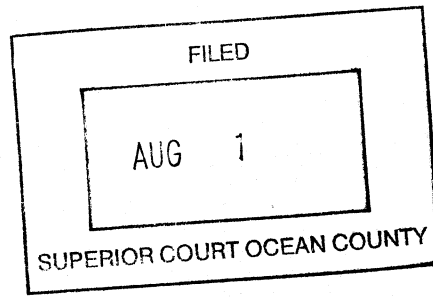


DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs



By: Jennifer L. Cordes
Deputy Attorney General
(609) 984-4987

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

QcnL 257602

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

Plaintiffs, :

v. :

ROBERT E. JOHNSON, :
Individually, and as a :
Partner trading as South :
Brunswick Asphalt; SOUTH :
BRUNSWICK ASPHALT, a Limited :
Partnership; THOMAS NICOL :
ASPHALT COMPANY, INC.; :
THOMAS NICOL COMPANY, INC., :

Defendants. :

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Acting Administrator, New Jersey Spill Compensation Fund ("Acting Administrator"), 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, say:

STATEMENT OF THE CASE

1. Plaintiffs DEP and Acting Administrator bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, to recover the cleanup and removal costs they have incurred, and will incur, as a result of the discharge and unsatisfactory storage or containment of hazardous substances at the Thomas Nicol site located in Manchester Township, Ocean County, New Jersey (the "Nicol site" or the "Site"). Plaintiffs DEP and Acting Administrator also seek reimbursement under the Spill Act for the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the 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. Plaintiff Acting 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 Acting 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.

4. Defendant Robert Eugene Johnson is an individual whose dwelling or usual place of abode is 884 Breezy Oaks Drive, Toms River, New Jersey. Defendant Johnson is also the general partner of Defendant South Brunswick Asphalt, L.P.

5. Defendant South Brunswick Asphalt, L.P. ("SBA") is a limited partnership organized under the laws of the State of New Jersey, with a principal place of business located at 252 Route 9, Bayville, New Jersey.

6. Defendant Thomas Nicol Asphalt Company, Inc. ("TNA"), formerly known as Earth Products, Inc., is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 622 Green Grove Road, Neptune, New Jersey.

7. Defendant Thomas Nicol Company, Inc. ("TNI") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 2065 State Highway 37, Manchester, New Jersey.

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

GENERAL ALLEGATIONS

9. The Nicol site comprises approximately 45 acres of real property located at 2065 State Highway 37, Manchester Township, Ocean County, New Jersey, this property being also known and designated as Block 44, Lot 15.01 on the Tax Map of Manchester Township, and all other areas where any hazardous substance discharged there has become located.

10. Defendant Johnson, as the general partner of Defendant SBA, is involved in the day to day operations of Defendant SBA, and at the time, had knowledge of the discharge of hazardous substances that took place at the Site.

11. Defendant SBA leased the Site from Defendant TNI from 1981 to the present, and, during that time, engaged in the manufacture of asphalt products.

12. Defendant TNA engaged in the manufacture of asphalt products at the Site from 1966 until 1981.

13. Defendant TNI has owned the Site since 1966.

14. In 1971, Plaintiff DEP inspected the Site and observed #4 fuel oil being applied to asphalt trucks prior to their being loaded, as well as an asphalt pile at the rear of the Site.

15. Plaintiff DEP also observed that spillage was evident in the storage tank areas, while roadways leading to the "batchers" were being sprayed with oil for dust suppression.

16. The practice of applying fuel oil to asphalt trucks prior to them being loaded and spraying the roadways with oil for dust suppression continued throughout the operation of an asphalt plant at the Site.

17. In February 1983, Plaintiff DEP inspected the Site and found 26 full or partially filled 55-gallon steel drums, containing waste oil, and a 1,000 gallon above ground storage tank containing #2 fuel oil.

