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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY  
DOCKET NO. *MID-L-2516-06*

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

Plaintiffs,

v.

CROWN BEVERAGE PACKAGING,  
INC., a Delaware corporation;  
"ABC CORPORATIONS" 1-10 (Names  
Fictitious); and "JOHN DOES"  
1-5 (Names Fictitious),

Defendants.

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Civil Action

COMPLAINT

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MIDDLESEX COUNTY  
CLERK OF SUPERIOR COURT

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 Crown Beverage Packaging, Inc.,

"ABC Corporations" 1-10 (Names Fictitious), and "John Does" 1-10 (Names Fictitious) (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 Continental Can site in Edison, Middlesex 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 Continental Can 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 Continental Can 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 Crown Beverage Packaging, Inc. ("Crown Beverage") is a corporation organized and existing under the laws of the State of Delaware and with a principal place of business at One Crown Way, Philadelphia, Pennsylvania. Crown Beverage is authorized to do business in New Jersey, and has a registered agent within the State, Corporation Trust Company, located at 820 Bear Tavern Road, West Trenton, New Jersey 08628.

6. Crown Beverage is the successor in interest to Continental Can Company ("CCC"), an entity that, either directly or through wholly-owned subsidiaries, was the owner of the Continental Can Property and of the can manufacturing facility that operated on the premises.

7. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, which were either owners or operators of the Site and/or are the corporate successors to the previous owners and/or operators of the Site, or are otherwise related to previous owners and operators of the Site.

8. Defendants "John Does" 1-10, these names being fictitious, are persons whose identities cannot be ascertained as of the filing of this Complaint, who were either owners or operators of the Site and/or are successors to the previous owners and/or operators of the Site.

#### AFFECTED NATURAL RESOURCES

##### Ground Water

9. 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.

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

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

12. 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.

13. 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.

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

#### GENERAL ALLEGATIONS

15. The Continental Can site consists of approximately 13 acres of real property located at 24 Kilmer Road, Edison, Middlesex County, New Jersey, this property being also known and designated as Block 3B, Lot 2A, on the Tax Map of Edison ("the Continental Can 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. G000002880.

16. In May 1983, Crown Beverage and/or its predecessors purchased the Continental Can Property.

17. From May 1983 through December 1992, Crown Beverage and/or its predecessors owned the Continental Can 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, 1,1,1-

trichloroethylene, tetrachloroethylene, 1,1-dichloroethylene and 1,1-dichloroethane.

18. From May 1983 through December 1992, Crown Beverage and/or its predecessors also operated an aluminum can manufacturing facility at the Continental Can Property, the operation of which involved the use and storage 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 trichloroethylene, 1,1,1-trichloroethylene, tetrachloroethyle, 1,1-dichloroethylene and dichloroethane.

19. In 1986, the manufacturing facility was shut down for a period of time for retooling and remodeling, an event that triggered compliance 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.

20. In March 1986, CCC decommissioned and excavated a 5,000 gallon waste oil underground storage tank that had been used to store water soluble waste lubricating and/or cooling oil and organic solvents used in the plant's can manufacturing process (the "UST").

21. In 1986, soil borings were taken at the Site as part of an Environmental Site Assessment. The Environmental Site Assessment determined that the soil in the vicinity of the tank had been contaminated by volatile organic compounds (primarily 1,1,1-trichloroethane (TCEA)) and total petroleum hydrocarbons. As a

result, approximately 150 cubic yards of contaminated soil were removed from the UST excavation pit.

22. A Phase I Investigation was performed to determine the extent and severity of the organic constituents in the ground water underlying the Continental Can Property. The ground water samples from the monitoring wells installed at the Continental Can Property revealed the presence of a volatile organic compound plume (primarily chloroethane and TCEA) in the ground water near the area where the UST had been located.

