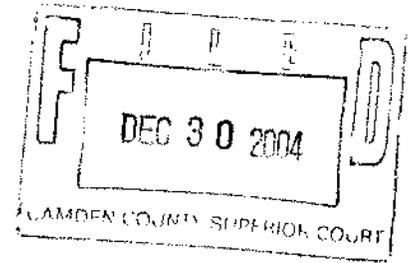


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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAMDEN COUNTY
DOCKET NO. L-8-05

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

Plaintiffs,

v.

AGEN LEASING CORP., INC.;
SOUTH JERSEY CONTAINER CORP.,
INC.; C.J. OSBORN CHEMICALS,
INC.; SUPERIOR VARNISH & DRIER
CO., INC.; and WALTER DANIELS,
an individual,

Defendants.

Civil Action

COMPLAINT

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 Agen Leasing Corp., Inc.; South Jersey Container Corp., Inc.; C.J. Osborn Chemicals, Inc.; Superior Varnish & Drier Co., Inc.; and Walter Daniels (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 267 New Freedom/New Brooklyn Road, Winslow Township, New Jersey, being designated as Block 2704, Lots 19 and 23 in Winslow Township, Camden County, known as the South Jersey Container Corporation ("SJCC") site. 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 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 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 ("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 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 Agen Leasing Corp., Inc., is a corporation organized under the laws of the State of New Jersey, with a last known place of business at 267 New Freedom/New Brooklyn Road, Winslow Township, Camden County, New Jersey.

6. Defendant South Jersey Container Corp., Inc. is a corporation organized under the laws of the State of New Jersey,

with a last known place of business at 267 New Freedom/New Brooklyn Road, Winslow Township, Camden County, New Jersey.

7. Defendant C.J. Osborn Chemicals, Inc. is a corporation organized under the laws of the State of New Jersey, with an agent mailing address of Crescent Blvd. and Clement Avenue, Pennsauken, New Jersey 08110.

8. Defendant Superior Varnish and Drier Co., Inc. is a corporation organized under the laws of the State of New Jersey, with an agent mailing address of Crescent Blvd. and Clement Avenue, Pennsauken, New Jersey 08110.

9. Defendant Walter Daniels is an individual who owned the Property from 1972 through 1979. In addition, he was in control of the day to day operations of, and served as an officer of, Enterprise Container Corp., Enterprise Steel Drum Corp., and South Jersey Container Corp., which were corporations that operated on the Property from approximately 1972 through 1985.

AFFECTED NATURAL RESOURCES

Ground Water

10. 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.

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

12. Ground water provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

13. 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.

14. Ground water 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.

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

Surface Water

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

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

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

Wetlands

19. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

20. Wetlands are a critical example of New Jersey's ecological resources.

21. New Jersey wetlands cover approximately 730,000 acres of freshwater wetlands, and 250,000 acres of coastal wetlands.

22. Wetlands can sustain a wide diversity of plants and animals that are essential in a healthy food chain.

23. Wetlands perform many additional functions, including improvement of water quality, sediment trapping, ground water recharge, shoreline protection, and protecting lands from flooding or erosion.

GENERAL ALLEGATIONS

24. The SJCC site consists of approximately 12 acres of real property located at 267 New Freedom/New Brooklyn Road, Winslow Township, Camden County, New Jersey, this property being also known and designated as Block 2704, Lots 19 and 23, on the Tax Map of Winslow Township (the "Property"), and all other areas where any hazardous substance discharged there has become located (the "SJCC site").

25. From April 1972 through November 1979, Defendant Walter Daniels owned the 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 trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead.

26. From November 1979 through December 1983, Enterprise Steel Drum Corp. owned the 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 trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead.

27. From December 1983 through the present, Defendant Agen Leasing Corporation has owned the 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 trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead.

28. From April 1972 through November 1979, Enterprise Container Corp., Inc. operated a drum cleaning/reconditioning and metal fabricating business at the Property, the operation of which involved the storage 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., which substances included trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead. During this period of time Defendant Walter Daniels was responsible for the day to day

operations of, and served as President of, Enterprise Container Corp.

