

MARC-PHILIP FERZAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street, PO Box 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs

By: John F. Dickinson, Jr.
Deputy Attorney General
(609) 984-4863

JACKSON GILMOUR & DOBBS, PC
3900 Essex Lane, Suite 700
Houston, Texas 77027

By: William J. Jackson, Special Counsel
(713) 355-5000

GORDON & GORDON
505 Morris Avenue
Springfield, New Jersey 07081

By: Michael Gordon, Special Counsel
(973) 467-2400

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

Plaintiffs,

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA
SOLUTIONS, INC., MAXUS ENERGY
CORPORATION, MAXUS
INTERNATIONAL ENERGY
COMPANY, REPSOL YPF, S.A.,
YPF, S.A., YPF HOLDINGS, INC., YPF
INTERNATIONAL S.A. (f/k/a/ YPF
INTERNATIONAL LTD.) and
CLH HOLDINGS,

Defendants.

MAXUS ENERGY CORPORATION
AND TIERRA SOLUTIONS, INC.,

Third-Party

Plaintiffs,

v.

3M COMPANY, et al.,

Third-Party

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST
OCCIDENTAL CHEMICAL CORPORATION
AND MAXUS ENERGY CORPORATION

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Plaintiffs, the New Jersey Department of Environmental Protection (“DEP”), the Commissioner of the DEP (“Commissioner”) and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “Plaintiffs”), file this Brief in support of their Motion for Partial Summary Judgment (“Brief”) against Defendants Occidental Chemical Corporation (“OCC”) and Maxus Energy Corporation (“Maxus”). Contemporaneously, Plaintiffs file a separate brief in support of their Motion for Partial Summary Judgment against Defendant Tierra Solutions, Inc. (“Tierra”).

PRELIMINARY STATEMENT

Over twenty-five years ago, environmental agencies discovered that the “Lister Plant” – a pesticides plant located at 80 Lister Avenue on the banks of the Passaic River – caused massive contamination of the surrounding environment. During the quarter century that followed, key facts about the pollution emanating from the Lister Plant have been established so conclusively that there is truly nothing to dispute. Those facts were even established in a lawsuit brought by the owner of the Lister Plant seeking insurance coverage for the effects of the pollution, and those facts have been confirmed through evidence put into the public domain or produced in discovery by OCC, Maxus and Tierra in this lawsuit. These undisputed facts significantly reduce the issues this Court must decide.

In this Brief, Plaintiffs demonstrate that there is no genuine issue as to any material fact and Plaintiffs are entitled to a partial summary judgment establishing as a matter of law that:

- (1) Diamond Shamrock Chemicals Company (“DSCC”) discharged dioxin, DDT and other hazardous substances into the Passaic River;
- (2) OCC is DSCC’s direct successor by merger and is liable under the Spill Act for all cleanup and removal costs associated with DSCC’s discharges; and
- (3) OCC and its indemnitor, Maxus, are collaterally estopped from denying that DSCC intentionally discharged dioxin, DDT and other hazardous substances into the Passaic River.

Plaintiffs can establish the fact of DSCC's discharges, and OCC's resulting liability under the Spill Act, through pleadings, documentary evidence produced during discovery, and even a final judgment establishing certain elements of Plaintiffs' claim. The evidence demonstrates, without question, that DSCC intentionally discharged dioxin, DDT and other hazardous substances into the Passaic River – a practice so pervasive that DSCC employees had a name for it: “riverize.” Additional documentary evidence, as well as admissions from this and other proceedings, also demonstrate beyond dispute that OCC is the direct successor by merger to DSCC and is, therefore, strictly liable under the Spill Act for all cleanup and removal costs associated with DSCC's discharges. Importantly, OCC and its indemnitor, Maxus, are also collaterally estopped from denying some of the facts necessary to establish Plaintiffs' Spill Act claims. Over twenty-five years ago, Maxus prosecuted an action in Superior Court on behalf of its indemnitee, OCC. In that case, a final judgment was issued, and affirmed by the Appellate Division, establishing that DSCC intentionally discharged dioxin, DDT and other hazardous substances into the Passaic River with impunity for decades.

By granting Plaintiffs summary judgment on these facts and claims, the Court will greatly streamline the remaining issues to be tried in this case. The defendants cannot change the past. The intentional discharges of dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River were the subject of extensive judicial proceedings. OCC and Maxus should not be allowed to dispute again what was already decided in a full-scale trial, and Plaintiffs would be unfairly prejudiced if, twenty-five years later, they were forced to re-litigate issues already decided by New Jersey courts. As such, Plaintiffs respectfully request that the Court grant this motion and enter an order establishing (i) DSCC's intentional discharges into the Passaic River and (ii) OCC's legal liability under the Spill Act.

FACTUAL SUMMARY

Pursuant to R. 4:46-2(a), Plaintiffs have submitted a common Statement of Undisputed Material Facts (“Statement of Facts”), as to which there is no genuine issue. Plaintiffs hereby incorporate by reference their Statement of Facts for all purposes. In addition, Plaintiffs provide a brief summary of those undisputed material facts particularly relevant to this Brief.

A. DSCC Intentionally Discharged Dioxin, DDT and Other Hazardous Substances from the Lister Plant into the Passaic River.

It is beyond dispute that DSCC intentionally discharged dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River during the entire 18-year period of its plant operations. Documents produced by OCC, Maxus and Tierra describe those discharges in detail. DSCC’s own employees provided testimony regarding the discharges for weeks during the “Aetna Trial.” Following the testimony, Superior Court Judge Reginald Stanton specifically found that such discharges occurred. And, finally, in its unsuccessful effort to overturn Judge Stanton’s most critical findings, DSCC even admitted that the discharges occurred in its briefing to the Appellate Division.

The list of documents describing DSCC’s discharges to the Passaic River is long. See, e.g., Statement of Facts at ¶¶ 21 – 32. Some are internal DSCC memoranda explaining the nature of the Lister Plant effluent discharges to the Passaic River. See Statement of Facts at ¶¶ 24 – 31. These include significant admissions regarding the quantity and duration of DSCC’s discharges from the Lister Plant to the Passaic River:

- “Until approximately 1956, we disposed of all our plant effluents into the Passaic River.” Exhibit 35 at MAXUS036883 ¶ 2.
- “Approximately 1956, the [PVSC] officially objected to our polluting the river, and we spent approximately \$15,000 for a sewer connection to the Newark city sewer.” Ibid.

- “My impression is that the city sewer is a pretty good bet for getting rid of modest amounts of chlorophenols which otherwise would be serious contaminants in rivers, etc.” Id. at MAXUS036884 ¶ 1.
- “All of our unsold muriatic acid is dumped in the Passaic.” “In 1958 we dumped 2000 tons; in 1959 we dumped 4400 tons.” Ibid. at ¶ 2.
- “We produce approximately 2000 tons of 2,4-D per year with a yield slightly less than 60%. This means we discard approximately the molecular weight equivalent of 400 tons of 2,4-D per year.” “Considering molecular weights, this would be approximately 110 tons of chlorophenols.” Ibid. at ¶ 3.
- “We discard the acidic effluent from our chlorosulfonation operations to either the city sewer or the river.” Ibid. at ¶ 4.
- “The 2,4,5-T effluent is generally similar to 2,4-D, but is only approximately one quarter the amount. The effluent would consist of mostly trichlorophenols with some 2,4,5-T acid and 2,4,5-T esters.” Ibid. at ¶ 5.
- “[A]t various times we have spills or special products which involve additional contamination problems. The ‘unimportant violations’ are minor quantities of slightly dirty liquids which we sometimes get from washing down the floors near the river or the river front. I call them ‘unimportant’ because overzealous inspectors sometimes comment on slight signs of poor housekeeping at the river front” Id. at MAXUS0036884-85 ¶ 5.

Other documents reflect communications with regulatory authorities regarding violations of pollution control statutes. See Statement of Facts at ¶¶ 23, 25, and 29. Any one of these documents provides evidence of DSCC’s discharges to the Passaic River. Taken together, there should be no dispute that DSCC systematically and intentionally discharged its waste chemical effluent into the Passaic River during the entire period of its plant operations.

Notably, the documentary evidence goes beyond the fact of DSCC’s intentional discharges to the Passaic River. These records demonstrate the efforts of a rare corporate citizen who for years – in order to save money and increase profits – systematically evaded detection by regulatory authorities trying to police pollution of New Jersey’s waterways. Documents explain how the Lister Plant Manager re-routed pipes from the plant’s process buildings so that they discharged beneath the surface of the Passaic River. Exhibit 31 at OCCNJ0048862 ¶ 2.

Internally, DSCC explained the rationale for its deception with a clarity of arrogance: “[I]n view of their strict rules which these various agencies have, we will have to continue to out-wit them as we have in the past or spend a substantial amount of money for neutralizing our effluent Every year that we can stall this off we are saving ourselves a substantial amount of money” *Id.* at OCCNJ0048863 ¶¶ 2-4. This “profits first” mentality ran from the Lister Plant to corporate headquarters. In fact, DSCC’s environmental expert at the time explained that “[e]vasive tactics are fine as long as they work, but discovery of such action by the [PVSC] can lead to a change of attitude which could be serious.” Exhibit 34 at ¶¶ 1, 3-4. In fact, DSCC’s environmental expert even foresaw the consequences of their tactics: “If the [PVSC] begins to feel that they have been ‘had’ they may insist on orderly and complete elimination of polluting materials from your discharge.” *Ibid.*

Testimony from the Aetna Trial only confirms the nature and extent of DSCC’s discharges to the Passaic River. Long-time Lister Plant employees Walter Blair, Nicholas Centanni, Aldo Andreini, Arthur Scureman and John Burton testified extensively about DSCC’s practice of discharging its waste chemical effluent in the Passaic River. See Statement of Facts at ¶¶ 7-12. DSCC even had a name for it – “riverize.” According to Mr. Centanni, “riverize” meant “send it to the river.” Exhibit 17 at MAXUS028415 (9:13-17). Mr. Centanni also provided a first-hand account of the “mountain” of DDT that accumulated in the Passaic River due to discharges from the Lister Plant. *Id.* at MAXUS028437-39 (31:17-33:18). Similarly, Mr. Scureman testified that he worked overtime – before dawn – in order to “put some stuff away in the river” when others would not witness the activity. Exhibit 18 at MAXUS028507 (38:19-22). Indeed, to “out-wit” the regulatory authorities, DSCC even had a secret alarm system. Lister Plant Manager John Burton described the alarm system whereby, when an inspector checked in

with the receptionist to obtain an escort for a visit to the Lister Plant, the receptionist would sound three buzzes on the inter-plant communication system to alert the foreman and the operators “so they would take prompt steps to see that anything . . . going into the river at that moment was stopped.” Id. at MAXUS028547 (105:10-24). Even DSCC’s own expert witness had no choice but to admit that DSCC’s discharges to the Passaic River were essentially continuous and occurred “throughout the operation.” Exhibit 22 at MAXUS026919-20 (34:20-35:14); MAXUS026957 (72:2-3).

After twenty days of testimony, Superior Court Judge Reginald Stanton issued his findings of fact, the majority of which specifically dealt with discharges from the Lister Plant to the Passaic River. Exhibit 15. Judge Stanton found:

- “From 1951 to 1956, [DSCC] intentionally discharged all of its waste chemical effluent into the Passaic River.” Id. at MAXUS030406 ¶ 4.
- In 1956, the Passaic Valley Sewerage District insisted that DSCC discontinue their discharges into the Passaic River and, in response, DSCC “purportedly tied its entire complex at the [Lister Plant] into an industrial sewer constructed by the Passaic Valley Sewerage Commission.” Id. at MAXUS030407 ¶ 1.
- However, “[a]lthough [DSCC] purported to tie the whole [Lister Plant] into the sewer in 1956, it actually tied only the 2,4-D building into the sewer. The chemical effluent from the main building continued to be discharged directly into the Passaic River.” Ibid. at ¶ 2.
- Those discharges “were intentional, planned discharges from processing equipment through pipes or ditches.” Ibid.
- “In addition, from 1951 through 1969, spills onto floors and ground surfaces drained mostly into the Passaic River. These spills were constant, and, collectively, they were substantial in volume.” Ibid.
- “[DSCC] was conscious that its discharges into the [Passaic] [R]iver were illegal. It deliberately concealed them, and over a period of many years employed an alarm system to warn employees to stop the discharges when Passaic Valley inspectors were on the premises.” Ibid.

- “Over the years, discharges from the [Lister Plant] into the Passaic River included 2,4,5-T acid (and dioxin), caustic soda, DDT, sulfuric acid, TCP (and dioxin), muriatic acid and monochlorobenzene.” Ibid. at ¶ 3.
- Thus, “[t]he conclusion is inescapable that the consistent policy of [DSCC’s] management (both at the local plant level and at corporate headquarters) was to discharge chemicals into the Passaic River in known violation of public law. This policy persisted from 1951 through 1969.” Id. at MAXUS030407-08 ¶ 3.
- “The policy was consciously adopted by [DSCC’s] management because the pollution of the public waters of the State was not perceived by them as a significant wrong, and because it would have been technically difficult and very costly to have avoided such discharges.” Id. at MAXUS030408 ¶ 1.
- “[E]ven by the standards of the 1951-1969 period, [DSCC’s] conduct in operating the [Lister Plant] was unacceptably wrong and irresponsible. [DSCC] always put its narrowly perceived economic interest first.” Id. at MAXUS030409 ¶ 3.
- DSCC knew “the nature of the chemicals it was handling, it [knew] that they were being continuously discharged into the environment, and it [knew] that they were doing at least some harm.” Id. at MAXUS030431 ¶ 2.

Judge Stanton summarized his findings and DSCC’s environmental policies by stating that “[DSCC] intentionally and continuously discharged highly toxic chemical effluent into the Passaic River from 1951 to 1969.” Id. at MAXUS030430 ¶ 2.

Faced with the reality of its past, DSCC did not appeal Judge Stanton’s findings that intentional discharges to the Passaic River occurred. Instead, in its Aetna appeal, DSCC argued that it should be afforded insurance coverage because it did not expect or intend the damages resulting from its discharges. Exhibit 1 at MAXUS034128 ¶ 1. In doing so, DSCC admitted that discharges of dioxin and other hazardous substances to the Passaic River occurred during the course of plant operations: “Up to 1960 the Newark Plant discharged 2,4,5-T process waste waters to the river. Although these discharges contained minute quantities of 2,4,5-T, which, in turn, contained even more minute quantities of dioxin, (Pa 2334-37), there is no evidence of any complaint by the PVSC with respect to such discharges. . . .” Id. at MAXUS034103 n. 9. DSCC even admitted that its discharge of waste waters from the 2,4,5-T process to the Passaic River

continued until the time the Lister Plant ceased operations in 1969. Id. at MAXUS034104 ¶ 1; see also Exhibit 4 at MAXUS0964706-07 ¶ 15, MAXUS0964709 ¶ 17 – 0964711 ¶ 18, MAXUS0964716 ¶ 21, MAXUS0964722 ¶ 25.

Given all of this evidence, it cannot be disputed that DSCC intentionally discharged dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River.

B. OCC Is DSCC's Direct Successor by Merger.

Likewise, it cannot be disputed that OCC is DSCC's direct, legal successor by merger. Documents produced by OCC, Maxus and Tierra explain this relationship, which OCC has admitted for years. See Statement of Facts at ¶¶ 35-41.

- In September 1986, pursuant to the terms of a Stock Purchase Agreement (“SPA”), New Diamond Corporation (a/k/a “DSC-2” or Maxus) sold the stock of its wholly-owned subsidiary, DSCC, to Oxy-Diamond Alkali Corporation, an OCC affiliate. Exhibit 46 at OCCNJ0000204; OCC's Amended Cross-Claims at ¶ 13.
- After the SPA was implemented, DSCC, a Delaware corporation, was renamed Occidental Electrochemical Corporation (“OEC”). Exhibit 47 at OCCNJ0009303-04; OCC's Amended Cross-Claims at ¶ 13.
- On or about November 25, 1987, OCC and OEC merged, with OCC being the surviving entity in the merger. Exhibit 48 at OCCNJ0011580 ¶ 2; 0011581 ¶ 2; OCC's Amended Cross-Claims at ¶ 13.
- In the merger, OCC expressly assumed DSCC's liabilities as a matter of law. Exhibit 48 at OCCNJ0011580; N.J.S.A. 14A:10-6(e); DEL. CODE ANN. tit. 8, § 259(a); N.Y. BUS. CORP. LAW § 906(b)(3).

It has never been disputed that OCC is the successor by merger to DSCC. In previous litigation involving Lister Plant-related liabilities (the “Agent Orange Litigation”), OCC admitted that it was the successor to DSCC and the proper party to defend against claims relating to those dioxin- and Lister-Plant-related liabilities. Exhibit 49 at OCCNJ0124796-97. That admission came in the Affidavit of Robert D. Luss, the Associate General Counsel and Assistant Secretary of OCC. Mr. Luss explained: “OCC is the successor by merger to the company which

was known until on or about December 19, 1967, as Diamond Alkali Company and eventually thereafter as [DSCC] and [OEC].” Id. at ¶¶ 2-7. Mr. Luss’s Affidavit was filed in support of a motion for summary judgment in the Agent Orange Litigation, in which Maxus, Tierra and Occidental Petroleum Corporation (“OPC”) sought dismissal of the claims against them as “misjoined” defendants. Id. at OCCNJ0124728-807. In that motion, OCC explained that it was the proper defendant in the Agent Orange Litigation for Lister Plant-related liabilities, as the successor by merger to DSCC. Id. at OCCNJ0124733-34 ¶¶ 4 – 10.

Additional documents produced by OCC, Maxus and Tierra in this case confirm this relationship. In fact, OCC’s counsel in this litigation confirmed that OCC is, in fact, the direct successor by merger to DSCC. In a letter to DEP, OCC’s counsel explained:

[I]n 1967, during a merger with Shamrock Oil and Gas Company, Diamond Alkali Company became Diamond Shamrock Corporation (DSC-1). In 1983, DSC-1 changed its corporate name first to Diamond Chemicals Company, and then to Diamond Shamrock Chemicals Company (DSCC). In 1986, following the sale of all of DSCC’s stock to Oxy-Diamond Alkali Corporation as its new parent corporation, DSCC changed its name to Occidental Electrochemicals Corporation (OEC). OEC, with its parent Oxy-Diamond Alkali, then merged into OCC. According to fundamentals of corporate law, OCC, then, stands as the successor corporation to the liabilities, if any, of DSC-1 (known at various times as Diamond Alkali Company, Diamond Shamrock Chemicals Company, and Occidental Electrochemicals Corporation). OCC’s liability would arise, not from any conduct of its own, but solely as the successor to any liabilities of DSC-1 for the Diamond Alkali Site [a/k/a the Lister Plant]. [Exhibit 50 at p. 11, ¶ 1.]

Thus, OCC has repeatedly admitted that it is the successor by merger to DSCC and is the legal successor to DSCC’s Lister Plant-related liabilities. See also, Exhibit 2 at MAXUS1355009 ¶ 1; Exhibit 10 at OCCNJ0022877 ¶ 1; Exhibit 51 at NJDEP00382472 ¶¶ 7-10; Exhibit 52 at OCCNJ0023767; Exhibit 53 at OCCNJ00467171; Exhibit 54 at OCCNJ0023709-10; Exhibit 55 at OCCNJ0046187-90. Pursuant to “fundamentals” of corporate law, OCC stands in the shoes of DSCC and is legally responsible for DSCC’s intentional discharges of dioxin, DDT and other hazardous substances into the Passaic River.

APPLICABLE LEGAL STANDARD

A court may grant summary judgment where no genuine issue of material fact exists:

The judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. [R. 4:46-2(c).]

When determining whether a genuine issue of material fact exists, a court is “to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995).

Plaintiffs seek partial summary judgment, as provided for by R. 4:46-1. “A party seeking any affirmative relief may, at any time after the expiration of 35 days from the service of the pleading claiming such relief, move for a summary judgment or order on all or any part thereof or as to any defense.” R. 4:46-1. When the summary judgment requested does not entirely dispose of the case, the court is to determine which facts have been determined by the partial judgment and make an order specifying those facts, which are then deemed established. R. 4:46-3.¹ Thus, the court can render partial summary judgment on any issue, reserving the remaining issues for trial.

¹ 4:46-3. Case Not Adjudicated on Motion

(a) Order Limiting Factual Controversy. If on motion under this rule judgment is not rendered upon the whole action or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts, including facts as to the amount of damages, exist without substantial controversy and shall thereupon make an order specifying those facts and directing such further proceedings in the action as are appropriate. Upon trial of the action the facts so specified shall be deemed established. [R. 4:46-3(a).]

ARGUMENT

POINT I

DSCC IS STRICTLY, JOINTLY AND SEVERALLY LIABLE UNDER THE SPILL ACT FOR ALL CLEANUP AND REMOVAL COSTS ASSOCIATED WITH ITS DISCHARGES OF HAZARDOUS SUBSTANCES INTO THE PASSAIC RIVER.

