

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: Brendan Ruane  
Deputy Attorney General  
(609) 984-5016

Gordon C. Rhea, Esq.  
Special Counsel to the Attorney General  
Richardson, Patrick, Westbrook & Brickman, L.L.C.  
1037 Chuck Dawley Boulevard, Building A  
Mt. Pleasant, SC 29464  
(843) 727-6501

John K. Dema, Esq.  
Special Counsel to the Attorney General  
Law Offices of John K. Dema, P.C.  
1236 Strand Street, Suite 103  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-5008  
(340) 773-6142

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY  
DOCKET NO. L-3203-05

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

Plaintiffs,

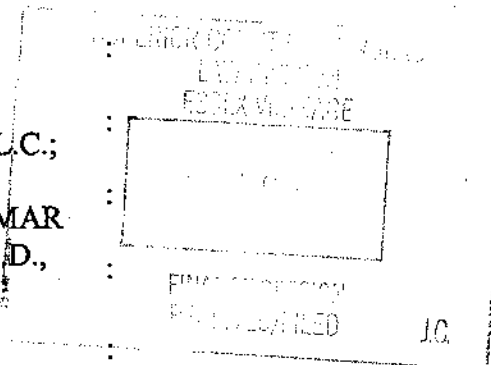
v.

CHARLES BESELER COMPANY;  
VANFAIR ASSOCIATES, L.L.C.;  
J.A. MULLIGAN ASSOCIATES, L.L.C.;  
MARTIN F. MYERS; HELENE F.  
MYERS; PHILLIP BERMAN; VENMAR  
REALTY CORPORATION; and N.E.D.,  
L.L.C.,

Defendants.

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 defendants ("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 discharge of hazardous substances at the Charles Beseler Company site located in the City of East Orange and the City of Newark, Essex 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 Charles Beseler 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 Charles Beseler 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 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 damages 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 Charles Beseler Company ("Beseler") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

6. Defendant Beseler is the successor in interest to, and the remaining entity resulting from, the merger and/or acquisition of several entities, to wit: P.O. World Trade, Projection Optics, and Charles Beseler Co.

7. Defendant Vanfair Associates, L.L.C. ("Vanfair LLC") is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 80 Fairfield Drive, Short Hills, New Jersey 07078.

8. Defendant Vanfair LLC was formed in 1994 by the partners of Vanfair Associates ("Vanfair GP"), a New Jersey general partnership, and is the successor-in-interest to Vanfair GP.

9. Defendant Phillip Berman ("Berman") is an individual whose dwelling or usual place of abode is located at 17 Bonnyview Drive, Livingston, New Jersey 07039.

10. Defendant Martin F. Myers is an individual whose dwelling or usual place of abode is located at 17 Bonnyview Drive, Livingston, New Jersey 07039.

11. Helene F. Myers ("Helene Myers") is an individual whose dwelling or usual place of abode is located at 17 Bonnyview Drive, Livingston, New Jersey 07039.

12. Defendants Martin Myers and Helen Myers are husband and wife and, along with defendant Philip Berman are, or were, partners in Vanfair GP.

13. Defendant J.A. Mulligan Associates L.L.C. ("Mulligan") is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 8 Rachel Court, Long Valley, New Jersey 07853.

14. Defendant Venmar Realty Corporation ("Venmar"), during its existence, was a corporation organized and existing under the laws of the State of New Jersey with its principal place of business located at 158 Mayhew Drive, South Orange, New Jersey 07079.

15. Defendant N.E.D., L.L.C. ("N.E.D.") is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 2693 Bancroft Avenue, Union, New Jersey 07083.

#### AFFECTED NATURAL RESOURCE

##### Ground Water

16. 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.

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

18. Ground water provides base flow to streams and other surface water bodies and influences surface water quality, wetland ecology, and the health of aquatic ecosystems.

19. 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.

20. Ground water also is used for commercial, industrial, and agricultural uses.

21. There are more than 6,000 contaminated sites in New Jersey that have ground water confirmed to be contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

22. The Charles Beseler Company site consists of approximately 2.4 acres of real property located at 219 S. 18<sup>th</sup> Street, City of East Orange, Essex County, this property being also known and designated as Block 11, Lot 1, on the Tax Map of the City of East Orange, and Block 1818, Lots 5, 6 and 7, on the Tax Map of the City of Newark ("the Beseler 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. 025639.

