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

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

Plaintiffs,

v.

ISP ENVIRONMENTAL SERVICES,
INC. and G-I HOLDINGS, INC.,

Defendants.

Civil Action

COMPLAINT

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

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

STATEMENT OF THE CASE

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

2. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the ISP Environmental Services site. Further, the Plaintiffs seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the ISP Environmental Services site, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

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

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

5. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10A-3. In this capacity, plaintiff Commissioner is vested by law with various powers and authority, including those conferred by plaintiff DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19.

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

7. Defendant ISP Environmental Services, Inc. ("ISP") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1361 Alps Road, Wayne, New Jersey 07470.

8. Defendant ISP was previously known as ISP 9 Corporation before changing its name to ISP Environmental Services, Inc., the defendant herein, in June 1991.

9. Defendant G-I Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1361 Alps Road, Wayne, New Jersey 07470.

10. Prior to 1968, GAF Corporation was known as General Aniline and Film Corporation ("General Aniline").

11. In April 1989, GAF Corporation changed its name to Dorset, Inc. ("Dorset"), before again changing its name to GAF Chemical Corporation ("GAF Chemical") in October 1989.

12. On or about October 31, 2000, GAF Chemical merged with defendant G-I Holdings, with defendant G-I Holdings being the surviving entity.

13. Defendant G-I Holdings is the successor-in-interest to General Aniline, GAF Corporation, Dorset and GAF Chemical.

NATURAL RESOURCES

14. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources

owned, managed, held in trust or otherwise controlled by the State.
N.J.S.A. 58:10-23.11b.

15. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

16. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of pollutants and hazardous substances at the ISP Environmental Services site.

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 pollutants and hazardous substances.

Surface Water

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

24. Surface water, like ground water, is a unique resource that is used for other commercial and industrial purposes, such as cooling water and electrical generation, commercial fishing, and transportation of goods and services.

25. The tourist and recreation industries, including boating, fishing and swimming, which are vital to the economy of this State, depend on clean waters and beaches.

Wetlands

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

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

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

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

Sediments

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

31. Sediments are a critical example of New Jersey's ecological resources.

32. These sediments can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments, particularly in New Jersey's coastal areas, are part of the State's ecosystems that provide a living substrate for submerged and emergent flora, and support diverse invertebrate species, wading birds, and fish and shellfish populations.

Biota

33. New Jersey's ecosystems—forests, lakes, rivers, wetlands, agricultural lands, coastal estuaries, pinelands, and grasslands—are among the most complex and diverse in the nation.

34. New Jersey is home to 2,117 plant species, including entire communities of rare flora that can be found nowhere else in the world. Approximately 15 percent of the native plant species in New Jersey, however, are now at risk at of extinction, with a total of 331 vascular plant species listed as endangered and an additional 32 that have already been extirpated.

35. New Jersey wildlife includes close to 900 species, including 90 mammal species, 79 reptile and amphibian species, more than 400 fish species, and approximately 325 species of birds. Approximately 1.5 million shorebirds and as many as 80,000 raptors make migratory stopovers here each year. At least 17 percent of New Jersey's native vertebrate species and 24 percent of its native invertebrate species are at risk of extinction. Several threatened and endangered raptor species have difficulty breeding because of the bioaccumulaion of toxic compounds.

36. New Jersey's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for all cultural and economic activity in the state.

37. New Jersey's ecosystems, however, are vulnerable to pollution, degradation and destruction from the discharge of hazardous substances. Contamination from the discharge of hazardous substances and pollutants is one of the major causes of biodiversity loss.

38. Natural resource injuries to biota in New Jersey negatively impact not only the individual species directly involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future.

GENERAL ALLEGATIONS

39. The ISP Environmental Services site consists of approximately 143 acres of real property located at 4000 Grasselli Road, Linden, Union County, which property is also known and designated as Block 587, Lots 1 and 2.01, on the Tax Map of the City of Linden ("the ISP Property"), and all other areas where any hazardous substance or pollutant discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 000001667.

40. The ISP Property is located in an industrial area of Linden and is bordered to the west by the New Jersey Turnpike, to the north by Piles Creek, to the east by the Arthur Kill, and to the south and southeast by industrial properties.

41. Because of the size and complexity of the Arthur Kill and Piles Creek estuary, it provides multiple valuable ecological services to the region.

42. The area includes intertidal salt marsh and tidally influenced creeks. These habitats are some of the most productive in the world, providing support for a wide variety of invertebrates, fish, birds, and other biota.

43. Tidal creeks distribute sea water, nutrients and organic matter throughout the marsh as well as providing important routes in and out of the marsh for various estuarine and marine species.

