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

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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,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
Plaintiffs,	:	
v.	:	
CIBA SPECIALTY CHEMICALS CORPORATION and NOVARTIS CORPORATION,	:	
Defendants.	:	

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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") (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. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of pollutants and the discharge of hazardous substances at the Ciba-Geigy site in Manchester Township and Toms River Township, Ocean County.

2. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Ciba-Geigy 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 of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Ciba-Geigy site, 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 provided by plaintiff DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19.

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

7. Defendant Ciba Specialty Chemicals Corporation ("Ciba Specialty") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 540 White Plains Road, Tarrytown, New York 10591-9005.

8. Defendant Novartis Corporation ("Novartis") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 608 Fifth Avenue, New York, New York 10020.

9. In 1970, Toms River Chemical Corporation ("TRC") was acquired by Ciba-Geigy Corporation ("Ciba-Geigy"), with the surviving entity being Ciba-Geigy Corporation.

10. In December 1996, Ciba-Geigy merged with Sandoz Corporation, with the surviving entity being defendant Novartis.

11. Defendant Novartis is the successor-in-interest to TRC and Ciba-Geigy.

#### 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 Ciba-Geigy 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 Ciba-Geigy site consists of approximately 1,350 acres of real property located on Route 37, in the Township of Manchester and the Township of Toms River, Ocean County, New Jersey, this property being also known and designated as Block 1, Lot 6; on the Tax Map of Manchester Township, and Block 409, Lot 62; Block 411, Lots 6, 84, 107, 124, 130, 131 and 6X; Block 411.32, Lot 8; and Block 411.34, Lot 12, on the Tax Map of Toms River Township ("the Ciba-Geigy Property"), and all other areas where any pollutant or hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 009044.

22. The Ciba-Geigy Property is bordered to the north, south and west by light industrial, commercial, residential and recreational properties, and to the east by wetlands and the Toms River.

23. Approximately 320 acres of the Site are developed, with the remaining property consisting of pine barrens, cleared areas and wetlands.

24. Ground water at the Site flows in an easterly direction from the Ciba-Geigy Property towards the Toms River and adjacent wetlands.

25. In August 2001, defendant Ciba Specialty acquired ownership of the Ciba-Geigy Property from defendant Novartis and, as of the filing of this Complaint, was the owner of record of the Ciba-Geigy Property.

26. At all other times relevant to this Complaint, defendant Novartis and/or its predecessors, including TRC and Ciba-Geigy, owned the Ciba-Geigy Property.

27. During the time that defendant Novartis and/or its predecessors, including TRC and Ciba-Geigy, owned the Ciba-Geigy 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 substances included chlorobenzene, 1,2,4-trichlorobenzene, 1,2-dichlorobenzene, 2-chlorotoluene, and trichloroethene ("TCE").

28. From 1952 through in or about 1996, defendant Novartis and/or its predecessors, including TRC and Ciba-Geigy, operated a specialty chemical manufacturing plant at the Ciba-Geigy Property, the operation of which involved the storage, use, processing, handling and disposal of hazardous substances, certain of which were discharged there, which substances included chlorobenzene, 1,2,4-trichlorobenzene, 1,2-dichlorobenzene, 2-chlorotoluene and TCE.

29. From 1952 through in or about 1996, defendant Novartis and/or its predecessors, including TRC and Ciba-Geigy, also stored,

used, processed, handled and disposed of "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" to the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants included chlorobenzene, 1,2,4-trichlorobenzene, 1,2-dichlorobenzene, 2-chlorotoluene and TCE.

30. On October 11, 1977, plaintiff DEP issued a one-year certificate for the operation of a non-hazardous solid waste disposal facility ("the Landfill") at the Ciba-Geigy Property to TRC.

31. On December 19, 1979, plaintiff DEP issued a Certificate of Approved Registration and Engineering Design Approval for a ten-year expansion of the Landfill ("the Landfill Approval") to TRC.

