William L. Warren, Esq.
DRINKER BIDDLE & REATH LLP
105 College Road East, Suite 300
Princeton, New Jersey 08542-0627
Tel: 609.716.6500
Fax: 609.799.7000
Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.

Thomas E. Starnes, Esq.
Charles M. Crout, Esq.
ANDREWS KURTH LLP
1350 I Street NW
Suite 1100
Washington, DC 20005
Tel: 202.662.2700
Fax: 202.662.2739
Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, Plaintiffs, vs. OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., AND CLH HOLDINGS, Defendants. MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC. Third-Party Plaintiffs, vs.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION -ESSEX COUNTY DOCKET NO. ESX-L-9868-05 **DEFENDANTS MAXUS ENERGY CORPORATION'S AND TIERRA SOLUTIONS, INC.'S THIRD PARTY COMPLAINT "A" (Against Public Entities)**

BAYONE MUNICIPAL UTILITIES :
AUTHORITY, :
BOROUGH OF CARTERET, :
BOROUGH OF EAST NEWARK, :
BOROUGH OF EAST RUTHERFORD, :
BOROUGH OF ELMWOOD PARK :
BOROUGH OF FAIR LAWN, :
BOROUGH OF FANWOOD, :
BOROUGH OF FRANKLIN LAKES, :
BOROUGH OF GARWOOD, :
BOROUGH OF GLEN RIDGE, :
BOROUGH OF GLEN ROCK, :
BOROUGH OF HALEDON, :
BOROUGH OF HASBROUCK HEIGHTS, :
BOROUGH OF HAWTHORNE; :
BOROUGH OF KENILWORTH, :
BOROUGH OF LODI, :
BOROUGH OF MOUNTAINSIDE, :
BOROUGH OF NEW PROVIDENCE, :
BOROUGH OF NORTH ARLINGTON, :
BOROUGH OF NORTH CALDWELL, :
BOROUGH OF NORTH HALEDON, :
BOROUGH OF PROSPECT PARK, :
BOROUGH OF ROSELLE PARK, :
BOROUGH OF ROSELLE, :
BOROUGH OF RUTHERFORD, :
BOROUGH OF TOTOWA, :
BOROUGH OF WALLINGTON, :
BOROUGH OF WEST PATERSON, :
BOROUGH OF WOOD-RIDGE, :
CITY OF BAYONNE, :
CITY OF CLIFTON, :
CITY OF EAST ORANGE, :
CITY OF ELIZABETH, :
CITY OF GARFIELD, :
CITY OF HACKENSACK, :
CITY OF JERSEY CITY, :
CITY OF LINDEN, :
CITY OF NEWARK :
CITY OF ORANGE, :
CITY OF PASSAIC, :
CITY OF PATERSON, :
CITY OF RAHWAY, :
CITY OF SUMMIT, :
CITY OF UNION CITY, :
HOUSING AUTHORITY OF THE CITY OF :

NEWARK, :
JERSEY CITY MUNICIPAL UTILITIES :
AUTHORITY, :
JOINT MEETING OF ESSEX AND UNION :
COUNTIES, :
LINDEN ROSELLE SEWERAGE :
AUTHORITY :
PASSAIC VALLEY SEWERAGE :
COMMISSIONERS; :
PORT AUTHORITY OF NEW YORK AND :
NEW JERSEY, :
RAHWAY VALLEY SEWERAGE :
AUTHORITY, :
THE NEW JERSEY DEPARTMENT OF :
AGRICULTURE, :
THE NEW JERSEY DEPARTMENT OF :
TRANSPORTATION, :
THE STATE OF NEW JERSEY, :
TOWN OF BELLEVILLE, :
TOWN OF HARRISON, :
TOWN OF KEARNY, :
TOWN OF NUTLEY, :
TOWN OF WESTFIELD, :
TOWN OF WOODBRIDGE, :
TOWNSHIP OF BERKELEY HEIGHTS, :
TOWNSHIP OF BLOOMFIELD, :
TOWNSHIP OF CEDAR GROVE, :
TOWNSHIP OF CLARK, :
TOWNSHIP OF CRANFORD, :
TOWNSHIP OF HILLSIDE, :
TOWNSHIP OF IRVINGTON, :
TOWNSHIP OF LITTLE FALLS, :
TOWNSHIP OF LIVINGSTON, :
TOWNSHIP OF LYNDHURST, :
TOWNSHIP OF MAPLEWOOD, :
TOWNSHIP OF MILLBURN, :
TOWNSHIP OF MONTCLAIR, :
TOWNSHIP OF ORANGE, :
TOWNSHIP OF SADDLE BROOK, :
TOWNSHIP OF SCOTCH PLAINS :
TOWNSHIP OF SOUTH HACKENSACK, :
TOWNSHIP OF SOUTH ORANGE VILLAGE, :
TOWNSHIP OF SPRINGFIELD, :
TOWNSHIP OF UNION, :
TOWNSHIP OF WEST ORANGE, :
TOWNSHIP OF WINFIELD PARK, :

TOWNSHIP OF WYCKOFF, :
VILLAGE OF RIDGEWOOD, :
:
Third-Party Defendants :
:

THIRD-PARTY COMPLAINT

Defendants Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") bring this Third-Party Complaint against the herein named Third-Party Defendants, and allege as follows:

PROCEDURAL BACKGROUND

1. The Plaintiffs commenced this lawsuit on December 13, 2005, suing Defendants Occidental Chemical Corporation ("Occidental"), Tierra, Maxus, Repsol YPF, S.A., YPF, S.A., YPF Holdings, Inc. and CLH Holdings (collectively, "Defendants").[1]

2. After several revisions, the Plaintiff's Complaint seeks to recover from the Defendants past and future "cleanup and removal costs"—as well as unspecified economic damages, punitive damages, damages for alleged "unjust enrichment," penalties and a variety of other forms of relief—purportedly arising from the alleged discharges into the Passaic River of 2,3,7,8-tetrachlorodibenzo-p-dioxin (a form of dioxin referred to as "TCDD") and other unspecified "hazardous substances" from a plant that operated at 80 Lister Avenue in Newark, New Jersey ("Lister Plant") for approximately twenty years before the plant was closed in 1969.

3. The Plaintiffs further allege that, after operations at the Lister Plant ceased, hazardous substances purportedly discharged from the plant "migrated" throughout the lower 17

[1] The Plaintiffs in the original complaint were the New Jersey Department of Environmental Protection ("NJDEP") and the Administrator of the New Jersey Spill Compensation Fund (the "Administrator"). The Commissioner of NJDEP ("Commissioner") was added as named plaintiff in the Second Amended Complaint filed in 2008.

miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, "and into adjacent waters and sediments," which Plaintiffs define collectively as the "Newark Bay Complex." Plaintiffs contend that Occidental, Maxus and Tierra are "responsible for the liabilities arising from almost forty years of discharges of TCDD, DDT, and other hazardous substances" at 80 Lister Avenue.

4. In an Answer filed on October 6, 2008, Maxus and Tierra have substantially denied the Plaintiffs' allegations in the Second Amended Complaint. On the same date, moreover, Maxus and Tierra filed a Counterclaim that explained in detail that the longstanding and widespread pollution of the vast waterbody addressed in the Complaint can not plausibly be blamed on the operations of a single manufacturing facility that did not even commence operations until some 40 years **after** the Governor of New Jersey admitted in his January 1902 inaugural address that "the pollution of the Passaic River from the adjacent population" had already "destroyed the use and beauty of a noble stream and gravely injured manufacturing and property interests on its banks." *See Counterclaim of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. ("Counterclaim")*, ¶ 2 (citing *New York Times* (1/22/1902)).

5. Indeed, more than a century before the Plaintiffs singled out the Defendants in this lawsuit as scapegoats for the pollution that has long plagued the Passaic River and Newark Bay, yet another Governor acknowledged to the Senate and General Assembly that the Passaic River had already "undergone the fate of all similar streams that happen to flow through sections attractive to large populations and manufacturing industries. It has become the receptacle of the wash, the refuse, and the general sewage of the great and rapidly growing populations of the valley, until public comfort and health are threatened from the excess of pollution poured into the

stream." *Id.*, ¶ 1 (citing *Journal of the Fifty-Third Senate of the State of New Jersey Being the One Hundred and Twenty-First Session of the Legislature*, at 17 (1897)).

6. The Counterclaim further explains that significant blame for the polluted condition of the Passaic River and Newark Bay resides with the "several cities whose sewers empty into the river," that is, with essentially "every municipal corporation that now exists or may be hereafter created in the Passaic valley from Little Falls to Newark." *Id. See also id.*, ¶ 8 ("the pollution comes from each and every municipality along the river using the Passaic river as a dumping ground") (citing *Nineteenth Annual Report of the Board of Health of the State of New Jersey* (1895) at 17).

7. The longstanding and continued pollution of the Newark Bay Complex by municipalities was primarily an economic decision. As the Center for Analysis of Public Issues noted in its 1972 report entitled *Pollution Control on the Passaic River* (hereinafter "*Pollution Control*"):

> The dreadful condition of the Passaic River is due primarily to the fact that dozens of municipalities use the river as a secondary waste disposal system. Bypassing raw or undertreated sewage into the stream is much cheaper than installing tertiary treatment facilities or laying new collection lines under city streets. It is also, in the view of many municipal officials, the only way to compete successfully for new property tax ratables. In the race for added local revenues, the town ready to welcome new industrial and residential construction without worrying about the additional sewage load has a great advantage. It can appeal directly to the taxpayers' pocketbooks: 'Locate here and you won't have to worry about the rising costs of sewage collection and treatment. We have the most economical waste catch basin in New Jersey -- the Passaic River.' For several months each year, much of the Passaic is just that -- a sewage catch basin for overloaded treatment plants, inadequate collection systems and streamside factory outfalls.

8. The Counterclaim further sought to achieve realistic balance and perspective by pointing out that, whereas the State of New Jersey (the "State") —notwithstanding its ownership

of the submerged lands that, for all intents and purposes, have been used as liquid landfill for more than a century—has done nothing to remediate the problem, Maxus and Tierra have spent many millions of dollars to assess and address contamination in the Newark Bay Complex. *Counterclaim*, ¶¶ 23-26.

9. Specifically, Maxus and Tierra: (i) have implemented a Remedial Investigation and Feasibility Study ("RI/FS") under a 1994 Administrative Order On Consent ("AOC") with the United States Environmental Protection Agency ("EPA"), which addresses the lower 6 miles of the Passaic River ("1994 AOC"); (ii) are funding and are implementing, as part of the "Lower Passaic River Study Area Cooperating Parties Group" ("CPG"), a further RI/FS under two additional AOCs executed by the CPG and EPA in 2004 and 2007, respectively, which address the lower 17 miles of the Passaic River ("CPG AOCs"); and (iii) are funding and are implementing an RI/FS for the Newark Bay under a separate AOC with EPA, also executed in 2004 ("Newark Bay AOC").

10. Additionally, Maxus and Tierra proposed and negotiated a momentous agreement in 2008 with EPA, pursuant to which 200,000 cubic yards of contaminated sediment will be removed from the portion of the Passaic River directly in front of the Lister Plant, at an estimated cost of $80 million. ("2008 Removal Action AOC"). EPA has described this removal action as "the most significant removal of contaminated material from the Passaic in history." *See Counterclaim*, ¶ 25 (citing EPA Press Release dated 6/23/08).

11. The claims asserted in this Third-Party Complaint are brought against public entities pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.* ("Spill Act"), the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 *et seq.* and/or N.J.S.A. 59:9-3), the Passaic Valley Sewerage Commission Statute

(N.J.S.A. 58:14-7 and 58:14-8), the Environmental Rights Act, N.J.S.A. 2A:35A-1 *et seq.*, and common law arising from the environmental contamination of the Newark Bay Complex as a result of the actions and omissions of the Third-Party Defendants.

12. Given the multiple sources of the pollution, costs and damages that are the subject of the Plaintiffs' lawsuit, Maxus and Tierra seek to recover in this Third-Party Complaint, as in the Counterclaim, *inter alia*, all or a proportionate share of cleanup and removal costs, damages, or other loss or harm, if any, for which Maxus and Tierra may be held liable in this action.

13. In addition, Maxus and Tierra also seek to recover from the Third-Party Defendants (as from the State in the Counterclaim) an equitable share of the cleanup and removal costs that Maxus and Tierra have incurred or will incur in the future relating to the Newark Bay Complex, including the cleanup and removal costs incurred in implementing the 1994 AOC, the CPG AOCs, Newark Bay AOC, and the 2008 Removal Action AOC.

14. Further, insofar as the Plaintiffs have contended in recent correspondence that certain claims in the Counterclaim are more properly treated as third-party claims—inasmuch as some of the polluting activities are not precisely attributable to the named Plaintiffs but to other state agencies—Maxus and Tierra, to eliminate any pointless disputes over such matters, have further alleged claims against the State of New Jersey in its own name, the New Jersey Department of Transportation, and the New Jersey Department of Agriculture, for conduct that is already the subject of the Maxus' and Tierra's Counterclaim.

ADDITIONAL HISTORICAL BACKGROUND

15. As explained in more detail in the Counterclaim, Plaintiffs' Complaint essentially ignores that the Newark Bay Complex was grossly polluted long before operations even commenced at the Lister Plant.

16. As the U.S. Army Corps of Engineers noted in a June 2004 Study Area Report, "[t]he Hackensack River and Passaic River basins and Newark Bay have been a center of industrial activity since the Industrial Revolution. As a result, hundreds of chemical, paint and pigment manufacturing plants, petroleum refineries, and other large industrial facilities have been located along their banks. Effluent from these facilities have caused severe contamination of sediments in the rivers."

17. In addition to manufacturing waste, however, the longstanding pollution of the Passaic River and Newark Bay was also attributable in large measure to the conduct of our own public governments, and especially to woefully inadequate municipal sewage practices and systems.

18. Municipalities in proximity to the Newark Bay Complex designed and built their sewer systems to discharge untreated wastewater directly into the Complex.

19. The United States Supreme Court recognized in *People of the State of New York v. State of New Jersey*, 256 U.S. 296 (1921), that the drainage of sewage into the Passaic River resulted in it "becoming such a menace to the health and property of the adjacent communities that, in 1896, a commission was appointed by the Governor of New Jersey" to devise some system of sewage disposal which would afford relief. Nearly 30 years passed before the commission the Governor appointed actually implemented any such system.

20. Building an interceptor sewer along the Passaic River to divert discharges into New York Bay was seen as a possible solution to the pollution problems in the Passaic River. The construction of the Passaic Valley Sewerage Commission's ("PVSC") Main Intercepting Sewer was completed in approximately 1924. Completion of the PVSC's Main Intercepting Sewer, however, did not eliminate the ongoing pollution of the Newark Bay Complex because

the PVSC collection system was knowingly designed to overflow into the Passaic River, or its tributaries, whenever wastewater entering the system exceeded the capacity of the Main Intercepting Sewer.

21. Additionally, a number of municipal sewer systems within the Newark Bay Complex are "combined" sewers, meaning that they were specifically designed to collect wet-weather runoff (i.e., storm water), domestic sewage, and commercial and industrial wastewater in the same system, and to discharge the combination directly into the Newark Bay Complex, without treatment, whenever the combined volume of the runoff, domestic sewage and commercial/industrial wastewater entering the system exceeded its capacity.

22. The Interstate Sanitation Commission ("ISC"), a joint agency of the States of New Jersey, New York, and Connecticut, noted in its 1947 Annual Report that in the case of combined sewers, it was uneconomical and impractical to construct sewage treatment plants large enough to accommodate all the storm water as well as the sanitary sewage and, therefore, "it has been customary to permit the excess combined sewage to overflow and discharge into the stream without treatment." The ISC further noted that although such overflows were contrary to the Tri-State Compact under which the ISC was established, "the overflow of excess storm water without treatment is presently condoned." Indeed, the ISC insisted that the bypassing of treatment plants, "as a result of which raw, incompletely or inadequately treated sewage is discharged into the waters of the District must be condoned . . . ."

23. A number of municipalities chose to continue to pollute the Newark Bay Complex. In prepared testimony before a Subcommittee of the Committee on Public Works of the United States Senate and the Committee on Public Works of the House of Representatives in 1947, counsel for the PVSC noted that most of the municipalities in the PVSC had combined

sewer systems. Counsel for the PVSC further testified: "In times of storm, the discharge becomes so great that it is necessary to bypass a considerable amount of waste into the Passaic River." In opposing legislation that would provide for federal control of stream pollution, counsel for the PVSC acknowledged that a "federal agency might very well determine that this method of operation is unsatisfactory and could require that the municipalities be put to the expense of installing dual sewerage systems. The cost of this would be staggering."

24. The continued discharge of untreated wastewater into the Newark Bay Complex was a simple matter of economics. As recognized by ISC in its 1950 Annual Report, "it is not desirable to have untreated sewage enter the District Waters by bypassing a plant" and that the "undesirability of such a situation is fully recognized . . . ." Yet, according to the ISC, bypasses of treatment plants serving combined sewers in the district occurred because the cost of constructing plants large enough to provide treatment for all inputs was believed to be simply too high.

25. Similarly, the ISC concluded in a 1953 report that "we must accept" discharges of storm water polluted with domestic sewage during periods of heavy rainfall because it would be impractical to attempt to reconstruct the collection systems of municipalities to provide a separate sewer for domestic wastes in light of the investments already made in combined sewers.

26. Seymour A. Lubetkin, Chief Engineer of the PVSC between 1954 and 1978, concluded that every entity connected to a municipal sewer system serviced by the PVSC had discharged its waste stream untreated into the Passaic River at some time or another because the practice of bypassing was so frequent.

27. The PVSC's consultant, Elson T. Killam Associates, Inc., estimated that combined storm water and sewage overflows into the Passaic River exceeded seven billion

gallons per year in 1974 and 1975, with another 2 billion gallons being discharged into Newark Bay. *Report Upon Overflow Analysis to Passaic Valley Sewerage Commissioners Passaic River Overflows* (E. Killam Assoc's, Inc. 1976) at 194.

28. On or about August 15, 1978, the PVSC reported that 242 industries discharged wastewater containing heavy metals into the PVSC System, of which sixty-nine of the industries were located in Newark, and sixty-three were located in Paterson. The PVSC reported there were 109 electroplating and metal finishing facilities, twenty-seven organic chemical manufacturing facilities, ten inorganic chemical manufacturing facilities, thirty-one textile manufacturing facilities, eight plastics and synthetic material manufacturing facilities, seven pulp-paper and paperboard manufacturing facilities, six leather tanning and finishing facilities, and miscellaneous industrial and manufacturing facilities.

29. On or about August 15, 1978, the PVSC reported that in comparison to other wastewater treatment systems, "the PVSC raw wastewater is high in metals with particular emphasis on mercury, zinc, nickel, lead, and chromium."

30. On or about August 15, 1978, the PVSC reported that under typical operating conditions, wastewater entering the PVSC treatment plant from the PVSC System contained, without limitation, 67.8 lbs/day of cadmium; 1523.2 lbs/day of chromium; 999.1 lbs/day of copper; 1869.3 lbs/day of lead; 990.6 lbs/day of nickel; 5693.5 lbs/day of zinc; 1.9 lbs/day of beryllium; 25 lbs/day of arsenic; and 118.6 lbs/day of mercury. According to the PVSC, industrial sources accounted for ninety-two percent of the heavy metal loadings into the PVSC System. Of the total daily metal loadings into the PVSC System, the PVSC estimated that 5.7 lbs/day of cadmium, 25.8 lbs/day of chromium, 120.2 lbs/day of copper, 69.9 lbs/day of lead, 21.3 lbs/day of nickel, 277.4 lbs/day of zinc, and 1.1 lbs/day of mercury were contributed into

the PVSC System from domestic sources; and 1.8 lbs/day of cadmium, 7.5 lbs/day of chromium, 30.6 lbs/day of copper, 63.5 lbs/day of lead, 26.0 lbs/day of nickel, 81.7 lbs/day of zinc, 0.06 lbs/day of arsenic, and 0.49 lbs/day of mercury were contributed into the PVSC System from wet-weather runoff and groundwater infiltration.

31. In 1980, a PVSC trunk line ruptured and the State of New Jersey allowed the PVSC to dump half a billion gallons of raw sewage into the Passaic River.

32. According to a report by the Center for Analysis of Public Issues, a chronic source of pollution in the lower Passaic River is "the municipal collection systems which bypass untreated wastewater into the Passaic during and immediately after heavy rainfall." *Pollution Control*, at 24.

33. A 1986 report by NJDEP's Office of Science and Research ("1986 OSR Report") confirmed that New Jersey Publicly Owned Treatment Works ("POTWs") continued to discharge priority pollutants long after manufacturing operations at 80 Lister Avenue had ceased.

34. According to the 1986 OSR report, metals, volatile organics, base neutrals, phenols, pesticides and PCBs were detected in the effluent of the Kearny Municipal POTW.

35. According to the 1986 OSR report, metals, volatile organics, base neutrals, and pesticides were detected in the effluent of the Arlington-Lyndhurst POTW.

36. According to the 1986 OSR report, metals, volatile organics, base neutrals, and pesticides were detected in the effluent of the PVSC.

37. An October 1988 report by the ISC on combined sewer overflows concluded that they were a major contributing factor to the poor water quality in the Arthur Kill.

38. In his prepared statement before a Subcommittee of the Appropriations Committee of the United States House of Representatives on April 28, 1999, the Executive

Director of the PVSC noted that "[t]he real key to improving the water quality of the Passaic River and Newark Bay is to reduce Combined Sewer Overflows." The PVSC's Executive Director also observed that "[f]or the last 30 years New Jersey has been struggling to find a solution that is both economically viable and environmentally acceptable to the problem of CSOs." The PVSC's Executive Director stated that Newark, Jersey City, Paterson, Harrison, East Newark, Bayonne and Kearny "each has a combined sewer system which continually threatens the water quality of the Passaic River and Newark Bay during wet weather events." The PVSC's Executive Director acknowledged that "[t]he traditional solution for reducing CSOs is to separate the storm water from the sanitary sewers," but declared that "[t]his has never been and will never be a feasible solution."

39. In prepared statements before Subcommittees of the Appropriations Committee of the United States House of Representatives on or about April 12, 2000 and March 21, 2001, the Executive Director of the PVSC once again testified that the "real key to improving the water quality of the Passaic River and Newark Bay is to reduce Combined Sewer Overflows." Nonetheless, combined sewer systems continue to discharge untreated or partially treated wastewater into the Newark Bay Complex because the owners and operators of such systems have chosen to continue to pollute the Newark Bay Complex rather than spend the resources necessary to eliminate such discharges.

40. In addition to the combined sewer overflows that pollute the Newark Bay Complex, a number of municipalities chose to continue to pollute the Newark Bay Complex, rather than to construct wastewater treatment facilities.

41. In 1953, the ISC noted that one quarter of the pollution in the Interstate Sanitation District, which includes parts of the Newark Bay Complex, were discharges of untreated wastewater.

42. The Borough of Carteret discharged untreated wastewater into the Rahway River and/or the Arthur Kill until it built a wastewater treatment plant in 1953.

43. Similarly, the City of Bayonne discharged untreated wastewater directly into Newark Bay, the Kill van Kull, and Upper New York Harbor until it completed a wastewater treatment plant in 1954.

44. The south side of Newark discharged untreated wastewater directly into Newark Bay until 1965.

45. The City of Elizabeth continued to use the sewer in Bayway to discharge highly polluted, untreated, industrial wastes to the Arthur Kill until at least 1968.

46. In a report dated November 30, 1977, EPA noted that the Town of Kearny was "concerned about enforcing" the Town's industrial waste ordinance because of a "fear that the industry will move."

47. To this day, untreated wastewater continues to discharge into the Newark Bay Complex from municipal and regional sewer systems as a result of design flaws, improper maintenance, operator error and accidents.

48. Despite the fact that the Newark Bay Complex has received contamination from countless sources in the region entirely unrelated to 80 Lister Avenue, Maxus and Tierra have devoted an unparalleled level of resources to investigate the contamination within the Passaic River and Newark Bay.

49. Maxus and Tierra have incurred many millions in environmental costs in the course of: (i) implementing the 1994 AOC with the EPA, which addresses the lower 6 miles of the Passaic River; (ii) implementing the CPG AOCs, which address the lower 17 miles of the Passaic River; (iii) implementing the Newark Bay AOC, which addresses contamination in Newark Bay, including contamination that may have emanated from the Passaic River and the Bay's other main tributaries; and (iv) implementing the 2008 Removal Action AOC,.

50. Implementing these AOCs has been a monumental task, resulting in the expenditure of many millions of dollars by Maxus and Tierra, all under the direction and supervision of EPA.

51. Maxus and Tierra are not identified as potentially responsible parties on any of the above-mentioned AOCs. Rather, such AOCs were implemented on behalf of Occidental. Indeed, Maxus did not exist until 1983, and Tierra did not exist until 1986, long after the Lister Plant was shut down and more than 80 years after the State's own governors admitted that the Passaic River had already been destroyed by pollution.

THE PARTIES

Third-Party Plaintiffs

52. Third-Party Plaintiff Maxus Energy Corporation ("Maxus") is a corporation organized under the laws of the State of Delaware and is a defendant in this action.

53. Third-Party Plaintiff Tierra Solutions, Inc. ("Tierra") is a corporation organized under the laws of the State of Delaware and is a defendant in this action.

54. Hereinafter, Maxus and Tierra will be referred to collectively as "Third-Party Plaintiffs."

Third-Party Defendants

55. Third-Party Defendant Bayonne Municipal Utilities Authority is a non-profit corporation organized under the laws of the State of New Jersey with its principal place of business at 630 Avenue C, Bayonne, New Jersey.

56. Third-Party Defendant Borough of Carteret is a public body and municipality of the State of New Jersey with its principal place of business at the Carteret Municipal Building at 61 Cook Avenue, in Carteret, New Jersey.

57. Third-Party Defendant Borough of East Newark is a public body and municipality of the State of New Jersey with its principal place of business at 501 N. 3rd. Street, East Newark, New Jersey.

58. Third-Party Defendant Borough of East Rutherford is a public body and municipality of the State of New Jersey with its principal place of business at 300 Hackensack Street (East), East Rutherford, New Jersey.

59. Third-Party Defendant Borough of Elmwood Park is a public body and municipality of the State of New Jersey with its principal place of business at 182 Market Street #2, Elmwood Park, New Jersey.

60. Third-Party Defendant Borough of Fair Lawn is a public body and municipality of the State of New Jersey with its principal place of business at 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey.

61. Third-Party Defendant Borough of Fanwood is a public body and municipality of the State of New Jersey with its principal place of business at 75 N. Martine Avenue, Fanwood, New Jersey.

62. Third-Party Defendant Borough of Franklin Lakes is a public body and municipality of the State of New Jersey with its principal place of business at Franklin Lakes Municipal Building, DeKorte Drive, Franklin Lakes, New Jersey.

63. Third-Party Defendant Borough of Garwood is a public body and municipality of the State of New Jersey with its principal place of business at 402 South Avenue, Garwood, New Jersey.

64. Third-Party Defendant Borough of Glen Ridge is a public body and municipality of the State of New Jersey with its principal place of business at 825 Bloomfield Avenue, Glen Ridge, New Jersey.

65. Third-Party Defendant Borough of Glen Rock is a public body and municipality of the State of New Jersey with its principal place of business at 1 Harding Plaza, Municipal Building, Glen Rock, New Jersey.

66. Third-Party Defendant Borough of Haledon is a public body and municipality of the State of New Jersey with its principal place of business at 510 Belmont Avenue, Haledon, New Jersey.

67. Third-Party Defendant Borough of Hasbrouck Heights is a public body and municipality of the State of New Jersey with its principal place of business at 320 Boulevard, Hasbrouck Heights, New Jersey.

68. Third-Party Defendant Borough of Hawthorne is a public body and municipality of the State of New Jersey with its principal place of business at 445 Lafayette Avenue, Hawthorne, New Jersey.

69. Third-Party Defendant Borough of Kenilworth is a public body and municipality of the State of New Jersey with its principal place of business at 567 Boulevard, Kenilworth, New Jersey.

70. Third-Party Defendant Borough of Lodi is a public body and municipality of the State of New Jersey with its principal place of business at 1 Memorial Drive, Lodi, New Jersey.

71. Third-Party Defendant Borough of Mountainside is a public body and municipality of the State of New Jersey with its principal place of business at 1385 Route 22, Mountainside, New Jersey.

72. Third-Party Defendant Borough of Roselle is a public body and municipality of the State of New Jersey with its principal place of business at 210 Chestnut Street, Roselle, New Jersey.

73. Third-Party Defendant Borough of Roselle Park is a public body and municipality of the State of New Jersey with its principal place of business at 110 East Wakefield Avenue, Roselle Park, New Jersey.

74. Third-Party Defendant Borough of New Providence is a public body and municipality of the State of New Jersey with its principal place of business at 360 Elkwood Avenue, New Providence, New Jersey.

75. Third-Party Defendant Borough of North Arlington is a public body and municipality of the State of New Jersey with its principal place of business at 214 Ridge Road, North, North Arlington, New Jersey.

76. Third-Party Defendant Borough of North Caldwell is a public body and municipality of the State of New Jersey with its principal place of business at Gould Avenue, North Caldwell, New Jersey.

77. Third-Party Defendant Borough of North Haledon is a public body and municipality of the State of New Jersey with its principal place of business at 103 Overlook Avenue, North Haledon, New Jersey.

78. Third-Party Defendant Borough of Prospect Park is a public body and municipality of the State of New Jersey with its principal place of business at 106 Brown Avenue, Prospect Park, New Jersey.

79. Third-Party Defendant Borough of Rutherford is a public body and municipality of the State of New Jersey with its principal place of business at 176 Park Avenue, Rutherford, New Jersey.

80. Third-Party Defendant Borough of Totowa is a public body and municipality of the State of New Jersey with its principal place of business at 527 Totowa Road, Suite 1, Totowa, New Jersey.

81. Third-Party Defendant Borough of Wallington is a public body and municipality of the State of New Jersey with its principal place of business at 24 Union Boulevard, Wallington, New Jersey.

82. Third-Party Defendant Borough of West Paterson is a public body and municipality of the State of New Jersey with its principal place of business at 5 Brophy Lane, West Paterson, New Jersey.

83. Third-Party Defendant Borough of Wood-Ridge is a public body and municipality of the State of New Jersey with its principal place of business at 85 Humbolt Street, Wood-Ridge, New Jersey.

84. Third-Party Defendant City of Bayonne is a public body and municipality of the State of New Jersey with its principal place of business at 630 Avenue C, Bayonne, New Jersey.

85. Third-Party Defendant City of Clifton is a public body and municipality of the State of New Jersey with its principal place of business at 900 Clifton Avenue, Clifton, New Jersey.

86. Third-Party Defendant City of East Orange is a public body and municipality of the State of New Jersey with its principal place of business at 44 City Hall Plaza, New Jersey.

87. Third-Party Defendant City of Elizabeth is a public body and municipality of the State of New Jersey with its principal place of business at 50 Winfield Scott Plaza, Elizabeth, New Jersey.

88. Third-Party Defendant City of Garfield is a public body and municipality of the State of New Jersey with its principal place of business at 500 Palisade Avenue, Garfield, New Jersey.

89. Third-Party Defendant City of Hackensack is a public body and municipality of the State of New Jersey with its principal place of business at 65 Central Avenue, Hackensack, New Jersey.

90. Third-Party Defendant City of Jersey City is a public body and municipality of the State of New Jersey with its principal place of business at 402 Jersey City Avenue, Jersey City, New Jersey.

91. Third-Party Defendant City of Linden is a public body and municipality of the State of New Jersey with its principal place of business at 301 North Wood Avenue, Linden, New Jersey.

92. Third-Party Defendant City of Newark is a public body and municipality of the State of New Jersey with its principal place of business at City Hall - Room B331F, 920 Broad Street, Newark, New Jersey.

93. Third-Party Defendant City of Orange is a public body and municipality of the State of New Jersey with its principal place of business at 29 North Day Street, Orange, New Jersey.

94. Third-Party Defendant City of Passaic is a public body and municipality of the State of New Jersey with its principal place of business at 330 Passaic Street, Passaic, New Jersey.

95. Third-Party Defendant City of Paterson is a public body and municipality of the State of New Jersey with its principal place of business at 155 Market Street, Paterson, New Jersey.

96. Third-Party Defendant City of Rahway is a public body and municipality of the State of New Jersey with its principal place of business at 1 City Hall, Rahway, New Jersey.

97. Third-Party Defendant City of Summit is a public body and municipality of the State of New Jersey with its principal place of business at 512 Springfield Avenue, Summit, New Jersey.

98. Third-Party Defendant City of Union City is a public body and municipality of the State of New Jersey with its principal place of business at 3715 Palisade Avenue, Union City, New Jersey.

99. Third-Party Defendant Housing Authority of the City of Newark is an agency of the City of Newark, with its principal place of business at 500 Broad Street, Newark, New Jersey.

100. Third-Party Defendant Jersey City Municipal Utilities Authority is a non-profit corporation incorporated in the State of New Jersey with its principal place of business at 555 Route 440, Jersey City, New Jersey.

101. Third-Party Defendant Joint Meeting of Essex and Union Counties is a public body corporate and politic of the State of New Jersey with its principal place of business at 500 South First Street, Elizabeth, New Jersey.

102. Third-Party Defendant Linden Roselle Sewerage Authority is a public body of the State of New Jersey with its principal place of business at 5005 South Wood Avenue, Linden, New Jersey.

103. Third-Party Defendant New Jersey Department of Agriculture is a principal department of the Executive Branch of the State of New Jersey with offices at Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey.

104. Third-Party Defendant New Jersey Department of Transportation is a principal department of the Executive Branch of the State of New Jersey with offices at David J. Goldberg Transportation Complex, 1035 Parkway Ave., Trenton, New Jersey 08625.

105. Third-Party Defendant Passaic Valley Sewerage Commissioners is a public body politic and corporate constituting a political subdivision of the State of New Jersey with its principal place of business at 600 Wilson Avenue, Newark, New Jersey.

106. Third-Party Defendant Port Authority of New York and New Jersey is a joint agency of New York and New Jersey, with its principal place of business at 225 Park Avenue South, New York, New York.

107. Third-Party Defendant Rahway Valley Sewerage Authority is a non-profit corporation incorporated in the State of New Jersey with its principal place of business at 1050 East Hazelwood Avenue, Rahway, New Jersey.

108. Third-Party Defendant State of New Jersey has a principal place of business at State House, 125 State Street, Trenton, New Jersey.

109. Third-Party Defendant Town of Belleville is a public body and municipality of the State of New Jersey with its principal place of business at 152 Washington Avenue, Belleville, New Jersey.

110. Third-Party Defendant Town of Harrison is a public body and municipality of the State of New Jersey with its principal place of business at 318 Harrison Avenue, Harrison, New Jersey.

111. Third-Party Defendant Town of Kearny is a public body and municipality of the State of New Jersey with its principal place of business at 402 Kearny Avenue, Kearny, New Jersey.

112. Third-Party Defendant Town of Nutley is a public body and municipality of the State of New Jersey with its principal place of business at 1 Kennedy Drive, Nutley, New Jersey.

113. Third-Party Defendant Town of Westfield is a public body and municipality of the State of New Jersey with its principal place of business at 425 East Broad Street, Westfield, New Jersey.

114. Third-Party Defendant Town of Woodbridge is a public body and municipality of the State of New Jersey with its principal place of business at 1 Main Street, Woodbridge, New Jersey.

115. Third-Party Defendant Township of Berkeley Heights is a public body and municipality of the State of New Jersey with its principal place of business at 29 Park Avenue, Berkeley Heights, New Jersey.

116. Third-Party Defendant Township of Bloomfield is a public body and municipality of the State of New Jersey with its principal place of business at 1 Municipal Plaza, Bloomfield, New Jersey.

117. Third-Party Defendant Township of Cedar Grove is a public body and municipality of the State of New Jersey with its principal place of business at 525 Pompton Avenue, Cedar Grove, New Jersey.

118. Third-Party Defendant Township of Clark is a public body and municipality of the State of New Jersey with its principal place of business at 430 Westfield Avenue, Clark, New Jersey.

119. Third-Party Defendant Township of Cranford is a public body and municipality of the State of New Jersey with its principal place of business at 8 Springfield Avenue, Cranford, New Jersey.

120. Third-Party Defendant Township of Hillside is a public body and municipality of the State of New Jersey with its principal place of business at 1409 Liberty Avenue, Hillside, New Jersey.

121. Third-Party Defendant Township of Irvington is a public body and municipality of the State of New Jersey with its principal place of business at the Municipal Building, Civil Square, Irvington, New Jersey.

122. Third-Party Defendant Township of Little Falls is a public body and municipality of the State of New Jersey with its principal place of business at 49 Stevens Avenue, Little Falls, New Jersey.

123. Third-Party Defendant Township of Livingston is a public body and municipality of the State of New Jersey with its principal place of business at 357 South Livingston Avenue, Livingston, New Jersey.

124. Third-Party Defendant Township of Lyndhurst is a public body and municipality of the State of New Jersey with its principal place of business at 367 Valley Brook Avenue, Lyndhurst, New Jersey.

125. Third-Party Defendant Township of Maplewood is a public body and municipality of the State of New Jersey with its principal place of business at Township of Maplewood Municipal Building, 574 Valley Street, Maplewood, New Jersey.

126. Third-Party Defendant Township of Millburn is a public body and municipality of the State of New Jersey with its principal place of business at Millburn Town Hall, 375 Millburn Avenue, Millburn, New Jersey.

127. Third-Party Defendant Township of Montclair is a public body and municipality of the State of New Jersey with its principal place of business at 205 Claremont Avenue, Montclair, New Jersey.

128. Third-Party Defendant Township of Orange is a public body and municipality of the State of New Jersey with its principal place of business at 419 Central Avenue, Orange, New Jersey.

129. Third-Party Defendant Township of Saddle Brook is a public body and municipality of the State of New Jersey with its principal place of business at 95 Market Street, Saddle Brook, New Jersey.

130. Third-Party Defendant Township of Scotch Plains is a public body and municipality of the State of New Jersey with its principal place of business at 430 Park Avenue, Scotch Plains, New Jersey.

131. Third-Party Defendant Township of South Hackensack is a public body and municipality of the State of New Jersey with its principal place of business at 227 Phillips Avenue, South Hackensack, New Jersey.

132. Third-Party Defendant Township of South Orange Village is a public body and municipality of the State of New Jersey with its principal place of business at 101 South Orange Avenue, South Orange, New Jersey.

133. Third-Party Defendant Township of Springfield is a public body and municipality of the State of New Jersey with its principal place of business at 601 Mountain Avenue, Springfield, New Jersey.

134. Third-Party Defendant Township of Union is a public body and municipality of the State of New Jersey with its principal place of business at 1976 Morris Avenue, Union, New Jersey.

135. Third-Party Defendant Township of West Orange is a public body and municipality of the State of New Jersey with its principal place of business at Town Hall, 66 Main Street, South Orange, New Jersey.

136. Third-Party Defendant Township of Winfield Park is a public body and municipality of the State of New Jersey with its principal place of business at 12 Gulfstream Avenue, Winfield Park, New Jersey.

137. Third-Party Defendant Township of Wyckoff is a public body and municipality of the State of New Jersey with its principal place of business at 340 Franklin Avenue in Wyckoff, New Jersey.

138. Third-Party Defendant Village of Ridgewood is a public body and municipality of the State of New Jersey with its principal place of business at Village Hall, 131 North Maple Avenue, New Jersey.

