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

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION; and	:	<u>Civil Action</u>
THE ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION	:	COMPLAINT
FUND,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SOUTH JERSEY GAS COMPANY,	:	
	:	
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, South Jersey Gas Company ("the Defendant"), say:

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 Glassboro MGP site in Glassboro Borough, Gloucester 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 Glassboro MGP 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 Glassboro MGP 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 South Jersey Gas Company ("South Jersey Gas") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 1 South Jersey Plaza, Folsom, New Jersey.

6. In 1947, Peoples Gas Company ("Peoples Gas") and Atlantic City Gas Company merged to form defendant South Jersey Gas.

NATURAL RESOURCES

7. 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.

8. 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 Glassboro MGP site.

AFFECTED NATURAL RESOURCES

Ground Water Resources

9. 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.

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

11. 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.

12. 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.

13. 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.

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

Sediment Resources

15. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

16. Sediments are a critical example of New Jersey's ecological resources.

17. These sediments can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments, particularly in New Jersey's coastal areas, are part of the State's ecosystems that provide a living substrate for submerged and emergent flora, and support diverse invertebrate species, wading birds, and fish and shellfish populations.

GENERAL ALLEGATIONS

18. The Glassboro MGP site consists of approximately 5.34 acres of real property located at 103 Union Street, Glassboro Borough, Gloucester County, this property being also known and designated as Block 62, Lots 1 and 5, on the Tax Map of the Borough of Glassboro ("Glassboro MGP 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. 030709.

19. From September 1947 to the present, the Defendant has owned the Glassboro MGP 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 included various polynuclear aromatic hydrocarbons ("PAHs") and volatile organic compounds ("VOCs").

20. From approximately 1923 through 1947, the Defendant's predecessor-in-interest, Peoples Gas, operated a manufactured gas plant ("MGP") at the Glassboro MGP Property, the operation of which involved the use, generation, storage, and handling of hazardous substances, certain of which were discharged there, which substances included various PAHs and VOCs.

21. From approximately 1948 until the mid- to late 1950s, defendant South Jersey Gas continued manufacturing gas at the Glassboro MGP Property, the operation of which involved the use, generation, storage, and handling of hazardous substances, certain of which were discharged there, which substances included various PAHs and VOCs.

22. Between March 1983 and September 1984, plaintiff DEP investigated the Site, including conducting on-site inspections of the Glassboro MGP Property.

23. Based on its investigation of the Site, plaintiff DEP determined that coal tar wastes from the MGP operations had been discharged to the soils and, possibly, to the ground water.

24. On March 12, 1985, plaintiff DEP issued a directive to defendant South Jersey Gas pursuant to N.J.S.A. 58:10-23.11f.a. to -23.24, ("1985 Directive"), directing defendant South Jersey Gas to investigate the extent of the soils and groundwater contamination at the Site, and requiring defendant South Jersey Gas to immediately prevent public contact with coal gasification production-related hazardous substances known to exist on the Site by enhancing site security (i.e., repair fencing and hire a security guard).

25. Defendant South Jersey Gas did not comply with the 1985 Directive.

26. On or about August 2, 1988, plaintiff DEP received complaints from local residents concerning odors emanating from the Glassboro MGP Property.

27. On August 5, 1988, plaintiff DEP's personnel conducted another inspection of the Site, during which they determined that wastes, including coal tars, were being discharged to the soils from storage tanks located at the Glassboro MGP Property.

28. As a result of these findings, plaintiff DEP issued a second Spill Act directive to defendant South Jersey Gas on August 30, 1988 ("1988 Directive"), directing defendant South Jersey Gas to provide 24-hour security to prevent public contact with the coal gasification production wastes, and implement interim remedial

measures to clean up the contamination at the Glassboro MGP Property.

29. On February 20, 1990, plaintiff DEP entered into an administrative consent order ("1990 ACO") with defendant South Jersey Gas, pursuant to which defendant South Jersey Gas agreed to remediate the Site, including delineating the nature and extent of the groundwater contamination.