A Spill Act claim for strict, joint and several liability may be granted on a motion for summary judgment. Dep't of Env'tl. Prot. v. Exxon Mobil Corp., 393 N.J. Super. 388, 397-98 (App. Div. 2007) (noting that trial court granted DEP's summary judgment holding Exxon Mobil strictly liable for cleanup and removal costs). To establish liability under the Spill Act, Plaintiffs must demonstrate that a "person" "discharged a hazardous substance, or is in any way responsible for any hazardous substance" that is discharged onto the land or into the waters of the State of New Jersey. N.J.S.A. 58:10-23.11g(c)(1). Once established, the person is "strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs" incurred by the State. Ibid. Liability under the Spill Act is retroactive, i.e., Spill Act liability attaches to discharges that occurred prior to the statute's enactment in 1977. Dep't of Env'tl. Prot. v. Ventron Corp., 94 N.J. 473, 497 (1983) ("Not only has the Legislature granted DEP the power to clean up preexisting spills, but it has also established retroactive strict liability[.]"). In addition, Spill Act liability attaches to both past and future cleanup and removal costs. In re Kimber Petroleum Corp., 110 N.J. 69, 74-75 (1988); City of Perth Amboy v. Madison Indus., Inc., Nos. A-1127-81T3, A-1276-81T3 (Consolidated), 1983 N.J. Super. LEXIS 1111, *8-10 (App. Div. April 21, 1983) (unpublished opinion).²

² Attached as Appendix A is the unpublished opinion of the Appellate Division, in the matter of City of Perth Amboy v. Madison Indus., Inc., Nos. A-1127-81T3, A-1276-81T3 (Consolidated), 1983 N.J. Super. LEXIS 1111 (App. Div. 1983). Pursuant to R. 1:36-3, a copy of this opinion has been served upon the Court and all parties. Counsel is not aware of any contrary unpublished opinions.

Plaintiffs are entitled to a traditional partial summary judgment on the issue of DSCC's strict liability under the Spill Act for decades of intentional discharges of dioxin, DDT and other hazardous substances into the Passaic River. Plaintiffs rely on documents produced by OCC, Maxus and Tierra in this litigation, judicial admissions, and testimony from the Aetna Trial, any one of which by itself can establish Spill Act liability. Taken together, there is no dispute that Spill Act liability results from DSCC's conduct. The substantial body of incontrovertible evidence simply allows for no other conclusion.

A. The Passaic River Is a Waterway of the State of New Jersey.

The Passaic River is a waterway of the State of New Jersey, a natural resource subject to the public trust doctrine providing the State trusteeship over the resource for the benefit of the public. McCarter v. Hudson County Water Co., 70 N.J. Eq. 525, 528-29 (Ch. Div. 1905) (“That the Passaic river is a tidal stream, the bed of which, so far as the tide ebbs and flows, is the property of the state, is a fact the court will judicially notice[.]”); Matthews v. Bay Head Improvement Ass'n, 95 N.J. 306, 319 (1984) (noting that all navigable rivers, “including the water and land under the water, are ‘common to all the citizens, and that each [citizen] has a right to use them . . . , subject only to the laws which regulate that use’”). OCC, Maxus and Tierra cannot dispute this fact. See, e.g., Counterclaim of Maxus and Tierra at ¶ 4.

B. DSCC and OCC Are “Persons” Within the Meaning of the Spill Act.

Spill Act liability attaches to any “person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance” discharged. N.J.S.A. 58:10-23.11g(c)(1). The Spill Act expansively defines a “person” as any “public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents[.]” N.J.S.A. 58:10-23.11b. There is no dispute that DSCC, before its merger with OCC, was a “person” for purposes of the

Spill Act. Exhibit 46 at OCCNJ0000225. In addition, OCC admits its status as a “person” within the meaning of the statute. See Third-Am. Compl. at ¶ 11; OCC Answer at ¶ 11.

C. DSCC “Discharged Hazardous Substances” into the Passaic River.

1. As a matter of policy, intent and design, DSCC “discharged” its waste chemical effluent into the Passaic River during the entire period of its plant operations.

The Spill Act speaks to a “discharge” of hazardous substances. The Spill Act defines “discharge” as “any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the lands of the State[.]” N.J.S.A. 58:10-23.11b. Even viewed in the light most favorable to OCC, there can be no doubt about DSCC’s “discharges” into the Passaic River. Brill, supra, 142 N.J. at 540. Decades of DSCC’s discharges into the Passaic River are established through documents produced by OCC and/or Maxus and Tierra, the testimony of DSCC’s Lister Plant employees during the Aetna Trial, and DSCC’s judicial admissions.

Documents produced by OCC, Maxus and Tierra in this lawsuit establish, beyond dispute, that DSCC “discharged” its waste chemical effluent into the Passaic River as a matter of corporate policy. These documents include internal DSCC memoranda that describe DSCC’s practice of discharging its wastes into the Passaic River, discuss the quantities of various wastes discharged, and detail the efforts to evade detection by environmental agencies by rerouting discharge lines underneath the surface of the Passaic River. See, e.g., Statement of Facts at ¶¶ 24-31. The practice of discharging wastes into the Passaic River and using evasive tactics was condoned at the highest levels of DSCC management. See, e.g., Exhibit 34. Documents produced by OCC, Maxus and Tierra in this lawsuit also include notices of violations from environmental agencies for DSCC’s illegal discharge of wastes from the Lister Plant into the Passaic River. These letters came from the PVSC (see, e.g., Exhibit 29; Exhibit 37) and the U.S.

Army Corps of Engineers (see, e.g., Exhibit 39; Exhibit 40; Exhibit 41). Any one of these documents is evidence, and some even constitute admissions, sufficient to support a finding of DSCC's intentional discharges to the Passaic River. Together, the documents establish that fact beyond any doubt. The internal correspondences and other documents exchanged during the operation of the Lister Plant provide incontrovertible evidence that the Lister Plant discharged its wastes into the Passaic River from at least the 1950s until the late 1960s.

Moreover, testimony from the Aetna Trial thoroughly establishes DSCC's two-decade-long history of discharges of waste chemical effluent into the Passaic River. Consistent and elaborate testimony was provided by multiple Lister Plant employees, including Lister Plant Manager John Burton himself. Witnesses admitted that it was standard practice to "riverize" wastes (which meant "send it to the river"). Exhibit 17 at MAXUS028415 (9:13-17). Testimony included a description of the "mountain" of DDT that accumulated in the Passaic River due to discharges from the Lister Plant, and further detailed DSCC's efforts to conceal that mountain by sending workers under the cover of darkness to "chop [it] up." Id. at MAXUS028437-39 (31:17-33:18). Similarly, testimony included efforts to conceal the unlawful discharges by having workers dump the waste in the Passaic River before daylight hours and by intercepting environmental inspectors until others could conceal illegal discharges. Exhibit 18 at MAXUS028507 (38:8-22), MAXUS028508 (39:11-18). Plant Manager Burton even described DSCC's alarm system, whereby the receptionist would sound three buzzes on the inter-plant communication system to alert the foreman and the operators of incoming environmental inspectors "so they would take prompt steps to see that anything . . . going into the river at that moment was stopped." Id. at MAXUS028547 (105:10-24). DSCC's expert witness even testified that the Lister Plant's effluent discharges to the Passaic River violated regulations and

that those violations essentially “continued . . . throughout the operation.” Exhibit 22 at MAXUS026919-20 (34:20-35:14); MAXUS026957 (72:2-3).

In addition to the contemporaneous documents and the extensive testimony from the Aetna Trial, DSCC admitted in its appellate briefing, in which DSCC sought to overturn Judge Stanton’s rulings, that it had discharged dioxin into the Passaic River. On page 13 of its appellant’s brief, DSCC makes the following statement:

Up to 1960 the Newark Plant discharged 2,4,5-T process waste waters to the river. Although these discharges contained minute quantities of 2,4,5-T, which, in turn, contained even more minute quantities of dioxin (Pa 2334-37), there is no evidence of any complaint by the PVSC with respect to such discharges, which were odorless, non-viscous and relatively clear (Pa 2338-39). [Exhibit 1 at MAXUS034103 n. 9.]

DSCC repeats this admission, stating that: “Leaks or spills inside buildings would fall onto the concrete floor and from there would be washed down into floor trenches and, prior to 1956, discharged to the [Passaic River].” Ibid. DSCC even admitted that the discharges from units that made the dioxin-containing 2,4,5-T esters were made to the Passaic River up until Lister Plant operations ceased:

In 1960, following an explosion of the building in which TCP – an intermediate chemical in the 2,4,5-T manufacturing chain – was made, the facility was rebuilt and process waste waters discharged to the industrial sewer (Pa 2248-49, Pa 2228-29), although it appears that some chemical process waste waters – from a unit that made 2,4,5-T and 2,4-D esters – were discharged to the river up to the time the plant ceased operations (Pa 1751). [Id. at MAXUS034104 ¶ 1.]

See also Exhibit 4 at MAXUS0964706-07 ¶ 15; 0964709 ¶ 17 – 0964711 ¶ 18, 0964716 ¶ 21, 0964722 ¶ 25. Based on these unequivocal statements from DSCC, there is no issue of fact as to whether DSCC discharged its waste chemical effluent into the Passaic River. Plaintiffs further incorporate by reference their Statement of Facts, at ¶¶ 8 – 32, including exhibits referenced therein.

2. DSCC's wastes and chemical effluent include "hazardous substances" as that term is defined under the Spill Act.

It is also beyond dispute that the waste chemical effluent discharged from the Lister Plant included "hazardous substances" under the Spill Act. Establishing that these substances are hazardous substances under the Spill Act can be done by judicial notice. N.J.R.E. 201(a) ("Law which may be judicially noticed includes the decisional, constitutional and public statutory law, rules of court, and private legislative acts and resolutions of the United States, this state, . . . as well as ordinances, regulations and determinations of all governmental subdivisions and agencies thereof.").

The Spill Act defines a hazardous substance based, in part, on a hazardous substance list DEP maintains pursuant to statute.³ See Appendix B. The list of hazardous substances includes the substances the Aetna trial court found were discharged from the Lister Plant, including DDT, TCP and dioxin.⁴ Id. at 5 (DDT), 7 (Dioxin) and 16 (Trichlorophenol). In fact, in the Aetna case, Judge Stanton noted that the facts before him would support Spill Act liability. Exhibit 15 at MAXUS030402 ("It should be noted that if [DSCC] had not agreed to undertake remediation,

³ The term "hazardous substances" means:

the "environmental hazardous substances" on the environmental hazardous substance list adopted by the department pursuant to section 4 of P.L.1983, c.315 (C.34:5A-4); such elements and compounds, including petroleum products, which are defined as such by the department, after public hearing, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 311 of the federal Water Pollution Control Act Amendments of 1972, Pub.L.92-500, as amended by the Clean Water Act of 1977, Pub.L.95-217 (33 U.S.C.s.1251 et seq.); the list of toxic pollutants designated by Congress or the EPA pursuant to section 307 of that act; and the list of hazardous substances adopted by the federal Environmental Protection Agency pursuant to section 101 of the "Comprehensive Environmental Response, Compensation and Liability Act of 1980," Pub.L.96-510 (42 U.S.C.s.9601 et seq.); provided, however, that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of P.L.1976, c.141 (C.58:10-23.11 et seq.). [N.J.S.A. 58:10-23.11b.]

⁴ A particularly toxic form of dioxin produced by the Lister Plant is 2,3,7,8-tetrachlorodibenzo-p-dioxin. Exhibit 15 at MAXUS030400 ("In the process of manufacturing TCP at the Newark plant, quantities of dichloradibenzo-p-dioxin ('dioxin') were created as an unintended impurity. Dioxin was present as an impurity in all the 2,4,5-T phenoxy herbicides, including Agent Orange, manufactured by [DSCC] at the [Lister Plant].").

the State itself could have performed the work and then collected three times the cost of the work from [DSCC].”) (citing the Spill Act at N.J.S.A. 58:10-23.11f).

The facts before Judge Stanton included the testimony of Lister Plant Manager Burton. He testified that the chemicals discharged into the Passaic River included caustic soda, muriatic acid, sulfuric acid and DDT. Exhibit 18 at MAXUS028544 (75:4-17). These same chemicals continued to be disposed of in the Passaic River into the later 1950s, in addition to TCP and associated chlorophenols, “and probably very small quantities of 2,4,5-T acid.” Id. at MAXUS028546 (77:2-24). In fact, the quantity of DDT discharged was so high that a mid-river “mountain” of DDT formed. Exhibit 17 at MAXUS028437-39 (31:17-33:18). Based on these statements from DSCC, there is no issue of fact as to whether DSCC discharged “hazardous substances” into the Passaic River.

In fact, remedial work to be undertaken by OCC, Maxus and Tierra, under the supervision of USEPA and DEP, highlights the fact that “hazardous substances” were discharged from the Lister Plant into the Passaic River. Exhibit 2. In June 2008, OCC and Tierra agreed to excavate a high volume of Passaic River sediments directly adjacent to the Lister Plant at a cost of between \$80 – \$100 million. See id. at MAXUS1355019 ¶ 18. The contaminated sediments include “the most concentrated inventory of 2,3,7,8-TCDD[,]” and a host of similar hazardous substances such as DDT. Ibid.; MAXUS1355016 ¶ “r.” Therefore, OCC and Maxus cannot credibly dispute the fact that DSCC discharged hazardous substances from the Lister Plant into the Passaic River.

D. DSCC Is Liable for All Past and Future Cleanup and Removal Costs Associated With Its Discharges.

Once Spill Act liability is established, the person is “strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.” N.J.S.A.

58:10-23.11g(c)(1). “Cleanup and removal costs” is a defined term under the Spill Act. It means:

all direct costs associated with a discharge, and those indirect costs that may be imposed by [DEP] pursuant to section 1 of P.L.2002, c. 37 associated with a discharge, incurred by the State or its political subdivisions or their agents or any person with written approval from the department in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources[.] [N.J.S.A. 58:10-23.11b (emphasis added.)]

Pursuant to R. 4:46-3(a), therefore, Plaintiffs respectfully request that the Court enter an order establishing DSCC’s, and its successor’s, liability under the Spill Act for all cleanup and removal costs, past and future, “associated with” DSCC’s discharges of dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River.⁵

POINT II

OCC IS STRICTLY, JOINTLY AND SEVERALLY LIABLE FOR ALL CLEANUP AND REMOVAL COSTS ASSOCIATED WITH DSCC’S DISCHARGES OF HAZARDOUS SUBSTANCES INTO THE PASSAIC RIVER.

Clearly, there is no genuine issue of material fact: DSCC intentionally discharged dioxin, DDT and other hazardous substances into the Passaic River with impunity for decades. Equally as plain: DSCC was acquired by – and was subsequently merged into – OCC. As such, OCC is DSCC and is, therefore, liable under the Spill Act as matter of law.

It is axiomatic under the common law, as well as any relevant state statutory authority, that the merger of two corporate entities leaves the merged entity liable for its two constituent parts. Brotherton v. Celotex Corp., 202 N.J. Super. 148, 153-154 (Law Div. 1985); N.J.S.A.

⁵ With a finding of Spill Act liability, the Court can then proceed to a mini-trial or successive motions for summary judgment following discovery on which past and future costs are “associated with” DSCC’s discharges.

14A:10-6(e); DEL. CODE ANN. tit. 8, § 259(a); N.Y. BUS. CORP. LAW § 906(b)(3).⁶ According to black-letter corporate law, a company cannot avoid or erase its liabilities by merging into another:

Generally, where a corporation succeeds to the assets of another corporation by virtue of a merger or consolidation and not by way of purchase, the new or resulting corporation is liable for the debts and contracts of the other corporation, whether they rise ex contractu or ex delicto, although there is no statute imposing a liability and no agreement assuming it. Public policy requires that the obligations of the extinguished corporation in a merger survive as obligations of the surviving corporation. Corporations cannot by merger or consolidation escape the obligation to pay debts incurred before the merger or consolidation or defeat the right of their creditors to subject their property to the satisfaction of such debt. [American Jurisprudence, 2d Ed., Corporations at § 2330.]

See also Polius v. Clark Equipment Co., 802 F.2d 75, 77 (3d. Cir. 1986) (“The same concepts of continuing life and accountability underlie the law governing corporate merger through the purchase of stock. Liability continues because the corporate body itself survives.”).

A. As the Merged Entity, OCC Is Strictly, Jointly and Severally Liable for DSCC’s Discharges to the Passaic River.

By virtue of the merger of DSCC into OCC, all liability associated with DSCC’s discharges now rests with OCC. The undisputed facts on this point are admitted by OCC in its Amended Cross-Claims:

- In September 1986 (after allegations of DSCC’s intentional misconduct were clear), Diamond Shamrock Corporation sold the stock of its wholly-owned subsidiary DSCC to Oxy-Diamond Alkali Corporation, an OCC affiliate. Exhibit 46 at OCCNJ0000204; OCC’s Amended Cross-Claims at ¶ 13.
- Later, DSCC was renamed OEC. Exhibit 47 at OCCNJ0009303-04; OCC’s Amended Cross-Claims at ¶ 13.

⁶ The effect of the merger of DSCC/OEC into OCC does not involve a choice-of-law analysis because there is no conflict of law to resolve. Bussell v. DeWalt Products Corp., 259 N.J. Super. 499, 512 (App. Div. 1992) (noting that first step of choice-of-law analysis was to determine whether there was an actual conflict between the laws of the interested states). The Certificate of Merger of OEC, a Delaware corporation, into OCC, a New York Corporation, refers to § 905 of the New York Business Corporation Code. Exhibit 48 at OCCNJ0011583. New York law, like New Jersey and Delaware law, requires the surviving corporation in a merger to assume all liabilities of the merged corporations. N.J.S.A. 14A:10-6(e); DEL. CODE ANN. tit. 8, § 259(a); N.Y. BUS. CORP. LAW § 906(b)(3).

- On or about November 25, 1987, OCC merged OEC into itself, with OCC being the surviving entity in the merger. Exhibit 48 at OCCNJ0011580 ¶ 2; 0011581 ¶ 2; OCC’s Amended Cross-Claims at ¶ 13.

There is no question of fact and no dispute here: DSCC was first acquired by and then later merged into OCC. At law, they are the same entity.

New Jersey, Delaware and New York law could not be any clearer regarding the liability of merged corporations. See, supra, note 6.

- “The surviving or new corporation shall be liable for all the obligations and liabilities of each of the corporations so merged or consolidated[.] . . . Neither the rights of creditors nor any liens upon, or security interests in, the property of any of such corporations shall be impaired by such merger or consolidation.” N.J.S.A. 14A:10-6(e).
- “When any merger or consolidation shall have become effective under this chapter, for all purposes of the laws of this State . . . the constituent corporations shall become a new corporation, or be merged into 1 of such corporations, as the case may be, . . . and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.” DEL. CODE ANN. tit. 8, § 259(a).
- “The surviving or consolidated corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the constituent entities. No liability or obligation due or to become due, claim or demand for any cause existing against any such constituent entity . . . shall be released or impaired by such merger or consolidation.” N.Y. BUS. CORP. LAW § 906(b)(3).

See also Ventron, supra, 94 N.J. at 503 (citing N.J.S.A. 14A:10-6) (“Through the merger of Wood Ridge into Ventron, the latter corporation assumed all of Wood Ridge’s liabilities, including those arising out of the pollution of Berry’s Creek.”); Baker v. Nat’l State Bank, 161 N.J. 220, 228 (1999) (“Proof of a merger is sufficient to establish liability under N.J.S.A. 14A:10-6.”); Stayton v. Clariant Corp., 10 A.3d 597, 599 n.1 (Del. Supr. 2010) (finding that, under either Delaware or New York statutes, surviving corporation in a merger assumed liabilities of merged corporation). Thus, DSCC is now OCC, and OCC is liable in DSCC’s stead.

Until just recently, OCC freely admitted that it is the successor to DSCC and responsible for Lister Plant liabilities. First, OCC agreed and expressly proclaimed that, through the merger, it was assuming all of DSCC/OEC's obligations and liabilities in the Certificate of Ownership and Merger that OCC filed on November 30, 1987 with the Delaware Secretary of State. Exhibit 48 at OCCNJ0011580 (stating "that [OCC] assume all of the obligations and liabilities of OEC"). More recently, in the Agent Orange Litigation, OCC admitted that it was the successor to DSCC and the proper party to defend against claims relating to those liabilities. Exhibit 49 at OCCNJ0124796-97. There, the Associate General Counsel and Assistant Secretary of OCC, Robert D. Luss, explained in an Affidavit that:

OCC is the successor, by merger effective November 30, 1987, to [OEC].

...

[OEC] was known until on or about December 19, 1967 as Diamond Alkali Company, and successively thereafter as Diamond Shamrock Corporation (until on or about September 1, 1983), Diamond Chemicals Company (until on or about November 1, 1983), and [DSCC] (until on or about September 29, 1986).

On or about September 4, 1986, an affiliate of OCC, Oxy-Diamond Alkali Corporation, acquired from the holding company then known as Diamond Shamrock Corporation (and now known as [Maxus]) the stock of the operating company then known as [DSCC].

Following that acquisition, DSCC changed its name to [OEC] on or about September 29, 1986. As noted above, [OEC] was subsequently merged into OCC effective November 30, 1987.

