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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX 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.

UNION CARBIDE CORPORATION, A
Wholly-Owned Subsidiary of The
Dow Chemical Company,

Defendant.

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") (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 defendant ("the Defendant"), 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 hazardous substances at the Union Carbide Facility site and River Road Landfill site (collectively, the "Site" or the "Union Carbide Site") in Middlesex Borough and Piscataway Township, Middlesex 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 pollutants and hazardous substances at the Union Carbide Site. Further, the Plaintiffs seek an order compelling the Defendant 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 Union Carbide 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

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

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

4. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. In this capacity, plaintiff Commissioner is vested by law with various powers and authority, including those conferred by plaintiff DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19.

5. 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.

6. Defendant Union Carbide Corporation is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 2030 Dow Center, Tax Department, Midland, Michigan 48674.

7. On November 1, 1917, Union Carbide and Carbon Corporation was incorporated in the State of New York.

8. On July 31, 1946, Union Carbide and Carbon Corporation filed for foreign corporate status in the State of New Jersey.

9. On May 1, 1957, Union Carbide and Carbon Corporation changed its name to Union Carbide Corporation.

10. On July 1, 1989, pursuant to the adoption of a holding company plan, Union Carbide Corporation was acquired by UCC Holdings, Inc., a New York corporation on January 3, 1989. Also on July 1, 1989, UCC Holdings, Inc. changed its name to Union Carbide Corporation.

11. On July 3, 1989, Union Carbide Corporation, formerly known as UCC Holdings, Inc., changed its name to Union Carbide Chemicals and Plastics Company, Inc.

12. On April 27, 1994, Union Carbide Chemicals and Plastics Company, Inc., changed its name to Union Carbide Corporation ("Union Carbide" or the "Defendant"). An Amended Certificate of

Authority for the name change was filed in the State of New Jersey on August 26, 2003.

13. On February 6, 2001, Union Carbide became a wholly-owned subsidiary of The Dow Chemical Company as a result of a transaction that occurred between the companies in August 1999.

NATURAL RESOURCES

14. 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.

15. 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.

16. 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 Union Carbide Site.

AFFECTED NATURAL RESOURCE

Ground Water

17. 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.

18. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

19. 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.

20. 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.

21. 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.

22. There are thousands of sites in New Jersey confirmed as having ground water contaminated with pollutants and hazardous substances.

GENERAL ALLEGATIONS

23. The Union Carbide Facility site consists of approximately 277 acres of real property located on River Road, Middlesex Borough and Piscataway Township, Middlesex County, New Jersey, this property being also known and designated as Block 353, Lot 1 (which, upon information and belief, consists of the Blocks formerly designated as 353, 354, 355, 362, 364, 365, 366, 367, 368, and 369, and all lots contained therein) and Block 356, Lots 1 and

2, on the Tax Map of Middlesex Borough, and as Block 421.1, Lots 1.02, 5.01, and 6.02 on the Tax Map of Piscataway Township ("the Facility Property"), and all other areas where any pollutant or hazardous substance discharged there has become located (collectively, "the Plant Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 008332.

24. The River Road Landfill site consists of approximately 13.4 acres of real property located along the Raritan River and on River Road, Middlesex Borough and Piscataway Township, Middlesex County, New Jersey, this property being also known and designated as Block 363, Lots 1, 2, 2A, 3, 3A, 3B and 4, on the Tax Map of Middlesex Borough, and also as Block 420, Lots 1, 2.01, 3, 3.01, 4, and 4.02 on the Tax Map of Piscataway Township (the "River Road Landfill Property" or the "Landfill Property"), and all other areas where any pollutant or hazardous substance discharged there has become located (collective, "the River Road Landfill Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. G000008812.

25. The Facility Property, and all other areas where any pollutant or hazardous substance discharged there has become located, and the Landfill Property, and all other areas where any hazardous substance discharged there has become located, comprise the "Union Carbide Site" or the "Site."

The Facility Property

26. On or about November 21, 1939, Union Carbide and Carbon Corporation purchased portions of the Facility Property from Bakelite Corporation, which portions were transferred back to Bakelite Corporation on or about December 7, 1939 (collectively, the "1939 Transactions"). Upon information and belief, the portions of the Facility Property involved in the 1939 Transactions included the former Blocks 362, 364, and 367, and all lots contained therein, on the Tax Map of the Borough of Middlesex.

27. On or about December 31, 1949, Bakelite Corporation conveyed the parcels within the Facility Property involved in the 1939 Transactions to Union Carbide and Carbon Corporation. Additionally, on or about December 31, 1949, Bakelite Corporation also conveyed portions of the Facility Property also known and designated as Block 421.1, Lot 1.02, on the Tax Map of the Township of Piscataway to Union Carbide and Carbon Corporation.

