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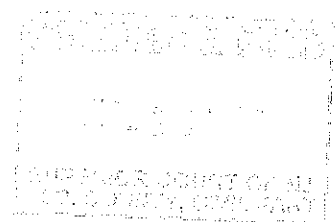
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - GLOUCESTER COUNTY  
DOCKET NO. L-1110-06

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
OWENS-ILLINOIS, INC.;	:	
OWENS-ILLINOIS CLOSURE, INC.;	:	
ANCHOR HOCKING CORPORATION;	:	
and	:	
ANCHOR HOCKING PACKAGING COMPANY,	:	
	:	
Defendants.	:	

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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. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("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 they have incurred, and will incur, as a result of the discharge of hazardous substances at the Owens-Illinois Site in Glassboro Borough, Gloucester 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 Owens-Illinois site. Further, the Plaintiffs seek to have this Court 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 Owens-Illinois 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 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 Owens-Illinois, Inc. ("Owens-Illinois") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at One Seagate, Toledo, Ohio.

6. Defendant Owens-Illinois Closure, Inc., ("OIC") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at One Seagate, Toledo, Ohio.

7. Defendant Anchor Hocking Corporation ("Anchor Hocking") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 29 E. Stephenson Street, Freeport, Illinois..

8. Defendant Anchor Hocking Packing Company ("AHPC") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at One Crown Way, Philadelphia, Pennsylvania.

#### AFFECTED NATURAL RESOURCE

##### 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 Owens-Illinois site consists of approximately 30 acres of real property located at 70 Sewell Street, Glassboro Borough, Gloucester County, New Jersey, this property being also known and designated as Block 59-A, Lots 4, 5, 6 and 7; Block 59, Lots 14 and 15; Block 60, Lot 12; Block 61, Lot 7; Block 155, Lot 1; and Block 496, Lot 7, on the Tax Map of Glassboro Borough ("the Owens-Illinois 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. 001117.

16. From 1929 through 1988, defendant Owens-Illinois owned the Owens-Illinois Property.

17. In 1988, defendant Owens-Illinois sold the Owens-Illinois Property to defendant Anchor Hocking.

18. In 1992, defendant Anchor Hocking conveyed the Owens-Illinois Property to defendant AHPC.

19. In September 1998, defendant AHPC sold the Owens-Illinois Property to Glassboro Associates, which is presently the owner of record of this Property.

20. During the time that defendants Owens-Illinois and Anchor Hocking owned the Owens-Illinois 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 1,1-dichloroethene, 1,2-dichloroethane, 1,1,1-trichloroethane, toluene, benzene, ethylbenzene, and xylenes.

21. From 1937 through 1988, defendant OIC operated the plant at the Owens-Illinois Property, manufacturing steel and aluminum closures for jars and bottles, which activities involved the generation and handling 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. These substances included 1,1-dichloroethene, 1,2-dichloroethane, 1,1,1-trichloroethane, toluene, benzene, ethylbenzene, and xylenes.

22. From 1988 until 1995, defendant AHPC operated the plant at the Owens-Illinois Property, continuing to manufacture steel and aluminum closures for jars and bottles, which activities 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. These substances included 1,1-dichloroethene, 1,2-dichloroethane, 1,1,1-trichloroethane, toluene, benzene, ethylbenzene, and xylenes.

23. The proposed sale of the Owens-Illinois Property to defendant Anchor Hocking triggered defendant Owens-Illinois'

obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14.

24. In March 1987, defendant Owens-Illinois signed an Administrative Consent Order ("ACO") with plaintiff DEP, pursuant to which defendant Owens-Illinois was allowed to sell the Owens-Illinois Property to defendant Anchor Hocking.

25. The March 1987 ACO conditioned the sale of the Owens-Illinois Property on defendant Owens-Illinois investigating the nature and extent of the soils and groundwater contamination at the Site, which investigations defendant Owens-Illinois performed from 1988 through 1993.

26. Sampling results from defendant Owens-Illinois' investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the soils and ground water, which substances included 1,1-dichloroethene, 1,2-dichloroethane, 1,1,1-trichloroethane, toluene, benzene, ethylbenzene and xylenes.