By reason of the foregoing, OCC is the successor by merger to the company which was known until on or about December 19, 1967, as Diamond Alkali Company and eventually thereafter as [DSCC] and [OEC].

OCC is being defended, indemnified and held harmless in this action by [Maxus]. [*Id.* at ¶¶ 2-7 (emphasis added).]

Mr. Luss's Affidavit was filed in support of a motion for summary judgment in the Agent Orange Litigation, in which Maxus, Tierra and OPC sought dismissal of the claims against them as "misjoined" defendants. *Id.* at OCCNJ0124728-807. In that motion, OCC explained that it

was the proper defendant in the Agent Orange Litigation for Lister Plant-related liabilities, as the successor by merger to DSCC. Id. at OCCNJ0124733-34 ¶¶ 4-10.

In fact, OCC/DSCC has repeatedly accepted and acknowledged its position as the party responsible for the Lister Plant environmental liabilities at all times since 1983, when the liabilities began to manifest:

- On March 13, 1984, DSCC entered into an Administrative Consent Order (“ACO”) with DEP to conduct activities at the Lister Plant aimed at investigating the dioxin contamination and preventing migration of the dioxin off-site. Exhibit 10 at OCCNJ0022877 ¶ 1.
- Ten years later, in March 1994, OCC, as the successor to DSCC, entered into an ACO with the EPA for work done on the Passaic River Study Area in the Diamond Alkali Superfund Site. Exhibit 51 at NJDEP00382472 ¶¶ 7-10.
- Ten years after that, in February 2004, OCC and USEPA modified an ACO, and OCC signed the modification as the “successor to [DSCC].” Exhibit 52 at OCCNJ0023767.
- In October 2003, OCC’s counsel requested that Maxus’s counsel identify OCC as the “legal entity which is the successor to DSCC.” Exhibit 53 at OCCNJ0046171.
- In June 2008, in an agreement to remove some of the most highly contaminated sediments in front of the Lister Plant site, OCC – as “successor to Diamond Shamrock Chemicals Company” – made the following representation: “[OCC] and Tierra represent that pursuant to a 1986 stock transaction, the corporation now named [Maxus] indemnified [OCC] for (among other things) environmental liabilities arising from ownership and/or operation of 80 and 120 Lister Avenue by [DSCC] or its predecessors in interest. Exhibit 2 at MAXUS1355009 ¶ 1; 1355012 ¶ “r.”
- In connection with the 2008 agreement, described above, OCC entered into a separate agreement with Maxus and Tierra making clear that OCC was to be indemnified by Maxus, but OCC did not disavow its status as DSCC’s legal successor. Exhibit 55 at OCCNJ0046187-190.
- In 2003, OCC’s former counsel in this litigation explained to DEP that OCC became the successor by merger to DSCC, “formerly known as Diamond Chemicals Company, Diamond Shamrock Corporation [DSC-1] and Diamond Alkali Company.” Exhibit 50 at p. 11 ¶ 1.

New protestations notwithstanding, OCC is bound by its many prior representations to courts across the country, the Delaware Secretary of State, the USEPA, the DEP, and the New Jersey Division of Law. “Prior assertions made in pleadings or evidence which are inconsistent with or contradictory of present claims can be treated as an admission in subsequent litigation.” New Amsterdam Cas. Co. v. Popovich, 18 N.J. 218, 224 (1955); Lincks v. Erie R. Co., 97 N.J.L. 343, 344 (1922) (citing Wigmore, “in his valuable book on Evidence,” for the proposition that “pleadings in prior causes . . . can be treated as the parties’ admissions, usable, as evidence in later cases. . . .”). The unequivocal nature of OCC’s admissions demonstrates that there is truly no genuine issue as to any material fact. Plaintiffs are entitled to partial summary judgment that OCC is, in fact, DSCC’s successor by merger and is, therefore, liable for DSCC’s discharges of dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River.

B. OCC’s Recent Theory that Lister Plant Liabilities Were “Transferred” Out of DSCC Before Its Purchase Is Without Merit.

Only recently, after having spent hundreds of millions of dollars indemnifying OCC for costs related to DSCC discharges, Maxus has taken the position that it has no indemnity obligation to OCC with respect to Lister Plant liabilities. Not surprisingly, OCC responded that – if there is no indemnity – it is not the successor to DSCC’s liabilities with respect to the Lister Plant. In Paragraphs 7 and 8 of its Amended Cross-Claims, OCC sets forth its latest version of the “transfer theory.”⁷ OCC (which, by merger, includes DSCC) now contends that, in 1984, before the 1986 SPA, DSCC transferred the assets and liabilities associated with the Lister Plant into a newly formed subsidiary, Diamond Shamrock Corporate Company (“DS Corp. Co.”), through an assignment and assumption agreement. OCC’s Amended Cross-Claims at ¶¶ 7-8;

⁷ OCC had identified additional theories as to how the Lister Plant liabilities may have possibly been removed from DSCC. In its Amended Cross-Claims, OCC has narrowed those theories to one: the “DS Corp. Co. theory.”

Exhibit 63. As such, OCC (f/k/a DSCC) claims that none of the Lister Plant liabilities remained in DSCC by the time it bought DSCC's stock in 1986. OCC's Amended Cross-Claims at ¶¶ 7-8. In other words, OCC claims that DSCC (n/k/a OCC) liberated itself from its Lister Plant liabilities by niftily moving them into a subsidiary company. Id. Consequently, because it chose to transfer the liabilities at issue to its subsidiary, OCC argues that Plaintiffs are now required to pursue Maxus (as the successor by merger to DS Corp. Co.) for DSCC's Spill Act liabilities.

1. As a matter of law, OCC/DSCC cannot absolve itself of liability to Plaintiffs by transferring that liability to a subsidiary.

OCC's recent theory is without merit. In fact, as to Plaintiffs, it is wholly without legal or factual support. Even if every fact pled in OCC's Amended Cross-Claims is true, OCC is still liable to Plaintiffs as DSCC's successor to the Lister Plant liabilities. It is fundamental that, while two corporations can agree which among them will satisfy a liability, that agreement has no effect on an injured third party. In Re Silicon Gel Breast Implants Products Liability Litigation, 837 F. Supp. 1123, 1126 (N.D. Ala. 1993).

Although the sale of assets may allow an injured plaintiff to proceed against the successor corporation it does not vitiate the original company's liability. The right of the injured party to elect to proceed against the defunct corporation, the successor corporation, or both cannot be altered per se by the corporations, although the corporations can regulate how much liability will be allocated among themselves. [15 Fletcher Cyclopedia of Corporations § 7123 (Perm Ed.).]

See also Haynes v. Kleinfewers & Lembo Corp., 921 F.2d 453, 458 (2d Cir. 1990); Grant-Howard Assoc. v. General Housewares Corp., 472 N.E.2d 1, 3 (N.Y. 1984) ("The companies can regulate how such liability will be allocated among themselves, but they cannot affect the rights of a stranger to their contract."); American Standard, Inc. v. Oakfabco, Inc., 907 N.Y.S.2d 98 (N.Y. Sup. Ct. 2008) ("The fact that the parties have made an arrangement between themselves concerning liability assumption or indemnification does not affect third parties.").

The case of Watkins v. Black and Decker (U.S.) Inc., 882 F. Supp. 621 (S.D. Tex. 1995) (opinion vacated pursuant to settlement), is also instructive. There, the court held a corporation liable to an injured third person, even though it had sold the division that made the product at issue to another entity who contractually assumed the division's liabilities. Watkins, supra, 882 F. Supp. at 624-25. According to the court, holding otherwise would be "contrary to the policy upon which successor liability is based." Id. at 625. Specifically, "[s]uccessor corporation liability is designed to protect the injured Plaintiff, not the corporation. It is designed to furnish the Plaintiff with a remedy where the preceding corporation has merged or ceased to exist as a result of a sale of assets." Ibid.;⁸ Bussell, supra, 259 N.J. Super. at 518 ("We conclude . . . that even where the agreements show an assumption of liability by an intermediate purchaser this does not cause a break in the chain of liability of subsequent successor corporations."). If OCC/DSCC chose to move the environmental liabilities at issue into a subsidiary, it simply would have no effect as to the Plaintiffs. To hold otherwise would be to ignore critical underpinnings of the corporate form. Moreover, to do so in this context would be to ignore the fundamental purpose of the Spill Act. Ventron, supra, 94 N.J. at 503 (citing N.J.S.A. 14A:10-6 and holding Ventron liable for the acts of Wood Ridge).

Accordingly, it does not matter whether OCC/DSCC purported to transfer the Lister Plant assets and liabilities to DS Corp. Co. because, as a matter of law, OCC/DSCC remains liable to Plaintiffs as a discharger.

⁸ Although this opinion was vacated, the order granting the motion for reconsideration recites that the court vacated the opinion to assist in settlement. Appendix C. Thus, the opinion was not withdrawn on substantive grounds.

2. Even if it was possible for OCC/DSCC to absolve itself of liability to Plaintiffs by transferring that liability to a subsidiary, the purported transfer at issue failed to do so.

Even if it was possible for OCC/DSCC to shed the Lister Plant liabilities through a contractual “transfer,” which it is not, the transaction that OCC has identified does not, in fact, transfer the Lister Plant liabilities out of DSCC. OCC has identified the January 1, 1984 Assignment and Assumption Agreement between DSCC and DS Corp. Co. as the document evidencing the transfer. OCC’s Amended Cross-Claims at pp. 29-30 ¶¶ 7-8. According to that agreement, DSCC agreed to transfer to DS Corp. Co.:

all assets of whatsoever kind of [DSCC] both real and personal, tangible and intangible, wherever situated, provided, however, that such assignment and transfer excludes all assets that are necessary for the operation of or used principally in connection with or related principally to the industrial and proprietary chemicals businesses of [DSCC.] [Exhibit 63 at MAXUS022033.]

The agreement also transferred four categories of liabilities to DS Corp. Co., but all four of those categories were explicitly tied to the assets that were transferred. In other words, only liabilities that were related to assets were transferred – “[a]ll current liabilities relating to or based upon any of the assets or business activities assigned and transferred” – and there was no assumption of DSCC’s historical or general liabilities. Id. at MAXUS022035 ¶ (ii).

Importantly, DSCC did not have any Lister Plant-related assets to transfer at the time of the DS Corp. Co. agreement. DSCC had sold the Lister Plant site in the 1970s. Exhibit 3 at MAXUS036796 ¶ 2; OCC’s Amended Cross-Claims at ¶ 3; Maxus and Tierra’s Answer to Amended Cross-Claims at ¶ 3. In fact, a Diamond entity did not own 120 Lister Avenue until later in 1984 or own 80 Lister Avenue again until January 1986. Exhibit 60; Exhibit 62; OCC’s Amended Cross-Claims at ¶ 10; Maxus and Tierra’s Answer to Amended Cross-Claims at ¶ 10. As a result, there were no assets associated with the Lister Plant liabilities – notably, including the Lister Plant itself – to transfer from DSCC to DS Corp. Co. Regardless, even if DSCC did

own some minor asset associated with Lister Plant operations in 1984, as explained before, an asset transfer is not sufficient to transfer corporate liabilities owed to third parties. Watkins, supra, 882 F. Supp. at 624-25; Bussell, supra, 259 N.J. Super. at 518 (“We conclude . . . that even where the agreements show an assumption of liability by an intermediate purchaser this does not cause a break in the chain of liability of subsequent successor corporations”).

In sum, OCC’s recent attempt to disclaim the Lister Plant liabilities is understandable given Maxus’s new theory that the SPA does not provide indemnification. Plaintiffs, however, do not think Maxus’s brand-new defenses should fare any better than OCC’s brand-new defenses. Moreover, the issue of who actually pays for remedial activities underway at the Lister Plant is irrelevant to the issue of OCC’s liability in this case. There is no genuine issue of material fact as to OCC’s status as DSCC’s direct successor. As such, OCC is strictly, jointly and severally liable under the Spill Act for DSCC’s discharges to the Passaic River. Ventron, supra, 94 N.J. at 498, 503.

POINT III

OCC AND MAXUS ARE ESTOPPED FROM DENYING THE FACT OF DSCC’S INTENTIONAL DISCHARGES OF DIOXIN, DDT AND OTHER HAZARDOUS SUBSTANCES INTO THE PASSAIC RIVER.

In addition to a traditional motion for partial summary judgment against OCC, Plaintiffs move against OCC and Maxus for partial summary judgment on the ground that DSCC’s intentional discharges to the Passaic River have been established and that OCC and Maxus are collaterally estopped from re-litigating them.

“The doctrine of collateral estoppel is a branch of the broader law of res judicata which bars relitigation of any issue actually determined in a prior action generally between the same parties and their privies involving a different claim or cause of action.” Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000). Collateral estoppel bars relitigation of

factual issues that arise in different causes of action in separate lawsuits. Ibid. That is, if a fact issue that was necessary for a judgment in one case is also an element of a claim in a second case, collateral estoppel provides for the conservation of judicial resources and the avoidance of repetitious litigation by establishing the fact without further proofs. Id. at 174.

The party claiming estoppel “must present to the second tribunal so much of the record of the first proceeding as may be necessary to show that the issue he seeks to exclude from the subsequent trial was ‘necessarily determined’ in the prior proceeding.” State v. Ebron, 61 N.J. 207, 216 (1972). This Court can take judicial notice of pleadings and briefs from the trial court and appellate court proceedings in the Aetna case. N.J.R.E. 201(b)(4) (court can take judicial notice of “records of the court in which the action is pending and of any other court of this state or federal court sitting for this state”). Likewise, this Court can take judicial notice of testimony from the Aetna Trial for purposes of establishing collateral estoppel. Tp. of Brick, Ocean County v. Vannell, 55 N.J. Super. 583, 587 (App. Div. 1959) (“There is no doubt we may take judicial notice of the prior proceeding . . . including the recorded testimony of witnesses.”).⁹

New Jersey law on collateral estoppel follows the Restatement (Second) of Judgments, §§ 27 – 29. Gregory Marketing Corp. v. Wakefern Food Corp., 207 N.J. Super. 607, 621 (Law Div. 1985); Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 520-21 (2006); Kortenhous v. Eli Lilly & Co., 228 N.J. Super. 162, 165 (App. Div. 1988). Section 27 states the general rule for

⁹ Plaintiffs respectfully request that, pursuant to N.J.R.E. 201(b) and (d), the Court take judicial notice of the records and testimony of the Superior Court of New Jersey, Chancery Division, Morris County in Docket No. C-3939-84 and of the Superior Court of New Jersey, Appellate Division, Docket No. A-694-89TI. Plaintiffs hereby provide notice to all parties and the Court of such request. N.J.R.E. 201(d). The materials Plaintiffs provide are documents from the appellate record, attached as Exhibits 13 and 15, the insurers’ and DSCC’s appellate briefs before the Appellate Division attached as Exhibits 1, 12 and 24, official trial transcripts and exhibits discussed therein, attached as Exhibits 16-23, and the pleadings contained in Exhibits 4, 11 and 14. Plaintiffs respectfully request that the Court take judicial notice of the information contained in ¶¶ 4 through 20 of the Statement of Facts, as presented in the trial transcripts in the above-mentioned exhibits.

affording preclusive effect to a prior judgment, while §§ 28 and 29 provide potential exceptions to the general rule.

A. Plaintiffs Can Establish All of the Elements for Collateral Estoppel Under New Jersey Law.

For OCC and Maxus to be collaterally estopped by the findings in the Aetna Trial, Plaintiffs must establish five elements:

- (1) the issue to be precluded is identical to the issue decided;
- (2) the issue was actually litigated in the prior proceeding;
- (3) the court in the prior proceeding issued a final judgment on the merits;
- (4) the determination was essential to the prior judgment; and
- (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceedings.

Olivieri, supra, 186 N.J. at 520-21 (citing In re Estate of Dawson, 136 N.J. 1, 20-21 (1994)); Restatement (Second) of Judgments § 27 (1982). All five elements can be established with respect to the fact issues decided in the Aetna Trial.

1. The issue to be precluded is identical to the issue decided in the Aetna Trial.

Plaintiffs seek to prove by collateral estoppel the fact that DSCC intentionally discharged dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River. This identical fact was established in the Aetna Trial. There, the trial court found:

Over the years, discharges from the Newark plant into the Passaic River included 2,4,5-T acid (and dioxin), caustic acids, DDT, sulfuric acid, TCP (and dioxin), muriatic acid and monochlorobenzene. The conclusion is inescapable that the consistent policy of Diamond's management (both at the local plant level and at corporate headquarters) was to discharge dangerous chemicals into the Passaic River in known violation of public law. This policy persisted from 1951 to 1969. The policy was consciously adopted by Diamond's management because the pollution of the public waters of the State was not perceived by them as a significant wrong, and because it would have been technically difficult and very costly to have avoided such discharges. [Exhibit 15 at MAXUS030407-08.]

The trial court's factual findings were undisturbed on appeal. Aetna, supra, 258 N.J. Super. at 211. In fact, the Appellate Division affirmed the trial court's ruling that DSCC had no insurance coverage for the environmental pollution claims based "on the judge's finding of fact that [DSCC] knowingly and routinely discharged contaminants over a period of 18 years." Ibid.

2. The issue of whether DSCC intentionally discharged dioxin and other hazardous substances into the Passaic River was actually litigated in the Aetna Trial.

An issue is actually litigated in a prior proceeding if it was "properly raised by the pleadings or otherwise submitted for determination, and determined." Gregory Marketing Corp., supra, 207 N.J. Super. at 622. In Aetna, the issue of DSCC's intentional discharges of dioxin, DDT and other hazardous substances into the Passaic River was both. The insurers defended against DSCC's claims for insurance coverage for environmental liabilities by arguing that DSCC had intentionally discharged dioxin, DDT and other hazardous substances into the Passaic River and was, thus, precluded from insurance coverage.

DSCC tried its declaratory judgment action against its insurers to the bench, with Superior Court Judge Reginald Stanton presiding over twenty days of trial before rendering his decision. Exhibit 13 at MAXUS 033008 ¶ 1. During the trial, DSCC's intentional discharge of pollutants into the Passaic River was the subject of extensive, detailed testimony. According to the trial court, "[m]uch of the extensive testimony about the operation of the [Lister Plant] focused on discharges, spills and drainage of chemicals into the Passaic River." Exhibit 15 at MAXUS030408 ¶ 3.

The evidence of DSCC's intentional discharges into the Passaic River was overwhelming. Witness after witness described both accidental spills that washed into the river and the deliberate dumping of chemical waste products into the river, both of which were continuous for many years. Exhibit 16 at MAXUS028344-45 (70:19-71:25); Exhibit 17 at

MAXUS028427-28 (21:10-22:16); Id. at MAXUS028452 (46:12-23); Exhibit 18 at MAXUS028544 (75:4-17); Id. at MAXUS028546 (77:2-24); Exhibit 21 at MAXUS026855-57 (87:7-89:2).

DSCC's intentional discharges into the Passaic River could not reasonably be disputed. In fact, Dr. Anthony Wolfskill, DSCC's own expert witness, testified that releases from the Lister Plant to the Passaic River were both accidental and "planned." Exhibit 21 at MAXUS026855-57 (87:7-89:2) ("Well, I think that effluent went into the river two ways, one of them was a discharge, planned discharge. There were plenty of accidental releases although to the river. I mean both occurred.").

Instead of disputing that its discharges into the Passaic River were intentional or "planned," in its appellate briefing, DSCC argued that it was entitled to insurance coverage because it did not "intend" the resulting environmental damage. Exhibit 1 at MAXUS034128 ¶ 1. The Appellate Division rejected this disingenuous effort to avoid financial responsibility for the same discharges for which Plaintiffs are now seeking cleanup and removal costs and damages, explicitly finding that DSCC's assertion that it did not intend environmental damage to be "wholly at odds with the evidence." Aetna, supra, 258 N.J. Super. at 212. Detailing the evidence presented at the trial, including discharges to the river and onto the ground, the Appellate Division concluded that "we are convinced that subjective knowledge of harm was proven as a matter of fact. The Chancery Division judge so found, and we agree that this conclusion is virtually inescapable." Id. at 215.

As such, discharges to the Passaic River and DSCC's intent regarding those discharges were not only actually litigated, they were the primary focus of the Aetna Trial. The Appellate

Division took notice that, at least as of the time of its decision, the losses for which DSCC was suing its insurance carriers for coverage did not include remediating the Passaic River:

A number of former plant employees testified concerning [DSCC's] waste disposal policy which essentially amounted to "dumping everything" into the Passaic River. We digress to note that neither Federal nor State environmental protection agencies have directed [DSCC] to remediate the damage to the river. As [DSCC] correctly points out in its brief, the claims which are the subject of this litigation do not encompass losses resulting from the discharge of substances into the Passaic River. We nevertheless recount this evidence because it bears upon the state of [DSCC's] knowledge and intent regarding the environmental damage caused by its operations. At least to some extent, this evidence disclosed a less than benign indifference to the consequences of [DSCC's] operations that directly bears upon whether other discharges and their effects were accidental or inadvertent.