139. Each of the Third-Party Defendants is a "person" within the meaning of the Spill Act, N.J.S.A. § 58:10-23.11b.o.

DEFINITIONS

140. "BOD" means biochemical oxygen demand.

141. "CERCLA" refers to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*

142. The term "Cleanup and Removal Costs" shall have the meaning given that term under the Spill Act, N.J.S.A. § 58:10-23.11b.d.

143. "COD" means chemical oxygen demand.

144. The term "Combined Sewer System" refers to any sewer system designed to collect wet-weather runoff, domestic sewage, commercial and/or industrial wastewater in the same system.

145. The term "Diamond Alkali Site" shall mean the property located at 80 Lister Avenue in Newark, New Jersey and the adjacent property at 120 Lister Avenue, Newark, New Jersey.

146. The term "Discharge" shall have the meaning given that term under the Spill Act, N.J.S.A. § 58:10-23.11b.h.

147. "EPA" refers to the United States Environmental Protection Agency.

148. The term "Hazardous Substance" shall have the meaning given that term under the Spill Act, N.J.S.A. § 58:10-23.11b.k.

149. The term "ISC" refers to the Interstate Sanitation Commission.

150. The term "the Lower Passaic River Study Area" shall have the meaning given that term by the EPA in CERCLA Docket No. 02-2004-2011 (*In the Matter of: Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site*), paragraph 10.a, namely the 17-mile stretch of the Lower Passaic River and its tributaries from Dundee Dam to Newark Bay.

151. The term "MGD" refers to million gallons per day.

152. The terms "Municipality" or "Municipalities" refers to any city of any class, any borough, village, town, township, or any other municipality other than a county or a school district, and any agency thereof, or any two or more thereof acting jointly.

153. The term "Newark Bay Complex" shall mean the lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill Van Kull, including the waters and sediments of such bodies, and any adjacent waters and the sediments of such adjacent bodies.

154. The term "Newark Bay Study Area" shall have the meaning given that term by the EPA in CERCLA Docket No. 02-2004-2010 (*In the Matter of the Diamond Alkali Superfund Site (Newark Bay Study Area)*), paragraph 2.r, namely Newark Bay and portions of the Hackensack River, Arthur Kill, and Kill Van Kull.

155. "NJDEP" refers to the New Jersey Department of Environmental Protection.

156. "NJPDES" refers to the New Jersey Pollutant Discharge Elimination System.

157. "NJDOH" refers to the New Jersey Department of Health.

158. "PAHs" means polycyclic aromatic hydrocarbons.

159. The term "Person" shall have the meaning given that term under the Spill Act, N.J.S.A. § 58:10-23.11b.o.

160. "PVSC" refers to the Passaic Valley Sewerage Commission.

161. The term "Separate Sewer System" refers to any sewer system designed to collect only domestic sewage and commercial and industrial wastewater in the same system, but that is not designed to collect wet-weather runoff.

162. "Spill Act" refers to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*

163. The term "Storm Water System" refers to any sewer system designed to collect only wet-weather runoff.

164. The term Wet-Weather Runoff" or "Storm Water" refers to water runoff from land that is generated by natural non-anthropogenic weather phenomena, including, without limitation, rain, ice, snow, dew, and fog.

FACTUAL ALLEGATIONS

WASTEWATER DISPOSAL ENTITIES

Borough of Carteret

165. On or about April 11, 1907, the Borough of Roosevelt was incorporated by an act of the State Legislature, and in a general election held on or about November 27, 1922, changed its name to the Borough of Carteret ("Carteret").

166. Carteret owned and/or operated a sanitary sewer system from which Carteret discharged wastewaters into the Arthur Kill.

167. The Arthur Kill is a tidal strait separating the western side of Staten Island from mainland New Jersey. The Arthur Kill links Raritan Bay with Newark Bay. Upon information and belief, sediment and water flow from the Arthur Kill into Newark Bay.

168. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or

operated by Carteret for the collection, transport, treatment, and Discharge of industrial, commercial, storm, and/or sanitary wastewaters is hereinafter referred to as the "Carteret System."

169. As of 1981, the EPA identified industrial wastes discharging into the Carteret System, including, but not limited to, chemicals, metals, and petroleum products. Upon information and belief, the wastewater discharging into the Carteret System has consisted of and continues to consist of sewage, commercial, and/or industrial wastewater containing Hazardous Substances and/or other compounds.

170. Wastewater sewers were first installed in Carteret in the early 1900s. The sewers were located in the central city and discharged directly into Newark Bay without any treatment. Development of the sewer system continued on an ad-hoc basis without any systemic central planning.

171. Before World War II, many of the sewer lines constructed in Carteret were Combined Sewer Systems. After World War II, most of the sewer lines constructed in Carteret were Separate Sewer Systems, which conveyed storm water in separate Storm Water Systems. In 1967, Carteret reported that the Combined Sewer Systems accounted for a "low percentage of the Borough's system," but "represent[ed] a source of pollution to the Arthur Kill and Rahway River."

172. On or about August 1, 1946, the ISC ordered Carteret to "cease and desist, on or before the 31st day of December, 1947, from causing or permitting the discharge of sewage or other polluting matters to flow into, or be placed into, or permitted to fall or move into the waters of the Interstate Sanitation District." The Interstate Sanitation Commission also ordered Carteret to initiate construction of a treatment plant by July 1947.

173. The Carteret treatment plant was completed in 1953. The treatment processes employed by the Carteret treatment plant included grit removal, primary sedimentation, and chlorine disinfection. Effluent from the Carteret treatment plant discharged into the Arthur Kill. Until the treatment plant was completed, wastewater collected by the Carteret System discharged directly into the Rahway River and/or Arthur Kill without treatment.

174. Upon information and belief, secondary treatment was never employed at the Carteret treatment plant.

175. Throughout the 1960s, the Carteret treatment plant was plagued with defects, malfunctions, and problems treating the wastewater effluent.

176. On or about January 22, 1963, the New Jersey Department of Health ("NJDOH") ordered Carteret to "cease the discharge of inadequately and insufficiently treated sewage into the waters of the Arthur Kill." Carteret proved unable to comply with the order through the 1960s.

177. In 1963, citizens complained that wastewater from the Carteret System frequently overflowed into area streets and yards, and into the Rahway River. Samples of the overflow contained fecal matter and contraceptive wastes.

178. On or about August 19, 1966, Summary Judgment was entered in favor of the NJDOH against Carteret. The court ordered Carteret to hire a consulting engineer, study its sewage and treatment facilities, and initiate reconstruction of Carteret's treatment plant.

179. In approximately 1967, Carteret reported that studies indicated that the Carteret System accounted for approximately two to three percent "of the total pollution load placed on the entire Arthur Kill. This include[d] industrial loading as well as both New York and New Jersey contributions."

180. On or about March 15, 1973, analysis of samples of effluent discharging from the terminus outfall of the Carteret treatment plant indicated the presence of elevated concentrations of fecal coliforms and elevated levels of biological and chemical oxygen demand.

181. On or about February 10, 1981, the EPA reported that the Carteret System has "significant" infiltration and inflow problems; that "heavy influx of industrial wastes makes adequate disinfection impossible to attain;" that "no industrial sampling program has been implemented;" that the "existing facility cannot meet even primary effluent limitations;" that "chemical wastes hamper treatment capabilities;" that the "average daily flows exceed the facility's design capacity;" and that the "collection system has numerous dry weather bypasses."

182. As of 1984, the Carteret System included at least six overflow structures, known as the Bernard Street Overflow, the Hayward Avenue Overflow, the Dorothy Street Overflow, the Roosevelt Avenue Overflow, the Noes Creek Overflow, and the Sewage Treatment Plant Overflow, and which collectively discharged untreated domestic and industrial wastewater directly into the Rahway River and/or the Arthur Kill when flow exceeded the capacity of the Carteret System. Upon information and belief, during periods of wet weather or high tide events, the discharge of untreated or partially treated wastewater occurred throughout the Carteret System.

183. In 1984, malfunctions in the regulator, tide gate, and pumping station at the Dorothy Street Overflow resulted in the continuous discharge of untreated wastewater through a forty-eight inch pipe into the Rahway River. The discharge was unrelated to wet-weather events.

184. Sometime after the enactment of the CWA, Carteret received authorization to discharge wastewater into the Arthur Kill pursuant to NPDES Permit Number NJ0024571.

185. The Carteret treatment plant was ultimately decommissioned and converted into a pumping station. The Carteret System now discharges its wastewater into the Middlesex County Utilities Authority sewer system.

186. Upon information and belief, Carteret Discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Carteret System into the Rahway River, the Arthur Kill, and/or their tributaries without authorization under a federally authorized permit.

187. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, Carteret Discharged wastewater containing Hazardous Substances and/or other compounds from the Carteret System into the Rahway River, the Arthur Kill, and/or their tributaries.

188. Carteret is responsible, as the owner and operator of the Carteret System, for any Hazardous Substances discharged from the Carteret System into the Newark Bay Complex.

189. Carteret is a "discharger" and/or person "in any way responsible" for the Hazardous Substances that were discharged from the Carteret System and released into the Newark Bay Complex.

City of Bayonne

190. Bayonne was originally formed as a township on April 1, 1861. On or about March 10, 1869, the City of Bayonne ("Bayonne") was incorporated by an act of the State Legislature.

191. Bayonne installed sewers at least as early as the 1880's. In 1888, the New Jersey Court of Chancery issued a permanent injunction against emptying filth and sewage on the lands of a property owner affected by a sewer constructed by Bayonne that terminated at Fifth Street and Cottage Place and discharged into a tidal ditch running into Newark Bay. Bayonne added a

brick extension to that sewer by 1891 that ran through Cottage Street and Ingham Avenue and discharged into the Kill Van Kull.

192. Bayonne constructed a Combined Sewer System that was designed to convey untreated storm, industrial, commercial and sanitary wastewater flows into Newark Bay, the Kill Van Kull and Upper New York Harbor. There are approximately 78 miles of sewers located in Bayonne, 95% of which are combined sewers, with the balance being storm sewers. Bayonne's sewers are constructed out of vitrified clay, brick, reinforced concrete and ductile or cast iron.

193. The Combined Sewer System in Bayonne was constructed in phases. Originally, numerous independent sewer systems in Bayonne discharged directly into local receiving waters. An interceptor system was later constructed to collect these discharges and transport them to a treatment plant. The hydraulic capacity of the interceptor system and treatment plant were designed for dry weather flows and for periods of light to moderate rainfalls. Flow regulators were installed for higher discharges, as were storm relief lines. During wet weather periods, the flow regulators and storm relief lines are designed to bypass excess flow, which is not treated, into local receiving waterways.

194. Bayonne employs three major interceptor systems which service the southern, eastern, and western sections of the city.

195. Bayonne has a relief sewer system with outfalls to the Kill Van Kull and Newark Bay. Bayonne's relief sewer system is designed to relieve the main Combined Sewer System when wastewater flow reaches a certain level by discharging untreated wastewater to the Kill Van Kull, Newark Bay and Upper New York Bay. The Bayonne Combined Sewer System utilizes five pumping stations, two of which serve the relief sewer system.

196. In July of 1954, Bayonne began operating a primary wastewater treatment plant. The treatment processes employed by the Bayonne treatment plant included grit removal, primary sedimentation, and chlorination. Effluent from the Bayonne treatment plant discharged into the Kill Van Kull. Until the treatment plant was completed in 1954, wastewater collected by Bayonne discharged directly into Newark Bay, the Kill Van Kull, and Upper New York Harbor without treatment.

197. Bayonne joined the PVSC in 1986. Bayonne converted its primary wastewater treatment plant into a pumping station known as the Oak Street Pumping Station and in 1990 began to divert its wastewater flow to the PVSC for treatment. Bayonne's wastewaters are pumped from the Oak Street Pumping Station through a common force main to Jersey City, where they combine with Jersey City's wastewater flow and are transported across Newark Bay to the PVSC's Newark treatment plant.

198. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, former treatment plant or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by Bayonne for the collection, transport, treatment, and Discharge of industrial, commercial, storm and/or sanitary wastewaters from Bayonne is hereinafter referred to as the "Bayonne System."

199. The Bayonne System has thirty-two Combined Sewer System overflow discharge points, twenty-eight of which discharge to Newark Bay or the Kill Van Kull.

200. Bayonne System outfalls which discharge to the Kill Van Kull include: DSN#002 - 5th Street Pump Station; DSN#003 - 1st Street Pump Station; DSN#004 - Lord Avenue, Regulator No. 1; DSN#005 - East 15th Street, Regulator No. 2; DSN#008 - East 5th Street

Regulator No. 5; DSN#009 - Broadway and East 1st Street; DSN#010 - Avenue C and East 1st Street; and DSN#024 - Humphrey's Avenue.

201. Bayonne System outfalls which discharge to Newark Bay include: DSN#011 - West 3rd Street, Regulator No. 8; DSN#012 - West 5th Street, Regulator No. 9; DSN#013 - Edwards Court, Regulator No. 10; DSN#014 - West 16th Street, Regulator No. 11; DSN#015 - West 22nd Street, Regulator No. 12; DSN#016 - West 24th Street, Regulator No. 13; DSN#017 - West 25th Street, Regulator No. 14; DSN#018 - West 30th Street, Regulator No. 15; DSN#019 - Lincoln Parkway, Regulator No. 16; DSN#020 - West 59th Street, Regulator No. 17; DSN#022 - Zabriskie Avenue; DSN#025 - West 5th Street; DSN#026 - Veteran's Park; DSN#027 - West 30th Street; DSN#028 - Lincoln Parkway; DSN#029 - West 37th Street; DSN#030 - West 54th Street; DSN#034 - Bayview Court; and DSN#035 - Schuyler Place.

202. Bayonne owns at least three Storm Water System outfalls. Bayonne storm water outfall #23, located at the Newman Avenue Extension at West 1st Street, discharges to the Kill Van Kull. Bayonne storm water outfall #31, located at West 10th Street, discharges to Newark Bay. Bayonne storm water outfall #32, located at Benmore Terrace, discharges to Newark Bay.

203. On information and belief, Bayonne owns and once operated the Bayonne System. On information and belief, the Bayonne Municipal Utilities Authority has assumed operational responsibility for all or parts of the Bayonne System through an Interlocal Services Agreement pursuant to which the Bayonne Municipal Utilities Authority leases Bayonne's water and sewer systems.

204. The Annual Report of the ISC for the year 1937 notes that Bayonne discharged 3,000,000 gallons per day of untreated wastewater to the Kill Van Kull and Newark Bay.

205. By letter dated February 26, 1937, the Bayonne City Engineer informed the ISC that Bayonne discharged approximately eleven million gallons of dry weather flow of sanitary sewage per day through some twenty-five outlets into Newark Bay, the Kill Van Kull and New York Bay. The Bayonne City Engineer estimated that wet weather flow from Bayonne to these water bodies amounted to thirty-five million gallons per day. The Bayonne City Engineer informed the ISC that Bayonne "has refrained from developing any independent scheme for treatment or disposal of its sanitary effluent."

206. A 1946 report by Clyde Potts for Bayonne noted that sewage discharged to the waters adjacent to Bayonne must be treated to meet the requirements of the NJDOH and the ISC. Nonetheless, Bayonne did not begin treating wastewaters discharged from the Bayonne System until 1954.

207. On November 10, 1948, ISC inspectors observed wastewater discharging from the Bayonne System outfall located at the foot of West 58th Street, as well as contraceptives, fecal matter, toilet paper and sludge deposits in the area near the outfall.

208. On November 10, 1948, ISC inspectors observed storm water with traces of oil discharging from the Bayonne System outfall located between West 31st and West 32nd Street.

209. On November 10, 1948, ISC inspectors observed a turbid gray discharge from the Bayonne System into Newark Bay from an outfall located at West 30th Street, as well as contraceptives and particles of paper in the area near the outfall.

210. On November 10, 1948, ISC inspectors observed wastewater discharging from the Bayonne System outfall located at the foot of West 25th Street, as well as contraceptives, fecal matter, and toilet paper discharging from the outfall.

211. On November 10, 1948, ISC inspectors observed a musty odor of sewage in the Bayonne System outfall located at the foot of West 22nd Street and that the shore in this area was covered with contraceptives, fecal matter, and toilet paper.

212. On November 10, 1948, ISC inspectors observed dried oil and tar in the vicinity of the Bayonne System outfall located at the foot of West 23rd Street.

213. On November 10, 1948, ISC inspectors observed wastewater discharging from the Bayonne System outfall located at the foot of West 20th and West 21st Street, as well as paper particles and sludge deposits in the shore area in the vicinity of the outfall.

214. On November 10, 1948, ISC inspectors observed a turbid gray discoloration with contraceptives, fecal matter and toilet paper in the area of the Bayonne System outfall located at West 16th Street.

215. On November 12, 1948, ISC inspectors observed wastewater discharging from the Bayonne System into Newark Bay from an outfall located at the foot of West 24th Street.

216. On November 12, 1948, ISC inspectors observed wastewater discharging from the Bayonne System into Newark Bay from an outfall located at West 5th Street.

217. On November 12, 1948, ISC inspectors observed a discharge of contraceptives, fecal matter and paper from the Bayonne System outfall located at West 3rd Street, and noted that the area was covered with oil and sludge deposits.

218. On November 12, 1948, ISC inspectors observed a discharge with the appearance of industrial wastes discharging from the Bayonne System outfall located at West 1st Street.

219. On November 12, 1948, ISC inspectors observed wastewater discharging from Bayonne System into the Kill Van Kull from an outfall located at the foot of Avenue C.

220. On November 12, 1948, ISC inspectors observed wastewater discharging from broken pipes on the Bayonne System at the foot of Broadway, running over the shore and into the Kill Van Kull. Inspectors observed a heavy wastewater flow with contraceptives, fecal matter, paper, and rags in clear view in the vicinity of the outfall.

221. On November 12, 1948, ISC inspectors observed a heavy flow of wastewater containing fecal matter, contraceptives, and paper discharging from the Bayonne System outfall located at the foot of Ingham Avenue.

222. On November 15, 1948, ISC inspectors observed wastewater and oil wastes discharging into the Kill Van Kull from the Bayonne System outfall located in the vicinity of the Tidewater Oil Company property. Inspectors observed fecal materials, particles of paper, and contraceptives in the area of the outfall.

223. On November 15, 1948, ISC inspectors observed discharges of wastewater from the Bayonne System outfall located at East 30th and 31st Street, as well as fecal matter on the shoreline in the area of the outfall.

224. On November 15, 1948, ISC inspectors observed sludge and fecal matter in the vicinity of the Bayonne System outfall located at the foot of West 34th Street.

225. On November 15, 1948, ISC inspectors observed wastewater discharging from the Bayonne System outfall located at the foot of East 49th Street, as well as sludge deposits and contraceptives in the area of the outfall.

226. A March 2, 1949 ISC Engineering Report on the Pollution of the Waters of the Interstate Sanitation District by Bayonne ("1949 ISC Engineering Report") states that the "city has twenty (20) recorded outfalls discharging raw sewage into Class 'B' waters of the Interstate

Sanitation District in violation of the law as indicated in the tri-state compact" between New Jersey, New York, and Connecticut.

227. The 1949 ISC Engineering Report regarding Bayonne's wastewater discharges states that "[i]t is considered worthy of general recognition that the discharge of approximately 9,000,000 gallons of raw sewage a day into the adjacent tidal waters is hazardous from a public heath standpoint and is in unquestionable violation of the tri-state compact" between New Jersey, New York and Connecticut.

228. The 1949 ISC Engineering Report estimated that Bayonne discharged 3.3 million gallons per day of sewage into the Kill Van Kull and 3.2 million gallons per day of raw sewage into Newark Bay. This untreated sewage was comprised of domestic and industrial wastes from Bayonne. The 1949 ISC Engineering Report noted that there was an appreciable contribution of industrial wastes from Bayonne to the adjacent tidal waters.

229. On or about July 7, 1949, the ISC issued an order finding that Bayonne had been discharging sewage or other polluting matter into the waters of the Interstate Sanitation District in violation of the law. The ISC ordered Bayonne to "cease and desist from causing or permitting the discharge of sewage or other polluting matters to flow into, or be placed into, or permitted to fall or move into the waters of the Interstate Sanitation District" before September 1, 1952. The ISC also ordered Bayonne to complete construction of a wastewater treatment works before September 1, 1952 "so that the discharge of sewage or other polluting matters from the City of Bayonne into the waters of the Interstate Sanitation District in violation of the provisions of the Tri-State Compact shall have been discontinued."

230. Bayonne opposed the construction of a primary treatment plant. At a Bayonne City Commission meeting regarding the issuance of bonds to finance the costs of engineering

services related to the construction of a treatment plant, the then city attorney for Bayonne stated that the law department made every effort to delay action on the ISC order without success. The then Commissioner of Parks for Bayonne stated that when he was director of public works for Bayonne, he received a similar order from the ISC but paid no attention to it.

231. In 1950, the ISC filed suit against Bayonne seeking to require Bayonne to cease discharging untreated wastewater into the waters that comprise the Interstate Sanitation District, which include Newark Bay and the Kill Van Kull.

232. In an order dated December 12, 1951, New Jersey Superior Court Judge Thomas Stanton found that Bayonne, its officers, agents, servants and inhabitants had been causing and permitting sewage and other polluting matter from within Bayonne to enter into the waters of the Interstate Sanitation District in a raw and untreated condition in violation of the Tri-State Compact entered into between New York, New Jersey, and Connecticut. Judge Stanton ruled that Bayonne must begin building a wastewater treatment plant by 1952 and have it completed by 1954.

233. Although the Bayonne wastewater treatment plant went into service in July of 1954, it did not eliminate the discharge of untreated wastewater from the Bayonne System into the Kill Van Kull or Newark Bay.

234. On November 21, 1956, the NJDOH informed the ISC that the Bayonne West Side Pumping Station would be bypassed, pending repairs. Approximately one to two million gallons of untreated wastewater were expected to be bypassed daily until the repairs were completed.

235. A February 5, 1957 inspection of the Bayonne wastewater treatment plant revealed that the wastewater treatment plant was bypassed in November and December of 1957

while repairs were being made, resulting in the discharge of an estimated twenty-four million gallons of untreated wastewater into Newark Bay. The 1957 inspection also revealed that certain outfall violations reported in 1954 on the Bayonne System still had not been corrected.

236. By letter dated April 4, 1957, the ISC informed Bayonne that an inspection on February 7, 1957 revealed that three outfalls were discharging raw sewage into Newark Bay in violation of the Tri-State Compact, namely the 24-inch sewer at West 5th Street; the 18-inch sewer at the foot of 10th Street; and the 10-inch sewer at the foot of 20th Street.

237. On November 19, 1957, the operator of the Bayonne wastewater treatment plant informed the ISC that the treatment plant would be bypassed and that raw sewage would be discharged into the Kill Van Kull as a result of problems in the grit chamber at the treatment plant.

238. According to an ISC memorandum dated December 6, 1957, the Bayonne wastewater treatment plant was to be bypassed for approximately one week as a result of problems stemming from the accumulation of sand in the grit chamber at the Bayonne wastewater treatment plant.

239. According to an ISC memorandum dated July 16, 1959, the regulator at 19th Street and Avenue F on the Bayonne System had been closed since the Bayonne wastewater treatment plant was put into operation, thereby permitting raw sewage to be discharged into ISC District waters.

240. According to an ISC memorandum dated July 23, 1959, the regulator at 19th Street and Avenue F on the Bayonne System was bypassing flow from part of Bayonne to prevent oil from entering into the interceptor sewer and the Bayonne wastewater treatment plant.

241. According to an ISC memorandum dated September 17, 1959, the Bayonne wastewater treatment plant was bypassing raw sewage as a result of a breakdown of the bar screens at the Bayonne plant.

242. According to an ISC memorandum dated November 9, 1959, the Bayonne wastewater treatment plant bypassed approximately 25% of the flow into the plant and discharged it directly into Newark Bay as a result of repair work on the 84-inch influent line at the West Side Pumping Station on the Bayonne System.

243. According to an ISC memorandum dated December 11, 1959, the Bayonne wastewater treatment plant would be bypassing approximately 25% of the flow into the plant in order to address problems with the bar screens in the West Side Pumping Station on the Bayonne System.

244. On or about November 14, 1962, there was an explosion at the Bayonne wastewater treatment plant, resulting in all wastewater being diverted into the Kill Van Kull. The flow that was diverted from the Bayonne wastewater treatment plant to the Kill Van Kull was estimated to be approximately eight to ten MGD.

245. According to a memorandum from the NJDOH, Bayonne bypassed its treatment plant on March 5, 1965 at a rate of two MGD as a result of heavy rains.

246. According to a memorandum from the NJDOH, Bayonne bypassed its treatment plant on September 22, 1966 because bearings had failed in the grit collector, resulting in the discharge of untreated wastewater at a rate of two MGD.

247. An October 28, 1969 inspection report by the NJDOH noted that two settling tanks at the Bayonne wastewater treatment plant were out of service, sludge was being dumped

on plant grounds, and there was excessive color and odor in the final effluent from the Bayonne System.

248. A 1979 study for the Hudson County Utilities Authority by Malcolm Pirnie used modeling to estimate annual loads and overflow volumes that were discharged from all the Combined Sewer System outfalls in Bayonne during the period of 1963 through 1974. The Malcolm Pirnie study estimated that average overflow volumes from Bayonne System outfalls were 51.1 million cubic feet and that annual suspended solids and BOD5 loads were 7.1 million pounds and 912,000 pounds respectively. The Malcolm Pirnie study also noted that the concentrations of lead, oil and grease in the influent stream to the Bayonne treatment plant were high.

249. On November 28, 1967, an inspection by the NJDOH revealed that dry weather flow of a polluting nature was being discharged from the Bayonne System to the Kill Van Kull through a 60-inch brick sewer on Ingham Avenue. The Bayonne City Engineer stated that two industries, E. Norton & Son and the Pharma Chemical Company, were contributing to flow in this storm relief sewer.

250. By letter dated May 24, 1968, the NJDOH notified Bayonne that its wastewater treatment plant had deficiencies, including insufficient overall reduction in BOD, excessive BOD in final effluent, insufficient chlorination, malfunctioning treatment units, and improper storage of sludge.

251. On April 21, 1970, the NJDOH issued an order finding that Norton & Son was discharging industrial waste and other polluting matter into the Ingham Avenue storm relief sewer on the Bayonne System and thence into the Kill Van Kull without approval of the State Department of Health.

252. On or about October 23, 1970, the ISC advised NJDEP that pollution was being discharged into the Kill Van Kull from an outfall on the Bayonne System located at Ingham Avenue.

253. By letter dated February 8, 1971, the NJDEP notified Bayonne that a recent inspection revealed that a dry weather flow of a polluting nature was being discharged from the Bayonne System Ingham Avenue sewer. The NJDEP further noted that Bayonne's discharge of polluting wastewater into the waters of the State was in violation of applicable state statutes. By letter dated February 25, 1971, Bayonne advised the NJDEP that the source of the pollution at the Ingham Avenue outfall was Norton Company and that Norton Company had submitted plans for Bayonne to accept its sewage and process water.

254. On or about May 16, 1972, an NJDEP inspector observed that sludge in a holding lagoon at the Bayonne System treatment plant was causing heavy odors and leaching to the Kill Van Kull.

255. Bayonne received its first NPDES permit in 1978.

256. According to a March 1981 report by Malcolm Pirnie, Inc. ("1981 Malcolm Pirnie Report") for the Hudson County Utilities Authority, regulator mechanisms and tide gates on the Bayonne System were not operating as originally designed. The 1981 Malcolm Pirnie Report noted that the majority of the tide gates on the Bayonne System were found to be locked in a semi-open position, allowing untreated wastewaters to be discharged to local waterways during low tide conditions. Of the 17 regulators on the Bayonne System with tide gates, the 1981 Malcolm Pirnie Report observed that thirteen of them were leaking. The 1981 Malcolm Pirnie Report noted that only a portion of the 20 million gallons of water discharged by wastewater treatment plants within the boundary of Bayonne met present standards for pollution control.

257. By letter dated August 12, 1985, the NJDEP invoked the sewer extension ban regulations effectively prohibiting construction in Bayonne until such time as NJDEP was satisfied that substantial improvements in effluent quality from the Bayonne System would occur.

258. In March 1986, NJDEP issued a new NJPDES permit to Bayonne.

259. In March 1986, the United States sued Bayonne for, *inter alia*, discharging untreated or under-treated sewage and wastewater into the Kill Van Kull in violation of the Clean Water Act. Bayonne did not contest that it had violated the effluent limitations under its 1986 permit over 83 times between March 1986 and April 1987. Bayonne also did not contest over 29 violations of the effluent limitations in its 1978 NPDES permit occurring between 1978 and 1981. Judge Ackerman of the United States District Court for the District of New Jersey ruled that Bayonne was liable under the CWA for these violations in an opinion dated November 23, 1987. Judge Ackerman also found Bayonne liable under the CWA for an additional 121 violations resulting from discharges in excess of Bayonne's NPDES permit that occurred between July 1, 1983 and March 1986. In total, Judge Ackerman found Bayonne liable for no less than 233 violations of the Clean Water Act occurring between 1981 and 1986 for exceeding federal limitations on effluent in wastewater that Bayonne discharged to the Kill Van Kull.

260. In a September 1987 administrative consent order between NJDEP and Bayonne, NJDEP found that Bayonne's wastewater treatment plant was unable to meet the secondary treatment requirement under the Clean Water Act. As a result, Bayonne agreed to abandon the Bayonne wastewater treatment plant and to divert the flow from the Bayonne System to the PVSC secondary treatment facility in Newark.

261. Although Bayonne abandoned its wastewater treatment plant and diverted flow to the PVSC treatment facility in Newark, this did not eliminate the discharge of untreated wastewater from the Bayonne System into the Kill Van Kull or Newark Bay. Indeed, Bayonne's 1990 Operation and Maintenance Plan Manual for the Bayonne/PVSC Sewerage Connection states that "excess combined sewage caused by storm flows will continue to be discharged through existing outfalls." Such combined sewer overflows discharge untreated wastewater from the Bayonne System into the Newark Bay Complex.

262. In October of 1997, Bayonne created the Bayonne Municipal Utilities Authority. The Bayonne Municipal Utilities Authority leased Bayonne's water and sewer systems for a fee of $23.5 million and the right to operate the Bayonne System. The Bayonne Municipal Utilities Authority contracted with Bayonne to provide sewer services using Bayonne city employees.

263. In 1997, the Bayonne Municipal Utilities Authority commissioned an inspection of the Bayonne System. This inspection revealed that large sections of the sewers in the Bayonne System were cracked and the internal walls had significant deterioration. The inspection revealed that the sewers in the Bayonne System were experiencing heavy infiltration and inflow of groundwater. Out of the 3,600 linear feet of sewers inspected on the Bayonne System, 34% were found to be in imminent danger of collapse. Preliminary inspections of other sections of brick sewers in the Bayonne System indicated that the deterioration was fairly consistent throughout the whole system. Concrete and vitrified clay sewers in the Bayonne System were also found to be eroding due to abrasion and the influence of sewer gas attacks, and the clay sewers were cracked in some cases.

264. By letter dated June 24, 1998, Bayonne reported a dry weather overflow to the NJDEP that occurred on June 22, 1998. This dry weather overflow discharged untreated

wastewater from the Bayonne System at the West 22nd Street Regulator Chamber into Newark Bay at a rate of between 100 and 125 gallons per minute. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

265. On June 13, 2000, the Bayonne Municipal Utilities Authority discovered a dry weather overflow of untreated wastewater into Newark Bay from the Bayonne System at the foot of North Street in an amount estimated to be more than 9,000 gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

266. On November 20, 2000, the Bayonne Municipal Utilities Authority discovered an 8-inch sanitary line connected to a storm relief sewer that was causing an intermittent dry weather overflow of untreated wastewater at the foot of West 545h Street. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

267. By letter dated February 4, 2001, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that was discovered on January 30, 2002. This dry weather overflow discharged untreated wastewater from the Bayonne System at 30th Street to Newark Bay at a rate of 2,400 gallons per day ("GPD"). The dry weather overflow was caused by a service connection from the Bayonne High School into the Bayonne System's relief sewer system and was estimated to have first begun when the relief sewer was constructed. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

268. On or about April 2, 2001, the Bayonne Municipal Utilities Authority investigated a report of a pink substance flowing out of the Ingham Avenue outfall on the Bayonne System. The investigation revealed that a shutter was jammed in the closed position, causing a dry

weather overflow of untreated wastewater to the Kill Van Kull. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

269. By letter dated June 1, 2001, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on May 28, 2001. This dry weather overflow discharged untreated wastewater from the Bayonne System to the Kill Van Kull in an amount estimated to be approximately 4 million gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

270. By letter dated November 14, 2002, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on November 10, 2002. On information and belief, this dry weather overflow discharged untreated wastewater from the Bayonne System to the Kill Van Kull in an amount estimated to be approximately 1.39 million gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

271. By letter dated September 5, 2003, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on September 4, 2003. This dry weather overflow discharged untreated wastewater from the Bayonne System to Newark Bay in an amount estimated to be approximately 1.2 million gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

272. By letter dated August 22, 2003, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on August 14, 2003 from the West 22nd Street Pumping Station and the North Street Pumping Station. These dry weather overflows discharged untreated wastewater from the Bayonne System to Newark Bay. It was estimated that between 18,000 and 27,000 gallons of untreated wastewater was discharged to

Newark Bay from the West 22nd Street Pumping Station, and approximately 5,000 gallons were discharged to Newark Bay from the North Street Pumping Station. These dry weather discharges from the Bayonne System were not in compliance with Bayonne's NJPDES permit.

273. By letter dated September 23, 2003, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP from a previously unknown Combined Sewer System outfall on the Bayonne System located at the intersection of West 1st Street and Trask Avenue. This dry weather overflow was from an 18-inch diameter pipe that discharged untreated wastewater from the Bayonne System to the Kill Van Kull. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

274. By letter dated September 24, 2003, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that resulted from the connection of a park restroom to a storm sewer on the Bayonne system. This dry weather overflow discharged untreated wastewater from the Bayonne System to Newark Bay in an amount estimated to be approximately 300 GPD during the summertime, for a period of over ten years when the restrooms were first constructed. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

275. By letter dated February 26, 2004, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on February 23, 2004. This dry weather overflow discharged untreated wastewater from the Bayonne System to the Upper New York Harbor near the Kill Van Kull in an amount estimated to be approximately 212,000 gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

276. By letter dated May 26, 2004, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on May 22, 2004. This dry weather overflow discharged untreated wastewater from the Bayonne System to Newark Bay in an amount estimated to be approximately 500,000 gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

277. On June 30, 2004, NJDEP issued a Notice of Violation to the Bayonne Municipal Utilities Authority for discharging pollutants to the waters of the State without a valid NJPDES permit in connection with dry weather overflows from the Bayonne System that occurred as a result of pump failures at the 22nd Street pump station and equipment failures at the Oak Street pump station.

278. By letter dated May 19, 2005, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on May 16, 2005. This dry weather overflow discharged untreated wastewater from the Bayonne System to Newark Bay in an amount estimated to be between 2,700 gallons and 119,700 gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

279. By letter dated June 9, 2005, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on June 3 and June 4, 2005. This dry weather overflow discharged untreated wastewater from the Bayonne System to the Upper New York Harbor near the Kill Van Kull in an amount estimated to be approximately 8.95 million gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

280. By letter dated June 20, 2005, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred from June 11, 2005 until June 13, 2005.

This dry weather overflow discharged untreated wastewater from the Bayonne System to the Kill Van Kull in an amount estimated to be approximately 11 million gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

281. By letter dated August 26, 2005, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that occurred on August 21 and August 22, 2005. This dry weather overflow discharged untreated wastewater from the Bayonne System to Newark Bay in an amount estimated to be approximately 540,000 gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

282. By letter dated September 23, 2005, the Bayonne Municipal Utilities Authority reported a dry weather overflow to the NJDEP that was discovered on September 18, 2005. This dry weather overflow discharged untreated wastewater from the Bayonne System to the Kill Van Kull in an amount estimated to be approximately 2.5 million gallons. This dry weather discharge from the Bayonne System was not in compliance with Bayonne's NJPDES permit.

283. The Bayonne System discharges wastewaters into the Kill Van Kull and/or Newark Bay.

284. The Bayonne System receives commercial, industrial, storm and sanitary wastewaters from throughout Bayonne.

285. The Combined Sewer System overflow and Storm Water System outfalls of the Bayonne System discharge untreated wastewater directly into the Newark Bay Complex during malfunctions, when flow exceeds the capacity of the Newark System, or otherwise. During periods of wet weather or high tide events, the Bayonne System discharges untreated or partially treated wastewater into the Newark Bay Complex.

286. The Bayonne System cannot handle all wet weather flows. The aggregate interceptor flow capacity of the interceptors on the Bayonne system are in excess of 90 million gallons per day ("MGD"), but Bayonne is limited to transporting an average daily flow of 11 MGD and a peak flow of 17.6 MGD to the PVSC treatment plant. Wastewater flows which enter the Bayonne System interceptor and exceed the limits that may be transported to the PVSC treatment plant are currently discharged to the Kill Van Kull through a combined sewer overflow outfall at Regulator No. 2 (DSN#005).

287. Upon information and belief, Bayonne and/or the Bayonne Municipal Utilities Authority discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Bayonne System into the Newark Bay Complex without authorization under a federally authorized permit.

288. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, Bayonne discharged wastewater containing Hazardous Substances and other compounds from the Bayonne System into the Newark Bay Complex.

289. The Bayonne Municipal Utilities Authority was an operator of a Facility at the time Hazardous Substances were Discharged from the Bayonne System into the Newark Bay Complex.

290. Bayonne is responsible, as the owner and/or operator of the Bayonne System, for any Hazardous Substances discharged from the Bayonne System into the Newark Bay Complex.

291. The Bayonne Municipal Utilities Authority is responsible, as an operator of the Bayonne System, for Hazardous Substances discharged from the Bayonne System into the Newark Bay Complex.

292. Bayonne and the Bayonne Municipal Utilities Authority are "dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that were discharged from the Bayonne System and released into the Newark Bay Complex.

City of Elizabeth

293. The City of Elizabeth ("Elizabeth") was founded in 1665 and was originally called Elizabethtown. On or about March 13, 1885, Elizabeth was incorporated by an act of the State Legislature.

294. Upon information and belief, Elizabeth installed sewer lines in nearly all of its developed streets beginning in the mid-to-late 1800s. The sewers collected both sanitary wastes and storm runoff in a common pipe that discharged into subtrunks extending to waterways adjacent to Elizabeth. Subtrunks in central and western Elizabeth discharged to the Elizabeth River. Subtrunks in eastern and southern Elizabeth discharged to the Arthur Kill, Newark Bay and the Great Ditch.

295. Most of Elizabeth's original Combined Sewer System had insufficient capacity to prevent frequent upstream flooding. Accordingly, Elizabeth installed several relief and separate storm sewers.

296. The Joint Meeting of Essex and Union Counties ("Joint Meeting") owns and maintains two parallel trunk sewers that extend through Elizabeth and intersect many of Elizabeth's combined branch sewers that serve areas in the Elmora Section of Elizabeth. Approximately 11.5 miles of Elizabeth branch sewers, including 500 manholes, 1550 building connections, and 120 catch basins convey approximately 7.6 percent of Elizabeth's wastewaters to the Joint Meeting trunk sewers.