18. This oil was used to wash down asphalt truck beds prior to loading, which dripped directly onto the ground.

19. In mid-1987, several residents of the Pine Lake Park residential community, which is located east-northeast of the Site, had their potable wells tested, the analysis of which revealed that they were contaminated with various hazardous substances, including carbon tetrachloride, trichloroethylene, 1,1,1 trichloroethane and 1,1 dichloroethylene.

20. Ground water in the area of the Site flows generally in the direction of east-northeast.

21. In September 1987, Plaintiff DEP inspected the Site and observed discharges of oils, tars and greases. Soil samples collected at the Site revealed the presence of various hazardous substances including styrene, toluene, xylene and 1,1,1 trichloroethane.

22. In response to the discovery of the contaminated wells in Pine Lake Park, Ocean County implemented a comprehensive well testing program, the results of which showed that 157 potable wells in Pine Lake Park contained hazardous substances, including 1,1,1 trichloroethane, 1,1 dichloroethylene, trichloroethylene, carbon tetrachloride, methylene chloride, and tetrachloroethylene.

23. In November 1987, Plaintiff DEP installed and sampled 26 monitoring wells in the Pine Lake Park area, the analysis of which revealed that the groundwater was contaminated with various hazardous substances, including 1,1,1 trichloroethane, trichloroethylene, and 1,1 dichloroethylene.

24. In March 1988, Plaintiff DEP inspected the Site and observed #2 fuel oil being discharged from an oil transfer station onto the ground, an unidentified lubricant being discharged onto the ground under a dryer, and an area of oil-saturated soil behind the garage.

25. In August 1988, Plaintiff DEP inspected the Site and noted that 1,1,1 trichloroethane was being stored and used in the laboratory.

26. On August 22, 1988, Plaintiff DEP issued a directive to Defendants TNI, TNA, SBA, Robert Johnson, individually, and others, pursuant to N.J.S.A. 58:10-23.11f.a., directing them to pay \$86,331.68 to Plaintiff DEP for DEP to perform a hydrogeologic investigation of the Site.

27. TNI paid \$86,331.68 to Plaintiff DEP, thus satisfying its obligation under the August 22, 1988 directive.

28. In August and September 1988, Plaintiff DEP installed and sampled an additional 9 monitoring wells in the Pine Lake Park area, the analysis of which revealed the presence of various hazardous substances including 1,1,1 trichloroethane, trichloroethylene and 1,1 dichloroethylene.

29. In October 1988, the New Jersey Department of Transportation ("DOT") filed a Declaration of Taking on a portion of the Site as part of a project to widen State Highway 37.

30. In November and December 1988, Plaintiff DEP installed and sampled 11 monitoring wells at the Site, the analysis of which revealed the presence of various hazardous substances including 1,1,1 trichloroethane, benzene, toluene, 1,1 dichloroethylene, 1,1 dichloroethane, and trichloroethylene.

31. On December 9, 1988, Plaintiff DEP issued a second directive to Defendants TNI, TNA, SBA, Robert Johnson, individually, and others, pursuant to N.J.S.A. 58:10-23.11f.a., directing them to pay an additional \$46,957.00 to Plaintiff DEP for the hydrogeologic investigation. None of the defendants complied with this directive.

32. In May 1989, the Manchester Township Municipal Utilities Authority and Manchester Township ("the Township") filed a claim against the Spill Fund for reimbursement of the costs for

connecting all of the Pine Lake Park residents to municipal water. Over one thousand homeowners in Pine Lake Park also submitted claims to the Spill Fund for damages associated with the ground water contamination in Pine Lake Park.

33. In February 1990, Plaintiff DEP collected samples from 11 monitoring wells at the Site, the analysis of which revealed the presence of various hazardous substances including benzene, 1,1 dichloroethane, 1,1,1 trichloroethane, and trichloroethylene.

34. In April 1990, DOT installed and sampled 4 monitoring wells as part of its investigation of contamination of the right of way parcel, the analysis of which revealed the presence of hazardous substances, including benzene, 1,1,1 trichloroethane, trichloroethylene, 1,1 dichloroethylene, and 1,1 dichloroethane.

