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**FILED**  
**TEAM #2**

**OCT 04 2005**

**SUPERIOR COURT  
OF NEW JERSEY  
COUNTY OF HUDSON  
CIVIL DIVISION #8**

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO. *L - 4962 - 05*

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
THE ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION  
FUND,

Plaintiffs,

v.

BASF CORPORATION;  
UNITED TECHNOLOGIES  
CORPORATION; ABC  
CORPORATIONS 1-10 (Names  
Fictitious), and  
JOHN DOES 1-10 (Names Fictitious),

Defendants.

Civil Action

COMPLAINT

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 ("the Defendants"), say:

### STATEMENT OF THE CASE

1. 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, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of discharge of hazardous substances at the BASF/Inmont site located in the City of Hawthorne, Passaic 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 hazardous substances at the BASF/Inmont site, and to compel the Defendants 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 BASF/Inmont site.

### 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 damages to the natural resources of the State.

N.J.S.A. 58:10-23.11a.

4. 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.

5. Defendant, BASF Corporation ("BASF") is a corporation organized under the laws of the State of Delaware with a principal place of business located at 100 Campus Drive, Florham Park, New Jersey.

6. In 1964, BASF Aktiengesellschaft ("BASF AG"), a corporation of the Federal Republic of Germany, acquired the assets of United Cork Companies, a New York corporation, with the surviving entity being Badische Products Corporation ("Badische Products"), also a New York corporation.

7. In January 1968, Badische Products merged with BASF Colors & Chemicals, thus becoming BASF Corporation, a New York corporation.

8. In December 1970, BASF Corporation merged with Wyandotte Chemical Corporation, thus becoming BASF Wyandotte Corporation, a Michigan corporation.

9. In December 1985, Badische Corp., a Delaware corporation, merged with BASF Wyandotte Corporation and several other companies to form Inmont Corporation ("Inmont"), a Delaware corporation, and simultaneously changed the surviving entity's name to BASF Corporation, a Delaware corporation, defendant BASF herein

10. Defendant United Technologies Corporation ("UTC") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at One Financial Plaza Hartford, Connecticut 06103.

11. Inmont was a wholly-owned subsidiary of defendant UTC.

12. Defendant BASF acquired Inmont from defendant UTC through a stock purchase agreement in 1985, and is the successor-in-interest to Inmont.

13. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, or are otherwise related to, defendant UTC, defendant BASF, and/or their predecessors, including Inmont.

14. 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 are partners, officers, directors, responsible corporate officials and/or shareholders of, or are otherwise related to, defendant UTC, defendant BASF, one or more of the ABC Corporations Defendants, and/or their predecessors, including Inmont.

#### AFFECTED NATURAL RESOURCES

##### 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, wetland ecology, and the health of aquatic ecosystems.

18. Ground water 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.

19. Ground water is also used for commercial, industrial and agricultural purposes.

20. There are more than 6,000 contaminated sites in New Jersey that have ground water confirmed to be contaminated with hazardous substances.

#### Surface Water

21. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

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

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

#### GENERAL ALLEGATIONS

24. The BASF/Inmont site consists of approximately 16 acres of real property located at 150 Wagaraw Road, City of Hawthorne, Passaic County, this property being also known and designated as Block 12, Lot 7, on the Tax Map of the City of Hawthorne, ("the BASF/Inmont Property"), and all other areas where any hazardous substance

discharged there has become located (collectively, "the BASF/Inmont Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 006777.

25. The BASF/Inmont Property is bordered on the south by the Passaic River.

26. The groundwater system beneath the BASF/Inmont Site consists of two aquifers; an overburden aquifer and a bedrock aquifer. Ground water in the overburden aquifer flows south to the Passaic River.

27. Ground water in the lower portion of the bedrock aquifer flows both south toward the Passaic River and north-northwest toward a municipal water production well field, which flow migrates depending on the pumping conditions at the local municipal well field.

28. Ground water in the upper portion of the bedrock aquifer flows toward the Passaic River, the rate of which flow varies depending on local well pumping conditions.

29. Prior to 1946, the BASF/Inmont Property was part of a larger 25-acre tract of land owned by the Weidman Company ("Weidman") which began developing the property for water production in 1910.

30. By 1912, Weidman had installed 47 bedrock wells on the 25-acres property, which wells ranged in depth from 300 to 400 feet and had an average combined yield of 5,000,000 gallons per day.

31. Nine of the water production wells Weidman installed were located on the BASF/Inmont Property, and were used for drinking and manufacturing until the 1950s.

32. In 1946, Inmont purchased the 16 acre BASF/Inmont Property.

33. In 1985, defendant BASF acquired Inmont and the the BASF/Inmont Property from defendant UTC, and, as of the filing of this Complaint, defendant BASF continues to own the BASF/Inmont Property.

34. During the time that defendants UTC and BASF and/or their division/predecessor Inmont, owned the BASF/Inmont Property, hazardous substances, as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), which substances included nitrobenzene, aniline, benzene, trichloroethylene, tetrachloroethylene, 1,2,4-trichlorobenzene, and chlorobenzene.

35. Inmont produced dyestuffs, dyestuff intermediate, pigment intermediates, specialty polymers, and chemicals at the BASF/Inmont Property.

36. In 1967, Inmont cease producing organic chemicals at the BASF/Inmont Property, and, in 1974, stopped manufacturing dyestuff there.

37. From 1974 through 1988, Inmont, and, later, defendant BASF, continued manufacturing pigments, aqueous dispersions, and flush bases at the BASF/Inmont Property.

38. Inmont, as a division of defendant UTC, and defendant BASF, doing business as BASF/Inmont, engaged in chemical manufacturing activities at the BASF/Inmont Property, which activities involved the generation, storage, handling, and disposal 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 nitrobenzene, aniline, benzene, trichloroethylene, tetrachloroethylene, 1,2,4-trichlorobenzene, and chlorobenzene.

39. In 1982, Inmont retained consultants to conduct an investigation of possible chemical contamination of the bedrock aquifer underlying the BASF/Inmont Property.

40. Inmont's investigation That revealed the presence of measurable amounts of hazardous substances in the ground water underlying the BASF/Inmont Site, and proposed to plaintiff DEP that additional investigation was needed, which proposal plaintiff DEP approved in November 1983.

41. In August 1984, Inmont completed the second phase of the groundwater investigation, the results of which further revealed and delineated the contaminants in the ground water and soils at the Site.

42. Defendant BASF's 1985 acquisition of Inmont and the BASF/Inmont Property triggered defendant UTC's obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

43. In July 1985, defendant UTC entered into an Administrative Consent Order ("ACO") with plaintiff DEP, which required defendant UTC to investigate the nature and extent of the contamination at the BASF/Inmont Site, and to remediate the contamination.

44. In September 1985, defendant UTC submitted a sampling and analysis plan ("SAP") to plaintiff DEP, in which defendant UTC outlined its plan to investigate the nature and extent of the groundwater contamination at the BASF/Inmont Site.

45. In 1993, defendant UTC completed the remedial investigation, the results of which revealed the presence of various hazardous substances exceeding plaintiff



DEP's cleanup criteria in the soils and ground water at the BASF/Inmont Site, which substances included nitrobenzene, aniline, benzene, trichloroethylene, tetrachloroethylene, 1,2,4-trichlorobenzene, and chlorobenzene.

46. In September 1993, defendant UTC submitted its Remedial Action Workplan ("RAW") to plaintiff DEP, in which defendant UTC outlined the proposed remedial alternatives for the BASF/Inmont Site.

47. The remediation UTC proposed in the RAW, and which plaintiff DEP approved, primarily provided for the excavation contaminated soils, and the construction, operation and maintenance of a groundwater extraction, treatment, and injection system consisting of eight pumping wells capable of operating at a flow rate of 210 gallons per minute ("gpm"), with the extracted contaminated water being treated at an on-site treatment plant with a capacity of 260 gpm.

48. Defendant UTC began operating the groundwater treatment system in 1997, and has also excavated contaminated soils at the BASF/Inmont Site.

49. On April 12, 2001, defendant UTC submitted a proposed Classification Exception Area ("CEA") to plaintiff DEP for the BASF/Inmont Site, which excludes designated ground water from use as a potable water source within the boundaries of the BASF/Inmont Property for an indefinite duration.

50. Plaintiff DEP required that the vertical extent of the CEA be increased to a depth of 250 feet, and that the horizontal extent of the CEA be increased 200 feet to the west. Defendant UTC subsequently revised its CEA proposal as requested by plaintiff DEP, which proposal plaintiff DEP approved in October 2003.

51. Although defendant UTC has initiated the remediation of the

BASF/Inmont Site, the ground water and soils, and surface water remain contaminated.

FIRST COUNT

Spill Act

52. Plaintiffs repeat each allegation of Paragraphs 1 through 51 above as though fully set forth in its entirety herein.

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

54. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the BASF/Inmont Property.

55. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, and may continue to approve, other appropriations for the BASF/Inmont Site.

56. 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 by the discharge of hazardous substances at the BASF/Inmont Property.

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

58. The Defendants are dischargers, and/or the successor-in-interest to the dischargers, of hazardous substances at the BASF/Inmont Property, and are 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 by the discharge of hazardous substances at the BASF/Inmont Property. N.J.S.A. 58:10-23.11g.c.

59. The Defendants, as the owners, or as a successor-in-interest to the owners, of the BASF/Inmont Property at the time hazardous substances were discharged there, also are persons otherwise responsible for the discharged hazardous substances, and are 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 by the discharge of hazardous substances at the BASF/Inmont Property. N.J.S.A. 58:10-23.11g.c.(1).

60. 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); for 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).

61. 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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the BASF/Inmont 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the BASF/Inmont 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 discharge of hazardous substances at the BASF/Inmont Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the BASF/Inmont 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

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

63. Ground water and surface water are natural resources of the State held in

trust by the State.

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

65. The contamination of ground water and surface water at the BASF/Inmont 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.

66. As long as ground water and/or surface water remains contaminated due to the Defendants' conduct, the public nuisance continues.

67. Until the ground water 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 ground water 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 lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the BASF/Inmont Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the

discharge of hazardous substances at the BASF/Inmont 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 discharge of hazardous substances at the BASF/Inmont Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the BASF/Inmont 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

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

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

70. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the BASF/Inmont Site by the Defendants and/or their predecessors.

71. As long as ground water and/or surface water remain contaminated, the Defendants' trespass continues.

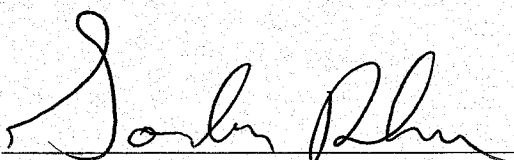
### PRAYER FOR RELIEF

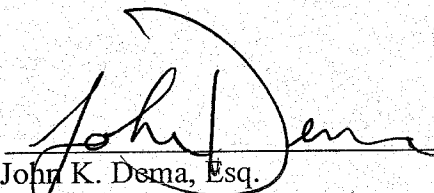
**WHEREFORE**, Plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the BASF/Inmont Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances at the BASF/Inmont 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 discharge of hazardous substances at the BASF/Inmont Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the BASF/Inmont 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.

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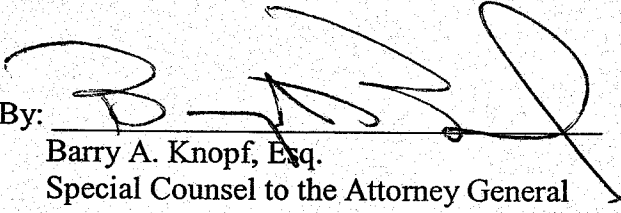
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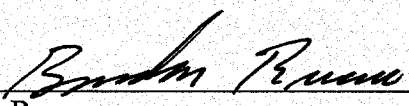
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Brendan Ruane  
Deputy Attorney General

Dated:

Dated: 9/29/05

DESIGNATION OF TRIAL COUNSEL

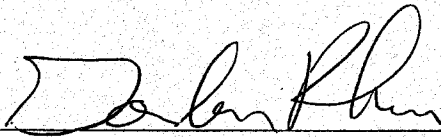
Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, Barry A. Knopf, Leonard Kaufmann, and Scott E. Kauff, Special Counsel to the Attorney General, are hereby designated as trial counsel for the Plaintiffs in this action.

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 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).

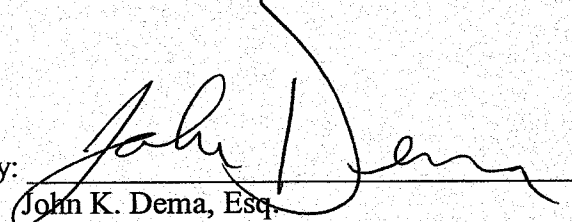


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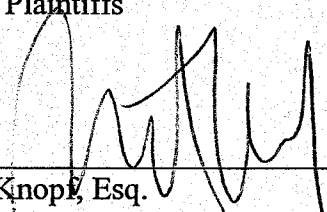
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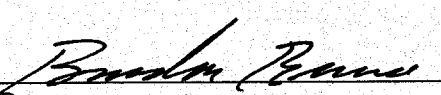
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