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MICHAEL H. GIBSON, J.S. Clerk  
CLERK OF SUPERIOR COURT

By: Michael E. McMahon  
Deputy Attorney General  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CAPE MAY COUNTY  
DOCKET NO. *CFM L-306-06*

\_\_\_\_\_  
NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION and : Civil Action  
THE ADMINISTRATOR OF THE NEW :  
JERSEY SPILL COMPENSATION : COMPLAINT  
FUND, :  
 :  
Plaintiffs, :  
 :  
v. :  
 :  
ROSS FOGG FUEL OIL COMPANY; :  
SCRF, INC.; :  
STEWART J. CAMPBELL; :  
"ABC CORPORATIONS" 1-10 (Names :  
Fictitious); and :  
"JOHN DOES" 1-10 (Names :  
Fictitious), :  
 :  
Defendants. :  
\_\_\_\_\_

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 ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Tom Foodery Texaco site located in Middle Township, Cape May 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 Tom Foodery Texaco site. Further, the Plaintiffs seek an order compelling the Defendants 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 Tom Foodery Texaco site.

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 the 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 Ross Fogg Fuel Oil Company ("Ross Fogg Fuel") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 245 North Virginia Avenue, Carneys Point, New Jersey.

6. Defendant SCRF, Inc. ("SCRF") is a dissolved corporation organized under the laws of the State of New Jersey, with a principal place of business located at 245 North Virginia Avenue, Carneys Point, New Jersey.

7. Defendant Stewart J. Campbell is an individual whose dwelling or usual place of abode is 327 Petersburg Road, Woodbine, New Jersey.

8. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate predecessors or successors to, or are otherwise related to, defendants Ross Fogg Fuel and SCRF.

9. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials, of defendants Ross Fogg Fuel, SCRF, Campbell, and one or more of the ABC Corporation defendants.

#### AFFECTED NATURAL RESOURCE

##### Ground Water

10. 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.

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

12. 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.

13. 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.

14. 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.

15. There are more than 6,000 contaminated sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

16. The Tom Foodery Texaco site consists of approximately 1.5 acres of real property located on the southeast corner of the intersection of New Jersey State Highway Route 47 and Bay Shore Road, Middle Township, Cape May County, this property being also known and designated as Block 466.01, Lots 18, 19, 20 and 21.01, on the Tax Map of Middle Township ("the Tom Foodery Texaco 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. 011948.

17. The Tom Foodery Texaco Property is located in a mixed-use area of Middle Township, and is surrounded by commercial, residential and undeveloped properties.

18. On April 8, 1986, Green Creek, Inc. acquired the Tom Foodery Texaco Property from Steven and Donna Oliver, husband and wife.

19. On December 29, 1988, Green Creek, Inc. sold the Tom Foodery Texaco Property to defendant Campbell and Ross G. Fogg, now deceased, as tenants in common.

20. On October 1, 1995, defendant SCRF acquired the Tom Foodery Texaco Property from defendant Campbell and Ross G. Fogg, and remains the owner of record as of the filing of this Complaint.

21. During the time that defendant Campbell, defendant SCRF, one or more of the ABC Corporation defendants and/or one or more of the John Doe defendants, owned the Tom Foodery Texaco Property, "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 benzene, ethylbenzene, xylene and methyl-tertiary-butyl-ether ("MTBE").

22. From 1988 through 2001, defendants Ross Fogg Fuel, SCRF, Campbell, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, operated a retail gasoline service station at the Tom Foodery Texaco Property, the operation of which involved the storage 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 included benzene, ethylbenzene, xylene and MTBE.

23. In November 1993, the M.L. Ruberton Construction Company, on behalf of defendant Campbell, excavated piping associated with five 4,000 gallon-underground gasoline storage tanks and one 4,000 gallon-underground kerosene storage tank at the Tom Foodery Texaco Property.

24. M.L. Ruberton also excavated and removed approximately 208 tons of contaminated soils from where the product piping lines and underground storage tanks were located, which soils M.L. Ruberton disposed of off-site.

25. Prior to disposing of the soils, M.L. Ruberton took samples, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria, which substances included xylenes.

26. In December 1994, plaintiff DEP directed defendant Campbell to investigate the nature and extent of the groundwater contamination at the Site, which investigation defendant Campbell performed.

27. On or about May 10, 1995, defendant Campbell submitted a remedial investigation report to plaintiff DEP, which report documented defendant Campbell's installation of three monitoring wells and defendant Campbell's sampling of those wells, the results

of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the ground water, which substances included benzene, ethylbenzene, xylene and MTBE.