35. Various hazardous substances found at the Site, including styrene, toluene, xylene, benzene, 1,1,1 trichloroethane, trichloroethylene, and 1,1 dichloroethylene, are substances used in the manufacture of asphalt and asphalt-related products, or are common by-products of the production of asphalt and asphalt-related products.

36. These sampling results revealed the presence of various hazardous substances exceeding Plaintiff DEP's cleanup criteria in the groundwater and soils at and underlying the Site.

37. On June 8, 1990, Plaintiff Acting Administrator filed a first priority lien (Docketed Judgment No. DJ-61533-90) against the

real property comprising the Site pursuant to N.J.S.A. 58:10-23.11f. and/or g.

38. On June 8, 1990, Plaintiff Acting Administrator also filed a non-priority lien (Docketed Judgment DJ-61533-90) against the revenues and all other real and personal property of Defendants TNI and TNA.

39. On June 8, 1990, Plaintiff Acting Administrator also filed a non-priority lien (Docketed Judgment No. DJ-61537-90) against all revenues and other real and personal property of Defendants SBA and Robert Johnson, individually, pursuant to N.J.S.A. 58:10-23.11f. and/or g.

40. On June 26, 1990, Plaintiff DEP issued a third directive to Defendants TNI, TNA, SBA, Robert Johnson, individually, and others pursuant to N.J.S.A. 58:10-23.11f.a., directing them to pay \$245,000 to DOT to fund the cost of DOT's remedial measures. None of the defendants complied with this directive.

41. In February 1992, an arbitrator determined that the Township's Spill Fund claim was valid, and that the homeowners were also entitled to compensation where their claims were timely filed.

42. On May 28, 1992, Plaintiff DEP issued a fourth directive to Defendants TNI, TNA, SBA, Robert Johnson, individually, and others pursuant to N.J.S.A. 58:10-23.11f.a., directing them to pay \$20,357,217.51 in connection with the cleanup and removal of

hazardous substances discharged at the Site. None of the defendants complied with this directive.

43. On January 9, 1996, Plaintiff Acting Administrator filed an amended first priority lien (Docketed Judgment No. DJ-004161-96) against the real property comprising the Site.

44. On January 17, 1996, Plaintiff Acting Administrator filed an amended non-priority lien (Docketed Judgment No. DJ-61537-90) against the revenues and all other real and personal property of Defendants SBA and Robert Johnson, individually, as well as an amended non-priority lien (Docketed Judgment No. DJ-61533-90) against the revenues and all other real and personal property of Defendants TNI and TNA.

45. On May 13, 1999, Plaintiff DEP issued a fifth directive to Defendants TNI, TNA, SBA, Robert Johnson, individually, and others, pursuant to N.J.S.A. 58:10-23.11f.a., directing them to pay \$10,000 so that DEP could restrict access to the area where there is a coal tar-sand mixture located at the Site.

46. The defendants did not comply with this directive. Instead, a prospective purchaser constructed the needed fence.

47. Plaintiff DEP is continuing to oversee remediation of the Site.

FIRST COUNT

48. Plaintiffs DEP and Acting Administrator repeat each allegation of paragraph nos. 1 through 47 above as though fully set forth in its entirety herein.

49. Plaintiff DEP has incurred, and will continue to incur, costs concerning the Site.

50. Plaintiff Acting Administrator has certified, and will continue to certify, for payment, valid claims made against the Spill Fund concerning the Site and, further, has approved, and will continue to approve, other appropriations to remediate the Site.

51. Plaintiffs DEP and Acting Administrator have also incurred, and will continue to incur, damages, including reasonable assessment costs, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

52. The costs and damages Plaintiffs DEP and Acting Administrator have incurred, and will incur, including any claims paid from the Spill Fund, for the Nicol site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

53. From 1966 through the present, Defendant TNI has owned the real property comprising the Site, during which time materials that were, or contained, hazardous substances were not satisfactorily stored or contained there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were discharged

within the meaning of N.J.S.A. 58:10-23.11f.a.(1) and/or N.J.S.A. 58:10-23.11f.b.(3).