297. Elizabeth owns and operates the Westerly Interceptor, which was built in approximately 1912 and serves the northern, western and central parts of Elizabeth. The

Western Interceptor collects wastewater from approximately 76 miles of main sewer, 9,600 buildings, 1,700 catch basins, and 3,100 manholes in Elizabeth. By the 1950s, the Western Interceptor's limited capacity was unable to convey the maximum dry weather flow into the interceptor. According to an August 1986 report on the Combined Sewer Overflow Pollution Abatement Program ("1986 Bogert Report") by Elizabeth's consultant, Clinton Bogert Associates ("Clinton Bogert"), almost daily overflows were occurring in dry weather as late as 1986 from the Westerly Interceptor at Westfield Avenue.

298. Elizabeth owns and operates the Easterly Interceptor which was built in 1957 and collects wastewaters from subtrunks in the southern and eastern parts of Elizabeth that discharged to the Arthur Kill, Newark Bay, the Great Ditch and the Peripheral Ditch. The Easterly Interceptor collects wastewater from approximately 54 miles of main sewer, 5,300 buildings, 1,000 catch basins, and 2,000 manholes.

299. Elizabeth currently lies within the service area of the Joint Meeting. In approximately 1930, Elizabeth entered into an agreement with the Joint Meeting that allowed Elizabeth to deliver an average of 18 MGD and a peak flow of 36 MGD to the then proposed Joint Meeting wastewater treatment plant. Elizabeth is also allowed to deliver a peak flow of 4 MGD to the Joint Meeting trunk sewers.

300. Elizabeth's Combined Sewer System collects wastewater and storm water from approximately 4,250 acres. Dry weather flow within Elizabeth's combined sewers is collected and conveyed to the Trenton Avenue Pump Station ("TAPS"). From TAPS, wastewater is pumped to the Joint Meeting treatment plant, where it is treated and discharged to the Arthur Kill. Wet weather flow within Elizabeth's Combined Sewer System is collected by Elizabeth's sewers, but when the regulator capacity to the interceptor is exceeded, the flow is diverted

through outfalls and discharged into the Arthur Kill, Great Ditch, Newark Bay and Elizabeth River.

301. In a December 1998 Annual Inspection Report of Elizabeth's Combined Sewer Overflow Facilities, Elizabeth's consultant, Killam Associates, noted that the Elizabeth River and the Arthur Kill, the principal receptors of Elizabeth's Combined Sewer System overflows and storm water runoff, were once prolific producers of shellfish, and were used for swimming, boating, fishing, and crabbing. Killam Associates noted that these primary contact activities were no longer possible because of water pollution. Killam Associates also noted that overflows from Elizabeth's combined sewers and storm sewers were significant sources of pollution in the Elizabeth River, Arthur Kill, Great Ditch, and Peripheral Ditch.

302. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by Elizabeth for the collection, transport, treatment, and Discharge of industrial, commercial, and/or sanitary wastewaters from Elizabeth is hereinafter referred to as the "Elizabeth System."

303. The Elizabeth System discharges wastewaters into the Arthur Kill, Great Ditch, Newark Bay and Elizabeth River.

304. The Elizabeth System receives commercial, industrial, storm, and sanitary wastewaters from throughout Elizabeth.

305. Elizabeth has three drainage areas: the southern area that drains to the Arthur Kill and Newark Bay; the central and western area that drains to the Elizabeth River; and the eastern area that drains to the Great Ditch and the Newark Airport Peripheral Ditch. Elizabeth currently has 34 outfalls for combined sewage overflow, twenty-six of which discharge to the Elizabeth

River, four to the Arthur Kill, two to the Great Ditch, and one each to the Newark Airport Peripheral Ditch and Newark Bay.

306. In a June 1, 1909 opinion, the Supreme Court of New Jersey noted that "the city of Elizabeth has a general system of sewers which for the most part discharge the sewage of the city into the Elizabeth River, a stream which runs through the city, and has thereby become polluted to an extent likely to endanger the health of the inhabitants of the city."

307. Although Elizabeth entered into a contractual agreement in 1930 with the Joint Meeting that allowed Elizabeth to deliver wastewater to the then proposed Joint Meeting treatment plant, Elizabeth did not deliver most of its wastewater to the Joint Meeting treatment plant when it became operational in 1937.

308. At a June 11, 1947 hearing before the ISC, the president of Elizabeth's Board of Works testified that Elizabeth was discharging 10,000,000 gallons of untreated wastewater per day. On information and belief, these discharges by Elizabeth were to the Arthur Kill and Newark Bay.

309. On or about April 7, 1948, the ISC issued an order finding that "the City of Elizabeth has been discharging sewage or other polluting matters into the waters of the Interstate Sanitation District, in violation of the law" and ordered Elizabeth to construct a treatment plant by January 1, 1951 to comply with the provisions of the ISC's order.

310. On September 1, 1950, the ISC filed suit against Elizabeth alleging that Elizabeth had not satisfied an order issued by the ISC to Elizabeth. On December 1, 1950, the Superior Court of New Jersey entered judgment in favor of the ISC against Elizabeth requiring certain tasks to be completed so that the discharge of sewage or other polluting matters from Elizabeth

to the waters of the Interstate Sanitation District would be discontinued on or before July 1, 1950.

311. Prior to 1957, Elizabeth discharged a portion of its wastewater directly to the Arthur Kill without treatment.

312. After the completion of new intercepting sewers and pumping stations in 1957, most of Elizabeth's wastewater was diverted to the Joint Meeting treatment plant.

313. A map prepared by J.F. Malloy dated October 19, 1964 identified several areas of Elizabeth that continued to discharge untreated wastewater to the Arthur Kill and/or Newark Bay.

314. By letter dated April 19, 1965, the ISC advised the Mayor and Council of Elizabeth that "there are two areas that have not been intercepted and the discharges are in violation of a court order obtained December 1, 1950. One is in the Bayway area which continues to discharge raw wastes into the Arthur Kill at the foot of Bayway Avenue. The other is from the Singer Manufacturing Company area, which discharges untreated sewage at the foot of Trumbull Street."

315. By letter dated June 2, 1966 to Elizabeth Mayor Thomas G. Dunn, the ISC noted that there were still "two areas of Elizabeth which now discharge untreated matter into the receiving waters of the Interstate Sanitation District."

316. In a letter dated October 28, 1966 to Elizabeth Mayor Thomas Dunn, the ISC noted that "it is apparent that your commitment previously made to undertake and complete all necessary work for the discontinuance of discharges of raw wastes during the current calendar year will not be fulfilled. We have been much disappointed by the course of events, since the only reason why we have deferred the taking of enforcement action has been reliance on your

promise of performance. We consider the absence of concrete progress to be especially lacking in just cause in view of the fact that your last relevant construction was done over ten years ago, and the court order requiring you to discontinue the discharge of the wastes in question is even older."

317. Elizabeth continued to discharge untreated wastewater directly to the Arthur Kill through the Bayway Avenue outfall and to Newark Bay through the Trumbull Street (also known as Puleo Plaza) outfall until at least 1968, in violation of the New Jersey Superior Court order dated December 1, 1950.

318. According to an August 1981 report on the Combined Sewer Overflow Pollution Abatement Program ("1981 Bogert Report") by Elizabeth's consultant, Clinton Bogert, Elizabeth continued to use the sewer in Bayway to discharge highly polluted, untreated, industrial wastes to the Arthur Kill until 1968.

319. On or about January 24, 1969, inspectors from the NJDOH observed a discharge of raw sewage into the Elizabeth River from the Elizabeth System from a pipe on the property of the John F. Kennedy Arms on Westfield Avenue in Elizabeth.

320. On or about November 30, 1978, Elizabeth received its first NPDES permit (Permit No. NJ 0020648).

321. Field inspections in 1978 revealed dry weather overflows from the Elizabeth System at outfall Nos. 003, 005, 007, 008, 014 and 015. The blockage and inadequate interceptor capacity at outfall No. 005 was causing bypassing of dry weather flow for up to two weeks after a rainfall event.

322. According to the 1981 Bogert Report, the Elizabeth River was polluted for the entire reach of Elizabeth and fish and wildlife resources were practically extinct. The 1981

Bogert Report noted that the wetlands which were located in the southeastern portion of Elizabeth and bordering on Newark Bay had been modified by pollution and industrial development to such an extent that it has eliminated shell fish, flounder, striped bass and drum as a resource.

323. The 1981 Bogert Report estimated that 5,067,000 pounds of suspended solids, 853,000 pounds of BOD, and 797 million gallons of combined sewage and urban runoff discharged annually to the Elizabeth River untreated from Elizabeth during wet weather alone. The 1981 Bogert Report estimated that the wet weather BOD discharged by Elizabeth to the Elizabeth River during each overflow event was equivalent to the daily raw sewage generated by about 61,000 persons. The 1981 Bogert Report estimated that there were 70 wet weather overflow events from the Elizabeth System each year.

324. The 1981 Bogert Report estimated that the annual wet weather discharge to the Arthur Kill from Elizabeth was 1,410,200 pounds of suspended solids, 269,100 pounds of BOD, and 152 million gallons of combined sewage and urban runoff, an amount equivalent to the raw sewage of 20,000 persons per wet weather overflow event.

325. The 1981 Bogert Report estimated that the annual wet weather discharge to Newark Bay by way of the Peripheral Ditch and the Great Ditch was 1,372,200 pounds of suspended solids, 225,300 pounds of BOD, and 232 million gallons of combined sewage and urban runoff, an amount equivalent to the raw sewage of 16,000 persons per wet weather overflow event.

326. A field inspection of the Elizabeth System's regulators, overflows, tide gates and outfalls was conducted in connection with the 1981 Bogert Report. Dry weather overflows of untreated sewage from the Elizabeth System noted by the 1981 Bogert Report include: frequent

bypassing from an outfall located at Rahway Avenue and Burnet Street; overflows from an outfall located at Broad Street and Elizabeth Avenue; frequent bypassing from an outfall located at Summer Street and Clarkson Avenue; continuous bypassing caused by a non-functional regulator and a tide gate silted open at Clifton Street and Pulaski Avenue; overflows bypassed for one to three days after a major rainfall from an outfall located at Westfield Avenue and Orchard Street; overflows from an outfall located at West Jersey Avenue and Elmora Avenue; overflows from an outfall located at Pennington Street and Elmora Avenue; frequent bypassing through an outfall at West Grand Street and the Elizabeth River; frequent bypassing through an outfall at Burnet Street; continuous bypassing of dry weather flow for up to two weeks after rainfall events at a regulator located at Westfield Avenue and Union Street; frequent bypassing from an outfall located at Rahway Avenue and South Union Street; and frequent bypassing from an outfall located at West Grand Street and Union Street.

327. By letter dated March 20, 1984, the Joint Meeting advised Elizabeth that Elizabeth had discharged "totally unacceptable" mixtures of oil and grease to the Joint Meeting's treatment plant on March 16, 17, and 20, 1984.

328. A letter from Elizabeth's consultant, Clinton Bogert Associates, to the NJDEP dated April 12, 1984, noted that sewage pollutants entered the Elizabeth River in large quantities during wet weather and that these pollutants settle in the reaches of the river in the vicinity of and below South Street, making that stretch of the tidal reaches grossly polluted as a result. Clinton Bogert also observed that, at the time, pollutants discharged into the Elizabeth River were greater due to dry weather overflows and improperly functioning regulators on the Elizabeth System.

329. A July 19, 1984 inspection by the NJDEP revealed dry weather discharges of untreated wastewater from the Elizabeth System at Westfield Avenue, Crane Street, and South Broad Street, as well as tide gate failures which allowed inflow into the Elizabeth System.

330. The Mayor of Elizabeth, Thomas G. Dunn, noted in an August 10, 1984 letter to the EPA that the "tidal reaches of the Elizabeth River are grossly polluted with the dissolved oxygen totally depleted. At times, a foul stench rises from the River due to its pollution. Floating turds can be observed."

331. In support of a Marine Combined Sewer Overflow Grant Application that Elizabeth submitted to EPA on August 10, 1984, Elizabeth noted that there was an almost daily discharge of raw sewage to the Elizabeth River and no days when swimming standards were not violated.

332. On August 27, 1984, a sampling inspection conducted by NJDEP revealed significant degradation of the Elizabeth River downstream of Trotters Lane Bridge, where the river enters Elizabeth.

333. A letter from Elizabeth's consultant, Clinton Bogert, to the NJDEP dated October 4, 1984 noted that two outfalls (Nos. 041 and 042) not previously reported to the NJDEP were discharging combined sewage to the Elizabeth River.

334. On January 16, 1985, an NJDEP inspector observed untreated sewage flowing to the Elizabeth River from the Elizabeth System from an outfall located under the Morris Avenue Bridge. The NJDEP inspector also observed a discharge from the Elizabeth System to the Elizabeth River approximately 150 feet south of Rahway Avenue.

335. On March 20, 1985, an NJDEP inspector observed discharges of untreated sewage from the Elizabeth System to the Elizabeth River from the sewer line on West Jersey Street and from an outfall under the Morris Avenue Bridge.

336. On March 21, 1985, an NJDEP inspector observed several discharges of untreated sewage from the Elizabeth System to the Elizabeth River in the area from Grand Street to Westfield Avenue, including discharges of raw sewage from an open lagoon behind the John F. Kennedy Arms Senior Citizens Housing Center.

337. During an April 3, 1985 inspection conducted by representatives of the NJDEP, Elizabeth, and the Joint Meeting, numerous discharges of untreated wastewaters, inoperative tide gates, sewage lagoons and unpermitted discharges from the Elizabeth System were observed.

338. On July 15, 1985, an NJDEP inspector observed untreated wastewater discharging from the Elizabeth System into the Elizabeth River at both Morris Avenue and Lowden Street.

339. On August 7, 1985, NJDEP inspectors observed a manhole on the Elizabeth System located in front of the John F. Kennedy Arms Senior Citizens Housing Center overflowing and raw sewage flowing across the Westfield Avenue Bridge to a catch basin and into the Elizabeth River. Inspectors also observed raw sewage being discharged from two pipe outlets on the Elizabeth System located on the westerly side of the Elizabeth River, as well as from a sluice gate on the easterly side of the river under the Westfield Avenue Bridge. The discharges observed on August 7, 1985 by NJDEP inspectors were observed again on August 15, 1985 during an inspection by representatives from the NJDEP and Elizabeth, as were discharges of untreated sewage from the Elizabeth System to the Elizabeth River at West Grand Street, West Jersey Street and Murray Street.

340. On August 21, 1985, representatives of the NJDEP, Elizabeth, and the Joint Meeting observed discharges of untreated wastewater from the Elizabeth System into the Elizabeth River at Rahway Avenue and South Broad Street.

341. On September 5, 1985, representatives of the NJDEP, Elizabeth, and the Joint Meeting observed several discharges of untreated wastewater from the Elizabeth System into the Elizabeth River in the stretch between Rahway Avenue and Pulaski Street, as well as several pools of sewage.

342. On or about September 12, 1985, NJDEP inspectors observed a dry weather discharge from 36-inch outfall to the Great Ditch (Outfall No. 039) on the Elizabeth System. As a result, the Elizabeth System received an "unacceptable" rating from the NJDEP. NJDEP inspectors also observed that the Great Ditch was grossly polluted.

343. In an Administrative Consent Order between NJDEP and Elizabeth signed in September 1986, NJDEP found that Elizabeth's failure to properly operate and maintain its sewerage system and Elizabeth's discharge of pollutants from the Elizabeth System to the Elizabeth River was not consistent with Elizabeth's NJPDES permit and in violation of New Jersey law. NJDEP further found that Elizabeth's discharges caused injury to the environment, and threatened injury to the health, comfort and property of the inhabitants of New Jersey.

344. A letter from Elizabeth's consultant, Clinton Bogert, to the NJDEP dated November 13, 1985, acknowledged that dry weather overflows from the Elizabeth System were occurring from outfalls located at Westfield Avenue, West Jersey Street, Rahway Avenue, Washington Avenue, South Street, and John Street.

345. According to an August 1986 report on the Combined Sewer Overflow Pollution Abatement Program ("1986 Bogert Report") by Elizabeth's consultant, Clinton Bogert, the BOD

discharged from the Elizabeth System to the Elizabeth River was equivalent to that in the raw sewage from 56,000 persons every five days; and to the Arthur Kill and Great Ditch, 76,000 persons every nine days.

346. On or about August 17, 1992, NJDEP issued a Notice of Violation to Elizabeth for the unpermitted discharge of sanitary sewage into the Elizabeth River.

347. The NJDEP observed two dry weather overflows from the Elizabeth System during an inspection on June 22, 1999. By letter dated June 30, 1999, the Elizabeth System received an "unacceptable" rating from the NJDEP.

348. The NJDEP observed two dry weather overflows from the Elizabeth System during an inspection on June 21, 2000. By letter dated June 30, 2000, the Elizabeth System received an "unacceptable" rating from the NJDEP.

349. According to a report on Elizabeth's combined sanitary/storm sewer collection system by Killam Associates in 2000, dry weather flow was diverted from the Elizabeth System to the Arthur Kill through Regulator/Outfall 31, as well as Regulator/Outfall 32 and Regulator/Outfall 37. The same report noted that dry weather flow was diverted from the Elizabeth System to Newark Bay through Regulator 34A/Outfall 34.

350. In connection with an Infiltration/Inflow Reduction Program Report, Elizabeth's consultant Clinton Bogert advised Elizabeth by letter dated September 6, 1995 that approximately 12,300 linear feet of Elizabeth's sewers were in very poor condition and required extensive repair or replacement.

351. On or about October 10, 2000, there was a dry weather overflow of raw sewage from the Elizabeth System on the west Bank of the Elizabeth River at Westfield Avenue.

352. On June 28, 2002, NJDEP issued a notice of violation to Elizabeth in connection with a dry weather overflow from the Elizabeth System to the waters of the State.

353. On November 28, 2002, NJDEP issued a notice of violation to Elizabeth in connection with a dry weather overflow from the Elizabeth System.

354. On or about December 9, 2002, there was a sewage spill from the Elizabeth System into the Elizabeth River as a result of an obstruction in a regulator.

355. An inspection by NJDEP on June 19, 2003 revealed that there had been discharges of raw sewage from other parts of the Elizabeth System besides the Combined Sewer System outfalls that were not reported to the NJDEP. The NJDEP noted that a discharge of raw sewage had occurred from a manhole on John Street.

356. Upon information and belief, Elizabeth discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Elizabeth System into the Newark Bay Complex without authorization under a federally authorized permit.

357. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, Elizabeth discharged wastewater containing Hazardous Substances and other compounds from the Elizabeth System into the Newark Bay Complex.

358. Elizabeth is responsible, as the owner and/or operator of the Elizabeth System, for any Hazardous Substances discharged from the Elizabeth System into the Newark Bay Complex.

359. Elizabeth is a "discharger" and/or a Person "in any way responsible" for the Hazardous Substances that were discharged from the Elizabeth System and released into the Newark Bay Complex.

City of Jersey City

360. On or about January 28, 1820, the City of Jersey City ("Jersey City") was incorporated by an act of the State Legislature. Jersey City was reincorporated on January 23, 1824 and February 22, 1838.

361. Upon information and belief, Jersey City installed sewer lines in the late 1800s.

362. Jersey City currently lies entirely within the service area of the PVSC. Jersey City joined the PVSC as a member in approximately 1986.

363. The Jersey City Sewage Authority ("JCSA") was commissioned in 1949.

364. On or about February 1, 1998, the JCSA was renamed the Jersey City Municipal Utilities Authority ("JCMUA").

Jersey City West System

365. Jersey City owns and operates a Combined Sewer System that serves approximately 2,863 acres of the western slope of Jersey City, which consists primarily of residential, commercial, and industrial facilities, as well as approximately nine acres of Bayonne, 31 acres of North Bergen, and 197 acres of Union City. This system is hereinafter referred to as the "Jersey City West System."

366. Wastewater in the Jersey City West System is collected by thirteen individual drainage districts within the Jersey City West System, each of which discharge wastewater into an individual Combined Sewer System regulator (RW1 through RW13). Regulator RW1, also designated DSN 001, is located along Secaucus Road. Regulator RW2, also designated DSN 002, is located along Manhattan Avenue. Regulator RW3, also designated DSN 003, is located along St. Pauls Avenue. Regulator RW4, also designated DSN 004, is located along Van Wrinkle Avenue. Regulator RW5, also designated DSN 005, is located along Broadway. Regulator RW6, also designated DSN 006, is located along Sip Avenue. Regulator RW7, also

designated DSN 007, is located along Duncan Avenue. Regulator RW8, also designated DSN 008, is located along Clendenny Avenue. Regulator RW9, also designated DSN 009, is located along Claremont Avenue. Regulator RW10, also designated DSN 010, is located along Fisk Street. Regulator RW11, also designated DSN 011, is located along Danforth Avenue. Regulator RW12, also designated DSN 11, is located near the Society Hill Exit and Route 1 and 9. Regulator RW13, also designated DSN 012, is located along Mina Drive.

367. The West Side Interceptor Sewer is approximately 6.8 miles long and is constructed of reinforced circular concrete pipe with diameters ranging from eighteen to ninety-six inches. The West Side Interceptor collects wastewater from the Combined Sewer System regulators and other areas of the Jersey City West System.

368. Regulators RW2 through RW13 discharge wastewater into the West Side Interceptor Sewer, the Hackensack River, and/or Newark Bay. Regulator RW1 discharges wastewater into the West Side Interceptor Sewer and/or into Penhorn Creek, and thence into the Hackensack River.

369. On or about November 26, 1943, the ISC identified Jersey City as one of several municipalities that failed to meet the ISC's requirements and was discharging untreated "sewage or other polluting matters" into the Hackensack River and Newark Bay.

370. On or about February 23, 1949, the ISC reported that Jersey City was discharging at least 38,000,000 gallons of untreated wastewater per day into the Hudson River, the Hackensack River, and Newark Bay.

371. On or about July 7, 1949, the ISC ordered Jersey City to cease discharging "sewage or other polluting matters" into the Hackensack River and Newark Bay, and to construct a wastewater treatment plant by January 1, 1954.

372. In approximately 1957, the JCSA constructed a wastewater treatment plant along Route 440 near the foot of Central Avenue in Jersey City to serve the Jersey City West System. The Jersey City West System treatment plant was owned and operated by the JCSA. Effluent from the Jersey City West System treatment plant discharged into the Hackensack River near the Hackensack River's confluence with Newark Bay.

373. The treatment processes employed by the Jersey City West System treatment plant was limited to primary treatment technologies, including screening, grit removal, primary clarification, and chlorine disinfection. The primary treatment provided minimal removal of suspended solids, BOD and other pollutants.

374. Sludge generated by the Jersey City West System treatment plant was incinerated in an incinerator located on the premises of the treatment plant.

375. Until the Jersey City treatment plant was completed, all wastewater collected by the Jersey City West System discharged directly into the Hackensack River, and/or Newark Bay without treatment.

376. The Jersey City treatment plant experienced malfunctions and problems treating the wastewater effluent.

377. On or about June 1, 1960, the JCSA reported that the Claremont Avenue regulator (upon information and belief, RW9) was being closed as a result of continued breakdowns at the Jersey City West System treatment plant.

378. On or about June 17, 1960, the NJDOH reported that the Claremont Avenue regulator was "closed off" and at least one million gallons of raw sewage per day was allowed to discharge into Newark Bay, including all of the flow of Dye Specialties, Inc., which was located at the foot of Clarke Avenue. The NJDOH reported that the waste from Dye Specialties, Inc.

was "inky blue and carries a great deal of solids." The NJDOH observed that the water and shores proximate to the sewer discharge were "deeply colored." The NJDOH estimated that Dye Specialties, Inc. discharged at least 380,000 gallons of wastewater per day into the Jersey City West System.

379. On or about June 17, 1960, the NJDOH reported generally deteriorating conditions at the Jersey City treatment plants, including inoperable sedimentation units. The NJDOH reported that the treatment plants were "performing very little of their function and [were] not likely to perform successfully in the near future."

380. In 1979, the Hudson County Utilities Authority ("HCUA") reported that at least twenty percent of the Jersey City West System's service area included industrial and warehousing facilities.

381. In 1979, the HCUA reported that the Jersey City West System was "suffering from age with accumulations of sediment in many lines. Many of the manholes inspected in the lower areas showed evidence of surcharging." The HCUA also reported that the mechanical equipment in the thirteen regulator chambers within the Jersey City West System were "in service beyond...[their]...anticipated useful life [and] will require a major overhaul to be made functional."

382. In 1979, the HCUA reported that the Jersey City West System treatment plant suffered from "limitations in hydraulic capacity, sludge pumping, sludge transmission, and sludge concentration facilities. The Plant is not equipped with standby power. During power outages, flow is backed up through the interceptor system and overflows at the regulation chambers."

383. On or about February 3, 1981, the United States of America entered into a Consent Judgment with Jersey City and the JCSA that ordered Jersey City and the JCSA to remove all accumulated sludge from several inoperable sedimentation units. The Consent Judgment also reinstated secondary treatment deadlines and effluent limitations.

384. On or about December 21, 1981, the JCSA reported problems complying with effluent limitations for settleable solids at the Jersey City West System treatment plant. The JCSA reported that "[c]onsidering the age of the equipment at the treatment facilities" compliance was "often a difficult task."

385. On or about March 24, 1982, Jersey City reported that raw sewage was discharging from regulator RW1 into Penhorn Creek, and thence into the Hackensack River.

386. On or about June 23, 1982, the JCSA reported problems complying with effluent limitations for settleable solids at the Jersey City West System treatment plant. The JCSA reported that "[m]ajor modifications and upgrading are required" to achieve continued compliance.

387. On or about November 13, 1985, the NJDEP reported that the Jersey City West System treatment plant discharged approximately 19.4 million gallons of wastewater per day.

388. On or about October 8, 1986, the NJDEP reported that during at least two inspections of the Jersey City West System, raw sewage from the regulator RW1 was observed discharging during dry and wet weather into Penhorn Creek, and thence into the Hackensack River.

389. On or about November 26, 1986, the JCSA reported that the Jersey City trunk line sewer on Secaucus Road collapsed and caused untreated wastewater to overflow from regulator RW1 into Penhorn Creek, and thence into the Hackensack River.

390. On or about July 24, 1986, Jersey City and the JCSA signed an Administrative Consent Order requiring Jersey City and the JCSA to convert the Jersey City System's treatment plants into pumping stations that would discharge effluent into the PVSC treatment plant in Newark through a sewer line to be constructed beneath Newark Bay ("Force Main").

391. On or about May 31, 1988, the United States of America entered into a Consent Decree with Jersey City and the JCSA, requiring Jersey City and the JCSA to pay $500,000 for violations of the Clean Water Act and to continue construction of the Force Main, which would convey wastewater from the Jersey City System to the PVSC treatment plant in Newark, New Jersey.

392. On or about September 17, 1987, the United States Postal Service reported that at least 1,000 gallons per minute of raw sewage was discharging from regulator RW1 on the Jersey City West System across the Postal Service property into Penhorn Creek, and thence into the Hackensack River.

393. On or about January 23, 1987, December 31, 1987, and May 22, 1989, the NJDEP reported that the Jersey City West System treatment plant received an "unacceptable" rating because the facility did not maintain an alternate source of power and "the facility is a primary treatment plant" and was unable to attain secondary effluent limitations as required under the Clean Water Act.

394. On or about September 28, 1989, discharges from the Jersey City West System treatment plant ceased and the facility was converted into a pumping station that directed wastewater into the Force Main.

395. On or about December 31, 1990, the Jersey City West System treatment plant was officially closed.

396. On or about January 8, 1990 and June 28, 1991, the NJDEP reported that the Jersey City West System pumping station received an "unacceptable" rating because the "force main bypass and the emergency overflow at the West Side Pumping Station are unpermitted discharge points" and the "alternate power supply was not operational at the time of the inspection."

397. On or about June 12, 1992, the NJDEP reported that the Jersey City West System pumping station received an "unacceptable" rating because the "force main bypass and the emergency overflow at the West Side Pumping Station are unpermitted discharge points" and "sludge and other residuals" remained on the site of the former treatment plant and had not been disposed of properly.

398. On or about April 12, 1993, the NJDEP reported that the Jersey City West System pumping station received an "unacceptable" rating because "sludge and other residuals" remained on the site of the former treatment plant and had not been disposed of properly.

399. On or about May 17, 1999, the NJDEP reported that the Jersey City System received an "unacceptable" rating due to "tidal intrusion" in regulators RW3, RW5, and RW10.

400. In December 1994, the JCSA reported that regulator RW1 is "likely a source of continuous Dry Weather Overflows;" regulator RW6 has a "high risk for Dry Weather Flows;" and regulator RW9 contained "high volatile gas levels" and was filled with purple dye. The JCSA also reported that "sediment and floatables" were problems in regulators RW2, RW11, RW12, and RW13.

Jersey City East System

401. Jersey City owns and operates a Combined Sewer System that serves approximately 3,762 acres along the eastern half of Jersey City, which consists primarily of

residential, industrial, and commercial businesses. This system is hereinafter referred to as the "Jersey City East System."

402. The Jersey City East System is a Combined Sewer System divided into sixteen individual drainage areas that discharge wastewater into an interceptor sewer, which runs along the eastern boundary of Jersey City. The Jersey City East System includes at least fifteen Combined Sewer System overflow outfalls that discharge untreated wastewater into various points of the Hudson River.

403. In approximately 1957, the JCSA constructed a wastewater treatment plant which collected and treated wastewater discharged from the Jersey City East System.

404. Beginning in approximately 1979, sludge generated by the Jersey City East System treatment plant was piped to the Jersey City West System treatment plant for treatment and disposal.

405. In 1982 and 1983, the NJDEP reported that sludge accumulated at the Jersey City East System treatment plant contained concentrations of Hazardous Substances, including, without limitation, PCBs.

406. On or about December 6, 1989, discharges from the Jersey City East System treatment plant ceased and the facility was converted into a pumping station that directed wastewater into the Force Main.

407. On or about December 31, 1990, the Jersey City East System treatment plant was officially closed.

Jersey City System

408. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or

operated by Jersey City and/or the JCMUA for the collection, transport, treatment, and Discharge of industrial, commercial, storm, and/or sanitary wastewaters from Jersey City, and which includes both the Jersey City West System and the Jersey City East System, is hereinafter referred to as the "Jersey City System."

409. The Jersey City System discharges wastewaters into the Hackensack River and/or Newark Bay.

410. The Jersey City System receives commercial, industrial, storm, and sanitary wastewaters from throughout Jersey City.

411. Sometime after enactment of the CWA, the JCMUA received authorization under the CWA to discharge wastewater from the Jersey City System into Penhorn Creek, the Hackensack River, and Newark Bay pursuant to NJPDES Permit Numbers NJ0105023 and NJ0108723.

412. On or about June 25, 1997, the NJDEP reported that the Jersey City System received an "unacceptable" rating due to "tidal intrusion" at several locations and nine reported dry weather overflows during calendar year 1996.

413. On or about May 20, 1998, the NJDEP reported that the Jersey City System received an "unacceptable" rating due to "tidal intrusion" at several locations and two reported dry weather overflows during calendar year 1997.

414. Upon information and belief, JCMUA and/or Jersey City discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Jersey City System into the Newark Bay Complex without authorization under a federally authorized permit.

415. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, JCMUA and/or Jersey City discharged wastewater containing Hazardous Substances and other compounds from the Jersey City System into the Newark Bay Complex.

416. Since its formation in 1949, the JCMUA operated the Jersey City System.

417. On or about March 19, 1990, the JCMUA assumed ownership of the Jersey City System.

418. JCMUA was an operator of a Facility at the time Hazardous Substances were Discharged from the Jersey City System into the Newark Bay Complex.

419. JCMUA and Jersey City are responsible, as the owners and operators of the Jersey City System, for any Hazardous Substances discharged from the Jersey City System into the Newark Bay Complex.

420. JCMUA and Jersey City are "dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that were discharged from the Jersey City System and released into the Newark Bay Complex.

City of Linden

421. Linden was originally formed as a township on March 4, 1861 and was incorporated as a city by an Act of the New Jersey Legislature on January 1, 1925.

422. Upon information and belief, Linden installed sewer lines no later than 1917, serving both residential and industrial users.

423. Linden owns and operates a sewer system consisting of over twenty-five miles of storm lines, approximately 130 miles of sewer lines and over 2,000 catch basins in the city.

424. The combined network of trunk, intercepting, and outlet sewers, drains, conduits, pipelines, regulators, outfalls, and any other such plants, structures, facilities, and conveyances of

a similar nature owned and/or operated by Linden for the collection, transport, treatment, and Discharge of industrial, commercial, storm and/or sanitary wastewaters from Linden, is hereinafter referred to as the "Linden System."

425. On information and belief, the Linden System has outfalls at Morse's Creek, Piles Creek, the Rahway River, Marsh's Creek, Kings Creek, and West Brook Creek, all of which are tributaries of the Arthur Kill.

426. The Linden System receives commercial, industrial, storm, and sanitary wastewaters from throughout Linden.

427. The Linden System currently collects and conveys wastewater to the Linden Roselle Sewerage Authority treatment plant located on South Wood Avenue in Linden, New Jersey.

428. On information and belief, the Linden Roselle Sewerage Authority treatment plant did not begin operations until 1952.

429. Until the Linden Roselle Sewerage Authority treatment plant was completed, wastewater collected by Linden was discharged directly into the Arthur Kill, Marshes Creek, Morses Creek, Peach Orchard Brook, Staten Island Sound and/or West Brook without treatment.

430. Upon information and belief, Linden discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Linden System into the Newark Bay Complex without authorization under a federally authorized permit.

431. Linden is responsible, as the owner and/or operator of the Linden System, for any Hazardous Substances discharged from the Linden System into the Newark Bay Complex.

432. Linden is a "discharger" and/or a Person "in any way responsible" for the Hazardous Substances that were discharged from the Linden System and released into the Newark Bay Complex.

City of Newark

433. The City of Newark ("Newark") was founded as a township in approximately 1693 and was incorporated by an act of the New Jersey Legislature on or about February 21, 1798.

434. Upon information and belief, Newark installed its principal trunk and sewer collection system between 1830 and 1930.

435. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by Newark for the collection, transport, treatment, and Discharge of industrial, commercial, storm, and/or sanitary wastewaters from Newark is hereinafter referred to the "Newark System."

436. The Newark System discharges wastewaters into the Passaic River, the Second River, the Peripheral Ditch, and/or Newark Bay.

437. Newark is a member of the PVSC and the northwestern and southeastern portions of Newark discharge into the PVSC sewer system. Approximately 410 miles of sewers in the Newark System are tributary to the PVSC sewer system.

438. The PVSC main interceptor extends approximately 5.8 miles north from the PVSC treatment plant through Newark beneath Wilson Avenue, Ferry Street, and McCarter Highway. The PVSC Kearny-Newark-Harrison branch interceptor connects to the PVSC main interceptor in Newark near Jackson Street. The PVSC Jabez Street branch interceptor connects

to the PVSC main interceptor in Newark near Pulaski Skyway. The PVSC Second River Union Outlet interceptor connects to the PVSC main interceptor in Newark near the border of Newark and the Town of Belleville at or about McCarter Highway.

439. Wastewater collected from the southwestern corner of Newark and from the Vailsburg section of Newark are conveyed to and treated at the Joint Meeting of Essex and Union Counties treatment facility in Elizabeth.

440. Newark's sewers existed prior to the construction of the PVSC interceptor trunk sewer. When the PVSC main interceptor was constructed, existing lines within Newark that were tributary to the PVSC main interceptor were connected to the trunk line through a series of at least twenty-one sewer connections, including diversion chambers, regulators, metering facilities, and/or manhole interfaces. In 1975, Newark reported that "[l]ittle maintenance is provided for these facilities and at times they have been known to malfunction and discharge sanitary waste directly into the [Passaic] river even at low flow periods."

441. In 1976, the PVSC reported that the PVSC main interceptor "is entirely inadequate to carry but a very small portion of the total storm flow potential from the combined sewers in the City of Newark." Upon information and belief, during periods of precipitation the Newark System discharged all or a portion of the wastewater collected by the Newark System into the Newark Bay Complex.

Drainage Districts and Basins

442. The Newark System receives commercial, industrial, storm, and sanitary wastewaters from throughout Newark, including several individual drainage districts and basins within the Newark System. These districts and basins, include, without limitation, the Industrial River District, the Saybrook Basin, Millbrook Basin, the Adams District, the Wheeler District, the Peddie District, the Queen District, the Waverly District, and the Airport District.

443. The Industrial River District is comprised of approximately 3,650 acres and is generally bounded by the Passaic River to the north and east, by the City Channel at Port Newark to the south, and by Ferry Street and Pulaski Street to the west. In 1975, Newark reported that at least ninety-four percent of the Industrial River District was occupied by industrial and commercial facilities. The Industrial River District is primarily serviced by Separate Sewer Systems and Storm Water Systems. However, select areas of the district are serviced by Combined Sewer Systems, which discharge overflows into the Passaic River and/or Newark Bay. The Industrial River District Storm Water System includes multiple outfalls that discharge directly into the Passaic River, Pierson's Creek, and/or Newark Bay.

444. The Saybrook Basin includes the Ferry, Jackson, Raymond, and Saybrook Districts, which are located along the eastern boundary of Newark and contain the majority of the downtown commercial areas of Newark along the Passaic River. The Saybrook Basin is generally bounded by the Passaic River to the east, the Industrial River District to the west and south, the Adams, Wheeler, and Peddie Districts to the west, and the Millbrook Basin to the north. The Saybrook Basin is serviced by a Combined Sewer System, which ties into the PVSC trunk interceptor. Combined sewer overflows from the Saybrook Basin discharge into the Passaic River.

445. The Millbrook Basin is located in the northernmost area of Newark along the Passaic River and includes the Millbrook, Fourth Avenue, Herbert, Verona, and Roseville Districts. The Millbrook Basin is generally bounded by the Passaic River to the east, the Town of Belleville to the north, the Town of Bloomfield and the City of East Orange to the west, and the Peddie District and Saybrook Basin to the south. The Millbrook Basin is primarily comprised of residential developments, except for a strip of industrial properties along the banks

of the Second River and the Passaic River. The districts within the Millbrook basin are serviced by Combined Sewer Systems, which tie into the PVSC trunk interceptor. Combined sewer overflows from the Millbrook Basin discharge into the Second River and/or the Passaic River.

446. The Adams District is generally bounded by the Newark Airport and the Queens District to the south, the Peddie District and Wheeler District to the west, Lafayette Street to the north, and Avenue B, Mulberry Street, and McCarter Highway on the west. The Adams District is primarily comprised of residential and industrial properties and is serviced by a Combined Sewer System. However, limited portions of the Adams District are also served by Separate Sewer Systems and Storm Water Systems. Storm water and combined sewer overflows from the Adams District discharge into the Peripheral Ditch and thence into Newark Bay.

447. The Wheeler District is generally bounded by the Adams District to the east and south, the Peddie District to the west, and Lafayette Street to the north. The Wheeler District is primarily comprised of residential and industrial properties and is serviced by a Combined Sewer System. However, limited portions of the Wheeler District are also serviced by Separate Sewer Systems and Storm Water Systems. Storm water and combined sewer overflows from the Adams District discharge into the Peripheral Ditch and thence into Newark Bay.