28. On or about July 1, 1953, the Pierce Estates Liquidation Trust conveyed additional portions of the Facility Property to Union Carbide and Carbon Corporation (the "1953 Transaction"). Upon information and belief, the portions of the Facility Property involved in the 1953 Transaction included the former Blocks 353, 354, 355, 365, 366, 368, and 369, and all lots contained therein, on the Tax Map of the Borough of Middlesex. Upon information and belief, the parcels involved in the 1939 Transactions and the 1953

Transaction now are collectively referred to as Block 353, Lot 1, on the Tax Map of Middlesex Borough.

29. On or about February 28, 1974, National Broadcasting Company, Inc. conveyed additional portions of the Facility Property to Union Carbide Corporation (the "1974 Transaction"). Upon information and belief, the parcels involved in the 1974 Transaction included those parcels also known and designated as Block 421.1, Lots 5.01 and 6.02 on the Tax Map of the Township of Piscataway.

30. From approximately 1949 through the present, the Defendant has owned portions of the Facility Property, and from 1974 through the present, the Defendant has owned the entirety of the Facility 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., which substances included the volatile organic compounds ("VOCs") trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), 1,1,1-trichloroethane ("1,1,1-TCA"), 1,1-dichloroethane ("1,1-DCA"), 1,1-dichloroethylene ("1,1-DCE"), 1,2-dichloroethane ("1,2-DCA"), trans-1,2-dichloroethylene ("trans-1,2-DCE"), benzene, toluene, ethylbenzene, xylenes, chlorobenzene, carbon tetrachloride, chloroform, cis-1,2-dichloroethylene ("cis-1,2-DCE"), styrene, and vinyl chloride; and the semi-volatile organic compounds ("SVOCs") 2,4-dimethylphenol, 2-chlorophenol,

2,4,6-trichlorophenol, 2,4-dichlorophenol, pentachlorophenol, and phenol.

31. From approximately 1939 through approximately 2004, the Defendant also engaged in various manufacturing operations at the Facility Property, including the manufacture of phenolic resins and polyethylene compounding, 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, PCE, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, 1,2-DCA, trans-1,2-DCE, benzene, toluene, ethylbenzene, xylenes, chlorobenzene, carbon tetrachloride, chloroform, cis-1,2-DCE, styrene, vinyl chloride, 2,4-dimethylphenol, 2-chlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, pentachlorophenol, and phenol.

32. From 1939 through approximately 2004, the Defendant also engaged in various manufacturing operations at the Facility Property, including the manufacture of phenolic resins and polyethylene compounding, the operation of which involved the storage and handling 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 TCE, PCE, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, 1,2-DCA, trans-1,2-DCE, benzene, toluene, ethylbenzene, xylenes, chlorobenzene, carbon tetrachloride, chloroform, cis-1,2-DCE, styrene, vinyl chloride,

2,4-dimethylphenol, 2-chlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, pentachlorophenol, and phenol.

33. From 2002 to 2006, the Defendant decommissioned the Facility Property.

34. In 2004, the Defendant ceased manufacturing operations at the Facility Property.

35. Presently, the Defendant engages in research and development at the Facility Property.

The Landfill Property

36. From approximately 1940 to 1962, the Defendant disposed of industrial waste and construction/demolition debris at the Landfill Property, which wastes and debris were generated as a result of the Defendant's manufacturing operations at the Facility Property. These wastes included "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, PCE, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, 1,2-DCA, trans-1,2-DCE, benzene, toluene, ethylbenzene, xylenes, chlorobenzene, carbon tetrachloride, chloroform, cis-1,2-DCE, styrene, vinyl chloride, 2,4-dimethylphenol, 2-chlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, pentachlorophenol, and phenol.

37. From approximately 1940 to 1962, the Defendant disposed of industrial waste and construction/demolition debris at the Landfill Property, which wastes and debris were generated as a

result of the Defendant's manufacturing operations at the Facility Property. These wastes included "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 TCE, PCE, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, 1,2-DCA, trans-1,2-DCE, benzene, toluene, ethylbenzene, xylenes, chlorobenzene, carbon tetrachloride, chloroform, cis-1,2-DCE, styrene, vinyl chloride, 2,4-dimethylphenol, 2-chlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, pentachlorophenol, and phenol.

38. On or about November 13, 1963, Union Carbide Corporation acquired portions of the Landfill Property from Harvey A. Hughes and Cornelia E. Hughes, which portions, upon information and belief, included those parcels currently also known and designated as Block 420, Lot 1 on the Tax Map of the Township of Piscataway.

39. On or about January 2, 1968, Union Carbide Corporation acquired additional portions of the Landfill Property from Trygve Danielsen and Louise Danielsen, which portions, upon information and belief, included those parcels currently also known and designated as Block 420, Lots 2.01, 3, 3.01, 4, and 4.02 on the Tax Map of the Township of Piscataway.