27. As of 1995, defendant Owens-Illinois had undertaken a number of remedial activities at the Site, including removing drums containing solvents from a drum storage pad at the Owens-Illinois Property, excavating and removing approximately 3,318 tons of contaminated soils, removing contaminated sediments from an on-site

retention lagoon, removing a 10,000-gallon oil tank, installing monitoring wells, and initiating a groundwater sampling program.

28. In 1995, defendant Owens-Illinois submitted a Remedial Action Report to plaintiff DEP, in which defendant Owens-Illinois detailed its prior remediation activities, and recommended continued groundwater monitoring.

29. Plaintiff DEP subsequently required defendant Owens-Illinois to perform additional site characterization through additional soil sampling, which defendant Owens-Illinois subsequently completed.

30. In 1997, defendant Owens-Illinois established a Groundwater Classification Exception Area ("CEA") designating an aquifer zone where groundwater contamination would be present for a given duration, and in which groundwater would not be used for potable residential or public water supply.

31. Meanwhile, the proposed sale of the property by defendant Anchor Hocking to a third party triggered its obligations under the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14.

32. In December 1992, defendant Anchor Hocking signed an ACO with plaintiff DEP pursuant to which defendant would be allowed to sell the Owens-Illinois Property on the condition that defendant undertake a site investigation and conduct any remedial activities required as a result of the site investigation.



33. In 1993 and 1994, defendant AHPC, now the owner of the Owens-Illinois Property, conducted soil sampling at seven potential areas of concern at the Owens-Illinois Property and investigated the integrity of certain tanks and trenches at the Property.

34. In June 1994, defendant AHPC submitted to DEP a Remedial Investigation Report ("RI Report") that summarized AHPC's remedial investigatory activities at the Owens-Illinois Property and proposed additional remedial activities. The RI Report recommended additional soil sampling in certain limited areas where hazardous substances in excess of DEP's Soil Cleanup Criteria were found.

35. In late 1994 and through 1995, defendant AHPC conducted the recommended soil sampling, removed a 7,000-gallon underground storage tank, and excavated and disposed of additional contaminated soil.

36. Although defendants Owens-Illinois and AHPC have undertaken the remediation of the Site, the groundwater contamination continues.

#### FIRST COUNT

##### Spill Act

37. Plaintiffs DEP and Administrator repeat each allegation contained in paragraphs numbered 1 through 36 above as though fully set forth in its entirety herein.

38. The Defendants are "persons" 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 discharge of hazardous substances at the Owens-Illinois Property.

40. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

41. The Plaintiffs also 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 Owens-Illinois Property.

42. 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.

43. Defendants OIC and AHPC are the dischargers of hazardous substances at the Owens-Illinois 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 as a result of the discharge of hazardous substances at the Owens-Illinois Property. N.J.S.A. 58:10-23.11g.c.(1).

44. Defendants Owens-Illinois and Anchor Hocking, as the owners of the Owens-Illinois Property at the time hazardous substances were discharged there, 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 as a result of the discharge of hazardous substances at the Owens-Illinois 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 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 Owens-Illinois 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 Owens-Illinois Property;
- c. Enter judgment against the Defendants compelling them to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Property;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling them 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 Owens-Illinois 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 Owens-Illinois Property;

- e. Award the Plaintiffs their costs and fees in this action; and
- f. 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 resources of the State held in trust by the State for the benefit of the public.

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

50. 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.

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 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 Owens-Illinois 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 Owens-Illinois Property;

- c. Enter judgment against the Defendants, compelling them to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Property;
- d. Enter judgment against the Defendants, compelling them 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 Owens-Illinois 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 Owens-Illinois Property;
- e. Award the Plaintiffs their costs and fees in this action;  
and
- f. 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 Property.

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 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 Owens-Illinois 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 Owens-Illinois Property;
- c. Enter judgment against the Defendants, compelling them to cease, under plaintiff DEP's oversight, the trespass by



performing any further cleanup of hazardous substances discharged at the Property;

- d. Enter judgment against the Defendants, compelling them 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 Owens-Illinois 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 Owens-Illinois Property;
- e. Award the Plaintiffs their costs and fees in this action;  
and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Mary Ellen Halloran  
Mary Ellen Halloran  
Deputy Attorney General

Dated: July 17, 2006

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mary Ellen Halloran, 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 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).

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Mary Ellen Halloran  
Mary Ellen Halloran  
Deputy Attorney General

Dated: July 17, 2006

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