44. The wetlands also receive and filter surface water runoff and provide significant organic matter and nutrients to the estuary.

45. In or about 1919, General Aniline acquired the ISP Property.

46. The United States seized the ISP Property as part of the war effort during World War II, eventually returning the ISP Property to General Aniline in 1965.

47. General Aniline continued to own the ISP Property until 1968 in its name, when title then passed to GAF Corporation, by which name General Aniline was then known.

48. In May 1991, defendant ISP 9 Corporation acquired the ISP Property from GAF Chemical, by which name GAF Corporation was then known.

49. As of the filing of this Complaint, defendant ISP, which until June 1991 was known as ISP 9 Corporation, was the owner of record of the ISP Property.

50. During the time that defendant G-I Holdings' predecessors-in-interest, including General Aniline, GAF Corporation and GAF Chemical, and defendant ISP, owned the ISP 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 hazardous

substances included volatile organic compounds ("VOCs"), semi-VOCs, pesticides, polychlorinated biphenyls ("PCBs") and metals.

51. From approximately 1919 through 1991, G-I Holdings' predecessors-in-interest, including General Aniline, GAF Corporation and GAF Chemical, manufactured chemical products at the ISP Property, which operations involved the storage, processing and handling of hazardous substances, certain of which were discharged there, which hazardous substances included VOCs, semi-VOCs, pesticides, PCBs and metals.

52. From approximately 1919 through 1991, defendant G-I Holdings' predecessors-in-interest, including General Aniline, GAF Corporation and GAF Chemical, also stored, processed and handled "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" to the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants included VOCs, semi-VOCs, pesticides, PCBs and metals.

53. In or about December 1988, GAF Corporation closed an industrial building at the ISP Property, which triggered GAF Corporation's obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14.

54. On June 6, 1989, plaintiff DEP entered into an Administrative Consent Order with GAF Corporation ("June 1989 ACO"), pursuant to which GAF Corporation agreed to investigate the nature

and extent of the contamination at the Site, and to remediate the contamination.

55. In early 1990, defendant GAF Chemical performed a remedial investigation of the Site in order to determine the nature and extent of the contamination at the Site.

56. Sampling results obtained during this remedial investigation revealed the presence of various hazardous substances and pollutants exceeding plaintiff DEP's cleanup criteria in the surface water, wetlands, soils, sediments, ground water and biota at the Site, which substances and pollutants included VOCs, semi-VOCs, pesticides, PCBs and metals.

57. Between 1991 and November 2000, ISP performed limited remedial activities at the Site.

58. Beginning in November 2000, defendant ISP intensified its remediation efforts by installing metal barriers to contain shallow groundwater flow, and capping a significant portion of the ISP Property, including at least 89 acres of wetlands to minimize human contact with the contamination.

59. The ground water in the shallow aquifer remains contaminated, and may have migrated downward to the fractured bedrock aquifer.

60. On August 4, 2005, plaintiff DEP issued a No Further Action Letter ("NFA") to defendant ISP pursuant to N.J.S.A. 58:10B-

13.1, informing defendant ISP that it need conduct no further remediation regarding soils.

61. In 2005, defendant ISP submitted a Baseline Ecological Evaluation ("BEE") report to plaintiff DEP pursuant to N.J.A.C. 7:26E-3.11(a), in which defendant ISP concluded that contaminants of ecological concern exist, environmentally sensitive natural resources (i.e., surface water, sediments and wetlands) exist, and potential contaminant pathways to environmentally sensitive natural resources exist, or that an impact to these resources was indicated based on visual observation.

62. The BEE findings necessitate the performance an Ecological Investigation and Risk Assessment ("ERA") pursuant to N.J.A.C. 7:26E-4.7(a) to characterize the extent of contamination and contaminant migration pathways within environmentally sensitive natural resources at the Site, which include sediments, surface water and wetlands, as well as the severity of ecological impacts of the contamination.

63. As of the filing of this complaint, defendant ISP had not performed the ERA.

64. Although defendants G-I Holdings, ISP and certain of their predecessors-in-interest have undertaken the remediation of the Site, the groundwater, surface water, sediments, wetlands and biota contamination continues.

FIRST COUNT

Spill Act

65. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 64 above as though fully set forth in its entirety herein.

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

67. 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).

68. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge of hazardous substances is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c. (1).

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

70. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the

Site, and, further, has approved, or may approve, other appropriations for the Site.

71. Plaintiffs DEP and Administrator 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 ISP Property.

72. 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.

73. Defendant G-I Holdings is, or is the successor-in-interest to, the dischargers of hazardous substances at the ISP Property, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that plaintiffs DEP and Administrator 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 ISP Property. N.J.S.A. 58:10-23.11g.c.(1).