448. The Peddie District is generally bounded by Irvington Township to the west, the Queen District to the south, the Wheeler and Adams Districts to the east, and South Orange Avenue to the north. The Peddie District is comprised of approximately 1,880 acres, and is generally occupied by commercial and residential properties. In 1975, Newark reported that the Peddie District generated approximately 13.4 million gallons of wastewater per day and is serviced by a Combined Sewer System which was generally over 100 years old. Combined

sewer overflows from the Peddie District discharge into the Peripheral Ditch and thence into Newark Bay.

449. The Queen District is generally bounded by Hillside Township, the City of Elizabeth and the Waverly District to the south and east, the Peddie District to the north, and the Airport District to the east. The Queen District is comprised of approximately 1,027 acres, and is generally occupied by industrial and residential properties. In 1975, Newark reported that the Queens District generated approximately four million gallons of wastewater per day and is serviced by a sewer system that is approximately eighty percent separated into distinct lines to handle sanitary and storm water flow. Storm water and combined sewer overflows from the Queen District discharge into the Peripheral Ditch and thence into Newark Bay.

450. In 1975, Newark reported that the sanitary sewer systems in the Queen District surcharged during periods of intense rainfall and discharged into the area storm sewers, and thence into the Peripheral Ditch.

451. The Waverly District is generally bounded by the City of Elizabeth to the south, Hillside Township to the West, the Queen District to the north, and the Airport District to the east. The Waverly District is comprised of approximately 350 acres, and is occupied by industrial and dense residential properties. The Waverly District is serviced by a Combined Sewer System. In 1975, Newark reported that the Waverly District generated approximately 9.5 million gallons of wastewater per day, the majority of which were industrial flows. Combined sewer overflows from the Waverly District discharge into the Peripheral Ditch and thence into Newark Bay.

452. In approximately 1965, the City of Newark completed constructing the South Side Interceptor, which collects wastewater from the Peddie, Queen, and Waverly Districts and conveys it directly to the PVSC treatment plant.

453. Upon information and belief, until the South Side Interceptor was constructed, all wastewater generated within the Peddie, Waverly, and Queen Districts was discharged by the City of Newark into Newark Bay without treatment.

454. The Airport District is comprised of the Newark International Airport ("Newark Airport") and surrounding roadways. Except for the northeasterly corner of the district, all of the drainage facilities in the Airport District are designed to empty into the Peripheral Ditch.

Combined Sewer and Storm Sewer Outfalls

455. The Newark System includes, without limitation, at least thirty combined sewer overflow and/or storm water outfalls (Outfalls 001 to 030) that are included in Newark's NJDEP wastewater permit, some or all of which are owned and/or operated by the City of Newark. The outfalls discharge untreated wastewater directly into the Newark Bay Complex during malfunctions, when flow exceeds the capacity of the Newark System, or otherwise. Upon information and belief, during periods of wet weather or high tide events, the Newark System discharges untreated or partially treated wastewater into the Newark Bay Complex.

456. Outfall 001, also known as the Meadowbrook Outfall, is part of a Combined Sewer System and is located at the intersection of Sixth Avenue and Thirteenth Street in the Millbrook Basin's Verona District. The Meadowbrook Outfall is owned and/or operated by the City of Newark and discharges into the Second River. The Meadowbrook Outfall generally relieves surging combined flows from a 36-inch combined sewer flowing east from East Orange and a 48-inch combined sewer flowing north from Newark.

457. In 1972, the PVSC reported that "coliform is still being detected in the discharge of [the Meadowbrook Outfall] to the Second River."

458. In 1974, the PVSC reported that "coliform is still being detected at the discharge of [the Meadowbrook Outfall] to [the] Second River."

459. Wastewater collected from northern and central Newark is intercepted by the PVSC main interceptor through Outfall 002 at Verona Avenue, Outfall 003 near Delavan Avenue East, Outfalls 004-005 at Herbert Place, Outfalls 007-008 at Third Avenue East, Outfalls 009-010 at Clay Street, Outfall 011 at Orange Street, Outfall 012 at Bridge Street, Outfall 013 near Rector Street, Outfall 014 near Saybrook Place, and Outfall 015 near City Dock.

460. Outfall 019, also known as the Brown Street Outfall, is located in the Industrial River District and discharges into the Passaic River through a 24-inch diameter pipe beneath property along Lister Avenue and formerly and/or currently owned by Sherwin Williams. Outfall 019 is owned and/or operated by the City of Newark and collects wastewater from a nominally separate Storm Water System.

461. Outfall 020, also known as the Lockwood Street Outfall, is located in the Industrial River District and discharges into the Passaic River through an 84-inch diameter pipe located at the easterly end of Lister Avenue, north of Raymond Boulevard, and on property currently and/or formerly occupied by Benjamin Moore. Outfall 020 is owned and/or operated by the City of Newark and collects wastewater from a nominally separate Storm Water System.

462. Outfall 021, also known as the Blanchard Street Outfall, is located along the center line of Blanchard Street in the Industrial River District and discharges into the Passaic River through a 24-inch diameter pipe located at the end of Blanchard Street. Outfall 021 is

owned and/or operated by the City of Newark and collects wastewater from a nominally separate Storm Water System.

463. Throughout August 1961, the PVSC reported that "industrial waste" was discharging into the Passaic River from the Lockwood Street Outfall.

464. In August 1961, the PVSC reported that "sanitary sewage was being discharged into the Passaic River" from the Blanchard Street Outfall.

465. In 1972, the PVSC reported that illegal connections persisted within the Lockwood Street storm sewer.

466. In 1979, the City of Newark reported malfunctions, illegal connections, and dry weather discharges of industrial wastewater into and from the Blanchard Street, Lockwood Street, and/or Brown Street Outfalls.

467. In August 1992, the City of Newark reported that dry weather flows were observed discharging into the Lockwood Street Outfall from two industrial facilities located on Lister Avenue.

468. Outfall 022, also known as the Roanoke Avenue Outfall, is part of a Combined Sewer System and is located on the east side of Doremus Avenue, southeast of the intersection of Roanoke and Doremus Avenues in the Industrial River District. The overflow chamber was reconstructed in 1983. Outfall 022 currently discharges into the Passaic River through a 60-inch diameter pipe. Outfall 022 is owned and/or operated by the City of Newark.

469. On or about November 8, 1948, the PVSC reported that "the City of Newark sanitary sewer on Doremus Avenue, known as the Roanoke Avenue sewer has been since October 25, 1948 carrying considerable amounts of gasoline." The PVSC reported that gasoline

vapors at the PVSC pump station "compelled" the PVSC to bypass sewage from the Roanoke Avenue line into the Passaic River.

470. On or about April 26, 1949, the City of Newark's Chief Engineer reported that the "connection chamber between the Roanoke Avenue sewer and Doremus Avenue sewer is so fouled with gas that our maintenance men are not able to enter this chamber to maintain the tide gate and other equipment."

471. On or about May 31, 1955, the PVSC reported that the "City of Newark's Roanoke Avenue sewer was discharging polluting material into the Passaic River," including "colored acid waste."

472. On or about April 1, 1958, the PVSC reported that "for the past few years" it had observed "intermittent pollution" discharging from the Roanoke Avenue sewer, which was owned and operated by the City of Newark. This discharge was attributed to a malfunctioning overflow regulator in the sanitary sewer chamber located at Roanoke Avenue and Avenue P.

473. On or about June 3, 1958, the PVSC reported that "pollution from the Roanoke Avenue storm sewer continues."

474. In July 1958, the PVSC reported that the Pitt-Consol Chemical Company "still discharges its industrial wastes to the Roanoke Avenue Storm Sewer, which goes into the Passaic River."

475. On or about December 7, 1960, the PVSC reported that the Second Avenue Storm Sewer and the Roanoke Avenue Storm Sewer "have been overflowing polluting matter into the Passaic River for quite a period of time."

476. In June 1969, the PVSC brought suit against the City of Newark for discharging untreated "industrial and sanitary waste" from storm sewers that were owned and/or operated by

the City of Newark and "which terminate at Lockwood Street, Blanchard Street, and Roanoke Avenue, all of which discharge directly into the Passaic River" and the "Meadowbrook Storm Sewer, which empties into and discharges into [sic] Second River, a tributary of the Passaic River."

477. On or about March 31, 1970, the PVSC reported that through at least 1969, sanitary and industrial wastes discharged from the Roanoke Avenue sewer and into the Passaic River.

478. In 1972, the PVSC reported that "[i]ndustrial waste continued to discharge into the Passaic River, despite the concrete dam built by [Newark] to keep the sanitary sewer from overflowing into the storm sewer."

479. In 1974, the PVSC reported that "industrial waste continued to discharge into the Passaic River" from the Roanoke Avenue sewer.

480. In 1979, the City of Newark reported that a "non-functioning regulator caused the dry weather discharge at Roanoke Avenue." According to the City, "all flow in the Roanoke Avenue combined sewer enters the Passaic River through the Roanoke Avenue Outfall."

481. In August 1992, the City of Newark reported the regulator chamber, tide gates, and outfall pipe in the Roanoke Avenue Outfall was filled with a "dark red thick substance," which was likely derived from a "source of industrial pollution."

482. Outfall 030, also known as the Avenue A Outfall, is part of a Combined Sewer System and is located at the intersection of Emmet Street and McCarter Highway in the Adams and/or Wheeler Districts and discharges into the Peripheral Ditch through a 48-inch diameter pipe.

483. In September 1992, the City of Newark reported that the level of dry weather wastewater within the regulator chamber for Outfall 030 was a mere one to two inches below the overflow point, and "slightly heavier than normal flow and possible peak daily flow could result in an overflow condition."

The Peripheral Ditch

484. In the early 1960s, the Port Authority of New York and New Jersey ("Port Authority") and the State of New Jersey, within the scope of their master plan for development of the Newark Airport, constructed the Peripheral Ditch, which is a tidal ditch that provides drainage for approximately ten square miles of southern Newark, northeastern Elizabeth, and the Newark Airport.

485. The Peripheral Ditch extends approximately four miles and varies in width between 100 and 200 feet. The Peripheral Ditch begins at the northwest corner of the Newark Airport and encompasses the southeastern, southern, and western perimeter of the Newark Airport. The Peripheral Ditch discharges directly into the Elizabeth Channel of Newark Bay.

486. The Peripheral Ditch replaced area tributaries, including Bound Creek, Dead Creek, and Peddie (Peddy) Ditch, which formerly drained the watershed area prior to expansion of the Newark Airport.

487. On or about September 9, 1964, the NJDOH reported that approximately 31.2 million gallons of untreated wastewater per day generated by Newark's Waverly, Queen, and Peddie Districts were discharged by the City of Newark into a series of ditches and thence into Newark Bay.

488. On or about September 21, 1964, the Union County Extermination Commission reported that the City of Newark was discharging raw, untreated wastewater into the Peripheral

Ditch. The Commission also reported that the Newark Airport was discharging all of its raw, untreated wastewater into the Peripheral Ditch from the southern districts of Newark.

489. On or about July 26, 1965, the Port Authority reported that all or a portion of the untreated storm, commercial, industrial, and sanitary wastewater generated by the City of Newark's Peddie District, Wheeler District, Adams District, Queens District, and Waverly District was discharged into the Peripheral Ditch by the City of Newark, and thence into Newark Bay. According to the Port Authority, the City of Newark had been discharging up to 30 million gallons per day of "raw sewage" through the Newark Airport from the southern section of Newark and into Newark Bay since at least 1948.

490. On or about July 9, 1965, the New Jersey State Commissioner of Health reported that the City of Newark was "discharging tens of millions of gallons daily of slowly moving untreated domestic and industrial wastes" into the Peripheral Ditch. According to the State Commissioner of Health, prior to the construction of the Peripheral Ditch, the City of Newark discharged this waste into Peddie Ditch, and thence into Newark Bay. Upon information and belief, the wastewaters discharged into the Peripheral Ditch by the City of Newark contained Hazardous Substances and other compounds.

491. On or about March 1, 1972, the City of Newark reported that it discharged "30 percent of its total combined sewage" into the Peripheral Ditch.

492. Between October 1, 1974 and September 30, 1975, the PVSC estimated that the City of Newark discharged approximately 2,000 million gallons of untreated wastewater from the South Side Interceptor into the Peripheral Ditch, and thence into Newark Bay during wet-weather events.

493. The City of Newark owns and/or operates combined sewer outfalls that continue to discharge wastewater into the Peripheral Ditch.

494. Hazardous Substances and/or other compounds have been detected in the surface water and/or sediments of the Peripheral Ditch, including, but not limited to, petroleum hydrocarbons, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoroanthene, benzo(a)pyrene, benzo(g,h,i)perylene, bis(2-ethylhexyl)phthalate, butylbenzylphthalate, chrysene, dibenzofuran, 1,4-dichloroethene, di-n-butylphthalate, di-n-octylphthalate, fluorene, fluoranthene, indeno(1,2,3-cd)pyrene, naphthalene, 2-methylphenol, 4-methylnaphthalene, PCBs, polynuclear aromatic hydrocarbons, toluene, ethylbenzene, xylene, phenanthrene, pyrene, arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver.

495. Hazardous Substances and/or other compounds similar to those that have been released into and from the Peripheral Ditch have been detected in sediment core samples taken from the Elizabeth Channel proximate to the point where the Peripheral Ditch discharges into the Elizabeth Channel, including but not limited to 2,3,7,8-TCDD, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, di-n-octylphthalate, fluoranthene, pyrene, arsenic, barium, cadmium, chromium, chrysene, lead, mercury, selenium, silver, PCBs, polynuclear aromatic hydrocarbons, and petroleum hydrocarbons.

Other Discharges from the Newark System

496. In December 1963, the NJDOH reported that overflows from the McClellan Street sewer, which surcharged during heavy rains, frequently contained "highly volatile vapors and liquids resulting from certain industrial waste discharges into the McClellan Street sewer." According to the NJDOH, "[m]otor vehicles passing through the water have apparently started fires resulting in human injury and damage to the vehicles." Analysis of samples of wastewater in the McClellan Street sewer taken in April 1963 indicated "a distinct odor of benzene" and a

"large amount of ether-soluble oils." The McClellan Street sewer, which was owned and operated by the City of Newark and was located within the Waverly District, collected wastewater from a commercial and industrial area along Frelinghuysen Avenue and McClellan Street, and emptied into a 36-inch by 54-inch trunk sewer, which, at the time, flowed in a northerly direction before discharging directly into ditches that emptied into Newark Bay.

497. In 1975, Newark reported that samples of wastewater taken from the Queen District diversion chamber along Queen Street contained "extremely high concentrations" of industrial pollutants. According to Newark, deterioration and design flaws in the Queen District sewers allowed sediment containing heavy concentrations of industrial pollutants to settle during non-storm conditions, and then, during storm conditions, the concentrated sediments flush out into Queen Ditch area, and thence into the Peripheral Ditch and/or Newark Bay.

498. In 1975, Newark reported that samples of wastewater taken from four locations in the Adams District were "quite acidic with the lowest pH reported as 2.5."

499. On or about December 2, 1986, the NJDEP reported that the Newark System received an "unacceptable" rating because raw sewage was discharging into the Peripheral Ditch from outfall 030, the outfall pipe for outfall 026 was collapsed, and there were various reporting violations.

500. On or about July 8, 1988, the NJDEP reported that the Newark System received an "unacceptable" rating because the regulator at outfall 026 was "not functional" and there was an overflow of raw, untreated sewage from the Riverside Avenue regulator at outfall 003.

501. On or about October 26, 1988, the NJDEP reported that the Newark System received an "unacceptable" rating because untreated sewage continued to discharge into Newark Bay from outfall 029, and there were various reporting violations.

502. On or about November 1, 1989, the NJDEP reported that the Newark System received an "unacceptable" rating because untreated sewage was discharging into the Peripheral Ditch from outfall 030 during dry weather conditions, and there were various reporting violations.

503. On or about November 21, 1990, the NJDEP reported that the Newark System received an "unacceptable" rating because untreated sewage was discharging into Newark Bay during dry weather conditions, the outfall pipe for outfall 026 was collapsed, and there were various reporting violations.

504. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, Newark discharged wastewater containing Hazardous Substances and other compounds from the Newark System into the Newark Bay Complex.

505. Upon information and belief, Newark discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Newark System into the Newark Bay Complex without authorization under a federally authorized permit.

506. Newark is responsible, as the owner and/or operator of the Newark System, for any Hazardous Substances discharged from the Newark System into the Newark Bay Complex.

507. Newark is a "discharger" and/or person "in any way responsible" for the Hazardous Substances that were discharged from the Newark System and released into the Newark Bay Complex.

City of Rahway

508. The City of Rahway ("Rahway") was one of the earliest settlements in New Jersey, with settlements dating to the 1600s. Rahway was incorporated as a city in 1858.

509. Upon information and belief, wastewater sewers were first installed in Rahway in the early 1900s.

510. Rahway owns and/or operates a Separate Sewer System from which Rahway discharged wastewaters into the Arthur Kill.

511. The Arthur Kill is a tidal strait separating the western side of Staten Island from mainland New Jersey. The Arthur Kill links Raritan Bay with Newark Bay. Upon information and belief, sediment and water flow from the Arthur Kill into Newark Bay.

512. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by Rahway for the collection, transport, treatment, and Discharge of industrial, commercial, storm, and/or sanitary wastewaters is hereinafter referred to as the "Rahway System."

513. On or about October 7, 1930, the NJDOH ordered Rahway to cease discharging untreated sewage from the Rahway System into the Rahway River. On or about September 15, 1936, the NJDOH ordered Rahway to connect the Rahway System into the Rahway Valley Sewerage Authority System ("RVSA System").

514. Until at least 1936, Rahway discharged untreated wastewater from the Rahway system into the Rahway River, and thence into the Arthur Kill. Upon information and belief, the wastewater collected by Rahway and discharged into the Rahway River included commercial, industrial, storm and sanitary wastewaters which contained Hazardous Substances and other compounds.

515. The NJDOH observed raw sewage discharging from Rahway's Barnet Street regulator in the summer of 1940. On or about December 17, 1941, the NJDOH ordered Rahway to "cease the discharge of sewage or other harmful and deleterious matter, solid or liquid, through the Barnet Street sewage flow regulator at times when there is no surface run-off."

516. Until at least 2006, Rahway owned and operated at least five Combined Sewer System outfalls which discharged storm water and untreated wastewater into the Rahway River during periods of precipitation.

517. Sometime after the enactment of the Clean Water Act, Rahway received authorization to discharge wastewater into the Rahway River from its Combined Sewer System outfalls pursuant to NPDES Permit Number NJ0105023.

518. Upon information and belief, Rahway Discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Rahway System into the Rahway River, the Arthur Kill, and/or their tributaries without authorization under a federally authorized permit.

519. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, Rahway Discharged wastewater containing Hazardous Substances and/or other compounds from the Rahway System into the Rahway River, the Arthur Kill, and/or their tributaries.

520. Rahway is responsible, as the owner and operator of the Rahway System, for any Hazardous Substances discharged from the Rahway System into the Newark Bay Complex.

521. Rahway is a "discharger" and/or person "in any way responsible" for the Hazardous Substances that were discharged from the Rahway System and released into the Newark Bay Complex.

Joint Meeting of Essex and Union Counties

522. In the 1890's, R.S. Sinclair of South Orange, New Jersey wrote letters to surrounding communities asking for a "joint meeting" to discuss methods of cooperative disposal of sewage. Six towns joined in the effort and the Joint Meeting was created by the towns in March of 1901 as the governing entity for the joint sewerage facilities. Since then, the Joint Meeting of Essex and Union Counties ("Joint Meeting") has brought together the efforts of the member communities to dispose of their community wastes.

523. Member (owner) communities of the Joint Meeting include all or some parts of the City of East Orange ("East Orange"), Township of Hillside ("Hillside"), Township of Irvington ("Irvington"), Township of Maplewood ("Maplewood"), Township of Millburn ("Millburn"), City of Newark ("Newark"), Borough of Roselle Park ("Roselle Park"), Township of South Orange Village ("South Orange"), City of Summit ("Summit"), Township of Union ("Union") and Township of West Orange ("West Orange"), and are referred to herein collectively as "Joint Meeting Member Communities."

524. The City of Elizabeth and portions of the Township of Livingston ("Livingston"), City of Orange ("Orange"), Township of Berkeley Heights ("Berkeley Heights"), City of Linden ("Linden") and Borough of New Providence ("New Providence") are currently served as customers by the Joint Meeting (collectively "Joint Meeting Contributing Communities").

525. The original Joint Meeting sewer was constructed during the period of 1901-1904 and began operating in 1904. This Joint Meeting trunk sewer began at the Summit-Millburn line, with branches from the West Orange line and from Newark, flowing through Union and Elizabeth and discharging into the Arthur Kill at the foot of Bayway Avenue in Elizabeth. The section of the original Joint Meeting sewer that passes through Elizabeth and Union includes sewer diameters ranging from 33- inches to 72-inches and is constructed primarily of brick and

mortar, with double laid courses of brick parged mortar jute joints. The original Joint Meeting sewer consists of approximately 9.2 miles of brick sewer and 13.9 miles of tile pipe. The original Joint Meeting sewer included a brick lined tunnel 0.8 miles in length in Union through the ridge that separates the Rahway River watershed from the Elizabeth River watershed.

526. By 1920, the original Joint Meeting sewer was found to be inadequate to carry the flows from the various users attached to it and, therefore, it was necessary to construct a supplementary joint trunk sewer. The construction of the Joint Meeting supplementary joint trunk sewer took place between 1926 and 1936. The Joint Meeting supplementary joint trunk sewer consists of 18.6 miles of reinforced concrete pipe varying in size from 24-inches to 81-inches in diameter and discharges to the Arthur Kill at Clifton Street in Elizabeth. Following the completion of the supplementary sewer, a supplemental tunnel was drilled through the ridge in Union parallel to the original Joint Meeting sewer to more nearly match the total capacity of the two lines upstream and downstream.

527. In the early 1930's, the Joint Meeting constructed a primary wastewater treatment plant in Elizabeth which began operating in March of 1937. The primary treatment technologies employed by the Joint Meeting treatment plant consisted of screening, grit removal, sedimentation, and sludge storage and concentration. In 1937, approximately 25 million gallons of wastewater per day were transported to the Joint Meeting Treatment plant. Before the Joint Meeting's treatment plant became operational in 1937, wastewater collected by the Joint Meeting was discharged directly into the Arthur Kill and/or the Elizabeth River without treatment.

528. From the time the Joint Meeting's treatment plant became operational in 1937 until at least April of 1986, the Joint Meeting disposed of grit and screenings from its treatment

plant on the plant site. On information and belief, the landfill utilized by the Joint Meeting for the disposal of grit and screenings at the Joint Meeting treatment plant site was unlined.

529. During the 1970's, the Joint Meeting's primary treatment plant was expanded to provide secondary wastewater and residuals treatment. Construction of the secondary treatment facilities for the Joint Meeting System was completed by May 1978 and the Joint Meeting began employing secondary treatment and a chlorination process by August or September of 1978. Originally designed as a 75 million gallon per day secondary treatment facility, the Joint Meeting's treatment plant was subsequently re-rated to a hydraulic limit of 85 MGD.

530. The network of trunk, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by the Joint Meeting for the collection, transport, treatment, and Discharge of industrial, commercial, storm and/or sanitary wastewaters from the Joint Meeting is hereinafter referred to as the "Joint Meeting System."

531. The Joint Meeting System discharges wastewaters into the Arthur Kill.

532. The Joint Meeting treatment plant receives industrial, commercial and residential wastewater from a 65 square mile area in Essex and Union Counties, as well as storm water from Elizabeth's Combined Sewer System. The Joint Meeting treatment plant receives sewage from approximately 440,000 residents in northeastern Union and southwestern Essex Counties.

533. Sometime after enactment of the CWA, the Joint Meeting received authorization under the CWA to discharge treated wastewater from the Joint Meeting System through outfall DSN-001 into the Arthur Kill pursuant to an NPDES permit. In addition to outfall DSN-001, there are two bypass discharge points from the Joint Meeting System: an in-plant primary

overflow weir which discharges to the Arthur Kill and a bypass to the Elizabeth River in the vicinity of the Army Corps of Engineers Pump Station. Discharges from these two bypass points from the Joint Meeting System are not authorized by permit.

534. The Joint Meeting reported at least 383 bypasses between March 1984 to April 1993. Between late 1991 and February 2004, the Joint Meeting reported at least 144 secondary bypass events from its treatment plant to the NJDEP.

535. On January 6, 1976, the ISC sampled the influent and effluent at the Joint Meeting treatment plant. The ISC sampling revealed that effluent from the Joint Meeting treatment Plant was not in compliance with the ISC standards for settleable solids or BOD. Substances detected by the ISC on January 6, 1976 in the effluent from the Joint Meeting treatment plant included: ammonia, copper, zinc, chromium, lead, manganese, and mercury.

536. Sampling by the ISC on May 9, 1978 revealed that the Joint Meeting treatment plant was not in compliance with the ISC Compact requirements for total suspended solids or BOD.

537. Sampling by the ISC on December 18, 1978 revealed that the Joint Meeting treatment plant was not in compliance with the ISC Compact requirements for BOD.

538. During an inspection on January 28, 1980, the ISC observed that the effluent at the Joint Meeting treatment plant was brown in color with a heavy concentration of solids going into the plant outfall and that the Joint Meeting treatment plant was not in compliance with the ISC Compact requirements for floating solids, total suspended solids or BOD.

539. During an inspection on January 27, 1981, the ISC observed heavy concentrations of oil going into the effluent from the Joint Meeting treatment plant and that plant effluent was light brown in color. The ISC noted that the Joint Meeting treatment plant was not in

compliance with the ISC Compact requirements for total suspended solids, BOD or visible oil and grease.

540. Substances detected in the influent channels to the Joint Meeting treatment plant between 1984 and 1992 include: 1,1-dichloroethane, 1,1,1-trichloroethane, 1,2-dichloroethane, 4-methyl-2-pentanone, acetone, benzene, benzoic acid, benzyl alcohol, chlorobenzene, chloroform, ethylbenzene, methylene chloride, tetrachloroethene, toluene, trichloroethene, xylenes, 1,2,4-trichlorobenzene, 2-methylnaphthalene, 2-methylphenol, bis(2-ethylhexyl)phthalate, dibutyl phthalate, di-n-octyl phthalate, naphthalene, phenol, arsenic, cadmium, chromium, copper, cyanide, lead, nickel, selenium, silver and zinc.

541. Cadmium, chromium, copper, nickel, lead and zinc were detected in the influent to the Joint Meeting treatment plant each year between 1979 and 2002. The Joint Meeting reported that the total amounts of these metals detected in plant influent were: 788.5 pounds per day in 1979; 590.2 pounds per day in 1980; 430.1 pounds per day in 1981; 378 pounds per day in 1982; 371.1 pounds per day in 1983; 422.6 pounds per day in 1984; 382.8 pounds per day in 1985; 341 pounds per day in 1986; 278.3 pounds per day in 1987; 225 pounds per day in 1988; 214.3 pounds per day in 1989; 187.9 pounds per day in 1990; 189.5 pounds per day in 1991; 169.7 pounds per day in 1992; 199.8 pounds per day in 1993; 233.3 pounds per day in 1994; 186 pounds per day in 1995; 161.9 pounds per day in 1996; 165.3 pounds per day in 1997; 163.3 pounds per day in 1998; 170.2 pounds per day in 1999; 161.4 pounds per day in 2000; 176.1 pounds per day in 2001; and 162.1 pounds per day in 2002.

542. Substances detected in sediment samples taken in proximity to the Joint Meeting outfall near Clifton Street include: 2-methylnaphthalene, arsenic, bis(2-ethylhexyl)phthalate,

cadmium, chromium, copper, lead, manganese, mercury, naphthalene, nickel, selenium, silver, and zinc.

543. An overflow from the Joint Meeting System occurred on June 14, 1984 at a rate of approximately 50,000,000 gallons per day. This overflow discharged wastewater from the Joint Meeting System into the Elizabeth River. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

544. An overflow from the Joint Meeting System occurred on July 6, 1984 at a rate of approximately 50,000,000 gallons per day. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

545. After a Compliance and Assistance Inspection of the Joint Meeting's treatment plant on March 5, 1985, the NJDEP gave the Joint Meeting's facility an unacceptable rating. Violations noted by the NJDEP included the Joint Meeting's improper disposal of grit and screenings in an unauthorized, on-site landfill in violation of New Jersey law. The NJDEP noted that the landfill utilized by the Joint Meeting was not lined, did not have a leachate collection system, and did not have a groundwater monitoring system as required by the NJDEP.

546. In a memorandum dated September 10, 1985, the NJDEP noted that there were excessive concentrations of arsenic, cadmium, chromium, copper, mercury, zinc, cyanide, and PCBs in the Joint Meeting's sewer sludge.

547. After a Compliance and Assistance Inspection of the Joint Meeting's treatment plant on March 4, 1986, the NJDEP gave the Joint Meeting's facility an unacceptable rating as a result of several violations, including the frequent bypassing of secondary treatment including during periods of dry weather. The Joint Meeting was directed by the NJDEP to evaluate

conditions resulting in plant bypasses, including measures to mitigate such conditions. The NJDEP also noted that the Joint Meeting was improperly disposing of grit and screenings in an on-site, unauthorized landfill in violation of New Jersey law.

548. In an April 17, 1986 memorandum to the NJDEP's Chief of the Bureau of Municipal Waste Management, the NJDEP's Chief of the Metro Bureau of Regional Enforcement recommended against imposing a sewer ban extension on the Joint Meeting, despite the existence of bypasses from the Joint Meeting System.

549. For each and every year between 1987 and 2005, there have been violations by industrial users of the Joint Meeting of local and federal effluent limitations for pH, oil/grease, cyanide, and metals.

550. On February 10, 1987, a red colored waste entered the Joint Meeting treatment plant in sufficient quantity and intensity that it passed through all unit processes and appeared as a red plume in the Joint Meeting's outfall in the Arthur Kill. During this incident, sampling was being performed for the Joint Meeting's quarterly bioassay monitoring. The results of the bioassay were an LC50 of 6.25% effluent, which was the worst LC50 ever recorded at the Joint Meeting treatment plant at the time. An LC50 value is a measure of relative acute toxicity.

551. After a Compliance and Assistance Inspection of the Joint Meeting's treatment plant in February 1987, the NJDEP gave the Joint Meeting's facility an unacceptable rating. Deficiencies noted by the NJDEP included: (i) discharges by the Joint Meeting of wastewater from an oil/water separator and other Joint Meeting plant facilities to a storm drain and thence to the Elizabeth River without a valid NJPDES permit; (ii) bypassing of secondary treatment by the Joint Meeting and discharging primary effluent at less than plant average and peak design flow; and (iii) effluent permit violations by the Joint Meeting.

552. On June 27, 1987, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on June 27, 1987. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill at a rate of 800,000 gallons per hour. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

553. An overflow of sewage from the Joint Meeting System occurred on September 20, 1987. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

554. An overflow of sewage from the Joint Meeting System occurred on September 21, 1987. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

555. An overflow of primary chlorinated effluent from the Joint Meeting System occurred on September 22, 1987 at a rate of 10,000,000 gallons per day. This overflow discharged wastewater from the Joint Meeting System into the Elizabeth River. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

556. An overflow of primary chlorinated effluent from the Joint Meeting System occurred on September 23, 1987 at a rate of 10,000,000 gallons per day. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

557. After a Compliance and Assistance Inspection of the Joint Meeting's treatment plant on September 23, 1987, the NJDEP gave the Joint Meeting's facility an unacceptable rating. Among the violations noted by the NJDEP was the depositing and storage of grit and screenings in an unapproved landfill in violation of New Jersey law.

558. An overflow of primary chlorinated effluent from the Joint Meeting System occurred on September 24, 1987 at a rate of approximately 600,000 gallons per hour. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

559. An overflow of primary chlorinated effluent from the Joint Meeting System occurred on September 25, 1987 at a rate of approximately 600,000 gallons per hour. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

560. An overflow of approximately 1,000,000 gallons from the Joint Meeting System occurred on October 24, 1987. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

561. On information and belief, an overflow from the Joint Meeting System began on November 23, 1987 and continued on November 24, 1987. On information and belief, this overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

562. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 10.89 million gallons began on January 20, 1988 and ended on January 21, 1988. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

563. A chlorinated primary effluent overflow from the Joint Meeting System began on March 4, 1988 and ended on March 5, 1988. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

564. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 8.46 million gallons occurred on May 18, 1988. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

565. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 8.58 million gallons occurred on May 19, 1988. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

566. In an Administrative Order and Notice of Civil Administrative Penalty Assessment dated February 6, 1989, the NJDEP found that the Joint Meeting discharged approximately 270,000 gallons of unchlorinated primary effluent into the Arthur Kill and that the Joint Meeting was not authorized under an NJPDES permit to make the discharge. The NJDEP

determined that as a result of the unpermitted discharge by the Joint Meeting, the Joint Meeting had violated the New Jersey Water Pollution Control Act and the regulations promulgated pursuant thereto. The NJDEP ordered that the Joint Meeting discharge pollutants only in conformity with the Joint Meeting's NJPDES permit, the Water Pollution Control Act, and the regulations promulgated pursuant thereto. The NJDEP assessed the Joint Meeting a penalty of $1,750 for the unpermitted discharge of 270,000 gallons of untreated wastewater into the Arthur Kill.

567. Sewage sludge from the Joint Meeting discharged into the Arthur Kill during a barge loading on May 18, 1989.

568. An overflow from the Joint Meeting System occurred on July 16, 1989. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

569. An overflow from the Joint Meeting System occurred on August 12, 1989. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

570. An overflow from the Joint Meeting System began on August 13, 1989 and ended on August 14, 1989. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

571. An overflow from the Joint Meeting System occurred on September 14, 1989. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On

information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

572. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 24.63 million gallons began on November 8, 1989 and ended on November 10, 1989. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

573. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 6.49 million gallons began on November 10, 1989 and ended on November 11, 1989. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

574. An overflow of raw sewage from the Joint Meeting System occurred on January 29, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

575. An overflow of sewage from the Joint Meeting System occurred on February 10, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

576. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 43.7 million gallons began on April 3, 1990 and ended on April 5, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On

information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

577. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 11.38 million gallons began on April 15, 1990 and ended on April 16, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

578. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 9.04 million gallons began on April 21, 1990 and ended on April 22, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

579. A chlorinated primary effluent overflow from the Joint Meeting System occurred on May 13, 1990 at a rate of approximately 20,000,000 gallons per day. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

580. An overflow from the Joint Meeting System occurred on May 16, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

581. A chlorinated primary effluent overflow from the Joint Meeting System occurred on May 29, 1990. This overflow discharged wastewater from the Joint Meeting System into the

Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

582. A sewer connection ban was imposed on the Joint Meeting between June 1, 1990 and March 15, 1991 because the flows to the Joint Meeting's treatment plant exceeded the plant's permitted design capacity for a period before the ban was imposed. Overflows from the Joint Meeting System continued to occur during and after the sewer connection ban.

583. An overflow from the Joint Meeting System occurred on June 18, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

584. An overflow from the Joint Meeting System occurred on June 19, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

585. A chlorinated primary effluent overflow from the Joint Meeting System occurred on July 18, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

586. An overflow from the Joint Meeting System occurred on July 21, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

587. By letter dated August 1, 1990, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on July 29, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

588. An overflow of sewage from the Joint Meeting System occurred on August 6, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

589. A chlorinated primary effluent overflow from the Joint Meeting System occurred on August 10, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

590. An overflow from the Joint Meeting System occurred on August 12, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

591. An overflow of sewage from the Joint Meeting System occurred on August 14, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

592. On August 24, 1990, the Joint Meeting discharged residual digested sludge into the Arthur Kill.

593. An overflow from the Joint Meeting System occurred on August 29, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

594. By letter dated September 6, 1990, the Joint Meeting reported chlorinated primary effluent overflows to the NJDEP that occurred on September 1, 1990 and September 4, 1990. These overflows discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, these discharges from the Joint Meeting System were not in compliance with the Joint Meeting's NJPDES permit.

595. An overflow of sewage from the Joint Meeting System occurred on September 8, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

596. An overflow from the Joint Meeting System occurred on September 20, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

597. An overflow from the Joint Meeting System occurred on September 22, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

598. An overflow of raw sewage from the Joint Meeting System occurred on October 9, 1990. This overflow discharged wastewater from the Joint Meeting System into the Arthur

Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

599. An overflow of primary effluent from the Joint Meeting System occurred on January 12, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

600. An overflow from the Joint Meeting System occurred on January 19, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

601. An overflow from the Joint Meeting System occurred on March 3, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

602. An overflow from the Joint Meeting System occurred on March 5, 1991 at a rate of approximately 1,250,000 gallons per hour. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

603. An overflow from the Joint Meeting System occurred on March 6, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

604. An overflow of sewage from the Joint Meeting System occurred on March 7, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

605. An overflow from the Joint Meeting System occurred on March 15, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

606. An overflow from the Joint Meeting System occurred on March 18, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

607. An overflow from the Joint Meeting System occurred on March 23, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

608. By letter dated April 5, 1991, the Joint Meeting reported to the NJDEP an illegal discharge of water contaminated with hydraulic oil into a storm drain that occurred on April 2, 1991. The discharge occurred in the area of the dewatering facility at the Joint Meeting treatment plant. This discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

609. By letter dated April 18, 1991, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 80,000 gallons to the NJDEP that occurred on April 15,

1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

610. After a Compliance and Assistance Inspection of the Joint Meeting's treatment plant on May 14, 1991 and June 7, 1991, the NJDEP gave the Joint Meeting's facility an unacceptable rating and noted that the Joint Meeting had permit effluent violations and that the Joint Meeting was not consistently monitoring for all of the Effluent Toxicity Monitoring Requirements in accordance with the Joint Meeting's NJPDES permit.

611. An overflow from the Joint Meeting System occurred on May 15, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

612. A primary effluent overflow from the Joint Meeting System occurred on May 28, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

613. A primary effluent overflow from the Joint Meeting System occurred on June 11, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

614. A primary effluent overflow from the Joint Meeting System occurred on June 13, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill.

On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

615. By letter dated June 19, 1991, the Joint Meeting reported an unchlorinated primary effluent overflow of approximately 140,000 gallons to the NJDEP that occurred on June 15, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

616. An overflow from the Joint Meeting System of approximately two million gallons began on July 2, 1991 and ended on July 3, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

617. By letter dated July 24, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on July 20, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

618. A primary effluent overflow from the Joint Meeting System occurred on July 21, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

619. A primary effluent overflow from the Joint Meeting System occurred on July 23, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill.

On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

620. A primary effluent overflow from the Joint Meeting System occurred on July 26, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

621. By letter dated August 12, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on August 9, 1991 and ended on August 10, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

622. By letter dated August 20, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on August 19, 1991 and ended on August 20, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

623. By letter dated August 22, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on August 20, 1991 and ended on August 21, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

624. By letter dated September 23, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on September 19, 1991 and ended on

September 21, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

625. By letter dated September 25, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on September 21, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

626. A primary effluent overflow from the Joint Meeting System occurred on September 27, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

627. A primary effluent overflow from the Joint Meeting System occurred on September 28, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

628. A primary effluent overflow from the Joint Meeting System occurred on September 29, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

629. An overflow from the Joint Meeting System occurred on September 30, 1991 at a rate of approximately 10,000,000 gallons per day. This overflow discharged wastewater from

the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

630. A primary effluent overflow from the Joint Meeting System occurred on October 1, 1991 at a rate of approximately 625,000 gallons per hour. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

631. By letter dated October 3, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on October 2, 1991 and ended on October 3, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

632. By letter dated October 4, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on October 3, 1991 and ended on October 4, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

633. By letter dated October 7, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on October 4, 1991 and ended on October 5, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

634. By letter dated October 7, 1991, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on October 6, 1991 and ended on October 7, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

635. A primary effluent overflow from the Joint Meeting System occurred on October 31, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

636. A primary effluent overflow from the Joint Meeting System occurred on November 8, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

637. A primary effluent overflow from the Joint Meeting System occurred on November 9, 1991. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

638. In an Order dated December 23, 1991, the NJDEP found that bypasses from the Joint Meeting's treatment plant were occurring from December 16, 1991 through December 23, 1991 in such a manner as to cause or threaten injury to the environment and the inhabitants of the State of New Jersey in their health, comfort or property and were in violation of the New Jersey Water Pollution Control Act, as well as in violation of the Joint Meeting's NJPDES permit.