32. The Landfill Approval allowed TRC to dispose of solid wastes consisting of dry sewage sludge from the on-site effluent treatment plant and dry, non-hazardous chemical wastes, in the Landfill, but prohibited TRC from placing any liquids or hazardous materials in the Landfill.

33. On March 12, 1981, TRC signed an Administrative Consent Order ("ACO") with plaintiff DEP, which provided for the closure of one Landfill cell ("Cell 1"), and for the opening and operation of a new cell ("Cell 2") for the disposal of non-liquid, non-hazardous chemical wastes, subject to certain terms and conditions contained therein.



34. On September 8, 1983, federal Environmental Protection Agency ("EPA") placed the Site on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B. The NPL, which was established pursuant to Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C.A. §§9601 to -9675, specifically Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is the list that EPA promulgates of hazardous waste sites that pose the greatest threat to human health and safety, and the environment.

35. In 1984, plaintiff DEP conducted various investigations of TRC's waste disposal practices for Cell 2, the results of which showed that some of the drums being deposited in Cell 2 contained liquids, including hazardous substances and pollutants.

36. On April 25, 1985, Ciba-Geigy signed an administrative consent order with plaintiff DEP ("April 1985 ACO"), which provided for Ciba-Geigy to remove all hazardous wastes from Cell 2, pay a civil penalty, and reimburse plaintiff DEP for certain of its costs associated with the Landfill.

37. In or about 1985, EPA assumed primary responsibility for remediating the Site, other than Cell 1, for which plaintiff DEP retained oversight responsibilities.

38. EPA is conducting its remediation in two phases, also known as operable units, the first of which, Operable Unit 1 ("OU-1"), addresses the remediation of the groundwater contamination at

the Site, while the other, Operable Unit 2 ("OU-2"), addresses the remediation of the on-site sources of the groundwater contamination.

39. As part of OU-1, from January 1985 through February 1988, EPA performed a remedial investigation and feasibility study ("RI/FS") pursuant to Section 104 of CERCLA, 42 U.S.C.A. §9604, to determine the nature and extent of the contamination at the Site, and to evaluate various ways to remediate it.

40. Sampling results from the OU-1 remedial investigation revealed the presence of various hazardous substances and pollutants at concentrations exceeding the applicable cleanup standards in the soils and ground water, the surface water and sediments of the Toms River, and the sediments of the nearby marshlands, which substances included arsenic, benzene, chromium, trichloroethylene and toluene.

41. On April 24, 1989, EPA, with plaintiff DEP's concurrence, issued a Record of Decision for the OU-1 portion of the remediation ("April 1989 ROD"), in which EPA documented and explained the preferred remedy to address the contaminated ground water at the Site.

42. The April 1989 ROD primarily provided for the extraction and on-site treatment of the contaminated ground water, and the discharge of the treated ground water to the Toms River; evaluation of the lower aquifer; monitoring of the Toms River; sealing

contaminated residential irrigation wells; and further investigation to characterize source areas, and determine the appropriate remediation for them.

43. In September 1989, EPA initiated a remedial investigation of the Site as part of OU-2 to determine the nature and extent of the contamination in the source areas.

44. By mid-1991, EPA sealed all contaminated residential wells in the vicinity of the Ciba-Geigy Property as part of OU-1.

45. Also as part of OU-1, EPA began operating the on-site groundwater treatment plant in March 1996, which currently treats approximately 2 million gallons of water daily.

46. On February 27, 1992, Ciba-Geigy signed another administrative consent order with plaintiff DEP ("February 1992 ACO"), pursuant to which Ciba-Geigy agreed to install a new cap on Cell 1, continue regular monitoring of leachate from Cell 1, excavate and properly dispose of all of the contents of Cell 2, pay a civil penalty, and reimburse plaintiffs DEP and Administrator for certain of their costs associated with the Site.