40. In approximately June 1990, Union Carbide Chemicals and Plastics Company, Inc. acquired additional portions of the Landfill Property from Constantinos Lembesis, Efstathios Lembesis, and John Lembesis, including those parcels currently known and designated as

Block 363, Lots 3 and 3A on the Tax Map of the Borough of Middlesex.

41. Upon information and belief, the portion of the Landfill Property known and designated as Block 363, Lot 3B on the Tax Map of the Borough of Middlesex, is currently owned by the Middlesex County Sewerage Authority.

42. Upon information and belief, the portion of the Landfill Property known and designated as Block 363, Lot 4 on the Tax Map of the Borough of Middlesex has been owned by Union Carbide and its predecessors since at least May 1957. Further, on May 10, 1957, Union Carbide Corporation conveyed to Middlesex County Sewerage Authority a right-of-way and the right to lay, operate, use, maintain, repair, alter, place and remove a public sanitary sewer on that portion of the Landfill Property.

43. On or about June 6, 1995, Union Carbide Corporation acquired additional portions of the Landfill Property from Pierce Estates Corporation, Inc., including those parcels currently known and designated as Block 363, Lots 1, 2 and 2A on the Tax Map of the Borough of Middlesex.

Regulatory History

44. On November 6, 1985, a meeting was held between representatives of the Defendant, plaintiff DEP, and the Township of Piscataway. At the meeting, the Defendant provided information

to plaintiff DEP regarding the existence of groundwater contamination at the Facility Property and the Landfill Property.

45. On November 5, 1987, plaintiff DEP and the Defendant entered into an Administrative Consent Order, requiring Union Carbide to address all known areas of groundwater contamination at the Facility Property ("1987 ACO").

46. The 1987 ACO ordered Union Carbide to pay a \$350,000 fine for alleged violations of the Water Pollution Control Act and the Spill Compensation and Control Act, to conduct the equivalent of a remedial investigation/feasibility study, and to implement the remedial alternative selected by DEP to remedy all hazardous substance contamination at and/or emanating from the Facility Property.

47. On March 9, 1988, plaintiff DEP and the Defendant entered into an Administrative Consent Order, requiring the Defendant to conduct a remedial investigation, a feasibility study, and to implement remedial action to address the contamination discovered at the Landfill Property ("1988 ACO").

48. In August 1989, the Defendant submitted a Phase I Remedial Investigation report to DEP in accordance with the 1987 ACO, which was prepared as a result of the Defendant's investigation into the nature and extent of the contamination at the Facility Property ("Phase I RI Report").

49. The Phase I RI Report identified four areas of concern for groundwater contamination at the Facility Property: the Polystyrene Area, the Phenolics Area, the East Gate/Northern Perimeter, and the Southeast Property Boundary.

50. In August 1989, DEP issued a Notice of Violation for a spill of No. 2 fuel oil that was discovered in the No. 2 Fuel Oil Tank Farm and Tung Oil Tank Farm at the Facility Property.

51. On September 13, 1989, the Defendant informed DEP that it would include the No. 2 fuel oil contamination in its implementation of the remedial action alternative selected by DEP pursuant to the 1987 ACO.

52. In November 1991, the Defendant provided a preliminary feasibility study report and a Phase II Remedial Investigation Report regarding the Facility Property ("Phase II RI Report") to DEP.

53. The Phase II RI Report noted that ground water from both shallow and deep groundwater systems at the Facility Property discharges to the Raritan River.

54. The Phase II RI Report noted that the major contaminants of concern for groundwater contamination at the Facility Property include VOCs and acid extractables.

55. On October 28, 1991, a remedial investigation report for the Landfill Property was submitted to DEP ("1991 Landfill RI Report").

56. On February 3, 1993, DEP approved the 1991 Landfill RI Report.

57. In February 1993, a "Remediation and Construction Work Plan" for the Landfill Property was submitted to DEP, which noted that VOCs were detected in groundwater monitoring wells at the Landfill Property, including vinyl chloride, 1,2-DCA, TCE, and benzene.

58. On April 6, 1993, the Defendant submitted a feasibility study work plan for the Landfill Property to DEP ("1993 Landfill FS Workplan").

59. On June 2, 1993, plaintiff DEP directed the Defendant to implement the 1993 Landfill FS Workplan.

60. In May 1994, the Defendant submitted a remedy selection report to DEP for the Landfill Property.

61. In December 1995, the Defendant submitted a remedy selection report to DEP for groundwater remediation at the Site.

62. In March 1996, plaintiff DEP approved the remedial action for groundwater contamination at the Site. Thereafter, the Defendant implemented the approved remedial action.

