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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SUSSEX COUNTY
DOCKET NO. **SSX-L-678-04**

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,
Plaintiffs,
v.
A.O. 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 A.O. Corporation ("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 A.O. Polymer Superfund site in Sparta Township, Sussex County, New Jersey. 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 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.

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 A.O. Corporation is a defunct corporation organized under the laws of the State of New Jersey, with a last known principal place of business located at 44 Station Road, Sparta Township, 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 A.O. Polymer Superfund site consists of approximately four acres of real property located at 44 Station Road, Sparta Township, Sussex County, New Jersey, this property being also known and designated as Block 19, Lots 45-B and 45-C, on the Tax Map of Sparta Township ("the A.O. Polymer 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. 012272.

13. Defendant A.O. Corporation, or its predecessor, has owned the A.O. Polymer Property since November 1977, 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 toluene, trichlorethylene, 1,1,1-trichloroethane, and benzene.

14. Defendant A.O. Corporation, or its predecessor, conducted operations at the Site that involved the production of various resins and the processing of spent solvents, the operation of which included the handling 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 toluene, trichlorethylene, 1,1,1-trichloroethane, and benzene .

15. In December 1978, plaintiff DEP began investigating the Site and observed waste disposal and storage practices on the Site that included the disposal of liquid chemical waste into unlined lagoons, improper storage of deteriorating drums, and the burial of crushed and open drums containing waste materials.

16. On September 1, 1983, the United States Environmental Protection Agency ("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 the Comprehensive Environmental Response, Compensation and Liability Act ("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.

17. From May 1987, through April 1991, plaintiff DEP performed a remedial investigation and feasibility study ("RI/FS") of the Site to determine the nature and extent of the contamination, and to evaluate various ways to remediate the Site.

18. On June 28, 1991, EPA, with plaintiff DEP's concurrence, issued a Record of Decision ("June 1991 ROD") for the Site, in which EPA documented and explained the preferred remedy to address the contaminated soil, groundwater, and surface water at and underlying the Site.

19. The remedy EPA selected in the June 1991 ROD primarily provides for the vapor extraction of organic compounds in the soils; pumping and treatment of the contaminated groundwater using a activated carbon filtration system; and the implementation of an appropriate monitoring program to ensure the effectiveness of the remediation.

20. On March 31, 1992, EPA issued a Unilateral Administrative Order ("March 1992 UAO") to International Business Machines Corporation ("IBM") and A.O. Corporation pursuant to Section 106(a) of CERCLA, 42 U.S.C.A. §9606(a), ordering IBM and defendant A.O. Corporation to perform the remedy EPA selected for the Site.

21. On April 20, 1992, IBM informed EPA that it would comply with the March 1992 UAO by performing the remedy EPA selected for the Site under EPA and plaintiff DEP's oversight. Defendant A.O. Corporation did not comply with the March 1992 UAO.

22. Although IBM has completed various aspects of the remedy selected for the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

23. Plaintiffs DEP and Administrator repeat each allegation of Paragraphs 1 through 22 above as though fully set forth in its entirety herein.

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

25. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the A.O. Polymer Property.

26. 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.

27. 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 A.O. Polymer Property.

28. 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.

29. Defendant is a discharger of hazardous substances at the A.O. Polymer Property, 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 Property. N.J.S.A. 58:10-23.11g.c.(1).

30. 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).

31. 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 A.O. Polymer 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 A.O. Polymer Property;
- c. 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 A.O. Polymer 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 A.O. Polymer 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

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

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

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

35. The groundwater 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.

36. As long as the ground water remains contaminated due to the Defendant's conduct, the public nuisance continues.

37. 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 A.O. Polymer 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 A.O. Polymer 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 A.O. Polymer 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 A.O. Polymer 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

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

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

40. The Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the A.O. Polymer Property.

41. As long as the ground water remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

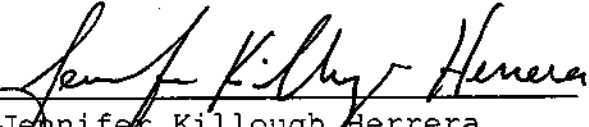
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- 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 A.O. Polymer 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 A.O. Polymer 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 A.O. Polymer 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 A.O. Polymer 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: 
Jennifer Killough Herrera
Deputy Attorney General

Dated: 12/21/04

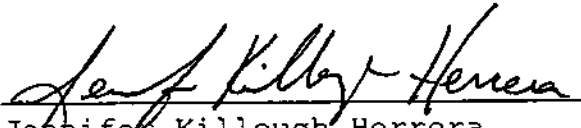
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Jennifer Killough Herrera, 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 two pending actions: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. A-006537-03T3. 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 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).

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Attorney for Plaintiffs

By: 
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Dated: 12/21/04