29. From November 1979 through December 1983, Enterprise Steel Drum Corp., Inc. operated a drum cleaning/reconditioning and metal fabricating business at the Property, the operation of which involved the storage 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., which substances included trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead. During this period of time Defendant Walter Daniels was responsible for the day to day operations of, and served as an officer of, Enterprise Steel Drum Corp.

30. From December 1983 through November 1985, Defendant South Jersey Container Corporation operated a drum cleaning/reconditioning and metal fabricating business at the Property, the operation of which involved the storage 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., which substances included trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead. During this period of time Defendant Walter Daniels was responsible for the day to day operations of, and served as an officer of, South Jersey Container Corp.

31. From April 1972 through November 1985, Defendants C.J. Osborn Chemicals, Inc. and Superior Varnish & Drier Co., Inc. transported "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., to the Property, certain of which were "discharged" at the Property within the meaning of N.J.S.A. 58:10-23.11b., which substances included trichloroethane, phenol, mercury, cyanide, petroleum hydrocarbons and lead.

32. On various occasions from 1976 through the present, Plaintiff DEP inspected the Site and observed discharges of hazardous substances.

33. On February 6, 1976, DEP inspectors inspected the Site and noted dead trees approximately 50 feet north of the Property. Upon closer inspection the bottoms of the trees within the area were stained black and the soil smelled like chemicals. The inspectors noted that chemical runoff from the incinerator dumpster area was the cause.

34. In an inspection conducted on May 29, 1979, DEP inspectors noted varnish and solvent spills within the drum storage area as well as contaminated runoff from the drum storage and incinerator areas as well as the area of dead vegetation noted in past inspections. A May 2, 1980 follow-up inspection conducted by the DEP noted that five 4,500 gallon caustic tanks, believed to have been a contributor to the area of dead vegetation, had been excavated.

35. On August 11, 1980, DEP inspectors went to the Site and observed paint, solvent and varnish spills within the drum storage area and a 15-foot wide by 200-foot long road-like drainage ditch which was located in the drum storage area and extended into the woods west of the Property.

36. In an inspection conducted on March 15, 1984, DEP inspectors noted poor housekeeping throughout the South Jersey Container Corporation facility. The incinerator and dumpster areas had large amounts of waste on the ground, and a reddish material was noted ponded in the drainage swale. In addition, a stream of green liquid was observed flowing from stacks of stored drums into the drainage trench and into the woods.

37. DEP inspectors inspected the Site on August 16, 1984, and observed the discharge of hazardous substances onto the ground.

38. On August 27, 1985, DEP inspectors again noted poor housekeeping and free liquids and sludges on the ground in the area of the dumpster, as well as liquid pumped from a cistern into a drainage swale.

39. A DEP inspection was conducted on the Site on March 7, 1986. DEP inspectors observed black silty residue covering a 15 square foot area in the vicinity of the baghouse, and numerous spills throughout the facility.

40. In November 1990 DEP installed eight monitoring wells on the Site. Analysis of samples of groundwater obtained by the DEP

from the monitoring wells indicated that the groundwater was contaminated with volatile organics, base neutrals and high levels of metals.

41. On December 18, 1984, Plaintiff DEP issued a Spill Act directive ("1984 Directive") to the Defendant South Jersey Container Corporation pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendant South Jersey Container Corporation to cease all activities, actions or operations that result in the unauthorized discharge of hazardous substances on the ground, and submit a remedial action plan to delineate the areas of contamination and remove the discharged hazardous substances and all contaminated soil and materials.

42. On August 27, 1985, Plaintiff DEP issued a Notice of Violation ("1985 NOV") to Defendant South Jersey Container Corporation for discharge of a hazardous substance and improper container storage and handling of hazardous waste.

