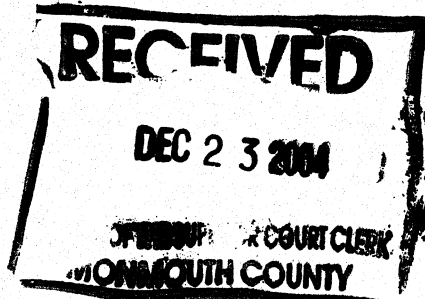


PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

By: Louis G. Karagias
Deputy Attorney General
(609) 984-4987



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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MONMOUTH COUNTY
DOCKET NO. *MON-2-5669-04*

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

Plaintiffs,

v.

KDD REALTY CORPORATION,

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 ("the Defendant"), say:

STATEMENT OF THE CASE

1. The 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 they have incurred, and will incur, as a result of the discharge of hazardous substances at the Waldick Aerospace Devices site in Wall Township, Monmouth 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 Waldick Aerospace Devices Site, and to compel 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 Waldick Aerospace Devices 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 ("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 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 KDD Realty Corporation was a corporation organized under the laws of the State of New Jersey, with a former principal place of business located at 3307 Atlantic Avenue, Allenwood, New Jersey.

AFFECTED NATURAL RESOURCE

Ground Water

6. 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.

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

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

9. Ground water 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. Ground water 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 Waldick Aerospace Devices site consists of approximately 1.72 acres of real property located at 2121 Highway 35, Wall Township, Monmouth County, New Jersey, this property being also known and designated as Block 733, Lot 5 on the Tax Map of Wall Township, ("the KDD Property") and all other areas where any hazardous substance discharged there has become located (collectively, "the Site").

13. From 1979 through the present, defendant KDD Realty Corporation has owned the KDD 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 volatile organic compounds (VOCs), cadmium, chromium, tetrachloroethene, trichloroethene, trans-1,2-

dichloroethene, chlorobenzene, ethylbenzene, 1,1-dichloroethene, toluene, chloroform, 1,1,1-trichloroethane, bis (2-ethylhexyl) phthalate, 2-butanone, petroleum hydrocarbons (PHCs) and metals.

14. In 1982, plaintiff DEP, the Monmouth County Division of Criminal Justice, and the Monmouth County Board of Health conducted an inspection at the KDD Property. This inspection revealed that a series of degreasing, dip, rinse and plating tanks, along with a polishing machine, were discharging wastewater directly onto the ground.

15. In October 1982, plaintiff DEP sent a letter to the tenant operating at the KDD Property demanding a cleanup at the Site. The tenant implemented some remedial measures under the supervision of the DEP, including the installation of four on-site monitoring wells. Subsequent sampling in 1983 revealed heavy metals and organic compounds contamination in the soil and ground water at the KDD Property.

16. From 1985 through 1987, the United States Environmental Protection Agency (USEPA) performed a remedial investigation and feasibility study in accordance with the National Oil and Hazardous Substance Pollution Contingency Plan, during which USEPA investigated the nature and extent of the contamination at and underlying the Site.

17. Sampling results from the remedial investigation and feasibility study revealed the presence of various hazardous

substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, surface water, stream sediments, and soils at and underlying the Site.

18. In 1986, the KDD Property was listed on the National Priorities List ("NPL"). The NPL, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list USEPA promulgates of hazardous waste sites that pose the greatest threat to human health and safety and the environment.

19. On September 29, 1987, the USEPA issued a Record of Decision (ROD), for the Site, described as a source control first operable unit remedy. This remedy included: in-situ air stripping to treat contaminated soils around and under the main building; excavation and the off-site disposal of all treated soils with residual contamination above action levels; appropriate remediation of on-site buildings by decontamination or demolition, depending on the volume of soils beneath the main building that require excavation and off-site disposal; installation of additional ground water wells, establishment of an environmental monitoring program, complete fencing of the Site to restrict access and well restrictions.

20. On March 29, 1991, a second ROD was issued by the USEPA for the Site that modified the major components of the 1987 ROD and includes the following major components: excavation of contaminated soil; on-site thermal treatment to remove organic contaminants;

solidification/ stabilization treatment for inorganic contaminated soil; and backfilling or off-site disposal of the treated soil, as appropriate.

21. The March 1991 ROD also presented the selected interim ground water remedy for the Site. The major components of the selected interim ground water remedy include: extraction of contaminated ground water from the zone of the highest contaminant concentrations; on-site treatment of the extracted ground water; reinjection of the treated ground water; and additional ground water monitoring and investigation to further characterize the overall contaminant plume and to evaluate the effectiveness of the above remedial measures.

22. On April 15, 1992, plaintiff DEP issued a Spill Act directive ("KDD Directive") to the Defendant pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendant to fund the remedial action for the Site. The Defendant has not complied with the KDD Directive.

23. In 1993, the soil remedy of the March 1991 ROD was completed. The contaminated soils were treated on-site using low temperature thermal desorption and the residuals were sent off-site for stabilization, solidification and disposal.

24. Between 1993 and 1999, ground water studies were performed at the Site. The studies delineated the contaminant ground water plume and indicated that the contamination consists of

cadmium, chromium, nickel, tetrachloroethene (PCE), and trichloroethene (TCE).

25. In 2004, a pre-design investigation for operable unit two (ground water phase) was completed for the Site.

26. Although USEPA initiated the remedial action at the Site, the groundwater, surface water, and sediment contamination continues.

FIRST COUNT

Spill Act

27. Plaintiffs DEP and Administrator 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. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the KDD Property.

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

31. The Plaintiffs also 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 as a result of the discharge of hazardous substances at the KDD 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 KDD Property at the time hazardous substances were discharged there, is a person otherwise responsible for the discharged hazardous substances, and is 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 as a result of the discharge of hazardous substances at the KDD 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, 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 as a result of the discharge of hazardous substances at the KDD Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, 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 will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the KDD Property;
- c. Order the Defendant to reimburse the Plaintiffs, jointly and severally, without regard to fault, in an amount

equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Site;

- d. Enter declaratory judgment against the Defendant, jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur for the Site;
- e. Enter judgment against the Defendant, jointly and severally, 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 discharge of hazardous substances at the KDD 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 as a result of the discharge of hazardous substances at the KDD Property.

SECOND COUNT

Public Nuisance

36. Plaintiffs repeat each allegation of Paragraphs 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.

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

39. The ground water 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 use 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 KDD 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 as a result of the discharge of hazardous substances at the KDD 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 discharge of hazardous substances at the KDD 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 as a result of the discharge of hazardous substances at the KDD 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

42. Plaintiffs repeat each allegation of Paragraphs 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 KDD 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 use 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 KDD 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 as a result of the discharge of hazardous substances at the KDD 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 discharge of hazardous substances at the KDD 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 as a result of the discharge of hazardous substances at the KDD 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: Louis G. Karagias
Louis G. Karagias
Deputy Attorney General

Dated: Dec. 22, 2004

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Louis G. Karagias, 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).

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

By: Louis G. Karagias
Louis G. Karagias
Deputy Attorney General

Dated: Dec. 27, 2004