To summarize this testimony briefly, it was clear that prior to 1956, all waste products from chemical processes were either directly discharged or ultimately released into the Passaic River. However, in 1956 an industrial sewer line was installed connecting the plant to the [PVSC] Lister Avenue Line. Nevertheless, the testimony is persuasive that not all of the effluent from the plant was directed to that sewer line. DDT was manufactured until about 1959. So much DDT waste water was directed into the river that a mid-river "mountain" of DDT was created. Employees were directed to surreptitiously wade into the river at low tide and "chop up" the deposits so that they would not be seen by passing boats. [Id. at 183-84.]

Accordingly, the parties, the trial court and the Appellate Division all recognized that the discharges to the Passaic River provided the most compelling evidence regarding DSCC's intent, which was central to the case and the determination of coverage. By virtue of the facts established in Aetna, and the resulting denial of insurance coverage, both Maxus and OCC were bound to admit in their Initial Disclosures that they have no insurance coverage for Plaintiffs' claims. Exhibit 25 at p. 28 ¶ IV; Exhibit 26 at p. 14 ¶ IV.

3. The Superior Court in the Aetna Trial issued a final judgment on the merits.

The Aetna trial court issued a Partial Final Judgment and R. 4:42-2 Certification. Exhibit 13. DSCC appealed. Exhibit 1. The Appellate Division affirmed that portion of the trial court's

judgment holding that the claims related to environmental contamination were not covered under DSCC's policies. Aetna, supra, 258 N.J. Super. at 180. A Petition for Certification was denied. Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 134 N.J. 481 (1993). Thus, the findings of fact pertaining to DSCC's intentional discharges from the Lister Plant into the Passaic River were included in a final judgment on the merits that was appealed to our Supreme Court.

4. The determination that DSCC intentionally discharged dioxin and other hazardous substances into the Passaic River was essential to the judgment.

There is no dispute that the trial court denied DSCC insurance coverage for the environmental claims because it found that DSCC had intentionally discharged the contaminants. Exhibit 15 at MAXUS030432 ¶ 2. And there is no dispute that the Appellate Division affirmed the judgment on the basis of the intentional nature of the discharges. Aetna, supra, 258 N.J. Super. at 211. Similarly, there should be no dispute that the judgment rendered in the Aetna Trial sufficiently depended on the factual finding that DSCC intentionally discharged dioxin and other hazardous substances into the Passaic River.

Collateral estoppel “applies not only to matters or facts that are directly in issue, but also to those necessary to support the judgment rendered in the prior action.” Township of Warren v. Suffness, 225 N.J. Super. 399, 408 (App. Div. 1988).¹⁰ Both the trial court and the Appellate Division decisions depended specifically on the factual findings regarding intentional discharges to the Passaic River. According to the trial court,

The fact that current remediation efforts are centering on the buildings and soils of the [Lister Plant] rather than on the Passaic River does not mean that the extensive testimony about the abuse of the river was irrelevant. The testimony was highly relevant because it established that from 1951 to 1969 [DSCC] had a

¹⁰ The Supreme Court in Dawson cited Suffness as the basis for the “essential to judgment” requirement. Dawson, supra, 136 N.J. at 20.

mindset and a method of conducting manufacturing operations which were destructive of the land, air and water resources of the environment. [Exhibit 15 at MAXUS030409 at ¶ 2 (emphasis added).]

Likewise, the Appellate Division stated that the evidence of discharges to the Passaic River bore “upon the state of [DSCC’s] knowledge and intent regarding the environmental damage caused by its operations.” Aetna, supra, 258 N.J. Super. at 183. It “directly bears upon whether other discharges and their effects were accidental or inadvertent.” Ibid. As such, the trial court’s and the Appellate Division’s findings that DSCC’s discharges to the Passaic River were intentional was the primary basis to deny insurance coverage to DSCC for the environmental claims. Id. at 211.

DSCC fully understood the import of the evidence of its intentional discharges to the Passaic River. To no avail, DSCC complained in its reply brief that “[t]he bulk of the defendant insurers’ statement of facts, like the bulk of Judge Stanton’s factual discussion and findings, deals with various discharges into the Passaic River.” Exhibit 24 at MAXUS045465. Moreover, in its Petition for Certification, DSCC argued that the Appellate Division had erred by relying on evidence regarding the discharges to the Passaic River: “In reaching the decision it did, the Appellate Division appeared to give great weight to the findings made by the Chancery Division with respect to [DSCC’s] alleged deliberate dumping of waste materials to the Passaic River, although it acknowledged that [DSCC] had not been asked to clean up the River. . . .” Exhibit 73 at MAXUS045554. In fact, DSCC took the position that evidence regarding discharges to soil and groundwater did not establish “intentional” discharges, only negligent discharges. Id. at MAXUS045554-55. Therefore, under DSCC’s own logic, it was the evidence regarding discharges to the Passaic River that established “intentional” conduct, which was “essential” to the trial court’s judgment.

5. OCC, as DSCC, Was a Party in the Aetna Trial, and Maxus Was in “Privity” with DSCC.

Under New Jersey law, collateral estoppel applies not only to parties who actually litigated the first action, but also to parties in privity with those parties. Olivieri, supra, 186 N.J. at 521. Privity for purposes of collateral estoppel is not the same as contractual privity – it is much broader. In the context of collateral estoppel, privity is a “necessarily imprecise” term. Zirger v. General Acc. Ins. Co., 144 N.J. 327, 338 (1996). “It is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the res judicata.” Ibid.; Panniel v. Diaz, 376 N.J. Super. 597, 613 (Law Div. 2004). OCC and Maxus are both collaterally estopped from denying that DSCC intentionally discharged dioxin and other hazardous substances into the Passaic River. OCC is DSCC as a matter of law, and Maxus is in privity with DSCC/OCC – despite the recent game of hot-potato they have played with DSCC’s Lister Plant-related liabilities.

As set forth in the Statement of Facts, Oxy-Diamond Alkali Corporation, an OCC affiliate, acquired DSCC from Diamond Shamrock Corporation (n/k/a Maxus) in September 1986. Exhibit 46. The acquisition occurred after DSCC filed the Aetna lawsuit in 1984, but before the case went to trial in 1988. Id. In November 1987, DSCC (then OEC) merged into OCC. Exhibit 48. Thus, as a matter of black-letter law, at the time of trial in September 1988, OCC was DSCC and the true plaintiff-in-interest.¹¹ In other words, OCC was not simply in privity with a party to the Aetna litigation, OCC was a party to the Aetna litigation. OCC then made the choice simply to let its indemnitor, Maxus, try the case in its stead.

OCC’s status as a party is absolutely confirmed by Exhibit 8.13 to the SPA. Exhibit 58. There, DSCC and OCC’s affiliate (the Buyer) appointed the Seller, Diamond Shamrock

¹¹ This is the case under New Jersey, New York or Delaware law. See, supra, note 6.

Corporation (n/k/a Maxus), to be their attorney-in-fact in the Aetna litigation. Ibid.; Exhibit 46 at OCCNJ0000324 ¶ 1. Part of the SPA deal was the agreement that Maxus would indemnify OCC – the legal successor to DSCC – from these liabilities and prosecute the Aetna Trial on behalf of OCC. Thus, after the OEC/OCC merger, OCC participated in the trial through its attorney-in-fact, Maxus. Transamerica Occidental Life Ins. Co. v. Aviation Office of America, Inc., 292 F.3d 384, 388-889, 391-92 (3d Cir. 2002) (explaining that parties to an “attorney-in-fact” relationship should be treated as the same “party”). For this reason, in-house counsel for Maxus represented DSCC during the Aetna litigation. Exhibit 4 at MAXUS0964734; Exhibit 14 at MAXUS032954. In short, OCC cannot escape being bound by the Aetna Trial because it hired Maxus to represent it.

Likewise, Maxus is also in “privity” with DSCC for purposes of collateral estoppel. Under the SPA, Diamond Shamrock Corporation (renamed Maxus in 1987) agreed to indemnify OCC for certain environmental liabilities. Maxus Energy Corp. v. Occidental Chemical Corp., 244 S.W.3d 875, 878 (Tex. App.—Dallas 2008, pet. denied). These liabilities included those associated with the Lister Plant. Exhibit 46 at OCCNJ0000346-49 ¶ 2. As such, Maxus participated in the Aetna litigation and appeal as the attorney-in-fact, and in-house Maxus attorneys appeared as counsel for DSCC. Exhibit 58; Exhibit 14 at MAXUS032954; Exhibit 4 at MAXUS0964734. Parties to an attorney-in-fact relationship, according to the Third Circuit, should be treated as the “same party” under these circumstances:

Where parties are functionally equivalent . . . , where an unnamed party controlled the litigation, or where . . . an unnamed party was the alter ego of the named party, they should be treated as opposing parties within the meaning of Rule 13.

The doctrine of res judicata provides further support for this approach. Courts have recognized the close connection between Rule 13(a) and the doctrine of claim preclusion. While the Publicis court acknowledged that it is debatable whether Rule 13(a) is “strictly an application of claim preclusion,” it noted that “both the scope of the doctrine and its rationale are the same as those of claim

preclusion, and most of the time the label is inconsequential.” It is therefore noteworthy that in the claim preclusion context, where an earlier lawsuit establishes the rights or liabilities of a party, both the named party and those in privity with it are bound by the holding. [Transamerica, supra, 292 F.3d at 391, citations omitted].

It was Maxus that financed the prosecution of the Aetna litigation for OCC (Exhibit 58); it was Maxus who lost the insurance coverage that would have been available to cover OCC’s exposure for damages resulting from Lister Plant discharges; and it is Maxus that has been, until recently, indemnifying OCC in the absence of insurance. Maxus cannot now argue that only OCC is bound by the Aetna rulings. As such, the doctrine of collateral estoppel applies to both OCC and Maxus, precluding them from denying that the environmental liabilities they sought to pass from company to company have a firm basis in fact.

B. None of the Restatement § 28 Exceptions to the Application of Collateral Estoppel Apply Here.

New Jersey courts recognize the exceptions to the application of collateral estoppel set out in § 28 of the Restatement (Second) of Judgments. Pace v. Kuchinsky, 347 N.J. Super. 202, 216 (App. Div. 2002). As discussed below, none of these exceptions apply to the circumstances of this case.

Exception 1: The party against whom preclusion is sought could not have obtained review of the prior judgment. [Restatement (Second) of Judgments § 28 (1982)]

This exception does not apply because DSCC could and did obtain appellate review of the prior judgment. The Appellate Division affirmed the prior judgment. Aetna, supra, 258 N.J. Super. at 211. The Supreme Court denied certification of the case. Aetna, supra, 134 N.J. at 481.

Exception 2: The issue is one of law and the claims are substantially unrelated or there has been an intervening change in the law. [Restatement (Second) of Judgments § 28 (1982)]

This exception does not apply because the issue of whether DSCC intentionally discharged hazardous substances is one of fact, not law.

Exception 3: The quality or extent of the procedures in the two actions is different. [Restatement (Second) of Judgments § 28 (1982)]

This exception does not apply because the Aetna case was a civil case litigated in Superior Court, as is the present case. The case was governed by the same Rules of Court as is the present action. Thus, there are no differences in the quality or extent of the procedures in the two actions.

Exception 4: The party against whom preclusion is sought had a significantly higher burden with respect to the issue in the original proceeding or the adversary has a significantly higher burden than he had in the original proceeding. [Restatement (Second) of Judgments § 28 (1982)]

This exception is, likewise, inapplicable. Both cases are governed by a preponderance of the evidence standard. Longobardo v. Chubb Ins. Co., 234 N.J. Super. 2, 24 (App. Div. 1989); Lacey Mun. Utils. Auth. v. Dep't of Env'tl. Prot., 369 N.J. Super. 261, 273 (App. Div. 2004). Moreover, in the original proceeding – Aetna – DSCC did not even dispute the fact that Plaintiffs seek to establish here, i.e., that DSCC intentionally discharged dioxin, DDT and other hazardous substances from the Lister Plant into the Passaic River. DSCC acknowledged that such discharges occurred and, instead, argued that coverage was proper because it did not expect or intend the damages resulting from its conduct. Exhibit 1 at MAXUS034128 ¶ 1.

Exception 5: There is a need for a new determination of the issue because of the potential adverse impact on the public interest, or because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or because the party sought to be precluded did not have the opportunity or incentive to fully develop its case in the first proceeding. [Restatement (Second) of Judgments § 28 (1982)]

There is no potential for an adverse impact on the public interest if the Defendants are collaterally estopped in this proceeding from arguing that DSCC discharged hazardous

substances into the Passaic River. In fact, the opposite is true. The public interest and resources, fiscal and judicial, would be adversely impacted if the parties in this case were forced to retry issues decided in a full-scale trial more than 20 years ago.

Moreover, the parties to the Aetna litigation knew that DEP might bring future claims against DSCC related to the Passaic River. In fact, DSCC called Michael Catania, the Deputy Commissioner of DEP, as a witness and asked him whether DEP had decided to take action against DSCC related to the Passaic River. Exhibit 23 at MAXUS026010 (45:2-15). Mr. Catania answered that a study of the river was being conducted and that DEP had reserved the right to require DSCC to take appropriate measures at the end of the study. Ibid. at 45:9-15. Even then, DSCC's liability would necessarily turn on whether DSCC discharged dioxin or other hazardous substances into the Passaic River. See also Exhibit 24 at MAXUS045465 n. 2.

Nor can it be argued that the precluded party did not have an adequate opportunity to obtain a full and fair adjudication in the prior action. The Aetna case was initiated in September 1984 and was litigated for four years with full discovery. The case was then tried before a Superior Court judge for twenty days. DSCC (and OCC/Maxus) appealed the trial court's decision. Exhibit 1. The Appellate Division affirmed the ruling with respect to the environmental claims. Aetna, supra, 167 N.J. Super. at 211. Our Supreme Court denied certification. Aetna, supra, 134 N.J. at 481. DSCC (and OCC/Maxus) had an adequate opportunity to obtain a full and fair adjudication as a matter of law.

C. The "Considerations" in Restatement (Second) of Judgments § 29 Are, Likewise, Inapplicable.

New Jersey has also adopted § 29 of the Restatement (Second) of Judgments. The focus of § 29 is ensuring that fairness is appropriately weighed against judicial economy. Kortenhaus,

supra, 228 N.J. Super. at 165 (1988) (citing § 29 to the Restatement (Second) of Judgments).

None of the circumstances outlined in § 29 are present here.

Consideration 1. Treating the issue as conclusively determined would be incompatible with an applicable scheme of administering the remedies in the actions involved. [Restatement (Second) of Judgments § 29 (1982).]

Both actions are civil actions in Superior Court. There is no unusual applicable scheme of administering remedies in either action. Moreover, DSCC/OCC and Maxus knew they were liable under the Spill Act when they sought insurance coverage from Aetna for the liabilities at issue in this case. This case is merely the logical extension of the Aetna Trial – the dropping of the other shoe – and the one OCC and Maxus sought to avoid. This exception does not apply.

Consideration 2. The forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined. [Restatement (Second) of Judgments § 29 (1982).]

Because the forums in the prior and present litigation are the same, this circumstance is not present.

Consideration 3. The person seeking to invoke favorable preclusion, or to avoid unfavorable preclusion, could have effected joinder in the first action between himself and his present adversary. [Restatement (Second) of Judgments § 29 (1982).]

The prior litigation was a declaratory judgment action in which DSCC sought a declaration of the rights and duties of the parties under DSCC's insurance policies. Plaintiffs were not parties to those policies.

Consideration 4. The determination relied on as preclusive was itself inconsistent with another determination of the same issue. [Restatement (Second) of Judgments § 29 (1982).]

There has been no other determination of the fact issue regarding DSCC's intentional discharges of dioxin and other hazardous substances at the Lister Plant inconsistent with that made in the Aetna Trial.

Consideration 5. The prior determination may have been affected by relationships among the parties to the first action that are not present in the subsequent action, or apparently was based on a compromise verdict or finding. [Restatement (Second) of Judgments § 29 (1982).]

The prior determination was the outcome of a twenty-day bench trial. Thus, it is not possible that the verdict was a compromise jury verdict. There is no indication that the trial court's ruling was in any way affected by the insurer/insured relationship of the parties.

Consideration 6. Treating the issue as conclusively determined may complicate determination of issues in the subsequent action or prejudice the interests of another party thereto. [Restatement (Second) of Judgments § 29 (1982).]

A finding that DSCC intentionally discharged dioxin into the Passaic River will only simplify this case, and it will only affect DSCC's successors and their indemnitors.

Consideration 7. The issue is one of law and treating it as conclusively determined would inappropriately foreclose opportunity for obtaining reconsideration of the legal rule upon which it was based. [Restatement (Second) of Judgments § 29 (1982).]

This consideration does not apply because the issue of whether DSCC intentionally discharged hazardous substances is one of fact, not law.

Consideration 8. Other compelling circumstances make it appropriate that the party be permitted to relitigate the issue. [Restatement (Second) of Judgments § 29 (1982).]

There are no other compelling circumstances that would support the dedication of scarce judicial resources to the relitigation of a fact that was determined in the course of a full-blown trial before a New Jersey Superior Court Judge and affirmed by the Appellate Division. Litigation that occurred from 1984 to 1988 is intrinsically superior to any litigation that could

occur now because eye-witnesses to the plant operations testified in depositions and at trial regarding their own actions and observations at the Lister Plant. Nothing is to be gained by recalling those who would still be available a quarter-century later to tell the same story again. In fact, it is the public and Plaintiffs who would be unfairly prejudiced if this issue – now decades old – had to be relitigated. Accordingly, Plaintiffs respectfully request that the Court enter partial summary judgment that OCC and Maxus are estopped from denying that DSCC intentionally discharged dioxin and other hazardous substances into the Passaic River.

CONCLUSION

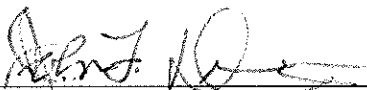
Plaintiffs respectfully submit that there is no genuine issue as to any material fact and that they are entitled to partial summary judgment as a matter of law that:

- (1) DSCC discharged dioxin, DDT and other hazardous substances into the Passaic River;
- (2) OCC, as DSCC's direct successor by merger, is liable under the Spill Act for all past and future cleanup and removal costs associated with DSCC's discharges; and
- (3) OCC and Maxus are collaterally estopped from denying that DSCC intentionally discharged dioxin, DDT and other hazardous substances into the Passaic River.

Plaintiffs respectfully request that, pursuant to R. 4:46-3, the Court enter an order accordingly and set the remaining issues for trial.

Respectfully submitted,

MARC-PHILIP FERZAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Plaintiffs

By: 

John F. Dickinson, Jr.
Deputy Attorney General

Dated: May 6, 2011

Of Counsel:

JACKSON GILMOUR & DOBBS, PC
3900 Essex Lane, Suite 700
Houston, Texas 77027

GORDON & GORDON, PC
505 Morris Avenue
Springfield, New Jersey 07081

APPENDIX A



LEXSEE 1983 NJ SUPER LEXIS 1111

CITY OF PERTH AMBOY, a municipal corporation, Plaintiff-Respondent, Cross-Appellant, v. MADISON INDUSTRIES, INC., et al., Defendants-Appellants, Cross-Respondents. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiff-Respondent, Cross-Appellant, v. CHEMICAL & POLLUTION SCIENCES, INC., et al., Defendants-Appellants, Cross-Respondents

Nos. A-1127-81T3, A-1276-81T3 (Consolidated)

Superior Court of New Jersey, Appellate Division

1983 N.J. Super. LEXIS 1111; 13 ELR 20554

Argued February 28, 1983

April 21, 1983, Decided

NOTICE: [*1] NOT DESIGNATED FOR PUBLICATION

PRIOR HISTORY: On appeal from Superior Court of New Jersey, Chancery Division, Middlesex County.

COUNSEL: William J. Bigham argued the cause for Madison Industries, Inc., appellant, cross-respondent (Sterns, Herbert & Weinroth, attorneys; Mr. Bigham, of counsel; Mr. Bigham and Vincent J. Paluzzi, on the brief)

Michael L. Rodburg argued the cause for appellant, cross-respondent Chemical & Pollution Sciences, Inc. (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, attorneys; Murry D. Brochin, of counsel; Mr. Brochin, Michael L. Rodburg and Ms. Wertheim, on the brief).

Albert W. Seaman argued the cause for City of Perth Amboy, respondent, cross-appellant.

Steven R. Gray, Deputy Attorney General, argued the cause for New Jersey Department of Environmental Protection, respondent, cross-appellant (Irwin S. Kimmelman, Attorney General of New Jersey, attorney; Deborah T. Poritz, Deputy Attorney General, of counsel; Mr. Gray, on the brief)

JUDGES: Before Judges Bischoff, J. H. Coleman and Gaulkin.