47. In September 1993, EPA issued an Explanation of Significant Differences, in which EPA, with plaintiff DEP's concurrence, modified the April 1989 ROD to provide for the treated ground water to be discharged on-site, rather than being discharged to the Toms River.

48. In September 1993, EPA also entered into a consent decree with Ciba-Geigy ("September 1993 ACO"), pursuant to which Ciba-Geigy agreed to fund the revised groundwater remedy, and satisfy certain of EPA's unreimbursed response costs.

49. Ciba-Geigy completed the cap for Cell 1 in May 1994 under plaintiff DEP's oversight, the operation and maintenance of which Ciba-Geigy and, now, defendant Novartis, have undertaken.

50. In December 1994, EPA completed the OU-2 remedial investigation, sampling results from which revealed the presence of various hazardous substances and pollutants exceeding the applicable cleanup standards in the soils and ground water at the Site.

51. In October 1995, EPA entered into an administrative order on consent with Ciba-Geigy, pursuant to which Ciba-Geigy performed the feasibility study to evaluate the remediation alternatives for the source areas as part of OU-2.

52. On September 29, 2000, EPA, with plaintiff DEP's concurrence, issued a ROD for OU-2 ("September 2000 ROD"), which primarily provided for the excavation and on-site bio-remediation of approximately 150,000 cubic yards of contaminated soils, and backfilling the treated soils; excavation of buried drums from a drum disposal area; off-site disposal of the contents of the drums; and the construction of slurry walls and caps for several of the source areas.

53. In March 2001, EPA entered into a consent decree with defendant Ciba Specialty, pursuant to which defendant Ciba Specialty agreed to implement the OU-2 remedy under EPA's oversight.

54. On or about October 8, 2003, the Township of Toms River, then known as the Township of Dover, filed suit in the Superior Court, Ocean County, against the defendants Novartis and Ciba Specialty, which action is captioned Township of Dover v. Ciba Specialty Chemicals Corporation, et al., Dkt. No. OCN-L-2884-03, and which action was pending as of the filing of this Complaint.

55. The Township of Toms River is seeking various relief under the Spill Act, the Environmental Rights Act, N.J.S.A. 2A:35A-1 to -14, and the common law, against defendants Novartis and Ciba Specialty, seeking, inter alia, to compel the Defendants to further remediate the Site, from which litigation plaintiff DEP withdrew as an involuntary plaintiff by stipulation filed on or about June 25, 2004.

56. Between December 2003 and November 2004, defendant Ciba Specialty removed approximately 47,000 drums from the stacked drum disposal area at the Ciba-Geigy Property.

57. Defendant Ciba Specialty began treating the contaminated soils at the Site in July 2004, and, as of March 2005, had treated and backfilled approximately 25,200 cubic yards of contaminated soils, which activities will continue until 2008.

58. During the excavation and removal of the contents of Cell 2, plaintiff DEP discovered that TRC and/or Ciba-Geigy disposed of hazardous substances and pollutants in Cell 2 in violation of the non-hazardous waste disposal permit plaintiff DEP issued Ciba-Geigy, and that these hazardous substances and pollutants were causing, or were otherwise contributing to, the deterioration of the Cell 2 liner.

59. Notwithstanding the remediation activities undertaken to date, the soils and groundwater contamination continues.

#### FIRST COUNT

##### Spill Act

60. The Plaintiffs repeat each allegation of paragraph nos. 1 through 59 above as though fully set forth in its entirety herein.

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

62. 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).

63. The discharge of hazardous substances, except as otherwise provided in N.J.S.A. 58:10-23.11g.12, 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).

64. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Ciba-Geigy Property.

65. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

66. The Plaintiffs 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 Ciba-Geigy Property.

67. 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.

68. Defendant Novartis is the discharger, or is the successor-in-interest to the discharger, of hazardous substances at the Ciba-Geigy 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 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 Ciba-Geigy Property. N.J.S.A. 58:10-23.11g.c.(1).