30. From 1990 to the present, defendant South Jersey Gas has been performing a remedial investigation of the Site in several phases.

31. From December 1990 through June 1991, defendant South Jersey Gas conducted the initial phase of the remedial investigation ("Phase I RI"), which focused on known areas of contamination on the Site, including the tar pit, relief holders, tar storage tanks and the generator room.

32. Defendant South Jersey Gas submitted the Phase I remedial investigation report ("Phase I RIR") to plaintiff DEP in August 1991.

33. In a letter dated October 30, 1991, plaintiff DEP informed defendant South Jersey Gas that the Phase I RIR was unacceptable as submitted, and directed defendant South Jersey Gas to address the technical deficiencies in an addendum to the RIR.

34. Defendant South Jersey Gas resubmitted the Phase I RIR to plaintiff DEP in December 1991, which, by letter dated February 7,

1992, plaintiff DEP advised defendant South Jersey Gas was still deficient, and directed defendant South Jersey Gas to conduct additional work, including installing additional monitoring wells and sampling of the ground water from those wells.

35. Plaintiff DEP also required defendant South Jersey Gas to implement an interim remedial measure to address the tar pit located on the Glassboro MGP Property. The tar pit contained gas manufacturing wastes and byproducts.

36. In June 1992, defendant South Jersey Gas completed the excavation of the tar pit, which involved excavating and removing approximately 1,710 cubic yards of material.

37. Additionally, in light of the contamination that had been confirmed at the Site, plaintiff DEP required defendant South Jersey Gas to initiate a potable well survey, and conduct potable well sampling.

38. Beginning in March 1993, defendant South Jersey Gas initiated the next phase of the remedial investigation ("Phase II RI"), the goal of which was to further delineate the horizontal and vertical extent of contamination by installing additional monitoring wells and taking deeper soil borings.

39. Defendant South Jersey Gas submitted its Phase II RIR to plaintiff DEP in January 1994, which plaintiff DEP conditionally approved on February 24, 1994, subject to defendant South Jersey Gas installing additional off-site monitoring wells and addressing

concerns plaintiff DEP had regarding defendant South Jersey Gas' sample collection techniques.

40. Defendant South Jersey Gas submitted a Phase II RIR addendum to plaintiff DEP in April 1994, which plaintiff DEP conditionally approved on September 28, 1995.

41. The next remedial investigation phase ("Phase III RI") focused on delineating the off-site groundwater contamination, which defendant South Jersey Gas initiated in September 1996.

42. While conducting the Phase III RI, it became apparent that contaminated ground water had migrated from the Glassboro MGP Property.

43. Preliminary groundwater sampling results indicated that the groundwater plume extended beyond the north and south boundaries of the Glassboro MGP Property, in response to which findings, defendant South Jersey Gas conducted a well search, and identified 22 potable wells in the vicinity of the Glassboro MGP Property that were within the contaminant plume.

44. On or about February 12, 1999, defendant South Jersey Gas submitted a potable well replacement plan to DEP, which plaintiff DEP approved on April 6, 1999.

45. Defendant South Jersey Gas submitted the Phase III RIR to plaintiff DEP in August 2000, which plaintiff DEP conditionally approved on January 8, 2001. In doing so, plaintiff DEP noted data

gaps related to the delineation of the groundwater impact area south of the Glassboro MGP Property.

46. In response to DEP's concerns, defendant South Jersey Gas installed additional monitoring wells in this area, the ground water from which it sampled.

47. Although defendant South Jersey Gas has finished the bulk of the groundwater remedial investigation, the groundwater remedial investigation is not yet complete.

48. As of the filing of this Complaint, defendant South Jersey Gas was still conducting the Phase III supplemental remedial investigation, which includes the replacement of monitoring wells on the Glassboro MGP Property that had been removed during previous soil excavation activities there, the installation of additional monitoring wells to obtain more information about the quality of the contaminated ground water underlying the Glassboro MGP Property, and performance of a vapor intrusion investigation.