43. On November 8, 1985, Plaintiff DEP and Defendant South Jersey Container Corporation entered into an Administrative Consent Order ("1985 ACO"), by which South Jersey Container Corporation agreed to, among other things, pay DEP a penalty of \$15,000 and submit a proposed soil and ground water contamination investigation program to the DEP, commence the implementation of the soil and ground water contamination investigation plan within three calendar days after DEP approval of said plan, and, upon completion of the

soil and ground water contamination investigation, submit a remedial action plan to the DEP for review and approval, and commence the implementation of the approved remedial action plan within three calendar days after DEP approval of said plan.

44. Defendant South Jersey Container Corporation has not complied with the 1984 Directive, the 1985 NOV or the 1985 ACO, thus requiring Plaintiff DEP to perform the site inspection of the Site and the assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Site.

45. From 1986 through 1991, Plaintiff DEP performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which Plaintiff DEP investigated the nature and extent of the contamination at the Site.

46. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding Plaintiff DEP's cleanup criteria in the ground water, soils, and sediments at the Site.

47. Although Plaintiff DEP has initiated the remedial investigation of the Site, the ground water and soils contamination continues.

FIRST COUNT

Spill Act

48. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 47 above as though fully set forth in its entirety herein.

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

50. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Site.

51. Plaintiff Administrator has certified, and may continue to 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.

52. The Plaintiffs also 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 as a result of the discharge of hazardous substances at the Site.

53. 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.

54. The Defendants Agen Leasing Corp., Inc., South Jersey Container Corp., Inc., and Walter Daniels are the dischargers of,

and are in any way responsible for, hazardous substances at the Site, and are liable, 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, 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 Site. N.J.S.A. 58:10-23.11g.c.(1).

55. The Defendants C.J. Osborn Chemicals, Inc. and Superior Varnish & Drier Co., Inc., as the transporters of hazardous substances to the Site that 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 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 as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

56. 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).

57. 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.

58. By failing to comply with the December 18, 1984 Directive, Defendant South Jersey Container Corp. is a person who, pursuant to N.J.S.A. 58:10-23.11f.a(1), is liable in an amount equal to three times the cleanup and removal costs incurred, and to be incurred, by Plaintiffs in connection with the Site.

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 as a result of the discharge of hazardous substances at the Site, 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 as a result of the discharge of hazardous substances at the Site;
- c. Order the Defendant South Jersey Container Corp. to reimburse the Plaintiffs in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Site;
- d. Enter declaratory judgment against the Defendant South Jersey Container Corp. in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur for the Site;
- e. 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 Site, 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 Site;

- f. Award the Plaintiffs their costs and fees in this action; and
- g. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

59. Plaintiffs repeat each allegation of Paragraphs 1 through 58 above as though fully set forth in its entirety herein.

60. Ground water, surface water and wetlands are natural resources of the State held in trust by the State.

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

62. The ground water, surface water and wetlands 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 these natural resources.

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

64. Until the ground water, surface water and wetlands are restored to their 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, surface water and wetlands.

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 as a result of the discharge of hazardous substances at the Site, 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 as a result of the discharge of hazardous substances at the Site;
- 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 Site, 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 Site;

- 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

65. Plaintiffs repeat each allegation of Paragraphs 1 through 64 above as though fully set forth in its entirety herein.

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

67. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Site.

68. As long as the ground water, surface water and wetlands remain contaminated, the Defendants' trespass continues.

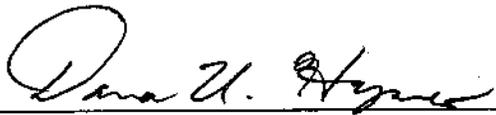
PRAYER FOR RELIEF

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 restitution for unjust enrichment, lost use 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 Site, 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 as a result of the discharge of hazardous substances at the Site;
- 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 Site, 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 Site;

- 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: 
Dana U. Haymes
Deputy Attorney General

Dated: 12/29/04

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Dana U. Haymes, 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-006537-03T3. 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 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

Dated: 12/29/04

By: Dana U. Haymes
Dana U. Haymes
Deputy Attorney General