69. Defendant Novartis, as an owner, or the successor-in-interest to the owners, of the Ciba-Geigy Property at the time hazardous substances were discharged there, is also 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 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 Ciba-Geigy Property. N.J.S.A. 58:10-23.11g.c.(1).

70. Defendant Ciba Specialty, by acquiring the Ciba-Geigy Property, at which hazardous substances had previously been discharged, 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 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 Ciba-Geigy Property. N.J.S.A. 58:10-23.11g.c.(3).

71. 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).

72. 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 these Plaintiffs have incurred for any natural resource of this State injured as a result of the

discharge of hazardous substances at the Ciba-Geigy 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 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 Ciba-Geigy Property;
- c. 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 of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Ciba-Geigy Property, 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.

SECOND COUNT

Water Pollution Control Act

73. The Plaintiffs repeat each allegation of paragraph nos. 1 through 72 above as though fully set forth in its entirety herein.

74. Defendant Novartis is, or is the successor-in-interest to, a "person" within the meaning of N.J.S.A. 58:10A-31.

75. 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.

76. 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.

77. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of pollutants at the Ciba-Geigy Property.

78. 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 Ciba-Geigy Property.

79. 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).

80. Defendant Novartis and/or its predecessors-in-interest, including TRC and Ciba-Geigy, discharged pollutants at the Ciba-Geigy 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 Ciba-Geigy Property. N.J.S.A. 58:10A-6a.

81. 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 Ciba-Geigy 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. Enter an order assessing defendant Novartis, 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;
- b. Enter declaratory judgment against defendant Novartis, 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;

- c. Enter an order assessing defendant Novartis, 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 Ciba-Geigy Property;
- d. Enter declaratory judgment against defendant Novartis, 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 Ciba-Geigy Property;
- e. Enter an order assessing defendant Novartis, 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 Ciba-Geigy Property;
- f. Enter declaratory judgment against defendant Novartis, 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 Ciba-Geigy Property;

- g. Enter an order assessing defendant Novartis, 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 Novartis 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;
- h. Enter declaratory judgment against defendant Novartis, without regard to fault, assessing defendant Novartis for the actual amount of any economic benefits that will accrue to it, 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 Novartis has enjoyed, or any other benefit that will accrue to it as a result of having violated the Water Pollution Control Act;
- i. Award plaintiff Commissioner her costs and fees in this action; and

- j. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

82. The Plaintiffs repeat each allegation of paragraph nos. 1 through 81 above as though fully set forth in its entirety herein.

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

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

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

86. As long as the ground water remains contaminated due to the Defendants' conduct, and/or the conduct of their predecessors-in-interest, including TRC and Ciba-Geigy, the public nuisance continues.

87. 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 these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Ciba-Geigy 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 Ciba-Geigy Property;
- 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 of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Ciba-Geigy Property, 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.

#### FOURTH COUNT

##### Trespass

88. The Plaintiffs repeat each allegation of paragraph nos. 1 through 87 above as though fully set forth in its entirety herein.

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

90. The Defendants are liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the Ciba-Geigy Property.

91. 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 plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Ciba-Geigy 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 Ciba-Geigy Property;
- 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 of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Ciba-Geigy Property, 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:   
Brendan Ruane  
Deputy Attorney General

Dated: 6-28-07

DESIGNATION OF TRIAL COUNSEL


Pursuant to R. 4:25-4, the Court is advised that Brendan Ruane, 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 certain of the matters in controversy in this action are the subject of the civil action the Township of Toms River (formerly Dover) filed on or about October 8, 2003, which matter is pending in the Superior Court, Ocean County, and is captioned Township of Dover v. Ciba Specialty Chemicals Corporation, et al., Dkt. No. OCN-L-2884-03. The Plaintiffs are

unaware 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:   
Brendan Ruane  
Deputy Attorney General

Dated: 6-28-07