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MAY 21 2004

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - GLOUCESTER COUNTY  
DOCKET NO. **G10-L-870-04**

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

Plaintiffs,

v.

VIACOM, INC.; and  
SONY MUSIC ENTERTAINMENT,  
INC.,

Defendants.

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:  
: 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, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"), and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharges of hazardous substances at the CBS Records site located in Pitman Borough, Gloucester County, New Jersey, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharges of hazardous substances at the CBS Records site.

### THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, with the State being the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Viacom, Inc. is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 1515 Broadway, New York, New York 10036.

6. Defendant Viacom is the successor corporation to CBS Corporation, having merged with CBS Corporation in 1999.

7. CBS Corporation was previously known as, or is the successor in interest to, CBS, Inc., which, in turn, was previously known as, or is the successor in interest to, Columbia Broadcasting System, Inc.

8. Between 1960 and 1987, CBS Records, Inc. was a wholly owned subsidiary of CBS Corporation or its predecessors before being sold in 1987 to Sony Corporation, a corporation based in Tokyo, Japan.

9. After acquiring CBS Records, Inc., Sony Corporation changed the name of CBS Records, Inc., to defendant Sony Music Entertainment, Inc., a corporation organized under the laws of the

State of Delaware, with a principal place of business located at 550 Madison Avenue, New York, New York 10022.

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

#### AFFECTED NATURAL RESOURCE

##### Groundwater

11. Groundwater is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

12. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

13. Groundwater also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

14. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

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

#### GENERAL ALLEGATIONS

16. The CBS Records site consists of approximately 83 acres of real property located at 400 North Woodbury Road, Pitman Borough, Gloucester County, this property being also known and designated as Block 138, Lot 1, on the Tax Map of Pitman Borough ("the CBS Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site."), which plaintiff DEP has designated as Site Remediation Program Interest No. 007704.

17. From 1959 through 1987, CBS Corporation or its predecessors owned the CBS Property, which CBS, Inc., a predecessor to CBS Corporation, conveyed to CBS Records, Inc. in November 1987.

18. In November 1987, the CBS Property was conveyed to defendant Sony Music Entertainment, Inc., which is the present owner of record.

19. From approximately 1960 through 1987, CBS Records, Inc. manufactured phonograph records and, later, compact discs at the CBS Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b.

20. As part of its 1987 acquisition of CBS Corp.'s wholly owned subsidiary, CBS Records, Inc., Sony Corporation acquired the CBS Property, which is now owned by defendant Sony Music Entertainment, Inc.

21. The 1987 sale of CBS Records, Inc. to Sony Corporation, required a site inspection pursuant to the Environmental Cleanup Responsibility Act, now the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 to -35.

22. Sampling results from the CBS Property inspection revealed the presence of elevated concentrations of various hazardous substances in the soils, sediments and groundwater at and underlying the Site, including tetrachloroethylene ("PCE"), trichloroethylene ("TCE"), lead, mercury, nickel, and benzene.

23. Defendant Viacom has undertaken the cleanup of hazardous substances from the soils, sediments, and groundwater at and underlying the Site, one component of which involves the natural attenuation of the groundwater contamination, which contamination continues.

#### FIRST COUNT

##### Spill Act

24. Plaintiffs repeat each allegation of Paragraphs 1 through 23 above as though fully set forth in its entirety herein.

25. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost use and reasonable assessment

costs, for any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the CBS Property.

26. 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.

27. The Defendants, as the successors in interest to CBS Records, Inc., the discharger of hazardous substances at the CBS Property, are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the CBS Property. N.J.S.A. 58:10-23.11g.c.(1).

28. The Defendants, as the successors in interest to CBS Records, Inc., the owner of the CBS 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 use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the

discharges of hazardous substances at the CBS Property. N.J.S.A.  
58:10-23.11g.c.(1).

29. 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); 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).

30. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff  
Administrator is authorized to bring an action in the Superior  
Court for any unreimbursed costs or damages paid from the Spill  
Fund.

PRAYER FOR RELIEF

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

- a. Order the Defendants to reimburse the Plaintiffs, jointly  
and severally, without regard to fault, for all cleanup  
and removal costs and damages, including lost use and  
reasonable assessment costs, that the Plaintiffs have  
incurred for any natural resource of this State injured  
by the discharges of hazardous substances at the CBS  
Property, with applicable interest;



- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the CBS Property;
- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharges of hazardous substances at the CBS Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharges of hazardous substances at the CBS 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

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

32. Groundwater is a natural resource of the State held in trust by the State.

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

34. The contamination of groundwater at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

35. As long as groundwater remains contaminated due to the Defendants' conduct, the public nuisance continues.

36. Until the groundwater 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 groundwater.

PRAYER FOR RELIEF

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

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured

- by the discharges of hazardous substances at the CBS Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the CBS Property;
  - c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharges of hazardous substances at the CBS Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharges of hazardous substances at the CBS 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

37. Plaintiffs repeat each allegation of Paragraphs 1 through 36 above as though fully set forth in its entirety herein.

38. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

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

40. As long as the groundwater 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 by the discharges of hazardous substances at the CBS Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by

the discharges of hazardous substances at the CBS Property;

- c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharges of hazardous substances at the CBS Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the CBS Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Mary Ellen Halloran  
Mary Ellen Halloran  
Deputy Attorney General

Dated: 5/20/04

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mary Ellen Halloran, 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. MER-L-343-04. Otherwise, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party or new issue, including claims to recover other cleanup and removal costs, later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

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By: Mary Ellen Halloran  
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Dated: 5/20/04