OPINION

PER CURIAM

These appeals and cross appeals are from the final order and judgment entered in these consolidated actions in favor of plaintiffs, City of Perth Amboy and the New Jersey Department of Environmental [*2] Protection (DEP), against defendants, Chemical & Pollution Sciences, Inc., (CPS), and Madison Industries, Inc., (Madison). The trial judge found that or-

ganic chemical emissions from CPS and heavy metal emissions from Madison entered the groundwater and the waters of neighboring Prickett's Brook resulting in contamination of an adjacent well field owned by the City of Perth Amboy. Statutory authority for a specific remedy to this pollution, created by the Spill Compensation and Control Act, *N. J. S. A.* 58:10-23.1(g) (c), and the Water Pollution Control Act, *N. J. S. A.* 58:10A-10c(3), was invoked by the trial court to compel contribution by both industrial defendants for the cost of DEP's recommended program for restoration of Prickett's Brook watershed.

The remedy ordered by the court provided for: (1) construction and operation of a slurry cutoff wall three to five feet thick of an impermeable substance surrounding the two industries at their boundaries to a depth of approximately 70 feet and anchored in the South Amboy fire clay layer underlying the aquifer; (2) installation of four maintenance wells within the slurry cutoff wall, four decontamination pump wells outside the [*3] slurry cutoff wall and monitoring wells to determine contamination levels; (3) diversion of Prickett's Brook to a new channel to the south and east bypassing the two industries; (4) dredging, pumping and disposal of contaminated sediments of Prickett's Pond.

The trial court ordered that the contaminants which are to be pumped from the area may be discharged into a Middlesex County Utilities Authority interceptor through a constructed pipeline. Dredged metal contaminants are to be pretreated if necessary in a plant to be constructed at Madison's expense.

The cost of the slurry cutoff wall is to be borne by the defendants in proportion to the area enclosed by the slurry cutoff wall within their respective industrial sites. The cost of the construction and operation of the wells and the diversion of Prickett's Brook is to be shared equally by both defendants. The cost of heavy metal removal and sludge dewatering is to be

borne by Madison. The cost of pumping pond water out of Prickett's Pond and disposing of the pumped waters into the Middlesex County Utilities Authority system is assessed against CPS. The total cost of the corrective measures is 5.2 million dollars. Each defendant [*4] is held to be only severally liable for its share of the total costs for the corrective measures. In addition, Madison and CPS are held jointly and severally liable to Perth Amboy for damages in the amount of \$ 100,000 for the loss of use of its watershed during the four year projected duration of the cleanup program.

In these appeals defendants and the City of Perth Amboy question the propriety of the remedial measures claiming a lack of credible evidence to support the efficacy, necessity and fairness of the ordered cleanup and removal methods. We are persuaded that such uncertainty as exists regarding the ordered use of these particular methods does not warrant a new trial as to remedy. The proofs demonstrate extensive toxic pollution of the Perth Amboy watershed directly attributable to defendants' activities. Liability for the contamination is not contested in these appeals. We recognize, as did the trial judge, that the experimental nature of the possible remedial methods available under current technology precludes an absolute guarantee of success. Nevertheless, reasonable success with the ordered measures is indicated by the testimony of the court appointed expert. This reasonable [*5] probability, considered with the dangers to public health and safety inherent in an alternative plan such as the abandonment of the watershed, necessitates an attempt at cleanup. We find sufficient credible evidence in the record to support the findings and conclusions of the trial court. *Rova Farms Resort v. Investors Ins. Co.*, 65 *N. J.* 474, 484 (1974).

In its cross-appeal, the City of Perth Amboy contends that the award of \$ 100,000 in damages is grossly inadequate. This figure represents the loss of the beneficial use of Perth

Amboy's property located within the affected area of Prickett's Brook watershed as a water resource for the four year period of the cleanup program. At trial, the city proposed to abandon the watershed and sought damages for the permanent loss of its property and for loss of the water itself.

We agree with the trial court's determination that the city's plan to abandon the use of the watershed was not as responsive to the public interest as the DEP's plan to restore and purify this water source. The DEP proposal is intended to safeguard the future water supply of the city and other downstream users. The city's claim for damages for loss of the water [*6] itself was denied because the city's water needs were being met by the suction and pump wells of another city watershed. The trial court's assessment of \$ 100,000 damages presumes that the remedial measures ordered will succeed within four years and is without prejudice to any future claim for damages if these measures fail or if, before four years time, the water needs of the city exceed the capacity of the city's presently operating wells. We affirm the damage award to the City of Perth Amboy. Since the court correctly wanted to see if the ordered remedies would work, it did not intend for the monetary aspect to be final. The court used its equitable power to fashion remedies which include the present payment of money, installation of cleanup procedures and future damages to the city if the cleanup measures do not work. This is highly desirable and we, therefore, affirm that aspect of the judgment.

In its cross-appeal, DEP alleges two grounds for error in the trial court's decision. First, it is claimed that joint and several liability should have been assessed against CPS and Madison. Second, the liability of the defendants for the costs of abating their pollution should not have [*7] been limited to a specific figure.

The trial court's division of costs between defendants reflects the court's apparent concern with the fact that the contamination by Madison

and CPS were distinct, one being of heavy metals and the other of organic compounds. Under common law tort principles, damages for harm are to be apportioned among two or more causes where there are distinct harms, or there is a reasonable basis for determining the contribution of each cause to a single harm. *Hill v. Macomber*, 103 N. J. Super. 127 (App. Div. 1968); *Prosser, Law of Torts* (4 ed. 1971), § 52 at 313.

As a practical matter, however, we find that the harm caused in the present case is indivisible in that the pond would have been contaminated as a water source from either of defendant's actions and the pond cannot be decontaminated unless both defendants fulfill their obligations to reimburse DEP for the costs of the remedial measures ordered by the court. Without an assessment of joint and several liability, either defendant's failure to meet the financial obligation imposed by the judgment would leave DEP in a position where it has insufficient funds from defendants to Ate the contamination. [*8] The efficacy of the remedial measures ordered by the court, such as the construction of a slurry wall and rerouting of the brook, depends on completion.

Under both common law principles and relevant statutory law, the public need not bear such a burden as against a responsible party. See *Landers v. East Texas Salt Water Disposal Co.*, 248 S.W. 2d 731 (Tex. 1952); *Environmental Protect. Dep't. v. Ventron Corp.*, 182 N. J. Super. 210 (App. Div. 1981), certif. granted N. J. (1982). Moreover, the Spill Compensation and Control Act, N. J. S. A. 58:10-23 11g(c), requires that any person who has discharged a hazardous substance shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs. Accordingly, we impose joint and several liability for payment of all costs to DEP for all remedies ordered by the court which are to be implemented by DEP. The proportionate allocation approach used by the court to assess the

costs of the remedies between defendants was both reasonable and equitable and should be followed amongst the defendants.

DEP's second contention that the court improperly limited defendants' liability [*9] to 5.2 million dollars to remedy the contamination is most persuasive. That sum may prove to be grossly inadequate to implement the ordered remedies. Under both the Spill Compensation and Control Act, *N. J. S. A.* 58:10-23.11g(c), and the Water Pollution Control Act, *N. J. S. A.* 58:10A-10c(3), the court is empowered to order that all costs to abate water pollution be paid by those adjudged liable for violating the law. These are specially created statutory remedies and are not, therefore, subject to common law requirements that plaintiff be limited to those specific present and prospective damages which he can prove at the time of trial. Rather, the intent of the statute is to charge those found to be responsible for pollution with the actual costs of cleanup. The implementation of this statute necessarily requires that unforeseen expenses and contingencies be considered. An accurate assessment of the prospective cost of the cleanup program is not possible considering the unknowns to be encountered in the course of employing the untried, innovative technology required in toxic waste removal plans. In the present case, the exact placement depth of the slurry cutoff wall has not [*10] yet been determined pending final investigation of the exact depth of the South Amboy fire clay layer at relevant points underlying the aquifer. Nor is it certain whether a treatment plant for metal contaminants will have to be built. These and other final decisions concerning exact methods and specifications await further study and could significantly impact upon the court's cost estimates.

In light of these uncertainties, it is quite possible that the 5.2 million dollars ordered by the court will not accurately reflect the eventual costs of implementation. Therefore, defendants are hereby obligated to pay all cleanup and re-

moval costs actually incurred by DEP in implementing the remedies ordered by the court and are not limited to the amounts expressly imposed by the trial court's order and judgment.

Our reliance on statutory authority to require defendants to pay the costs of certain remedies does not negate our concern for fairness to defendants. The reasonableness of the costs imposed upon defendants, however, is adequately safeguarded by the provision of the trial court's judgment which provides that implementation of the remedial measures ordered "shall be accomplished in [*11] accordance with specifications to be developed by the Department [DEP] or by a contractor selected by the Department in accordance with any applicable State bidding laws. The specifications shall be submitted to the defendants and Perth Amboy before becoming final and shall be subject to approval by the Court." This provision allows the parties to have continued access to the Chancery Division to settle the reasonableness and necessity of any of the specifications or costs to be incurred. It should be remembered that lengthy delays will probably increase the ultimate costs and might also compel the court to consider some form of security to insure payment by defendants.

Finally, defendants contend that the trial court erroneously required them to pay the fees of the court appointed expert. This contention is unpersuasive. In a complex case such as this one, it was quite appropriate for the court to have the benefit of a neutral expert. The power of the court to appoint experts to assist the court and to assess the costs against any of the parties lies within the discretion of the Chancery Division. *Azalone v. Azalone Brothers, Inc.*, 185 *N. J. Super.* 481, 489 (App. Div. 1982); [*12] see 12 *A. L. R.* 375 (1957), "Judicial Authority to Call Expert Witnesses." Here, the exercise of that power does not represent an abuse of discretion. The amount and reasonableness of the fees awarded Dames & Moore and whether they are entitled to pre-

judgment interest and counsel fees to collect their expert fees must still be resolved in the appeal and cross appeal filed under Docket No. A-3550-82T3. Since that appeal was only filed on April 5, 1983, it is not ready for disposition.

In summary, we affirm the provisions of the remedial plan, the damage award to Perth Amboy, and the requirement that defendants pay the court appointed expert's fees. We mod-

ify the judgment to impose joint and several liability against both defendants for the actual costs of cleanup and removal of the organic and metal contamination for which they have been found liable. This matter is remanded to the Chancery Division to implement its judgment as modified by this opinion. We do not retain jurisdiction.

APPENDIX B

NJ ENVIRONMENTAL HAZARDOUS SUBSTANCE LIST
pursuant to NJ Community Right to Know (N.J.A.C. 7:1G)
in alphabetical order

Sub. No.	Name	CAS Number	DOT No.	Threshold Planning Quantity (TPQ) if below 500 pounds
3175	Abamectin [Avermectin B1]	71751-41-2	2902	
3140	Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester)	30560-19-1	2902	
0001	Acetaldehyde	75-07-0	1089	
2890	Acetamide	60-35-5		
0007	Acetone cyanohydrin * (S)	75-86-5	1541	
2059	Acetone thiosemicarbazide *	1752-30-3		
0008	Acetonitrile	75-05-8	1648	
2961	Acetophenone	98-86-2		
0010	2-Acetylaminofluorene	53-96-3		
0015	Acetylene	74-86-2	1001	
3455	Acifluorfen, sodium salt [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoic acid, sodium salt]	62476-59-9	2588	
0021	Acrolein *	107-02-8	1092	
0022	Acrylamide	79-06-1	2074	
0023	Acrylic acid	79-10-7	2218	
0024	Acrylonitrile *	107-13-1	1093	
2065	Acrylyl chloride * +	814-68-6		100
0027	Adiponitrile *	111-69-3	2205	
3143	Alachlor	15972-60-8	2588	
0031	Aldicarb * +	116-06-3	2757	100
0033	Aldrin *	309-00-2	2761	
3647	d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrine]	28057-48-9	2902	
0036	Allyl alcohol *	107-18-6	1098	
0039	Allyl chloride	107-05-1	1100	
0037	Allylamine *	107-11-9	2334	
0054	Aluminum (fume or dust)	7429-90-5		
2891	Aluminum oxide (fibrous forms)	1344-28-1		
0063	Aluminum phosphide *	20859-73-8	1397	
3150	Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,-triazine-2,4-diamine)	834-12-8	2588	
0069	2-Aminoanthraquinone	117-79-3		
0508	4-Aminoazobenzene	60-09-3	1602	
0072	4-Aminobiphenyl	92-67-1		
0076	1-Amino-2-methylanthraquinone	82-28-0		
2112	Aminopterin *	54-62-6	2588	
2113	Amiton *	78-53-5	2902	
2114	Amiton oxalate * +	3734-97-2	2783	100
3156	Amitraz	33089-61-1	2588	
0083	Amitrole	61-82-5		
0084	Ammonia * (The reportable quantity for anhydrous ammonia is based on 100% of the anhydrous ammonia. The reportable quantity for aqueous ammonia is the ammonia equivalent weight for concentrations of 20% or greater.)	7664-41-7	1005	
2130	Amphetamine *	300-62-9	1851	
3648	Anilazine [4,6-Dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine]	101-05-3	2588	
0135	Aniline (and salts) *	62-53-3	1547	
2841	Aniline, 2,4,6-trimethyl- *	88-05-1	2810	
1421	o-Anisidine	90-04-0	2431	
2893	p-Anisidine	104-94-9	2431	
1422	o-Anisidine hydrochloride	134-29-2		
0139	Anthracene	120-12-7		
0141	Antimony	7440-36-0	1549	
2223	Antimony compounds ¹	N010	1549	
0144	Antimony pentafluoride *	7783-70-2	1732	
2132	Antimycin A *	1397-94-0	2588	
0051	Antu *	86-88-4	1651	
0152	Arsenic	7440-38-2	1558	
2138	Arsenic compounds ¹	N020	1556	
0158	Arsenic pentoxide * +	1303-28-2	1559	100
0161	Arsenous oxide * +	1327-53-3	1561	100
0159	Arsenous trichloride *	7784-34-1	1560	
0163	Arsine * +	7784-42-1	2188	100
0164	Asbestos (friable)	1332-21-4	2590	

NJ Environmental Hazardous Substance List in Alphabetical Order

Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
0171	Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5-triazine-2,4-diamine)	1912-24-9	2588	
2140	Azinphos-ethyl * +	2642-71-9	2783	100
0966	Azinphos-methyl * +	86-50-0	2783	10
0180	Barium	7440-39-3	1400	
2146	Barium compounds ¹ [except Barium sulfate]	N040	1564	
0191	Bendiocarb [2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate]	22781-23-3	2588	
3181	Benfluralin (N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl)benzenamine)	1861-40-1	2588	
0192	Benomyl	17804-35-2	2588	
0195	Benzal chloride *	98-87-3	1886	
2895	Benzamide	55-21-0		
1916	Benzenamine, 3-(trifluoromethyl)- *	98-16-8	2948	
0197	Benzene	71-43-2	1114	
2155	Benzenearsonic acid * +	98-05-5	1557	10
2156	Benzene, 1-(chloromethyl)-4-nitro- *	100-14-1	2811	
0204	Benzidine	92-87-5	1885	
2908	Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)- *	3615-21-2		
2968	Benzo(g,h,l)perylene	191-24-2		
0212	Benzotrichloride * + (S)	98-07-7	2226	100
0214	Benzoyl chloride	98-88-4	1736	
0215	Benzoyl peroxide	94-36-0	2085	
0217	Benzyl chloride *	100-44-7	1738	
1490	Benzyl cyanide *	140-29-4	2470	
0222	Beryllium	7440-41-7	1567	
2163	Beryllium compounds ¹	N050	1566	
2856	Bicyclo[2.2.1]heptane-2-carbonitrile,5-chloro-6-(((methylamino)carbonyl)oxy)imino)-, (1s-(1-alpha, 2-beta, 4-alpha, 5-alpha, 6E))- *	15271-41-7	2992	
3194	Bifenthrin	82657-04-3		
0795	Biphenyl	92-52-4	2958	
2971	Bis(2-chloroethoxy)methane	111-91-1		
0232	Bis(2-chloroethyl)ether * (S)	111-44-4	1916	
0234	Bis(chloromethyl) ether (S)	542-88-1	2249	
0235	Bis(2-chloro-1-methylethyl)ether	108-60-1	2490	
2170	Bis(chloromethyl) ketone * +	534-07-6	2649	10
0238	Bis(2-ethylhexyl)phthalate (S)	117-81-7		
3479	Bis(tributyltin) oxide	56-35-9	2902	
2172	Bitoscanate *	4044-65-9	1588	
3517	(Sodium) Blue VRS	129-17-9	1602	
0245	Boron trichloride *	10294-34-5	1741	
0246	Boron trifluoride *	7637-07-2	1008	
0250	Boron trifluoride (compound with methyl ether (1:1)) *	353-42-4	2965	
2897	Brilliant Blue FCF Salts (S)	2650-18-2	1602	
0251	Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)-pyrimidinedione)	314-40-9	2588	
3651	Bromacil, lithium salt (2,4-(1H,3H)-Pyrimidinedione,5-bromo-6-methyl-3 (1-methylpropyl), lithium salt)	53404-19-6		
2179	Bromadiolone * +	28772-56-7	3027	100
0252	Bromine *	7726-95-6	1744	
3652	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	35691-65-7		
0384	Bromochlorodifluoromethane (Halon 1211)	353-59-3	1974	
0262	Bromoform	75-25-2	2515	
1231	Bromomethane * (S)	74-83-9	1062	
0269	Bromotrifluoroethylene	598-73-2	2419	
1912	Bromotrifluoromethane (Halon 1301)	75-63-8	1009	
3211	Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)	1689-84-5	2588	
3212	Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenylester)	1689-99-2		
0270	Brucine	357-57-3	1570	
0272	1,3-Butadiene	106-99-0	1010	
0273	Butane	106-97-8	1011	
0286	Butene	25167-67-3	1012	
3600	1-Butene	106-98-9	1012	
3601	2-Butene	107-01-7	1012	
3602	2-Butene-cis	590-18-1	1012	
3603	2-Butene-trans	624-64-6	1012	
0278	Butyl acrylate	141-32-2	2348	
1330	n-Butyl alcohol	71-36-3	1120	
1645	sec-Butyl alcohol	78-92-2	1120	
1787	tert-Butyl alcohol	75-65-0	1120	
2896	Butyl benzyl phthalate	85-68-7		
0287	1,2-Butylene oxide	106-88-7		

NJ Environmental Hazardous Substance List in Alphabetical Order

Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
0299	Butyraldehyde	123-72-8	1129	
2897	C.I. Acid Blue 9 Diammonium Salt (S)	2650-18-2	1602	
0445	C.I. Acid Red 114	6459-94-5		
0442	C.I. Acid Green 3 (S)	4680-78-8	1602	
0448	C.I. Basic Green 4 (S)	569-64-2	1602	
0449	C.I. Basic Red 1 (S)	989-38-8	1602	
0453	C.I. Direct Black 38	1937-37-7	1602	
0462	C.I. Direct Blue 6	2602-46-2	1602	
3661	C.I. Direct Blue 218	28407-37-6		
0478	C.I. Direct Brown 95	16071-86-6	1602	
0503	C.I. Disperse Yellow 3	2832-40-8	1602	
0504	C.I. Food Red 5 (S)	3761-53-3	1602	
0505	C.I. Food Red 15 (S)	81-88-9	1602	
0506	C.I. Solvent Orange 7 (S)	3118-97-6	1602	
0739	C.I. Solvent Yellow 2 (S)	60-11-7	1602	
0507	C.I. Solvent Yellow 3	97-56-3	1602	
0509	C.I. Solvent Yellow 14 (S)	842-07-9	1602	
2894	C.I. Solvent Yellow 34	492-80-8	1602	
0512	C.I. Vat Yellow 4	128-66-5	1602	
0305	Cadmium	7440-43-9	2570	
2199	Cadmium compounds ¹	N078	2570	
2200	Cadmium oxide * +	1306-19-0	2570	100
2201	Cadmium stearate *	2223-93-0	2570	
0310	Calcium arsenate *	7778-44-1	1573	
0316	Calcium cyanamide	156-62-7	1403	
1871	Camphchlor * (S)	8001-35-2	2761	
2207	Cantharidin * +	56-25-7		100
0339	Captan	133-06-2	9099	
2209	Carbachol chloride *	51-83-2		
2214	Carbamic acid, methyl-, O-((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)- * +	26419-73-8		100
0340	Carbaryl	63-25-2	1739	
0341	Carbofuran * +	1563-66-2	2757	10
0344	Carbon disulfide *	75-15-0	1131	
0349	Carbon oxysulfide (S)	463-58-1	2204	
0347	Carbon tetrachloride	56-23-5	1846	
0349	Carbonyl sulfide (S)	463-58-1	2204	
2218	Carbophenothion *	786-19-6	3018	
3224	Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)	5234-68-4		
0722	Catechol	120-80-9		
3654	Chinomethionat (6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one)	2439-01-2	2588	
0357	Chloramben	133-90-4		
0361	Chlordane *	57-74-9	2762	
3228	Chlorendic acid	115-28-6		
0364	Chlorfenvinfos *	470-90-6	3018	
3229	Chlorimuron ethyl (Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino] sulfonyl]benzoate)	90982-32-4		
0367	Chlorine * +	7782-50-5	1017	100
0368	Chlorine dioxide	10049-04-4		
3604	Chlorine monoxide	7791-21-1		
2235	Chlormephos *	24934-91-6	3018	
2236	Chlormequat chloride * +	999-81-5	2811	100
0373	Chloroacetic acid * +	79-11-8	1750	100
0048	2-Chloroacetophenone	532-27-4	1697	
3655	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	4080-31-3		
2964	p-Chloroaniline	106-47-8	2019	
0379	Chlorobenzene	108-90-7	1134	
0205	Chlorobenzilate	510-15-6		
0385	1-Chloro-1,1-difluoroethane (HCFC-142b)	75-68-3	2517	
0386	Chlorodifluoromethane (HCFC-22)	75-45-6	1018	
0863	Chloroethane (S)	75-00-3	1037	
0874	Chloroethanol *	107-07-3	1135	
2239	Chloroethyl chloroformate *	627-11-2	1182	
0388	Chloroform *	67-66-3	1888	
1235	Chloromethane (S)	74-87-3	1063	
0234	Chloromethyl ether (S)	542-88-1	2249	
0391	Chloromethyl methyl ether * +	107-30-2	1239	100
1223	3-Chloro-2-methyl-1-propene	563-47-3	2554	
2424	2-Chloronaphthalene	91-58-7		
0400	Chlorophacinone * +	3691-35-8	3027	100
0403	2-Chlorophenol	95-57-8	2021	
2976	Chlorophenols ¹	N084		

