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PLAINT DIVISION
MORRIS COUNTY

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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 SPILL COMPENSATION FUND,	:	
	:	<u>Civil Action</u>
Plaintiffs,	:	COMPLAINT
v.	:	
ADRON, INC. and "JOHN DOES" 1-10 (Names Fictitious),	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants (collectively, "the Defendants"), 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 discharges of hazardous substances at the Adron, Inc. site, Parsippany-Troy Hill Township, Morris County, New Jersey, and to compel the Defendants 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 discharges of hazardous substances at the Adron, Inc. 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 Adron, Incorporated, formerly known as Norda Essential Oil & Chemical Company (collectively, "Adron") is a corporation organized under the laws of the State of New York, with a last known principal place of business located at 94 Fanny Road, P.O. Box 270, Boonton, New Jersey.

6. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom may be corporate officers, directors, shareholders or responsible corporate officials of defendant Adron.

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

AFFECTED NATURAL RESOURCES

Groundwater

8. 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.

9. 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.

10. 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.

11. 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.

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

Surface Water

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

14. 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.

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

GENERAL ALLEGATIONS

16. The Adron, Inc. site consists of approximately 12.3 acres of real property located at 94 Fanny Road, Parsippany-Troy Hill Township, Morris County, this property being also known and designated as Block 448, Lot 5, on the Tax Map of Parsippany-Troy Hill Township ("the Adron Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 011035.

17. Lake Intervale is a freshwater lake roughly 1,200 feet long and 630 feet wide, located approximately 1,000 feet from the Adron Property.

18. In 1942, defendant Adron, then known as Norda Essential Oil and Chemical Company, a manufacturer of artificial flavors and fragrances, purchased the Adron Property, and remains the owner of record.

19. From 1942 through 1981, defendant Adron manufactured artificial flavors and fragrances at the Adron 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.

20. Defendant Adron continued to manufacture artificial flavorings, but not fragrances, at the Adron Property from October 1981 through the present.

21. In 1979, plaintiff DEP responded to a report of contaminants being discharged from the Adron Property into Lake Intervale.

22. As part of its 1979 investigation, plaintiff DEP sampled the discharged materials, the results of which showed that they contained hazardous substances exceeding the New Jersey Groundwater Quality Standards ("GWQS"), including benzene and toluene.

23. In 1981, plaintiff DEP performed additional sampling, the results of which revealed elevated levels of hazardous substances in the soils, sediments and groundwater, including chlorobenzene, benzene, toluene, and xylenes.

24. In or about December 1983, defendant Adron conducted a geohydrological study under plaintiff DEP's oversight, which involved the sampling of four monitoring wells on the Adron Property, the results of which showed various hazardous substances exceeding the GWQS in the groundwater underlying the Site, including arsenic, acetone benzene, chlorobenzene, and 1,1 xylenes.

25. In April 1999, plaintiff DEP sent defendant Adron a no further action letter pursuant to N.J.S.A. 58:10B-13.1 concerning the closure of two underground storage tanks at the Adron Property.

26. In March 2001, plaintiff DEP issued a Spill Act directive ("March 2001 Directive") to defendant Adron pursuant to N.J.S.A. 58:10-23.11f.a., directing defendant Adron to conduct a remedial investigation to further determine the nature and extent of the contamination at the Site.

27. Defendant Adron responded to the March 2001 Directive by claiming it lacked sufficient funds to conduct the remedial investigation.

28. In November 2003, plaintiff DEP proposed a two-part remedial investigation to first determine the nature and extent of the contamination in the soils, shallow groundwater, and the entrance to Lake Intervale. The second phase would involve additional delineation of any previously detected soils contamination, further groundwater investigation, additional surface water and sediment sampling, and performance of a baseline ecological evaluation.

29. Plaintiff DEP has not initiated the remedial investigation for the Site, and the soils, groundwater and surface water contamination continues.

FIRST COUNT

Spill Act

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

31. Plaintiff DEP has incurred, and will continue to incur, costs for the Site.

32. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Site and has approved, and may further approve, other appropriations for the Site.

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

34. 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.

35. The Defendants, including defendant Adron and one or more of the John Doe defendants, are dischargers of hazardous substances at the Adron Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has

been, or may be, injured by the discharges of hazardous substances at the Adron Property. N.J.S.A. 58:10-23.11g.c.(1).

36. Defendant Adron, as the owner of the Adron Property at the time hazardous substances were discharged there, also is a person otherwise 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 use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Adron Property. N.J.S.A. 58:10-23.11g.c.(1).

37. 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).

38. 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 Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Adron Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Adron Property;
- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharges of hazardous substances at the Adron 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 discharges of hazardous substances at the Adron 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.

SECOND COUNT

Public Nuisance

39. Plaintiffs repeat each allegation of Paragraphs 1 through 38 above as though fully set forth in its entirety herein.

40. Groundwater and surface water are natural resources of the State held in trust by the State.

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

42. The contamination of groundwater and surface water at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

43. As long as groundwater and surface water remain contaminated due to the Defendants' conduct, the public nuisance continues.

44. Until the groundwater and surface water are restored to their pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean groundwater and surface water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Adron Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by

the discharges of hazardous substances at the Adron Property;

- c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharges of hazardous substances at the Adron 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 discharges of hazardous substances at the Adron 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

45. Plaintiffs repeat each allegation of Paragraphs 1 through 44 above as though fully set forth in its entirety herein.

46. Groundwater and surface water are natural resources of the State held in trust by the State for the benefit of the public.

47. The Defendants are liable for trespass, and continued trespass, since hazardous substances were first discharged at the Adron Property.

48. As long as groundwater and surface water remain contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

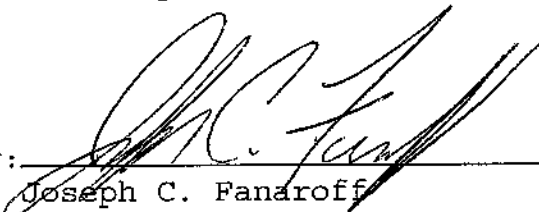
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- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of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

Dated: *8/18/04*

DESIGNATION OF TRIAL COUNSEL

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

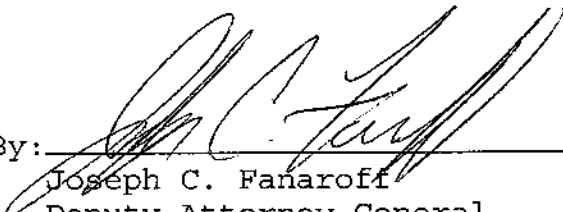
CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley

M. Campbell, et al., Docket No. A-6537-03T3. Otherwise, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party 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: _____


Joseph C. Fanaroff
Deputy Attorney General

Dated: 