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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BURLINGTON COUNTY
DOCKET NO. 001431-04

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

Plaintiffs,

v.

ACR, INC. OF SOUTH JERSEY;
UNITED STATES STEEL
CORPORATION;
"ABC CORPORATIONS" 1-20
(Names Fictitious); and
"JOHN DOES" 1-5 (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. 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 discharge of hazardous substances at the Tabernacle Drum Dump site located in Tabernacle Township, Burlington 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 discharge of hazardous substances at the Tabernacle Drum Dump 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 ACR, Inc. of South Jersey, formerly known as Atlantic Disposal Service, Inc., (collectively, "ACR"), is a corporation organized under the laws of the State of New Jersey, with a last known principal place of business located at the corner of Springdale Road and Church Road, Mt. Laurel, New Jersey.

6. Defendants "ABC Corporations" 1-20, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which are the corporate successors to, or are otherwise related to, defendant ACR.

7. Defendants "John Does" 1-20, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners of, or principals of, defendant ACR and/or its successors, including one or more of the ABC Corporation defendants.

8. Defendant United States Steel Corporation, formerly known as USX Corporation (collectively, "defendant United States Steel"), is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 600 Grant Street Pittsburgh, PA 15219-2800.

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

AFFECTED NATURAL RESOURCE

Groundwater

10. 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.

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

12. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

13. 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.

14. 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.

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

GENERAL ALLEGATIONS

16. The Tabernacle Drum Dump consists of approximately one acre of real property located on Caranza Road, Tabernacle Township, Burlington County, New Jersey, this property being also known and designated as Block 1202, Lot 22, on the Township of Tabernacle's Tax Map (the "Meyers 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 PI No. G000004967.

17. From November 24, 1972 until April 19, 1977, the Meyers Property was owned by Robert and Edith Ware.

18. On April 19, 1977, Robert and Edith Ware sold the Meyers Property to Phillip B. and Dorothy Mae Meyers, the parents of Edith Ware.

19. Following the death of Phillip B. Meyers in August 2002, Edith Ware resumed ownership of the Property through the estate of Phillip B. Meyers in July 2003.

20. Between 1976 and into 1977, after Philip B. and Dorothy Mae Meyers assumed ownership of the Meyers Property from Robert and Edith Ware, the Wares continued to occupy the premises.

21. Between 1976 and 1977, while occupying the Meyers Property, Robert and Edith Ware allowed defendant ACR to dispose of approximately 200 drums and other containers there.

22. Certain of the drums and other containers defendant ACR disposed of at the Meyers Property originated from, and were owned by, defendant United States Steel, which drums and containers contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" within the meaning of N.J.S.A. 58:10-23.11b.

23. In 1982, Tabernacle Township officials discovered the drums and other containers on the Meyers Property, and notified the Burlington County Health Department.

24. Following an initial site inspection by the Burlington County Health Department in October 1982, plaintiff DEP conducted a more detailed inspection, during which DEP personnel observed leaking and deteriorating drums containing solvents, heavy metals, and paint sludges, visibly contaminated soils, and dead vegetation.

25. In 1984, the United States Environmental Protection Agency ("EPA") issued an administrative order to defendant ACR, ordering defendant ACR to remove the drums and containers at the

Meyers Property, and to excavate and dispose of the contaminated soils there.

26. Defendant ACR complied in part with EPA's 1984 administrative order and removed the containers, approximately 40 cubic yards of drummed materials, eight truck loads of excavated soils and approximately 3,000 gallons of liquid materials.

27. On September 1, 1984, EPA placed the Site on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B. The NPL, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list EPA promulgates of hazardous waste sites that pose the greatest threat to the human health and safety, and the environment.

28. From December 1986, through February 1988, EPA performed, with plaintiff DEP's concurrence, a remedial investigation and feasibility study ("RI/FS") of the Site pursuant to Section 104 of CERCLA, 42 U.S.C.A. §9604, to determine the nature and extent of the contamination, and to evaluate various ways to remediate it.

29. Sampling results from the remedial investigation revealed the presence of various hazardous substances in the groundwater and soils at and underlying the Site, including 1,1,1-trichloroethane, 1,1 dichloroethene, chromium, cyanide, and lead.

30. In June 1988, EPA, with plaintiff DEP's concurrence, issued a Record of Decision for the Site ("June 1988 ROD"), in

which EPA documented and explained the preferred remedy to address the contaminated soil and ground water at and underlying the Site.

31. The remedy EPA selected in the June 1988 ROD primarily provided for groundwater treatment, further delineation of the groundwater contaminant plume, the implementation of a groundwater monitoring program, and confirmatory soil sampling.

32. Although defendant United States Steel undertook the remediation selected in the June 1988 ROD under EPA and plaintiff DEP's oversight pursuant to a consent decree entered into on September 19, 1989, the groundwater underlying the Site remains contaminated.

FIRST COUNT

Spill Act

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

34. The 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 discharge of hazardous substances at the Meyers 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. Defendants United States Steel and one or more of the ABC Corporation defendants, as generators of hazardous substances, certain of which were discharged at the Meyers Property, are liable, jointly and severally, 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 Meyers Property. N.J.S.A. 58:10-23.11g.c.(1).

37. As persons that transported hazardous substances to the Meyers Property, certain of which were discharged there, defendants ACR and one or more of the ABC Corporation defendants, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use 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 by the discharges of hazardous substances at the Meyers Property. N.J.S.A. 58:10-23.11g.c.(1).

38. One or more of the ABC Corporation defendants, as the successors to defendant ACR, a person that transported hazardous substances to the Meyers Property, certain of which were discharged

there, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, 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 Meyers Property. N.J.S.A. 58:10-23.11g.c.(1).

39. Defendants John Does, as principals of defendant ACR and one or more of the ABC Corporation defendants, are persons otherwise responsible for the discharged hazardous substances at the Meyers Property, and are liable, jointly and severally, 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 Meyers Property. N.J.S.A. 58:10-23.11g.c.(1).

40. 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).

41. 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 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 Meyers 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 use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Meyers Property;

- c. 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 discharges of hazardous substances at the Meyers 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 Meyers 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

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

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

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

45. 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.

46. As long as groundwater remains contaminated due to the Defendants' conduct, the public nuisance continues.

47. Until the groundwater 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 groundwater.

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 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 Meyers 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 use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Meyers Property;

- c. 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 discharges of hazardous substances at the Meyers 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 Meyers 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

48. Plaintiffs repeat each allegation of Paragraphs 1 through 47 above as though fully set forth in its entirety herein.

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

50. The Defendants are liable for trespass, and continued trespass, since hazardous substances were first discharged at the Meyers Property.

51. As long as groundwater remains contaminated, the Defendants' trespass continues.


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 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 Meyers 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 use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Meyers Property;
- c. 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 discharges of hazardous substances at the Meyers 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 Meyers 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: 
Adam B. Lavinthal
Deputy Attorney General

Dated:

DESIGNATION OF TRIAL COUNSEL

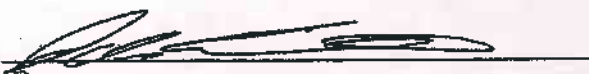
Pursuant to R. 4:25-4, the Court is advised that Adam B. Lavinthal, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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
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Attorney for Plaintiffs

By: 
Adam B. Lavinthal
Deputy Attorney General

Dated: