

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

By: A. Paul Stofa
Deputy Attorney General
(609) 984-5016

SUPERIOR COURT
WARREN COUNTY
CLERK'S OFFICE

2004 MAY 21 AM 9:58

RECEIVED / FILED

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - WARREN COUNTY
DOCKET NO. L-218-04

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

Plaintiffs,

v.

7-ELEVEN, INC.,

Defendant.

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 defendant, 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 and 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 Southland Corporation site located in Independence Township, Warren County, New Jersey, 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 Southland Corporation 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, 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 7-Eleven, Inc., formerly known as The Southland Corporation and 7-Eleven Stores, having merged with Lavicio's, Inc. (collectively, "the Defendant"), is a corporation organized under the laws of the State of Texas, with a principal place of business located at 2711 North Haskell Avenue, Dallas, Texas 75204-2911.

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

AFFECTED NATURAL RESOURCE

Groundwater

7. 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.

8. 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.

9. 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.

10. 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.

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

GENERAL ALLEGATIONS

12. The Southland Corporation site consists of approximately 277 acres of real property located at Alphano Road, Independence Township, Warren County, this property being also known and designated as Block 29, Lot 31 on the Tax Map of Independence Township ("the Southland 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. 014762.

13. In 1978, the Defendant purchased the Southland Property from Ashland Oil Company.

14. From approximately 1978 until October 1988, when activities ceased at the Southland Property, the Defendant manufactured organic chemicals there, including phenylenediamine dyes, fluchloralin, various diakyl products, and triphenylsulgonium chloride, a rust inhibitor, 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.

15. On or about November 30 and December 1, 1983, plaintiff DEP sampled the soils and surface water at the Southland Property, which sampling revealed that soils and surface water contained hazardous substances, including volatile organic chemicals.

16. On or about November 5, 1984, plaintiff DEP issued the Defendant a New Jersey Pollutant Discharge Elimination System/Industrial Waste Management Facility ("NJPDDES/IWMF") permit (Permit No. NJ0005291), which permit established a groundwater monitoring program for the Southland Property.

17. The NJPDDES/IWMF groundwater monitoring program revealed the presence of hazardous substances, including benzene, chlorobenzene, and toluene, in the groundwater in concentrations exceeding the NJPDDES/IWMF permit limitations for volatile organic chemicals.

18. On or about December 18, 1985, plaintiff DEP issued a Spill Act directive ("December 1985 Directive") to the Defendant

pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendant to remediate the Southland Property as stated therein.

19. On or about February 21, 1986, the Defendant and plaintiff DEP entered into an Administrative Consent Order ("February 1986 ACO"), which required the Defendant to conduct a remedial investigation to determine the nature and extent of the contamination, and a feasibility study of the remediation alternatives for the Site.

20. In March 1986, the Defendant commenced the remedial investigation, which revealed the presence of elevated concentrations of various hazardous substances in the groundwater underlying the Site, including arsenic, benzene, chlorobenzene, ethylbenzene, dichlorobenzene, toluene, 1,2-dichloroethane, trans-1,2-dichloroethene, tetrachloroethene, trichloroethene, bromoform, and xylene.

21. On or about August 1, 1987, plaintiff DEP and the Defendant entered into another ACO ("August 1987 ACO"), requiring the Defendant to conduct additional investigations, conduct various interim remedial measures, and develop a comprehensive cleanup plan for the Site consistent with the requirements of the Environmental Cleanup Responsibility Act ("ECRA"), now the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -35.

22. After the Defendant ceased manufacturing operations at the Site in 1988, remediation continued under plaintiff DEP's oversight and is currently in the remedial action phase.

23. The Defendant has undertaken the cleanup of hazardous substances from the soils, sediments, and groundwater at and underlying the Site, one component of which involves the remediation of groundwater contamination, which contamination continues.

FIRST COUNT

Spill Act

24. Plaintiffs repeat each allegation of Paragraphs 1 through 23 above as though fully set forth in its entirety herein.

25. Plaintiffs have incurred, and will continue to incur, costs and 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 Southland Property.

26. 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.

27. The Defendant, as the discharger of hazardous substances at the Southland Property, is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, 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 Southland Property. N.J.S.A. 58:10-23.11g.c.(1).

28. The Defendant, as the owner of the Southland Property at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, 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 Southland Property. N.J.S.A. 58:10-23.11g.c.(1).

29. 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).

30. 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 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 Southland 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 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 Southland Property;
- c. Enter judgment against the Defendant, without regard to fault, compelling the Defendant 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 Southland 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 Southland Property;

- 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

31. Plaintiffs repeat each allegation of Paragraphs 1 through 30 above as though fully set forth in its entirety herein.

32. Groundwater is a natural resource of the State held in trust by the State.

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

34. The contamination of groundwater 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.

35. As long as groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

36. Until the groundwater 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 groundwater.

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 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 Southland 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 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 Southland Property;
- c. Enter judgment against the Defendant, compelling the Defendant 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 Southland 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 Southland Property;

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

THIRD COUNT

Trespass

37. Plaintiffs repeat each allegation of Paragraphs 1 through 36 above as though fully set forth in its entirety herein.

38. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

39. The Defendant is liable for trespass, and continued trespass, since hazardous substances were first discharged at the Southland Property.

40. As long as groundwater 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 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 Southland 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 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 Southland Property;

c. Enter judgment against the Defendant, compelling the Defendant 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 Southland 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 Southland Property;

d. Award the Plaintiffs their costs and fees in this action;
and

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

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

By: 
A. Paul Stofa
Deputy Attorney General

Dated: 05/20/2004

DESIGNATION OF TRIAL COUNSEL


Pursuant to R. 4:25-4, the Court is advised that A. Paul Stofa, 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 or new

issue, including claims to recover other cleanup and removal costs, 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: 
A. Paul Stofa
Deputy Attorney General

Dated: 05/20/2004