639. An overflow from the Joint Meeting System occurred on January 5, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

640. An overflow from the Joint Meeting System occurred on January 7, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

641. An overflow from the Joint Meeting System occurred on January 8, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

642. An overflow from the Joint Meeting System occurred on January 13, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

643. By letter dated January 22, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on January 18, 1992 and ended on January 19, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

644. By letter dated January 23, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on January 20, 1992 and ended on January 21, 1992.

This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

645. A primary effluent overflow from the Joint Meeting System began on January 22, 1992 and continued until at least January 25, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

646. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 198.32 million gallons began on February 1, 1992 and ended on February 4, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

647. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 0.14 million gallons occurred on February 6, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

648. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 14.34 million gallons began on February 15, 1992 and ended on February 16, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

649. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 14.89 million gallons began on February 25, 1992 and ended on February 26, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

650. By letter dated March 9, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 7, 1992 and ended on March 8, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

651. By letter dated March 12, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 10, 1992 and ended on March 12, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

652. By letter dated March 13, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 12, 1992 and ended on March 13, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

653. By letter dated March 20, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 19, 1992 and ended on March 20, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On

information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

654. By letter dated March 23, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 20, 1992 and ended on March 21, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

655. A primary effluent overflow from the Joint Meeting System began on March 22, 1992 and ended on March 24, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

656. An overflow from the Joint Meeting System occurred on March 25, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

657. By letter dated March 30, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 26, 1992 and ended on March 30, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

658. By letter dated April 2, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 30, 1992 and ended on April 1, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On

information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

659. By letter dated April 3, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on April 2, 1992 and ended on April 3, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

660. By letter dated June 1, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on May 31, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

661. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 124.45 million gallons began on June 5, 1992 and ended on June 8, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

662. A chlorinated primary effluent overflow from the Joint Meeting System of approximately 0.24 million gallons occurred on June 16, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

663. In connection with a Compliance Evaluation Inspection of the Joint Meeting's treatment plant on June 11, 1992, the NJDEP found that the Joint Meeting exceeded certain permit effluent limitations for BOD-5 and total suspended solids at the Joint Meeting's outfall that discharges into the Arthur Kill.

664. By letter dated July 10, 1992, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP of approximately 3.21 million gallons that occurred on July 9, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

665. An overflow of primary effluent from the Joint Meeting System occurred on July 14, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

666. An overflow of raw sewage from the Joint Meeting System occurred on July 28, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

667. An overflow of primary effluent from the Joint Meeting System occurred on August 10, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

668. An overflow of primary effluent from the Joint Meeting System occurred on November 3, 1992. This overflow discharged wastewater from the Joint Meeting System into

the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

669. An overflow from the Joint Meeting System occurred on November 23, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

670. An overflow from the Joint Meeting System occurred on December 11, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

671. A chlorinated primary effluent overflow from the Joint Meeting System began on December 17, 1992 and ended on December 20, 1992. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

672. A chlorinated primary effluent overflow from the Joint Meeting System occurred on January 5, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

673. An overflow from the Joint Meeting System occurred on January 19, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

674. A chlorinated primary effluent overflow from the Joint Meeting System occurred on February 12, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

675. An overflow from the Joint Meeting System occurred on March 8, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

676. A chlorinated primary effluent overflow from the Joint Meeting System occurred on March 17, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

677. By letter dated March 29, 1993, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on March 23, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

678. By letter dated April 5, 1993, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on April 1, 1993 and ended on April 4, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

679. By letter dated April 19, 1993, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on April 16, 1993 and ended on April 18, 1993. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

680. By letter dated January 28, 1997, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on January 25, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

681. By letter dated March 17, 1997, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 14, 1997 and ended on March 15, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

682. By letter dated April 3, 1997, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 31, 1997 and ended on April 2, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

683. By letter dated June 20, 1997, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 8.75 million gallons to the NJDEP that occurred on June 20, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill.

On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

684. By letter dated June 23, 1997, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 0.3 million gallons to the NJDEP that occurred on June 21, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

685. By letter dated July 28, 1997, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on July 24, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

686. By letter dated July 28, 1997, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on July 24, 1997 and ended on July 25, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

687. By letter dated December 31, 1997, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on December 29, 1997 and ended on December 30, 1997. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

688. By letter dated January 26, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on January 23, 1998 and ended on January 24, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

689. By letter dated February 25, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on February 24, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

690. By letter dated April 3, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on April 1, 1998 and ended on April 2, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

691. By letter dated April 13, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on April 10, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

692. By letter dated May 4, 1998, the Joint Meeting reported to the NJDEP that the Joint Meeting's treatment plant failed to achieve a minimum of 85% average removal of total suspended solids for April of 1998 as required by the Joint Meeting's NJPDES permit.

693. By letter dated May 12, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on May 10, 1998 and ended on May 11, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

694. By letter dated May 14, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on May 11, 1998 and ended on May 12, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

695. By letter dated June 1, 1998, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 3.90 million gallons to the NJDEP that occurred on May 29, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

696. By letter dated June 16, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on June 14, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

697. By letter dated July 13, 1998, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that occurred on July 8, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this

discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

698. By letter dated November 9, 1998, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 10,000 gallons to the NJDEP that occurred on November 6, 1998. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

699. By letter dated January 7, 1999, the Joint Meeting reported an overflow of approximately 60,000 gallons to the NJDEP that occurred on January 3, 1999. This overflow discharged wastewater from the Joint Meeting System into the Elizabeth River. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

700. By letter dated January 19, 1999, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 5,965,000 gallons to the NJDEP that occurred on January 14, 1999. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

701. After a Compliance and Assistance Inspection of the Joint Meeting's treatment plant on February 17, 1999, the NJDEP gave the Joint Meeting's facility an unacceptable rating and noted that the overflow events on January 3, 1999 and January 14, 1999 placed the Joint Meeting's facility in significant violation of the terms and conditions of the Joint Meeting's NJPDES permit and/or the New Jersey Water Pollution Control Regulations.

702. By letter dated March 25, 1999, the Joint Meeting reported a chlorinated primary effluent overflow to the NJDEP that began on March 22, 1999 and ended on March 23, 1999. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

703. By letter dated August 30, 1999, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 3.40 million gallons to the NJDEP that occurred on August 26, 1999. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

704. By letter dated September 21, 1999, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 34.46 million gallons to the NJDEP that began on September 16, 1999 and ended on September 17, 1999. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

705. By letter dated September 21, 1999, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 15.54 million gallons to the NJDEP that occurred on September 17, 1999. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

706. By letter dated December 22, 1999, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 3,239,000 gallons to the NJDEP that began on December 18, 1999 and ended on December 19, 1999. This overflow discharged wastewater

from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

707. In an Administrative Order and Notice of Civil Administrative Penalty Assessment dated May 25, 2000, the NJDEP found that the Joint Meeting did not have an NJDEP permit authorizing discharges from the bypass discharge points at the Joint Meeting treatment plant at the time of the overflows from the Joint Meeting System on June 20, 1997; November 6, 1998; January 3, 1999; January 14, 1999; December 18, 1999 and December 19, 1999. The NJDEP found that the Joint Meeting violated the New Jersey Water Pollution Control Act and the regulations promulgated pursuant thereto as a result of these unpermitted overflows.

708. By letter dated April 25, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 3.01 million gallons to the NJDEP that began on April 21, 2000 and ended on April 22, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

709. By letter dated May 23, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 0.4 million gallons to the NJDEP that began on May 18, 2000 and ended on May 19, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

710. By letter dated July 17, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 1.5 million gallons to the NJDEP that occurred on July 15, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill.

On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

711. By letter dated July 31, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 6.24 million gallons to the NJDEP that began on July 26, 2000 and ended on July 27, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

712. By letter dated July 31, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 6.65 million gallons to the NJDEP that occurred on July 27, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

713. By letter dated December 11, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 130,000 gallons to the NJDEP that occurred on December 6, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

714. By letter dated December 18, 2000, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 8.2 million gallons to the NJDEP that occurred on December 17, 2000. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

715. By letter dated April 3, 2001, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 14.39 million gallons to the NJDEP that occurred on March 30, 2001. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

716. By letter dated June 4, 2001, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 3.49 million gallons to the NJDEP that occurred on June 2, 2001. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

717. By letter dated October 17, 2002, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 18.93 million gallons to the NJDEP that occurred on October 12, 2002. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

718. By letter dated November 15, 2002, the NJDEP sent the Joint Meeting a draft NJPDES permit issued in accordance with N.J.C.A. 7:14A. In the Fact Sheet accompanying the Joint Meeting's draft NJPDES permit, the NJDEP noted that Joint Meeting's permit "does not authorize in-plant bypass discharges through the following emergency bypass points: 1) an in-plant primary overflow weir which discharges, after disinfection, to the Arthur Kill and 2) a bypass at the Army Corps of Engineers pump station to the Elizabeth River. Any discharge from the two identified unpermitted bypass points is a violation of the regulations at NJAC 7:14A-2.1, and will be subject to appropriate enforcement action." Nonetheless, the Joint Meeting

continued to make unpermitted bypasses from the Joint Meeting System in violation of New Jersey law.

719. By letter dated January 6, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 17.65 million gallons to the NJDEP that began on January 1, 2003 and ended on January 2, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

720. By letter dated February 26, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 20,500,000 gallons to the NJDEP that began on February 22, 2003 and ended on February 23, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

721. By letter dated March 3, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 1.94 million gallons to the NJDEP that occurred on March 2, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

722. By letter dated June 2, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 6.96 million gallons to the NJDEP that occurred on June 1, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

723. By letter dated June 9, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 57.46 million gallons to the NJDEP that began on June 4, 2003 and ended on June 5, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

724. By letter dated June 24, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 13.33 million gallons to the NJDEP that began on June 21, 2003 and ended on June 22, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

725. By letter dated June 24, 2003, the Joint Meeting reported to the NJDEP that sewer manholes overflowed at two separate locations in a combined amount of approximately 1.36 million gallons beginning on June 21, 2003 and ending on June 22, 2003. This overflow discharged wastewater from the Joint Meeting System into storm drains tributary to the West Branch of the Elizabeth River. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

726. By letter dated December 15, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 10.87 million gallons to the NJDEP that occurred on December 11, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

727. By letter dated December 30, 2003, the Joint Meeting reported a chlorinated primary effluent overflow of approximately 4.976 million gallons to the NJDEP that began on

December 24, 2003 and ended on December 25, 2003. This overflow discharged wastewater from the Joint Meeting System into the Arthur Kill. On information and belief, this discharge from the Joint Meeting System was not in compliance with the Joint Meeting's NJPDES permit.

728. For the period January 1 through December 31, 2003, the Joint Meeting reported that there were 212 effluent violations for hazardous pollutants by users of the Joint Meeting.

729. In connection with a March 8, 2004 Compliance Evaluation and Assistance Inspection, NJDEP found that the Joint Meeting had made discharges that were not authorized by a valid permit arising from unpermitted primary bypasses at the overflow weir at the Joint Meeting treatment plant.

730. By letter dated November 9, 2004, the NJDEP noted that the Joint Meeting's NJPDES renewal permit that became effective on April 1, 2003 did not authorize the use of the Joint Meeting's primary bypass point. The NJDEP also noted that since the effective date of the Joint Meeting's renewal permit, the Joint Meeting had experienced five overflow events from its primary bypass point. The NJDEP noted that because the affirmative defense provisions in the NJDEP's regulations do not apply to unpermitted discharges, the NJDEP was denying all of the Joint Meeting's affirmative defense requests relating to primary bypasses since April 1, 2003.

731. The Joint Meeting discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Joint Meeting System into the Newark Bay Complex without authorization under a federally authorized permit.

732. Prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, the Joint Meeting discharged wastewater containing Hazardous Substances and other compounds from the Joint Meeting System into the Newark Bay Complex.

733. The Joint Meeting is responsible, as the owner and/or operator of the Joint Meeting System, for any Hazardous Substances discharged from the Joint Meeting System into the Newark Bay Complex.

734. The Joint Meeting, the Joint Meeting Member Communities, and the Joint Meeting Contributing Communities are "dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that were discharged from the Joint Meeting System and released into the Newark Bay Complex.

Linden Roselle Sewerage Authority

735. The Linden Roselle Sewerage Authority ("LRSA") serves the City of Linden and the Borough of Roselle, with a service area of approximately 13 square miles.

736. The LRSA maintains a 48-inch joint trunk sewer which originates in the Borough of Roselle and runs southeast along Willow Glade Road and which continues to run in a southeast direction, south of Morse Mill Road and the West Brook Reservoir. At this point, the trunk sewer joins up through a junction chamber with another 48-inch sewer line that originates in Linden. This second line, "the Linden sewer" runs along Clinton Street, also in a southeast direction. The two sewers combine at this point and run along a service road in a general north to south direction before connecting to the LRSA treatment facility on South Wood Avenue in Linden, New Jersey.

737. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by the LRSA for the collection, transport, treatment, and Discharge of industrial, commercial, storm and/or sanitary wastewaters from LRSA is hereinafter referred to as the "LRSA System."

738. The average flow into the LRSA treatment plant is approximately 13 million gallons per day. As many as forty industrial users contribute approximately 20% of the influent flow to the LRSA treatment plant. Effluent from the LRSA treatment plant is discharged to the Arthur Kill.

739. The LRSA System receives commercial, industrial, storm, and sanitary wastewaters from the City of Linden and the Borough of Roselle (together "LRSA Communities").

740. On or about September 9, 1975, a breakdown occurred in a compressor at the Allen Street Ejector Station of the LRSA System resulting in the discharge of approximately 50,000 gallons of untreated wastewater per day into the Arthur Kill. The discharge consisted primarily of wastewater from the Allen Packing Company and three residences.

741. Upon information and belief, the LRSA discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the LRSA System into the Newark Bay Complex without authorization under a federally authorized permit.

742. The LRSA is responsible, as the owner and/or operator of the LRSA System, for any Hazardous Substances discharged from the LRSA System into the Newark Bay Complex.

743. The LRSA and/or the LRSA Communities are "dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that were discharged from the LRSA System and released into the Newark Bay Complex.

Passaic Valley Sewerage Commissioners

744. Since their earliest settlement and creation through at least the early 1900s, the towns, cities, and industries along and proximate to the Passaic River discharged their untreated wastewater into the Passaic River and/or Newark Bay. As reported by the United States Supreme Court in New York v. New Jersey, 256 U.S. 296, 299 (1924), by the late 1800s, the

combined impacts of the sewage inflow into the Passaic River caused the river to become a "menace to the health and property of the adjacent communities."

745. Between 1896 and 1898, three commissions were appointed by the Governor of New Jersey to study the pollution problems in the Passaic River and to devise a system to afford relief. Upon the recommendations of the three commissions, the Passaic Valley Sewerage Commissioners ("PVSC") was created in 1902 by an act of the New Jersey Legislature and was charged with the duty of preventing pollution of the waters of the Passaic River.

746. The PVSC's jurisdiction encompasses all of the land draining into the Passaic River from the Great Falls in Paterson to Newark Bay, and includes approximately 150 square miles of Passaic, Bergen, Essex, and Hudson Counties as defined in N.J.S.A.58:14-1 *et seq.* ("PVSC Sewerage District").

747. In approximately 1908, the PVSC adopted a plan for sewage disposal within the PVSC Sewerage District. The plan provided for, *inter alia*, the construction of a primary trunk intercepting sewer ("Main Intercepting Sewer"), which would discharge wastewater from the PVSC Sewerage District into Upper New York Bay.

748. Construction of the Main Intercepting Sewer began in 1912 and was completed in approximately 1924. The Main Intercepting Sewer is approximately 112,000 feet in length and originates at a point near Prospect Street in the City of Paterson. The Main Intercepting Sewer generally follows the Passaic River to the PVSC treatment plant located in the City of Newark.

749. At its lower end in Newark, the Main Intercepting Sewer has a horseshoe configuration and is approximately 12.5 feet in height. The Main Intercepting Sewer steadily reduces in size as it proceeds through Newark, Belleville, Nutley, Clifton, and Passaic, ultimately decreasing to a 3.75 foot diameter circular pipe in Paterson.

750. Wastewater enters the Main Intercepting Sewer from several PVSC branch interceptors, as well as through direct connections from public sewer systems and private industrial and commercial facilities.

751. The PVSC owns and operates twelve branch intercepting sewers, which have a total length of approximately 74,000 feet, and include: the Newark (Jabez Street) Branch Intercepting Sewer; the Kearny/Harrison/Newark Branch Intercepting Sewer; the Kearny/East Newark/Harrison Branch Intercepting Sewer; the Brown Street Branch Intercepting Sewer; the Kearny/North Arlington Branch Intercepting Sewer; the Rutherford/Lyndhurst Branch Intercepting Sewer; the Garfield/Wallington/Passaic Branch Intercepting Sewer; the Rutherford/East Rutherford Branch Intercepting Sewer; the Lowe Street Branch Intercepting Sewer and Wood Street Lateral; the Warren Street Branch Intercepting Sewer; the Lawrence Street Branch Intercepting Sewer; and the Prospect Street Branch Intercepting Sewer.

752. The PVSC owns and operates two primary pumping stations, the Yantacaw Pumping Station and the Wallington Pumping Station.

753. The Yantacaw Pumping Station has been in service since 1924. The Rutherford/Lyndhurst Branch Intercepting Sewer connects to the Main Intercepting Sewer through the Yantacaw Pumping Station.

754. The Wallington Pumping Station has been in service since 1924. The Garfield/Wallington/Passaic Branch Intercepting Sewer connects to the Main Intercepting Sewer through the Wallington Pumping Station.

755. In approximately 1924, the PVSC treatment plant was completed and is located along the shore of Newark Bay at 600 Wilson Avenue in Newark. From 1924 until at least the early 1980s, the PVSC treatment plant provided primary treatment, including screening and

primary sedimentation. Upon information and belief, secondary treatment technologies, including chlorination, were not installed at the PVSC treatment plant until at least 1981. The PVSC treatment plant was originally designed to handle up to 150 million gallons of wastewater per day. The capacity of the PVSC treatment plant was later expanded to handle up to 225 million gallons of wastewater per day and is currently designed to treat up to approximately 330 million gallons of wastewater per day.

756. The PVSC treatment plant discharges effluent into Upper New York Bay at Robbins Reef through an outfall line that runs beneath Newark Bay, Jersey City, and Bayonne ("Main Outfall Line," or "DSN 001"). The Main Outfall Line is approximately five miles long and is at least twelve feet in diameter. The Main Outfall Line terminates at a point approximately 500 feet north of Robbins Reef Lighthouse and discharges wastewater effluent through a network of diffusion nozzles spread over approximately 3.5 acres beneath Upper New York Bay.

757. Upon information and belief, the PVSC's wastewater effluent was discharged into Upper New York Bay because the carrying capacity of Newark Bay is generally insufficient to assimilate the volume of pollution discharged from the PVSC's Main Intercepting Sewer and treatment plant.

758. In 1972, the PVSC reported that the Main Outfall Line was designed to handle wastewater flows of up to 360 million gallons per day. Upon information and belief, if the PVSC discharges wastewater from the PVSC treatment plant in excess of the carrying capacity of the Main Outfall Line, any excess flow is discharged into Newark Bay through a secondary outfall located at the PVSC treatment plant (also designated as DSN 002).

759. On at least two occasions, ships have collided with the Main Outfall Line beneath Upper New York Bay. The damage caused by the collisions necessitated closing the Main Outfall Line to effectuate repairs. Upon information and belief, when the Main Outfall Line is closed, all wastewater effluent discharging from the PVSC treatment plant is directed into Newark Bay through DSN 002.

760. Since at least 1924, the PVSC has owned and/or operated a Combined Sewer System from which the PVSC discharges untreated or partially treated wastewater into the Passaic River, Newark Bay, and/or their tributaries.

761. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by PVSC for the collection, transport, treatment, and Discharge of industrial, commercial, storm, and/or sanitary wastewaters from PVSC is hereinafter referred to as the "PVSC System."

762. The PVSC is currently comprised of thirty-four Member Municipalities and fourteen Contributing Municipalities (collectively, the "PVSC Municipalities"). The Member Municipalities include: Bayonne, Belleville, Bloomfield, Clifton, East Newark, East Orange, East Rutherford, Elmwood Park, Fair Lawn, Garfield, Glen Ridge, Glen Rock, Haledon, Harrison, Hawthorne, Jersey City, Kearny, Little Falls, Lodi, Lyndhurst, Montclair, Newark, North Arlington, North Haledon, Nutley, Orange, Passaic, Paterson, Prospect Park, Rutherford, Saddle Brook, Totowa, Wallington, and West Paterson. The Contributing Municipalities include: Cedar Grove, Elizabeth, Franklin Lakes, Hackensack, Hasbrouck Heights, Hillside,

North Caldwell, Ridgewood, South Hackensack, South Orange, Union City, West Orange, Wood-Ridge, and Wyckoff.

763. Upon information and belief, several private industrial facilities have direct connections into the PVSC System.

764. Upon information and belief, the wastewater discharged into the PVSC System from the PVSC Member Municipalities, the PVSC Contributing Municipalities, and other sources consists of, and has consisted of, sanitary, storm, commercial, and industrial wastewater containing Hazardous Substances and/or other compounds.

765. On or about August 15, 1978, the PVSC reported that 242 industries discharged wastewater containing heavy metals into the PVSC System, of which sixty-nine of the industries were located in Newark, and sixty-three were located in Paterson. The PVSC reported there were 109 electroplating and metal finishing facilities, twenty-seven (27) organic chemical manufacturing facilities, ten (10) inorganic chemical manufacturing facilities, thirty-one (31) textile manufacturing facilities, eight (8) plastics and synthetic material manufacturing facilities, seven (7) pulp-paper and paperboard manufacturing facilities, six (6) leather tanning and finishing facilities, and miscellaneous industrial and manufacturing facilities.

766. On or about August 15, 1978, the PVSC reported that in comparison to other wastewater treatment systems, "the PVSC raw wastewater is high in metals with particular emphasis on mercury, zinc, nickel, lead, and chromium."

767. On or about August 15, 1978, the PVSC reported that under typical operating conditions, wastewater entering the PVSC treatment plant from the PVSC System contained, without limitation, 67.8 lbs/day of cadmium; 1523.2 lbs/day of chromium; 999.1 lbs/day of copper; 1869.3 lbs/day of lead; 990.6 lbs/day of nickel; 5693.5 lbs/day of zinc; 1.9 lbs/day of

beryllium; 25 lbs/day of arsenic; and 118.6 lbs/day of mercury. According to the PVSC, industrial sources accounted for ninety-two percent of the heavy metal loadings into the PVSC System. Of the total daily metal loadings into the PVSC System, the PVSC estimated that 5.7 lbs/day of cadmium, 25.8 lbs/day of chromium, 120.2 lbs/day of copper, 69.9 lbs/day of lead, 21.3 lbs/day of nickel, 277.4 lbs/day of zinc, and 1.1 lbs/day of mercury were contributed into the PVSC System from domestic sources; and 1.8 lbs/day of cadmium, 7.5 lbs/day of chromium, 30.6 lbs/day of copper, 63.5 lbs/day of lead, 26.0 lbs/day of nickel, 81.7 lbs/day of zinc, 0.06 lbs/day of arsenic, and 0.49 lbs/day of mercury were contributed into the PVSC System from wet-weather runoff and groundwater infiltration.

768. On or about July 30, 1991, the PVSC reported that the wastewater entering the PVSC treatment plant is approximately eighteen percent industrial by volume and fifty-five percent industrial by strength. According to the PVSC, the dominant industrial institutions within the PVSC Sewerage District include, without limitation, chemical manufacturers, electroplaters, textile dryers, hospitals, electronic products manufacturers, and newsprint recycling mills. The PVSC also reported that wastewater in its system contains a "pollutant strength" that is double normal domestic sewage, and contains "industrial shock loads of 50 to 100 percent above the average."

769. Regulator chambers situated along the Main Intercepting Sewer, the PVSC branch interceptors, and other areas within the PVSC System are designed to control the amount of flow entering the Main Intercepting Sewer during periods of peak flow and during wet weather events. When wastewater flow entering the regulator chamber exceeds the capacity of the Main Intercepting Sewer at that point, any excess flow will be directed into an outfall line that discharges to the Passaic River and/or a tributary thereof.

770. Upon information and belief, the PVSC also owns, operates and/or utilizes at least seventy-two combined sewer overflow chamber outfalls, designated as Outfalls DSN 003 through DSN 074, to discharge untreated wastewater into the Passaic River, and/or its tributaries during periods of peak dry-weather flow and wet-weather events.

771. In 1976, the PVSC determined that thirteen of the combined sewer overflow chamber outfalls within the PVSC System were responsible for approximately eighty percent of the known discharges of untreated wastewater from the PVSC System into the Newark Bay Complex upstream of the PVSC treatment plant. These outfalls include: the Hudson Street Overflow in Paterson, also designated as Outfall DSN 007, which discharges into the Passaic River; the Johnston Avenue Overflow in Kearny, also designated as Outfall DSN 022, which discharges into the Passaic River; the Ivy Street Overflow in Kearny, also designated as Outfall DSN 023, which discharges into Frank's Creek, a tributary of the Passaic River; the Verona Avenue Overflow in Newark, also designated as Outfall DSN 028, which discharges into the Passaic River; the Herbert Place Overflow in Newark, also designated as Outfall DSN 030, which discharges into the Passaic River; the Clay Street Overflow in Newark, also designated as Outfall DSN 033, which discharges into the Passaic River; the Saybrook Place Overflow in Newark, also designated as Outfall DSN 037, which discharges into the Passaic River; the City Dock Overflow in Newark, also designated as Outfall DSN 038, which discharges into the Passaic River; the Curtis Place Overflow in Paterson, also designated as Outfall DSN 042, which discharges into the Passaic River; the Montgomery Street Overflow in Paterson, also designated as Outfall DSN 047, which discharges into the Passaic River; the Northwest Street Overflow in Paterson, also designated as Outfall DSN 057, which discharges into the Passaic River; the Tenth Avenue & 33rd Street Overflow in Paterson, also designated as Outfall DSN 066, which

discharges into the Passaic River; and the Market Street Overflow in Paterson, also designated as Outfall DSN 068, which discharges into the Passaic River.

772. The Curtis Place Overflow serves a tributary area of approximately 965 acres. In 1976, the PVSC estimated that the Curtis Place Overflow discharged untreated wastewater into the Passaic River an average of fifty to sixty times per year during wet-weather events. The PVSC estimated that the Curtis Place Overflow discharged between 0.1 million gallons to 1.3 million gallons of untreated wastewater into the Passaic River per wet-weather event.

773. The Northwest Street Overflow serves a tributary area of approximately 283 acres. In 1976, the PVSC estimated that the Northwest Street Overflow discharged untreated wastewater into the Passaic River an average of sixty to seventy times per year during wet-weather events. The PVSC estimated that the Northwest Street Overflow discharged between 0.2 million gallons to 5.5 million gallons of untreated wastewater into the Passaic River per wet-weather event.

774. The Montgomery Street Overflow serves a tributary area of approximately 667 acres. In 1976, the PVSC estimated that the Montgomery Street Overflow discharged untreated wastewater into the Passaic River an average of fifty-five to seventy-five times per year during wet-weather events. The PVSC estimated that the Montgomery Street Overflow discharged between 0.5 million gallons to 5.4 million gallons of untreated wastewater into the Passaic River per wet-weather event.

775. The Tenth Avenue & 33rd Street Overflow serves a tributary area of approximately 699 acres. In 1976, the PVSC estimated that the Tenth Avenue & 33rd Street Overflow discharged untreated wastewater into the Passaic River an average of fifty to seventy times per year during wet-weather events. The PVSC estimated that the Tenth Avenue & 33rd

Street Overflow discharged between 0.2 million gallons and 6.6 million gallons of untreated wastewater into the Passaic River per wet-weather event. According to the PVSC, the "pollutional discharge" from the Tenth Avenue & 33rd Street Overflow was "very high."

776. The Market Street Overflow serves a tributary area of approximately 1,487 acres. In 1976, the PVSC estimated that the Market Street Overflow discharged untreated wastewater into the Passaic River an average of sixty to seventy-five times per year during wet-weather events and during "storm flow conditions...this overflow is activated with essentially every rain." The PVSC estimated that the Market Street Overflow discharged between 5.0 million gallons to 15.0 million gallons of untreated waster into the Passaic River per wet-weather event. According to the PVSC, the wastewater discharging from the Market Street Overflow contained "extremely high" levels of suspended solids, and was generally "objectionable" and "highly polluted."

777. All or a portion of the untreated wastewater discharged from the PVSC System upstream of Dundee Dam flowed downriver and was carried over the Dundee Dam.

778. The Marcal Paper Mills, Inc. ("Marcal") property, which consists of approximately sixty acres of real property and associated improvements located at 1 Market Street in Elmwood Park, Bergen County, New Jersey ("Marcal Paper Site"), connected to the PVSC System proximate to the Market Street Overflow chamber.

779. Marcal's paper manufacturing operations generated wastewater from its pulp and paper milling processes. Marcal admitted that its wastewater contains 2,3,7,8-TCDD and PCBs and that those hazardous substances were discharged into the PVSC System.

780. Since at least the early 1950s, all or portions of the wastewater generated at the Marcal Paper Site were discharged into the PVSC System.

781. Wastewater containing Hazardous Substances and other compounds, including 2,3,7,8-TCDD and PCBs, discharged from the Marcal Paper Site into the PVSC System was discharged by the PVSC without treatment into the Newark Bay Complex from one or more combined sewer overflows or other points within the PVSC System.

782. The Ivy Street Overflow serves a tributary area of approximately 607 acres. In 1976, the PVSC estimated that the Ivy Street Overflow discharged untreated wastewater into the Passaic River an average of fifty to sixty-five times per year during wet-weather events. The PVSC also estimated that the Ivy Street Overflow discharges over 200 million gallons of untreated wastewater during peak wet-weather events.

783. The Johnston Avenue Overflow serves a tributary area of approximately 207 acres. In 1976, the PVSC estimated that the Johnston Avenue Overflow discharged untreated wastewater into the Passaic River an average of fifty to sixty-five times per year during wet-weather events. The PVSC estimated that Johnston Avenue Overflow discharged up to 13.5 million gallons of untreated wastewater into the Passaic River during peak wet-weather events.

784. The Clay Street Overflow serves a tributary area of approximately 2,874 acres. In 1976, the PVSC estimated that the Clay Street Overflow discharged untreated wastewater into the Passaic River an average of forty-six to sixty times per year during wet-weather events. The PVSC estimated that the Clay Street Overflow discharged up to fifty million gallons of untreated wastewater into the Passaic River during peak wet-weather events. In 1976, the PVSC also reported that samples of the wastewater discharging from the Clay Street Overflow into the Passaic River were found to be "very objectionable because of the high BOD, high TSS, and high COD," and which was attributed to the "heavy concentration of industrial waste" in the wastewater.

785. The Saybrook Place Overflow serves a tributary area of approximately 306 acres. In 1976, the PVSC estimated that the Saybrook Place Overflow discharged untreated wastewater into the Passaic River an average of seventy to ninety times per year during wet-weather events. The PVSC estimated that Saybrook Place Overflow discharged between 0.2 million gallons and 8.1 million gallons of untreated wastewater into the Passaic River per wet-weather event. The PVSC also reported that approximately forty percent of the flow through the Saybrook Place Overflow chamber was comprised of industrial wastewater.

786. The Herbert Place Overflow serves a tributary area of approximately 298 acres. In 1976, the PVSC estimated that the Herbert Place Overflow discharged untreated wastewater into the Passaic River during an average of sixty-three percent of wet weather events. The PVSC estimated that the Herbert Place Overflow discharged between 0.1 million gallons and 4.9 million gallons of untreated wastewater into the Passaic River per wet-weather event.

787. The City Dock Overflow serves a tributary area of approximately 380 acres. In 1976, the PVSC estimated that the City Dock Overflow discharged untreated wastewater into the Passaic River an average of forty-five to fifty-five times per year during wet-weather events. The PVSC estimated that the City Dock Overflow discharged up to 3.4 million gallons of untreated wastewater into the Passaic River during peak wet-weather events.

788. The Verona Avenue Overflow serves a tributary area of approximately 367 acres. In 1976, the PVSC estimated that the Verona Avenue Overflow discharged up to 2.2 million gallons of untreated wastewater into the Passaic River during wet-weather events.

789. The Hudson Street Overflow, also designated Outfall DSN 007, is owned by the PVSC and serves a tributary area of approximately 450 acres. In 1976, the PVSC estimated that

the Hudson Street Overflow discharged untreated wastewater into the Passaic River an average of thirty to forty times per year during wet-weather events. The volume of wastewater discharged from the Hudson Street Overflow during overflow events ranged from 0.2 million gallons per day to 5.3 million gallons per day. In 1976, the PVSC also reported that samples of the wastewater discharged into the Passaic River were "representative of diluted sanitary sewage" and contained high levels of suspended solids.

790. All wastewater entering the Main Intercepting Sewer upstream of the junction of the Third River and the Passaic River passes through the Yantacaw Street Bypass in Clifton, also designated as Outfall DSN 003. The Yantacaw Street Bypass is owned by the PVSC and is the largest combined sewer overflow outfall in the PVSC System. Outfall DSN 003 is operated by manually opening and closing a series of gates. When the primary gate to the Main Intercepting Sewer is closed, all wastewater generated upstream of the Yantacaw Street Bypass, which includes an approximately thirty-eight square mile drainage basin, is discharged into the Passaic River without treatment.

791. The Yantacaw Pumping Station Overflow, also designated as Outfall DSN 004, is owned by the PVSC and serves a tributary area of approximately 1,359 acres. Outfall DSN 004 provides overflow relief for the Rutherford/Lyndhurst Branch Intercepting Sewer at the point where the branch interceptor crosses the Passaic River and enters the Yantacaw Pumping Station. The areas tributary to the Yantacaw Pumping Station Overflow are primarily served by Separate Sewer Systems. The Yantacaw Pumping Station Overflow is operated by manually opening and closing a series of gates. When the primary gate to the Yantacaw Pumping Station is closed, all wastewater entering the PVSC System from the Rutherford/Lyndhurst Branch Intercepting Sewer is discharged into the Passaic River without treatment.

792. The Wallington Pump Station Bypass, also designated as Outfall DSN 005, is owned by the PVSC and serves a tributary area of approximately 2,524 acres. Outfall DSN 005 provides overflow relief for the Garfield/Wallington/Passaic Branch Intercepting Sewer at the point where the branch interceptor crosses the Passaic River prior to entering the Wallington Pumping Station. The areas tributary to the Wallington Pump Station Bypass are primarily served by Separate Sewer Systems. In 1976, the PVSC reported that dry weather flows of wastewater flowing through the Wallington Pump Station Bypass contained high levels of BOD, which were indicative of industrial wastewater. Wastewater overflows from Outfall DSN 005 discharge directly into the Passaic River without treatment.

793. The North Arlington Branch Overflow, also designated as Outfall DSN 006, is owned by the PVSC and serves a tributary area of approximately 560 acres. Outfall DSN 006 provides overflow relief for the Kearny/North Arlington Branch Intercepting Sewer at the point where the branch interceptor crosses the Passaic River before connecting with the Main Intercepting Sewer on the westerly side of the Passaic River. The areas tributary to the North Arlington Branch Overflow are primarily served by Separate Sewer Systems. Wastewater overflows from Outfall DSN 006 discharge directly into the Passaic River without treatment.

794. The Second River Joint Meeting Bypass, also known as the Union Outlet Overflow or Outfall DSN 074, serves a tributary area of approximately 10,227 acres and is the second largest outfall in the PVSC System. The areas tributary to the Second River Joint Meeting Bypass are primarily served by Separate Sewer Systems. The Second River Joint Meeting Bypass is operated by manually opening and closing a series of gates. When the primary gate to the Main Intercepting Sewer is closed, all waste upstream of the Second River Joint Meeting Bypass is discharged into the Passaic River without treatment. Between October

1, 1974 and October 1, 1975, the Second River Joint Meeting Bypass was activated thirty-six times and between 2.0 million gallons and 128.3 million gallons of untreated wastewater were discharged into the Passaic River per incident. In 1976, the PVSC estimated that the Second River Joint Meeting Bypass is activated between thirty and forty times per year. According to the PVSC, the discharges from the Second River Joint Meeting Bypass into the Passaic River remained relatively undiluted by storm water and were "highly polluting."

795. Between October 1, 1974 and September 30, 1975, the PVSC reported that it discharged approximately 600 million gallons of untreated wastewater from the Second River Joint Meeting Bypass into the Passaic River.

796. Between October 1, 1974 and September 30, 1975, the PVSC reported that it discharged approximately 7,500 million gallons of untreated wastewater from the PVSC System into the Passaic River, containing approximately 4,805 tons of BOD.

797. Upon information and belief, the PVSC System's sewer overflow outfalls were utilized by the PVSC to divert untreated wastewater into the Passaic River and/or its tributaries during repairs and/or maintenance to the PVSC System.

798. Upon information and belief, the PVSC System's sewer overflow outfalls periodically discharged untreated wastewater into the Passaic River and/or its tributaries during mechanical failures and blockages within the PVSC System.

799. According to Seymour Lubetkin, Chief Engineer of the PVSC between 1954 and 1978, the untreated wastewater of every municipality and industry connected to a municipal sewer line served by the PVSC between 1950 and 1978 was diverted to the Passaic River on a periodic basis.

800. In 1950, the PVSC determined that its "sewage disposal facilities were becoming antiquated and seriously inadequate."

801. After 1950, the PVSC added all or a portion of Little Falls, Saddle Brook, Newark, North Haledon, West Paterson, Bayonne, Jersey City, and South Hackensack into the PVSC System.

802. Between August 2, 1960 and September 5, 1960, the PVSC discharged approximately 3,532.50 million gallons of wastewater effluent into Newark Bay.

803. On or about December 5, 1967, the PVSC reported that it planned to bypass untreated wastewater from its wastewater treatment plant into Newark Bay for at least one week.

804. In August 1971, a 400-foot section of the Second River Joint Meeting Sewer was broken. Between August 28 and September 3, 1971, at least forty million gallons of untreated wastewater was discharged into the Passaic River per day during repairs to the broken line.

805. In 1973, the PVSC reported that the Main Intercepting Sewer "is inadequate for present wet weather flows" and that supplemental capacity was required in the Main Intercepting Sewer because the existing interceptor is "barely adequate for present dry weather peak flows in its upper reach, and is inadequate for wet weather peak flows in its entire length."

806. Between 1974 and 1975, the PVSC reported that seventy to eighty percent of the recorded rainfalls within the PVSC Sewerage District produced an overflow of untreated wastewater from the PVSC System into the Newark Bay Complex.

