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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO.

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,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
ESSEX CHEMICAL CORPORATION, a Wholly-Owned Subsidiary of The Dow Chemical Company,	:	
	:	
Defendant.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") ("the Plaintiffs"), having their principal offices at 401 East State

Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendant ("the Defendant"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of pollutants and hazardous substances at the Essex Chemical site in South Brunswick Township, Middlesex County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Essex Chemical site. Further, the Plaintiffs seek an order compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Essex Chemical site, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. In this capacity, plaintiff Commissioner is vested by law with various powers and authority, including those conferred by plaintiff DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19.

5. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

6. Defendant Essex Chemical Corporation (the "Defendant" or "Essex Chemical") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 2030 Dow Center, Midland, Michigan 48674.

7. The Defendant is a wholly-owned subsidiary of The Dow Chemical Company, a corporation organized and existing under the laws of the State of Delaware.

NATURAL RESOURCES

8. The "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. N.J.S.A. 58:10-23.11b.

9. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of pollutants and hazardous substances at the Essex Chemical site.

AFFECTED NATURAL RESOURCE

Ground Water

10. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

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

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

13. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

14. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

15. There are thousands of sites in New Jersey confirmed as having ground water contaminated with pollutants and hazardous substances.

GENERAL ALLEGATIONS

16. The Essex Chemical site consists of 11.4 acres of real property located at 167 Black Horse Lane, South Brunswick Township, Middlesex County, New Jersey, this property being also known and designated as Block 91, Lot 14.03 (formerly Block 91, Lot 14 C), on the Tax Map of South Brunswick Township ("the Black Horse Lane Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"); which plaintiff DEP has designated as Industrial Site Recovery Act

("ISRA") Case No. 84357 and Site Remediation Program Interest No. G000003573.

17. From December 1976 through December 1985, the Defendant owned the Black Horse Lane Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), trans-1,2-dichloroethylene ("trans-1,2-DCE"), vinyl chloride, toluene, heptane and hexane.

18. From approximately December 1976 through approximately November 1984, the Defendant, through its Coated Products Division, operated an adhesive-backed paper products preparation facility at the Black Horse Lane Property, the operation of which involved the storage and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included TCE, PCE, trans-1,2-DCE, vinyl chloride, toluene, heptane and hexane.

19. From December 1976 through approximately November 1984, the Defendant, through its Coated Products Division, operated an adhesive-backed paper products preparation facility at the Black Horse Lane Property, the operation of which involved the storage and handling of "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" to the waters of the State

within the meaning of N.J.S.A. 58:10A-3e., which pollutants included TCE, PCE, trans-1,2-DCE, vinyl chloride, toluene, heptane and hexane.

20. On or about December 23, 1985, Essex Chemical Corporation sold the Black Horse Lane Property to Black Horse Lane Associates Limited Partnership.

21. On or about April 15, 2002, Joseph C. Spicuzzo, Sheriff of Middlesex County, acquired title to the Black Horse Lane Property.

22. On or about January 21, 2004, J.M.G. Properties, Ltd. c/o Mercury Capital Corporation purchased the Black Horse Lane Property.

23. On or about October 4, 2004, J.M.G. Properties, Ltd. sold the Black Horse Lane Property to Annex Realty, L.L.C., a New Jersey limited liability corporation, which remains the current owner of the Property.

UST-AREA CONTAMINATION

24. In August 1984, Essex Chemical detected a solvent odor in the vicinity of six underground storage tanks ("USTs") located on the Black Horse Lane Property. The six USTs had a total capacity of 30,000 gallons and were used for storing toluene and a mixture of heptane and hexane known as "Metrex." Toluene and Metrex were used in the Defendant's operations at the Black Horse Lane Property. Soil samples were taken in the vicinity of the six USTs

and the results showed concentrations of hexane, heptane, and toluene in soil.

25. In October 1984, Essex Chemical entered into negotiations with plaintiff DEP pursuant to the Environmental Cleanup Responsibility Act, now known as ISRA, and began decommissioning its plant located at the Black Horse Lane Property.

