



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 US Metals site in Carteret Borough, Middlesex County.

2. 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 US Metals 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 US Metals 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

3. 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.

4. 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.

5. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10A-3. 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.

6. 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.

7. Defendant United States Metals Refining Company, Inc. ("US Metals") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at One North Central Avenue, Phoenix, Arizona.

8. In or around April 1983, United States Metals Refining Company ("US Metals New Jersey"), a defunct New Jersey corporation, merged with Amax Copper, Inc. ("Amax Copper"), with Amax Copper being the surviving entity.

9. In 1993, Amax Copper's parent corporation, Amax, Inc., merged with Cyprus Amax Minerals Company ("Cyprus"), with Cyprus being the surviving entity.

10. In 1999, Phelps Dodge Corporation acquired Cyprus, and became the parent corporation of Amax Copper, which changed its name that year to United States Metals Refining Company, Inc., the defendant herein.

11. Defendant US Metals is the successor-in-interest to US Metals New Jersey and Amax Copper.

#### NATURAL RESOURCES

12. 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.

13. 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. N.J.S.A. 58:10A-3t.

14. 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 US Metals site.

#### AFFECTED NATURAL RESOURCE

##### Ground Water

15. 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.

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

17. 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.

18. 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.

19. 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.

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

#### GENERAL ALLEGATIONS

21. The US Metals site consists of approximately 180 acres of real property located 400 Middlesex Avenue, in the Borough of Carteret, Middlesex County, New Jersey, this property being also known and designated as Block 267, Lot 6, and Block 1, Lots 2.11, 2.12, 2.2, 2.3 and 2.4, on the Tax Map of Carteret Borough ("the US Metals Property"), and all other areas where any pollutant or hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 009101.

22. From in or around 1920 through 2006, defendant US Metals and various related entities owned the US Metals 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 arsenic, cadmium, chlorobenzene, copper, lead, nickel, selenium and zinc.

23. In March 2006, defendant US Metals sold the US Metals Property to V. Paulius & Associates, which as of the filing of this Complaint was the owner of record of the US Metals Property.

24. From in or about 1920 through 1992, the Defendant and its predecessors-in-interest, including Amax Copper and US Metals New Jersey, also operated a metals refining facility at the US Metals Property, the operation of which involved the generation, 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 arsenic, cadmium, chlorobenzene, copper, lead, nickel, selenium and zinc.

25. From in or about 1920 through 1992, the Defendant and its predecessors-in-interest's refining operations also involved generation, 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 arsenic, cadmium, chlorobenzene, copper, lead, nickel, selenium and zinc.

26. Amax Copper's 1985 decision to phase out its metal refining operations triggered the company's obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14.

27. Amax Copper initiated a groundwater investigation at the US Metals Property, during which Amax Copper identified various hazardous substances and pollutants in the ground water, which included metals and chlorobenzene.

28. In June 1988, Amax Copper's then parent, Amax, entered into an Administrative Consent Order with plaintiff DEP ("1988 ACO"), pursuant to which Amax agreed to remediate the Site.

29. From 1988 through 1992, Amax performed a remedial investigation to determine the nature and extent of the contamination at the Site in accordance with N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2.

30. Sampling results from the remedial investigation confirmed the presence of various hazardous substances and pollutants at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, surface water in the Arthur Kill, and soils at the Site, which included arsenic, cadmium, chlorobenzene, copper, lead, nickel, selenium and zinc.

31. In October 1991, Amax submitted a feasibility study report and remedial action workplan to plaintiff DEP for review, in which Amax proposed remediating the ground water, surface water and soils by installing a trench to cut off the flow of metals toward the Arthur Kill, and proposing to delineate a Classification Exception Area ("CEA"), which when established would restrict groundwater usage within its boundaries.

32. In April 1992, Amax and plaintiff DEP entered into an amended administrative consent order ("1992 ACO"), allowing Amax to cease operations before completing its remediation of the Site



under the 1988 ACO, which activities are ongoing, as, at a minimum, additional capping of areas of the US Metals Property is needed.

33. Amax proposed a 168.5-acre CEA for the Site, with a 14-year duration for the chlorobenzene contamination, and an indeterminate duration for the metals contamination, which plaintiff DEP approved in 1997.

34. Plaintiff DEP has since determined that the CEA may not be as large as it should be, and, accordingly, may not be protective of human health and safety, thus prompting plaintiff DEP to direct Amax to recalculate the duration of the CEA for the chlorobenzene contaminant plume.

35. Although Amax has initiated the remediation of the Site, the ground water, surface water and soils remain contaminated.

36. As the soils and ground water remain contaminated, plaintiff DEP suspects that hazardous substances and pollutants are being flushed by tidal flows and advective groundwater flow into the Arthur Kill.

37. As of the filing of this Complaint, plaintiff DEP cannot say with certainty what, if any, injury to the sediments and surface water of the Arthur Kill has occurred as a result of the discharge of hazardous substances and pollutants at the US Metals Property, as US Metals has not, as required by law, conducted a Baseline Ecological Evaluation ("BEE") pursuant to N.J.A.C. 7:26E-3.11(a).

38. Plaintiff DEP requires the results of the BEE to be able to confirm that contaminants of ecological concern exist, environmentally sensitive natural resources (e.g., surface water and sediments) exist, and potential contaminant pathways to environmentally sensitive natural resources exist, or that an impact to these resources was indicated based on visual observation.

39. Depending on the results of the BEE, US Metals may have to perform an Ecological Investigation and Risk Assessment ("ERA") pursuant to N.J.A.C. 7:26E-4.7(a) to characterize the extent of contamination along contaminant migration pathways and within environmentally sensitive natural resources at the Site, which include sediments and surface water.

40. Accordingly, the remedial investigation, as it relates to sediments and surface water, was not complete as of the filing of this Complaint, and, accordingly, the Plaintiffs are seeking to have this Court compel the Defendant to perform the BEE and ERA in accordance with the Spill Act and the regulations promulgated thereunder.

41. Although the Defendant and Amax have initiated the remediation of the Site, the ground water and soils, and possibly surface water and sediments, remain contaminated.

FIRST COUNT

Spill Act

42. The Plaintiffs repeat each allegation of paragraph nos. 1 through 41 above as though fully set forth in its entirety herein.

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

44. 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).

45. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge of hazardous substances 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).

46. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the US Metals Property.

47. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning

the Site, and, further, has approved, or may approve, other appropriations for the Site.

48. Plaintiffs DEP and Administrator also 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 US Metals Property.

49. The costs and damages plaintiffs DEP and Administrator 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, or is the successor-in-interest to, a discharger of hazardous substances at the US Metals Property, and is liable, 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, 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 US Metals Property. N.J.S.A. 58:10-23.11g.c.(1).

51. The Defendant as, or as the successor-in-interest to, the owner of the US Metals 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, 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, 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 US Metals 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, without regard to fault, for all cleanup

and removal costs and damages, including lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the US Metals Property, with applicable interest;

- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, which 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 US Metals Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform any further cleanup of hazardous substances discharged at the US Metals Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, 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 US Metals Property, including performing a BEE and ERA in accordance with the Spill Act and the regulations

- promulgated thereunder, and 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. 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, or may incur, costs as a result of the discharge of pollutants at the US Metals Property.

59. Plaintiff DEP also has incurred, or will 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 US Metals Property.

60. 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).

61. The Defendant is, or is the successor-in-interest to, a person that discharged pollutants at the US Metals 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 US Metals Property. N.J.S.A. 58:10A-6a.

62. 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 US Metals 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, including enjoining

- the Defendant to perform a BEE and ERA pursuant to the Spill Act and the regulations promulgated thereunder;
- 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 US Metals 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 US Metals 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 US Metals 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 US Metals 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 the

Defendant, 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 him 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

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

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

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

66. 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.

67. As long as the ground water remains contaminated due to the Defendant's conduct, and that of its predecessors-in-interest, the public nuisance continues.

68. 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 Defendants 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 these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the US Metals 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 US Metals 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 US Metals 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 US Metals Property, including performing a BEE and ERA in accordance with the Spill Act and the regulations promulgated thereunder, and restoring any injured resource to its pre-discharge condition, and compelling the Defendants 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

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

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

71. The Defendant is liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the US Metals Property.

72. 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 Defendants 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 these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the US Metals 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 US Metals 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 US Metals 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 US Metals Property, including performing a BEE and ERA in accordance with the Spill Act and the regulations promulgated thereunder, and restoring any injured resource to its pre-discharge condition, and compelling the Defendants 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: Mark D. Oshinskie  
Mark D. Oshinskie  
Deputy Attorney General

Dated: 6/25/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark D. Oshinskie, 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: Mark D. Oshinskie  
Mark D. Oshinskie  
Deputy Attorney General

Dated: 6/25/07

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