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

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NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	
ADMINISTRATOR, NEW JERSEY	:	<u>Civil Action</u>
SPILL COMPENSATION FUND,	:	COMPLAINT
Plaintiffs,	:	
v.	:	
EXXON MOBIL CORPORATION and	:	
AGC CHEMICALS AMERICAS, INC.	:	
f/k/a ICI AMERICAS, INC.,	:	
Defendants.	:	

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

Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants, say:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, ("the Spill Act"), and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Exxon Bayonne site located in Bayonne, New Jersey, Hudson County and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharge of hazardous substances at or from the Exxon Bayonne site.

THE PARTIES

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

3. In addition, with the State being the trustee, for the benefit of its citizens, of all natural resources within its

jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

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

5. Defendant Exxon Mobil Corporation ("Exxon Mobil Corp."), is a corporation organized under the laws of the State of New Jersey, with its main place of business located at 800 Bell Street, Houston, Texas 77002.

6. Defendant Exxon Mobil Corp. is the successor corporation to Exxon Corporation. In 1999, Exxon Corporation merged with Mobil Corporation.

7. Defendant AGC Chemicals Americas, Inc. ("AGCCA") is a corporation organized under the laws of the state of Delaware, with its principle place of business at 2201 Water Ridge Parkway 400, Charlotte, North Carolina 28217.

8. Defendant AGGCA is the successor corporation of the January 2004 merger between Asahi Glass Fluoropolymers Co., Ltd. ("AGFC") and its sister company, AGA Chemicals.

9. AGFC is the successor corporation to Asahi Glass Corporation ("AGC"). In January 1999, AGC purchased ICI Americas, Inc. ("ICI").

10. The defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

#### AFFECTED NATURAL RESOURCES

##### Groundwater

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

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

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

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

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

#### Surface Water

16. A supply of approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

17. Surface water in New Jersey is also used for other commercial and industrial uses, such as cooling water and electrical generation, boating, fishing, swimming, and transportation of goods and services.

18. The tourist and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

#### Ecological Resources

19. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

20. Wetlands are a critical example of New Jersey's ecological resources.

21. New Jersey wetlands cover approximately 730,000 acres of freshwater wetlands and 250,000 acres of coastal wetlands.

22. These wetlands can sustain a wide diversity of plants and animals which are essential in a healthy food chain. Wetlands perform a number of additional functions, including improvement of

water quality, sediment trapping, recharge of groundwater, protection of shorelines and lands from flooding or erosion.

#### GENERAL ALLEGATIONS

23. The Exxon Bayonne Terminal property consists of approximately 288 acres of real property located at 250 East 22<sup>nd</sup> Street, Bayonne, Hudson County, this property being also known and designated as Block 419, Lots 1, 3, and 4; Block 427, Lot 3; Block 465, Lots 1 through 5 and 8; Block 466, Lots 1 through 4; Block 477.01, Lot 1; Block 478, Lot 1; and Block 480, Lot 1 on the Tax Map of the City of Bayonne ("the Exxon Bayonne Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 007986.

24. In addition to the previously described property, there are additional properties that were previously owned by Exxon which include, but may not be limited to, Block 453.01, Lots 1 through 5, 9, 10 and 11; Block 464.01, Lots 1, 3, 4, 5.01, 5.02 and 7 through 25; Block 464.02, Lots 1 and 2; Block 465, Lots 1 through 8; Block 477.01, Lot 1 and 2; Block 477.02, Lot 1, 2 and 3; Block 476.01, Lots 1, 3, 4, 5, 6, 7 and 8; Block 476.02, Lots 1 and 2; Block 478, Lot 1, 2 and 2.01 on the Tax Map of the City of Bayonne due to historic discharges at the property by Exxon Corp. and its predecessors. These properties will herein be designated as a part of the Exxon Bayonne Property.

25. From 1877 until 1972, Exxon Mobil Corp.'s predecessors owned and operated the Exxon Bayonne Property. From approximately 1877 through 1993, Exxon Mobil Corp., or its predecessors, engaged in a variety of operations at the Exxon Bayonne Property, including, at one time or another, oil refining, petroleum products storage, wholesale distribution with various blending and packaging operations, the manufacturing of oil additives, and chemical manufacturing.

26. In 1972, the refining operations were dismantled, wax manufacturing operations ceased, and the Exxon Bayonne Property functioned primarily as a petroleum products storage facility, a wholesale distribution facility with various blending and packaging operations, and an oil additives manufacturing plant. Presently, two separate Exxon divisions still operate on the part of the property retained by Exxon Mobil Corp. Exxon Company, U.S.A. operates a petroleum products marketing terminal, and Exxon Chemical Americas operates a lubricating oil and fuel additives manufacturing plant and a research laboratory. During this time period, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Exxon Bayonne Property within the meaning of N.J.S.A. 58:10-23.11b.

27. Between 1965 and 1969, ICI Americas, Inc. purchased portions of the Exxon Bayonne property totaling approximately 36

acres. Specifically, ICI Americas purchased Block 453.01, Lots 1 through 5, 9, 10 and 11 (the "ICI subsite").

28. Between 1965 and 1999, ICI Americas manufactured chlorinated rubber products, paraffin wax products, resins, polymers, polyesters, polyurethane and polytetrafluoroethylene at the ICI subsite.

29. During ICI America's ownership and operation of the property, contamination resulted from discharges in a trichloroethylene storage tank and other discharges from its process area.

30. During ICI America's ownership and operation of the property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the ICI subsite under the meaning of N.J.S.A. 58:10-23.11b. These discharges contributed to the groundwater and surface water contamination at the Exxon Bayonne Property.

31. Exxon Mobil Corp., or its predecessors, has had numerous reported spills into surface water from the Exxon Bayonne Property. In a 1977, New Jersey Superior Court decision, the Court, quoting from the stipulation of facts, stated that "[d]uring the course of their refining, storing and transfer operations, Exxon spilled, permitted to leak and intentionally discharged massive quantities of oil on and into the ground of the Exxon property..." State, Department of Environmental Protection v. Exxon, 151 N.J. Super.



464, 469 (Ch. 1977). Further documentation indicates that from September 28, 1984 through July 24, 1989 alone, Exxon Mobil Corp. or its predecessors received 12 oil spill citations from the U.S. Coast Guard.

32. Contamination from the operations of Exxon Mobil Corp., and its predecessors, remains in the groundwater under and surface water adjoining the ICI subsite.

33. Defendants Exxon Mobil Corp. or its predecessors began hydrogeologic investigations at the Exxon Bayonne Property in 1958. In 1974, Exxon Mobil Corp. or its predecessors began groundwater monitoring in order to evaluate shallow hydrocarbon contamination. On or about November 27, 1991, a predecessor to defendants Exxon Mobil Corp. entered into an Administrative Consent Order ("November 27, 1991 ACO") with plaintiff DEP, which required defendants Exxon Mobil Corp. and its predecessors and successors to remediate the Site under DEP's oversight.

34. On or about December 16, 1998, the November 27, 1991 ACO for the Exxon Bayonne site was amended by mutual agreement to include ICI subsite and reflect Exxon's agreement to remediate the ICI subsite.

35. Sampling results taken from the Exxon Bayonne Property during inspections have revealed the presence of various hazardous substances in the soils and groundwater at and underlying the Site, including non-aqueous phase liquids and related petroleum

constituent contaminants, including numerous volatile organic compounds, semi-volatile organic compounds and metals.

36. While the defendants Exxon Mobil Corp. or its predecessors and AGCCA have undertaken limited cleanup of hazardous substances from the soils and groundwater at and underlying the Site pursuant to the November 27, 1991 ACO, as amended, groundwater contamination continues.

37. Hazardous substances from the Exxon Bayonne Property have discharged to and are present in the surface water and sediments adjacent to the Exxon Bayonne Property.

#### FIRST COUNT

##### Spill Act

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

39. Plaintiffs have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Exxon Bayonne Property.

40. 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.

41. The Defendants, as the dischargers of hazardous substances at the Exxon Bayonne Property, are liable, without

regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Exxon Bayonne Property. N.J.S.A. 58:10-23.11g.c.(1).

42. The Defendants, as the owners of the Exxon Bayonne Property at the time hazardous substances were discharged there, also are persons otherwise responsible for the discharged hazardous substances, and are liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Exxon Bayonne Property. N.J.S.A. 58:10-23.11g.c.(1).

43. 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).

44. 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, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayonne Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayonne Property;

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

SECOND COUNT

Public Nuisance

45. Plaintiffs repeat each allegation of Paragraphs 1 through 44 above as though fully set forth in its entirety herein.

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

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

48. The contamination of groundwater at the Site constitutes a physical invasion of public property and an unreasonable and

substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

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

50. Until the groundwater is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean groundwater.

PRAYER FOR RELIEF

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

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayonne Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the

discharges of hazardous substances at the Exxon Bayonne Property;

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

### THIRD COUNT

#### Trespass

51. Plaintiffs repeat each allegation of Paragraphs 1 through 50 above as though fully set forth in its entirety herein.

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

53. The Defendants are liable for trespass, and continued trespass, since hazardous substances were first discharged at and from the Exxon Bayonne Property.

54. As long as groundwater remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

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

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayonne Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayonne Property;
- c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Exxon Bayonne Property, by performing, under plaintiff



DEP's oversight, or by funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Exxon Bayonne Property;

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

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

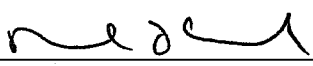
Dated: July \_\_, 2004

By: \_\_\_\_\_

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Dated: July 23, 2004

By: \_\_\_\_\_

  
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DEP's oversight, or by funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Exxon Bayonne Property;

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

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

Dated: August 18<sup>th</sup>, 2004

By: \_\_\_\_\_

  
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Dated: August \_\_\_\_, 2004

By: \_\_\_\_\_

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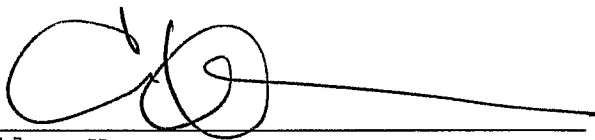
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Superior Ct of NJ, Appellate Division, Docket No. A-6537-03 T3. Otherwise, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party or new issue, including claims to recover other cleanup and removal costs, later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

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Dated: August 18<sup>th</sup>, 2004