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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAPE MAY COUNTY
DOCKET NO. CPM - L - 1 - 05.

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

Plaintiffs,

v.

AZON CORPORATION;
JOHN F. HANSON;
PETER O HANSON;
ANTOINETTE W. MUSCARELLE, and
"XYZ ENTITY" (Name Fictitious),

Defendants.

Civil Action

COMPLAINT

RECEIVED
OFFICE OF THE
CIVIL DIVISION MANAGER

2004 DEC 29 PM 1:21

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. 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 Keuffel & Esser site in Cape May Court House, Middle Township, Cape May County, which has contributed to the groundwater contamination in the Cape May Court House area. 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 Cape May Court House 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 Keuffel & Esser 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 Azon Corporation ("Azon") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 720 Azon Road, Johnson City, New York.

6. In 1987, defendant Azon acquired Keuffel & Esser of New Jersey, a New Jersey corporation.

7. In 1995, Keuffel & Esser of New Jersey merged with defendant Azon, with defendant Azon being the surviving entity.

8. Defendant Peter O. Hanson is a person whose dwelling or usual place of abode is 235 Moore Street, Hackensack, New Jersey 07601.

9. Defendant Jon F. Hanson is a person whose dwelling or usual place of abode is 15 Maple Avenue, Morristown, New Jersey 07960.

10. Defendant Antoinette W. Muscarelle is a person whose dwelling or usual place of abode is 7269 Reserve Creek Drive, Port St. Lucie, Florida.

11. Defendant "XYZ Entity," this name being fictitious, is an entity whose identity cannot be ascertained as of the filing of this Complaint, which may have owned the real property in Cape May Court House on which Keuffel & Esser operated.

AFFECTED NATURAL RESOURCE

Ground Water

12. 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.

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

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

15. 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.

16. 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.

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

GENERAL ALLEGATIONS

18. The Keuffel & Esser site consists of approximately 1.6 acres of real property located at 502 South Main Street, Cape May Court House, Middle Township, New Jersey, this property being also known and designated as Block 331, Lot 1, on the Tax Map of Middle Township ("the K & E Property"), and all other areas where any hazardous substance discharged there has become located ("the K & E Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 008853.

19. From at least 1971 to 1974, defendant Antoinette W. Muscarelle owned the K & E Property.

20. From at least 1974 through the present, defendant XYZ and/or defendants Peter O. Hanson and Jon F. Hanson, have either owned the K & E Property, or have served as trustees of an entity that has owned the K & E Property.

21. During the time defendants John F. Hanson, Peter O. Hanson, Antoinette Muscarelle and/or XYZ Entity owned the K & E 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. 58:10-23.11b., which substances included trichloroethylene ("TCE"), 1,1,1-trichloromethane ("TCA") and perchlorethylene ("PCE").

22. From approximately 1960 to 1980, Keuffel & Esser and its predecessor, Cape May Products, Inc., operated a slide rule and tape measure manufacturing facility at the K & E Property, which involved electroplating, painting and printing.

23. Among the hazardous substances Keuffel & Esser and its predecessor used in their manufacturing processes, certain of which were stored in 55-gallon drums at the K & E Property, were TCE, TCA, PCE, toluene and xylene, certain of which were discharged at the K & E Property.

24. In January 1985, plaintiff DEP inspected the K & E Property, during which it sampled the soils and ground water, the results of which revealed the presence of various hazardous substances, including TCE, dichloroethene, TCA and PCE, in the ground water.

25. During the 1990s, defendant Azon performed an investigation of the K & E Site under plaintiff DEP's oversight, the results of which were that no further action was required for the remaining contamination, which would naturally attenuate, and

the establishment of a classification exception area and well restriction area downgradient of the K & E Property, in which areas water use was limited.

26. In July 2002, in an attempt to identify the source of groundwater contamination, plaintiff DEP again inspected the K & E Property, during which plaintiff DEP sampled the ground water, the results of which revealed the presence of elevated concentrations of hazardous substances, including TCE, which results led plaintiff DEP to conclude that the manufacturing facility, particularly the former plating room, was a source of contamination at the K & E Site.