63. The remedial action plaintiff DEP has approved for the Site primarily provides for remediation of contaminated groundwater at both the Facility Property and the Landfill Property through operation of a pump-and-treat system.

64. Contaminated ground water at the Site is being treated in six distinct areas: the Alcohol Tank Farm, the Phenolics Area, the Energy Systems Area, the Polystyrene Area, the North Parking Lot Area, and the River Road Landfill. Contaminants that have been detected include TCE, PCE, 1,1,1-TCA, 1,1-DCA, 1,1-DCE, 1,2-DCA, trans-1,2-DCE, benzene, toluene, ethylbenzene, xylenes, chlorobenzene, carbon tetrachloride, chloroform, cis-1,2-DCE, styrene, vinyl chloride, 2,4-dimethylphenol, 2-chlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, pentachlorophenol, and phenol.

65. Groundwater monitoring sampling events conducted by the Defendant have been reported to plaintiff DEP in 1999, 2000, 2002, 2004 and 2006, the results of which continue to show groundwater contamination.

66. A Classification Exception Area has been established for ground water and encompasses the entire Site.

67. Although the Defendant has initiated the remedial action for contaminated ground water at the Site, the ground water at the Site remains contaminated.

FIRST COUNT

Spill Act

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

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

70. 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 that is discharged, 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.

71. 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 of, 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).

72. The Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Facility Property and the Landfill Property.

73. 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.

74. The Defendant is the discharger of hazardous substances at the Facility Property and the 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 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 Facility Property and the Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

75. The Defendant, as the owner of the Facility Property and the Landfill Property at the time hazardous substances were discharged there, also 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 Facility Property and the Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

76. 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).

77. 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 Defendant 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 Facility Property and Landfill Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, 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 Facility Property and Landfill Property;

- c. Enter judgment against the Defendant, compelling Defendant to perform any further cleanup of hazardous substances discharged at the Facility Property and Landfill Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, jointly and severally, without regard to fault, compelling the Defendant 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 Facility Property and Landfill Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant 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

78. The Plaintiffs repeat each allegation of paragraph nos. 1 through 77 above as though fully set forth in its entirety herein.

79. The Defendant is a "person" within the meaning of N.J.S.A. 58:10A-31.

80. 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.

81. 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.

82. Plaintiff DEP 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 Facility Property and the Landfill Property.

83. 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).

84. The Defendant discharged pollutants at the Facility Property and Landfill Property, which discharge was 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 Facility Property and Landfill Property. N.J.S.A. 58:10A-6a.

85. 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 that 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 Facility Property and 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 the Defendant by requiring the Defendant to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing the Defendant, 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 the Defendant, 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 the Defendant, 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 Facility Property and Landfill Property;
- e. Enter declaratory judgment against the Defendant, 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 Facility Property and Landfill Property;
- f. Enter an order assessing the Defendant, 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 Facility Property and Landfill Property;
- g. Enter declaratory judgment against the Defendant, 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 Facility Property and Landfill Property;

- h. Enter an order assessing the Defendant, 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 the Defendant 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 the Defendant, without regard to fault, assessing the Defendant 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 the Defendant 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

Public Nuisance

86. The Plaintiffs repeat each allegation of paragraph nos. 1 through 85 above as though fully set forth in its entirety herein.

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

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

89. 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.

90. As long as the ground water remains contaminated due to the Defendant's conduct, the public nuisance continues.

91. Until the ground water is restored to its pre-injury quality, the Defendant is 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 Defendant 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 Facility Property and Landfill Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant 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 Facility Property and Landfill Property;
- c. Enter judgment against the Defendant, compelling the Defendant to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the Facility Property and Landfill Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant 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 Facility Property and Landfill Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant 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.

FOURTH COUNT

Trespass

92. The Plaintiffs repeat each allegation of paragraph nos. 1 through 91 above as though fully set forth in its entirety herein.

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

94. The Defendant is liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the Facility Property and Landfill Property.

95. As long as the ground water remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

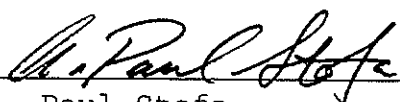
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant 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 Facility Property and Landfill Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant 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 Facility Property and Landfill Property;
- c. Enter judgment against the Defendant, compelling the Defendant to cease the trespass by performing any further

cleanup of pollutants and hazardous substances discharged at the Facility Property and Landfill Property, under plaintiff DEP's oversight;

- d. Enter judgment against the Defendant, compelling the Defendant 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 Facility Property and Landfill Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant 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.

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
A. Paul Stofa
Deputy Attorney General

Dated: 06/25/2007

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 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: *A. Paul Stofa*
A. Paul Stofa
Deputy Attorney General

Dated: 06/25/2007