 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. 018291.

15. By way of deed dated December 31, 1975, Johns-Manville Products Corporation, a corporation of the State of Delaware, transferred the Property to the Condren Corporation, a New Jersey Corporation.

16. In April of 1979, Condren Corporation merged with Parker-Hannifin Corporation, an Ohio corporation. Parker-Hannifin Corporation was the surviving corporation.

17. During the time defendant Parker-Hannifin Corporation, through its Parker Seals Gasket Division (collectively, "Parker-Hannifin") used the site to manufacture a variety of different types of metal gaskets, including a solid metal ring gasket, a

metal jacket-enclosed polymer or asbestos-filled gasket, and a spiral wound metal-filled gasket, "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 trichloroethene ("TCE"), cis-1,2,-dichloroethene ("cis-DCE"), 1,1,-dichloroethene ("DCE"), and tetrachloroethylene("PCE").

18. From approximately 1979 until March of 1987, when operations ceased at the Parker Seals Property, defendant Parker-Hannifin owned and operated a facility at the Parker Seals Property that was used to manufacture solid metal ring gaskets, metal jacket-enclosed polymer or asbestos-filled gaskets, and spiral wound metal-filled gaskets, the operation of which involved the generation, 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., which substances included TCE, cis-DCE, DCE, and PCE.

19. Defendant Parker-Hannifin ceased manufacturing operations at the Parker Seals Property on or about March 27, 1987.

20. In 1987, defendant Parker-Hannifin placed the Parker Seals Property up for sale, which triggered the requirement to comply with the Environmental Cleanup Responsibility Act ("ECRA").

21. In July of 1987, defendant Parker-Hannifin submitted a Sampling and Analysis Plan ("SAP") as part of the Site Evaluation

Submission ("SES") form, required by ECRA. Results from the SAP identified at least twelve areas of concern at the Site.

22. In November of 1989, thirteen monitoring wells were sampled at the Site. The analytical results revealed excessive concentrations of various hazardous substances, including PCE, in wells MW-2, MW-2D, MW-3, MW-3D, MW-4, MW-5 and MW-8.

23. Sampling in November 1989, also revealed that excessive concentrations of volatile organics were present in various intermediate wells, specifically, PCE, trans-1,2-dichloroethylene, and TCE. PCE was also detected in excessive concentrations in the deep monitoring wells at the Site.

24. A February 1990 Soil and Ground Water Cleanup Plan, submitted on behalf of defendant Parker-Hannifin, revealed that excessive concentrations of PCE were detected in various wells on the Parker Seals Property. The Plan also revealed that at least one well on the Parker Seals Property was impacted by volatile organics.

25. Records prepared on behalf of defendant Parker-Hannifin revealed that PCE was used on the Parker Seals Property as part of the degreasing operations. It was discovered that degreasing sludge was routinely disposed of directly into the ground at the Parker Seals Property.

26. During operations at the Parker Seals Property, metal turnings were stored directly on the ground surface in the metal

cutting storage area, also known as Area A. Oil from these cuttings leached directly into the ground. Sampling revealed PHC contamination in surficial soil, as well as cadmium, copper, nickel, chromium and B/N levels over action levels.

27. In January of 1991, nineteen monitoring wells were sampled at the Parker Seals Property. Sampling indicated that excessive concentrations of PCE were present in wells MW-2, MW-2D, MW-2DB, MW-3, MW-3D, MW-3DB, MW-4, MW-5, MW-6, MW-7D, MW-7DB, MW-8, and MW-8D.

28. In July of 1992, defendant Parker-Hannifin submitted a Remedial Investigation Report, which revealed the presence of elevated concentration of various hazardous substances in the groundwater underlying the Parker Seals Property.

29. By way of deed dated May 22, 2000, Parker-Hannifin Corporation, an Ohio successor by Merger to the Condren Corporation, transferred the Property to 601 Nassau Street Associates, L.L.C., a limited liability company of New Jersey.

30. In February of 2004, twenty-one monitoring wells were sampled at the Site. Fourteen of these wells exhibited volatile organic compounds above the ground water quality standards. Excessive concentrations of certain hazardous substances were still present at the Site, including PCE, TCE, cis-DCE, and DCE.

31. Although the defendant Parker-Hannifin initiated, and 601 Nassau Street Associates, L.L.C., has continued, the remedial action for the Site, the groundwater remains contaminated.

FIRST COUNT

Spill Act

32. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 31 above as though fully set forth in its entirety herein.

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

34. The Plaintiffs 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 Parker Seals 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 Parker-Hannifin is the discharger or successor to the discharger of hazardous substances at the Parker Seals Property, and is liable, 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, 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 Parker Seals Property. N.J.S.A. 58:10-23.11g.c.(1).

37. 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).

38. 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 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 Parker Seals 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 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 Parker Seals Property;
 - c. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Parker Seals 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 discharge of hazardous substances at the Parker Seals 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 Parker Seals 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

39. Plaintiffs repeat each allegation of Paragraphs 1 through 38 above as though fully set forth in its entirety herein.

40. Ground water is a natural resource of the State held in trust by the State.

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

42. 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.

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

44. 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 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 Parker Seals 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 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 Parker Seals Property;
- c. Enter judgment against the Defendants, compelling the Defendants to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Parker Seals Property;
- d. Enter judgment against the Defendants, compelling the Defendants to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Parker Seals Property;

- e. 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 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 Parker Seals Property;
- f. Award the Plaintiffs their costs and fees in this action; and
- g. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

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

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

47. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Parker Seals Property.

48. As long as the 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 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 Parker Seals 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 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 Parker Seals Property;
- c. Enter judgment against the Defendants, compelling the Defendants to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Parker Seals Property;
- d. Enter judgment against the Defendants, compelling the Defendants to cease, under plaintiff DEP's oversight, the

- trespass by performing any further cleanup of hazardous substances discharged at the Parker Seals Property;
- e. 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 Parker Seals 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 Parker Seals Property;
 - f. Award the Plaintiffs their costs and fees in this action; and
 - g. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By: 
Kevin L. Uniglicht
Deputy Attorney General

Dated: 1/11/06


DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Kevin L. Uniglicht, 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 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: 
Kevin L. Uniglicht
Deputy Attorney General

Dated: 1/11/06