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SUPERIOR COURT BERGEN COUNTY
FILED

DEC 27 2005



DEPUTY CLERK

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L 35-06

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

Plaintiffs,

v.

CARLISLE COMPANIES, INC.;
CARLISLE WIRE COMPANY (formerly
known as International Wire Products
Company);
PHELPS DODGE CORPORATION;
"ABC CORPORATIONS" 1-10 (Names

Civil Action

COMPLAINT

Fictitious); and :
"JOHN DOES" 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 ("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 International Wire Products site located in Wyckoff Township, Bergen 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 International Wire Products 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 International Wire Products 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 Carlisle Companies, Inc. ("Carlisle") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 250 South Clinton Street, Syracuse, New York 13202-1258.

6. Defendant Carlisle Wire Company ("Carlisle Wire") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 250 South Clinton Street, Syracuse, New York 13202-1258.

7. Defendant Carlisle Wire was formally known as International Wire Products Company ("International") until 1988, when International was purchased by defendant Carlisle and its name was changed to Carlisle Wire, a division of defendant Carlisle.

8. Defendant Carlisle Wire was a division of defendant Carlisle until 1989, when defendant Carlisle Wire was acquired by Hudson Wire Company ("Hudson Wire") with the surviving entity known as Hudson International.

9. Defendant Phelps Dodge Corporation ("Phelps") is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at One North Central Avenue, Phoenix, Arizona 85004-4414.

10. In 1990, defendant Phelps acquired Hudson International, with the surviving entity being defendant Phelps.

11. Defendant Phelps is the successor to defendants Carlisle and Carlisle Wire, and, in turn, International, Hudson Wire and Hudson International.

12. 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 corporate successors to, or are otherwise related to, defendants Carlisle, Carlisle Wire, and Phelps, and/or their predecessors, including Hudson, Hudson International, and International.

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 are partners, officers, directors, and/or responsible corporate officials of defendants Carlisle, Carlisle Wire, Phelps, and ABC Corporations, and/or their predecessors, including Hudson, Hudson International, and International.

AFFECTED NATURAL RESOURCES

Ground Water

14. 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.

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

16. 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.

17. 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.

18. Ground water is also used for commercial, industrial and agricultural purposes.

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

Surface Water

20. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

21. Surface water in New Jersey is also used for commercial, recreational, agricultural, and industrial uses, such as cooling water and electrical generation, boating, fishing, swimming, irrigation, and transportation of goods and services.

22. The tourist and recreation industries, which are vital to the economy of this State, depend on clean waters and beaches.

GENERAL ALLEGATIONS

23. The International Wire Products site consists of approximately 13 acres of real property located at 500 West Main Street, Wyckoff Township, Bergen County, this property being also known and designated as Block 222, Lot 1.01, on the Tax Map of the Township of Wyckoff, ("the International Wire Property"), and all other areas where any

hazardous substance discharged there has become located (collectively, "the International Wire Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 001143.

24. The International Wire Property is located above the Passaic Formation aquifer which is designated as Class II-A for use as a potable water supply, and is located adjacent to Ho-Ho-Kus Brook, which is a tributary of the Saddle River, which, in turn, feeds into Spring Lake, and then drains into the Passaic River.

25. The International Wire Property was purchased by International in 1965 from Braen Sand and Gravel Company.

26. The International Wire Property was purchased by Charles W. Cole, Jr. and Shawn S. Cole in 1997 from defendant Carlisle Wire, formerly International. As of the date of the filing of this Complaint Charles W. Cole, Jr. and Shawn S. Cole remain the owners of record of the International Wire Property.

27. During the time that International and defendants Carlisle Wire and Carlisle owned the International Wire 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 ("TCE"), tetrachloroethene ("PCE"), and other volatile organic compounds ("VOCs").

28. From 1966 through 1987, defendant Carlisle Wire and/or its predecessor, International, operated a facility for manufacturing wire used in the computer and aerospace industries at the International Wire 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. 58:10-23.11f.b.(2), which substances included PCE, TEC and VOCs.

29. In November 1980, plaintiff DEP detected concentrations of TCE exceeding plaintiff DEP's cleanup criteria in a groundwater production well on the International Wire Property, which discovery resulted in the removal of contaminated soils and waste solvents from the TCE disposal area on the premises during 1980 and 1981.

