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

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
Plaintiffs,	:	
v.	:	
DAIMLERCHRYSLER CORPORATION; LIGHTMAN DRUM COMPANY; A&B DRUM COMPANY, INC.; VERNA DALE DONNELLY; "ABC CORPORATIONS" 1-10 (Names Fictitious); and "JOHN DOES" 1-10 (Names Fictitious),	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") ("the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of

Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24 and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Ewan Property Superfund site in Shamong Township, Burlington County. Plaintiff DEP further brings this action pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 to -116 ("Sanitary Landfill Act"), for reimbursement of the damages it has incurred, and will incur, as a result of the operation of the sanitary landfill facility located at the Ewan property.

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 hazardous substances and the operation of the sanitary landfill facility at the Ewan property. 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 hazardous substances, and the operation of the sanitary landfill

facility at the Ewan property, 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 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 DaimlerChrysler ("Chrysler") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1000 Chrysler Drive, Auburn Hills, Michigan 48326.

7. In 1998, Chrysler Motors Corporation ("Chrysler Motors") was merged into defendant Chrysler with defendant Chrysler being the surviving entity.

8. Defendant Chrysler is the successor-in-interest to Chrysler Motors.

9. Defendant Lightman Drum Company ("Lightman") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located on Route 73, Berlin, New Jersey.

10. Defendant A&B Drum Company, Inc. ("A&B Drum") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 401 Holly Avenue, Woodbury Heights, New Jersey.

11. Defendant Verna Dale Donnelly ("Donnelly") is an individual whose dwelling or usual place of abode is 4 Rambler Court, Willingboro, New Jersey.

12. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, or are otherwise related to, the named defendants, or are persons who otherwise participated in, or were responsible for, the generation and/or transportation of hazardous substances discharged at the Ewan property.

13. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are persons who otherwise participated in, or were responsible for, the generation and/or transportation of hazardous substances discharged at the Ewan property.

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 hazardous substances at the Ewan property.

AFFECTED NATURAL RESOURCES

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 hazardous substances.

Wetlands

23. Wetlands are a critical example of New Jersey's ecological resources, which include land and aquatic resources comprised of unique and complex ecosystems.

24. New Jersey has approximately 730,000 acres of freshwater wetlands, and 250,000 acres of coastal wetlands.

25. Wetlands can sustain a wide diversity of plants and animals that are essential in a healthy food chain.

26. Wetlands perform many additional functions, including improvement of water quality, sediment trapping, groundwater recharge, shoreline protection, and protecting lands from flooding or erosion.

GENERAL ALLEGATIONS

27. The Ewan Property Superfund site consists of approximately 43 acres of real property located one mile east of the intersection of Route 206 and Tuckerton Road, Shamong Township, Burlington County, New Jersey, this property being also known and designated as Block 23, Lots 31.01 and 32.01, on the Tax Map of Shamong Township ("the Ewan Property"), and all other areas where any hazardous substances discharged there have become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. G000004968.

28. From 1973 through the present, defendant Verna Ewan Donnelly has owned the Ewan 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 acetone, 2-butanone, benzene, naphthalene, 2-methylnaphthalene, (ortho, meta and para)-xylenes, methylene chloride, toluene, chloroform, carbon tetrachloride, 2, 4-dichlorophenol, ethylbenzene, n-butylbenzene, o-dichlorobenzene,

p-dichlorobenzene, 1,2,4-trichlorobenzene, trichloroethene, trichloroethane, tetrachloroethene, phthalate esters including (bis(2-ethylhexyl)phthalate, di-n-butylphthalate and diethylphthalate, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene arsenic, cadmium, chromium, antimony and lead.

29. During the time that defendant Verna Ewan Donnelly owned the Ewan Property, "solid wastes," as defined in N.J.S.A. 13:1E-3a., were "disposed of" there within the meaning of N.J.S.A. 13:1E-3c.

30. Certain of the solid wastes disposed of at the Ewan Property during this period were deposited on, or in, the land as fill for a period of more than six months, thereby creating a "sanitary landfill facility" within the meaning of N.J.S.A. 13:1E-3q.