23. From 1972 through 1982, defendant Martin Myers and Ruth Berman owned the portion of the Beseler Property known and designated as Block 11, Lot 1, on the Tax Map of the City of East Orange ("Lot 1"), which they conveyed to defendant Beseler in September 1982.

24. In January 1987, defendant Beseler conveyed the Lot 1 portion of the Beseler Property to Vanfair GP.

25. In January 1995, Ruth Berman and defendant Helene Myers, on behalf of Vanfair GP, conveyed the Lot 1 portion of the Beseler Property to defendant Vanfair LLC.

26. From April of 1964 through September of 1977, Venmar Realty Corp. owned that portion of the Beseler Property also known and designated as Block 1818, Lots 5, 6 and 7, on the Tax Map of the City of Newark ("Lots 5, 6 and 7"), which it conveyed to Ruth Berman and defendant Helene Myers on August 19, 1977.

27. In October 1994, Ruth Berman and defendant Helene Myers, on behalf of Vanfair GP, conveyed Lots 5, 6 and 7 of the Beseler Property to defendant Vanfair LLC.

28. In January 1995, defendant Vanfair LLC conveyed the entire Beseler Property to defendant Mulligan.

29. In April 2002, defendant Mulligan conveyed Lots 5, 6 and 7 of the Beseler Property to defendant N.E.D.

30. As of the filing of this Complaint, defendant Mulligan is the owner of record of the Lot 1 portion of the Beseler Property, while defendant N.E.D. is the owner of record of Lots 5, 6, and 7 of the Beseler Property.

31. During the time that defendant Vanfair LLC and/or its predecessor, Vanfair GP, defendant Venmar, defendant Martin Myers, defendant Helene Myers, and defendant Berman owned portions of the Beseler 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. 58:10-23.11f.b.(2), which substances included trichloroethene, perchloroethylene, dichloroethane, and vinyl chloride.

32. From 1954 through 1987, defendant Beseler engaged in plastic extruding, manufacturing and warehousing activities at the Beseler Property, which activities involved the generation, storage, handling, and disposal 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 trichloroethene, perchloroethylene, dichloroethane, and vinyl chloride.

33. Defendant Beseler's cessation of operations in 1987, triggered defendant Beseler's obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

34. Pursuant to its obligations under ECRA, defendant Beseler initiated an investigation of the Site, the results of which revealed the presence of various hazardous substances in the sediments, soils and ground water, which hazardous substances included trichloroethene, vinyl chloride, and 1,1 dichloroethene.

35. In 1988, defendant Beseler installed several monitoring wells at the Site in order to determine the extent and the severity of the groundwater contamination.

36. In 1992, defendant Beseler installed a soil vacuum system ("SVE") at the Beseler Property to remove trichloroethene and other chlorinated volatile organic substances from the vicinity of the source area, which defendant Beseler continued to operate until 1997.

37. In October 1994, defendant Vanfair LLC submitted its Remedial Investigation Report ("RIR") and Remedial Action Workplan ("RAWP") to plaintiff DEP, in which defendant Vanfair LLC presented the results of soils and groundwater sampling conducted to delineate the nature extent of the contamination at the Site, and the proposed remedial action.

38. Plaintiff DEP determined that defendant Vanfair LLC's October 1994 RIR and RAWP were unacceptable.

39. On or about November 1, 1994, defendant Vanfair LLC entered into a Remediation Agreement with plaintiff DEP requiring, in part, defendant Vanfair LLC to further investigate and remediate the contamination at the Site pursuant to ISRA.

40. Sampling results from defendant Vanfair LLC's investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and soils, which substances included trichloroethene, tetrachloroethane, and vinyl chloride.

41. The initial phases of the remediation defendant Vanfair LLC undertook involved the excavation and removal of contaminated soils from the Beseler Property, the installation of numerous monitoring wells for sampling ground water, and the preliminary delineation of the contaminant plumes.

42. In 1997, defendant Vanfair LLC submitted a revised Remedial Action Workplan ("1997 RAWP") to plaintiff DEP, in which defendant Vanfair LLC described the selected remedial alternatives for the Site, which included continued monitoring of the ground water, excavating contaminated soils, and implementing an air sparging/soil vapor extraction system primarily to remove the contaminant sources from the soils.