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
3656	p-Chlorophenyl isocyanate	104-12-1		
2824	1-(o-Chlorophenyl)thiourea * + (S)	5344-82-1	2588	100
0405	Chloropicrin	76-06-2	1580	
0407	Chloroprene	126-99-8	1991	
2711	3-Chloropropionitrile * (S)	542-76-7	2404	
3605	1-Chloropropylene	590-21-6	2456	
0409	2-Chloropropylene	557-98-2	2456	
0414	Chlorotetrafluoroethane	63938-10-3	1021	
3606	1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	354-25-6	1021	
3607	2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	2837-89-0	1021	
0415	Chlorothalonil	1897-45-6		
3657	p-Chloro-o-toluidine	95-69-2		
3658	2-Chloro-1,1,1-trifluoroethane (HCFC-133a)	75-88-7	1983	
0425	Chlorotrifluoromethane (CFC-13)	75-72-9	1022	
3659	3-Chloro-1,1,1-trifluoropropane (HCFC-253fb)	460-35-5		
2246	Chloroxuron *	1982-47-4	2588	
3660	Chlorpyrifos methyl (O,O-Dimethyl-O-(3,5,6-trichloro-2-pyridyl)phosphorothioate)	5598-13-0		
3574	Chlorsulfuron (2-Chloro-N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide)	64902-72-3	2588	
2247	Chlorothiophos *	21923-23-9	3018	
2248	Chromic chloride * +	10025-73-7		1
0432	Chromium	7440-47-3		
2245	Chromium compounds ¹	N090		
0511	Citrus Red No. 2	6358-53-8	1602	
0520	Cobalt	7440-48-4		
0521	Cobalt carbonyl * +	10210-68-1	2811	10
2222	Cobalt compounds ¹	N096		
2260	Cobalt, ((2,2'-(1,2-ethanediylbis(nitrilomethylidene))bis(6-fluoro-phenolato))(2-)-N,N',O,O')-	62207-76-5		100
2263	Colchicine * +	64-86-8	1851	10
0528	Copper	7440-50-8		
2215	Copper compounds ¹ [except: C.I. Pigment Blue 15, C.I. Pigment Green 7, and C.I. Pigment Green 36]	N100		
0536	Coumaphos * +	56-72-4	2783	100
2297	Coumatetralyl *	5836-29-3	3027	
0517	Creosote	8001-58-9	1993	
1467	p-Cresidine	120-71-8		
1161	m-Cresol	108-39-4	2076	
1426	o-Cresol *	95-48-7	2076	
1468	p-Cresol	106-44-5	2076	
0537	Cresol (mixed isomers)	1319-77-3	2022	
0351	Crimidine * +	535-89-7	2588	100
2888	Crotonaldehyde *	4170-30-3	1143	
0538	Crotonaldehyde, (E)- *	123-73-9	1143	
0542	Cumene	98-82-8	1918	
0543	Cumene hydroperoxide	80-15-9	2116	
0545	Cupferron	135-20-6		
0529	Cupric acetoarsenite * (S)	12002-03-8	1585	
0240	Cyanazine	21725-46-2	2588	
0553	Cyanide	57-12-5	1588	
2308	Cyanide compounds ¹	N106	1588	
0554	Cyanogen	460-19-5	1026	
2302	Cyanogen bromide *	506-68-3	1889	
0556	Cyanogen chloride	506-77-4	1589	
2303	Cyanogen iodide *	506-78-5	1588	
2304	Cyanophos *	2636-26-2	3018	
2305	Cyanuric fluoride * +	675-14-9		100
3662	Cycloate	1134-23-2		
0565	Cyclohexane	110-82-7	1145	
0569	Cyclohexanol	108-93-0	1993	
0574	Cycloheximide * +	66-81-9	2811	100
0576	Cyclohexylamine *	108-91-8	2357	
0588	Cyclopropane	75-19-4	1027	
3180	Cyfluthrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester)	68359-37-5		

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
3248	Cyhalothrin (3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester)	68085-85-8		
0593	2,4-D [(2,4-Dichlorophenoxy)acetic acid]	94-75-7	2765	
3664	Dazomet (Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)	533-74-4	2588	
3665	Dazomet, sodium salt (Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, ion(1-), sodium)	53404-60-7		
3271	2,4-DB	94-82-6	2588	
2949	2,4-D butoxyethyl ester	1929-73-3	2765	
2943	2,4-D butyl ester	94-80-4	2765	
2947	2,4-D chlorocrotyl ester	2971-38-2	2765	
0596	DDT	50-29-3	2761	
0597	Decaborane(14) *	17702-41-9	1868	
0598	Decabromodiphenyl oxide	1163-19-5		
0604	Demeton *	8065-48-3	2902	
2886	Demeton-s-methyl *	919-86-8	3018	
3666	Desmedipham	13684-56-5		
3667	2,4-D 2-ethylhexyl ester	1928-43-4	2765	
3668	2,4-D 2-ethyl-4-methylpentyl ester	53404-37-8	2765	
0238	Di-(2-ethylhexyl)phthalate (S)	117-81-7		
2309	Dialifor * +	10311-84-9	2783	100
0608	Diallate	2303-16-4	2902	
0611	2,4-Diaminoanisole	615-05-4		
2899	2,4-Diaminoanisole sulfate	39156-41-7		
0612	4,4'-Diaminodiphenyl ether	101-80-4		
0613	2,4-Diaminotoluene	95-80-7	1709	
2134	Diaminotoluene (mixed isomers)	25376-45-8	1709	
0618	Diazinon	333-41-5	2783	
0620	Diazomethane	334-88-3		
2230	Dibenzofuran	132-64-9		
0629	Diborane * +	19287-45-7	1911	100
0595	1,2-Dibromo-3-chloropropane	96-12-8	2872	
0877	1,2-Dibromoethane	106-93-4	1605	
3137	Dibromotetrafluoroethane (Halon 2402)	124-73-2		
0773	Dibutyl phthalate (S)	84-74-2	9095	
0773	Di-n-butyl phthalate (S)	84-74-2	9095	
0634	Dicamba (3,6-Dichloro-2-methoxybenzoic acid)	1918-00-9	2769	
3671	Dichloran (2,6-Dichloro-4-nitroaniline)	99-30-9		
0642	1,2-Dichlorobenzene	95-50-1	1591	
2301	1,3-Dichlorobenzene	541-73-1	9255	
0643	1,4-Dichlorobenzene	106-46-7	1592	
2321	Dichlorobenzene (mixed isomers)	25321-22-6		
0644	3,3'-Dichlorobenzidine	91-94-1		
3267	3,3'-Dichlorobenzidine dihydrochloride	612-83-9		
3672	3,3'-Dichlorobenzidine sulfate	64969-34-2		
2341	Dichlorobromomethane	75-27-4		
3070	1,4-Dichloro-2-butene	764-41-0	2924	
2829	trans-1,4-Dichlorobutene * (S)	110-57-6	2924	
2829	trans-1,4-Dichloro-2-butene * (S)	110-57-6	2924	
3673	1,2-Dichloro-1,1-difluoroethane (HCFC-132b)	1649-08-7		
0649	Dichlorodifluoromethane (CFC-12)	75-71-8	1028	
0652	1,2-Dichloroethane	107-06-2	1184	
0653	1,2-Dichloroethylene	540-59-0	1150	
0232	Dichloroethyl ether * (S)	111-44-4	1916	
3270	1,1-Dichloro-1-fluoroethane (HCFC-141b)	1717-00-6	9274	
3109	Dichlorofluoromethane (HCFC-21)	75-43-4	1029	
1255	Dichloromethane (S)	75-09-2	1593	
1286	Dichloromethylphenylsilane *	149-74-6	2437	
3681	Dichloropentafluoropropane	127564-92-5		
3679	1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	13474-88-9		
3680	1,1-Dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	111512-56-2		
3674	1,2-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	422-44-6		
3677	1,2-Dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	431-86-7		
3678	1,3-Dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	507-55-1		
3683	1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	136013-79-1		
3682	2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	128903-21-9		
3675	2,3-Dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	422-48-0		
3676	3,3-Dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	422-56-0		
3684	Dichlorophene (2,2'-Methylenebis(4-chlorophenol))	97-23-4		
2344	2,4-Dichlorophenol	120-83-2		
0664	1,2-Dichloropropane (S)	78-87-5	1279	
3685	trans-1,3-Dichloropropene	10061-02-6	2047	
2929	2,3-Dichloropropene	78-88-6	2047	

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
0666	1,3-Dichloropropylene	542-75-6	2047	
0670	Dichlorosilane	4109-96-0	2189	
0671	Dichlorotetrafluoroethane (CFC-114)	76-14-2	1958	
3608	Dichlorotrifluoroethane	34077-87-7		
3609	Dichloro-1,1,2-trifluoroethane	90454-18-5		
3611	1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	812-04-4		
3612	1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	354-23-4		
3613	2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	306-83-2		
0674	Dichlorvos *	62-73-7	2783	
3686	Diclofop methyl (2-[4-(2,4-Dichlorophenoxy) phenoxy]propanoic acid, methyl ester)	51338-27-3		
0675	Dicofol	115-32-2	2588	
0676	Dicrotophos * +	141-66-2	3018	100
0681	Dicyclopentadiene	77-73-6	2048	
0683	Dieldrin	60-57-1	2761	
0685	Diepoxybutane *	1464-53-5	1955	
2444	Diesel Fuel or #2 Heating Oil ⁴	68476-34-6	1993	
0686	Diethanolamine	111-42-2		
3687	Diethyl ethyl	38727-55-8		
2333	Diethyl chlorophosphate *	814-49-3	1993	
0707	Diethyl phthalate	84-66-2	1851	
0710	Diethyl sulfate	64-67-5	1594	
3276	Diflubenzuron	35367-38-5	2588	
0715	Difluoroethane	75-37-6	1030	
2336	Digitoxin * +	71-63-6	1851	100
0717	Diglycidyl ether *	2238-07-5	2929	
2054	Diglycidyl resorcinol ether	101-90-6		
2337	Digoxin * +	20830-75-5	1851	10
0199	Dihydrosafrole	94-58-6		
3757	Diisocyanates ^{1,2} (this category includes only those substances listed below):	N120		
	1,3-Bis(methylisocyanate)cyclohexane	38661-72-2		
	1,4-Bis(methylisocyanate)cyclohexane	10347-54-3		
	1,4-Cyclohexane diisocyanate	2556-36-7		
	Diethyl diisocyanatobenzene	134190-37-7		
	4,4'-Diisocyanatodiphenyl ether	4128-73-8		
	2,4'-Diisocyanatodiphenyl sulfide	75790-87-3		
	3,3'-Dimethoxybenzidine-4,4'-diisocyanate	91-93-0		
	3,3'-Dimethyl-4,4'-diphenylene diisocyanate	91-97-4		
	3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate	139-25-3		
	Hexamethylene-1,6-diisocyanate	822-06-0	2281	
	Isophorone diisocyanate * +	4098-71-9	2290	
	4-Methyldiphenylmethane-3,4-diisocyanate	75790-84-0		
	1,1-Methylene bis(4-isocyanatocyclohexane)	5124-30-1		
	Methylenebis(phenylisocyanate) ³	101-68-8	2489	
	1,5-Naphthalene diisocyanate	3173-72-6		
	1,3-Phenylene diisocyanate	123-61-5		
	1,4-Phenylene diisocyanate	104-49-4		
	Polymeric diphenylmethane diisocyanate	9016-87-9		
	2,2,4-Trimethylhexamethylene diisocyanate	16938-22-0		
	2,4,4-Trimethylhexamethylene diisocyanate	15646-96-5		
2342	Dimefox *	115-26-4	2902	
3278	Dimethipin (2,3,-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide)	55290-64-7		
0733	Dimethoate *	60-51-5	2783	
0734	3,3'-Dimethoxybenzidine	119-90-4		
3692	3,3'-Dimethoxybenzidine dihydrochloride (o-Dianisidine dihydrochloride)	20325-40-0		
3693	3,3'-Dimethoxybenzidine hydrochloride (o-Dianisidine hydrochloride)	111984-09-9		
0737	Dimethylamine	124-40-3	1032	
3694	Dimethylamine dicamba	2300-66-5		
0739	4-Dimethylaminoazobenzene (S)	60-11-7	1602	
0741	N,N-Dimethylaniline	121-69-7	2253	
0742	3,3'-Dimethylbenzidine	119-93-7		
3695	3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride)	612-82-8		
3696	3,3'-Dimethylbenzidine dihydrofluoride (o-Tolidine dihydrofluoride)	41766-75-0		
0746	Dimethylcarbaryl chloride	79-44-7	2262	
0770	Dimethyl chlorothiophosphate * (S)	2524-03-0	2267	
0752	Dimethyldichlorosilane *	75-78-5	1162	
0759	N,N-Dimethylformamide	68-12-2	2265	
0761	1,1-Dimethyl hydrazine *	57-14-7	2382	
0764	2,4-Dimethylphenol	105-67-9		

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
2348	Dimethyl-p-phenylenediamine * +	99-98-9	1673	10
0770	Dimethyl phosphorochloridothioate * (S)	2524-03-0	2267	
0765	Dimethyl phthalate	131-11-3		
0766	2,2-Dimethylpropane	463-82-1	2044	
0768	Dimethyl sulfate *	77-78-1	1595	
2349	Dimetilan *	644-64-4	2757	
3017	m-Dinitrobenzene	99-65-0	1597	
3018	o-Dinitrobenzene	528-29-0	1597	
3019	p-Dinitrobenzene	100-25-4	1597	
2354	Dinitrobutyl phenol (Dinoseb) * + (S)	88-85-7	2902	100
0779	4,6-Dinitro-o-cresol * +	534-52-1	1598	10
2950	2,4-Dinitrophenol	51-28-5	0076	
0783	2,4-Dinitrotoluene	121-14-2	1600	
0784	2,6-Dinitrotoluene	606-20-2	1600	
2985	Dinitrotoluene (mixed isomers)	25321-14-6	1600	
3699	Dinocap	39300-45-3	2902	
2354	Dinoseb * + (S)	88-85-7	2902	100
2355	Dinoterb *	1420-07-1	2780	
0787	Di-n-octyl phthalate	117-84-0		
0789	1,4-Dioxane	123-91-1	1165	
0790	Dioxathion *	78-34-2	2783	
3760	Dioxin and dioxin-like compounds ¹ (manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical)	N150		
0794	Diphacinone * +	82-66-6	3027	10
3290	Diphenamid	957-51-7		
0796	Diphenylamine	122-39-4		
0800	1,2-Diphenylhydrazine	122-66-7		
2357	Diphosphoramidate, octamethyl * +	152-16-9	3018	100
3700	Dipotassium endothall (7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt)	2164-07-0		
3701	Dipropyl isocinchomeronate	136-45-8		
3702	Disodium cyanodithioimidocarbonate	138-93-2		
2941	2,4-D isopropyl ester	94-11-1	2765	
0812	Disulfoton *	298-04-4	2783	
2367	Dithiazanine iodide *	514-73-8		
2368	Dithiobiuret * + (S)	541-53-7	2771	100
2368	2,4-Dithiobiuret * + (S)	541-53-7	2771	100
0819	Diuron	330-54-1	2767	
3579	Dodine (Dodecylguanidine monoacetate)	2439-10-3		
3076	2,4-DP	120-36-5	2588	
2944	2,4-D propylene glycol butyl ether ester	1320-18-9	2765	
3297	2,4-D sodium salt	2702-72-9	2765	
2387	Emetine, dihydrochloride * +	316-42-7	1544	1
0824	Endosulfan * +	115-29-7	2761	10
2389	Endothion *	2778-04-3	2783	
0825	Endrin *	72-20-8	2761	
0828	Epichlorohydrin *	106-89-8	2023	
0829	EPN * +	2104-64-5	2783	100
2391	Ergocalciferol *	50-14-6	1851	
2392	Ergotamine tartrate *	379-79-3	1544	
0834	Ethane	74-84-0	1035	
2393	Ethanesulfonyl chloride, 2-chloro- *	1622-32-8		
2394	Ethanol, 1,2-dichloro-, acetate *	10140-87-1	1993	
0837	Ethion *	563-12-2	2783	
2395	Ethoprop (Phosphorodithioic acid O-ethyl S,S-dipropyl ester) * (S)	13194-48-4	3018	
2395	Ethoprophos * (S)	13194-48-4	3018	
0839	2-Ethoxyethanol	110-80-5	1171	
0842	Ethyl acetylene	107-00-6	2452	
0843	Ethyl acrylate	140-88-5	1917	
0847	Ethylamine	75-04-7	1036	
0851	Ethylbenzene	100-41-4	1175	
2396	Ethylbis(2-chloroethyl)amine *	538-07-8	2810	
0863	Ethyl chloride (S)	75-00-3	1037	
0865	Ethyl chloroformate	541-41-3	1182	
3300	Ethyl dipropylthiocarbamate (EPTC)	759-94-4	2902	
0873	Ethylene	74-85-1	1962	
3614	Ethylenebisdithiocarbamic acid, salts and esters ¹	N171		
0875	Ethylenediamine *	107-15-3	1604	
2400	Ethylene fluorohydrin * +	371-62-0	2642	10
0878	Ethylene glycol	107-21-1		
0881	Ethyleneimine *	151-56-4	1185	

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
0882	Ethylene oxide *	75-21-8	1040	
0883	Ethylene thiourea	96-45-7		
0701	Ethyl ether	60-29-7	1155	
0651	Ethylidene dichloride	75-34-3	2362	
0894	Ethyl mercaptan	75-08-1	2363	
0899	Ethyl nitrite	109-95-5	1194	
2402	Ethyl thiocyanate *	542-90-5	2902	
2915	Famphur	52-85-7	2588	
0448	Fast Green 0 (S)	569-64-2	1602	
0914	Fenamiphos * +	22224-92-6	2783	10
3703	Fenarimol (.alpha.-(2-Chlorophenyl)-.alpha.-(4-chlorophenyl)-5-pyrimidinethanol)	60168-88-9		
3704	Fenbutatin oxide (Hexakis(2-methyl-2-phenylpropyl)distannoxane)	13356-08-6		
3705	Fenoxaprop ethyl (2-(4-((6-Chloro-2-benzoxazolyl)oxy)phenoxy)propanoic acid, ethyl ester)	66441-23-4		
3706	Fenoxycarb (2-[(4-Phenoxy-phenoxy)-ethyl]carbamic acid ethyl ester)	72490-01-8		
3253	Fenpropathrin (2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester)	39515-41-8	2902	
0916	Fenthion (O,O-Dimethyl O-[3-methyl-4-(methylthio) phenyl] ester, phosphorothioic acid)	55-38-9	2902	
0915	Fensulfothion	115-90-2	3018	
3134	Fenvalerate (4-Chloro-alpha-(1-methylethyl)benzeneacetic acid cyano(3-phenoxyphenyl)methyl ester)	51630-58-1	2902	
0917	Ferbam (Tris(dimethylcarbamadithioato-S,S'))iron)	14484-64-1	2588	
3707	Fluazifop butyl (2-[4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester)	69806-50-4	2902	
2433	Fluometuron	4301-50-2	2902	100
0935	Fluorine *	2164-17-2		
0937	Fluoroacetamide * +	7782-41-4	1045	
2434	Fluoroacetic acid * +	640-19-7	2811	100
0938	Fluoroacetyl chloride * +	144-49-0	2642	10
2435	Fluoroacetyl chloride * +	359-06-8	1752	10
1966	Fluorouracil * (S)	51-21-8	1851	
1966	Fluorouracil (5-Fluorouracil) * (S)	51-21-8	1851	
3310	Fluvalinate (N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)-cyano(3-phenoxy phenyl)methyl ester)	69409-94-5	2902	
3554	Folpet	133-07-3	2588	
3312	Fomesafen (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N-(methylsulfonyl)-2-nitrobenzamide)	72178-02-0		
0945	Fonofos *	944-22-9	2783	
0946	Formaldehyde *	50-00-0	1198	
0962	Formaldehyde cyanohydrin *	107-16-4	1648	
2862	Formetanate hydrochloride *	23422-53-9	2757	
0948	Formic acid	64-18-6	1779	
2439	Formothion * +	2540-82-1	3018	100
2440	Formparanate * +	17702-57-7		100
2441	Fosthietan *	21548-32-3	3018	
1904	Freon 113	76-13-1		
2442	Fuberidazole * +	3878-19-1	2902	100
0952	Furan *	110-00-9	2389	
2448	Gallium trichloride *	13450-90-3		
0957	Gasoline ⁴	8006-61-9	1203	
3138	Glycol ethers ¹ (except surfactants) consists of those glycol ethers that meet the following definition: R-(OCH ₂ CH ₂) _n -OR' where n = 1,2, or 3; R = alkyl C7 or less, or R = phenyl or alkyl substituted phenyl; R' = H or alkyl C7 or less; or OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.	N230		
0442	Guinea Green B (S)	4680-78-8	1602	
2461	Haz Waste, N.O.S. (only if EHS reported)		9189	
2444	Heating Oil ⁴	68476-34-6	1993	
0974	Heptachlor	76-44-8	2761	
0978	Hexachlorobenzene	118-74-1	2729	
0979	Hexachloro-1,3-butadiene	87-68-3	2279	
0566	alpha-Hexachlorocyclohexane	319-84-6	2761	
0980	Hexachlorocyclopentadiene * +	77-47-4	2646	100
0981	Hexachloroethane	67-72-1	9037	