31. From 1974 through 1976, defendant Donnelly owned, and her late husband Herbert S. Ewan operated, an unregulated drum and liquid waste disposal facility at the Ewan Property, the operation of which involved the discharge there of hazardous substances, including acetone, 2-butanone, benzene, naphthalene, 2-methylnaphthalene, (ortho, meta and para)-xylenes, methylene chloride, toluene, chloroform, carbon tetrachloride, 2, 4-dichlorophenol, ethylbenzene, n-butylbenzene, o-dichlorobenzene, p-dichlorobenzene, 1,2,4-trichlorobenzene, trichloroethene, trichloroethane, tetrachloroethene, phthalate esters including

(bis(2-ethylhexyl)phthalate, di-n-butylphthalate and diethylphthalate, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene arsenic, cadmium, chromium, antimony and lead.

32. Also during the period that defendant Donnelly owned, and her late husband Herbert S. Ewan operated, an unregulated drum and liquid waste disposal facility at the Ewan Property, solid wastes were disposed of there, certain of which were deposited on, or in, the land as fill for a period exceeding six months.

33. From 1974 through 1976, defendant Chrysler, one or more of the ABC Corporation Defendants and/or one or more of the John Doe defendants, generated "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the Ewan Property within the meaning of N.J.S.A. 58:10-23.11b., which substances included acetone, 2-butanone, benzene, naphthalene, 2-methylnaphthalene, (ortho, meta and para)-xylenes, methylene chloride, toluene, chloroform, carbon tetrachloride, 2, 4-dichlorophenol, ethylbenzene, n-butylbenzene, o-dichlorobenzene, p-dichlorobenzene, 1,2,4-trichlorobenzene, trichloroethene, trichloroethane, tetrachloroethene, phthalate esters including (bis(2-ethylhexyl)phthalate, di-n-butylphthalate and diethylphthalate, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene arsenic, cadmium, chromium, antimony and lead.

34. From 1974 through 1976, defendants Lightman, A&B Drum, one or more of the ABC Corporation Defendants and/or one or more of

the John Doe defendants, transported "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., to the Ewan Property, certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included acetone, 2-butanone, benzene, naphthalene, 2-methylnaphthalene, (ortho, meta and para)-xylenes, methylene chloride, toluene, chloroform, carbon tetrachloride, 2, 4-dichlorophenol, ethylbenzene, n-butylbenzene, o-dichlorobenzene, p-dichlorobenzene, 1,2,4-trichlorobenzene, trichloroethene, trichloroethane, tetrachloroethene, phthalate esters including (bis(2-ethylhexyl)phthalate, di-n-butylphthalate and diethylphthalate, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene arsenic, cadmium, chromium, antimony and lead.

35. In September, 1982, the Burlington County Health Department obtained information that the dumping of possible hazardous waste had occurred at the Ewan Property.

36. On various occasions from 1982, through 1983, personnel from plaintiff DEP inspected the Site and observed buried drums, some of which were exposed.

37. In September 1983, plaintiff DEP installed five monitoring wells to sample the ground water at the Site, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's Ground Water Quality Standards, which substances included methylene chloride, toluene,

chloroform, 2, 4-dichlorophenol, n-butylbenzene, p-dichlorobenzene, 1,2,4-trichlorobenzene, arsenic, chromium and lead.

38. In 1984, the United States Environmental Protection Agency ("EPA") performed a Preliminary Assessment and Site Inspection of the Site, which included sampling the ground water and surface water, and performing a preliminary geophysical survey, the results of which confirmed plaintiff DEP's earlier findings.

39. During its inspection of the Site, EPA discovered approximately 4,500 cubic yards of contaminant source materials, including buried drums and heavily contaminated soils.

40. In September 1984, 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 Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C.A. §§9601 to 9675, is a list EPA promulgates of hazardous waste sites that pose the greatest threat to human health and safety, and the environment.

41. EPA conducted a Remedial Investigation and Feasibility Study ("RI/FS") of the Site pursuant to Section 104 of CERCLA, 42 U.S.C.A. §9604, to determine the nature and extent of the contamination, and to evaluate alternative remediation options.

