

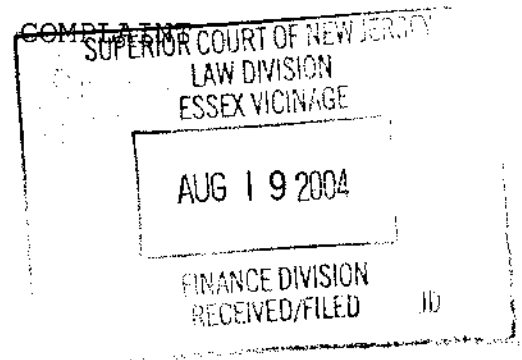
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. L6599-04

NEW JERSEY DEPARTMENT OF :
ENVIRONMENTAL PROTECTION and :
ADMINISTRATOR, NEW JERSEY :
SPILL COMPENSATION FUND, :
 :
Plaintiffs, :
 :
v. :
 :
CONE MILLS LLC, :
CROMPTON COLORS, INC., and :
CROMPTON CORP., :
 :
Defendants. :

Civil Action



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 and 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 discharges of hazardous substances at the Crompton Colors site located in the City of Newark, Essex County, New Jersey, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharges of hazardous substances at the Crompton Colors 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 ("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 Cone Mills, LLC is a corporation organized under the laws of the State of North Carolina, with a principal place of business located at 3101 North Elm Street, Greensboro, North Carolina.

6. Defendant Cone Mills, LLC previously was known as, or is the successor to, Cone Mills Corp., which merged in 1976 with May Urban Renewal Corp. No. 1 and Otto B. May, Inc., with the surviving corporation being Cone Mills Corp. (collectively, "Cone Mills Corp.").

7. Defendant Crompton Colors, Inc. is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 1 American Lane, Greenwich, Connecticut.

8. Defendant Crompton Colors, Inc. previously was known as, or is the successor to, Dyes and Chemical Corp., which merged with Crompton and Knowles Corp., and subsequently changed its name to

Crompton Colors, Inc. in April 2001 (collectively, "Crompton Colors, Inc.").

9. Defendant Crompton Corp. is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 15724 Fire Light Place, Moseley, Virginia.

10. Defendant Crompton Corp. previously was known as, or is the successor to, Crompton and Knowles Corp., which merged with Witco Corp. in 1999, with defendant Crompton Corp. being the surviving entity.

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

AFFECTED NATURAL RESOURCE

Groundwater

12. Groundwater 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 groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

14. Groundwater 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.

15. Groundwater 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.

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

GENERAL ALLEGATIONS

17. The Crompton Colors site consists of approximately 5.6 acres of real property located at 52 Amsterdam Street, Newark, Essex County, which property is also known and designated as Block 2068, Lots 1, 5, 7, 10, 14, 25, 27, 28, 29, 30, 32, 33, 41 and 60; Block 2083, Lot 19; and Block 2085, Lots 1, 3 and 20, on the Tax Map of the City of Newark ("the Crompton Colors 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.019390.

18. Between 1930 and 1966, Cone Mills Corp. acquired the various lots comprising the Crompton Colors Property.

19. In September 1980, Crompton and Knowles purchased the Crompton Colors Property from Cone Mills Corp.

20. In January 1995, Crompton and Knowles conveyed the Crompton Colors Property to Dyes and Chemical Corp., which despite

having merged with Crompton and Knowles, and subsequently having changed its name to Crompton Colors, Inc., still holds title to the Crompton Colors Property in its name.

21. From 1930 through 1979, defendant Cone Mills LLC and its predecessors manufactured dyes at the Crompton Colors Property, which involved the use 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.

22. From 1980 to 2001, defendant Crompton Colors, Inc. and its predecessors manufactured dyes at the Crompton Colors Property, which involved the use 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.

23. In June 2001, defendant Crompton Colors, Inc. signed a Memorandum of Agreement with plaintiff DEP, which provided for defendant Crompton Colors to remediate the Site under plaintiff DEP's oversight.

