

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

By: Lauren Caruso Garofalo
Deputy Attorney General
(609) 984-5016

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

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THE TRUSTEES OF PRINCETON UNIVERSITY,	:	
	:	
Defendant.	:	

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

STATEMENT OF THE CASE

1. The 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 costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Princeton Plasma Physics Laboratory site in Plainsboro, 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 James Forrestal Campus site. Further, the Plaintiffs seek an order compelling the Defendant 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 James Forrestal Campus site, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

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 any injury 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 The Trustees of Princeton University is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 1 Nassau Hall, Princeton, New Jersey 08544.

NATURAL RESOURCES

6. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

7. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of hazardous substances at the James Forrestal Campus site.

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 aquatic ecosystems.

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 thousands of sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

14. The Princeton Plasma Physics Laboratory site consists of approximately 88 acres of real property located at Route 1 and Scudders Mill Road, Plainsboro Township, Middlesex County, New Jersey, this property being also known and designated as Block 701, Lot 23, formally, Block 5, Lot 3.07, on the Tax Map of Plainsboro ("the PPPL 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. 014853.

15. Since 1951, the Defendant has owned the PPPL 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., which substances include volatile organic compounds Tetrachloroethene and Tricholoroethene.

16. Since 1951, the Defendant leased approximately 72 acres of the PPPL Property to the United States Department of Energy ("DOE") for use by its contractor, Princeton Plasma Physics Laboratory, who operates a fusion research plasma physics laboratory, the operation of which involved the generation 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 include volatile organic compounds Tetrachloroethene and Tricholoroethene.

17. Several underground storage tanks ("UST") at the facility maintained by PPPL were removed because the USTs failed tightness tests. Soil sampled after the excavation revealed high concentrations of total petroleum hydrocarbons. The Defendant recycled the removed soil into asphalt at an off-site facility.

18. On January 25, 1993, the Defendant signed a Memorandum of Understanding with plaintiff DEP, and assumed responsibility for remediation at the entire PPPL Property and agreed to remedial investigations that were later provided in reports to plaintiff DEP.

19. From 1994 to 1997, two phases of remedial investigation and remedial action of the PPPL Property were performed under the direction of plaintiff DEP.

20. Phase I ground water sampling at the PPPL Property conducted in 1994 and 1995 revealed volatile organic compounds Tetrachloroethene and Tricholoroethene at concentrations above the New Jersey Department of Environmental Protection groundwater quality standards.

21. Phase II ground water sampling at the PPPL Property conducted in 1996 and 1997 also revealed volatile organic compounds Tetrachloroethene and Tricholoroethene at concentrations above the New Jersey Department of Environmental Protection groundwater quality standards.

22. From 1997, through 2000, the Defendant and PPPL performed a remedial investigations pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Defendant and PPPL investigated the nature and extent of the contamination at the Site.

23. Sampling results from these remedial investigations revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water at the Site, which substances include volatile organic compounds Tetrachloroethene and Tricholoroethene.

24. In June 2000, plaintiff DEP approved a Remedial Action Work Plan for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action, and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

25. The remedial action plaintiff DEP has approved for the Site primarily provides for hydraulic control through groundwater pumping.

26. Although the Defendant has initiated the remedial action for the Site, the ground water remains contaminated.

FIRST COUNT

Spill Act

27. The Plaintiffs repeat each allegation of paragraph nos. 1 through 26 above as though fully set forth in its entirety herein.

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

29. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.(c).

30. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge of hazardous substances is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

31. 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 PPPL Property.

32. 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.

33. The Defendant, as the owner of the PPPL Property at the time hazardous substances were discharged there, is a person in any

way responsible for the discharged hazardous substances, and is liable 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 PPPL Property. N.J.S.A. 58:10-23.11g.c.(1).

34. 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).

35. 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 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 PPPL Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant 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 PPPL Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform any further cleanup of hazardous substances discharged at the PPPL Property, under plaintiff DEP's oversight;
- 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

36. The Plaintiffs repeat each allegation of paragraph nos. 1 through 35 above as though fully set forth in its entirety herein.

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

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

39. 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.

40. As long as the ground water remains contaminated due to the Defendant's conduct, the public nuisance continues.

41. Until the ground water 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 ground water.

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 PPPL 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 PPPL Property;
- c. Enter judgment against the Defendant, compelling the Defendant to abate the nuisance by performing any further cleanup of hazardous substances discharged at the PPPL Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant 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 PPPL Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the

citizens of New Jersey for the lost value of any injured natural resource;

- 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

42. The Plaintiffs repeat each allegation of paragraph nos. 1 through 41 above as though fully set forth in its entirety herein.

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

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

45. As long as the ground water 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 PPPL 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 PPPL Property;
- c. Enter judgment against the Defendant, compelling the Defendant to cease the trespass by performing any further cleanup of hazardous substances discharged at the PPPL Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant 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 PPPL Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate

the citizens of New Jersey for the lost value of any injured natural resource;

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

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: 6/28/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Lauren Caruso Garofalo, 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).

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FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: Lauren Caruso Garofalo
Lauren Caruso Garofalo
Deputy Attorney General

Dated: 6/28/07