807. On or about February 28, 1975, the PVSC received authorization under the CWA to discharge wastewater from the PVSC System into Upper Newark Bay, Newark Bay, the Third River, the Passaic River, and Frank's Creek pursuant to NJPDES Permit Number NJ0021016.

808. On or about March 20, 1977, the NJDEP reported that the PVSC diverted approximately twenty million gallons of raw sewage into the Passaic River.

809. Between approximately February 1980 and August 6, 1980, the PVSC discharged approximately 250 million gallons of wastewater effluent into Newark Bay per day. From August 6, 1980 until August 17, 1980, the PVSC discharged 70 million gallons of wastewater effluent into Newark Bay per day.

810. Pursuant to a July 9, 1980 Administrative Order between NJDEP and the PVSC, the NJDEP found that the PVSC was "discharging in excess of 200 mgd of primary effluent into Newark Bay through DSN-002;" and that sampling of the effluent discharging into Newark Bay indicated "a severe degradation of the water quality of Newark Bay."

811. In 1983, the PVSC determined that "rainfall intensities exceeding 0.04 inches per hour produced an overflow within fifteen to twenty minutes while the duration of the overflow period generally coincided with the time of rainfall and the change in rainfall intensity." The PVSC also determined that the initial overflow generally "contained a higher degree of pollution than found in waste characteristics of the dry weather flow;" "BOD and COD were often a function of the non-storm waste characteristics of the tributary area;" and "the overflows within the combined sewered areas were contributing a measurable loading to the Passaic River."

812. In May 1986, the PVSC reported that wastewater entering the PVSC treatment plant between November 1984 and January 1986 contained Hazardous Substances and other compounds, including, without limitation, up to 6504.6 lbs/day of chlorobenzene; 1798.9 lbs/day of chloroform; 9857.2 lbs/day of toluene; 1186.9 lbs/day of chlorophenol; 1537.9 lbs/day of 2,4-dichlorophenol; 8511.8 lbs/day of phenol; 1728.4 lbs/day of 2,4-dimethylphenol; 8301.7 lbs/day of 2,4-dinitrophenol; 1662.2 lbs/day of 2-nitrophenol; 8278.8 lbs/day of p-chloro-m-cresol; 103.6

lbs/day of 4-nitrophenol; 2443.7 lbs/day of pentachlorophenol; 8511.8 lbs/day of phenol; 822.3 lbs/day of 2,4,6-trichlorophenol; 802.5 lbs/day of bis(2-ethylhexyl)phthalate; 246.8 lbs/day of 1,2-dichlorobenzene; 107.1 lbs/day of 1,3-dichlorobenzene; 304.2 lbs/day of 1,4-dichlorobenzene; 623.9 lbs/day of hexachlorobenzene; 3096.1 lbs/day of naphthalene; 122.4 lbs/day of anthracene; 33.7 lbs/day of chrysene; 634.0 lbs/day of di-n-buty phthalate; 821.0 lbs/day of di-n-octyl phthalate; 275.8 lbs/day fluoranthene; 87.6 lbs/day of pyrene; 1399.0 lbs/day of 2,4-dinitrotoluene; 372.6 lbs/day of 1,2,4-trichlorobenzene; 0.15 lbs/day of alpha-hexachlorocyclohexane, 0.26 lbs/day of beta-hexachlorocyclohexane; and 1.72 lbs/day of delta-hexachlorocyclohexane.

813. In May 1986, the PVSC reported that wastewater entering the Main Intercepting Sewer at the convergence chamber located in Belleville just downstream of the Second River main line meter between November 1984 and January 1986 contained Hazardous Substances and other compounds, including, without limitation, up to 1417.2 lbs/day of chlorobenzene; 4134.4 lbs/day of bromoform; 1020.9 lbs/day of chlorophenol; 257.6 lbs/day of 2,4-dichlorophenol; 2461.0 lbs/day of vinyl chloride; 1420.2 lbs/day of 2,4-dimethylphenol; 8345.5 lbs/day of 2,4-dinitrophenol; 503.1 lbs/day of 2-nitrophenol; 115.8 lbs/day of 4-nitrophenol; 1353.0 lbs/day of p-chloro-m-cresol; 1242.4 lbs/day of pentachlorophenol; 13296.3 lbs/day of phenol; 526.6 lbs/day of 2,4,6-trichlorophenol; 252.1 lbs/day of bis(2-ethylhexyl)phthalate; 115.5 lbs/day of anthracene; 229.7 lbs/day of benzo(a)anthracene; 135.9 lbs/day of chyrsene; 516.6 lbs/day of di-n-butyl phthalate; 320.5 lbs/day of di-n-octyl phthalate; 361.8 lbs/day of fluoranthene; 8.2 lbs/day of indeno(1,2,3-cd)pyrene; 129.7 lbs/day of pyrene; 52.4 lbs/day of 1,2-dichlorobenzene; 114.6 lbs/day of 1,3-dichlorobenzene; 174.6 lbs/day of 1,4-dichlorobenzene; 342.5 lbs/day of

hexachlorobenzene; and 73.6 lbs/day of 1,2,4-trichlorobenzene. Wastewater flowing through this location accounts for approximately fifty percent of the flow into the PVSC System.

814. In May 1986, the PVSC reported that wastewater entering the PVSC System from the City of Newark's South Side Interceptor between November 1984 and January 1986 contained Hazardous Substances and other compounds, including, without limitation, up to up to 99.3 lbs/day of chlorobenzene; 2883.0 lbs/day of chlorophenol; 41182.2 lbs/day of 2,4-dichlorophenol; 15811.1 lbs/day of 2,4-dimethylphenol; 246.8 lbs/day of 2,4-dinitrophenol; 760.2 lbs/day of 2-nitrophenol; 16.2 lbs/day of 4-nitrophenol; 220.0 lbs/day of p-chloro-m-cresol; 215.7 lbs/day of anthracene; 99.1 lbs/day of benzo(a)anthracene; 1008.5 lbs/day of chrysene; 2.8 lbs/day of di-n-butyl phthalate; 8.6 lbs/day of di-n-octyl phthalate; 31.0 lbs/day of fluoranthene; 63.6 lbs/day of pyrene; 81.0 lbs/day of pentachlorophenol; 26625.8 lbs/day of phenol; 998.9 lbs/day of 2,4,6-trichlorophenol; and 176.5 lbs/day of bis(2-ethylhexyl)phthalate. Wastewater from the City of Newark's South Side Interceptor accounts for approximately twelve percent of the flow into the PVSC System.

815. In May 1986, the PVSC reported that wastewater entering the PVSC System's Brown Street interceptor sewer located in Newark between November 1984 and January 1986 contained Hazardous Substances and other compounds, including, without limitation, up to up to 13.7 lbs/day of chlorobenzene; 5.2 lbs/day of chlorophenol; 6.1 lbs/day of 2,4-dichlorophenol; 2.8 lbs/day of anthracene; 0.3 lbs/day of benzo(a)anthracene; 0.4 lbs/day of chrysene; 7.5 lbs/day of di-n-octyl phthalate; 6.2 lbs/day of fluoranthene; 3.8 lbs/day of pyrene; 7.9 lbs/day of 2,4-dimethylphenol; 62.5 lbs/day of 2-nitrophenol; 109.37 lbs/day of phenol; 120.9 lbs/day of 2,4,6-trichlorophenol; and 2.1 lbs/day of bis(2-ethylhexyl)phthalate. Wastewater from the Brown

Street interceptor sewer accounts for less than one percent of the flow into the PVSC System, however, it originates from a heavily industrialized area.

816. In prepared statements before Subcommittees of the Appropriations Committee of the United States House of Representatives on or about April 12, 2000 and March 21, 2001, the Executive Director of the PVSC testified that the "real key to improving the water quality of the Passaic River and Newark Bay is to reduce Combined Sewer Overflows." The Executive Director also testified that the Combined Sewer Systems of the PVSC and its member municipalities have led to "swimming prohibitions due to elevated coliform bacteria concentrations and fishing and shellfish bans due to the contaminated river sediments. Dredged material disposal options are limited due to toxic contaminants such as heavy metals and organic compounds in the river sediments. Floatable debris impacts the aesthetic qualities of these water bodies."

817. Hazardous Substances and other compounds were detected in Newark Bay sediment samples adjacent to PVSC Outfall DSN 002, including, without limitation: 2,3,7,8-TCDD, 2-methylnaphthalene, DDT and related derivatives, aluminum, anthracene, antimony, PCBs and related derivatives, arsenic, barium, benzo(a)anthracene, benzo(b)fluoranthene, beryllium, bis(2-ethylhexyl)phthalate, cadmium, chromium, chrysene, cobalt, copper, di-n-butyl phthalate, di-n-octyl phthalate, endrin, ketone, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, lead, manganese, mercury, nickel, PAHs, petroleum hydrocarbons, pyrene, selenium, silver, titanium, vanadium, and zinc.

818. Since at least 1924, the PVSC has continued to add municipalities and private businesses into the PVSC System, thus increasing the volume of wastewater discharging into the PVSC System, without implementing effective measures to control or arrest the discharge of

untreated wastewater from the PVSC System into the Newark Bay Complex during wet-weather events or peak-flow conditions.

819. In 1976, the PVSC developed several plans to eliminate overflows into the Passaic River from the PVSC System. The alternatives included: (i) constructing a relief interceptor of sufficient size to accommodate storm water flows, at an estimated cost of between $1.5 and $2.5 billion; (ii) reconstructing/replacing portions of the antiquated Separate and Combined Sewer System at an estimated cost of between $1.2 and $1.8 billion; (iii) constructing a new PVSC relief interceptor and separate sanitary sewers in the Paterson, Newark, and Harrison-Kearny service areas, at an estimated cost of approximately $850 million; and (iv) developing alternative storage plans to accommodate storage of peak storm water flows during wet-weather events, at an estimated cost of between $650 and $850 million. Upon information and belief, none of the proposed alternatives were implemented due to, *inter alia*, economic considerations.

820. Under N.J.S.A. 58:14-7 and 58:14-8, the PVSC is charged with preventing the discharge of sewage or other polluting materials into the Passaic River. Despite this statutory mandate, the PVSC has knowingly and deliberately discharged untreated wastewater into the Passaic River since at least 1924 to the present day.

821. In letter to Bradley M. Campbell, then-Commissioner of the NJDEP, dated December 17, 2004, the Army Corps of Engineers and the EPA noted that "PVSC's operation and ownership of the regulators make it a PRP, within the meaning of CERCLA. To date, EPA has exercised its enforcement discretion and has not issued PVSC a Notice letter."

822. Upon information and belief, the PVSC discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the PVSC System into

the Newark Bay Complex without authorization under a federally authorized permit.

823. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, the PVSC discharged wastewater containing Hazardous Substances and other compounds from the PVSC System into the Newark Bay Complex.

824. The PVSC is responsible, as the owner and/or operator of the PVSC System, for any Hazardous Substances discharged from the PVSC System into the Newark Bay Complex.

825. The PVSC, the PVSC Member Municipalities, and the PVSC Contributing Municipalities are "discharges" and/or Persons "in any way responsible" for the Hazardous Substances that were discharged from the PVSC System and released into the Newark Bay Complex.

Rahway Valley Sewerage Authority

826. The Rahway Valley Sewerage Authority ("RVSA") owns and/or operates a Separate Sewer System, including a "publicly owned treatment works" ("POTW"), from which the RVSA discharges wastewaters into the Rahway River and Arthur Kill.

827. The Rahway River empties into the Arthur Kill, a tidal strait separating the western side of Staten Island from mainland New Jersey. The Arthur Kill links Raritan Bay with Newark Bay. Upon information and belief, sediment and water flow from the Arthur Kill into Newark Bay.

828. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or operated by the RVSA for its members for the collection, transport, treatment, and Discharge of

industrial, commercial, storm, and/or sanitary wastewaters is referred to collectively as the "RVSA System."

829. The RVSA System was originally designed to handle a maximum flow of 55 million gallons per day. The system's capacity was later expanded to handle a maximum flow of approximately 63 million gallons per day. The RVSA System currently serves more than 300,000 residents and 3,500 industrial and commercial customers.

830. Pursuant to a Judicial Consent Order issued on October 12, 2001, the RVSA system is being expanded to handle a maximum flow of approximately 105 millions gallons per day.

831. Plans to construct a trunk sewer line and treatment plant to serve communities within the watershed of the lower Rahway River were advocated as early as 1913. However, formal action was not taken until approximately 1928.

832. In 1928, nine municipalities in Middlesex and Union counties, including Township of Springfield ("Springfield"), Borough of Kenilworth ("Kenilworth"), Borough of Roselle Park ("Roselle Park"), Township of Cranford ("Cranford"), Town of Westfield ("Westfield"), Borough of Garwood ("Garwood"), Township of Clark ("Clark"), City of Rahway ("Rahway"), and Town of Woodbridge ("Woodbridge") (collectively the "Original RVSA Members"), organized the Rahway Valley Joint Meeting pursuant to the Act of 1899, also known as "An Act to Authorize Two or More Municipalities in this State to Jointly Construct and Maintain Outlet or Trunk Sewers." The Rahway Valley Joint Meeting was formed to construct a trunk line sanitary sewer and sewage treatment plant to collect and treat wastewater generated by the member municipalities.

833. In 1951, the Original RVSA Members entered into a new agreement, pursuant to Section 40:14A-1 of the New Jersey Sewerage Authorities Law, and the Rahway Valley Joint Meeting was renamed to the Rahway Valley Sewerage Authority. Upon information and belief, the 1951 agreement, which was revised in 1995, details the rights of member municipalities to use the RVSA system and allocates the cost of operating, maintaining, repairing, and improving the facilities to each of the member municipalities.

834. In approximately 1995, Scotch Plains Township ("Scotch Plains") joined the RVSA. In approximately 1999, the Borough of Mountainside ("Mountainside"), which previously purchased flow rights from Cranford, joined the RVSA. Springfield, Kenilworth, Roselle Park, Cranford, Westfield, Garwood, Clark, Rahway, Woodbridge, Scotch Plains, and Kenilworth are hereinafter referred to collectively as the "RVSA Member Municipalities."

835. Upon information and belief, the Township of Winfield Park ("Winfield Park"), portions of the Borough of Fanwood ("Fanwood"), and portions of the City of Linden ("Linden") are connected to the RVSA system. Upon information and belief, Winfield Park, Fanwood, and Linden are not members of the RVSA. Winfield Park, Fanwood, and Linden are hereinafter referred to collectively as the "RVSA User Municipalities."

836. Upon information and belief, the wastewater discharging into the RVSA System from the RVSA Member Municipalities and the RVSA User Municipalities has consisted of and continues to consist of sewage, commercial, storm, and/or industrial wastewater containing Hazardous Substances and/or other compounds.

837. In approximately 1931, the RVSA trunk line was completed. Originally, the trunk line was approximately eighteen miles in length and varied from twelve inches to seventy-two inches in diameter. The primary trunk line was constructed of reinforced concrete. The

main trunk line includes branches and spurs extending from the main trunk line that collect wastewaters from Westfield, Garwood, Roselle Park, and Woodbridge.

838. The RVSA treatment plant was completed in 1937. The treatment processes employed by the RVSA treatment plant included grit removal, primary sedimentation, and chlorine disinfection. Effluent from the RVSA treatment plant discharges into the Arthur Kill and/or the Rahway River.

839. Until the treatment plant was completed, wastewater collected by the RVSA trunk line discharged directly into the Rahway River without treatment through a ditch extending from the end of the trunk line and terminating in the Rahway River.

840. In February and March 1933, analysis of samples of effluent discharging from the terminus outfall of the RVSA trunk sewer indicated the presence of elevated concentrations of total suspended solids, total solids and ammonia nitrogen, and elevated levels of BOD.

841. On or about May 3, 1956, the ISC noted that the RVSA's discharge of wastewater into Arthur Kill would result in an additional 20,000 pounds of biological oxygen demand load into the Arthur Kill that would "further deteriorate the waters of Arthur Kill."

842. The RVSA originally received authorization from EPA to discharge wastewater into the Rahway River and/or the Arthur Kill pursuant to NPDES Permit Number NJ0024643.

843. The RVSA System receives flows from Separate Sewer Systems. The RVSA System also receives wastewater from the City of Rahway, a portion of which is serviced by a Combined Sewer System.

844. Upon information and belief, the outfalls permitted under the RVSA federally authorized permits are Separate Sewer System outfalls.

845. The RVSA federally authorized permits authorize the discharge of wastewater from select outfalls provided that certain pollutants in the treated effluent do not exceed specific effluent limitations as set forth in the permits.

846. The RVSA owned and operated at least two overflow outfalls along the main trunk line. The outfalls are described in the RVSA federally authorized permits as outfalls DSN003 and DSN004.

847. Outfall DSN003 discharges into the Rahway River just upstream of the headworks of the RVSA treatment plant. Discharges of untreated wastewaters typically occur when the seventy-two inch main trunk line exceeds approximately forty million gallons per day.

848. Outfall DSN0004, also known as the "Grand Street Overflow," discharges into a tributary of the Rahway River at or about Grand Street and Linden Avenue. Outfall DSN004 was constructed in approximately 1953 and has the capacity to discharge up to ten million gallons per day into the Rahway River during periods of maximum flow. According to the EPA, the outfall was constructed to "relieve serious system surcharge and recurrent overflow problems existing within the [RVSA] system upstream of this location."

849. The RVSA also operates a primary effluent bypass outfall, which is described as DSN002 in the RVSA's federally authorized permits and is located just downstream of the primary clarifier in the RVSA treatment plant. Outfall DSN002 discharges into the Rahway River.

850. As of 1976, the EPA recorded that there were "no combined sewer facilities known to exist within the" RVSA System upstream of outfall DSN0004.

851. Although there are no permitted or recognized overflows upstream of outfall DSN0004, as of 1976, the Rahway Water Company "documented constant overflow conditions

occurring in the virtually all of the communities located...within the [RVSA's] service area.... The most serious and constantly recurring sewage overflows exist within the [RVSA] main trunk line in Clark Township, the trunk line servicing Winfield Township, the Cranford collection system, the Westfield collection system, and the Springfield siphon under the Rahway River."

852. As of 1980, the EPA reported that the RVSA System "is subject to severe infiltration/inflow which affects the treatment efficiency" of the RVSA System. The EPA also noted that "during periods of extreme wet weather, discharge of untreated or partially treated sewage at outfalls 002-004" occurs.

853. A 1981 report partially funded by EPA stated that the "bypass" at outfall DSN0003 on the RVSA System "has by far the most significant impact on water quality in the receiving stream. This is due to the fact that over a period of three hours during the storm, the treatment plant bypasses 7-10.4 mgd flows directly into the river without any treatment. This discharge has a high C-BOD and fecal coliform concentrations [sic], which account for the increases in the simulated concentrations of these pollutants in the river when CSO and bypass discharges are considered."

854. On or about April 7, 1998, the NJDEP revoked the RVSA's authorization to discharge wastewater through outfalls DSN003 and DSN004. Ultimate closure of the outfalls is governed by a Judicial Consent Order entered into between the RVSA and NJDEP on October 12, 2001.

855. Upon information and belief, the RVSA Discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the RVSA System into the Rahway River, the Arthur Kill, and/or their tributaries without authorization pursuant to a federally authorized permit.

856. The RVSA federally authorized permits do not authorize discharges or overflows from unpermitted outfalls within the RVSA System. The RVSA discharged untreated or partially treated sewage, commercial, and/or industrial wastes containing Hazardous Substances and other compounds from unpermitted outfalls within the RVSA System into the Rahway River, the Arthur Kill, and/or their tributaries.

857. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, the RVSA Discharged wastewater containing Hazardous Substances and/or other compounds from the RVSA System into the Rahway River, the Arthur Kill, and/or their tributaries.

858. The RVSA federally authorized permits require the RVSA to properly operate and maintain the RVSA System. Upon information and belief, the RVSA has failed to properly operate and maintain its facilities, in violation of its RVSA federally authorized permits and the CWA.

859. The RVSA is responsible, as the owner and operator of the RVSA System, for any Hazardous Substances Discharged from the RVSA System into the Newark Bay Complex.

860. The RVSA, the RVSA Member Municipalities, and the RVSA User Municipalities are "dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that were discharged from the RVSA System and released into the Newark Bay Complex.

Town of Kearny

861. On or about March 14, 1867, the Town of Kearny ("Kearny") was incorporated by an act of the State Legislature.

862. Kearny lies entirely within the service area of the PVSC. Kearny joined the PVSC as a member in approximately 1911.

Kearny South System

863. Kearny owns and operates a Separate Sewer System that serves the southern sections of Kearny, which consists primarily of industrial facilities and occupies a "peninsula" of land bounded by the Hackensack River to the east, Newark Bay to the south, the Passaic River to the west, and central Kearny to the north—the boundary of which is generally delineated by the east-west Port Authority Trans-Hudson railroad tracks. This system is hereinafter referred to as the "Kearny South System."

864. The Kearny treatment plant was constructed in the 1950s at the foot of Central Avenue in Kearny, New Jersey and served the Kearny South System. Upon information and belief, until the Kearny treatment plant was completed, all wastewater collected by the Kearny South System discharged directly into the Passaic River, the Hackensack River, and/or Newark Bay without treatment.

865. Sometime after enactment of the CWA, Kearny received authorization under the CWA to discharge wastewater from the Kearny treatment plant into the Hackensack River pursuant to NJPDES Permit Number 0022161.

866. The treatment processes employed by the Kearny treatment plant include screening, grit removal, primary clarification, and chlorine disinfection. The Kearny treatment plant discharged effluent into the Hackensack River through an outfall known as DSN-001.

867. The Kearny treatment plant experienced malfunctions and problems treating the wastewater effluent.

868. On or about June 9, 1967, the ISC reported that the Kearny treatment plant was "very dirty," did not operate any preventative maintenance program, and was "receiving a lot of dye waste."

869. On or about June 5, 1969, consultants for the Town of Kearny reported that the Kearny treatment plant was receiving "slugs" of industrial waste that interfered with the treatment plant's ability to remove high levels of BOD from the wastewater stream.

870. On or about January 15, 1970, the NJDOH reported that maintenance at the Kearny treatment plant was poor.

871. On or about March 4, 1970, the NJDOH reported that poorly digested sludge was overflowing from a lagoon at the Kearny treatment plant and into Newark Bay and that various pieces of equipment at the Kearny treatment plant were broken.

872. The Kearny wastewater treatment plant was put into state "receivership" on or about May 15, 1970, and NJDEP took control over the plant.

873. On or about May 19, 1970, Judge John F. Lynch of the New Jersey Superior Court, Chancery Division, in Hudson County, issued an order finding, *inter alia*, that: (i) Kearny had failed to comply with a court order dated July 1969; (ii) Kearny "has not at all times maintained and operated its sewage treatment plant at maximum efficiency and have in full working order all of the treatment units"; (iii) Kearny was "discharging raw sewage sludge into the waters of Newark Bay"; (iv) many of the treatment units at Kearny's treatment plant were not operational; and that (v) Kearny had "created a public health hazard and is continuing to pollute the waters of Newark Bay. . . ."

874. On or about May 26, 1970, the NJDEP reported that wastewater received at the Kearny treatment plant was "industrial in nature" and contained Hazardous Substances including zinc and cyanide. The NJDEP also reported that sludge from a lagoon at the Kearny treatment plant was overflowing into Newark Bay.

875. On or about December 3, 1976, the ISC reported that the Kearny treatment plant and associated equipment "were in poor condition" and plant maintenance "appeared to be non-existent." The ISC also reported that influent entering the treatment plant and effluent discharging from the Kearny treatment plant was "black with fine particles of suspended solids." Samples of effluent discharging from the Kearny treatment plant indicated a higher BOD discharging from the plant than was entering it, minimal removal of heavy metals, and that the Kearny Treatment plant was not complying with the ISC's requirements concerning removal of settleable solids.

876. In 1973, Kearny reported that effluent discharging from the Kearny treatment plant into the Hackensack River contained Hazardous Substances and other compounds, including, without limitation, cyanide, cadmium, copper, lead, manganese, mercury, nickel, silver, and zinc.

877. On or about November 30, 1977, the EPA reported that the Kearny treatment plant served at least fifty-six industries that discharged various acids, dyes, effluent from plastics manufacturing, solvents, and detergents. According to EPA, industrial waste comprised ninety-eight percent of the volume of effluent discharging into the Kearny treatment plant.

878. In 1977, the EPA reported that the Kearny treatment plant received approximately 5.3 million gallons of wastewater per day.

879. On or about January 12, 1978, the NJDEP reported that the Kearny treatment plant received an "unacceptable" rating due to "numerous equipment being out of operation."

880. In 1980, wastewater discharging from the Kearny treatment plant contained Hazardous Substances and other compounds, including, but not limited to, arsenic, beryllium, cadmium, chromium, copper, iron, lead, mercury, nickel, zinc, and oil and grease.

881. On or about April 16, 1980, the ISC reported that effluent discharging from the Kearny treatment plant was light to dark brown in color and contained "increased amounts of oil."

882. On or about April 13, 1981, the PVSC reported that high levels of heavy metals were entering the Kearny treatment plant from the Kearny South System.

883. On or about February 15, 1984, the NJDEP reported that wastewater discharging from the Kearny treatment plant contained Hazardous Substances and other compounds, including, but not limited to, benzene, bromodichloromethane, chloroform, 1,1-dichloroethane, 1,2-dichloroethene, cumene, methylene chloride, naphthalene, tetrachloroethene, toluene, 1,1,1-trichloroethane, 1,2,4-trimethylbenzene, o-oxylene, m-xylene, trichloroethene, and petroleum hydrocarbons. Kearny was not permitted to discharge any of these chemicals or compounds.

884. On or about December 12, 1986, the NJDEP reported that the Kearny treatment plant received an "unacceptable" rating because the plant was "primarily a primary treatment plant and cannot attain the secondary effluent limitations required" by its NJPDES permit.

885. On or about June 30, 1988, the NJDEP reported that the Kearny treatment plant received an "unacceptable" rating because the plant exceeded BOD, fecal coliform, and oil and grease limitations, as well as for equipment problems and reporting deficiencies.

886. On or about February 1, 1989, the NJDEP reported that the Kearny treatment plant received an "unacceptable" rating because the plant exceeded BOD, fecal coliform, and suspended solids limitations, as well as for equipment problems and reporting deficiencies.

887. On or about June 30, 1989, the NJDEP reported that the Kearny treatment plant received an "unacceptable" rating because the plant exceeded BOD and oil and grease

limitations, as well as for equipment problems concerning the anaerobic digester and reporting deficiencies.

888. On or about February 7, 1990, the NJDEP reported that the Kearny treatment plant received an "unacceptable" rating related to various NJPDES permit exceedances.

889. On or about September 11, 1990, the EPA reported that the Kearny treatment plant received an "unsatisfactory" rating because the plant was in poor condition, lacked qualified personnel, was incorrectly performing analyses, and had reporting deficiencies.

890. Between March 6, 1987 and March 27, 1989, sewage and sewage sludge containing Hazardous Substances, including, but not limited to, arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc, phenols, and cyanide was disposed of onto and about the Kearny treatment plant property.

891. In July 1992, the chief operator of the Kearny treatment plant was sentenced to a state prison term and fined for purposely and unlawfully releasing sewage sludge containing toxic pollutants onto the property of the Kearny treatment plant.

892. On or about June 30, 1992, the NJDEP notified Kearny that it was a potentially responsible party under the Spill Compensation and Control Act concerning the release of Hazardous Substances at the Kearny treatment plant.

893. On or about December 28, 1992, the NJDEP reported that wastewater sludge stored in tanks at the Kearny treatment plant contained Hazardous Substances and other compounds, including, but not limited to, arsenic, nickel, beryllium, cadmium, copper, lead, mercury, zinc, phenols, and bis(2-ethylhexyl)phthalate.

894. On or about December 31, 1992, the NJDEP reported that the Kearny treatment plant received an "unsatisfactory" rating because sludge residuals were improperly stored, and

catch basins on the Kearny treatment plant property discharged to the Hackensack River through an old outfall pipe.

895. In the early 1990s, the Kearny treatment plant was ultimately converted into a pump station and began to discharge its effluent into a PVSC interceptor.

Kearny North System

896. Kearny owns and operates a Combined Sewer System that serves the northern and central sections of Kearny, which consists primarily of residential, industrial, and commercial businesses. This Combined Sewer System was tied into the PVSC in the 1920s when the PVSC Kearny-Harrison branch interceptor was constructed and is hereinafter referred to as the "Kearny North System."

897. The Kearny North System includes at least ten combined sewer overflow outfalls that are owned and operated by Kearny, including, without limitation, Outfall 001 - Steward Avenue, Outfall 002 - Washington Street, Outfall 003 - Bergen Avenue West, Outfall 004 - Nairn Avenue, Outfall 005 - Marshall Street, and Outfall 006 - Johnson Avenue, which all discharge untreated wastewater into various points in the Passaic River; and Outfall 007 - Ivy Street, Outfall 008 - Bergen Avenue East, Outfall 009 - Tappan Street, and Outfall 010 - Dukes Street, which all discharge untreated wastewater into various points in Frank's Creek, a tributary of the Passaic River.

898. Upon information and belief, during periods of wet weather or high tide events, discharges of untreated or partially treated wastewater occur throughout the Kearny North System from the ten combined sewer outfalls and other points of release.

899. In approximately 1924, the PVSC constructed a wastewater treatment plant. Upon information and belief, until at least 1924, wastewater originating from the Kearny North System discharged directly into the Passaic River and/or Newark Bay without treatment.

900. Kearny received authorization under the CWA to discharge effluent from combined sewer outfalls within the Kearny North System into the Passaic River pursuant to NJPDES Permit Number 0111244.

901. On or about March 31, 1997, the NJDEP issued an Administrative Order and Notice of Civil Penalty Assessment to the Town of Kearny for failure to comply with the terms of its combined sewer overflow NJPDES Permit NJ0111244.

902. On or about July 2, 1997, the Town of Kearny received a notice of citizen suit filed by the Natural Resources Defense Council and other parties related to alleged non-compliance with the terms of Kearny's combined sewer overflow NJPDES permit.

903. On or about August 29, 1997, the NJDEP filed a civil action against the Town of Kearny concerning Kearny's alleged failure to comply with the provisions of its combined sewer overflow NJPDES permit.

904. On or about December 26, 1997, the NJDEP reported that the Kearny received an "unacceptable" rating for its combined sewer overflow collection system for failure to submit an interim solids/floatables control plan and a long-term solids/floatables control plan, and for failure to develop an operations and maintenance plan and manual.

905. On or about June 12, 2001, the NJDEP reported that the Town of Kearny failed to comply with the conditions of its combined sewer overflow NJPDES permit, including, failure to fully implement its solids/floatables control measures, failure to maintain quarterly progress reports, and failure to retain monitoring records.

Kearny System

906. The network of trunk, intercepting, bypass and outlet sewers, drains, conduits, pipelines, regulators, pumping and ventilation stations, treatment plants or works, outfalls, and any other such plants, structures, facilities, and conveyances of a similar nature owned and/or

operated by Kearny for the collection, transport, treatment, and Discharge of industrial, commercial, storm, and/or sanitary wastewaters from Kearny, and which includes both the Kearny South System and the Kearny North System, is hereinafter referred to as the "Kearny System."

907. The Kearny System discharges wastewaters into the Passaic River, the Hackensack River, and/or Newark Bay.

908. The Kearny System receives commercial, industrial, storm, and sanitary wastewaters from throughout Kearny.

909. Upon information and belief, Kearny discharged untreated or partially treated wastewater containing Hazardous Substances and other compounds from the Kearny System into the Newark Bay Complex without authorization under a federally authorized permit.

910. Upon information and belief, prior to receiving authorization to discharge wastewater pursuant to federally authorized permits, Kearny discharged wastewater containing Hazardous Substances and other compounds from the Kearny System into the Newark Bay Complex.

911. Kearny is responsible, as the owner and operator of the Kearny System, for any Hazardous Substances discharged from the Kearny System into the Newark Bay Complex.

912. Kearny is a "discharger" and/or person "in any way responsible" for the Hazardous Substances that were discharged from the Kearny System and released into the Newark Bay Complex.

OWNERS AND OPERATORS OF SUBMERGED LANDS WITHIN THE NEWARK BAY COMPLEX

The State of New Jersey

913. As set forth in more detail in the Counterclaim filed by Maxus and Tierra, the contamination of the Newark Bay Complex took place during the time the State of New Jersey (the "State") owned and controlled virtually all of the submerged lands within the Newark Bay Complex, and still continues today.

914. Since its admission into the United States on December 18, 1787, the State of New Jersey has held, and continues to hold, title to submerged lands within its jurisdiction subject to the influence of the ebb and flow of the tide up to the mean high water mark. The submerged lands owned and controlled by the State of New Jersey include all of the sediments in the Passaic River, the Hackensack River and Newark Bay, as well as portions of the submerged lands in Arthur Kill and Kill van Kull.

915. The State of New Jersey has owned and controlled these submerged lands at the time discharge of hazardous substances onto those lands have occurred.

916. In the State of New Jersey' 2003 Directive No. 1 In the Matter of the Lower Passaic River (hereinafter "2003 Directive"), the State of New Jersey admits that "the hazardous substances in the Lower Passaic River" were "discharged onto the land and into the waters of the State." *2003 Directive*, ¶ 293.

917. The Newark Bay Complex has received liquid and solid wastes from countless sources in the region, including untreated wastewater from industries and municipalities throughout the Newark Bay Complex.

918. The State owned and controlled—and continues to own and control—all of the submerged lands of the Passaic River, the Hackensack River and Newark Bay, as well as

portions of the submerged lands of the Kill van Kull and Arthur Kill, during times when hazardous substances were discharged on the State's property. By virtue of its ownership of the property in question during the time discharges were occurring, the State is a person in "any way responsible" for hazardous substances discharged into the Newark Bay Complex.

The Port Authority and the City of Newark

919. The City of Newark owns submerged land within the Newark Bay Complex, including, without limitation, Lot 6000 Block 80 as described on the Tax Maps of the City of Newark, and which is comprised of approximately 117.84 acres ("Newark Port Parcel") also known as the "City Channel" or the "Port Newark Channel."

920. In 1974, the City of Newark acquired eight acres of submerged land within Newark Bay located in the northeast corner of Port Newark ("Bay Parcel") from the State of New Jersey. Pursuant to the April 1, 1974 Twelfth Supplemental Agreement to the Agreement with Respect to the Newark Marine and Air Terminals entered into between the City of Newark and the Port Authority of New York and New Jersey (the "Port Authority"), effective March 22, 1948, the Port Authority provided funding to the City of Newark to purchase the Bay Parcel. The Port Authority subsequently leased the Bay Parcel from the City of Newark.

921. The City of Newark owned and/or controlled submerged lands within the Newark Bay Complex at the time of the Discharge of Hazardous Substances and other compounds on and from such lands.

922. The Port Authority leased and/or leases submerged land from the City of Newark within the Newark Bay Complex, including, without limitation, the Newark Port Parcel, the Bay Parcel, and/or other submerged land within the Port Authority's geographic jurisdiction. The Port Authority is responsible for operating and maintaining the shipping berths and other submerged lands within Port Newark.

923. The Port Authority controlled submerged lands within the Newark Bay Complex at the time of the Discharge of Hazardous Substances and other compounds on and from such submerged lands.

924. To accommodate vessels accessing Port Newark and other areas within the Newark Bay Complex, the Port Authority has constructed, operated and maintained navigation channels within the Newark Bay Complex.

925. Dredge materials were utilized as fill to expand Port Newark and along other shoreline areas to facilitate commercial, industrial, and recreational expansion. Between the 1860s and 1970s, filling of shoreline areas reduced the area of Newark Bay by approximately twenty percent.

926. Since the 1930s, dredging activities have occurred periodically within Newark Bay and its tributaries, including, the Kill Van Kull and the Arthur Kill.

927. Between 1996 and 2004, the Port Authority dredged over 1,000,000 cubic yards of sediments from submerged lands within the Newark Bay Complex.

928. On one or more occasions since the 1900s, the City of Newark has conducted operations, including, but not limited to, the dredging of sediments within the Newark Bay Complex. Upon information and belief, such operations have disturbed, suspended, and redistributed sediments contaminated with Hazardous Substances and other compounds into the currents, tides, and/or water column of the Newark Bay Complex.

929. On one or more occasions since 1948, the Port Authority has conducted operations, including, but not limited to, the dredging of sediments within the Newark Bay Complex. Upon information and belief, such operations have disturbed, suspended, and

redistributed sediments contaminated with Hazardous Substances and other compounds into the currents, tides, and/or water column of the Newark Bay Complex.

930. The Port Authority is a discharger and/or a Person "in any way responsible" for Hazardous Substances that have come to be located within the Newark Bay Complex.

931. The City of Newark is a discharger and/or a Person "in any way responsible" for Hazardous Substances that have come to be located within the Newark Bay Complex.

THE STATE OF NEW JERSEY AND NEW JERSEY DEPARTMENT OF AGRICULTURE MOSQUITO AND PEST CONTROL PRACTICES

932. Beginning no later than the early 1900s, various types of oil were used to combat mosquitoes in New Jersey. "The first larvicides were waste oils discarded from various manufacturing processes. These were followed by the use of waste crank case oil and finally by fuel oils," which were employed until at least the 1960s. "Past Achievements, Current Activities and Contributions, and a View to the Future on Research on and Control of Mosquitoes in New Jersey," *Proceedings of Fiftieth Annual Meeting of the New Jersey Mosquito Extermination Association* at 109 (1963) (hereinafter "Control of Mosquitoes").

933. Early mosquito control in New Jersey through "[s]praying consisted of the application of oils or larvicides at the rate of 30 to 40 gallons per acre by means of knapsack, compressed air or high pressure spraying equipment. This program necessitated both small and large trucks as it was not uncommon for one spraying crew to use several hundred gallons of oil per day. Catch basins required weekly treatments to prevent mosquito emergence." "New Values in Mosquito Control," *Proceedings of the Thirty-Sixth Annual Meeting of the New Jersey Mosquito Extermination Association* at 144 (1949).

934. Catch basins and standing rain water were oiled in Newark to control mosquitoes. *Report of the Entomological Department of the New Jersey Agricultural College Experiment*

Station For the Year 1907 at 549 (1908). Catch basins in Paterson, Passaic and Clifton were also regularly sprayed with fuel oil to control mosquitoes. *Fortieth Annual Report of the New Jersey State Agricultural Experiment Station and the Thirty-Second Annual Report of the New Jersey Agricultural College Experiment Station*, at 490 (1920).

935. Mosquito breeding in the Passaic River "was controlled by the use of a rowboat and two men who patrolled the river and sprayed fuel oil wherever larvae were found." *Id.* Indeed, the "Passaic River was oiled whenever and wherever inspection revealed [mosquito] breeding." *Forty-First Annual Report of the New Jersey State Agricultural Experiment Station and the Thirty-Third Annual Report of the New Jersey Agricultural College Experiment Station*, at 526 (1921).

936. By their Complaint, the Plaintiffs seek to impose liability for the purported discharge of DDT, which the Plaintiffs now categorize as a hazardous substance. But the State, itself, through its departments and agencies, sprayed or funded the spraying of millions of pounds of DDT into the New Jersey environment.

937. DDT was widely used in New Jersey to combat mosquitoes beginning in the years immediately following World War II. In 1947, "a DDT solution was sprayed from an airplane over 2,500 acres of central and northern New Jersey's parks, watershed properties and private plantings." "DDT Saves the Pines," *New York Times* (9/6/1947).