28. In June and September 1995, plaintiff DEP directed defendant Campbell to conduct additional groundwater sampling, which defendant Campbell did by installing four additional monitoring wells in December 1995, and sampling the ground water at the Site on four occasions between December 1995 and September 1996.

29. In 1999, defendant Campbell submitted a Remedial Action Workplan to plaintiff DEP, which plan provided for defendant Campbell to submit semi-annual groundwater progress reports to plaintiff DEP.

30. Plaintiff DEP approved defendant Campbell's Remedial Action Workplan on May 3, 1999.

31. On August 22, 2000, plaintiff DEP established a Classification Exception Area ("CEA") and Well Restriction Area ("WRA") for the Site, which provided for special restrictions for water use within the designated areas.

32. The CEA/WRA plaintiff DEP established for the Site is to last for an indeterminate number of years.

33. Although defendant Campbell initiated the remediation of the Site, the groundwater contamination may be continuing.



FIRST COUNT

Spill Act

34. Plaintiffs repeat each allegation of Paragraphs 1 through 33 above as though fully set forth in its entirety herein.

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

36. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Tom Foodery Texaco Property.

37. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

38. 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 by the discharge of hazardous substances at the Tom Foodery Texaco Property.

39. 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.

40. Defendants Ross Fogg Fuel, SCRF, Campbell, one or more of the ABC Corporation Defendants and/or one or more of the John Doe Defendants are dischargers, or are otherwise related to the

dischargers, of hazardous substances at the Tom Foodery Texaco Property, and are liable, jointly and severally, 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 by the discharge of hazardous substances at the Tom Foodery Texaco Property. N.J.S.A. 58:10-23.11g.c.(1).

41. Defendants SCRF, Campbell, one or more of the ABC Corporation Defendants, and/or one or more of the John Doe Defendants, have owned, or are otherwise related to the owners of, the Tom Foodery Texaco Property at the time hazardous substances were discharged there, and, thus, are persons in any way 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 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 by the discharge of hazardous substances at the Tom Foodery Texaco Property. N.J.S.A. 58:10-23.11g.c.

42. Defendants SCRF, Campbell, one or more of the ABC Corporation Defendants, and/or one or more of the John Doe Defendants, as knowing purchasers of the Tom Foodery Texaco

Property, a property at which hazardous substances were previously discharged, are persons in any way responsible for the discharged hazardous substances, and are jointly and severally liable, without regard to fault, for all cleanup and removal costs and damages, including lost value 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 discharge of hazardous substances at the Tom Foodery Texaco Property. N.J.S.A. 58:10-23.11g.c.(3).

43. 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).

44. Pursuant to N.J.S.A. 58:10-23.11g., 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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Tom Foodery Texaco 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Tom Foodery Texaco 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 discharge of hazardous substances at the Tom Foodery Texaco Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any

further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Tom Foodery Texaco 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

45. Plaintiffs repeat each allegation of Paragraphs 1 through 44 above as though fully set forth in its entirety herein.

46. Ground water is a natural resource of the State held in trust by the State.

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

48. The contamination of ground water 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.

49. As long as ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

50. Until the ground water 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 ground water.

PRAYER FOR RELIEF

**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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Tom Foodery Texaco 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Tom Foodery Texaco 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 discharge of hazardous substances at the Tom Foodery Texaco Property, by performing, under plaintiff DEP's

oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Tom Foodery Texaco 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

51. Plaintiffs repeat each allegation of Paragraphs 1 through 50 above as though fully set forth in its entirety herein.

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

53. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Tom Foodery Texaco Property by the Defendants.

54. As long as ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

**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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Tom Foodery Texaco 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the Tom Foodery Texaco 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 discharge of hazardous substances at the Tom Foodery Texaco Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Tom Foodery Texaco 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.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Michael E. McMahon  
Deputy Attorney General

Dated: May 17, 2006

DESIGNATION OF TRIAL COUNSEL

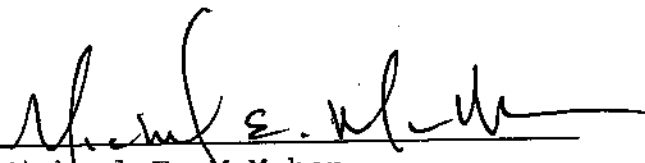
Pursuant to R. 4:25-4, the Court is advised that Michael E. McMahon, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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).

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Michael E. McMahon  
Deputy Attorney General

Dated: May 17, 2006