NJ Environmental Hazardous Substance List in Alphabetical Order

Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
0982	Hexachloronaphthalene	1335-87-1		
0983	Hexachlorophene	70-30-4	2875	
2462	Hexamethylenediamine, N,N'-dibutyl- *	4835-11-4	2735	
0973	Hexamethylphosphoramide	680-31-9		
1340	n-Hexane	110-54-3	1208	
3339	Hexazinone	51235-04-2		
3149	Hydramethylnon (Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone [3-[4-(trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl)phenyl]ethenyl]-2-propenylidene]hydrazone)	67485-29-4	2588	
1006	Hydrazine *	302-01-2	2029	
2360	Hydrazine sulfate	10034-93-2		
1012	Hydrochloric acid (> 37% concentration)	7647-01-0	1789	
1013	Hydrocyanic acid * + (S)	74-90-8	1051	100
3759	Hydrofluoric acid * + (S)	7664-39-3	1790	100
1010	Hydrogen	1333-74-0	1049	
2909	Hydrogen chloride (gas only) *	7647-01-0	1050	
1013	Hydrogen cyanide * + (S)	74-90-8	1051	100
1014	Hydrogen fluoride (S) (gas only)	7664-39-3	1052	
1015	Hydrogen peroxide (> 52% concentration) *	7722-84-1	2984	
1016	Hydrogen selenide * +	7783-07-5	2202	10
1017	Hydrogen sulfide *	7783-06-4	1053	
1019	Hydroquinone *	123-31-9	2662	
3343	Imazalil (1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole)	35554-44-0	2902	
3708	3-Iodo-2-propynyl butylcarbamate	55406-53-6		
1037	Iron, pentacarbonyl- * +	13463-40-6	1994	100
2494	Isobenzan * +	297-78-9	2588	100
1040	Isobutane	75-28-5	1969	
1051	Isobutyraldehyde	78-84-2	2045	
1054	Isobutyronitrile *	78-82-0	2284	
0658	Isocyanic acid, 3,4-dichlorophenylester *	102-36-3	2250	
2499	Isodrin * +	465-73-6	2761	100
3709	Isofenphos (2-[[Ethoxyl[(1-methylethyl)amino]phosphinothioyl]oxy]benzoic acid 1-methylethyl ester)	25311-71-1	2902	
2500	Isofluorphate * +	55-91-4	3018	100
1064	Isopentane	78-78-4	1265	
1068	Isophorone diisocyanate * +	4098-71-9	2290	100
1069	Isoprene	78-79-5	1218	
1076	Isopropyl alcohol (manufacturing - strong acid process only)	67-63-0	1219	
1077	Isopropylamine	75-31-0	1221	
2241	Isopropyl chloride	75-29-6	2356	
1080	Isopropyl chloroformate *	108-23-6	2407	
2388	4,4'-Isopropylidenediphenol	80-05-7		
2505	Isopropylmethylpyrazolyldimethylcarbamate *	119-38-0	2992	
0198	Isosafrole	120-58-1		
1090	Kepone	143-50-0	2761	
1091	Kerosene ⁴	8008-20-6	1223	
3550	Lactofen (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester)	77501-63-4		
2514	Lactonitrile *	78-97-7		
1096	Lead	7439-92-1		
2266	Lead compounds ¹	N420		
2516	Leptophos *	21609-90-5	2588	
2517	Lewisite * +	541-25-3	1556	10
3140	Light Green SF	5141-20-8		
1117	Lindane *	58-89-9	2761	
3352	Linuron	330-55-2	2588	
1124	Lithium carbonate	554-13-2		
1127	Lithium hydride * +	7580-67-8	2805	100
3617	Lopac #	9003-54-7		
1150	Malathion	121-75-5	2783	
1152	Maleic anhydride	108-31-6	2215	
1153	Malononitrile *	109-77-3	2647	
1154	Maneb	12427-38-2	2968	
1155	Manganese	7439-96-5		
2324	Manganese compounds ¹	N450		
1244	Manganese, tricarbonylmethylcyclopentadienyl * +	12108-13-3		100
1377	Mechlorethamine * + (S)	51-75-2	2810	10
3093	Mecoprop	93-65-2	2588	
2535	Mephosfolan *	950-10-7	3018	
3710	2-Mercaptobenzothiazole (MBT)	149-30-4	1228	
1166	Mercuric acetate *	1600-27-7	1629	
1170	Mercuric chloride *	7487-94-7	1624	

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2537	Mercuric oxide *	21908-53-2	1641	
1183	Mercury	7439-97-6	2809	
2414	Mercury compounds ¹	N458		
3359	Merphos	150-50-5	2903	
2549	Methacrolein diacetate *	10476-95-6		
2550	Methacrylic anhydride *	760-93-0	2531	
1220	Methacrylonitrile *	126-98-7	3079	
2551	Methacryloyl chloride * +	920-46-7		100
2552	Methacryloyloxyethyl isocyanate * +	30674-80-7	2206	100
1201	Methamidophos * +	10265-92-6	2783	100
3711	Metham sodium (Sodium methyldithiocarbamate)	137-42-8	2588	
1202	Methane	74-82-8	1971	
2553	Methanesulfonyl fluoride *	558-25-8		
1222	Methanol	67-56-1	1230	
3712	Methazole (2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione)	20354-26-1	2588	
1206	Methidathion *	950-37-8	2588	
1165	Methiocarb *	2032-65-7	2757	
1208	Methomyl *	16752-77-5	2757	
3094	Methoxone ((4-Chloro-2-methylphenoxy) acetic acid) (MCPA)	94-74-6	2588	
3713	Methoxone sodium salt ((4-Chloro-2-methylphenoxy) acetate sodium salt)	3653-48-3	2588	
1210	Methoxychlor	72-43-5	2761	
1211	2-Methoxyethanol	109-86-4	1188	
2554	Methoxyethylmercuric acetate *	151-38-2	2777	
1219	Methyl acrylate	96-33-3	1919	
1225	Methylamine	74-89-5	1061	
1231	Methyl bromide * (S)	74-83-9	1062	
1233	2-Methyl-1-butene	563-46-2	2459	
3366	3-Methyl-1-butene	563-45-1	2561	
1293	Methyl tert-butyl ether	1634-04-4	2398	
1235	Methyl chloride (S)	74-87-3	1063	
2556	Methyl 2-chloroacrylate *	80-63-7	2810	
1238	Methyl chlorocarbonate * (S)	79-22-1	1238	
1238	Methyl chloroformate * (S)	79-22-1	1238	
1250	4,4'-Methylenebis(2-chloroaniline)	101-14-4		
1252	4,4'-Methylenebis(N,N-dimethyl)benzenamine	101-61-1		
1254	Methylene bromide	74-95-3	2664	
1255	Methylene chloride (S)	75-09-2	1593	
1256	4,4'-Methylenedianiline	101-77-9	2651	
0758	Methyl ether	115-10-6	1033	
1262	Methyl formate	107-31-3	1243	
1265	Methyl hydrazine *	60-34-4	1244	
1266	Methyl iodide	74-88-4	2644	
1268	Methyl isobutyl ketone	108-10-1	1245	
1270	Methyl isocyanate *	624-83-9	2480	
1272	Methyl isothiocyanate * (S)	556-61-6	2477	
1272	Methyl isothiocyanate (Isothiocyanatomethane) * (S)	556-61-6	2477	
0007	2-Methylacetonitrile * (S)	75-86-5	1541	
1275	Methyl mercaptan *	74-93-1	1064	
1276	Methylmercuric dicyanamide *	502-39-6	2777	
1277	Methyl methacrylate	80-62-6	1247	
3715	N-Methylolacrylamide	924-42-5		
1283	Methyl parathion * + (S)	298-00-0		100
2559	Methyl phenkapton *	3735-23-7	2783	
2560	Methyl phosphonic dichloride * +	676-97-1	9206	100
1045	Methylpropene	115-11-7	1055	
2955	2-Methylpyridine	109-06-8	2313	
3716	N-Methyl-2-pyrrolidone	872-50-4		
2562	Methyl thiocyanate *	556-64-9	1935	
1296	Methyltrichlorosilane *	75-79-6	1250	
1301	Methyl vinyl ketone * +	78-94-4	1251	10
3717	Metiram	9006-42-2		
2563	Metolcarb * +	1129-41-5	2757	100
1302	Metribuzin	21087-64-9	2588	
3507	Mevinphos *	7786-34-7	2883	
1304	Mexacarbate *	315-18-4	2757	
1305	Michler's ketone	90-94-8	1224	
1306	Mirex	2385-85-5	2646	
1307	Mitomycin C *	50-07-7	1851	
3718	Molinate (1H-Azepine-1 carbothioic acid, hexahydro-S-ethyl ester)	2212-67-1	2588	
1312	Molybdenum trioxide	1313-27-5		
0398	Monochloropentafluoroethane (CFC-115)	76-15-3	1020	

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
1313	Monocrotophos * +	6923-22-4	2783	10
3719	Monuron	150-68-5	2588	
2571	Muscimol *	2763-96-4	2811	
1319	Mustard gas *	505-60-2		
3462	Myclobutanil (.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile)	88671-89-0		
3720	Nabam	142-59-6	2588	
0751	Naled	300-76-5	2783	
1322	Naphthalene	91-20-3	1334	
1325	alpha-Naphthylamine	134-32-7	2077	
1324	beta-Naphthylamine	91-59-8	1650	
1341	Nickel	7440-02-0		
1343	Nickel carbonyl * +	13463-39-3	1259	1
2366	Nickel compounds ¹	N495		
1349	Nicotine * +	54-11-5	1654	100
2583	Nicotine and salts ¹	N503		
1352	Nicotine sulfate * +	65-30-5	1658	100
1355	Nitrapyrin (2-Chloro-6-(trichloromethyl)pyridine)	1929-82-4		
3722	Nitrate compounds ¹ (water dissociable)	N511		
1356	Nitric acid *	7697-37-2	2031	
1357	Nitric oxide * +	10102-43-9	1660	100
1358	Nitrilotriacetic acid	139-13-9		
1548	p-Nitroaniline	100-01-6	1661	
1388	5-Nitro-o-anisidine	99-59-2		
1361	Nitrobenzene *	98-95-3	1662	
0229	4-Nitrobiphenyl	92-93-3		
2588	Nitrocyclohexane *	1122-60-7	2810	
1374	Nitrofen	1836-75-5	2588	
1376	Nitrogen dioxide * +	10102-44-0	1067	100
1377	Nitrogen mustard * + (S)	51-75-2	2810	10
1383	Nitroglycerin	55-63-0	0143	
1391	2-Nitrophenol	88-75-5	1663	
1390	4-Nitrophenol	100-02-7	1663	
1392	2-Nitropropane	79-46-9	2608	
1406	N-Nitrosodi-n-butylamine	924-16-3		
1404	N-Nitrosodiethylamine	55-18-5		
1405	Nitrosodimethylamine * (S)	62-75-9	1955	
1405	N-Nitrosodimethylamine * (S)	62-75-9	1955	
1550	p-Nitrosodimethylaniline	138-89-6	1369	
1408	N-Nitrosodiphenylamine	86-30-6		
1551	p-Nitrosodiphenylamine	156-10-5		
1407	N-Nitrosodi-n-propylamine	621-64-7		
1410	N-Nitroso-N-ethylurea	759-73-9		
1411	N-Nitroso-N-methylurea	684-93-5		
2907	N-Nitrosomethylvinylamine	4549-40-0		
1409	N-Nitrosomorpholine	59-89-2		
2900	N-Nitrosornicotine	16543-55-8		
1412	N-Nitrosopiperidine	100-75-4		
1444	5-Nitro-o-toluidine	99-55-8		
2591	Norbormide * +	991-42-4	2588	100
3405	Norflurazon (4-Chloro-5-(methylamino)-2-[3-(trifluoromethyl)phenyl]-3(2H)-pyridazinone)	27314-13-2		
1427	Octachloronaphthalene	2234-13-1		
3761	Octachlorostyrene	29082-74-4		
3143	Oil Orange SS	2646-17-5		
1762	Oleum [Sulfuric acid (fuming)] (S)	8014-95-7	1831	
2611	Organorhodium Complex (PMN-82-147) * +		2811	10
3409	Oryzalin (4-(Dipropylamino)-3,5-dinitrobenzenesulfonamide)	19044-88-3	2588	
1441	Osmium tetroxide	20816-12-0	2471	
2617	Ouabain * +	630-60-4	1851	100
2618	Oxamyl * +	23135-22-0	2757	100
2619	Oxetane, 3,3-bis(chloromethyl)- *	78-71-7		
3724	Oxydemeton methyl (S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl ester phosphorothioic acid)	301-12-2		
3410	Oxydiazon (3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5-(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one)	19666-30-9	2588	
2625	Oxydisulfoton *	2497-07-6	3018	
3411	Oxyfluorfen	42874-03-3	2588	
1451	Ozone * +	10028-15-6	1693	100
1455	Paraldehyde	123-63-7	1264	
1458	Paraquat * + (S)	1910-42-5	2588	10
1458	Paraquat dichloride * + (S)	1910-42-5	2588	10

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2630	Paraquat methosulfate * +	2074-50-2	2588	10
1459	Parathion * +	56-38-2	2783	100
1283	Parathion-methyl * + (S)	298-00-0	2783	100
0529	Paris green * (S)	12002-03-8	1585	
3725	Pebulate (Butylethylcarbamoithioic acid S-propyl ester)	1114-71-2	2902	
3415	Pendimethalin (N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine)	40487-42-1	2588	
1470	Pentaborane *	19624-22-7	1380	
3417	Pentachlorobenzene	608-93-5		
1471	Pentachloroethane	76-01-7	1669	
1473	Pentachlorophenol	87-86-5	2020	
2634	Pentadecylamine * +	2570-26-5	2733	100
2925	1,3-Pentadiene	504-60-9		
1476	Pentane	109-66-0	1265	
3618	1-Pentene	109-67-1		
3619	2-Pentene, (E)-	646-04-8		
3620	2-Pentene, (Z)-	627-20-3		
3726	Pentobarbital sodium	57-33-0		
1482	Peracetic acid *	79-21-0	2131	
1810	Perchloroethylene (S)	127-18-4	1897	
1480	Perchloromethylmercaptan *	594-42-3	1670	
3422	Permethrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid, (3-phenoxyphenyl)methyl ester)	52645-53-1	2588	
2651	Petroleum Oil ⁴		1270	
3004	Phenanthrene	85-01-8		
1487	Phenol *	108-95-2	1671	
2654	Phenol, 3-(1-methylethyl)-,methylcarbamate *	64-00-6	2757	
2816	Phenol, 2,2'-thiobis(4-chloro-6-methyl)- * +	4418-66-0		100
3727	Phenothrin (2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (3-phenoxyphenyl) methyl ester)	26002-80-2	2902	
2653	Phenoxarsine, 10,10'-oxydi- *	58-36-6	1557	
1494	Phenyl dichloroarsine *	696-28-6	1556	
1495	1,2-Phenylenediamine	95-54-5	1673	
1316	1,3-Phenylenediamine	108-45-2	1673	
1586	p-Phenylenediamine	106-50-3	1673	
3728	1,2-Phenylenediamine dihydrochloride	615-28-1	1673	
3729	1,4-Phenylenediamine dihydrochloride	624-18-0	1673	
2659	Phenylhydrazine hydrochloride *	59-88-1	2572	
1502	Phenylmercury acetate *	62-38-4	1674	
1439	2-Phenylphenol	90-43-7		
2663	Phenylsilatrane * +	2097-19-0		100
2664	Phenylthiourea * +	103-85-5		100
1507	Phenytoin	57-41-0		
1508	Phorate * +	298-02-2	2783	10
2669	Phosacetim * +	4104-14-7	1681	100
2670	Phosfolan * +	947-02-4	2783	100
1510	Phosgene * +	75-44-5	1076	10
1513	Phosphamidon * +	13171-21-6	2783	100
1514	Phosphine *	7803-51-2	2199	
2673	Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino) ethyl) O-ethyl ester * +	50782-69-9	3018	100
2671	Phosphonothioic acid, methyl-, O-ethyl O-(4-(methylthio)phenyl) ester	2703-13-1	3018	
2672	Phosphonothioic acid, methyl-, O-(4-nitrophenyl) O-phenylester *	2665-30-7	3018	
2674	Phosphoric acid, dimethyl 4-(methylthio) phenyl ester *	3254-63-5	3018	
2910	Phosphorothioic acid, O,O-dimethyl-S-(2-methylthio) ethyl ester *	2587-90-8	3018	
1520	Phosphorus * +	7723-14-0	1338	100
1523	Phosphorus oxychloride *	10025-87-3	1810	
1525	Phosphorus pentachloride *	10026-13-8	1806	
1530	Phosphorus trichloride *	7719-12-2	1809	
1535	Phthalic anhydride	85-44-9	2214	
2681	Physostigmine * +	57-47-6	2757	100
2682	Physostigmine, salicylate (1:1) * +	57-64-7	2757	100
1536	Picloram	1918-02-1		
1946	Picric acid, dry or wetted with less than 30 percent water, by mass (S)	88-89-1	0154	
0526	Picrotoxin *	124-87-8	1584	
1543	Piperidine *	110-89-4	2401	
3732	Piperonyl butoxide	51-03-6		
1545	Pirimifos-ethyl *	23505-41-1	3018	

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Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
3430	Pirimiphos methyl (O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethyl phosphorothioate)	29232-93-7	2902	
1552	Polybrominated biphenyls ¹ (PBBs)	N575		
3733	Polychlorinated alkanes ¹ (C ₁₀ to C ₁₃) includes those chemicals defined by the following formula: $C_xH_{(2x-y+2)}Cl_y$ where x = 10 to 13 y = 3 to 12; and where the average chlorine content ranges from 40% - 70% with the limiting molecular formulas C ₁₀ H ₁₉ Cl ₃ and C ₁₃ H ₁₆ Cl ₁₂	N583		
1554	Polychlorinated biphenyls (PCBs)	1336-36-3	2315	
3514	Polychlorinated triphenyls (PCTs)	12642-23-8		
3758	Polycyclic aromatic compounds ^{1,2} (PACs) (this category includes only those substances listed below and are reported as "Polycyclic aromatic compounds"):	N590		
	Benz(a)anthracene	56-55-3	2588	
	Benzo(a)phenanthrene	218-01-9		
	Benzo(a)pyrene	50-32-8		
	Benzo(b)fluoranthene	205-99-2		
	Benzo(j)fluoranthene	205-82-3		
	Benzo(k)fluoranthene	207-08-9		
	Benzo(j,k)fluorene	206-44-0		
	Benzo(r,s,t)pentaphene	189-55-9		
	Dibenz(a,h)acridine	226-36-8		
	Dibenz(a,j)acridine	224-42-0		
	Dibenzo(a,h)anthracene	53-70-3		
	Dibenzo(a,e)fluoranthene	5385-75-1		
	Dibenzo(a,e)pyrene	192-65-4		
	Dibenzo(a,h)pyrene	189-64-0		
	Dibenzo(a,l)pyrene	191-30-0		
	7H-Dibenzo(c,g)carbazole	194-59-2		
	7,12-Dimethylbenz(a)anthracene	57-97-6		
	Indeno[1,2,3-cd]pyrene	193-39-5		
	3-Methylcholanthrene	56-49-5		
	5-Methylchrysene	3697-24-3		
	1-Nitropyrene	5522-43-0		
3147	Ponceau 3R	3564-09-8		
0504	Ponceau MX (S)	3761-53-3	1602	
1557	Potassium arsenite *	10124-50-2	1678	
1559	Potassium bromate	7758-01-2	1484	
1562	Potassium cyanide * +	151-50-8	1680	100
3735	Potassium dimethyldithiocarbamate	128-03-0		
3736	Potassium N-methyldithiocarbamate	137-41-7		
2708	Potassium silver cyanide *	506-61-6	1588	
3737	Profenofos (O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propylphosphorothioate)	41198-08-7		
2710	Promecarb *	2631-37-0	2757	
3437	Prometryn (N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4-diamine)	7287-19-6	2588	
1592	Pronamide	23950-58-5		
3438	Propachlor (2-Chloro-N-(1-methylethyl)-N-phenylacetamide)	1918-16-7	2588	
1593	Propadiene	463-49-0	2200	
1594	Propane	74-98-6	1978	
1446	Propane sultone	1120-71-4		
3439	Propanil (N-(3,4-Dichlorophenyl)propanamide)	709-98-8	2588	
1596	Propargite	2312-35-8	2765	
1597	Propargyl alcohol	107-19-7	1986	
0268	Propargyl bromide * +	106-96-7	2345	10
3738	Propetamphos (3-[[[(Ethylamino)methoxyphosphinothioyl]oxy]-2-butenic acid, 1-methylethyl ester)	31218-83-4	2902	
3442	Propiconazole (1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]-methyl-1H-1,2,4-triazole)	60207-90-1		
0228	beta-Propiolactone *	57-57-8		
1598	Propionaldehyde	123-38-6	1275	
1601	Propionitrile *	107-12-0	2404	
2711	Propionitrile, 3-chloro * (S)	542-76-7	2404	
2911	Propiophenone, 4-amino- * +	70-69-9		100
1604	Propoxur	114-26-1	2588	
1608	Propyl chloroformate *	109-61-5	2740	
1609	Propylene (Propene)	115-07-1	1077	
0664	Propylene dichloride (S)	78-87-5	1279	