23. In 1988, the Phase II investigation of the Continental Can Property was carried out. The Phase II Investigative Report, issued in January 1989, disclosed that the overburden contamination in the area of the former UST consisted primarily of chloroethane with lower concentrations of trichloroethane, 1,1-dichloroethene and 1,1-dichloroethane. The investigation also revealed that the bedrock contamination was essentially 1,1-dichloroethene with lower concentrations of 1,1-dichloroethane, chloroethane and trichloroethane.

24. The DEP and CCC entered into an Administrative Consent Order (the "1989 ACO") that became effective in February 1989. In accordance with the 1989 ACO, additional ground water sampling was performed at the Continental Can Property and a Remedial Investigation Work Plan (RIWP) was prepared.

25. In June 1990, the DEP was notified that the stock of several of CCC's wholly-owned subsidiaries (the "CCC Entities") had

been sold to Crown Cork & Seal Company ("Crown Cork"). As part of the transaction, ownership of the can manufacturing plant was transferred to Crown Cork, an event that triggered compliance with ECRA. As a result, the CCC Entities agreed to enter into an ACO with DEP (the "1990 ACO") so as to permit the sale, transfer and/or closing of operations prior to completion of all obligations under ECRA.

26. In October 1990, pursuant to the ECRA review process, a preliminary site inspection was carried out. DEP representatives observed limited surface soil staining in two areas and identified several potential areas of environmental concern (AOC) requiring additional investigation.

27. The Phase III Investigation Report - ECRA, submitted to DEP in November 1991 ("Phase III Report"), disclosed that concentrations of chloroethane, 1,1-dichloroethane, 1,1-dichloroethene and TCEA continued to remain in the ground water.

28. In 1992, Crown Cork excavated soil on the Continental Can Property to eliminate potential sources of underlying soils and ground water contaminants. The contaminant characterization and end-point sampling determined that the remaining contaminant concentrations were below the ECRA Residential Surface Cleanup Standards.

29. On May 20, 2003, the DEP issued a No Further Action Letter and Covenant Not to Sue (NFA/CNS). The NFA/CNS established a Classification Exception Area and Well Restriction Area (CEA/WRA)



for those contaminants with concentrations higher than the Ground Water Quality Standards, namely, trichloroethylene, 1,1,1-trichloroethylene, tetrachloroethylene, 1,1-dichloroethylene, 1,1-dichloroethane, vinyl chloride and xylenes. The duration of the CEA/WRA was set at 90 years.

30. Although remedial action for the Site was initiated, the ground water remains contaminated.

#### FIRST COUNT

##### Spill Act

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

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

33. The Plaintiffs 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 Continental Can Property.

34. 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.

35. Defendant Crown Beverage, as the owner, or a person who is a successor to the owners, of the Continental Can Property at the time hazardous substances were discharged there, 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 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 Continental Can Property. N.J.S.A. 58:10-23.11g.c.(1).

36. One or more of the ABC Corporation Defendants, as former or current owners or operators of the Continental Can Property following the discharge of hazardous substances there, or as successors to either those persons who discharged hazardous substances at the Site or the former owners or operators of the Site, are dischargers or 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 Continental Can Property. N.J.S.A. 58:10-23.11g.c.(1).

37. One or more of the John Does Defendants, as former or current owners or operators of the Continental Can Property following the discharge of hazardous substances there, or as

successors to either those persons who discharged hazardous substances at the Site or the former owners or operators of the Site, are dischargers or 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 Continental Can Property. N.J.S.A. 58:10-23.11g.c.(1).

38. 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).

39. 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 Continental Can 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 Continental Can 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 Continental Can 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 Continental Can 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

40. Plaintiffs repeat each allegation of Paragraphs 1 through 39 above as though fully set forth in its entirety herein.

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

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

43. 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.

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

45. 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 Continental Can 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 Continental Can 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 Continental Can 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 Continental Can 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

46. Plaintiffs repeat each allegation of Paragraphs 1 through 45 above as though fully set forth in its entirety herein.

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

48. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Continental Can Property.

49. 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 Continental Can 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 Continental Can 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 Continental Can 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 Continental Can Property;

d. Award the Plaintiffs their costs and fees in this action;  
and