26. Between April 4 and April 15, 1985, the six USTs and associated piping were excavated.

27. In August 1985, Essex Chemical conducted additional site investigations in preparation of a cleanup plan. Soil borings in the area of the former six USTs indicated the presence of hexane, heptane and methylene chloride. Benzene and toluene were detected in ground water in the area of the former six USTs.

28. In October 1985, Essex Chemical conducted additional groundwater sampling, the results of which showed concentrations of TCE, trans-1,2-DCE, benzene, toluene, and ethylbenzene.

29. On December 20, 1985, plaintiff DEP approved the 1985 Cleanup Plan, which called for the installation of a temporary dewatering trench, the excavation of contaminated soil in the vicinity of the former six USTs and the implementation of a groundwater recovery system at the Site, whereby contaminated groundwater in the area of the former six USTs would be pumped into an interception trench, then recovered and discharged to the

Middlesex County Utilities Authority's wastewater treatment plant ("Groundwater Recovery System").

30. In 1987, construction of the Groundwater Recovery System was completed and, in 1988, it was made operational.

31. In July 1993, defendant Essex Chemical supplemented the Groundwater Recovery System by installing an additional pumping well to further treat contaminated groundwater in the area of the former six USTs.

32. In December 2001, defendant Essex Chemical supplemented the Groundwater Recovery System by incorporating in-situ chemical oxidation to further treat contaminated groundwater in the area of the former six USTs.

33. In September 2002, defendant Essex Chemical reported that the in-situ chemical oxidation of contaminated groundwater in the area of the former six USTs was effective in remediating pollutants and hazardous substances in ground water there.

34. In June 2003, with plaintiff DEP's approval, defendant Essex Chemical shut down operation of the Groundwater Recovery System.

CVOC CONTAMINATION

35. In September 1991, Essex Chemical conducted a soil gas survey to further investigate the presence of chlorinated volatile organic compounds ("CVOCs") in the northern and eastern portions of the Site, areas distinct from the area of the former six USTs.

36. The soil gas survey revealed two apparent sources for CVOCs: the eastern portion of the Site within the parking lot area and the northeastern side of the building.

37. In its quarterly monitoring reports, the Defendant has stated that the detection of the CVOCs, including TCE, PCE, trans-1,2-DCE, and vinyl chloride, may be associated with a former drum storage area located within the parking lot and with incidental releases in the rear of its building.

38. In January 1992, defendant Essex Chemical proposed to remediate areas contaminated with CVOCs through the implementation of a soil vapor extraction system ("SVE System"), also referred to as a "dual-phase extraction system."

39. In August 1997, installation of the SVE System was completed and made operational.

40. In December 2000, the SVE System was shut down, but was subsequently re-started in February 2002.

41. In September 2004, a Remediation Agreement was signed between The Dow Chemical Company ("Dow") and DEP, whereby Dow agreed to be responsible for conducting the remediation of the Site. Specifically, Dow agreed to submit quarterly remedial action reports in accordance with N.J.A.C. 7:26E and the approved remedial action work plan.

42. In March 2006, defendant Essex Chemical and/or Dow implemented enhanced in-situ bioremediation in the areas of the

former drum storage area and the incidental spill areas to further remediate persistent CVOC groundwater contamination ("In-Situ Bioremediation"). With plaintiff DEP's approval of In-Situ Bioremediation, the SVE System was shut down.

43. Although the Defendant and Dow initiated and/or continue remediation of the Site, including submissions of quarterly monitoring reports, the ground water remains contaminated.

FIRST COUNT

Spill Act

44. The Plaintiffs repeat each allegation of paragraph nos. 1 through 43 above as though fully set forth in its entirety herein.

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

46. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.

47. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged, is strictly

liable, jointly and severally, without regard to fault. N.J.S.A.
58:10-23.11g.c.(1).

48. The Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Black Horse Lane Property.

49. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

50. The Defendant is the discharger of hazardous substances at the Black Horse Lane Property, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Black Horse Lane Property.
N.J.S.A. 58:10-23.11g.c.(1).

51. The Defendant, as the owner of the Black Horse Lane Property at the time hazardous substances were discharged there, also is a person in any way responsible for the discharged hazardous substances, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages,

including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Black Horse Lane Property. N.J.S.A. 58:10-23.11g.c.(1).

52. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

53. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to

fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Black Horse Lane Property, with applicable interest;

- b. Enter declaratory judgment against the Defendant, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Black Horse Lane Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform any further cleanup of hazardous substances discharged at the Black Horse Lane Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, jointly and severally, without regard to fault, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Black Horse Lane Property,

including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource.

- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

54. The Plaintiffs repeat each allegation of paragraph nos. 1 through 53 above as though fully set forth in its entirety herein.

55. The Defendant is a "person" within the meaning of N.J.S.A. 58:10A-31.

56. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit issued by plaintiff Commissioner pursuant to the Water Pollution Control Act, or pursuant to a valid National Pollutant Discharge Elimination System permit issued pursuant to the federal Water pollution Control Act, 33 U.S.C.A. 1251 to -1387. N.J.S.A. 58:10A-6a.

57. The unauthorized discharge of pollutants is a violation of the Water Pollution Control Act for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.

58. Plaintiff DEP has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages, for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Black Horse Lane Property.

59. The costs and damages plaintiff DEP has incurred, and will incur, for the Site are recoverable within the meaning of N.J.S.A. 58:10A-10c. (2) - (4).

60. The Defendant discharged pollutants at the Black Horse Lane Property, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and is liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Black Horse Lane Property. N.J.S.A. 58:10A-6a.

61. Pursuant to N.J.S.A. 58:10A-10c., plaintiff Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c. (1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to

establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10c.(2); any reasonable cost incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c.(3); compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Black Horse Lane Property, N.J.S.A. 58:10A-10c.(4); and the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).

PRAYER FOR RELIEF

WHEREFORE, plaintiff Commissioner prays that this Court:

- a. Permanently enjoin the Defendant by requiring the Defendant to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;

- b. Enter an order assessing the Defendant, without regard to fault, for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter declaratory judgment against the Defendant, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- d. Enter an order assessing the Defendant, without regard to fault, for all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Black Horse Lane Property;
- e. Enter declaratory judgment against the Defendant, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Black Horse Lane Property;
- f. Enter an order assessing the Defendant, without regard to fault, for all compensatory damages and other actual

damages incurred for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Black Horse Lane Property;

- g. Enter declaratory judgment against the Defendant, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Black Horse Lane Property;
- h. Enter an order assessing the Defendant, without regard to fault, for the actual amount of any economic benefits it has accrued, including any savings realized from avoided capital or noncapital costs, the return it has earned on the amount of avoided costs, any benefits the Defendant has enjoyed as a result of a competitive market advantage, or any other benefit it has received as a result of having violated the Water Pollution Control Act;
- i. Enter declaratory judgment against the Defendant, without regard to fault, assessing the Defendant for the actual amount of any economic benefits that will accrue to it, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the

amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage the Defendant has enjoyed, or any other benefit that will accrue to it as a result of having violated the Water Pollution Control Act;

- j. Award plaintiff Commissioner her costs and fees in this action; and
- k. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

62. The Plaintiffs repeat each allegation of paragraph nos. 1 through 61 above as though fully set forth in its entirety herein.

63. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

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

65. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

66. As long as the ground water remains contaminated due to the Defendant's conduct, the public nuisance continues.

67. Until the ground water is restored to its pre-injury quality, the Defendant is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Black Horse Lane Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Black Horse Lane Property;

- c. Enter judgment against the Defendant, compelling the Defendant to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the Black Horse Lane Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Black Horse Lane Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

68. The Plaintiffs repeat each allegation of paragraph nos. 1 through 67 above as though fully set forth in its entirety herein.

69. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

70. The Defendant is liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the Black Horse Lane Property.

71. As long as the ground water remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Black Horse Lane Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of pollutants

and hazardous substances at the Black Horse Lane Property;

- c. Enter judgment against the Defendant, compelling the Defendant to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the Black Horse Lane Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Black Horse Lane Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: A. Paul Stofa
A. Paul Stofa
Deputy Attorney General

Dated: 06/25/2007

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that A. Paul Stofa, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: A. Paul Stofa
A. Paul Stofa
Deputy Attorney General

Dated: 06/25/2007