54. From 1966 through 1981, Defendant TNA operated an asphalt plant at the Site, the operation of which involved the handling of materials that were, or contained, hazardous substances, which Defendant TNA did not satisfactorily store or contain within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1) and/or N.J.S.A. 58:10-23.11f.b.(3).

55. From 1981 through the present, Defendant SBA operated an asphalt plant at the Site, the operation of which involved the handling of materials that were, or contained, hazardous substances, which Defendant SBA did not satisfactorily store or contain within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1) and/or N.J.S.A. 58:10-23.11f.b.(3).

56. From 1981 through the present, Defendant Johnson personally directed, conducted and managed the operations of Defendant SBA on a day-to-day basis, and knew or should have known the manner in which those operations, including matters involving the storage, containment, and disposal of hazardous substances, were carried out.

57. As dischargers of hazardous substances at the Site, Defendants Johnson, SBA, TNA and TNI are persons who are liable,

jointly and severally, without regard to fault, for all costs Plaintiffs DEP and Acting Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11.g.c.(1).

58. As persons responsible for materials that were, or contained, hazardous substances, certain of which were not satisfactorily stored or contained at the Site, the defendants are liable, jointly and severally, without regard to fault, for all costs Plaintiffs DEP and Acting Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11.g.c.(1).

59. By failing to comply with the various directives, the defendants are also persons who, pursuant to N.J.S.A. 58:10-23.11f.a(1), are liable in an amount equal to three times the cleanup and removal costs Plaintiffs DEP and Acting Administrator have incurred, and will incur, for the Site.

60. As dischargers of hazardous substances at the Site, the defendants are persons who are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Acting Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

61. As persons responsible for materials that were, or contained, hazardous substances, certain of which were discharged or not satisfactorily stored or contained at the Site, the

defendants are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Acting Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

62. 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 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 Plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

63. Pursuant to N.J.S.A. 58:10-23.11q., Plaintiff Acting 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 New Jersey Department of Environmental Protection, and the Acting Administrator, New Jersey Spill Compensation Fund, pray that this Court:

a. Order Defendants Robert Johnson, SBA, TNA, and TNI to reimburse Plaintiffs DEP and Acting Administrator, jointly and severally, without regard to fault, for all cleanup and removal

costs the plaintiffs have incurred for the Site, with applicable interest;

b. Enter declaratory judgment against the defendants jointly and severally, without regard to fault, for any cleanup and removal costs Plaintiffs DEP and Acting Administrator may incur for the Site;

c. Order the defendants to reimburse Plaintiffs DEP and Acting Administrator, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs Plaintiffs DEP and Acting Administrator have incurred for the Site;

d. Enter declaratory judgment against the defendants jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs Plaintiffs DEP and Acting Administrator may incur for the Site;

e. Order the defendants to reimburse Plaintiffs DEP and Acting Administrator, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Acting Administrator have incurred for any natural resource of this State damaged or destroyed by the contamination at the Site, with applicable interest;

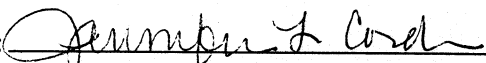
f. Enter declaratory judgment against the defendants jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Acting

Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Site;

g. Award Plaintiffs DEP and Acting Administrator their costs and fees in this action; and

h. Award Plaintiffs DEP and Acting Administrator such other relief as this Court deems appropriate.

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Jennifer L. Cordes
Deputy Attorney General

Dated: July 30, 2002

DESIGNATION OF TRIAL COUNSEL

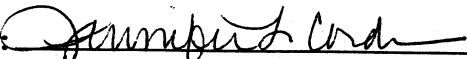
Pursuant to R. 4:25-4, the Court is advised that Jennifer L. Cordes, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

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).

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Jennifer L. Cordes
Deputy Attorney General

Dated: July 30, 2002