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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAMDEN COUNTY
DOCKET NO.

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

Plaintiffs,

v.

GENERAL ELECTRIC COMPANY,
BUZBY BROTHERS MATERIALS
CORPORATION, INC.; and
"ABC COPORATIONS" 1-10 (Names
Fictitious),

Defendants.

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") ("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. 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 hazardous substances and pollutants at the Buzby Sanitary Landfill site in Voorhees Township, Camden County. Plaintiff DEP further brings this action pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 to -116 ("Sanitary Landfill Act"), for reimbursement of the damages it has incurred, and will incur, as a result of the improper operation of the sanitary landfill facility located at the Buzby Sanitary Landfill site.

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 and the improper operation of the sanitary landfill facility at the Buzby Sanitary Landfill site. Further, the Plaintiffs seek an

order compelling 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 pollutants and hazardous substances and the improper operation of the sanitary landfill facility at the Buzby Sanitary Landfill 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 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 General Electric Company ("GE") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut.

8. In 1986, defendant GE acquired Radio Corporation of America ("RCA"), a corporation organized under the laws of the State of Delaware.

9. Defendant GE is the successor-in-interest to RCA.

10. Defendant Buzby Brothers Materials Corporation (a/k/a Buzby Brothers and Company), ("Buzby Brothers") is a dissolved corporation organized under the laws of the State of New Jersey, with a last known principal place of business located on Gibbsboro-Marlton Road, Gibbsboro, New Jersey.

11. Defendants "ABC Corporations" 1-10 (names fictitious) are entities that generated hazardous substances and pollutants,

certain of which were discharged at the Buzby Sanitary Landfill site, the identities of which entities the Plaintiffs cannot ascertain as of the filing of this Complaint.

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 Buzby Sanitary Landfill 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 hazardous substances.

GENERAL ALLEGATIONS

21. The Buzby Sanitary Landfill site consists of approximately 57 acres of real property located at 300 Centennial Boulevard (formerly Gibbsboro-Marlton Road) in Voorhees Township, Camden County, New Jersey, this property being also known and designated as Block 206, Lots 4 and 33, on the Tax Map of Voorhees Township ("the Buzby Sanitary Landfill Property"), and all other areas where any hazardous substance or pollutant discharged there

has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. G000000408.

22. Located near the Buzby Sanitary Landfill Property is a stream known as the "Headwaters Stream," which discharges to a small chain of lakes known as the Silver Lakes.

23. From 1959 to April 1966, defendant Buzby Brothers owned the Buzby Sanitary Landfill Property.

24. In April 1966, RCA bought the 20-acre Lot 33 portion of the Buzby Sanitary Landfill Property from defendant Buzby Brothers, which RCA leased to defendant Buzby Brothers from April 1966 to mid-1978.

25. As of the filing of this Complaint, defendant GE is the owner of record of the Lot 33 portion of the Buzby Sanitary Landfill Property.

26. In 1970, Margaret Epley, believed deceased, acquired ownership the 37-acre Lot 4 portion of the Buzby Sanitary Landfill Property, which she sold to Voorhees Township in December 1977.

27. As of the filing of this Complaint, Voorhees Township is the owner of record of the Lot 4 portion of the Buzby Sanitary Landfill Property.

28. During the time that RCA and defendant Buzby Brothers owned all or some of the Buzby Sanitary Landfill 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. 58:10-23.11b.,

which hazardous substances included volatile organic compounds ("VOCs"), semi-volatile organic compounds ("semi-VOCs"), and metals.

29. From approximately 1959 through in or around April 1966, defendant Buzby Brothers mined sand at the Buzby Sanitary Landfill Property.

30. Beginning in or around April 1966 through mid-1978, defendant Buzby Brothers operated a landfill facility at the Buzby Brothers Property, the Lot 33 portion of which defendant Buzby Brothers was leasing from defendant GE's predecessor-in-interest, RCA.

31. During the time that defendant Buzby Brothers was operating a landfill at the Buzby Sanitary Landfill Property, it accepted various residential and industrial wastes for disposal, including from defendants ABC Corporations 1-10.

32. During the time that Buzby Brothers operated a landfill at the Buzby Sanitary Landfill Property, hazardous substances were discharged there, which hazardous substances included VOCs, semi-VOCs and metals.