27. The Cape May Court House Groundwater Contamination area consists of various properties in a residential area of Cape May Court House, Middle Township, near and downgradient of the K & E Property ("Cape May Court House Area"), which plaintiff DEP has designated as Site Remediation Program Interest No. 8853.

28. In 1984 and 1985, the Cape May County Health Department, the Middle Township Health Department and plaintiff DEP sampled potable wells located hydraulically downgradient of the K & E Property, the results of which showed that the water from eighteen wells were contaminated.

29. The sampling results revealed the presence of TCE in the water from fourteen wells. Nine other wells also had hazardous substances, including TCA, 1,1-dichloroethene, ("1,1-DCE") and PCE

at concentrations exceeding plaintiff DEP's cleanup criteria. A total of eighteen wells were contaminated with either TCE or one of these other substances.

30. On March 8, 1985, plaintiff DEP recommended to Keuffel & Esser that it install and sample monitoring wells at the K & E Property due to the contamination detected in the Cape May Court House Area wells.

31. Pursuant to a memorandum of understanding, Keuffel & Esser, under plaintiff DEP's oversight, performed a subsurface investigation of the K & E Site beginning in 1989.

32. Sampling results from K & E's investigation revealed that there was a contamination source beneath the K & E Property, and that ground water flowed easterly toward the Cape May Court House Area.

33. Between 1989 and 1996, the Middle Township Health Department continued sampling potable wells in the Cape May Court House Area, the results of which revealed the presence of various hazardous substances, including TCE, concentrations exceeding plaintiff DEP's cleanup criteria in the water from six of the nine wells sampled.

34. Eventually, the water from 92 residential potable wells in the Cape May Court House Area was either contaminated, or was threatened to be contaminated, with hazardous substances at

concentrations exceeding plaintiff DEP's cleanup criteria, including TCE.

35. Based upon the findings from the above investigations, the affected residences were connected to the municipal water supply system, and the wells were sealed, which activities the Spill Fund and plaintiff DEP funded.

36. Although the Spill Fund and plaintiff DEP have performed or funded certain remediation activities for the Cape May Court House Area, including for the K & E Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

37. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 36 above as though fully set forth in its entirety herein.

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

39. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharges of hazardous substances at the K & E Property, including costs for the Cape May Court House Area.

40. Plaintiff Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund concerning the Cape May Court House Area, including for the K & E Site, and, further, has approved, and may continue to approve,

other appropriations for the Cape May Court House Area, including for the K & E Site.

41. 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 K & E Property, including for the Cape May Court House Area.

42. The costs and damages the Plaintiffs have incurred, and will incur, for the Cape May Court House Area, including for the K & E Site, are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

43. Defendant Azon is a successor to the dischargers of hazardous substances at the K & E 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 K & E Property. N.J.S.A. 58:10-23.11g.c.(1).

44. Defendants Jon F. Hanson, Peter O. Hanson, Antoinette Muscarelle, and XYZ Entity, as the owners, or successors of the owners, or trustees of the owners, of the K & E Property 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 the K & E Property. N.J.S.A. 58:10-23.11g.c.(1).

45. 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).

46. 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 K & E Property, including for the Cape May Court House Area, 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 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 K & E Property, including for the Cape May Court House Area;
- 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 K & E 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 K & E 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

47. Plaintiffs repeat each allegation of Paragraphs 1 through 46 above as though fully set forth in its entirety herein.

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

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

50. The groundwater contamination at in the Cape May Court House Area, including the K & E 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.

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

52. 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 K & E Property, including for the Cape May Court House Area, 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 K & E Property, including for the Cape May Court House Area;

- 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 K & E 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 K & E Property, including for the Cape May Court House Area;
- 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

53. Plaintiffs repeat each allegation of Paragraphs 1 through 52 above as though fully set forth in its entirety herein.

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

55. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the K & E Property, including for the Cape May Court House Area.

56. 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 K & E Property, including for the Cape May Court House Area, 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 K & E Property, including for the Cape May Court House Area;
- 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 K & E 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 K & E Property, including for the Cape May Court House Area;

- 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: Mark D. Oshinskie
Mark D. Oshinskie
Deputy Attorney General

Dated: 12/29/09

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark D. Oshinskie, 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-6537-03 T3. 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: Mark D. Oshinskie
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Dated: 12/29/04