

ALLAN KANNER & ASSOCIATES, P.L.L.C.

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May 20, 2004

VIA FACSIMILE

Mr. J. Douglas Johnson, Chairman  
*Rowe International Inc.*  
1500 Union Ave. S.E.  
Grand Rapids, Michigan 49507 -1884

RE: New Jersey Department of Environmental Protection, et al v. Rowe International, Inc.

Dear Mr. Johnson:

This Office represents the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund. Enclosed is a courtesy copy of a complaint sent today for filing in the Superior Court of New Jersey, Morris County, against Rowe International, Inc.

Please be advised that this facsimile copy of the complaint is being provided for informational purposes only and that this office does not consider acceptance of this facsimile copy to be acceptance of service.

Should you wish to discuss this matter, please do not hesitate to contact me at the number above.

Cordially,

ALLAN KANNER & ASSOCIATES, P.L.L.C.

By: 

Allan Kanner, Esq.

Special Counsel to the N.J. Attorney General

EBC/wrf

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street  
PO Box 093  
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Attorney for Plaintiffs

By: Allan Kanner  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION -MORRIS COUNTY  
DOCKET NO.

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NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	<u>Civil Action</u>
ADMINISTRATOR, NEW JERSEY	:	
SPILL COMPENSATION FUND,	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
ROWE INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	

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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 defendant, 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 discharge of hazardous substances at the Rowe International, Inc. site located in Hanover Township, Morris County, New Jersey, and to compel the Defendant 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 discharge of hazardous substances at or from the Rowe International, Inc. 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 Rowe International, Inc., is a corporation organized under the laws of the State of Delaware, with its main place of business located at 1500 Union Avenue SE, Grand Rapids, Michigan, 49507.

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

#### AFFECTED NATURAL RESOURCE

##### Groundwater

7. 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.

8. 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.

9. 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.

10. 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.

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

#### GENERAL ALLEGATIONS

12. The Rowe International, Inc. property consists of approximately 35 acres of real property located at 75 Troy Hills Road, Hanover Township, Morris County, this property being also known and designated as Block 7801, Lot 1, on the Tax Map of Hanover Township, Morris County ("the Rowe Property"), and all other areas where any hazardous substance discharge there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 013641.

13. From 1946 through 1999, Rowe International, Inc. owned the Rowe Property, which Rowe International, Inc. conveyed to Whippany Venture I in 1999.

14. From 1946 through 1995, when the facility closed, Rowe International, Inc. manufactured vending machines for the food

industry on the Rowe Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Rowe Property within the meaning of N.J.S.A. 58:10-23.11b.

15. On or about May 24, 1985, prior to the sale of the Property from Rowe International, Inc. to Whippany Venture I, defendant Rowe International, Inc. entered into an Administrative Consent Order (and as modified thereafter) with plaintiff DEP to remediate the Site.

16. Sampling results taken from the Rowe Property, have revealed the presence of various hazardous substances in the soils and groundwater at and underlying the Site, including dense non-aqueous phase liquids, primarily trichloroethylene, tetrachloroethene, and cis-1, 2-dichloroethene.

17. While defendant Rowe International, Inc. had begun the cleanup of hazardous substances from the soils and groundwater at and underlying the site, pursuant to the 1985 Administrative Consent Order, contamination of groundwater continues.

#### FIRST COUNT

##### Spill Act

18. Plaintiffs repeat each allegation of Paragraphs 1 through 17 above as though fully set forth in its entirety herein.

19. Plaintiffs have incurred, and will continue to incur, cleanup and removal 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 at the Rowe Property.

20. 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.

21. The Defendant, as the discharger of hazardous substances at the Rowe Property, is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, 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 Rowe Property. N.J.S.A. 58:10-23.11g.c.(1).

22. The Defendant, as the owner of the Rowe 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, 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 Rowe Property. N.J.S.A. 58:10-23.11g.c.(1).

23. 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); 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).

24. 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 Defendant to reimburse the Plaintiffs, 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 Rowe Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and



damages, including lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Rowe Property;

- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Rowe Property by performing, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Rowe 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

25. Plaintiffs repeat each allegation of Paragraphs 1 through 24 above as though fully set forth in its entirety herein.

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

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

28. The contamination of 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.

29. As long as groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

30. Until the groundwater is restored to its pre-injury quality, the Defendant is 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 Defendant 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 Rowe Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including

- restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Rowe Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damage to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Rowe 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 Rowe 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

31. Plaintiffs repeat each allegation of Paragraphs 1 through 30 above as though fully set forth in its entirety herein.

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

33. The Defendant is liable for trespass, and continued trespass, since hazardous substances were first discharged at the Rowe Property.

34. As long as groundwater remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant 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 Rowe Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Rowe Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a

result of the discharges of hazardous substances, at the Rowe Property, 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 Rowe 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: \_\_\_\_\_

Allan Kanner  
Special Counsel to the  
Attorney General  
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Dated: May 20, 2004

DESIGNATION OF TRIAL COUNSEL

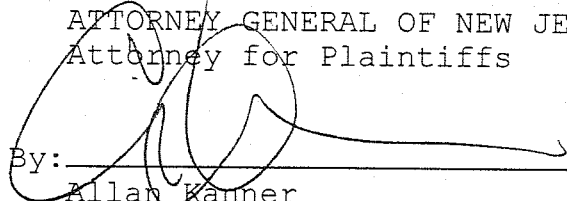
Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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. MER-L-343-04. 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 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).

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:  \_\_\_\_\_

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Dated: May 20, 2004