33. Defendant Buzby Brothers' landfilling operations also involved the disposal of "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10A-3e., which pollutants included VOCs, semi-VOCs and metals.

34. At various times in or around April 1966 through mid-1978, defendants ABC Corporations 1-10 generated hazardous substances and pollutants, certain of which they, or someone acting on their behalf, took to the Buzby Sanitary Landfill Property, where these hazardous substances and pollutants were discharged.

35. From in or around April 1966 through mid-1978, defendant Buzby Brothers operated a landfill at the Buzby Sanitary Landfill Property, which defendant GE's predecessor-in-interest, RCA, then owned, during which time, "solid wastes," within the meaning of N.J.S.A. 13:1E-3a., were "disposed of" there within the meaning of N.J.S.A. 13:1E-3.c.

36. Certain of the solid wastes disposed of at the Buzby Sanitary Landfill Property were deposited on, or in, the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, thereby creating a "sanitary landfill facility" at the Buzby Sanitary Landfill Property within the meaning of N.J.S.A. 13:1E-3q.

37. In 1975, plaintiff DEP issued an administrative order to defendant Buzby Brothers, ordering defendant Buzby Brothers to cease accepting chemical wastes at the landfill located at the Buzby Sanitary Landfill Property.

38. In mid-1978, defendant Buzby Brothers ceased operating the landfill at the Buzby Sanitary Landfill Property.

39. In 1987, defendant GE entered into an Administrative Consent Order with plaintiff DEP, pursuant to which defendant GE agreed to conduct a remedial investigation to determine the nature and extent of the contamination at the Site.

40. As part of the remedial investigations it was performing, defendant GE installed monitoring wells, from which it sampled ground water.

41. Sampling results revealed the presence of various hazardous substances and pollutants in the ground water at the Site, including VOCs and semi-VOCs and metals.

42. On September 25, 1991, plaintiff DEP issued a directive to defendant GE pursuant to N.J.S.A. 58:10-23.11f.a. ("1991 Directive"), directing the defendant GE to perform the remedial investigation and remedial action for the Site, or to fund plaintiff DEP's performance of these activities.

43. On or about May 11, 1993, defendant GE and other parties that had disposed of materials at the Buzby Sanitary Landfill Property entered into another Administrative Consent Order with plaintiff DEP ("1993 ACO"), in which defendant GE and the other signatories agreed to perform the remedial investigation to determine the nature and extent of the contamination at the Site, and to remediate the contamination.

44. In April 1998, defendant GE submitted a Baseline Ecological Evaluation ("BEE") report to plaintiff DEP pursuant to

N.J.A.C. 7:26E-3.11(a), in which defendant GE concluded that contaminants of ecological concern existed, environmentally sensitive natural resources existed, and potential contaminant pathways to environmentally sensitive natural resources existed, or that an impact to these resources was indicated based on visual observation.

45. The BEE findings necessitated defendant GE's performance 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:

46. On or about December 15, 2000, defendant GE completed the ERA, in which it concluded that the sediments and surface water of the Headwaters Stream and Silver Lakes, and wetlands, were not being adversely affected by the discharge of hazardous substances and pollutants at the Buzby Sanitary Landfill Property.

47. On or about February 21, 2001, defendant GE completed the remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, sampling results from which revealed the presence of various hazardous substances and pollutants exceeding plaintiff DEP's cleanup criteria in the ground water, the surface water and sediments and soils at the Site, which substances and pollutants included VOCs, semi-VOCs and metals.

48. In 2003, defendant GE entered into another administrative consent order with plaintiff DEP ("2003 ACO"), pursuant to which defendant GE agreed to complete the remediation of the Site.

49. The remediation plaintiff DEP approved for the Site, primarily provided for the capping of the landfill, and natural attenuation and in situ bioremediation of the groundwater contamination, which defendant GE is still performing as of the filing of this Complaint.

50. On July 21, 2005, defendant GE established a 144-acre Classification Exception Area ("CEA") for the Site, which restricts groundwater usage within its boundaries.

51. The CEA, which plaintiff DEP has approved, has a 42-year duration (i.e., until 2047) for VOCs and semi-VOCs, and an indeterminate duration for iron.