938. As of 1948, DDT was "the most widely used chemical in mosquito extermination." "Research Activities in Chemical Control of Mosquitoes in New Jersey in 1953," *Proceedings of the Forty-First Annual Meeting of the New Jersey Mosquito Extermination Association* at 279 (1954).

939. By 1949, it was reported that "many thousands of pounds of DDT both in solution and as powder have been applied by the mosquito commissions [in New Jersey] for investigational as well as for practical purposes, without a single case of injury or damage to plants and higher animal life." "The Place of New and Old Insecticides in Mosquito Control in New Jersey," *Proceedings of the Thirty-Sixth Annual Meeting of the New Jersey Mosquito Extermination Association* at 139-40 (1949). DDT was applied in solutions using kerosene or fuel oil, and solvents such as xylene, benzene, acetone, and dimethyl phthalate cyclohexanone. *Id.* at 140. In 1948, seven counties in New Jersey treated catch basins with oil and DDT. *Id.* at 137.

940. DDT was utilized in the Passaic Valley to combat mosquitoes. For example, in 1948, treatments of DDT and DDD "were made on more than 200 acres of meadow land subject to flood by the Passaic River." "Field Trials with Insecticides for Mosquito Control in the Passaic Valley in 1948," *Proceedings of the Thirty-Sixth Annual Meeting of the New Jersey Mosquito Extermination Association* at 123 (1949).

941. Soil testing conducted in 1953 in nine New Jersey counties detected the presence of DDT. Three samples detected the presence of DDT in a range of 30 to 110 pounds per acre. In areas that received pre-mosquito season residual treatments plus seasonal DDT sprays, DDT was detected in an average amount of 6.27 pounds per acre, with one sample as high as fourteen pounds per acre. "Research Activities in Chemical Control of Mosquitoes in New Jersey in 1953," *Proceedings of the Forty-First Annual Meeting of the New Jersey Mosquito Extermination Association* at 280-83 (1954).

942. In 1956, approximately 600,000 pounds of DDT was sprayed over 600,000 acres in northern New Jersey, southern New York and northeast Pennsylvania in a joint effort by such

states and the United States Government. "Drive Ends Today on Gypsy Moths," *New York Times* (6/16/56).

943. In 1957, more than 3,000,000 pounds of DDT was sprayed over approximately 3 million acres of New Jersey, New York, and Pennsylvania in a joint effort by such states with the United States Department of Agriculture. "Spraying Goes on Despite Protests," *New York Times* (5/25/57); "U.S. Aide Says DDT Caused No Illness," *New York Times* (2/22/58). At least 190,000 acres in parts of Bergen, Passaic, Morris, Sussex and Warren Counties were sprayed with DDT by the State of New Jersey and the United States Department of Agriculture as part of this effort. "Air Spray Attack Begins," New York Times (4/24/57); "Gypsy Moth Spray Hailed in New Jersey," New York Times (10/2/57).

944. At one time, DDT reportedly traveled down the Arthur Kill "like soap suds." "Oil in Arthur Kill: Publicity and Peril for Urban Marsh," *New York Times* (1/18/1990).

945. On information and belief, the New Jersey Department of Agriculture sprayed DDT on 71,000 acres in parts of Passaic, Bergen, Morris, Warren and Sussex counties in 1963. "Audubon Society Opposes Spraying Tracts in Jersey," *New York Times* (4/25/63).

946. In 1963, it was "estimated that approximately 80% of the 296,000 acres of coastal wetlands [in New Jersey] have received some mosquito control treatment." *Control of Mosquitoes* at 108.

947. The State of New Jersey and the New Jersey Department of Agriculture are "Dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that they discharged during the course of mosquito and pest control efforts and that were released into the Newark Bay Complex.

COMMERCIAL SITES

80 Lister Avenue

948. Upon information and belief, in 1978, the City of Newark acquired the real property and improvements located at 80 Lister Avenue in Newark, New Jersey ("80 Lister Avenue Site").

949. The City of Newark owned the 80 Lister Avenue Site from 1978 until 1979.

950. In Paragraph 61 of the Plaintiffs' Second Amended Complaint, the Plaintiffs allege that "extremely high levels of TCDD and other hazardous substances remained in and on the process buildings, tanks, sumps, drains, sewers, pipes and other equipment, which were simply left on the [80 Lister Avenue Site]. The TCDD and other hazardous substances continued to discharge into the environment from the process buildings, tanks, sumps, drains, sewers, pipes and other equipment throughout the 1970s and 1980s."

951. Maxus and Tierra have denied the Plaintiffs' allegations that discharges of TCDD and other Hazardous Substances continued from facilities at the 80 Lister Avenue Site through the 1980s. However, in the event Plaintiffs' allegations that discharges of Hazardous Substances from the 80 Lister Avenue Site continued "throughout the 1970s and 1980s" are true, then the City of Newark has liability for such discharges.

952. If Plaintiffs' allegations regarding purported Discharges from the Lister Site throughout the 1970s and 1980s are true, then the City of Newark is a "discharger" and/or a person "in any way responsible" for Hazardous Substances that were allegedly Discharged at the 80 Lister Avenue Site and that have Discharged into the Newark Bay Complex.

Newark Airport Site

953. The Newark International Airport property consists of approximately 2,027 acres of real property and associated improvements located in Essex and Union Counties, New Jersey ("Newark Airport").

954. The City of Newark owns the portion of Newark Airport that falls within Essex County.

955. Beginning in approximately 1927, the City of Newark constructed the Newark Airport on approximately sixty-eight acres. In the late 1960s and early 1970s, the airport was significantly expanded to accommodate new runways, passenger terminals, and parking and support facilities.

956. Prior to construction of the Newark Airport, the area was comprised of salt marshes, which were drained and filled with demolition debris, refuse, dredging spoils, municipal waste, hydraulic fill, and industrial wastes. Upon information and belief, the marshes and filled areas were treated with oils to control the formation of mosquito larvae.

957. Current activities at the Newark Airport include operation of passenger terminals, vehicle maintenance garages, vehicle washing facilities, general storage areas, aircraft hangars, vehicle and aircraft maintenance facilities, bulk fuel storage facilities, air cargo and freight areas, and ancillary support facilities.

958. Substances utilized, handled, stored and/or Discharged at the Newark Airport include, but are not limited to, diesel fuel, jet fuel, oils, varsol, gasoline, glycol, cutting oil, lube oils, paint thinners, paints, deicing fluids.

959. From at least 1942 until at least 1948, the City of Newark leased the Newark Airport to the United States of America at an estimated rental rate of $55 per acre. During its

leasehold, the United States expended substantial amounts of money adding improvements to the Newark Airport, including sewer and drainage systems.

960. In approximately 1921, the Legislatures of the States of New York and New Jersey entered into a compact creating the Port Authority of New York. In approximately 1972, the Port of Authority of New York changed its name to the Port Authority of New York and New Jersey ("Port Authority").

961. Since at least 1948, the Port Authority has leased, operated, and assumed responsibility for development of the Essex County portion of Newark Airport from the City of Newark.

962. Since at least 1948, the Port Authority has owned and operated the portion of Newark Airport that falls within Union County.

963. In the early 1960s, the Port Authority constructed the Peripheral Ditch, which is a tidal ditch that provides drainage for approximately ten square miles of southern Newark, northeastern Elizabeth, and the Newark Airport. Upon information and belief, the Port Authority is primarily responsible for operation and maintenance of the Peripheral Ditch.

964. The Peripheral Ditch replaced area tributaries, including Bound Creek, Dead Creek, and Peddie (Peddy) Ditch, which formerly drained the watershed area prior to expansion of the Newark Airport.

965. The Peripheral Ditch extends approximately four miles, varies in width between 100 and 200 feet, begins at the northwest corner of the Newark Airport and encompasses the southeastern, southern, and western perimeter of the Newark Airport. The Peripheral Ditch discharges directly into the Elizabeth Channel of Newark Bay.

966. On or about September 21, 1964, the Union County Extermination Commission reported that the Newark Airport was discharging all of its untreated wastewater into the Peripheral Ditch from the southern districts of Newark.

967. Storm water runoff from roads, taxiways, parking fields, fuel storage areas, roof collection systems, ramp areas, vehicle loading and fueling areas, and unpaved areas of the airport, as well as cooling water generated at the Newark Airport, collectively discharged from at least forty-nine outfalls and into the Peripheral Ditch and/or the Newark Channel of Newark Bay.

968. In 1971, the Port Authority reported that "most of the storm water at Newark Airport" and at least "1,200 gallons per day" of raw sewage was discharged into the Peripheral Ditch. Upon information and belief, the storm water runoff and direct discharges of wastewater from the Newark Airport and into the Peripheral Ditch contained Hazardous Substances and/or other compounds.

969. On or about July 1, 1980, a study conducted by the Port Authority indicated significant soil and/or groundwater contamination at the Newark Airport. Samples of soil and/or groundwater at the Newark Airport indicated the presence of up to 4.1 feet of oil beneath the South Bulk Fuel Farm, up to 2.8 feet of oil beneath the previously decommissioned North Fuel Farm, and up to 3.6 feet of oil beneath the Central Terminal Area.

970. On or about October 9, 1988, at least 50,000 gallons of jet fuel were released from the Newark Airport, some of which discharged into the Peripheral Ditch

971. On or about November 26, 1993, a 600-yard oily sheen was observed in the Newark Channel of Newark Bay and emanating from a storm water outfall that discharged

effluent from the Newark Airport. According to an NJDEP inspector, the sheen was an "ongoing problem with runoff from [the] airport."

972. Upon information and belief, spills, leaks, mechanical failures, and/or poor housekeeping practices resulted in Discharges of Hazardous Substances and/or other compounds to and from the Newark Airport.

973. On or about June 6, 1988, the NJDEP reported that the Newark Airport received an "unacceptable" rating because COD exceeded permitted limits at six airport outfalls in February 1988.

974. On or about January 6, 1989, the NJDEP reported that the Newark Airport received an "unacceptable" rating because of multiple exceedences of permitted limits at nine airport outfalls between March and September 1988. Permit limits exceeded included those established for COD, total suspended solids, petroleum hydrocarbons, and temperature.

975. On or about December 29, 1989, the NJDEP reported that the Newark Airport received an "unacceptable" rating because of multiple exceedences of permitted limits at eight airport outfalls between March and August 1989. Permit limits exceeded included those established for COD, pH, total suspended solids, and petroleum hydrocarbons.

976. On or about December 1, 1991, the NJDEP assessed a $98,750 penalty against the Port Authority for multiple exceedences of permitted limits at three airport outfalls between January and June 1991. Permit limits exceeded included those established for total organic carbon, total suspended solids, petroleum hydrocarbons, and pH.

977. On or about March 31, 1992, the NJDEP reported that the Newark Airport received an "unacceptable" rating because of multiple exceedences of permitted limits at two

airport outfalls between July and December 1991. Permit limits exceeded included those established for total organic carbon, petroleum hydrocarbons, and pH.

978. Between April and December 1992, the Port Authority reported exceeding permit limits at five airport outfalls. Permit limits exceeded included those established for total organic carbon, total suspended solids, petroleum hydrocarbons, and pH.

979. On or about March 26, 1993, the NJDEP reported that the Newark Airport received an "unacceptable" rating because of multiple exceedences of permitted limits at five airport outfalls between July and December 1992. Permit limits exceeded included those established for total organic carbon, total suspended solids, petroleum hydrocarbons, and pH.

980. On or about September 1, 1994, the NJDEP issued a Notice of Violation to the Port Authority for "serious violations" of total suspended solids, total organic carbon, and petroleum hydrocarbon effluent limitations at two airport outfalls between February and July 1994.

981. Hazardous Substances and/or other compounds have been detected in the surface water and/or sediments of the Peripheral Ditch, including, but not limited to, petroleum hydrocarbons, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoroanthene, benzo(a)pyrene, benzo(g,h,i)perylene, bis(2-ethylhexyl)phthalate, butylbenzylphthalate, chrysene, chloroform, trichloroethylene, dibenzofuran, 1,4-dichloroethene, di-n-butylphthalate, di-n-octylphthalate, fluorene, fluoranthene, indeno(1,2,3-cd)pyrene, naphthalene, 2-methylphenol, 4-methylnaphthalene, PCBs, polynuclear aromatic hydrocarbons, toluene, ethylbenzene, xylene, phenanthrene, pyrene, arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver.

982. Hazardous Substances and/or other compounds similar to those that have been released into and from the Peripheral Ditch have been detected in sediment core samples taken from the Elizabeth Channel proximate to the point where the Peripheral Ditch discharges into the Elizabeth Channel, including but not limited to 2,3,7,8-TCDD, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, di-n-octylphthalate, fluoranthene, pyrene, arsenic, barium, cadmium, chromium, chrysene, lead, mercury, selenium, silver, PCBs, polynuclear aromatic hydrocarbons, and petroleum hydrocarbons.

983. The Port Authority and City of Newark are "dischargers" and/or Persons "in any way responsible" for the Hazardous Substances that were Discharged from the Newark Airport and released into the Newark Bay Complex.

Newark Seaport Site

984. The Elizabeth Port Authority Marine Terminal includes Port Newark and Port Elizabeth and is waterfront property that consists of approximately 930 acres of real property and associated improvements located in Essex and Union County, New Jersey ("Newark Seaport").

985. Since at least 1915, the City of Newark has owned all or a portion of the Newark Seaport.

986. From approximately 1942 until 1948, the City of Newark leased all or a portion of the Newark Seaport to the United States of America at an estimated rental rate of $55 per acre. During its leasehold, the United States expended substantial amounts of money adding improvements to the Newark Seaport. Upon information and belief, the United States also owned and operated approximately 38 acres of property at the Newark Seaport.

987. In approximately 1921, the Legislatures of the States of New York and New Jersey entered into a compact creating the Port Authority of New York. In approximately 1972,

the Port of Authority of New York changed its name to the Port Authority of New York and New Jersey ("Port Authority").

988. In approximately 1948, the City of Newark leased the Newark Seaport to the Port Authority.

989. In approximately 1963, the Port Authority acquired the United States Naval Industrial Shipyard ("Naval Shipyard") and the Naval Shipyard is included within the Port Authority's leasehold.

990. Between approximately 1971 and 1978, the Port Authority constructed additional berths and related paving in the Naval Shipyard and also developed the southern area of the Newark Seaport, now known as the Port Elizabeth facility.

991. Prior to construction of the Newark Seaport, the area was comprised of salt marshes, which were drained and filled with demolition debris, refuse, dredging spoils, municipal waste, and industrial wastes. Upon information and belief, the marshes and filled areas were treated with oils to control the formation of mosquito larvae.

992. Current activities at the Newark Seaport include operation of wharves, deep-water ship berths, transit sheds, open storage areas, cargo distribution buildings, specialized facilities, and railroad tracks.

993. The Newark Seaport abuts the Elizabeth Channel, the Port Newark Channel, and Newark Bay, which received direct discharges, overland flow, and sheet storm water runoff directly from the Newark Seaport.

994. Upon information and belief, during the periods that the City of Newark owned the Newark Seaport and the Port Authority operated the Newark Seaport, industrial and/or

commercial tenants operated facilities that generated and discharged Hazardous Substances and/or other compounds into the Newark Bay Complex from the Newark Seaport.

995. On or about November 18, 1971, the Port Authority reported that "sewage from most of Port Newark is now discharged into a combination storm-sanitary sewer system which discharges into Newark Bay and/or the Newark Channel at the rate of 100,000 gallons per day from various outfalls."

996. On or about January 12, 1972, the NJDEP reported that "[a]ll facilities located in the Port Authority Terminal in Newark discharge any and all effluents to the storm sewers, and thence to Newark Bay."

997. Hazardous Substances and other compounds have been detected in the groundwater at the Newark Seaport, including, but not limited to, arsenic, cadmium, chromium, lead, methylene chloride, benzene, toluene, ethylbenzene, xylene, and petroleum hydrocarbons.

998. Upon information and belief, groundwater at the Newark Seaport flows to Newark Bay. Upon information and belief, Hazardous Substances and/or other compounds released to the groundwater at the Newark Seaport discharge into the Newark Bay Complex.

999. Hazardous Substances and/or other compounds have been detected in sediment core samples taken from Newark Bay proximate to outfalls emanating from the Newark Seaport, including, but not limited to, dioxins and related derivatives, PCBs and related derivatives, cadmium, chromium, lead, nickel, benzene, toluene, xylene, methylene chloride, PAHs, and petroleum hydrocarbons.

1000. The City of Newark is a "discharger" and/or a Person "in any way responsible" for the Hazardous Substances that were Discharged at the Newark Seaport and released into the Newark Bay Complex.

1001. The Port Authority is a "discharger" and/or a Person "in any way responsible" for the Hazardous Substances that were Discharged at the Newark Seaport and released into the Newark Bay Complex.

Revere Site

1002. Revere Smelting & Refining Corporation operated a secondary lead smelting facility located at 387 Avenue P, Newark, Essex County, New Jersey, immediately south of the Avenue P Landfill Site (the "Revere Site"). Battery manufacturers and others shipped used automobile batteries, industrial batteries, battery plates, scrap metallic lead and other waste to the facility for reclamation.

1003. From 1957 until approximately April 14, 1970, Revere Smelting & Refining Corporation, a New Jersey corporation, operated the facility at the Revere Site.

1004. On or about April 14, 1970, Revere Smelting & Refining Corporation, a Delaware corporation, began operating the facility at the Revere Site.

1005. On information and belief, during the time Revere Smelting & Refining Corporation operated the Revere Site, the Housing Authority of the City of Newark owned the Revere Site.

1006. Plum Creek, a tributary of the Passaic River, flows adjacent to the Revere Site. Overland flow, direct discharges and sheet storm water runoff from the Revere Site are received by Plum Creek and the Passaic River.

1007. Hazardous Substances used, produced or stored at the Revere Site include: antimony; arsenic; copper; lead, lead dust, lead oxide and other lead compounds; zinc; sulfuric acid; sulfur dioxide; and sodium hydroxide.

1008. Batteries were disassembled and broken up at the Revere Site, causing acid and acid waste to be discharged to the ground which, in turn, flowed into yard drains and was

discharged through a concrete pipe or by other means into Plum Creek and thence the Passaic River. Acid waste was also disposed of in one or more on-site lagoons. On information an belief, waste products from smelting operations, including blast furnace slag, were disposed of on site.

1009. On information and belief, surface discharges, leaks and spills, leachate, seepage, overland flow, sheet storm water runoff and flood waters carried Hazardous Substances from the Revere Site by way of Plum Creek or by other means into the Passaic River.

1010. Sediment samples taken two locations on Plum Creek downstream of the Revere Site showed the presence antimony, copper, lead and zinc. Sediment samples from the Passaic River in the vicinity of the mouth of Plum Creek also showed the presence of antimony, copper, lead, zinc and other Hazardous Substances.

1011. On or about September 15, 2003, EPA sent a General Notice Letter notifying Revere Smelting & Refining Corporation of its potential liability for Response costs relating to the Lower Passaic River Study Area as the result of the Release of Hazardous Substances from the Revere Site.

1012. Housing Authority of the City of Newark is a Person "in any way responsible" for the Hazardous Substances that were discharged at the Revere Site and released into the Newark Bay Complex.

Housing Authority of the City of Newark McCarter Highway Site

1013. Upon information and belief, the Housing Authority of the City of Newark owned and/or operated property located at 900 McCarter Highway in Essex County, Newark, New Jersey ("McCarter Highway Site").

1014. The McCarter Highway Site abuts the Passaic River, which received direct discharges, overland flow, and sheet storm water runoff directly from the McCarter Highway Site.

1015. In approximately August 1991, during demolition of existing improvements on the McCarter Highway Site, approximately fifty, 55-gallon drums were crushed and the contents of the drums flowed onto the McCarter Highway Site and into the Passaic River. Upon information and belief, the drums contained Hazardous Substances and other compounds including paint sludge wastes, waste oils, inorganic salts, acids, and spent organic solvents.

1016. The Housing Authority of the City of Newark is a "discharger" and/or a Person "in any way responsible" for the Hazardous Substances that were discharged at the McCarter Highway Site and released into the Newark Bay Complex.

American Ref-Fuel Site

1017. On information and belief, the Port Authority of New York and New Jersey is the current owner of an approximately 25 acre property at 66 Blanchard Street, Newark, New Jersey (the "American Ref-Fuel Site"). The American Ref-Fuel Site is bounded by the Passaic River on the north, the New Jersey Turnpike on the east and Blanchard Street on the west.

1018. The Essex County Resource Recovery Facility, a waste to energy facility, is situated on the American Ref-Fuel Site On information and belief, American Ref-Fuel Company of Essex County ("American Ref-Fuel") began operating the Essex County Resource Recovery Facility in approximately 1990 pursuant to an agreement with the Port Authority of New York and New Jersey. Before the Essex County Resource Recovery Facility was constructed, the American Ref-Fuel Site was an open dump site.

1019. American Ref-Fuel changed its name to Covanta Essex Company ("Covanta").

1020. From at least 1990 until at least 1994, stormwater at the American Ref-Fuel Site was collected and discharged into two ditches, which in turn discharged to the Passaic River via two outfalls.

1021. American Ref-Fuel exceeded permitted discharge levels for its outfalls to the Passaic River on numerous occasions. American Ref-Fuel's discharges exceeded permitted levels for lead, total petroleum hydrocarbons, zinc, toluene, methylene chloride, pH, fecal coliform, and total suspended solids.

1022. On June 21, 1993, NJDEP gave the American Ref-Fuel Site an "unacceptable" rating for, among other things, exceeding permit effluent limitations for the period of December 1, 1992 to April 30, 1992.

1023. On June 8, 1994, NJDEP gave the American Ref-Fuel Site an "unacceptable" rating for, among other things, exceeding permit effluent limitations for the period of November 1, 1993 to April 30, 1994. Compounds discharged in violation of American Ref-Fuel's NJPDES permit included, but were not limited to, toluene, benzene, and lead.

1024. By letter dated March 25, 1995, American Ref-Fuel reported to the NJDEP that it had discharged zinc, toluene, and methylene chloride in excess of its NJPDES permit limits

1025. On June 8, 1994, NJDEP gave the American Ref-Fuel Site an "unacceptable" rating for, among other things, exceeding permit effluent limitations for the period of November 1, 1993 to April 30, 1994. Compounds discharged in violation of American Ref-Fuel's NJPDES permit included, but were not limited to, toluene, benzene, and lead.

1026. On June 20, 1995, NJDEP gave the American Ref-Fuel Site an "unacceptable" rating for, among other things, exceeding permit effluent limitations for the period of October 1,

1994 to April 30, 1995. Compounds discharged in violation of American Ref-Fuel's NJPDES permit included, but were not limited to, benzene.

1027. On June 22, 1998, NJDEP gave the American Ref-Fuel Site an "unacceptable" rating for, among other things, failing to monitor stormwater discharges and inaccurately reporting on discharge monitoring reports that there were no stormwater discharges.

1028. On or about December 1, 1992, NJDEP and American Ref-Fuel Company entered into an administrative consent order in which NJDEP found that American Ref-Fuel had exceeded certain discharge limits in its NJPDES permit and violated the Water Pollution Control Act and the regulations promulgated thereto. Compounds discharged in violation of American Ref-Fuel's NJPDES permit included, but were not limited to, lead and zinc.

1029. Substances detected in the groundwater at the American Ref-Fuel Site include: arsenic, manganese, ammonia, phenol, total coliform, copper, zinc, chromium, chloroform, methylene chloride, toluene, vinyl chloride, dichloroethane, trichloroethane, ethylbenzene, napthalene, chlorobenzene, dichlorobenzene, and dichloroethylene.

1030. At least one of the outfalls to the Passaic River at the American Ref-Fuel Site experienced infiltration of contaminated groundwater.

1031. The Port Authority of New York and New Jersey is a Person "in any way responsible" for the Hazardous Substances that were discharged at the American Ref-Fuel Site and released into the Newark Bay Complex.

NJDOT Kearny Oil Lake Site

1032. The State, through the New Jersey Department of Transportation ("NJDOT"), is the current owner of property designated as Block 285, Lot 2 on the tax maps of the Town of Kearny, New Jersey (the "Kearny Oil Lake Site").

1033. The State acquired the Kearny Oil Lake Site on or about March 6, 1968, at which time the Kearny Oil Lake Site contained oily wastes, sludge, and contaminated waste water. The lake of oil wastes on the Kearny Oil Lake Site was estimated to be fifteen acres in size. The Kearny Oil Lake Site contained more than ten million gallons of oil-contaminated water and more than 200,000 cubic yards of oily sludge containing hazardous substances and other compounds including phenol, phosphate, sulfate, cadmium, chromium, copper, iron, lead, nickel, mercury, sulfur and zinc.

1034. On information and belief, from approximately 1949 until waste material was removed to make way for the construction of Interstate Highway 280, the Kearny Oil Lake Site periodically overflowed, particularly during wet weather, into Harrison Turnpike, storm drains, ditches, surrounding wetlands, and Frank's Creek, which is a tributary of the Passaic River.

1035. By letter dated October 13, 1971, the PVSC informed NJDOT that an oil pool on the State's property was intermittently polluting Frank's Creek and inquired as to what NJDOT intended to do about the matter.

1036. By letter dated November 12, 1971, the Deputy Attorney General for the State of New Jersey advised the PVSC that the issue of pollution from the Kearny Oil Lake Site had been referred to the NJDEP.

1037. By letter dated January 28, 1972, the PVSC asked the NJDEP for "a report on what is being done concerning the pool of oil on the Department of Transportation's property in Kearny, which overflows during rain storms, discharging oil into Frank's Creek." NJDEP did not respond to the PVSC's January 28, 1972 letter.

1038. By letter dated March 8, 1972, the PVSC asked the NJDEP to report on "what is being done by the State Department of Environmental Protection concerning the pool of oil in Kearny which discharges oil into Frank's Creek during rain storms."

1039. On information and belief, an inspector for NJDEP's Bureau of Water Pollution Control executed an affidavit dated June 16, 1978, in which the inspector stated that he was aware that the NJDOT's Kearny Oil Lake Site had overflowed numerous times, both prior and subsequent to February 6, 1973.

1040. The United States Coast Guard advised NJDEP in May of 1973 that discharges were being made from the Kearny Oil Lake Site into navigable waters of the United States in violation of Federal law.

1041. NJDEP did not issue any abatement orders upon learning that NJDOT's Kearny Oil Lake Site was polluting waters of the State, including the Passaic River. Instead, an August 23, 1974 NJDEP memorandum recommended that NJDEP "negotiate with the Department of Transportation" for the "immediate removal of the oil lake from their property" and noted that "[i]t is wrong to allow DOT to continue their pollution, as well as inconsistent with our other efforts."

1042. An August 23, 1974 NJDEP memorandum stated that it was NJDEP's "impression that DOT was going to take some immediate steps to remove the oil" but noted that NJDOT's "actual intention was to wait until the highway goes through; which might not be for a period of years."

1043. According to the NJDOT, the Kearny Oil Lake Site overflowed during periods of heavy rainfall and other times, including, but not limited to September 3, 1974 and April 29, 1974, carrying petroleum waste products into the waters of the State. Nonetheless, on

information and belief, NJDEP did not seek or issue any orders requiring NJDOT to abate the pollution of the waters of the State from the NJDOT's Kearny Oil Lake Site during the 1970s.

1044. By letter dated June 21, 1976, the EPA notified the State of New Jersey of a violation of Federal law as a result of an overflow from the Kearny Oil Lake Site into the waters of the United States.

1045. On or about June 21, 1976, the State, through NJDOT, acquired the southern 1.212 acres of the property designated as Block 285, Lot 3 on the tax maps of the Town of Kearny.

1046. On information and belief, NJDOT did not begin to remove the oily-water, sludge material and hazardous substances at the Kearny Oil Lake Site until 1977, when NJDOT began the construction of Interstate 280.

1047. Hazardous substances and other compounds detected in the sediment at the State's Kearny Oil Lake Site include heptachlor epoxide, dieldrin, aroclor 1242, aroclor 1260, aluminum, antimony, arsenic, barium, cadmium, chromium, lead, manganese, nickel, thallium, vanadium, and zinc.

1048. During the construction of Interstate 280, NJDOT encountered an underground lake of free oil product floating upon the groundwater at the NJDOT Kearny Oil Lake Site which extended from the eastern limits of NJDOT's right-of-way to Frank's Creek to the west.

1049. On or about May 3, 1977, the Hackensack Meadowlands Development Commission ("HMDC") reviewed and approved a plan by an NJDOT contractor for the disposal of 72,000 cubic yards of oil contaminated materials from Sections 8A and 8D of the Interstate 280 construction project in the MSLA 1-D Landfill. NJDOT disposed of approximately 87,000

cubic yards of contaminated materials from NJDOT's Kearny Oil Lake Site in the MSLA 1-D Landfill.

1050. On information and belief, NJDOT disposed of contaminated materials containing hazardous substances at the MSLA 1-D Landfill in connection with the construction of Interstate 280.

1051. By memorandum dated January 4, 1980, HMDC informed NJDOT that sampling data from one of the monitoring wells located at the MSLA 1-D Landfill showed increasing concentrations of BOD5, COD and chlorides. A black liquid was also observed in the same well indicating liner damage at the NJDOT disposal area in the MSLA 1-D Landfill.

1052. On or about January 30, 1978, the HMDC granted NJDOT permission to create a disposal area on the NJDOT Kearny Oil Lake Site that was designed to contain a maximum of 197,000 cubic yards of contaminated materials from Sections 8A and 8D of the Interstate 280 construction project. On information and belief, NJDOT disposed of contaminated materials containing hazardous substances on the NJDOT Oil Lake Site in connection with the construction of Interstate 280.

1053. By memorandum dated November 30, 1979, the HMDC advised NJDOT that recent inspections of the NJDOT "disposal area for oil-contaminated soils adjacent to Ramp 'M' indicates that top soil covering the side slopes of the disposal area has eroded, exposing contaminated materials . . . ." The HMDC noted that "rainfalls have caused oily discharges from the eroded areas into the ditch adjacent to Ramp 'M'. As this ditch connects directly into Franks Creek, oily discharges have been observed in Franks Creek at the ditch connection. This is a violation of the Federal Water Pollution Control Act."

1054. NJDOT constructed, maintains, owns and operates two ditches on the NJDOT Kearny Oil Lake Site known as the North Ditch and the South Ditch, which discharge into Frank's Creek.

1055. Oily leachate and/or floating oil was detected in NJDOT's North and South Ditches on the NJDOT Kearny Oil Lake Site.

1056. In 1981, NJDOT obtained an NJPDES permit for discharges from its North Ditch. NJDOT's NJPDES permit expired on October 31, 1986. NJDOT contends that it reapplied for another NJPDES permit on July 13, 1986, but NJDEP never received the application. NJDOT submitted another NJPDES permit application, but had not received a new NJPDES as of June 21, 1991.

1057. NJDEP gave NJDOT's North Ditch an "unacceptable" rating on several occasions, including the periods of November 1, 1986-November 31, 1986; November 1, 1987-October 31, 1988; and November 1, 1989-October 31, 1990. As a result of these unacceptable ratings, NJDOT was in significant violation of the terms and conditions of its NJPDES permit for the North Ditch and/or the Water Pollution Control Act regulations.

1058. NJDOT advised NJDEP by letter dated April 25, 1989 that it would "take the necessary action to see that our discharge into Frank's Creek complies with those limits set by our NJPDES permit." On information and belief, NJDOT did not take actions to abate the cause of the contamination from the North Ditch until at least 1991.

1059. Due to the periodic non-compliance with the limits of its NJPDES permit, NJDOT was issued directives from the NJDEP to, *inter alia*, achieve an acceptable discharge rating and submit a report concerning details of remedial measures to be instituted and an implementation timetable.

1060. NJDOT's consultant determined that one of the primary sources of contamination in NJDOT's North Ditch was from oil seeps from oil-contaminated soils that NJDOT had excavated and stockpiled on the NJDOT Kearny Oil Lake Site.

1061. NJDOT's consultant determined that one of the primary sources of contamination in NJDOT's South Ditch was from leachate from the Kearny Landfill.

1062. NJDOT informed NJDEP by letter dated June 21, 1991 that NJDOT had not implemented any of the remedial alternatives for the North and South Ditches identified by its consultant because it felt that implementation of such "a costly mitigation alternative, ranging from approximately $1 million to $6.6 million" would "not be in the best interest of the State of New Jersey with respect to the use of public funds."

1063. On information and belief, contaminated discharges into storm drains, ditches and wetlands from the Kearny Oil Lake Site were carried into Frank's Creek and thence the Passaic River.

1064. On information and belief, the periodic overflowing of the Kearny Oil Lake Site caused hazardous substances to be discharged into Frank's Creek and thence the Passaic River.

1065. Hazardous substances and other compounds detected in sediment samples taken 500 feet across the Passaic River from the outlet of Frank's Creek include total extractable petroleum hydrocarbons ("TEPH"), polycyclic aromatic hydrocarbons, lead, and mercury.

1066. NJDOT is a "discharger" and/or a Person "in any way responsible" for the Hazardous Substances that were discharged at the Kearny Oil Lake Site and released into the Newark Bay Complex.

LANDFILL SITES

The Keegan Landfill Site

1067. The MSLA 1-B Landfill, also known as the Keegan Landfill, is located at the Foot of Bergen Avenue, Town of Kearny, Hudson County, New Jersey ("Keegan Landfill Site").

1068. Third-Party Defendant the Town of Kearny, New Jersey ("Town of Kearny") owns all or substantially all of the Keegan Landfill Site.

1069. From June 14, 1949, until approximately 1972, landfill operations were conducted at the Keegan Landfill Site on land leased from the Town of Kearny. Operations at the Keegan Landfill Site included the dumping of household and commercial waste, industrial waste, construction and demolition waste and chemical industrial waste, including Hazardous Substances.

1070. The Keegan Landfill Site is bounded on the east and north by freshwater marshlands or open water wetlands and is crossed by Frank's Creek and an unnamed creek. These marshlands, wetlands and creeks receive direct discharges, overland flow, sheet storm water runoff and leachate from the Keegan Landfill Site. From the Keegan Landfill Site, Frank's Creek and the unnamed creek flow southward into the Passaic River. The open water wetland area drains southeastward to the Hackensack River.

1071. The Keegan Landfill Site is unlined. From the time it was an active landfill to the present day, it has lacked sufficient dikes or other containment structures to prevent leachate from flowing into the surrounding marshlands, wetlands and creeks.

1072. On information and belief, approximately 65 million gallons of leachate is discharged from the Keegan Landfill Site into Frank's Creek and the surrounding marshlands, wetlands and creeks annually. Leachate seeps are visible around the perimeter of the Keegan Landfill Site and along the banks of Frank's Creek, which has been described as an open sewer

that varies in color and odor. Nearby areas of the marshland are stained brown with leachate, which beats into a white froth when agitated by the wind.

1073. On information and belief, because there has never been an effective leachate collection system at the Keegan Landfill Site, leachate is also discharging to the groundwater in proximity to the site and, from there, into the surrounding marshlands, wetlands and creeks.

1074. Throughout its years of operation, soil cover at the Keegan Landfill Site has been inadequate to prevent Hazardous Substances and other compounds disposed of at the landfill from being transported in stormwater runoff and leachate into the surrounding marshlands, wetlands and creeks.

1075. On information and belief, oil and other Hazardous Substances were discharged at the Keegan Landfill Site.

1076. The Keegan Landfill Site has been ranked fourth by the NJDEP in potential for greenhouse gas emission/leachate pollution among sixteen improperly closed former landfills within the jurisdiction of the New Jersey Meadowland Commission.

1077. Soil sampling conducted at the Keegan Landfill Site in 1989 confirmed the presence of Hazardous Substances including mercury, lead and chromium.

1078. Sediment sampling conducted at the Keegan Landfill Site in 1989 confirmed the presence of Hazardous Substances including PCBs, phenanthrene, fluoranthene, pyrene, benzo(a)anthracene, indeno(1,2,3-cd)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene and benzo(g,h,i)perylene, mercury, lead and chromium.

1079. Soil or sediment samples taken at the Keegan Landfill Site in 1997 confirmed the presence of Hazardous Substances including PCBs, acenaphthene, dibenzofuran, fluorene, phenanthrene, anthracene, carbazole, di-n-butylphthalate, fluoranthene, pyrene,

butylbenzylphthalate, benzo(a)anthracene, chrysene, bis(2-ethylhexyl)phthalate, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, dibenz(a,h)anthracene, benzo(g,h,i)perylene, diethylphthalate, gamma-BHC (Lindane), Aldrin, Heptachlor Expoxide, Endosulfan, Dieldrin, 4,4'-DDE, Endrin, 4,4'-DDD, 4,4'-DDT, Endrin Ketone, Endrin Aldehyde, alpha-Chlordane, gamma-Chlordane, arsenic, chromium, lead and mercury.

1080. Surface water samples taken at the Keegan Landfill Site in 1989 confirmed the presence of Hazardous Substances including mercury, lead and chromium.

1081. Surface water samples from Frank's Creek taken downstream from the Keegan Landfill Site contain concentrations of Hazardous Substances as much as five times higher than the concentrations found in upstream samples.

1082. On information and belief, groundwater flow in the overburden at the Keegan Landfill flows south-southwestward towards the Passaic River.

1083. The Town of Kearny owned and controlled the Keegan Landfill at the time Hazardous Substances were discharged at the Keegan Landfill.

1084. The Town of Kearny owned and controlled the Keegan Landfill at the time Hazardous Substances were discharged from the Keegan Landfill into the Newark Bay Complex.

1085. The Town of Kearny is a "discharger" and/or person "in any way responsible" for the Hazardous Substances that were discharged from the Keegan Landfill and released into the Newark Bay Complex.

The MSLA 1-D Landfill Site

1086. The MSLA 1-D Landfill is an approximately 88.6-acre site located at 1500 Harrison Avenue, Town of Kearny, Hudson County, New Jersey ("MSLA 1-D Landfill Site"). The MSLA 1-D Landfill Site is located on the north bank of the Passaic River less than 1,000

feet from the river at its nearest point. The landfill is bounded on the east and south by marshlands, open water wetlands, drainage ditches and tidal ponds. Frank's Creek, a tributary of the Passaic River, is located to the west of the MSLA 1-D Landfill Site.

1087. The Town of Kearny owns all or substantially all of the MSLA 1-D Landfill Site.

1088. On information and belief, beginning as early as 1968, and continuing until approximately September 18, 1982, landfill operations were conducted at the MSLA 1-D Landfill Site on land leased from the Town of Kearny. Operations at the MSLA 1-D Landfill Site included the dumping of household and commercial waste, industrial waste, construction and demolition waste and chemical industrial waste, including Hazardous Substances.

1089. The marshlands, open water wetlands, drainage ditches and tidal ponds near the MSLA 1-D Landfill Site receive direct discharges, overland flow, sheet storm water runoff and leachate from the landfill. These bodies of water are, in turn, in communication with the Passaic River through culverts, tide gates or other structures under the Conrail railroad tracks between the Passaic River and the MSLA 1-D Landfill.

1090. The marshlands, open water wetlands, drainage ditches and tidal ponds near the MSLA 1-D Landfill Site are also in communication with the Passaic River through the Cedar Creek pumping station which has been operated by the Hudson County Mosquito Commission since approximately 1960. During or after heavy rain events, the Cedar Creek pumping station discharges into the Passaic River.

