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May 20, 2004

VIA FACSIMILE

Mr. David Dorman
Chairman and CEO
AT&T Corporation
One AT&T Way, Suite 412
Bedminster, NJ 07921-0752

RE: New Jersey Department of Environmental Protection, et al v. AT&T Corporation

Dear Mr. Dorman:

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

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

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

Cordially,

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

By: 

Allan Kanner, Esq.

Special Counsel to the N.J. Attorney General

EBC/wrf

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION -MORRIS COUNTY
DOCKET NO.

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	
ADMINISTRATOR, NEW JERSEY	:	<u>Civil Action</u>
SPILL COMPENSATION FUND,	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AT&T CORPORATION,	:	
	:	
Defendant.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendant, say:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, ("the Spill Act"), and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the AT&T Bell Laboratories Whippany site located in Hanover Township, Morris County, New Jersey, and to compel the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharge of hazardous substances at or from the Whippany site.

THE PARTIES

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

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

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

5. Defendant AT&T Corporation, is a corporation organized under the laws of the State of New York, with a principal place of business located at 900 RTE 202 206, Bedminster, New Jersey 07921.

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

AFFECTED NATURAL RESOURCE

Groundwater

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

8. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

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

10. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

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

Surface Water

12. A supply of approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

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

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

GENERAL ALLEGATIONS

15. The AT&T Bell Laboratories Whippany property consists of approximately 195 acres of real property located at the

intersection of Route 10 and Whippany Road in Hanover Township, Morris County, this property being also known and designated as Block 5801, Lots 1 and 1.01 on the Tax Map of Hanover Township ("the Whippany Property"), and all other areas where any hazardous substance discharge there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 008314.

16. AT&T Bell Telephone Laboratories ("Bell Labs"), a division of AT&T, operated the AT&T Bell Laboratories facility since approximately 1926.

17. Defendant AT&T, has owned the property since 1926. In 1965, AT&T acquired an additional parcel of property adjacent to the site from the Seeing Eye Dog Foundation which property was incorporated into the Whippany Property.

18. From approximately 1926, AT&T conducted high-powered radio testing at the Whippany Property. During World War II, AT&T conducted work for the U.S. Defense Department at the Whippany Property. Currently, the Whippany Property is used for telecommunication research and development operations, with the primary focus being in the areas of wireless/cellular development and telecommunications transmission. During the time AT&T has been operating on the property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Whippany Property within the meaning of N.J.S.A. 58:10-23.11b.

19. In 1982, groundwater investigations began at the Whippany Property when AT&T initiated a groundwater monitoring program under a New Jersey Discharge Elimination System Permit (NJPDES Permit No. NJ0000833, issued in 1981).

20. Sampling results from the initial 1982 Whippany Property inspection and subsequent inspections have revealed the presence of various hazardous substances, including certain volatile organic compounds such as benzene, ethyl benzene, toluene and xylene, and chlorinated aliphatic compounds (primarily trichloroethylene), sodium chloride, polychlorinated biphenyls, and certain metals (arsenic, aluminum, manganese, lead, iron, nickel, chromium, and sodium) in the soils and groundwater at and underlying the Site.

21. While defendant AT&T has undertaken limited cleanup of hazardous substances from the soils and groundwater at and underlying the Site, pursuant to an ISRA Remediation Agreement dated September 16, 1992 and a Memorandum of Understanding, groundwater contamination continues.

22. Hazardous substances from the Site have discharged to and are present in wetlands, surface water and sediment adjacent to the Whippany Property.

FIRST COUNT

Spill Act

23. Plaintiffs repeat each allegation of Paragraphs 1 through 22 above as though fully set forth in its entirety herein.

24. Plaintiffs have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Whippany Property.

25. 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.

26. The Defendant as the owner of the Whippany Property at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Whippany Property. N.J.S.A. 58:10-23.11g.c.(1).

27. The Defendant, as the discharger of hazardous substances at the Whippany Property is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the

discharges of hazardous substances at the Whippany Property.
N.J.S.A. 58:10-23.11g.c.(1).

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

29. 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, without regard to fault, for all cleanup and removal costs the plaintiffs have incurred in connection with site remediation investigation and remedial measures related to the contamination, with applicable interest;

- b. Enter declaratory judgment against the Defendant, without regard to fault, for any cleanup and removal costs plaintiffs DEP and Administrator may incur in connection with site remediation investigation and remedial measures;
- c. Order Defendant to reimburse the Plaintiffs, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Whippany Property, with applicable interest;
- d. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Whippany Property;
- e. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Whippany Property, by performing, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any

further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Whippany Property;

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

SECOND COUNT

Public Nuisance

30. Plaintiffs repeat each allegation of Paragraphs 1 through 29 above as though fully set forth in its entirety herein.

31. Groundwater is a natural resource of the State held in trust by the State. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

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

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

34. Until the groundwater is restored to its pre-injury quality, the Defendant is liable for the creation, and continued

maintenance, of a public nuisance in contravention of the public's common right to clean groundwater.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

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

Whippany Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Whippany Property;

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

THIRD COUNT

Trespass

35. Plaintiffs repeat each allegation of Paragraphs 1 through 34 above as though fully set forth in its entirety herein.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Whippany Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Whippany Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Whippany Property, under plaintiff DEP's oversight, by performing, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Whippany Property;

d. Award the Plaintiffs their costs and fees in this action;

and

e. Award the Plaintiffs such other relief as this Court

deems appropriate.

PETER C. HARVEY

ATTORNEY GENERAL OF NEW JERSEY

Attorney for Plaintiffs

By: 

Allan Kanner

Special Counsel to the

Attorney General

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New Orleans, LA 70130

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Dated: May 20, 2004

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Allan Kanner,

Special Counsel to the Attorney General, is hereby designated as

trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R.

4:5-1(b) (2), that the matters in controversy in this action may be

considered to be the subject of another pending action: New Jersey

Society for Environmental, Economic Development, et al. v. Bradley

M. Campbell, et al., Docket No. MRR-L-343-04. Otherwise, the

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

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

By: _____

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Dated: May 20, 2004