52. Although defendant GE has undertaken the remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

53. The Plaintiffs repeat each allegation of paragraph nos. 1 through 52 above as though fully set forth in its entirety herein.

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

55. 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, 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).

56. 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 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).

57. Plaintiff DEP has incurred, or will incur, costs as a result of the discharge of hazardous substances at the Buzby Sanitary Landfill Property.

58. Plaintiff Administrator has certified, or 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 Site.

59. 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 Buzby Sanitary Landfill Property.

60. 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.

61. Defendant Buzby Brothers is the discharger of hazardous substances at the Buzby Sanitary Landfill Property, and is liable, jointly and severally, 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 Buzby Property. N.J.S.A. 58:10-23.11g.c.(1).

62. Defendant GE, as the successor-in-interest to the owner of a portion of the Buzby Sanitary Landfill Property at the time hazardous substances were discharged there, is a person in any way 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 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 Buzby Sanitary Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

63. Defendants ABC Corporations 1-10, as generators of hazardous substances, certain of which were discharged at the Buzby Sanitary Landfill Property are persons in any way 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 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 Buzby Sanitary Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

64. 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).

65. 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 plaintiffs DEP and Administrator, jointly and severally, 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 for any natural resource of this State injured as a result of the discharge of hazardous substances at the Buzby Sanitary Landfill 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 DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Buzby Sanitary Landfill Property;
- c. Enter judgment against the Defendant GE, compelling defendant GE to perform any further cleanup of hazardous substances discharged at the Buzby Sanitary Landfill Property, under plaintiff DEP's oversight;

- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling 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 Buzby Sanitary Landfill Property, including 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.

SECOND COUNT

Water Pollution Control Act

66. The Plaintiffs repeat each allegation of paragraph nos. 1 through 65 above as though fully set forth in its entirety herein.

67. Defendant Buzby Brothers is a "person" within the meaning of N.J.S.A. 58:10A-31.

68. 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.

69. 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.

70. Plaintiff DEP has incurred, or will incur, costs as a result of the discharge of pollutants at the Buzby Sanitary Landfill Property.

71. Plaintiff DEP also has incurred, and will continue to 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 Buzby Sanitary Landfill Property.

72. 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).

73. Defendant Buzby Brothers discharged pollutants at the Buzby Sanitary Landfill 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 Buzby Sanitary Landfill Property. N.J.S.A. 58:10A-6a.

74. 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 Buzby Sanitary Landfill 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 defendant Buzby Brothers by requiring defendant Buzby Brothers to remove, correct, or terminate, the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing defendant Buzby Brothers, 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 defendant Buzby Brothers, 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 defendant Buzby Brothers, 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 Buzby Sanitary Landfill Property;

- e. Enter declaratory judgment against defendant Buzby Brothers, 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 Buzby Sanitary Landfill Property;
- f. Enter an order assessing defendant Buzby Brothers, 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 Buzby Sanitary Landfill Property;
- g. Enter declaratory judgment against defendant Buzby Brothers, 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 Buzby Sanitary Landfill Property;
- h. Enter an order assessing defendant Buzby Brothers, 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 defendant Buzby Brothers 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 defendant Buzby Brothers, without regard to fault, assessing defendant Buzby Brothers for the actual amount of any economic benefits that will accrue to them, 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 defendant Buzby Brothers has enjoyed, or any other benefit that will accrue to it 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

Sanitary Landfill Act

75. The Plaintiffs repeat each allegation of paragraph nos. 1 through 74 above as though fully set forth in its entirety herein.

76. Each Defendant is, or is the successor-in-interest to, a person that "owned" or "operated" the sanitary landfill facility located at the Buzby Sanitary Landfill Property within the meaning of N.J.S.A. 13:1E-102b.

77. Plaintiff DEP has incurred, or will incur, costs resulting from the operation of the sanitary landfill facility located at the Buzby Sanitary Landfill Property.

78. Plaintiff DEP has certified, or may certify, for payment, valid claims made against the Sanitary Landfill Facility Contingency Fund concerning the sanitary landfill facility at the Buzby Sanitary Landfill Property.

79. Plaintiff DEP has incurred, or may 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 disposal of solid wastes at the Buzby Sanitary Landfill Property.