43. Plaintiff DEP determined that the 1997 RAWP was unacceptable, and required defendant Vanfair LLC to submit a revised RIR and a revised RAWP.

44. In March 1998, defendant Vanfair LLC submitted the revised RIR to plaintiff DEP, in which defendant Vanfair LLC outlined the results of additional soils and groundwater testing, and



recommended the establishment of a Classification Exception Area ("CEA"), which would exclude the designated ground water from use as potable water.

45. In March 2003, defendant Vanfair LLC submitted an additional revised RIR and the revised RAWP to plaintiff DEP, in which defendant LLC proposed a pilot study of a Hydrogen Releasing Compound ("HRC") injection system to treat the ground water contaminant plume, which study plaintiff DEP approved.

46. In March 2003, defendant Vanfair LLC began the implementation of the pre-HRC injection pilot study phase of the remediation, the results of which demonstrated that HRC injection system was not an appropriate remedial option for the Site.

47. By letter dated January 14, 2004, plaintiff DEP directed defendant Vanfair LLC to reevaluate the remedial options for the Site, and submit a revised RAWP, CEA proposal, and a Baseline Ecological Evaluation ("BEE") to identify ecological concerns for the Site.

48. In March 2004, defendant Vanfair LLC submitted the CEA proposal and BEE to plaintiff DEP for consideration.

49. The proposed CEA, which includes the Beseler Property and properties in the immediate vicinity, extends to a vertical depth of 60 feet, and is expected to continue until at least 2052. The designation of the CEA excludes the designated ground water from use as Class II-A potable water due to the contamination.

50. Although defendants Vanfair LLC and Beseler have initiated the remediation of the Site, the groundwater and soils contamination continues.

#### FIRST COUNT

#### Spill Act

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

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

53. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Allied Signal Property.

54. Plaintiff Administrator may 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.

55. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost use, existence value damages, 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 Beseler Property.

56. 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.

57. Defendant Beseler, as the discharger of hazardous substances at the Beseler Property, is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use, existence value damages, 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 Beseler Property. N.J.S.A. 58:10-23.11g.c.

58. Defendant Vanfair LLC, as the successor-in-interest to the owner of the Beseler Property at the time hazardous substances were discharged there, and defendants Venmar, Martin

Myers, Helene Myers, and Berman, as owners of the Beseler Property at the time hazardous substances were discharged there, are persons 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, existence value damages, 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 Beseler Property. N.J.S.A. 58:10-23.11g.c.(1).\

59. Defendants Mulligan, N.E.D. and Vanfair LLC, as knowing purchasers of the Beseler Property, a property at which hazardous substances were previously discharged, 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, existence value damages, 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 Beseler Property. N.J.S.A. 58:10-23.11g.c.(3).

60. 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); for 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).

61. 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, existence value damages, 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 Beseler 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 use, existence value damages, 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 Beseler 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 Beseler 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 Beseler 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

62. Plaintiffs repeat each allegation of Paragraphs 1 through 61 above as though fully set forth in its entirety herein.

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

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

65. 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.

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

67. 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 lost use, existence value damages 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 Beseler Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost use, existence value damages, 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 Beseler 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 Beseler 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 Beseler 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

68. Plaintiffs repeat each allegation of Paragraphs 1 through 67 above as though fully set forth in its entirety herein.

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

70. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Site.

71. 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 lost use, existence value damages, 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 Beseler Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost use, existence value damages 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 Beseler 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 Beseler 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 Beseler 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.

RICHARDSON, PATRICK, WESTBROOK  
& BRICKMAN, L.L.C.  
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.  
Attorneys for Plaintiffs

By: *Gordon C. Rhea*  
Gordon C. Rhea, Esq.  
Special Counsel to the Attorney General

By: *John K. Dema*  
John K. Dema, Esq.  
Special Counsel to the Attorney General

Dated: 3/25/05

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

By: *Brendan Ruane*  
Brendan Ruane  
Deputy Attorney General

Dated: 3/27/05

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, and Scott E. Kauff, Special Counsel to the Attorney General, are 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 or new issue, including claims to recover other cleanup and removal costs, 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).

RICHARDSON, PATRICK, WESTBROOK  
& BRICKMAN, L.L.C.  
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.  
Attorneys for Plaintiffs

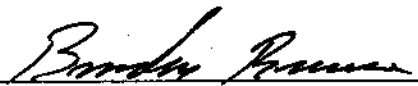
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