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SUPERIOR COURT OF NEW JERSEY
CUMBERLAND COUNTY
LAW DIVISION

SEP 29 2004

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CUMBERLAND COUNTY
DOCKET NO. L1368-04

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, :
: Civil Action
: COMPLAINT
: Plaintiffs, :
: v. :
: ABB DE INC.; C & C :
INVESTMENTS, A New Jersey :
Partnership; FISCHER & PORTER :
COMPANY; "JOHN DOES" 1-10 :
(Names Fictitious); and :
"ABC CORPS." 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. 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 Andrews Glass Company site ("the Site") in the City of Vineland, Cumberland 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 Andrews Glass Company 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 Andrews Glass Company 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 ABB DE, Inc. ("ABB DE") is a foreign corporation doing business as ABB DE, Inc., and is incorporated in the United States under the laws of the State of Delaware, with a principal place of business located at 940 Main Campus Drive, Raleigh, North Carolina.

6. Defendant C & C Investments ("C & C Investments") is a New Jersey Partnership incorporated under the laws of the State of New Jersey, with a principal place of business located at 410 South Fourth Street, Vineland, New Jersey.

7. Defendant Fischer & Porter Company ("Fischer & Porter") is a company incorporated under the laws of the state of Pennsylvania, with a principal place of business located at 125 East County Line Road, Warminster, Pennsylvania.

8. Andrews Glass Company ("Andrews Glass") was, and remains, a division of defendant Fischer & Porter.

9. Defendant Fischer & Porter merged in March 2001, with Elsag Bailey, Inc., with Elsag Bailey being the surviving entity.

10. Also in March 2001, Elsag Bailey, Inc. then merged with ABB Automation, Inc., with the surviving entity being ABB Automation, Inc.

11. In or about December 13, 2002, ABB Automation, Inc. merged with defendant ABB DE, with defendant ABB DE being the surviving entity.

12. Defendant ABB DE is the successor to defendant Fischer & Porter, and Andrews Glass, a division of defendant Fischer & Porter.

13. 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 may be corporate officers, directors, shareholders or responsible corporate officials of defendant C & C Investments.

14. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which are owners or operators of businesses that have contributed to the groundwater contamination in the North Vineland area.

AFFECTED NATURAL RESOURCE

Ground Water

15. 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.

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

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

18. 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.

19. 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.

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

GENERAL ALLEGATIONS

21. The Andrews Glass Company site consists of approximately 6.5 acres of real property located at 3740 Northwest Boulevard,

City of Vineland, Cumberland County, New Jersey, this property being also known and designated as Block 82, Lot 9, on the Tax Map of Vineland City ("the Andrews Glass 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. NJP0000000252.

22. From 1956 through February 1971, Roger and Helen Jones owned the Andrews Glass Property.

23. In February 1971, Andrews Glass purchased the Andrews Glass Property from Roger & Helen Jones.

24. In April 1985, Andrews Glass transferred title to the Andrews Glass Property to defendant Fischer & Porter.

25. In November 1996, defendant Fischer & Porter sold the Andrews Glass Property to C & C Investments, the owner of record at the time the Plaintiffs filed this complaint.

26. From 1956 through April 1985, Andrews Glass operated a laboratory and industrial glass manufacturing facility at the Andrews Glass Property, the operation of which involved 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., including 1,2 dichloroethene ("1,2 DCE"), trichloroethylene ("TCE"), and perchloroethylene ("PCE").

27. From April 1985 through November 1994, defendant Fischer & Porter continued operating the glass manufacturing facility at the Andrews Glass Property, the operation of which involved 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 1,2 DCE, TCE and PCE.

28. In August 1996, defendant Fischer & Porter sold the Andrews Glass Property to C & C Investments who is the current owner of record.

29. In January 1986, plaintiff DEP found that groundwater from approximately twenty-five residential potable wells located in the vicinity of the Andrews Glass Property contained DCE, PCE, and TCE at concentrations exceeding maximum contaminant levels as prescribed by N.J.A.C. 7:10-1.1-16.12.

30. In July 1986, as part of a regional groundwater investigation, plaintiff DEP inspected the Andrews Glass Property, during which plaintiff DEP sampled four septic systems and a potable well at the Andrews Glass Property, the results of which revealed the presence of various hazardous substances, including 1,2 DCE and TCE in one of the on-site septic systems, 1,2 DCE, TCE, and PCE in another, and all three hazardous substances in the potable well.

31. In January 1988, pursuant to its New Jersey Pollutant Discharge Elimination System ("NJPDES") Permit, defendant Fischer & Porter installed six monitoring wells on the Andrews Glass Property, which wells defendant Fischer & Porter sampled quarterly as required by the NJPDES permit.

32. Between February 1988 and August 1992, quarterly sampling results revealed the presence of PCE at concentrations exceeding plaintiff DEP's cleanup criteria in the six wells defendant Fischer & Porter installed in January 1988, and in one seepage pit at the Andrews Glass Property that defendant Fischer & Porter also sampled.

33. In February 1991, defendant Fischer & Porter conducted a soil vapor survey in the northern septic area of the Andrews Glass Property, the results of which revealed the presence of PCE, trans-1,2 DCE, and toluene at various locations throughout the area.

34. In July 1991, defendant Fischer & Porter again sampled the northern septic area of the Andrews Glass Property, the results of which revealed the presence of PCE, TCE, and 1,2 DCE in trace concentrations in three of the septic system samples, and trace concentrations of various hazardous substances, including TCE, PCE, 1,2 DCE and toluene in the soils.

35. The substances defendant Fischer & Porter detected in the soils and septic systems during July 1991 were contaminants of concern to plaintiff DEP in its regional groundwater investigation.

36. In March 1992, defendant Fischer & Porter removed the northern and southwest septic systems from the Andrews Glass Property, one component of which involved sampling facility's the two on-site septic systems, the results of which revealed trace concentrations of PCE.

37. From 1993 through 1994, plaintiff DEP investigated a number of properties in North Vineland to ascertain whether they were groundwater contamination sources, which investigations prompted plaintiff DEP to conclude that the Andrews Glass Property was a source of the regional groundwater contamination.

38. In November 1994, defendant Fischer & Porter ceased operations at the Andrews Glass Property, which obligated defendant Fischer & Porter to comply with the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

39. In August 1994, defendant Fischer & Porter entered into a ISRA remediation agreement ("the 1994 Agreement") with plaintiff DEP, which required defendant Fischer & Porter to submit various reports and a proposed work plan to remediate the Site, which agreement defendant Fischer & Porter failed to comply with.

40. In August 1996, plaintiff DEP and defendant Fischer & Porter signed an addendum to the 1994 Agreement, allowing defendant Fischer & Porter to sell the Andrews Glass Property to C & C Investments before fulfilling its ISRA obligations under the 1994

Agreement, which the addendum gave defendant Fischer & Porter additional time to satisfy.

41. Although defendant Fischer & Porter has submitted several investigative reports to plaintiff DEP concerning the delineation and remediation of the contamination at and from the Andrews Glass Property, and the regional groundwater contamination, the remedial action has not begun, and the groundwater contamination continues.

FIRST COUNT

Spill Act

42. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 41 above as though fully set forth in its entirety herein.

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

44. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Andrews Glass Property.

45. 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.

46. 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 Andrews Glass Property.

47. 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.

48. Defendant Fischer & Porter was a discharger of hazardous substances at the Andrews Glass 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 Andrews Glass Property. N.J.S.A. 58:10-23.11g.c.(1).

49. Defendant C & C Investments knowingly purchased property upon which hazardous discharges had occurred 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 Andrews Glass Property. N.J.S.A. 58:10-23.11g.c.(1).

50. Defendant ABB DE, as the successor to Andrews Glass and defendant Fischer & Porter, the dischargers of hazardous substances at the Andrews Glass Property, 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 Andrews Glass Property. N.J.S.A. 58:10-23.11g.c.(1).

51. Defendant Fischer & Porter, the owner of the Andrews Glass Property at the time hazardous substances were discharged there, also 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 Andrews Glass Property. N.J.S.A. 58:10-23.11g.c.(1).

52. Defendant C & C Investments, by knowingly purchasing property upon which hazardous discharges had occurred, also 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 Andrews Glass Property. N.J.S.A. 58:10-23.11g.c.(1

53. Defendant ABB DE, as the successor to Andrews Glass and defendant Fischer & Porter, the owners of the Andrews Glass Property at the time hazardous substances were discharged there, also 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 Andrews Glass Property. N.J.S.A. 58:10-23.11g.c.(1).

54. Defendants ABC Corporations, as the dischargers of hazardous substances at or near the Site, 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 as a result of the discharges. N.J.S.A. 58:10-23.11g.c.(1).

55. Defendants ABC Corporations, as the owners of properties at or near the Site at the time hazardous substances were discharged there, also 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 as a result of the discharge of hazardous substances at their properties. N.J.S.A. 58:10-23.11g.c.(1).

56. 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).

57. 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 as a result of the discharge of hazardous substances at the Andrews Glass Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, 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 Andrews Glass 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 Andrews Glass

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 Andrews Glass 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

58. Plaintiffs repeat each allegation of Paragraphs 1 through 57 above as though fully set forth in its entirety herein.

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

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

61. 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.

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

63. 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 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 Andrews Glass 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, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Andrews Glass 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 Andrews Glass 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 Andrews Glass 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

64. Plaintiffs repeat each allegation of Paragraphs 1 through 63 above as though fully set forth in its entirety herein.

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

66. The Defendant is liable for trespass, and continued trespass, since hazardous substances were discharged at the Andrews Glass Property.

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

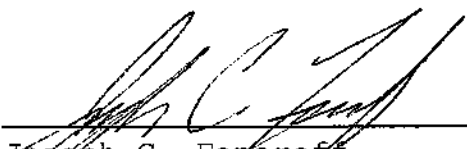
PRAYER FOR RELIEF

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 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 Andrews Glass 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, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Andrews Glass 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 Andrews Glass 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 Andrews Glass 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: 
Joseph C. Fanaroff
Deputy Attorney General

Dated: 12-28-04

DESIGNATION OF TRIAL COUNSEL

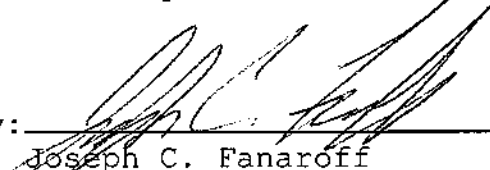
Pursuant to R. 4:25-4, the Court is advised that Joseph C. Fanaroff, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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. A-6537-03T3. 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).

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

By: 
Joseph C. Fanaroff
Deputy Attorney General

Dated: 12-28-04