80. As the successor-in-interest to the owner of the sanitary landfill facility at the Buzby Sanitary Landfill Property, defendant GE is liable, jointly and severally, for the sanitary

landfill facility's proper operation and closure as required by law, and for any damages, either direct or indirect, proximately resulting from the operation of the sanitary landfill facility at the Buzby Sanitary Landfill Property, including claims paid from the Sanitary Landfill Facility Contingency Fund, and including lost value and reasonable assessment costs, that plaintiff DEP has 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 operation of the sanitary landfill facility at the Buzby Sanitary Landfill Property. N.J.S.A. 13:1E-103.

81. As the operator of the sanitary landfill facility at the Buzby Sanitary Landfill Property, defendant Buzby Brothers is liable, jointly and severally, for the sanitary landfill facility's proper operation and closure as required by law, and for any damages, either direct or indirect, proximately resulting from the operation of the sanitary landfill facility at the Buzby Sanitary Landfill Property, including claims paid from the Sanitary Landfill Facility Contingency Fund, and including lost value and reasonable assessment costs, that the plaintiff DEP has 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 operation of the sanitary landfill facility at the Buzby Sanitary Landfill Property. N.J.S.A. 13:1E-103.

82. Pursuant to N.J.S.A. 13:1E-9b. and d., plaintiff DEP may bring an action in the Superior Court for the costs of any investigation, inspection or monitoring survey, and the reasonable costs of preparing and litigating the case, N.J.S.A. 13:1E-9d. (2); the costs to remove, correct or terminate any adverse effects upon water and air quality, N.J.S.A. 13:1E-9d. (3); compensatory damages, including the lost value and assessment costs, that plaintiff DEP incurs for any natural resource of this State that has been, or may be, injured as a result of the operation and/or closure of the sanitary landfill facility located at the Buzby Sanitary Landfill Property, N.J.S.A. 13:1E-9d. (3); and for any other actual damages. N.J.S.A. 13:1E-9d. (4).

PRAYER FOR RELIEF

WHEREFORE, plaintiff DEP prays that this Court:

- a. Order defendants GE and Buzby Brothers to reimburse plaintiff DEP, jointly and severally, for all direct and indirect damages, including claims paid from the Sanitary Landfill Facility Contingency Fund, including lost value and reasonable assessment costs for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the Buzby Sanitary Landfill Property, with applicable interest;
- b. Enter declaratory judgment against defendants GE & Buzby Brothers, jointly and severally, for all direct and

indirect damages, including claims to be paid from the Sanitary Landfill Facility Contingency Fund, including lost value and reasonable assessment costs that plaintiff DEP will incur for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the Buzby Sanitary Landfill Property;

- c. Award plaintiff DEP its costs and fees in this action; and
- d. Award plaintiff DEP such other relief as the Court deems appropriate.

FOURTH COUNT

Public Nuisance

83. The Plaintiffs repeat each allegation of paragraph nos. 1 through 82 above as though fully set forth in its entirety herein.

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

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

86. 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 resource.

87. As long as the ground water remains contaminated due to the Defendants' conduct, and that of defendant GE's predecessor-in-interest, the public nuisance continues.

88. 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 plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Buzby Sanitary Landfill 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 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 Buzby Sanitary Landfill Property;

- c. Enter judgment against defendant GE, compelling defendant GE to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the Buzby Sanitary Landfill Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, compelling 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 pollutants and hazardous substances at the Buzby Sanitary Landfill Property, including 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.

FIFTH COUNT

Trespass

89. The Plaintiffs repeat each allegation of paragraph nos. 1 through 88 above as though fully set forth in its entirety herein.

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

91. The Defendants are liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the Buzby Sanitary Landfill Property.

92. As long as the ground water, surface water and wetlands remain contaminated, the Defendants' 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 plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Buzby Sanitary Landfill Property, with applicable interest;

- a. Enter declaratory judgment against the Defendants 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 Buzby Sanitary Landfill Property;
- b. Enter judgment against defendant GE, compelling defendant GE to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the Buzby Sanitary Landfill Property, under plaintiff DEP's oversight;
- c. Enter judgment against the Defendants, compelling 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 pollutants and hazardous substances at the Buzby Sanitary Landfill Property, including 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;

- d. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- e. 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: 6/27/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark 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: 6/27/07