24. In 2001, defendant Crompton Colors, Inc. commenced a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which defendant Crompton Colors investigated the nature and extent of the contamination at the Site.

25. Sampling results from the remedial investigation revealed the presence of elevated concentrations of various hazardous

substances in the soils and groundwater at and underlying the Site, including polychlorinated biphenyls, benzene and tetrachloroethene.

26. Defendant Crompton Colors, Inc. has undertaken the cleanup of hazardous substances from the soils and groundwater at and underlying the Site, which contamination continues.

FIRST COUNT

Spill Act

27. Plaintiffs repeat each allegation of Paragraphs 1 through 26 above as though fully set forth in its entirety herein.

28. Plaintiffs 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 by the discharges of hazardous substances at the Crompton Colors Property.

29. 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.

30. Defendant Cone Mills LLC, as successor to Cone Mills Corp., the discharger of hazardous substances at the Crompton Colors Property, is liable, 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 by the

discharges of hazardous substances at the Crompton Colors Property.
N.J.S.A. 58:10-23.11g.c.(1).

31. Defendant Crompton Colors, Inc., as the discharger, or as the successor to a discharger, of hazardous substances at the Crompton Colors Property, is liable, 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 by the discharges of hazardous substances at the Crompton Colors Property.
N.J.S.A. 58:10-23.11g.c.(1).

32. Defendant Cone Mills, LLC, as the successor to Cone Mills Corp., the owner of the Crompton Colors Property at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable, 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 by the discharges of hazardous substances at the Crompton Colors Property. N.J.S.A. 58:10-23.11g.c.(1).

33. Defendant Crompton Colors, Inc., as the owner, or as the successor to the owner, of the Crompton Colors Property at the time

hazardous substances were discharged there, is a person otherwise responsible for the discharged hazardous substances, and is liable, 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 by the discharges of hazardous substances at the Crompton Colors Property. N.J.S.A. 58:10-23.11g.c.(1).

34. Defendant Crompton Corp., as the successor to Crompton and Knowles, the owner of the Crompton Colors Property at the time hazardous substances were discharged there, is a person otherwise responsible for the discharged hazardous substances, and is liable, 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 by the discharges of hazardous substances at the Crompton Colors Property. N.J.S.A. 58:10-23.11g.c.(1).

35. 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).

36. 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 by the discharges of hazardous substances at the Crompton Colors 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 and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Crompton Colors 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 discharges of hazardous substances at the Crompton Colors Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Crompton Colors 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

37. Plaintiffs repeat each allegation of Paragraphs 1 through 36 above as though fully set forth in its entirety herein.

38. Groundwater is a natural resource of the State held in trust by the State.

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

40. The contamination of the groundwater 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.

41. As long as the groundwater remains contaminated due to the Defendants' conduct, the public nuisance continues.

42. Until the groundwater 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 groundwater.

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 by the discharges of hazardous substances at the Crompton Colors 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 by

the discharges of hazardous substances at the Crompton Colors 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 discharges of hazardous substances at the Crompton Colors Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Crompton Colors 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

43. Plaintiffs repeat each allegation of Paragraphs 1 through 42 above as though fully set forth in its entirety herein.

44. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

45. The Defendants are liable for trespass, and continued trespass, since hazardous substances were first discharged at the Crompton Colors Property.

46. As long as the groundwater 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 by the discharges of hazardous substances at the Crompton Colors 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 by the discharges of hazardous substances at the Crompton Colors 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 discharges of hazardous substances at the Crompton Colors Property, by performing, under plaintiff DEP's oversight,

or by funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Crompton Colors 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: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 8/18/04

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Carol Lynn DeMarco, 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 or new issue, including claims to recover other cleanup and removal costs, later become 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: Carol Lynn DeMarco
Carol Lynn DeMarco
Deputy Attorney General

Dated: 8/18/04