NJ Environmental Hazardous Substance List in Alphabetical Order

Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
1614	Propyleneimine *	75-55-8	1921	
1615	Propylene oxide *	75-56-9	1280	
1218	Propyne	74-99-7		
2715	Prothoate * +	2275-18-5	2783	100
3622	PVC (chloroethylene, polymer) #	9002-86-2		
1024	Pyrene *	129-00-0		
1624	Pyridine	110-86-1	1282	
0172	Pyridine, 4-amino- *	504-24-5	2671	
2717	Pyridine, 2-methyl-5-vinyl- *	140-76-1	1993	
2718	Pyridine, 4-nitro-, 1-oxide *	1124-33-0		
2719	Pyriminil * +	53558-25-1	2588	100
1628	Quinoline	91-22-5	2656	
1460	Quinone	106-51-4	2587	
1630	Quintozene	82-68-8	2588	
3173	Quizalofop-ethyl (2-[4-[(6-Chloro-2-quinoxalinyloxy]phenoxy]propanoic acid ethyl ester)	76578-14-8		
3450	Resmethrin ([5-(Phenylmethyl)-3-furanyl]methyl- 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate)	10453-86-8	2902	
0505	Rhodamine B (S)	81-88-9	1602	
0449	Rhodamine 6G (S)	989-38-8	1602	
1641	Saccharin	81-07-2		
1642	Safrole	94-59-7	1851	
2756	Salcomine *	14167-18-1		
3623	Saran #	8013-77-2		
2757	Sarin * +	107-44-8		10
2762	Selenious acid *	7783-00-8	2928	
1648	Selenium	7782-49-2	2658	
2347	Selenium compounds ¹	N725		
1652	Selenium oxychloride *	7791-23-3	2879	
2765	Semicarbazide hydrochloride *	563-41-7	2811	
3453	Sethoxydim (2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxyl-2-cyclohexen-1-one)	74051-80-2		
1668	Silane	7803-62-5	2203	
2768	Silane, (4-aminobutyl)diethoxymethyl- *	3037-72-7		
1669	Silver	7440-22-4		
3008	Silver compounds ¹	N740		
3454	Simazine	122-34-9	2588	
1682	Sodium arsenate *	7631-89-2	1685	
1683	Sodium arsenite *	7784-46-5	1686	
1684	Sodium azide (Na(N ₃)) *	26628-22-8	1687	
1687	Sodium cacodylate * +	124-65-2	1688	100
1693	Sodium cyanide (Na(CN)) * +	143-33-9	1689	100
3739	Sodium dicamba (3,6-Dichloro-2-methoxybenzoic acid, sodium salt)	1982-69-0		
3740	Sodium dimethyldithiocarbamate	128-04-1		
1700	Sodium fluoroacetate * +	62-74-8	2629	10
2258	Sodium nitrite	7632-00-0	1500	
1712	Sodium pentachlorophenate * +	131-52-2	2567	100
3458	Sodium o-phenylphenoxide	132-27-4		
1726	Sodium selenate * +	13410-01-0	2630	100
1727	Sodium selenite * +	10102-18-8	2630	100
2783	Sodium tellurite *	10102-20-2		
2912	Stannane, acetoxytriphenyl- *	900-95-8		
1747	Strychnine * +	57-24-9	1692	100
3741	Strychnine and salts ¹	N746	1692	
2789	Strychnine, sulfate * +	60-41-3	1692	100
1748	Styrene	100-42-5	2055	
1749	Styrene oxide	96-09-3		
3628	Substance Samples (only if EHS reported)			
0509	Sudan I (S)	842-07-9	1602	
0506	Sudan II (S)	3118-97-6	1602	
1756	Sulfotep *	3689-24-5	1704	
2795	Sulfoxide, 3-chloropropyl octyl *	3569-57-1		
1759	Sulfur dioxide *	7446-09-5	1079	
1761	Sulfuric acid *	7664-93-9	1830	
1762	Sulfuric acid (fuming) (S)	8014-95-7	1831	
1766	Sulfur tetrafluoride * +	7783-60-0	2418	100
1767	Sulfur trioxide * +	7446-11-9	1829	100
1769	Sulfuryl fluoride (Vikane)	2699-79-8	2191	
1771	Sulprofos (O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S-propyl ester)	35400-43-2	2902	
1896	2,4,5-T [2,4,5-(Trichlorophenoxy) acetic acid]	93-76-5	2765	
2796	Tabun * +	77-81-6	1955	10

NJ Environmental Hazardous Substance List in Alphabetical Order

Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
3464	Tebuthiuron (N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl]-N,N'-dimethylurea)	34014-18-1		
1778	Tellurium hexafluoride * +	7783-80-4	2195	100
1780	Temephos	3383-96-8	2588	
3466	Terbacil (5-Chloro-3-(1,1-dimethylethyl)-6-methyl- 2,4(1H,3H)-pyrimidinedione)	5902-51-2	2588	
2801	Terbufos * +	13071-79-9	2903	100
3518	Terpene polychlorinates	8001-50-1		
3763	Tetrabromobisphenol A	79-94-7		
2992	1,1,1,2-Tetrachloroethane	630-20-6	1702	
1809	1,1,2,2-Tetrachloroethane	79-34-5	1702	
1810	Tetrachloroethylene (S)	127-18-4	1897	
3742	1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	354-11-0		
3743	1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	354-14-3		
1813	Tetrachlorvinphos	961-11-5	2783	
3744	Tetracycline hydrochloride	64-75-5		
1817	Tetraethyllead * +	78-00-2	1649	100
1781	Tetraethylpyrophosphate * +	107-49-3	2783	100
2803	Tetraethyltin * +	597-64-8	3020	100
1819	Tetrafluoroethylene	116-14-3	1081	
3745	Tetramethrin (2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester)	7696-12-0	2588	
1831	Tetramethyllead * +	75-74-1	1649	100
1833	Tetramethylsilane	75-76-3	2749	
1836	Tetranitromethane *	509-14-8	1510	
1840	Thallium	7440-28-0	1707	
2809	Thallium compounds ¹	N760	1707	
1842	Thallium sulfate * +	10031-59-1	1707	100
2811	Thallos carbonate * +	6533-73-9	1707	100
2812	Thallos chloride * +	7791-12-0	1707	100
2813	Thallos malonate * +	2757-18-8	1707	100
2887	Thallos sulfate * +	7446-18-6	1707	100
3746	Thiabendazole (2-(4-Thiazolyl)-1H-benzimidazole)	148-79-8	2588	
1844	Thioacetamide	62-55-5		
3472	Thiobencarb (Carbamic acid, diethylthio-, S-(p-chlorobenzyl))	28249-77-6	2588	
2818	Thiocarbazine *	2231-57-4	2588	
1847	4,4'-Thiodianiline	139-65-1		
3747	Thiodicarb	59669-26-0	2588	
2820	Thiofanox * +	39196-18-4	2757	100
2046	Thionazin *	297-97-2	3018	
3748	Thiophanate ethyl ([1,2-Phenylenebis (iminocarbonothioyl)] biscarbamic acid diethyl ester)	23564-06-9	2588	
3473	Thiophanate-methyl	23564-05-8	2588	
0203	Thiophenol *	108-98-5	2337	
2823	Thiosemicarbazide * +	79-19-6	2811	100
1853	Thiourea	62-56-6	2877	
2824	Thiourea, (2-chlorophenyl)- * + (S)	5344-82-1	2588	100
2825	Thiourea, (2-methylphenyl)- *	614-78-8	2811	
1854	Thiram	137-26-8	2771	
1856	Thorium dioxide	1314-20-1		
1864	Titanium tetrachloride * +	7550-45-0	1838	100
1866	Toluene	108-88-3	1294	
1869	Toluene-2,4-diisocyanate *	584-84-9	2078	
1868	Toluene-2,6-diisocyanate * +	91-08-7	2078	100
3132	Toluenediisocyanate (mixed isomers)	26471-62-5		
1442	o-Toluidine	95-53-4	1708	
1443	o-Toluidine hydrochloride	636-21-5		
1871	Toxaphene * (S)	8001-35-2	2761	
3179	Triadimefon (1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone)	43121-43-3	2588	
3474	Triallate	2303-17-5		
2830	Triamiphos *	1031-47-6	2783	
1461	Triaziquone	68-76-8		
2835	Triazofos *	24017-47-8	3018	
3749	Tribenuron methyl (2-(((4-Methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino) carbonyl)amino)sulfonyl)-, methyl ester)	101200-48-0		
3750	Tributyltin fluoride	1983-10-4		
3751	Tributyltin methacrylate	2155-70-6		
3360	S,S,S-Tributyltrithiophosphate (DEF)	78-48-8	2902	
1882	Trichlorfon	52-68-6	2783	
1884	Trichloroacetyl chloride *	76-02-8	2442	

NJ Environmental Hazardous Substance List in Alphabetical Order

Sub. No.	Name	CAS Number	DOT No.	TPQ if below 500 pounds
1887	1,2,4-Trichlorobenzene	120-82-1	2321	
2836	Trichloro(chloromethyl)silane * +	1558-25-4	1250	100
0663	Trichloro(dichlorophenyl)silane *	27137-85-5	1766	
1237	1,1,1-Trichloroethane	71-55-6	2831	
1889	1,1,2-Trichloroethane	79-00-5	2831	
1890	Trichloroethylene	79-01-6	1710	
0912	Trichloroethylsilane *	115-21-9	1196	
1891	Trichlorofluoromethane (CFC-11)	75-69-4		
2837	Trichloronate *	327-98-0	3018	
1895	2,4,5-Trichlorophenol	95-95-4	2020	
1894	2,4,6-Trichlorophenol	88-06-2	2020	
1506	Trichlorophenylsilane *	98-13-5	1804	
1902	1,2,3-Trichloropropane	96-18-4		
1903	Trichlorosilane	10025-78-2	1295	
3752	Triclopyr triethylammonium salt	57213-69-1		
2838	Triethoxysilane *	998-30-1	2810	
1907	Triethylamine	121-44-8	1296	
1913	Trifluorochloroethylene	79-38-9	1082	
1918	Trifluralin	1582-09-8	2588	
3753	Triforine	26644-46-2	2588	
	(N,N'-[1,4-Piperazinediylbis(2,2,2-trichloroethylidene)] bisformamide)			
1927	Trimethylamine	75-50-3	1083	
2716	1,2,4-Trimethylbenzene	95-63-6	1263	
1931	Trimethylchlorosilane *	75-77-4	1298	
2843	Trimethylolpropane phosphite * +	824-11-3		100
3756	2,3,5-Trimethylphenyl methylcarbamate	2655-15-4		
2845	Trimethyltin chloride *	1066-45-1		
1946	Trinitrophenol, dry or wetted with less than 30 percent water, by mass (S)	88-89-1	0154	
1952	Triphenyltin chloride *	639-58-7	2786	
1953	Triphenyltin hydroxide	76-87-9	2588	
2847	Tris(2-chloroethyl)amine * +	555-77-1	2810	100
1957	Tris(2,3-dibromopropyl) phosphate	126-72-7		
0465	Trypan blue	72-57-1		
1986	Urethane	51-79-6		
2850	Valinomycin *	2001-95-8	2588	
3762	Vanadium (except when contained in an alloy)	7440-62-2		
3492	Vanadium compounds ¹	N770	3285	
1993	Vanadium pentoxide * +	1314-62-1	2862	100
3494	Vinclozolin	50471-44-8	2588	
	(3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione)			
1998	Vinyl acetate * (S)	108-05-4	1301	
1998	Vinyl acetate monomer * (S)	108-05-4	1301	
3626	Vinyl acetylene	689-97-4		
1999	Vinyl bromide	593-60-2	1085	
2001	Vinyl chloride	75-01-4	1086	
2004	Vinyl ethyl ether	109-92-2	1302	
2005	Vinyl fluoride	75-02-5	1860	
2006	Vinylidene chloride	75-35-4	1303	
2007	Vinylidene fluoride	75-38-7	1959	
2009	Vinyl methyl ether	107-25-5	1087	
2012	Warfarin *	81-81-2	3027	
3627	Warfarin and salts ¹	N874	3027	
2860	Warfarin sodium * +	129-06-6	3027	100
2851	Waste Oil ⁴		1270	
2902	m-Xylene	108-38-3	1307	
2903	o-Xylene	95-47-6	1307	
2904	p-Xylene	106-42-3	1307	
2014	Xylene (mixed isomers)	1330-20-7	1307	
2016	2,6-Xylidine	87-62-7	1711	
2858	Xylylene dichloride * +	28347-13-9	2811	100
2021	Zinc (fume or dust)	7440-66-6	1436	
3012	Zinc compounds ¹	N982		
2041	Zinc phosphide *	1314-84-7	1714	
2863	Zinc, dichloro(4,4-dimethyl-5(((methylamino)carbonyl)oxy)imino)pentanenitrile)-, (T-4) * +	58270-08-9	2588	100
2045	Zineb	12122-67-7	2588	

NJ Environmental Hazardous Substance List in Alphabetical Order

FOOT-NOTES

1. Many of the listed chemical categories have a "Category Number" instead of a CAS number. The Category Number is formatted as "Nxxx" where each "x" may be any number from 0 to 9.
2. Be advised that there are two (2) chemical categories, "Diisocyanates" and "Polycyclic aromatic compounds (PACs)," that are restricted to the chemicals listed under the appropriate heading. If you have more than 500 pounds in combination of any of the listed chemicals, you are to report them under the category heading (that is, do not report the individual chemicals or their CAS numbers).
3. One diisocyanate compound, **Methylenebis(phenylisocyanate)**, was once a separately listed substance but is now grouped in this compound category.
4. Under N.J.A.C. 7:1G, environmental hazardous substances in mixtures such as gasoline or new and used petroleum oil may be reported under the following generic categories:

<u>Substance</u>	<u>Substance Number</u>	<u>CAS Number</u>	<u>DOT Number</u>
Diesel Fuel or #2 Heating Oil	2444	68476-34-6	1993
Gasoline	0957	8006-61-9	1203
Kerosene	1091	8008-20-6	1223
Petroleum Oil	2651	_____	1270
Waste Oil	2851	_____	1270

These substances must be reported if they were present at your facility in 2006 in quantities at or above 10,000 pounds at any one time. Please use the appropriate codes as indicated above.

- * = EPCRA Section 302 Extremely Hazardous Substance. The presence of these substances in quantities equal to or in excess of the Threshold Planning Quantity (TPQ) requires certain emergency planning activities. A letter should be sent to both the State Emergency Response Commission (SERC) and the LEPC giving the company name and location address (not mailing address, if different from location); an emergency contact person at the facility, with both a work phone number and an after hours phone number; and the substance(s) present onsite that meet the threshold planning quantities. Notification to the SERC should be sent to: New Jersey Department of Environmental Protection, Office of Pollution Prevention and Right to Know, Attn: 302 Notification, 22 South Clinton Avenue, PO Box 405, Trenton, NJ, 08625-0405. For further information, contact the Office of Pollution Prevention and Right to Know at (609) 292-6714, (609) 777-0518 or (609) 984-3219.
- + = EPCRA Section 302 Extremely Hazardous Substances with a TPQ of less than 500 pounds. The reporting thresholds for those substances are indicated by the TPQ for the particular chemical.
- (S) = Synonym of EHS listed elsewhere on this list.
- # = Report only those materials with the indicated CAS number.

REMINDERS: Naphthalene is now reportable at the de minimis quantity of greater than 0.1%.
Isophorone diisocyanate is now reportable at 500 pounds.

- ◆ **View the EHS list by CAS and substance number at <http://www.nj.gov/dep/opppc/figdoc.htm>. If you do not have access to the Internet, you may contact the Office at (609) 292-6714, (609) 777-0518 or (609) 984-3219 to obtain a hard copy of this list.**
- ◆ **For substances not listed on Table A and which meet the federal EPCRA reporting threshold of 10,000 pounds, check the EPCRA Only circle on the Part 2 of the CRTK Survey.**

APPENDIX C

38

United States District Court
Southern District of Texas
ENTERED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

SEP 8 1995

GALVESTON DIVISION

Michael N. Milby, Clerk of Court

JOHN BUREL WATKINS, JR.

§

VS.

§

CIVIL ACTION NO. G-94-692

§

§

BLACK & DECKER (U.S.), INC.,
AMERICAN HARDWARE, INC, AND
EMHART CORPORATION

§

§

§

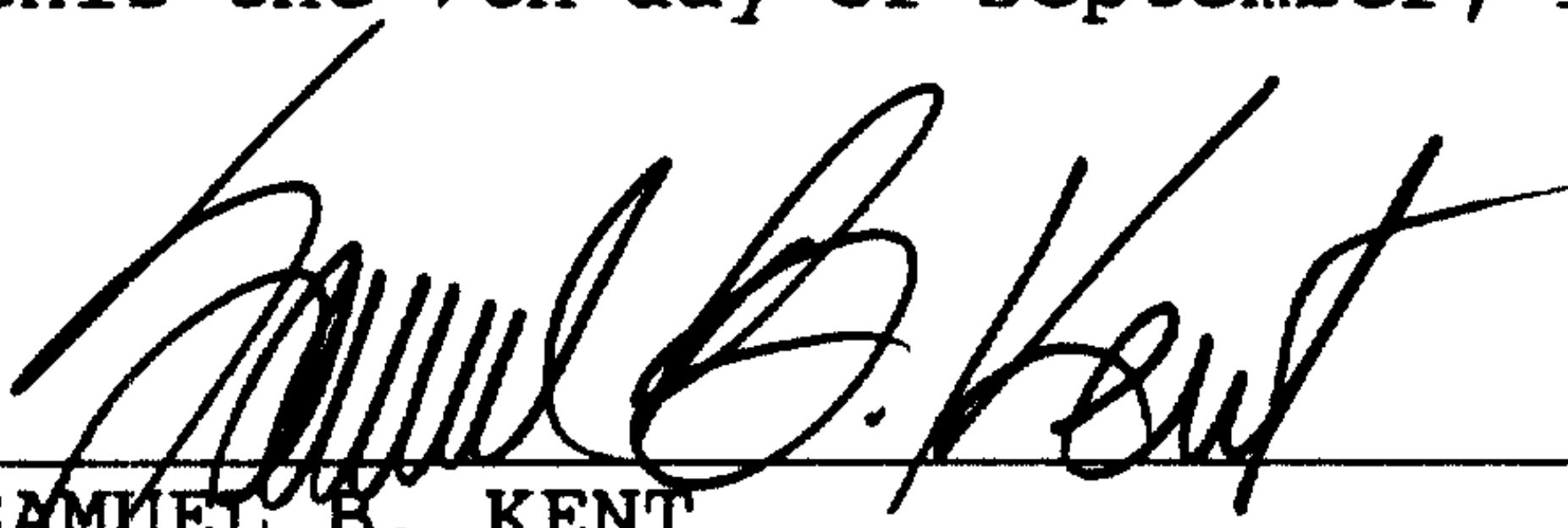
ORDER VACATING MEMORANDUM AND ORDER OF APRIL 20, 1995

Before the Court is Defendants' Motion for Reconsideration. After careful consideration, and as a part of, and in furtherance of settlement it is

ORDERED, ADJUDGED and DECREED that the Court's Memorandum and Order of April 20, 1995 is vacated, set aside and consequently withdrawn.

IT IS SO ORDERED.

DONE at Galveston, Texas, this the 7th day of September, 1995.



SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE