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BURLINGTON COUNTY

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BURLINGTON COUNTY
DOCKET NO. **L -000015 05**

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

Plaintiffs,

v.

AAXON INDUSTRIAL, INC.;
FLORENCE LAND DEVELOPMENT CO.,
A New Jersey Partnership;
JOHN K. ATKIN, as Partner in
Defendant Florence Land
Development Co. and Individually;
JEROME KOTZEN, as Partner in
Defendant Florence Land
Development Co. and Individually;
GEORGE KURDA, as Partner in
Defendant Florence Land
Development Co. and Individually;
FLORENCE LAND DEVELOPMENT, INC.;
FLORENCE LAND RECONTOURING, INC.;
HERCULES, INC.;
JERSEY ENVIRONMENTAL MANAGEMENT
SERVICES, INC.;
ESTATE OF ANTHONY AMADEI;
DAVID EHRlich, Individually;
RICHARD WINN, Individually;
MANOR CARE, INC.;
MARVIN JONAS, INC.;
OCCIDENTAL CHEMICAL CORP.

Civil Action

COMPLAINT

(f/k/a Hooker Chemicals &
 Plastics Corp.); :
 PORTFOLIO ONE, INC.; :
 PUBLIC SERVICE ELECTRIC AND :
 GAS COMPANY; :
 RANCOCAS VALLEY REFUSE :
 DISPOSAL, INC.; :
 TENNECO RESINS, INC. (f/k/a :
 Tenneco Chemicals, Inc.); and :
 "ABC CORPORATIONS" 1-25 (Names :
 Fictitious), :
 Defendants. :

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 (collectively, "the Defendants"), say:

STATEMENT OF THE CASE

1. The 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 they have incurred, and will incur, as a result of the discharge of hazardous substances at the Florence Land Recontouring Landfill Superfund site in Florence, Mansfield and Springfield Townships, 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 and/or closure of the sanitary landfill facility located at the Florence Land Recontouring Landfill Superfund site. 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 and/or closure of the sanitary landfill facility at the Florence Land Recontouring Landfill Superfund site, and to compel the Defendants 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 and the operation and/or closure of the sanitary landfill facility at the Florence Land Recontouring Landfill Superfund 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 ("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 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 Aaxon Industrial, Inc. ("Aaxon") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 1043 Route 1, Avenel, New Jersey.

6. Defendant Florence Land Development Co. ("FLD Co.") is a general partnership formed under the laws of the State of New Jersey, with a last known principal place of business located on Route 130, Bordentown, New Jersey.

7. Defendant John L. Atkin is an individual whose dwelling or usual place of abode is 61 Fountain Road, Levittown, Pennsylvania.

8. Defendant Jerome Kotzen is an individual whose dwelling or usual place of abode is 1879 Hemlock Circle, Arbington, Pennsylvania.

9. Defendant George Kurda is an individual whose dwelling or usual place of abode is 1006 North Pennsylvania Avenue, Morrisville, Pennsylvania.

10. At all times relevant to this Complaint, defendants Atkin, Kotzen, and Kurda, along with Alton W. Cross, Jr. and Ernest N. Sever, both of whom are deceased, were partners in defendant FLD Co.

11. Defendant Florence Land Development, Inc. ("FLD, Inc.") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 75 Jacobus Avenue, South Kearny, New Jersey.

12. Defendant Florence Land Recontouring, Inc. ("FLR, Inc.") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 75 Jacobus Avenue, South Kearny, New Jersey.

13. Defendant Hercules, Inc. is a corporation organized under the laws of the State of Delaware, with a principal place of business located at 1313 Market Street, Tax Department 8th Floor, Wilmington, Delaware.

14. Defendant Jersey Environmental Management Services, Inc. ("JEMS"), is a New Jersey corporation with a last known principal place of business located in Blackwood, New Jersey.

15. Defendant Estate of Anthony Amadei is the estate of Anthony Amdei, an individual who died on or about May 1, 2001, the address for which is Estate of Amadei, c/o Grace C. Amadei, 416 Mantua Boulevard, Mantua, New Jersey, and which is being named as a defendant in this Complaint pursuant to N.J.S.A. 2A:15-4.

16. Defendant David Ehrlich is an individual whose dwelling or usual place of abode is 36 West 9th Street, No. 2DPX, New York, New York.

17. Defendant Richard H. Winn is an individual whose dwelling or usual place of abode is 10 Wawbeek Avenue, Tupper Lake, New York.

18. At all times relevant to this Complaint, Anthony Amadei and defendants Ehrlich and Winn, were officers and/or directors of defendant JEMS.

19. Defendant Marvin Jonas, Inc. is a corporation organized under the laws of the State of New Jersey, with a last known principal place of business located on Barkridge Road, Sewell, New Jersey.

20. Defendant Manor Care, Inc. is a corporation formed under the laws of the State of Delaware, with a principal place of business located at 2501 Musgrove Road, Silver Spring, Maryland.

21. Defendant Portfolio One Corporation, formerly known as Chemline Corp. (collectively, "Portfolio One"), is a corporation formed under the laws of the State of New Jersey, with a principal place of business located at 10750 Columbia Pike, Silver Spring, Maryland.

22. Since 1983, defendant Manor Care, Inc. has been the parent corporation of defendant Portfolio One.

23. Almo Anti-Pollution Services Corp., formerly known as Almo Tank Cleaning and Maintenance Corp. (collectively "Almo"), is a corporation organized under the laws of the State of New Jersey, with a last known principal place of business located on East Academy Street, Clayton, New Jersey.

24. Until 1977, Almo was a subsidiary of defendant Portfolio One, at which time Almo merged with Chemline Corp., with the surviving entity being defendant Portfolio One.

25. Defendant Occidental Chemical Corporation, formerly known as Hooker Chemicals and Plastics Corp. (collectively, "Occidental"), is a corporation organized under the laws of the State of New York, with a principal place of business located at Occidental Tower, 5005 LBJ Parkway, Dallas, Texas.

26. Defendant Public Service Electric and Gas Company ("Public Service") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 80 Park Plaza, Newark, New Jersey.

27. Defendant Rancocas Valley Refuse Disposal, Inc. ("Rancocas Valley"), is a corporation organized under the laws of the State of New Jersey, with a last known principal place of business located at 240 Stokes Avenue, Trenton, New Jersey.

28. Defendant Tenneco Resins, Inc., formerly known as Tenneco Chemicals, Inc. (collectively, "Tenneco"), is a corporation organized under the laws of the State of Delaware, with a last known principal place of business located at 100 West 10th Street, Wilmington, Delaware.

29. Defendants "ABC Corporations" 1-25, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, who discharged hazardous substances at the Florence Land Recontouring Landfill Superfund Site, or were otherwise responsible for the hazardous substances discharged there.

AFFECTED NATURAL RESOURCES

Ground Water

30. 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.

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

32. Ground water provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

33. Ground water 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.

34. Ground water 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.

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

Surface Water

36. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

37. 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.

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

GENERAL ALLEGATIONS

39. The Florence Land Recontouring Landfill Superfund site consists of approximately 86 acres of real property on the Cedar Lane Extension, in Florence, Mansfield and Springfield Townships, Burlington County, New Jersey, this property being also known and designated as Block 73, Lots 1, 2, 3.02 and 3.03 on the Tax Map of Florence Township; Block 44, Lots 7 and 8, on the Tax Map of Mansfield Township; and Block 304, Lot 1, on the Tax Map of Springfield Township, ("the FLR 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. G000004498.

40. The FLR Property is located in a residential and agricultural area of Burlington County, and is bounded to the north by the Burlington County Resource Recovery complex.

41. The ground water underlying the FLR Property flows in a south-southeast direction toward Assicunk Creek, a tributary of the Delaware River.

42. In July 1973, Messrs. Cross and Sever, and defendants Atkin and Kotzen, trading as defendant FLD Co., acquired the FLR Property, which they subsequently reconveyed to themselves and to defendant Kudra in December 1973.

43. In May 1978, Messrs. Cross and Sever, and defendants Atkin, Kotzen, and Kudra, trading as defendant FLD, Co., sold the

FLR Property to defendant FLD, Inc., which, as of the filing of this Complaint, is the owner of record of the FLR Property.

44. During the time that Messrs. Cross and Sever, and defendants Atkin, Kotzen and Kudra, trading as defendant FLD Co., and defendant FLD, Inc., owned the FLR Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included asbestos, volatile organic compounds ("VOCs"), semi-VOCs, polycyclic aromatic hydrocarbons ("PAHs"), and metals.

45. From in or around November 1973 through late-1976, and again from in or about May 1977 through November 1981, defendant FLR operated a sanitary landfill on approximately 29 acres of the FLR Property, which plaintiff DEP permitted to accept municipal sanitary wastes, including septage, sewage, and, as of July 1977, industrial non-chemical wastes.

46. At some point between May and July 1976, defendant JEMS, under an agreement with defendants FLD Co. and FLR, Inc., assumed operational control of the landfill at the FLR Property, which agreement plaintiff DEP did not approve until in or about December 1976.

47. Defendant JEMS operated the landfill at the FLR Property until in or about May 1977.

48. Anthony Amadei, and defendants Ehrlich and Winn, participated in, or were otherwise responsible for, the day-to-day activities of defendant JEMS at all times relevant to this Complaint, including defendant JEMS' operation of the landfill at the FLR Property.

49. In or about May 1977, defendant FLR, Inc. resumed operating the landfill at the FLR Property, which defendant FLR, Inc. continued operating until November 1981.

50. During the time that defendants FLR, Inc. and JEMS operated the landfill at the FLR Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included asbestos; VOCs, semi-VOCs, and metals in the soils; VOCs and metals in the ground water; and VOCs, semi-VOCs metals and PAHs in the leachate.

51. At various times between 1973 and November 1981, "solid wastes," within the meaning of N.J.S.A. 13:1E-3a., were also "disposed of" at the FLR Property, within the meaning of N.J.S.A. 13:1E-3c.

52. Certain of the solid wastes disposed of at the FLR Property were deposited on, or in, the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, thereby creating a "sanitary landfill facility" at the FLR Property within the meaning of N.J.S.A. 13:1E-3q.

53. At various times between 1973 and November 1981, defendants Hercules, Manor Care, Occidental, Portfolio One, Public Service, and Tenneco, or their predecessors, generated "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the FLR Property within the meaning of N.J.S.A. 58:10-23.11b., which substances included asbestos, metals, PAHs, VOCs, and semi-VOCs.

54. At various times between 1973 and December 1981, defendants Aaxon, Rancocas Valley, and Marvin Jonas, Inc., or their predecessors, transported "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., to the FLR Property, certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included asbestos, metals, PAHs, VOCs, and semi-VOCs.

55. At various times between 1973 and November 1981, defendants ABC Corporations, or their predecessors, "discharged" "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., at the FLR Property within the meaning of N.J.S.A. 58:10-23.11b., which substances included asbestos, metals, PAHs, VOCs and semi-VOCs, or were otherwise responsible for the hazardous substances discharged at the FLR Property.

56. On various occasions from 1974 through 1976, plaintiff DEP inspected the FLR Property, and observed various violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 to -223.

57. In November 1974, plaintiff DEP issued defendant FLR, Inc. an administrative order pursuant to the Solid Waste Management Act, directing defendant FLR, Inc. to install and sample monitoring wells on the FLR Property to evaluate possible groundwater contamination from the landfill, and to submit the sampling results to plaintiff DEP by December 25, 1974.

58. In December 1974, plaintiff DEP a issued defendant FLR, Inc. an administrative order pursuant to the Solid Waste Management Act, extending the deadline for defendant FLR, Inc. to submit the monitoring well sampling results to plaintiff DEP by February 25, 1975.

59. In April 1975, plaintiff DEP issued defendant FLR, Inc. a notice of prosecution and administrative order pursuant to the Solid Waste Management Act for accepting chemical wastes, failing to implement adequate litter controls, and failing to properly cover exposed surfaces of the landfill area.

60. On various occasions between June 1976 and November 1976, plaintiff DEP inspected the FLR Property, during which time plaintiff DEP noted that defendant FLR had not submitted any monitoring well sampling results as plaintiff DEP had previously ordered defendant FLR, Inc. to do; failed to implement adequate litter controls; exceeded the approved height of the disposal area; failed to install and operate a leachate collection and treatment system, and failed to install an adequate gas venting system.

61. In December 1976, plaintiff DEP issued defendant FLR, Inc. a notice of prosecution pursuant to the Solid Waste Management Act for the aforementioned violations, and ordered defendant FLR, Inc. to stop accepting chemical wastes, and to remedy the other deficiencies plaintiff DEP noted during its inspections of the FLR Property between June 1976 and November 1976.

62. In February 1977, plaintiff DEP issued an administrative order to defendant JEMS pursuant to the Solid Waste Management Act, ordering defendant JEMS to accept sewage and septic sludges only during certain hours, and to immediately cover those wastes; properly cover the landfill surface; and accept only wastes that plaintiff DEP had approved for disposal at the FLR Property.

63. In April 1977, plaintiff DEP issued an administrative order to defendant FLR, Inc. pursuant to the Solid Waste Management Act for disposing of wastes in excavations extending to depths below the landfill engineering designs plaintiff DEP had previously approved.

64. Defendants FLD Co., FLR, Inc. and JEMS failed to properly address the various conditions and deficiencies for which plaintiff DEP cited them between 1974 and April 1977.

65. In May 1977, plaintiff DEP filed a civil action in the Superior Court, Burlington County, against Anthony Amadei, and against defendants FLR, Inc., FLD Co., and JEMS, for violating the Solid Waste Management Act during their ownership of the FLR

Property, and/or their operation of the landfill located there, in which plaintiff DEP primarily sought injunctive relief and statutory penalties for the alleged violations.

66. In July 1978, area residents complained of strong odors from water being discharged from the landfill at the FLR Property to Assicunk Creek, about which the Florence Township Police Department notified plaintiff DEP.

67. Two residents sampled the discharge water, the results of which revealed that the water contained high chemical oxygen demand, ammonia-nitrogen and phosphates, and various hazardous substances.

68. In January 1979, plaintiff DEP entered into a judicially-approved consent order and judgment with defendants FLD Co. and FLR, Inc., pursuant to which defendants FLD Co. and FLR, Inc. were required to accept only those wastes plaintiff DEP approved for disposal at the FLR Property; properly sample the monitoring wells located on the FLR Property, and submit the results to plaintiff DEP; install a leachate collection system; provide for leachate pumping and off-site disposal; submit specifications for site preparation, disposal limits and operations to plaintiff DEP; install a gas venting system, and construct certain dikes, walls and other landfill controls.

69. The January 1979 consent order and judgment further provided that landfilling was to cease at the FLR Property by July 12, 1979, though landfilling continued beyond this date.

70. On various occasions from April through June 1981, plaintiff DEP inspected the FLR Property, during which plaintiff DEP observed that septic and/or sewage sludges were being disposed of in unauthorized areas of the landfill, and were not being mixed with regular fill as plaintiff DEP required; the landfill cap was eroding, and garbage was protruding from it, and demolition wastes also were being disposed of, even though DEP did not authorize defendant FLR, Inc. to accept such wastes.

71. In or about July 1981, defendant FLR, Inc. filed a final closure plan for the landfill, and subsequently ceased all landfilling operations at the FLR Property in November 1981.

72. In 1982, defendant FLR, Inc. capped the landfill and constructed a leachate collection and disposal system.

73. Plaintiff DEP subsequently discovered leachate seeps near the banks of Assicunk Creek, and landfill gases in manholes and monitoring wells at the FLR Property.

74. In September 1984, the United States Environmental Protection Agency ("EPA") placed the Site on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B. The NPL, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list EPA promulgates of hazardous waste

sites that pose the greatest threat to the human health and safety, and the environment.

75. During 1985 and 1986, plaintiff DEP, with EPA's participation, performed 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 various ways to remediate it.

76. In June 1986, EPA, with plaintiff DEP's concurrence, issued a Record of Decision ("June 1986 ROD"), in which EPA documented and explained the preferred remedy to address the contamination of the Site.

77. The remedy EPA selected in the June 1986 ROD primarily provided for the removal and off-site disposal of lagoon liquids, sediments and other debris, and the construction of a multi-layer cap and circumferential slurry wall for the landfill area of the FLR Property, an upgradient groundwater interceptor system, a new storm water system, leachate and gas collection and treatment systems, and perimeter fencing.

78. In December 1989, plaintiff DEP issued a Spill Act directive ("1989 Directive") to various parties, including the Defendants, pursuant to N.J.S.A. 58:10-23.11f.a., directing the respondents, including the Defendants, to fund plaintiff DEP's share of the remediation EPA selected in the June 1986 ROD.

79. The respondents, including the Defendants, did not comply with the 1989 Directive, prompting DEP to use public funds to finance its share of the costs for the remediation EPA selected in the 1986 ROD.

80. Plaintiff DEP is the lead agency for the remediation of the Site, for which plaintiff DEP, with EPA's concurrence, completed the remedial design in 1991.

81. Plaintiff DEP completed the construction and removal phases of the remediation in 1994.

82. In March 1994, plaintiff DEP, with EPA's concurrence, approved the operation and maintenance plan for the Site, which activities, including leachate removal, Burlington County performed from 1998 through 2004.

83. One component of the operation and maintenance activities for the FLR Property is continued groundwater and surface water monitoring, the results of which have revealed the presence of various hazardous substances, including lead and arsenic, exceeding plaintiff DEP's cleanup criteria in the ground water, and at lesser concentrations in the surface water.

84. In June 2004, EPA removed the Site from the NPL.

85. Although EPA and plaintiff DEP have undertaken the remediation of the Site, the groundwater and the surface water contamination continues.

FIRST COUNT

Spill Act

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

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

88. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the FLR Property.

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

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

91. 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.

92. Defendants Estate of Anthony Amadei, Ehrlich, FLR, Inc., JEMS, Richard Winn, and one or more of the ABC Corporations, are,

or are the successors to, the dischargers of hazardous substances at the FLR Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the FLR Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

93. Defendants Atkin, FLD Co., FLD, Inc., Kotzen, Kurda, and one or more of the ABC Corporations, as the owners, or the successors to the owners, of the FLR Property at the time hazardous substances were discharged there, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the FLR Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

94. Defendants Aaxon, Marvin Jonas, Inc., Rancocas Valley, and one or more of the ABC Corporations, as the transporters, or the successors to the transporters, of hazardous substances to the

FLR Property, certain of which were discharged there, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the FLR Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

95. Defendants Hercules, Manor Care, Occidental, Portfolio One, Public Service, Tenneco, and one or more of the ABC Corporations, as the generators, or the successors to the generators, of hazardous substances, certain of which were discharged at the FLR Property, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the FLR Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

96. 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).

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the FLR Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use

and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the FLR Property;

- c. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs that the Plaintiffs have incurred for the Site;
- d. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur for the Site;
- e. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the FLR Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the FLR Property;
- f. Award the Plaintiffs their costs and fees in this action;
and

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

SECOND COUNT

Sanitary Landfill Act

98. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 97 above as though fully set forth in its entirety herein.

99. Defendants Atkin, FLD Co., FLD, Inc., Kotzen, Kurda, and one or more of the ABC Corporations, are, or are the successors to, persons who "owned" the sanitary landfill facility located at the FLR Property within the meaning of N.J.S.A. 13:1E-102b.

100. Defendants Estate of Amadei, Ehrlich, FLR, Inc., JEMS, Winn, and one or more of the ABC Corporations, are, or are the successors to, persons who "operated" the sanitary landfill facility located at the FLR Property within the meaning of N.J.S.A. 13:1E-102b.

101. Plaintiff DEP has incurred, and will continue to incur, costs resulting from the operation and/or closure of the sanitary landfill facility located at the FLR Property.

102. Plaintiff DEP has certified, or may certify, for payment, valid claims made against the Sanitary Landfill Facility Contingency Fund concerning the sanitary landfill facility at the FLR Property.

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

104. As the owners of the sanitary landfill facility at the FLR Property, defendants Atkin, FLD Co., FLD, Inc., Kotzen, Kurda, and one or more of the ABC Corporations, are, or are the successors to, persons liable, jointly and severally, 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 and/or closure of the sanitary landfill facility at the FLR Property, including claims paid, or to be paid, from the Sanitary Landfill Facility Contingency Fund, and including lost use 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 and/or closure of the sanitary landfill facility at the FLR Property. N.J.S.A. 13:1E-103.

105. As the operators of the sanitary landfill facility at the FLR Property, defendants Estate of Amadei, Ehrlich, FLR, Inc., JEMS, Winn, and one or more of the ABC Corporations, are, or are the successors to, persons liable, jointly and severally, 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 and/or closure of the sanitary landfill facility at the FLR Property, including claims paid from the Sanitary Landfill Facility Contingency Fund, and including lost use and reasonable assessment costs, that the 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 and/or closure of the sanitary landfill facility at the FLR Property. N.J.S.A. 13:1E-103.

106. 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 use 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 FLR Property; and for any other actual damages. N.J.S.A. 13:1E-9d.(4).

107. Pursuant to N.J.S.A. 13:1E-9a. and N.J.S.A. 13:1E-9f., plaintiff DEP may bring a summary action in the Superior Court

against anyone who violates a provision of the Sanitary Landfill Act for a civil penalty.

WHEREFORE, plaintiff DEP prays that this Court:

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

108. Plaintiffs repeat each allegation of Paragraphs 1 through 107 above as though fully set forth in its entirety herein.

109. Ground water and surface water are natural resources of the State held in trust by the State.

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

111. The groundwater and surface water 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.

112. As long as the ground water and surface water remain contaminated due to the Defendants' conduct, the public nuisance continues.

113. Until the ground water and surface water 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 surface water.

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

FOURTH COUNT

Trespass

114. Plaintiffs repeat each allegation of Paragraphs 1 through 113 above as though fully set forth in its entirety herein.

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

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

117. As long as the ground water and surface water remain contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

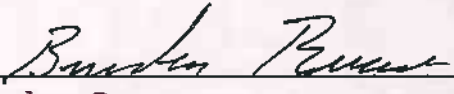
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- 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

as a result of the discharge of hazardous substances at the FLR Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the FLR Property;
- c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the FLR Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the FLR Property;
- d. Award the Plaintiffs their costs and fees in this action;
and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By: 
Brendan Ruane
Deputy Attorney General

Dated: 12/29/04

DESIGNATION OF TRIAL COUNSEL


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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. 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 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).

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

By: 
Brendan Ruane
Deputy Attorney General

Dated: 12/29/04

CIVIL CASE INFORMATION STATEMENT

(CIS)

Use for initial pleadings (not motions) under R. 4:5-1.

Pleadings will be rejected for filing under R. 1:5-6(c) if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHK/CK NO.:

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME: Brendan Ruane

TELEPHONE NO.:
(609) 984-5016

COUNTY OF VENUE: Burlington

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL

DOCKET NUMBER (When Available):

OFFICE ADDRESS:
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

DOCUMENT TYPE: Complaint

JURY DEMAND: YES X NO

NAME OF PARTY (e.g., John Doe, Plaintiff):
New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, plaintiffs

CAPTION: New Jersey Department of Environmental Protection, et al. v. Aaxon Industrial, Inc., et al.

CASE TYPE NUMBER
(See reverse side for listing): 156

IS THIS A PROFESSIONAL MALPRACTICE CASE? YES X NO

If You Have Checked "Yes," See N.J.S.A. 2A:53A-27 and Applicable Case Law Regarding Your Obligation to File an Affidavit of Merit.

RELATED CASES PENDING? X YES NO

IF YES, LIST DOCKET NUMBERS: A-6537-03 T3

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of the same transaction or occurrence)?

 X YES NO

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN

 NONE X UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO THE PARTIES HAVE IF YES, IS THAT EMPLOYER-EMPLOYEE FRIEND-NEIGHBOR X OTHER (explain) Statutory & Regulatory
A CURRENT, PAST OR RELATIONSHIP:

 X YES NO FAMILIAL BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? X YES NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION.

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?

 YES X NO

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED? YES X NO

IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE:

Brendan Ruane

BURLINGTON COUNTY
SUPERIOR COURT
49 RANOCAS ROAD
MT HOLLY NJ 08060

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (609) 518-2815
COURT HOURS

DATE: JANUARY 04, 2005
RE: NJ STATE DEPT OF ENVIRONMENTAL PROTECTION VS AAXON
DOCKET: BUR L -000015 05

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON CRAIG L. WELLERSON

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (609) 518-2815.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: BRENDAN RUANNE
ATTORNEY GENERAL DEPT ENV
RJ HUGHES JUSTICE COMPLEX
PO BOX 093
TRENTON NJ 08625-0093

JUDOM7