31. In 1983, defendant Carlisle Wire, then International, began pumping and treating the contaminated groundwater at the Site under plaintiff DEP's oversight.

32. In 1987, Carlisle Wire ceased operations at the International Wire Property, thereby triggering its 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.

33. Defendant Carlisle Wire's subsequent investigations and sampling revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and ground water at the International Wire Site, which substances included TCE, PCE, and other VOCs.

34. Ground water movement and stormwater runoff from the International Wire Property are believed to cause contamination of the nearby Ho-Ho-Kus Brook and thereby the Saddle River and Spring Lake, which are fed by the brook.

35. On May 7, 2001, defendant Carlisle Wire proposed a Classification Exception Area ("CEA"), which excludes designated ground water from use as a potable water source, to plaintiff DEP for the International Wire Site.

36. The proposed CEA extends to a vertical depth of 500 feet and is to last for 23 years.

37. Although defendant Carlisle has initiated the remediation of the International Wire Site, the ground water, soils, and surface water remain contaminated.

FIRST COUNT

Spill Act

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

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

40. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the International Wire Property.

41. 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.

42. 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 by the discharge of hazardous substances at the International Wire Property.

43. 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.

44. Defendants Phelps, Carlisle, Carlisle Wire and one or more of the ABC Corporations are, or the successor-in-interest to, the dischargers of hazardous substances at the International Wire Property, 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 by the discharge of hazardous substances at the International Wire Property. N.J.S.A. 58:10-23.11g.c.

45. Defendants Phelps, Carlisle, and Carlisle Wire, and one or more of the John Does, as the owners, or as successors-in-interest to the owners, of some or all of the International Wire 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 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 by the discharge of hazardous substances at the International Wire Property. N.J.S.A. 58:10-23.11g.c.(1).

46. One or more of the John Doe defendants, as knowing purchasers of the International Wire 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 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 by the discharge of hazardous substances at the International Wire Property. N.J.S.A 58:10-23.1 lg.c.(3).

47. 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).

48. 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 by the discharge of hazardous substances at the International Wire 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 by the discharge of hazardous substances at the International Wire 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 International Wire 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 International Wire 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

49. Plaintiffs repeat each allegation of Paragraphs 1 through 48 above as though fully set forth in its entirety herein.

50. Ground water and surface water are natural resources of the State held in trust by the State.

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

52. The contamination of ground water and surface water at the International Wire 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 these natural resources.

53. As long as ground water and/or surface water remain contaminated due to the Defendants' conduct, the public nuisance continues.

54. Until the ground water and surface water are restored to their pre-injury quality, quantity, function and value, 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 and surface 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 value 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 International Wire Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants 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 by the discharge of hazardous substances at the International Wire 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 International Wire 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 International Wire 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

55. Plaintiffs repeat each allegation of Paragraphs 1 through 54 above as though fully set forth in its entirety herein.

56. Ground water and surface water are natural resources of the State held in trust by the State for the benefit of the public.

57. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Site by the Defendants and/or their predecessors.

58. As long as ground water and surface water remain 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 value 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 International Wire Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants 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 by the

discharge of hazardous substances at the International Wire 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 International Wire 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 International Wire 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
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Attorneys for Plaintiffs

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

By: 
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Special Counsel to the Attorney General

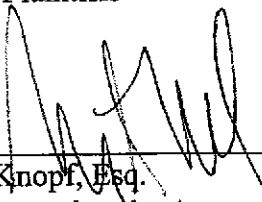
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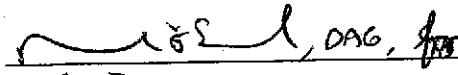
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Special Counsel to the Attorney General

By: 
Brendan Ruane
Deputy Attorney General

Dated: 12/19/05

Dated: 12/23/05

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, Barry A. Knopf, Matthew Thiesing, 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 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).

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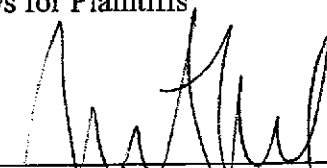
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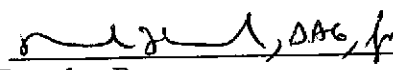
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