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MONMOUTH COUNTY

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MONMOUTH COUNTY  
DOCKET NO. *mon. l- 3647-06*

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NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION and : Civil Action  
THE ADMINISTRATOR OF THE NEW :  
JERSEY SPILL COMPENSATION : COMPLAINT  
FUND, :  
 :  
Plaintiffs, :  
 :  
v. :  
 :  
COOPER DEVELOPMENT COMPANY, :  
INC. and "ABC CORPORATIONS" 1- :  
20 (Names Fictitious), :  
 :  
Defendants. :  
 :  

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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. 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 American Vitamin site in Freehold 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 American Vitamin site, and to compel 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 American Vitamin 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, 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 damages to the natural resources of this 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 Cooper Development Company ("Cooper Development") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 2648 Stag Canyon Road, Santa Ynez, California, 93460.

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 were either previous owners and operators of the site and/or the corporate successors to previous owners and operators of the site, or are otherwise related to previous owners and operators of the site. Certain of the "ABC Corporations" 1-20 defendants may also be the current owners and operators of the site.

AFFECTED NATURAL RESOURCES

Ground Water

7. 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.

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

9. 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.

10. 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.

11. 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.

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

#### GENERAL ALLEGATIONS

13. The American Vitamin site consists of approximately three acres of real property located at 500 Halls Mill Road, Freehold Township, Monmouth County, New Jersey, this property being also known and designated as Block 78, Lots 8.0 and 8.01, on the Tax Map of Freehold Township and Block 169, Lot 4 on the Tax Map of Howell Township ("the American Vitamin 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. 012451.

14. On or about November 19, 1983, Cooper Laboratories, Inc. acquired the American Vitamin Property. In or about June 1985, Cooper Laboratories, Inc. dissolved. CooperBiomedical, a wholly-owned subsidiary of Cooper Laboratories, Inc., continued to exist, changing its name to Cooper Development Company, Inc. on or about April 22, 1986.

15. From 1983 through 1986, defendant Cooper Development (itself or operating as CooperBiomedical) owned and operated a manufacturing business at the American Vitamin 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 trichloroethylene ("TCE").

16. Contamination at the Site first came to DEP's attention in 1986, when Cooper Development's proposed sale of the American Vitamin Property to Cooper Technicon, Inc. ("CTI") required Cooper Development to comply with the former Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14. The American Vitamin Property was transferred to CTI on or about August 5, 1986.

17. On October 30, 1986, Cooper Development executed an Administrative Consent Order ("ACO One") with DEP. ACO One obligated Cooper Development to conduct a complete remedial investigation and remediation of the Site and allowed the proposed sale to go forward.

18. The American Vitamin Property was subsequently transferred by CTI to Technicon Instruments, Inc. ("TIC").

19. ISRA obligations were again triggered by the proposed sale of the American Vitamin Property from TIC to Hidel Partners, Inc. in May 1987.

20. Accordingly, CTI and TIC executed another Administrative Consent Order ("ACO Two") with DEP. ACO Two reaffirmed Cooper Development's cleanup responsibilities under ACO One and also

established CTI and TIC as guarantors that the investigation and cleanup of the Site would be completed.

21. The Site has triggered ISRA cleanup obligations on at least two other occasions. In February 1995, IVC Industries, Inc. applied to DEP for a Remediation in Progress Waiver to allow for the transfer of control and operation of the American Vitamin Property to IVC Industries, Inc., as part of a merger and acquisition with Hidel Partners, Inc., and American Vitamin Products, Inc. That application was granted on March 8, 1995.

22. On April 15, 2002, IVC Industries, Inc., received a Remediation in Progress Waiver from DEP following a merger with Nutritionals Acquisition Corporation.

23. From 1986, through 1988, defendant Cooper Development performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the defendant investigated the nature and extent of the contamination at the Site.

24. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and soils at the Site, including TCE.

25. In or around 1989, plaintiff DEP approved a Remedial Action Selection Report for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed

remedial action, and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Site.

26. The remedial action that plaintiff DEP approved for the Site primarily provided for a two phase groundwater treatment system that defendant Cooper Development constructed and operated for an approximately ten-year period with limited success. In or around 2000 defendant Cooper Development proposed a remedial action for groundwater that consisted of natural attenuation and a classification exception area. Plaintiff DEP has yet to approve the proposed remedy.

27. Although defendant Cooper Development has initiated the remedial action for the Site, and those actions have been in place for a number of years, the groundwater remains contaminated.

FIRST COUNT

Spill Act

28. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 27 above as though fully set forth in its entirety herein.

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

30. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the American Vitamin Property.



31. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, may approve other appropriations for the Site.

32. The plaintiffs also 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 as a result of the discharge of hazardous substances at the American Vitamin Property.

33. 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.

34. Defendants Cooper Development and one or more of the ABC Corporation defendants are the dischargers of hazardous substances at the American Vitamin 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 as a result of the discharge of hazardous substances at the American Vitamin Property. N.J.S.A. 58:10-23.11g.c.(1).

35. One or more of the ABC Corporation defendants, as former or current owners or operators of the American Vitamin Site following the discharge of hazardous substances there, or as

successors to either those persons who discharged hazardous substances at the American Vitamin Site or former owners or operators of the Site, 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 as a result of the discharge of hazardous substances at the American Vitamin Property. N.J.S.A. 58:10-23.11g.c.(1).

36. 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).

37. 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 value 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 American Vitamin 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 as a result of the discharge of hazardous substances at the American Vitamin Property;
- c. Enter judgment against the defendants, compelling the defendants to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the American Vitamin Property;
- d. 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 American Vitamin 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 American Vitamin Property;

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

#### SECOND COUNT

##### Public Nuisance

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

41. 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 these natural resources.

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

43. 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 as a result of the discharge of hazardous substances at the American Vitamin 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 as a result of the discharge of hazardous substances at the American Vitamin Property;

- c. Enter judgment against the defendants, compelling the defendants to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the American Vitamin Property;
- d. 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 American Vitamin 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 American Vitamin Property;
- e. Award the plaintiffs their costs and fees in this action; and
- f. Award the plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

44. Plaintiffs repeat each allegation of Paragraphs 1 through 43 above as though fully set forth in its entirety herein.

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

46. The defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the American Vitamin Property.

47. As long as the 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 as a result of the discharge of hazardous substances at the American Vitamin 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 as a result of the discharge of hazardous substances at the American Vitamin Property;
- c. Enter judgment against the defendants, compelling the defendants to cease, under plaintiff DEP's oversight, the

- trespass by performing any further cleanup of hazardous substances discharged at the American Vitamin Property;
- d. 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 American Vitamin 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 American Vitamin Property;
- e. Award the plaintiffs their costs and fees in this action; and
- f. Award the plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER  
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 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: 

Adam B. Lavinthal  
Deputy Attorney General

Dated: