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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MORRIS COUNTY  
DOCKET NO. *L-3479-04*

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

Plaintiffs,

v.

PRECISION ROLLED PRODUCTS,  
INC., VERIZON COMMUNICATIONS  
INC., as successor to GENERAL  
TELEPHONE AND ELECTRONICS  
CORPORATION, PHELPS DODGE  
CORPORATION, as successor to  
CYPRUS AMAX MINERAL COMPANY,  
GREAT MEADOWS LAND DEVELOPMENT  
CORPORATION, ESTATE OF F.  
WILLIAM HORSTMANN, "ABC  
GENERATOR CORPORATIONS" 1-20  
(Names Fictitious), "XYZ  
TRANSPORTER CORPORATIONS" 1-20  
(Names Fictitious), "JOHN  
DOES" 1-5 (Names Fictitious),  
PARK MEADOWS CORPORATION, and  
DYNALOY, INC.,

Defendants.

Civil Action

COMPLAINT

FINANCE DIVISION  
MORRIS COUNTY

2004 DEC 27 PM 3:25

RECEIVED AND FILED  
SUPERIOR COURT

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. The 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 they have incurred, and will incur, as a result of the discharge of hazardous substances that has impacted the Black Brook Well #1 in Hanover Township, Morris 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 that has impacted the Black Brook Well #1, 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 that has impacted the Black Brook Well #1.

### 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 ("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 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 Precision Rolled Products, Inc. ("Precision") is a corporation organized under the laws of the State of Nevada, with a principal place of business located at 306 Columbia Turnpike, Florham Park Borough, New Jersey.

6. Defendant Verizon Communications Inc. ("Verizon") is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1095 Avenue of the

Americas, New York, NY 10036, having formed from the merger of Bell Atlantic Corp. and General Telephone and Electronics Corporation ("GTE") on June 30, 2000.

7. Defendant Phelps Dodge Corporation ("Phelps Dodge") is a corporation organized under the laws of the State of New York with a principal place of business located at One North Central Avenue, Phoenix, Arizona 85004. In December 1999, Phelps Dodge acquired Cyprus Amax Minerals Co., which, upon information and belief, was formerly known as Amax Specialty Metals, Inc. ("Amax"), a wholly-owned subsidiary of Amax, Inc.

8. Defendant Great Meadows Land Development Corporation ("Great Meadows") is a corporation organized under the laws of the State of New Jersey with a principal place of business located at One Great Meadow Lane, East Hanover Township, New Jersey.

9. Defendant Estate of F. William Horstmann is the estate of F. William Horstmann, an individual whose last known address was 35 South Ridgedale Avenue, East Hanover, New Jersey 07936. F. William Horstmann died intestate in Morristown, New Jersey on March 18, 1985.

10. Defendants "ABC Generator Corporations" 1-20, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint that generated wastes containing hazardous substances that were disposed at

property owned by defendants Great Meadows and/or F. William Horstmann.

11. Defendants "XYZ Transporter Corporations" 1-20, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint that transported wastes containing hazardous substances that were disposed at property owned by defendants Great Meadows and/or F. William Horstmann.

12. Defendants "John Does" 1-5, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom were partners of, or principals of, defendants Great Meadows and/or F. William Horstmann, or are persons otherwise responsible for the discharge of hazardous substances at property owned by Great Meadows and/or F. William Horstmann.

13. Defendant Park Meadows Corporation ("Park Meadows") is a corporation organized under the laws of the State of New Jersey with a principal place of business located at One Great Meadow Lane, East Hanover Township, New Jersey.

14. Upon information and belief, defendant Dynaloy, Inc. ("Dynaloy") is a corporation organized under the laws of the State of New Jersey with a principal place of business located at 7 Great Meadow Lane, East Hanover Township, New Jersey.

## 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 influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

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 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.

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

## GENERAL ALLEGATIONS

21. Precision operates a specialty steel manufacturing facility located at 306 Columbia Turnpike, Florham Park, New

Jersey, this property being also known and designated as Block 127, Lot 1.01 on the Tax Map of the Township of East Hanover ("the Precision Property"), which plaintiff DEP has designated as Industrial Site Recovery Act ("ISRA") Case No. E90380. Great Meadows owns property located at 43 Great Meadow Lane in the Township of East Hanover, Morris County, New Jersey, this property being also known and designated as Block 128, Lot 43, on the Tax Map of the Township of East Hanover ("Horstmann's Landfill Property"). Park Meadows owns property located at One Great Meadow Lane, East Hanover Township, Morris County, New Jersey, this property being also known and designated as Block 128, Lot 42, on the Tax Map of the Township of East Hanover ("Park Meadows Industrial Park"). The Southeast Morris County Municipal Utilities Authority ("SMCMUA") operates two public water supply wells ("Black Brook Well #1" and "Black Brook Well #2") located on an easement on property owned by the Town of Morristown at the Morristown Airport in the Township of Hanover, Morris County, New Jersey, this property being also known and designated as Block 6301, Lots 1 & 2, on the Tax Map of the Township of Hanover. Discharges of hazardous substances at the Precision Property, Horstmann's Landfill Property, and Park Meadows Industrial Park (collectively, "the Properties") have impacted the Black Brook Well #1, which plaintiff DEP has designated as Site Remediation Program Interest No. 01768 ("the Site").

22. Between January 1992 and May 1997, the Drinking Water Maximum Contaminant Levels ("MCLs") were exceeded 22 times for 1,2-dichloroethane ("1,2-DCA") and five times for trichloroethylene ("TCE") in Black Brook Well #1. Additionally, 1,1-dichloroethene ("1,1-DCE"), 1,1-dichloroethane ("1,1-DCA") and cis-1,2-dichloroethene ("cis-1,2-DCE") were detected in Black Brook Well #1.

23. In October 1997, the DEP recommended that treatment be provided at Black Brook Well #1 and Black Brook Well #2 due to contamination by volatile organic compounds ("VOCs").

24. On September 22, 1998, plaintiff DEP approved the proposed remedial action for Black Brook Well #1 and Black Brook Well #2.

25. The remedial action approved by plaintiff DEP provided for the treatment of VOCs in Black Brook Well #1 and Black Brook Well #2 through the installation of air stripping equipment plus all necessary piping, controls, and instrumentation to the existing treatment plant.

26. Although Plaintiff DEP implemented the remedial action for Black Brook Well #1 and Black Brook Well #2 by constructing the air stripper, the groundwater contamination continues.

27. The Precision Property is located across the Black Brook from Black Brook Well #1.



28. Upon information and belief, Wilbur B. Driver Company purchased the Precision Property in 1957 and commenced manufacturing operations.

29. Upon information and belief, GTE purchased Wilbur B. Driver Company in 1967 and operated a metals processing and manufacturing facility at the Precision Property.

30. Upon information and belief, GTE owned and operated the Precision Property from 1967 through 1979, 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 TCE, 1,2-DCA, cis-1,2-DCE, 1,1-DCA, and vinyl chloride.

31. Upon information and belief, GTE operated a metals manufacturing facility at the Precision Property from 1967 until 1979, the operation of which involved the storage and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included TCE.

32. On or about August 1, 1979, Amax purchased the Precision Property and operated a metals manufacturing facility until April 1, 1985, 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 TCE, 1,2-DCA, cis-1,2-DCE, 1,1-DCA, and vinyl chloride.

33. From about April 1, 1985, until December 2, 1986, Amax owned and leased the Precision Property to Precision, 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 TCE, 1,2-DCA, cis-1,2-DCE, 1,1-DCA, and vinyl chloride.

34. On or about December 2, 1986, Precision purchased the Precision Property from Amax, and has continued to operate its specialty metals manufacturing facility until the present time, 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 TCE, 1,2-DCA, cis-1,2-DCE, 1,1-DCA, and vinyl chloride.

35. On September 9, 1986, the East Hanover Township Health Department conducted sampling of the Precision facility's production well, which revealed the presence of TCE.

36. Defendant Precision and GTE Operations Support Incorporated are conducting activities to remediate any contamination caused by the discharges of hazardous substances at the Precision Property in accordance with the ISRA Administrative Consent Order signed by Precision and DEP on June 4, 1990.

37. In May 1992, groundwater sampling conducted at the Precision Property revealed the presence of TCE in five of the eight wells sampled.

38. On November 23, 1998, plaintiff DEP issued a Spill Act directive ("1998 Directive") to defendant Precision pursuant to N.J.S.A. 58:10-23.11f.a., directing defendant Precision to arrange for the cleanup and removal of the contamination of the Black Brook Well #1 by paying plaintiff DEP \$1,770,000.00 to install an air stripper on the Black Brook Well #1.

39. On June 24, 1999, plaintiff DEP issued a Spill Act directive ("1999 Directive") to Amax and GTE pursuant to N.J.S.A. 58:10-23.11f.a., directing Amax and GTE to arrange for the cleanup and removal of the contamination of the Black Brook Well #1 by paying plaintiff DEP \$1,770,000.00 to install an air stripper on the Black Brook Well #1.

40. On July 15, 1999, Defendant Precision informed plaintiff DEP that it was unwilling to comply with the 1998 Directive, thus requiring plaintiff DEP to perform the remedial action for Black Brook Well #1 and the assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Precision Property.

41. From 1965 until 1978, F. William Horstmann owned Horstmann's Landfill 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.

42. From 1965 through 1973, F. William Horstmann operated a sanitary landfill ("Horstmann's Landfill") at Horstmann's Landfill

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.

43. In or about 1973, Horstmann's Landfill ceased operating as a sanitary landfill, but, under the ownership, operation and direction of F. William Horstmann until 1978, dumping continued at Horstmann's Landfill 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.

44. On or about June 30, 1978, Great Meadows purchased Horstmann's Landfill Property, and has owned Horstmann's Landfill Property through the present, 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.

45. On or about June 21, 1963, F. William Horstmann and Jacquelyn Horstmann sold Park Meadows Industrial Park to Park Meadows.

46. From 1963 through the present, Park Meadows has owned Park Meadows Industrial Park, 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.

47. From 1967 to the present, Dynaloy has been a tenant in Park Meadows Industrial Park, located at 7 Great Meadow Lane, East Hanover Township, Morris County, New Jersey ("the Dynaloy

facility"), and has manufactured specialty solvents and adhesives, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" by Dynaloy there, within the meaning of N.J.S.A. 58:10-23.11b.

48. The discharges of hazardous substances at the Properties have impacted Black Brook Well #1, causing the DEP to incur costs to install an air stripper to remediate Black Brook Well #1.

#### FIRST COUNT

##### Spill Act

49. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 48 above as though fully set forth in its entirety herein.

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

51. Plaintiff DEP has incurred costs as a result of the discharges of hazardous substances at the Properties, which discharges impacted the Site.

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

53. The Plaintiffs also 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site.

54. 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.

55. Defendants Precision, Phelps Dodge, as successor to Amax, and Verizon, as successor to GTE, are dischargers of hazardous substances at the Precision 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 as a result of the discharge of hazardous substances at the Precision Property that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).

56. Defendants Precision, Phelps Dodge, as successor to Amax, and Verizon, as successor to GTE, as the owners of the Precision Property at the time hazardous substances were discharged there, 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 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 as a result of the discharge of hazardous substances at the Precision Property that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).

57. By failing to comply with the 1998 Directive and the 1999 Directive, defendants Precision, Phelps Dodge, as successor to Amax, and Verizon, as successor to GTE, are also persons who, pursuant to N.J.S.A. 58:10-23.11f.a(1), are liable in an amount equal to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Precision Property that has impacted the Site.

58. Defendants Great Meadows and Estate of F. William Horstmann are dischargers of hazardous substances at Horstmann's Landfill 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 as a result of the discharge of hazardous substances at Horstmann's Landfill Property that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).

59. Defendants Great Meadows, Estate of F. William Horstmann, and one or more of the John Doe defendants as the owner or owners of Horstmann's Landfill Property at the time hazardous substances

were discharged there, 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 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 as a result of the discharge of hazardous substances at the Horstmann's Landfill Property that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).

60. One or more of the ABC Generator Corporation defendants, as persons who generated wastes containing hazardous substances disposed at Horstmann's Landfill Property, and one or more of the XYZ Transporter Corporation defendants, as persons who transported wastes containing hazardous substances to Horstmann's Landfill Property, 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 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 as a result of the discharge of hazardous substances at Horstmann's Landfill Property that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).



61. Defendant Park Meadows, as owner of Park Meadows Industrial Park, including, but not limited to, the property comprising the Dynaloy facility, at the time hazardous substances were discharged there, 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 as a result of the discharge of hazardous substances at Park Meadows Industrial Park that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).

62. Defendant Dynaloy is a discharger of hazardous substances at the Dynaloy facility within Park Meadows Industrial Park, 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 as a result of the discharge of hazardous substances at the Dynaloy facility that has impacted the Site. N.J.S.A. 58:10-23.11g.c.(1).

63. 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).

64. 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site, 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site;

- c. Order Defendants Precision, Phelps Dodge, as successor to Amax, and Verizon, as successor to GTE, to reimburse the Plaintiffs, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred as a result of the discharge of hazardous substances at the Precision Property that has impacted the Site;
- d. Enter declaratory judgment against Defendants Precision, Phelps Dodge, as successor to Amax, and Verizon, as successor to GTE, jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur as a result of the discharge of hazardous substances at the Precision Property that has impacted the Site;
- e. 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 Properties that have impacted the Site, 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site;

- f. Order the Defendants to pay plaintiff DEP all penalties to which plaintiff DEP is entitled;
- g. Award the Plaintiffs their costs and fees in this action; and
- h. Award the Plaintiffs such other relief as this Court deems appropriate.

#### SECOND COUNT

##### Public Nuisance

65. Plaintiffs repeat each allegation of Paragraphs 1 through 64 above as though fully set forth in its entirety herein.

66. Ground water is a natural resource of the State held in trust by the State.

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

68. The groundwater contamination at the Site caused by the discharges of hazardous substances at the Properties 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.

69. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

70. Until the ground water is restored to its 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.

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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site, 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site;

- 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 Properties that have impacted the Site, 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site;
- 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

71. Plaintiffs repeat each allegation of Paragraphs 1 through 70 above as though fully set forth in its entirety herein.

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

73. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Properties that have impacted the Site.

74. As long as the ground water remains 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 restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharges of hazardous substances at the Properties that have impacted the Site, 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site;
- 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 Properties that

have impacted the Site, 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 as a result of the discharges of hazardous substances at the Properties that have impacted the Site;

- 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:   
A. Paul Stofa  
Deputy Attorney General

Dated: 12/23/2004

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action 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-006537-03T3. 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 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:   
A. Paul Stofa  
Deputy Attorney General

Dated: 12/23/2004