1091. Frank's Creek receives direct discharges, overland flow, sheet storm water runoff and leachate from the MSLA 1-D Landfill Site. Runoff and leachate flows along Interstate Highway 280 and related feeder/access roads through culverts or other structures into Frank's

Creek which, in turn, discharges into the Passaic River through culverts, tide gates or other structures under the Conrail railroad tracks running along the riverbank.

1092. The MSLA 1-D Landfill Site is unlined. From the time it was an active landfill to the present day, it has lacked sufficient dikes or other containment structures to prevent leachate from flowing into the surrounding marshlands, wetlands, drainage ditches and creeks.

1093. The MSLA 1-D Landfill Site has never had a properly maintained, continuously functioning, leachate collection and recharge system. While the site was in active operation, leachate escaped into the surrounding bodies of water. When operations ceased, the MSLA 1-D Landfill Site was not properly closed. Therefore, leachate continues to escape into the surrounding bodies of water.

1094. On information and belief, because there has never been an effective leachate collection system at the MSLA 1-D Landfill Site, leachate is discharging to the groundwater in proximity to the site and, from there, into the surrounding marshlands, wetlands, drainage ditches, tidal ponds and creeks.

1095. During an inspection by the Hackensack Meadowlands Development Commission ("HMDC") on May 14, 1976, leachate was observed escaping into the marshlands at the southeastern corner of the MSLA 1-D Landfill Site. An HMDC inspection on June 17, 1976, noted that all work had ceased on the drainage and leachate control system along the southerly property line of Site 1-D. On information and belief, in August, 1976, the pumps at two recharge basins on the south side of the site were missing or inoperable.

1096. In 1989, 1990 and 1991, NJDEP inspections noted a number of "unacceptable" conditions at the MSLA 1-D Landfill Site, including the accumulation of runoff and leachate at the base of the landfill and the unpermitted discharge thereof to the land and surface waters of

the State. NJDEP notified the Town of Kearny that these discharges were in violation of the Town of Kearny's NJPDES permit and/or the New Jersey Water Pollution Control Act regulations. The Town of Kearny was directed to take corrective measures, but no effective corrective measures have ever been implemented.

1097. On information and belief, the Town of Kearny has not taken corrective measures that prevent the unpermitted discharge of runoff and leachate to the land, surface waters and ground waters of the State.

1098. In 1988, "a smelly, black run-off" was detected running down the face of the MSLA 1-D Landfill Site.

1099. In 1989, the NJDEP reported a discharge of wastewater and leachate cascading down the north face of the MSLA 1-D Landfill Site, flowing into ditches along Interstate Highway 280 and eventually into Frank's Creek.

1100. In 1993, a discolored, foaming liquid was observed percolating out of the ground and flowing along the curb of Harrison Avenue into the nearby marsh. In 1994, a similar yellowish-brown discharge, identified as leachate from the MSLA 1-D Landfill Site, was reported along Harrison Avenue.

1101. An NJDEP investigation on March 11, 1999, described the discharge of "a foul smelling aqueous liquid with an oily sheen" from the MSLA 1-D Landfill Site onto Harrison Avenue.

1102. During its operation and thereafter, soil cover at the MSLA 1-D Landfill Site has been inadequate to prevent storm water runoff and leachate from transporting Hazardous Substances and other compounds into the surrounding marshlands, wetlands, drainage ditches, ponds and Frank's Creek.

1103. On information and belief, oil and other Hazardous Substances were discharged at the MSLA 1-D Landfill Site.

1104. On information and belief, until approximately 1977, oily residue or other liquid waste was dumped in an open pit at the MSLA 1-D Landfill. During this period, dark stains of liquid and/or leachate were observed on the southern and northern slopes of the landfill below the open pit.

1105. For approximately 25 years, an accumulation of oil, oil/water emulsion and oily sludge sometimes referred to as the "Kearny Oil Lake" was located to the north of the MSLA 1-D Landfill Site. On information and belief, this oil lake, which varied in size over time, was located on the Diamond Head Oil Refinery Division Site, but also covered land owned by the New Jersey Department of Transportation and the Town of Kearny, including portions of Block 285, Lot 2.

1106. In approximately 1977, the New Jersey Department of Transportation caused oil sludge or other oily waste from the "Kearny Oil Lake" to be disposed of at the MSLA 1-D Landfill Site.

1107. A Decision Summary ("Decision Summary") made in connection with an NJDEP Remedial Action Plan Declaration Statement dated November 11, 1999 ("Declaration Statement") regarding the MSLA 1-D Landfill Site states that since operations at the MSLA 1-D Landfill had ceased, "the leachate overflows the berms into adjacent wetlands." The Decision Summary also states that "[t]he depth to ground water at the site is relatively shallow." The Decision Summary further states that "[s]hallow ground water discharges locally into adjacent wetlands and surface water bodies. There is no evidence that the landfill was constructed with a

bottom liner, therefore, leachate is free to drain out of the waste material and directly into ground water."

1108. According to the Decision Summary, "[t]he flow of leachate out of the landfill is estimated to be several hundred thousands gallons per day." The Decision Summary also concludes that "[l]eachate contaminated water in the wetlands is free to flow through a culvert on the south side of the site into the Passaic River which flows into the Newark Bay." The Decision Summary finds that "[t]he final cover was insufficient and the leachate collection and monitoring systems were not operating."

1109. The Decision Summary states that "the ground water quality at the site is contaminated above levels to be protective of human health based on potable use." The Decision Summary also concludes that "surface water and sediments in the wetlands are also degraded by landfill leachate above standards established for the protection of human health and/or aquatic life."

1110. The Declaration Statement regarding the MSLA 1-D Landfill Site finds that "[a]ctual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Remedial Action Plan, may present an imminent and substantial endangerment to public health, welfare, or the environment."

1111. On information and belief, the remedial actions described in the Declaration Statement have never been implemented.

1112. The MSLA 1-D Landfill Site has been ranked first by the NJDEP in potential for greenhouse gas emission/leachate pollution among sixteen improperly closed former landfills within the jurisdiction of the New Jersey Meadowland Commission.

1113. Leachate sampling conducted at the MSLA 1-D Landfill Site in 1990 confirmed the presence of Hazardous Substances, including pyrene, flouranthene, benzo(a)anthracene, chrysene, benzo(b)flouranthene, benzo(a)pyrene, benzo(1,2,3-cd)pyrene, beta-BHC, 4-4'-DDD, 4,4'-DDE, 4,4'-DDT, arsenic, lead, zinc, chromium, copper and mercury.

1114. Soil sampling conducted at the MSLA 1-D Landfill Site in 1990 confirmed the presence of the Hazardous Substances, including chlorobenzene, ethylbenzene, total xylenes, phenanthrene, fluoranthene, pyrene, benzo(b)fluoranthene, benzo(a)phrene, ideno(1,2,3-cd)pyrene, beta-BHC, 4,4'-DDT, methoxychlor, 4,4'-DDE, arsenic, addmium, chromium, lead and mercury.

1115. Surface water samples conducted at the MSLA 1-D Landfill Site in 1990 confirmed the presence of Hazardous Substances, including copper, lead, mercury, nickel and zinc.

1116. Sediment sampling conducted at the MSLA 1-D Landfill Site in 1990 confirmed the presence of Hazardous Substances, including phenanthrene, flouranthene, pyrene, benzo(a)anthracene, chrysene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benzo(g,h,i)pyrene, beta-BHC, 4-4'-DDE, arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc.

1117. Ground water sampling conducted at the MSLA 1-D Landfill Site in 1990 confirmed the presence of Hazardous Substances, including chlorobenzene, total xylenes, aluminum, barium, chromium, iron, lead, manganese, nickel and sodium.

1118. Additional sampling conducted at the MSLA 1-D Landfill Site in 2000 confirmed the presence of Hazardous Substances, including napthalene, 2-methylnapthalene, acenaphthylene, acenaphthene, fluorene, phenanthrene, anthracene, fluoranthene, pyrene, benzo(a)anthracene, chrysene, benzo(k)fluoranthene, benzo(a)phrene, indeno(1,2,3-cd)pyrene,

dibenzo(a,j)anthracene, benzo(g,h,i)perylene, dieldrin, 4,4'-DDE, 4,4'-DDD, 4,4'-DDT, Aroclor 1254, arsenic, cadmium, chromium, copper, lead, mercury, nickel and zinc.

1119. Sampling conducted at perimeter borings at the westernmost edge of the MSLA 1-D Landfill Site adjacent to Frank's Creek and the Passaic River confirmed the presence of Hazardous Substances, including Aroclor 1248, Aroclor 1254, SVOCs and heavy metals. Sampling conducted at test pits in the same area of the MSLA 1-D Landfill Site in a drum burial area confirmed the presence of Hazardous Substances, including Aldrin and Dieldrin.

1120. The Town of Kearny owned and controlled the MSLA 1-D Landfill Site at the time Hazardous Substances were discharged at the MSLA 1-D Landfill Site.

1121. The Town of Kearny owned and controlled the MSLA 1-D Landfill Site at the time Hazardous Substances were discharged from the MSLA 1-D Landfill Site into the Newark Bay Complex.

1122. The Town of Kearny is a "discharger" and/or person "in any way responsible" for the Hazardous Substances that were discharged from the MSLA 1-D Landfill Site and released into the Newark Bay Complex.

Avenue P Landfill Site

1123. The Avenue P Landfill is located at 357-405 Avenue P, Newark, New Jersey (the "Avenue P Landfill Site"). The Avenue P Landfill Site is bounded on the east by Avenue P and on the north by the Alliance Site. Plum Creek, a tributary of the Passaic River, and a ditch connected to Plum Creek flow along the southern and western flanks, respectively, of the Avenue P Landfill Site.

1124. From the 1930s until approximately 1978, the Avenue P Landfill Site was used as a dumping site for commercial waste, industrial waste, construction and demolition waste and chemical industrial waste, including Hazardous Substances and other compounds.

1125. On information and belief, from 1958 until 1968, all or part of the Avenue P Landfill Site was owned by D&J Trucking & Waste Company ("D&J Trucking"). D&J Trucking contracted with third parties to dispose of Hazardous Substances including, but not limited to, discarded varnish, lacquer and other paint waste products. On information and belief, the Avenue P Landfill Site was purchased by the Housing Authority of the City of Newark ("Newark Housing Authority") from D&J Trucking and others in 1968, but it continued to be used as a landfill by D&J Trucking until approximately 1978.

1126. Among other things, the Avenue P Landfill Site was used as a paint dump where discarded paint, varnish, lacquer, solvents, tank washings and other paint manufacturing waste products were discarded. The site has been described as "loaded with debris and junk," including thousands of paint cans.

1127. The Avenue P Landfill Site was unlined and lacked containment structures to prevent leachate and other discharges containing Hazardous Substances from flowing into Plum Creek or nearby storm sewers and thence the Passaic River.

1128. In 1976, the ditch separating the Avenue P Landfill Site from Interstate Highway 95 was reported to contain 300-400 chemical drums. Many additional drums were buried in the rear of the landfill face. Some of the drums were marked "Hazardous Waste Chemicals."

1129. Leachate was observed running into Plum Creek from the Avenue P Landfill Site during a 1978 inspection.

1130. A 1982 inspection report described Plum Creek as "a pale green color" and noted the presence of 55-gallon drums along its banks. The same inspection disclosed rusted and broken drums protruding through the surface and in piles above the ground.

1131. In 1983, an inspection disclosed "several hundred" drums "in poor condition which contain a sludge-like residue" along the western slope of the Avenue P Landfill Site. Protruding and exposed refuse and other waste was also observed along the western slope of the site. Also in 1983, an unknown liquid was observed leaching from piles of rusted drums and flowing into the ditch along the western side of the site.

1132. In 1985, pursuant to the terms of an Administrative Consent Order, the Newark Housing Authority was ordered to abate the discharges from drums at the Avenue P Landfill Site, to dispose of the drums, to excavate and dispose of all visibly contaminated soil, and to submit a Remedial Action Plan to the NJDEP setting forth methods to decontaminate, control or otherwise mitigate ground water contamination at the site. Approximately 2,000 drums were found buried in the ditch, in Plum Creek or elsewhere on the site.

1133. In 1987, an inspection of the Avenue P Landfill Site disclosed that fifteen drums containing unidentified chemicals had "popped up through the surface of the old landfill" and that "the stream in the back of [the] site is pure black in color with an oil sheen on it." An oily leachate emitting a strong odor of hydrocarbons was observed at the site.

1134. In 1988, a Potential Hazardous Waste Site Preliminary Assessment of the Avenue P Landfill Site noted, *inter alia*, that "[l]arge quantities of hazardous wastes have been found at the site," that "it is quite probable that groundwater is contaminated," and that wastes escaping the site may have adversely affected Plum Creek and Newark Bay.

1135. In 1993, the NJDEP prepared a proposed Administrative Consent Order regarding the Avenue P Landfill Site which named Newark Housing Authority (then known as the Newark Redevelopment and Housing Authority) and other parties as respondents and sought, among

other things, the reimbursement of prior response costs and the submission of a Remedial Investigation Work Plan for the remediation of the site.

1136. On information and belief, Hazardous Substances discharging to the groundwater at the Avenue P Landfill Site have contaminated Plum Creek and the Passaic River.

1137. Soil cover at the Avenue P Landfill Site has been inadequate to prevent storm water runoff and leachate from transporting Hazardous Substances disposed of at the landfill into Plum Creek or nearby storm sewers and thence the Passaic River.

1138. Hazardous Substances detected in the soil at the Avenue P Landfill Site include: arsenic, chromium, lead, zinc, toluene, ethylbenzene, 1,1,-dichloroethane, 1,1,1-trichloroethane, 1,1-dichloroethylene, xylenes, phenanthrene, fluoranthene, pyrene, naphtha, cyanide, beta-BHC, 4,4'-DDE, Endosulfan II, aroclor 1260 and petroleum hydrocarbons.

1139. Hazardous Substances detected in the sediment at the Avenue P Landfill Site include: barium, chromium, copper, lead, zinc, toluene, ethylbenzene, xylenes, 1,2-dichlorobenzene, naphthalene, fluoranthene, bis(2-ethylhexyl)phthalate, Endosulfan II, 4,4'-DDD and gamma-Chlordane.

1140. Hazardous Substances detected in the surface water at the Avenue P Landfill Site include: arsenic, barium, chromium, lead, zinc, acetone, toluene, xylenes, 1,1,1-trichloroethane, ethylbenzene, bis(2-ethylhexyl)phthalate, naphtha, beta-BHC, Endosufan II and 4,4-DDE.

1141. Plum Creek receives direct discharges, overland flow, sheet storm water runoff and leachate from the Avenue P Landfill Site.

1142. A 1988 sample of Plum Creek water showed the presence of chlorobenzene, trans-dichloroethene, trichloroethylene and benzene.

1143. A 1999 sample of Plum Creek silt taken downstream near the southeast corner of the Avenue P Landfill Site showed the presence of the following: (i) cadmium, chromium, acenaphthene, fluorene, phenanthrene, anthracene, benzo(a)anhracene, chrysene, benzo(b)pyrene and dibenz(a,h)anthracene in excess of the National Oceanic and Atmospheric Administration ("NOAA") marine and estuarine sediment Effects Range Low value; (ii) copper, nickel, zinc, Endrin, aroclor 1254, total cogeners, total homologues and pyrene in excess of NOAA marine and estuarine sediment Effects Range High values; and (iii) fluoranthene in excess of the United States Environmental Protection Agency proposed Sediment Quality Criteria of 1996.

1144. Hazardous Substances detected on the Avenue P Landfill Site including, but not limited to, arsenic, barium, copper, lead and zinc, have been found in Plum Creek and Passaic River sediment samples taken downstream of the site.

1145. In approximately 1968, Newark Housing Authority purchased the Avenue P Landfill Site and, on information and belief, pursuant to a lease or otherwise, permitted D&J Trucking to use the site for landfill operations at the site.

1146. During the period of the Newark Housing Authority's ownership of the Avenue P Landfill Site, Hazardous Substances were discharged from said sites into Plum Creek, drainage ditches or storm sewers and thence into the Passaic River.

1147. The Newark Housing Authority is a "discharger" and/or Person "in any way responsible" for the Hazardous Substances that were discharged at the Avenue P Landfill Site and released into the Newark Bay Complex.

FIRST COUNT

(New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a))

1148. Maxus and Tierra repeat and incorporate Paragraphs 1 through 1147 of this Third-Party Complaint by reference herein.

1149. Pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, each of the Third-Party Defendants is a discharger and/or "a person in any way responsible" for the discharge of Hazardous Substances into the Newark Bay Complex as set forth in detail above.

1150. The State owned and controlled—and continues to own and control—all of the submerged lands of the Passaic River, the Hackensack River and Newark Bay, as well as portions of the submerged lands of the Kill van Kull and Arthur Kill, during times when hazardous substances were discharged on the State's property. By virtue of its ownership of the property in question during the time discharges were occurring, the State is a person in "any way responsible" for hazardous substances discharged into the Newark Bay Complex.

1151. The State has breached the public trust by breaching its duty to protect and preserve the natural resources of the Newark Bay Complex (*see* Count V). By virtue of this breach of trust, the State is a person in "any way responsible" for hazardous substances discharged into the Newark Bay Complex.

1152. Pursuant to permits issued by the State, and other conduct by which the State has condoned and/or permitted such activity, municipalities and local and regional sewerage authorities, including the PVSC, have discharged, and continue to discharge, sewage, waste and other polluting matter into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay. The State's conduct in allowing, condoning and purporting to authorize such discharges makes the State of New Jersey a person "in any way

responsible" for the Hazardous Substances that were discharged, and continue to be discharged, by municipalities and local and regional sewerage authorities, including the PVSC.

1153. The State, through its departments and agencies including the New Jersey Department of Agriculture, funded, sprayed and/or contracted for the spraying of DDT that was discharged into the Newark Bay Complex and, therefore, is a "discharger" and/or person "in any way responsible" for Hazardous Substances discharged into the Newark Bay Complex.

1154. Hazardous Substances were discharged into the Newark Bay Complex from the Kearny Oil Lake Site during the time when the State, through NJDOT, owned and operated that property. NJDOT is a "discharger" and a person "in any way responsible" for hazardous substances discharged into the Newark Bay Complex.

1155. The New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a), provides that "[w]henever one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance."

1156. Maxus and Tierra are entitled to contribution from each of the Third-Party Defendants to recover a proportionate share of any cleanup and removal costs or damages, if any, for which Maxus or Tierra may be found liable under the Spill Act in this lawsuit.

1157. Maxus and Tierra have incurred and will continue to incur "cleanup and removal costs" within the meaning of the Spill Act, N.J.S.A. § 58:10-23.11b.d, in connection with implementing the AOCs identified in ¶¶ 9-10 of this Third-Party Complaint, and in otherwise addressing environmental contamination in the Newark Bay Complex.

1158. Maxus and Tierra are entitled to contribution from the Third-Party Defendants to recover a proportionate share of cleanup and removal costs that the Maxus and Tierra have incurred and will incur in the future.

WHEREFORE, as for this Count I, Maxus and Tierra respectfully request:

(a) a judgment finding each of the Third-Party Defendants liable for contribution under the Spill Act for an equitable share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be foun liable under the Spill Act in this lawsuit;

(b) an order requiring each of the Third-Party Defendants to pay Maxus and Tierra an equitable share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable under the Spill Act in this lawsuit;

(c) an order requiring each of the Third-Party Defendants to pay Maxus and Tierra an equitable share of cleanup and removal costs incurred and to be incurred by Maxus and Tierra in connection with the discharges of hazardous substances within the Newark Bay Complex, as well as pre-and post-judgment interest;

(d) all costs incurred and to be incurred by Maxus and Tierra in connection with this action; and

(e) such other and further relief that the Court deems just and proper.

SECOND COUNT

(Statutory Contribution)

1159. Maxus and Tierra repeat and incorporate Paragraphs 1 through 1158 of this Third-Party Complaint by reference herein.

1160. Pursuant to the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 *et seq.* and/or N.J.S.A. 59:9-3), Maxus and Tierra are entitled to contribution from the Third-Party Defendants for all or a proportionate share of Response costs, cleanup and removal costs, damages, or other loss or harm, if any, for which Maxus and Tierra may be held liable, or which they have incurred or will incur in the future, relating to the Newark Bay Complex.

WHEREFORE, as for this Count I, Maxus and Tierra respectfully request:

(a) a judgment finding each of the Third-Party Defendants liable for contribution for a *pro rata* share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable in this lawsuit;

(b) an order requiring each of the Third-Party Defendants to pay Maxus and Tierra a *pro rata* share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable in this lawsuit;

(c) an order requiring each of the Third-Party Defendants to pay Maxus and Tierra a *pro rata* share of cleanup and removal costs incurred and to be incurred by Maxus and Tierra in connection with the discharges of

hazardous substances within the Newark Bay Complex, as well as pre-and post-judgment interest;

(d) all costs incurred and to be incurred by Maxus and Tierra in connection with this action; and

(e) such other and further relief that the Court deems just and proper.

THIRD COUNT

(Enforcement of N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and Environmental Rights Act Claim)

1161. Maxus and Tierra repeat and incorporate Paragraphs 1 through 1160 of this Third-Party Complaint by reference herein.

1162. Municipalities and the PVSC have placed or discharged sewage, waste and other polluting matter into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay in direct violation of New Jersey law.

1163. N.J.S.A. 58:14-7 states that "[n]o sewage or other polluting matter shall be discharged, directly or indirectly, into the waters of the Passaic river at any point between the Great falls in the city of Paterson and the mouth of said river at Newark bay, or into the waters of any of the tributaries of said river which empty into it between said points . . . ."

1164. N.J.S.A. 58:14-8 states that "[n]o sewage, waste matter, article or substance, liquid or solid, of any kind which creates odors, gases or fumes, due to the putrefaction of organic matter or the presence of chemicals, or results in the presence of oil or grease on the surface of the waters of the Passaic river, or its tributaries, shall be placed or discharged, or be permitted to be placed or discharged, into the waters of said river between the points designated in section 58:14-7 of this title, or into its tributaries so designated."

1165. The City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC have placed and/or discharged, and continue to place and/or discharge, sewage, waste and other polluting matter into the Passaic River and/or its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1166. In addition to any storm water outfalls, the City of Newark owns and/or operates at least 22 combined sewer system outfall points that discharge sewage or other polluting matter into the Passaic River or its tributaries in violation of N.J.S.A. 58:14-7 and 58:14-8. Twenty-one of these outfalls discharge into the Passaic River, and the other outlet discharges into the Second River.

1167. The City of Newark has allowed, or has otherwise permitted sewage, waste and other polluting matter to be placed or discharged into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1168. In addition to any storm water outfalls, the Borough of East Newark owns and/or operates at least one combined sewer system outfall point that discharges sewage or other polluting matter into the Passaic River or its tributaries in violation of N.J.S.A. 58:14-7 and 58:14-8.

1169. The Borough of East Newark has allowed, or has otherwise permitted sewage, waste and other polluting matter to be placed or discharged into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1170. In addition to any storm water outfalls, the Town of Harrison owns and/or operates at least seven combined sewer system outfall points that discharge sewage or other

polluting matter into the Passaic River or its tributaries in violation of N.J.S.A. 58:14-7 and 58:14-8.

1171. The Town of Harrison has allowed, or has otherwise permitted sewage, waste and other polluting matter to be placed or discharged into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1172. In addition to any storm water outfalls, the Town of Kearny owns and/or operates at least ten combined sewer system outfall points that discharge sewage or other polluting matter into the Passaic River or its tributaries in violation of N.J.S.A. 58:14-7 and 58:14-8. Six of these outfalls discharge into the Passaic River, and the other four outlets discharge into Frank's Creek.

1173. The Town of Kearny has allowed, or has otherwise permitted sewage, waste and other polluting matter to be placed or discharged into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1174. In addition to any storm water outfalls, the City of Paterson owns and/or operates combined sewer system outfall points that discharge sewage or other polluting matter into the Passaic River or its tributaries in violation of N.J.S.A. 58:14-7 and 58:14-8.

1175. The City of Paterson has allowed, or has otherwise permitted sewage, waste and other polluting matter to be placed or discharged into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1176. In addition to any storm water outfalls, the PVSC owns and/or operates combined sewer system outfall points and/or regulators that discharge sewage or other polluting matter from the PVSC Municipalities into the Passaic River or its tributaries in violation of N.J.S.A. 58:14-7 and 58:14-8.

1177. The PVSC and the PVSC Municipalities have allowed, or have otherwise permitted sewage, waste and other polluting matter to be placed or discharged into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1178. Pursuant to N.J.S.A. 58:14-33, any corporation injured by the discharge, directly or indirectly, of any sewage or polluting matter into the waters of the Passaic River at any point between Great Falls and the mouth of the Passaic River at Newark Bay may institute and prosecute in the name of the PVSC such suit or suits at law or in equity as may be necessary or appropriate to enforce N.J.S.A. 58:14-1, *et seq.*

1179. Maxus and Tierra have been directly or indirectly injured by the discharges by the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC of sewage or other polluting matter into the waters of the Passaic River between Great Falls and the mouth of the Passaic River at Newark Bay.

1180. Tierra was conducting a Remedial Investigation and Feasibility Study of the Lower Passaic River at the time the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1181. Tierra was conducting a Remedial Investigation and Feasibility Study of the Newark Bay Study Area at the time the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities and the PVSC placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic

pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1182. The New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-4, authorizes "[a]ny person" to "commence a civil action in a court of competent jurisdiction against any other person alleged to be in violation of any statute, regulation or ordinance designed to prevent or minimize pollution, impairment or destruction of the environment."

1183. Pursuant to N.J.S.A. 2A:35A-3.a., Maxus, Tierra, the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, and City of Paterson are "persons" within the meaning of New Jersey Environmental Rights Act.

1184. N.J.S.A. 58:14-7 and 58:14-8 are statutes designed to prevent or minimize pollution, impairment and the destruction of the environment. The Legislature sought to achieve that goal by prohibiting discharges of any "sewage" and other "polluting matter" into the Passaic River, leaving NJDEP with no authority or discretion to grant or permit any exceptions.

1185. Pursuant to N.J.S.A. 2A:35A-4.a, an action under the New Jersey Environmental Rights act "may be for injunctive or other equitable relief to compel compliance with a statue, regulation or ordinance, or to assess civil penalties for the violation as provided by law."

1186. By letter dated November 19, 2008, Maxus and Tierra provided the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities and the PVSC notice of their violations of N.J.S.A. 58:14-7 and 58:14-8.

WHEREFORE, as for this Count III, Maxus and Tierra respectfully request:

(a) a judgment finding that the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC have violated N.J.S.A. 58:14-7 and 58:14-8;

(b) an order compelling the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC to comply with N.J.S.A. 58:14-7 and 58:14-8 and enjoining them from discharging or placing any sewage, waste and other polluting matter, or permitting any such matter to be placed or discharged, into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay in contravention of N.J.S.A. 58:14-7 and 58:14-8;

(c) an order finding the PVSC liable for a penalty of one hundred dollars for each and every violation of N.J.S.A. 58:14-8, and a further penalty of twenty-five dollars a day for each day the offense is continued;

(d) such other and further relief that the Court deems just and proper.

FOURTH COUNT

(Nuisance)

1187. Maxus and Tierra repeat and incorporate Paragraphs 1 through 1186 of this Third-Party Complaint by reference herein.

1188. Pursuant to N.J.S.A. 58:14-7 and 58:14-8, the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC had a duty not to place or discharge any sewage or other polluting matter into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1189. The City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC breached their duties established under N.J.S.A. 58:14-7 and 58:14-8 by discharging and/or placing sewage or other polluting matter into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1190. The City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC had no authority or discretion to place or discharge sewage, waste and other polluting matter into the Passaic River and/or its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1191. Maxus and Tierra have been injured as a result of the breach of duty by the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC.

1192. The injury Maxus and Tierra have suffered, and will continue to suffer, was reasonably foreseeable and proximately caused by the breach of duty by the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC.

1193. Tierra was conducting a Remedial Investigation and Feasibility Study of the Lower Passaic River at the time the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1194. Tierra was conducting a Remedial Investigation and Feasibility Study of the Newark Bay Study Area at the time the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay.

1195. The City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC are liable for all or a part of the costs and damages that Maxus and Tierra have incurred, and will incur, as a result of the conduct of the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC.

WHEREFORE, as for this Count IV, Maxus and Tierra respectfully request:

(a) a judgment finding the City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC liable for nuisance;

(b) an order enjoining City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities, and the PVSC from violating the provisions of N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and declaring any permits issued by the NJDEP to such parties in violation of N.J.S.A. 58:14-7 and 58:14-8 to be void;

(c) an order requiring City of Newark, East Newark Borough, Town of Harrison, Town of Kearny, City of Paterson, the PVSC Municipalities,

and the PVSC to abate continuing discharges of untreated or inadequately treated wastewater into the Newark Bay Complex;

(d) such other and further relief that the Court deems just and proper.

COUNT V

BREACH OF THE PUBLIC TRUST

1196. Maxus and Tierra repeat and incorporate paragraphs 1 through 1195 of this Third-Party Complaint by reference herein.

1197. According to N.J.S.A. 58:10-23.11a, the State of New Jersey "is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction . . . ."

1198. The Plaintiffs' Complaint asserts that "the State of New Jersey is the trustee of all natural resources within its jurisdiction for the benefit of its citizens and is vested with the authority to protect this public trust."

1199. In multiple lawsuits, the State of New Jersey has contended that "'natural resources' of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources, owned, managed, held in trust or otherwise controlled by the State."

1200. In multiple lawsuits, the State of New Jersey has contended that the "natural resources of this State include the 'waters of the state,' which are the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction."

1201. As detailed above and more fully in the Counterclaim filed by Maxus in Tierra which is incorporated herein by reference, the State of New Jersey has presided over the contamination and destruction of the natural resources within the Newark Bay Complex in direct

breach of its duties and obligations as a public trustee for natural resources of the Newark Bay Complex.

1202. The public trust doctrine has always been recognized in New Jersey and is deeply engrained in New Jersey's common law. The public trust doctrine in New Jersey is premised on the common rights of all citizens to use and enjoy tidal land seaward of the mean high water mark.

1203. The public trust doctrine applies to lands flowed by tidal waters in New Jersey.

1204. The State of New Jersey holds natural resources of the Newark Bay Complex in public trust.

1205. Tierra owns property on the banks of the Passaic River and is a beneficiary of the public trust that applies to the natural resources of the Newark Bay Complex.

1206. As a trustee for natural resources of the Newark Bay Complex, the State of New Jersey has the same duties and obligations as an ordinary trustee.

1207. As a trustee for natural resources of the Newark Bay Complex, the State of New Jersey has a duty to protect and preserve the corpus of the trust, namely the natural resources of the Newark Bay Complex which it holds in trust.

1208. Rather than protect and preserve the natural resources of the Newark Bay Complex, the State of New Jersey has publicly condoned the contamination of the Newark Bay Complex.

1209. The State of New Jersey has allowed the natural resources of the Newark Bay Complex to be dissipated and destroyed, despite being fully aware of the contamination of the Newark Bay Complex and the destruction of its natural resources.

1210. Indeed, counsel for the PVSC, an entity created by the State of New Jersey and charged with the duty of preventing pollution of the waters of the Passaic River, asserted before a United States Senate Subcommittee that "[t]he question of whether or not a stream in a certain region should be polluted is a matter which can be controlled by the residents of the district."

1211. The State, through NJDEP, has adopted a regulatory scheme which, besides being in plain violation of the expressed will of the Legislature, inevitably damages the natural resources of the Newark Bay Complex.

1212. The State of New Jersey has granted permits to owners and operators of wastewater treatment systems, which purport to authorize such owners and operators to discharge untreated wastewater containing hazardous substances and other polluting matter into the Newark Bay Complex.

1213. To this day, untreated wastewater continues to discharge into the Newark Bay Complex from combined sewer systems, which are designed to overflow and discharge untreated wastewaters directly into the Newark Bay Complex when wet-weather runoff causes the total inputs to exceed the capacity of the combined sewer system. The State of New Jersey has permitted such built-in discharges caused by combined sewer overflows, even though they have injured, and continue to injure, the natural resources within the Newark Bay Complex.

1214. The State of New Jersey has authorized owners and operators of combined sewer systems to continue to operate their systems even though the State of New Jersey is fully aware that such systems do not have sufficient capacity to treat all of the wastewater entering the systems and that such systems have discharged, and continue to discharge, untreated wastewater containing hazardous substances and other polluting matter into the Newark Bay Complex.

1215. The State of New Jersey has permitted stormwater to be discharged into the Newark Bay Complex, despite the fact that NJDEP Commissioner Jackson acknowledged on February 14, 2008 that "[t]he cumulative impacts of stormwater runoff pollution are profound, accounting for 60 percent of the pollution in New Jersey's waterways."

1216. The State of New Jersey has permitted, and continues to permit, the discharge of untreated or inadequately treated wastewater containing hazardous substances and other polluting matter in contravention of N.J.S.A. 58:14-7, which provides that "[n]o sewage or other polluting matter shall be discharged, directly or indirectly, into the waters of the Passaic river at any point between the Great falls in the city of Paterson and the mouth of said river at Newark bay, or into the waters of any tributaries of said river which empty into it between said points . . . ."

1217. The State of New Jersey has permitted, and continues to permit, the discharge of untreated or inadequately treated wastewater containing hazardous substances and other polluting matter in contravention of N.J.S.A. 58:14-8, which provides that "[n]o sewage, waste matter, article or substance, liquid or solid, of any kind which creates odors, gases or fumes, due to the putrefaction of organic matter or the presence of chemicals, or results in the presence of oil or grease on the surface of the waters of the Passaic river, or its tributaries, shall be placed or discharged, or be permitted to be placed or discharged, into the waters of said river between the points designated in section 58:14-7 of this title, or into its tributaries so designated."

1218. Additionally, pollution sources in the Upper Passaic River, above Dundee Dam (which is outside of the Newark Bay Complex), are continuing to cause loadings of hazardous substances and other polluting matter within the Newark Bay Complex.

1219. The State of New Jersey has breached the public trust by breaching its duty to protect and preserve the natural resources of the Newark Bay Complex.

1220. The State's breach of the public trust has caused injury to the natural resources of the Newark Bay Complex.

1221. Injury to the natural resources within the Newark Bay Complex was a direct and foreseeable consequence of the State's breach of the public trust.

1222. Injury to the natural resources within the Newark Bay Complex is a direct and foreseeable consequence of the economic development promoted by the State of New Jersey.

1223. According to the NJDEP, "[g]reat rivers -- those that drain large or diverse watersheds or that offer unique or uniquely valuable ecological and human services -- are among the most valuable natural resources on earth. The Passaic River was once a great river." *2003 Directive*, ¶ 12. Nonetheless, NJDEP has acknowledged that the "Passaic River watershed has been subject to numerous point and non-point discharges for over 100 years." *2003 Directive*, ¶ 1.

1224. NJDEP has determined that the water in the Lower Passaic River contains hazardous chemicals. *2003 Directive*, ¶ 2.

1225. NJDEP has determined that the sediment in the Lower Passaic River contains hazardous substances. *2003 Directive*, ¶ 3.

1226. According to NJDEP, the "Lower Passaic River is a prime example of resource degradation at its worst." *2003 Directive*, ¶ 11.

1227. According to NJDEP, "[c]learly, releases of chemical contaminants have adversely affected the Passaic River and reduced its ecological and human use services." *2003 Directive*, ¶ 13.

1228. According to the Plaintiffs' Complaint, "the ecosystem and natural resources of the Newark Bay Complex have been significantly injured."

1229. Injury to the natural resources of the Newark Bay Complex occurred during the State's tenure as public trustee for some or all of such resources, when the State had an obligation to protect and preserve such resources.

WHEREFORE, as for this Count V, Maxus and Tierra respectfully request:

(a) a judgment finding the State of New Jersey liable for breach of the public trust;

(b) an order enjoining the State of New Jersey from permitting entities to violate the provisions of N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and declaring any permits issued by the NJDEP in violation of N.J.S.A. 58:14-7 and 58:14-8 to be void;

(c) an order requiring the State of New Jersey to abate continuing discharges of untreated or inadequately treated wastewater into the Newark Bay Complex;

(d) an order enjoining the State of New Jersey from permitting wastewater treatment systems to discharge untreated or inadequately treated wastewater into the Newark Bay Complex;

(e) an order requiring the State of New Jersey to abate pollution sources from outside the Newark Bay Complex that have injured and continue to injure natural resources within the Newark Bay Complex, including, but not

limited to, pollution sources in the Upper Passaic River above Dundee Dam;

(f) an order removing the State of New Jersey as trustee for natural resources within the Newark Bay Complex;

(g) all costs incurred and to be incurred in connection with this action;

(h) such other and further relief that the Court deems just and proper.

DRINKER BIDDLE & REATH LLP
Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.

William L. Warren, Esq.

ANDREWS KURTH LLP
Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.

Thomas E. Starnes/ASHC
Thomas E. Starnes, Esq.

Dated: February 4, 2009

CERTIFICATION OF SERVICE

SUSAN SCHLECK KLEINER, in lieu of oath or affidavit, certifies and says:

1. I am an attorney-at-law and an associate at the law firm of Drinker Biddle & Reath LLP, co-counsel for Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") in connection with the above-captioned matter.

2. I hereby certify that, on this date, Maxus and Tierra's Third Party Complaint "A" was served upon the Clerk of Court via hand delivery.

3. I hereby certify that, on this date, copies of Maxus and Tierra's Third Party Complaint "A" was served upon Honorable Donald S. Goldman, J.S.C. 410 Historic Courthouse, 470 Dr. Martin Luther King Jr., Blvd., Chambers 410, Newark, NJ 07102 and upon the following counsel of record via Federal Express:

Attorneys for Plaintiff New Jersey Department of Environmental Protection, Commissioner, New Jersey Department of Environmental Protection, and Administrator, New Jersey Spill Compensation Fund:	
ANNE MILGRAM ATTORNEY GENERAL OF NEW JERSEY John F. Dickinson, Jr., Esq. Deputy Attorney General Richard J. Hughes Justice Complex 25 Market Street, PO Box 093 Trenton, NJ 08625-0093	Michael Gordon, Esq. GORDON & GORDON 505 Morris Ave. Springfield, NJ 07081
William J. Jackson, Esq. JACKSON GILMOUR & DOBBS, PC 3900 Essex Lane, Ste. 700 Houston, TX 77027 *Special Counsel to the Attorney General (pro hac vice)*	

(continued on next page)

Attorneys for Defendants YPF, S.A., YPF Holdings, Inc., CLH Holdings and Repsol YPF, S.A.:	
Marc J. Gross, Esq. GREENBAUM, ROWE, SMITH & DAVIS LLP 75 Livingston Avenue Roseland, NJ 07068	Ileana Blanco, Esq. DLA PIPER US LLP Chase Tower 600 Travis Street, Suite 1700 Houston, TX 77002-3009 *(pro hac vice)*
Richard C. Godfrey, Esq. Kirkland & Ellis 200 East Randolph Drive Chicago, Illinois 60601-6207	
Attorneys for Defendant Occidental Chemical Corporation:	
Robert T. Lehman, Esq. ARCHER & GREINER One Centennial Square P.O. Box 3000 Haddonfield, NJ 08033-0968	Oliver S. Howard, Esq. GABLEGOTWALS 1100 ONEOK Plaza 100 West 5th Street Tulsa, OK 74103-4217 *(pro hac vice)*

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Susan Schleck Kleiner

DATED: February 4, 2009