42. Additionally, EPA notified six parties, including defendants Chrysler, Donnelly, Lightman and A&B Drum, of their potential liability for the Site, which parties subsequently formed

the Ewan PRP Trust to remediate the Site under EPA and plaintiff DEP's oversight.

43. In September 1988, EPA, with plaintiff DEP's concurrence, issued a Record of Decision for the Site ("1988 ROD"), in which EPA documented and explained the first remedial phase or operable unit ("OU-1") to address the more seriously contaminated soils and buried drums at the Site.

44. The remedy EPA selected in the 1988 ROD, as later modified, primarily provided for the excavation of moderately to highly contaminated soils, excavation and off-site disposal of buried drums, characterization of the waste materials in the drums, and continued air and groundwater monitoring, which phase, the Ewan PRP Trust, including defendants Chrysler, Donnelly, Lightman and A&B Drum, completed in 1995.

45. Although an area of wetlands injured during the construction of an access road appears to have been successfully restored, further assessment is needed to determine the full extent of any damage to all wetlands at the Site.

46. In September 1989, EPA, with Plaintiff DEP's concurrence, issued a second ROD ("1989 ROD"), in which EPA explained the preferred second operable unit ("OU-2") to address the groundwater contamination and residual contaminated soils at the Site.

47. The remedy EPA selected in the 1989 ROD primarily provided for the extraction and treatment of the contaminated

ground water, and the on-site re-injection of the treated ground water to the upper sand aquifer.

48. The Ewan PRP Trust, including defendants Chrysler, Donnelly, Lightman and A&B Drum, completed the construction of the groundwater treatment plant in 1999.

49. In 2004, the Ewan PRP Trust, under EPA and plaintiff DEP's oversight, implemented a pilot study to test a dual phase extraction/soil vapor vacuum extraction system on several "hot spots," i.e., areas containing highly contaminated soils, which system the parties performing the remediation subsequently employed on other hot spots throughout the Site.

50. Also, in 2004, the Ewan PRP Trust excavated approximately 1,000 cubic yards of contaminated soils from one hot spot at the Site, which soils were disposed of off-site.

51. In March 2004, EPA conducted a periodic review of the Site, and concluded that the chosen remedy was functioning as intended, which findings are contained in EPA's September 2004 Five-Year Review Report.

52. In December 1998, the parties proposed, and plaintiff DEP established, a Classification Exception Area ("CEA"), which excludes the designated ground water from use as a potable water source.

53. The CEA, which plaintiff DEP approved, covers the Ewan Property, extends to a depth of 74 feet, and is expected to last in excess of ten years from the start of the remediation.

54. Although defendants Chrysler, Donnelly, Lightman, A&B Drum and others have initiated the remediation of the Site, the groundwater and wetlands contamination continues.

FIRST COUNT

Spill Act

55. The Plaintiffs repeat each allegation of paragraph nos. 1 through 54 above as though fully set forth in its entirety herein.

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

57. 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).

58. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge or unsatisfactory storage or containment 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 or not

satisfactorily stored or contained, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

59. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the Ewan Property.

60. 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 continue to approve, other appropriations for the Site.

61. 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 Ewan Property.

62. 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.

63. Defendant Donnelly, as the owner of the Ewan Property at the time hazardous substances were discharged there, is a person in any way responsible for the discharged hazardous substances, and is liable, 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 Ewan Property. N.J.S.A. 58:10-23.11g.c.(1).

64. Defendants Chrysler, Lightman, A&B Drum and one or more of the ABC Corporation and John Doe Defendants, as the generators and/or transporters of the hazardous substances discharged at the Ewan Property, also are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that 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 Ewan Property. N.J.S.A. 58:10-23.11g.c.(1).

65. 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).

66. 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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ewan Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ewan 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 Ewan Property, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- 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

Sanitary Landfill Act

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

68. Defendant Donnelly is a person, who "owned" the sanitary landfill facility located at the Ewan Property within the meaning of N.J.S.A. 13:1E-102b.

69. Plaintiff DEP has incurred, or may incur, costs resulting from the operation of the sanitary landfill facility located at the Ewan Property.

70. Plaintiff DEP has also certified, or may certify for payment, valid claims made against the Sanitary Landfill Facility

Contingency Fund concerning the sanitary landfill facility at the Ewan Property.

71. Plaintiff DEP has incurred, or may incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the disposal of solid wastes at the Ewan Property.

72. As the owner of the sanitary landfill facility at the Ewan Property, defendant Donnelly is liable for the sanitary landfill facility's proper operation and closure as required by law, and for any damages, either direct or indirect, proximately resulting from the operation of the sanitary landfill facility at the Ewan Property, including claims paid from the Sanitary Landfill Facility Contingency Fund, and including lost value and reasonable assessment costs, that plaintiff DEP has incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the operation of the sanitary landfill facility at the Ewan Property.
N.J.S.A. 13:1E-103.

73. Pursuant to N.J.S.A. 13:1E-9b. and d., plaintiff DEP may bring an action in the Superior Court for the costs of any investigation, inspection or monitoring survey, and the reasonable costs of preparing and litigating the case, N.J.S.A. 13:1E-9d.(2); the costs to remove, correct or terminate any adverse effects upon

water and air quality, N.J.S.A. 13:1E-9d.(3); compensatory damages, including the lost value and assessment costs, that plaintiff DEP incurs for any natural resource of this State that has been, or may be, injured as a result of the operation and/or closure of the sanitary landfill facility located at the Ewan Property, N.J.S.A. 13:1E-9d.(3); and for any other actual damages. N.J.S.A. 13:1E-9d.(4).

PRAYER FOR RELIEF

WHEREFORE, plaintiff DEP prays that this Court:

- a. Order defendant Donnelly to reimburse plaintiff DEP for all direct and indirect damages, including claims paid from the Sanitary Landfill Facility Contingency Fund, and including lost value and reasonable assessment costs for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the Ewan Property, with applicable interest;
- b. Enter declaratory judgment against defendant Donnelly, for all direct and indirect damages, including claims to be paid from the Sanitary Landfill Facility Contingency Fund, and including lost value and reasonable assessment costs that plaintiff DEP will incur for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the Ewan Property;

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

THIRD COUNT

Public Nuisance

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

75. Ground water and wetlands are natural resources of the State held in trust by the State for the benefit of the public.

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

77. The groundwater and wetlands 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 these natural resources.

78. As long as the ground water and wetlands remain contaminated due to the Defendants' conduct, or the conduct of their predecessors-in-interest, the public nuisance continues.

79. Until the ground water and wetlands are restored to their 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 and wetlands.

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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ewan 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 the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ewan 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 hazardous

substances at the Ewan Property and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

80. The Plaintiffs repeat each allegation of paragraph nos. 1 through 79 above as though fully set forth in its entirety herein.

81. Ground water and wetlands are natural resources of the State held in trust by the State for the benefit of the public.

82. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Ewan Property.

83. As long as the ground water and wetlands remain contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

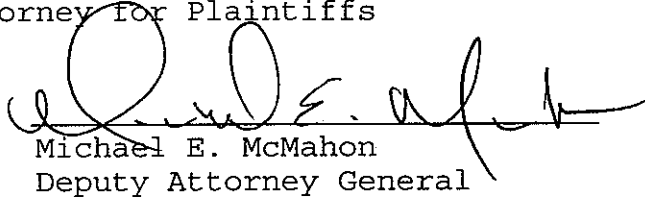
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- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ewan 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 hazardous substances at the Ewan Property, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- d. Award the Plaintiffs their costs and fees in this action;
and

- e. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By:



Michael E. McMahon
Deputy Attorney General

Dated: June 22, 2007

DESIGNATION OF TRIAL COUNSEL

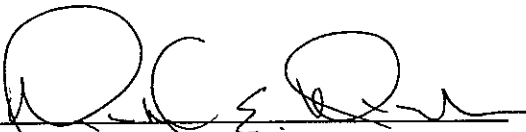
Pursuant to R. 4:25-4, the Court is advised that Michael E. McMahon, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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: 
Michael E. McMahon
Deputy Attorney General

Dated: June 22, 2007