49. On January 9, 2007, plaintiff DEP issued defendant South Jersey Gas a Notice of Deficiency for failure to complete the remedial investigation of the ground water at the Site.

50. Besides investigating the soils and groundwater contamination at the Site, in April 1999, defendant South Jersey Gas also began investigating the nature and extent of the injuries to the unnamed tributary to Still Run Creek as a result of the discharge of hazardous substances at the Glassboro MGP Property.

51. During this investigation, defendant South Jersey Gas identified hardened pieces of a tar-like substance in soils along the banks of the stream, and in sediments within the stream channel.

52. Defendant South Jersey Gas submitted an Environmental Risk Assessment ("ERA") to plaintiff DEP in March 2006, in which defendant South Jersey Gas confirmed the presence of PAHs in sediments and in shallow soils adjacent to the stream bed at levels that may pose an unacceptable risk to benthic organisms. The ERA, however, concluded that hazardous substances were not detected in the surface water.

53. In July 2006, defendant South Jersey Gas submitted the stream RIR to DEP, which plaintiff DEP approved on November 13, 2006.

54. Defendant South Jersey Gas submitted the remedial action workplan ("RAWP") for the stream in June 2006, which plaintiff DEP approved on November 16, 2006.

55. The stream remedy provides for the excavation of impacted materials within the stream and adjacent floodplain, coupled with off-site thermal treatment, and stream corridor restoration.

56. Although defendant South Jersey Gas has undertaken the remediation of the Site, the groundwater, soils and sediments contamination continues.

FIRST COUNT

Spill Act

57. The Plaintiffs repeat each allegation of paragraph nos. 1 through 56 above as though fully set forth in its entirety herein.

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

59. 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).

60. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge 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).

61. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the Glassboro MGP Property.

62. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning

the Site, and, further, may approve other appropriations for the Site.

63. The Plaintiffs also 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 Glassboro MGP Property.

64. 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.

65. The Defendant is, and is the successor-in-interest to, a person that discharged hazardous substances at the Glassboro MGP Property, and is liable, 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 Glassboro MGP Property. N.J.S.A. 58:10-23.11g.c.(1).

66. The Defendant, as the owner of the Glassboro MGP Property at the time hazardous substances were discharged there, also is a person in any way responsible for the discharged hazardous substances, and is liable, 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 Glassboro MGP Property. N.J.S.A. 58:10-23.11g.c.(1).

67. 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).

68. 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, 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 Glassboro MGP Property, with applicable interest;

- b. Enter declaratory judgment against the Defendant, 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 Glassboro MGP Property;
- c. Enter judgment against the Defendant, compelling the Defendant, to perform any further cleanup of hazardous substances discharged at the Glassboro MGP Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, without regard to fault, 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 Glassboro MGP 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.

SECOND COUNT

Public Nuisance

69. The Plaintiffs repeat each allegation of paragraph nos. 1 through 68 above as though fully set forth in its entirety herein.

70. Ground water and sediments are natural resources of the State held in trust by the State for the benefit of the public.

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

72. The groundwater and sediments 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 these natural resources.

73. As long as the ground water and sediments remain contaminated due to the Defendant's conduct, and that of its predecessor-in-interest, the public nuisance continues.

74. Until the ground water and sediments are restored to their 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 and sediments.

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 Glassboro MGP 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 Glassboro MGP 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 Glassboro MGP 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 Glassboro MGP 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

75. The Plaintiffs repeat each allegation of paragraph nos. 1 through 74 above as though fully set forth in its entirety herein.

76. Ground water and sediments are natural resources of the State held in trust by the State for the benefit of the public.

77. The Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the Glassboro MGP Property.

78. As long as the ground water and sediments remain 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 Glassboro MGP 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 Glassboro MGP 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 Glassboro MGP 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 Glassboro MGP 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.

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL
OF NEW JERSEY

By: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 6/22/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Carol Lynn DeMarco, 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).

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL
OF NEW JERSEY

By: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 6/22/07