74. Defendants ISP and G-I Holdings are, or are the successors-in-interest to, the owners of the ISP Property at the time hazardous substances were discharged there and, thus, 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 ISP Property. N.J.S.A. 58:10-23.11g.c.(1).

75. 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).

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs and damages,

including lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the ISP Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the ISP Property;
- c. Enter judgment against defendant ISP, compelling defendant ISP to perform any further cleanup of hazardous substances discharged at the ISP Property, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at the ISP Property to its pre-discharge condition, under plaintiff DEP's oversight;
- d. 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 and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the ISP Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- e. Award the plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

77. The Plaintiffs repeat each allegation of paragraph nos. 1 through 76 above as though fully set forth in its entirety herein.

78. Defendant G-I Holdings is a "person" within the meaning of N.J.S.A. 58:10A-31.

79. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d and p., it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit issued by plaintiff Commissioner pursuant to the Water Pollution Control Act, or pursuant to a valid National Pollutant Discharge Elimination System

permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§1251 to - 1387. N.J.S.A. 58:10A-6a.

80. The unauthorized discharge of pollutants is a violation of the Water Pollution Control Act for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.

81. Plaintiff DEP has incurred, or will incur, costs as a result of the discharge of pollutants at the ISP Property.

82. Plaintiff DEP also has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the ISP Property.

83. The costs and damages plaintiff DEP has incurred, and will incur, for the Site are recoverable within the meaning of N.J.S.A. 58:10A-10c.(2)-(4).

84. Defendant G-I Holdings is the successor-in-interest to parsons that discharged pollutants at the ISP Property, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and is liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or

destroyed as a result of the discharge of pollutants at the ISP Property. N.J.S.A. 58:10A-6a.

85. Pursuant to N.J.S.A. 58:10A-10c., plaintiff Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10c.(2); any reasonable cost incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c.(3); compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the ISP Property, N.J.S.A. 58:10A-10c.(4); and the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).

PRAYER FOR RELIEF

WHEREFORE, plaintiff Commissioner prays that this Court:

- a. Permanently enjoin defendant G-I Holdings by requiring defendant G-I Holdings to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at the ISP Property to its pre-discharge condition, under plaintiff DEP's oversight;
- b. Enter an order assessing defendant G-I Holdings, without regard to fault, for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter declaratory judgment against defendant G-I Holdings, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- d. Enter an order assessing defendant G-I Holdings, without regard to fault, for all reasonable costs incurred for

removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the ISP Property;

- e. Enter declaratory judgment against defendant G-I Holdings, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the ISP Property;
- f. Enter an order assessing defendant G-I Holdings, without regard to fault, for all compensatory damages and other actual damages incurred for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the ISP Property;
- g. Enter declaratory judgment against defendant G-I Holdings, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the ISP Property;
- h. Enter an order assessing defendant G-I Holdings, without regard to fault, for the actual amount of any economic benefits it has accrued, including any savings realized

from avoided capital or noncapital costs, the return it has earned on the amount of avoided costs, any benefits it has enjoyed as a result of a competitive market advantage, or any other benefit it has received as a result of having violated the Water Pollution Control Act;

- i. Enter declaratory judgment against defendant G-I Holdings, without regard to fault, assessing defendant G-I Holdings for the actual amount of any economic benefits that will accrue to it, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage it has enjoyed, or any other benefit that will accrue to it as a result of having violated the Water Pollution Control Act;
- j. Award plaintiff Commissioner her costs and fees in this action; and
- k. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

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

87. Ground water, surface water, sediments, wetlands and biota are natural resources of the State held in trust by the State for the benefit of the public.

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

89. The groundwater, surface water, sediments, wetlands and biota 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.

90. As long as the ground water, surface water, sediments, wetlands and biota remain contaminated due to the Defendants' conduct, and that of their predecessors-in-interest, the public nuisance continues.

91. Until the ground water, surface water, sediments, wetlands and biota 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, surface water, sediments, wetlands and biota.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this

Court:

- a. Order the Defendants to reimburse plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the ISP 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 DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the ISP Property;
- c. Enter judgment against defendant ISP, compelling defendant ISP to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the ISP Property, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of

- the discharge of pollutants at the ISP Property to its pre-discharge condition, under plaintiff DEP's oversight;
- d. 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 and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the ISP Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
 - e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
 - f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

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

93. Ground water, surface water, sediments, wetlands and biota are natural resources of the State held in trust by the State for the benefit of the public.

94. The Defendants are liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the ISP Property.

95. As long as the ground water, surface water, sediments, wetlands and biota remain contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the ISP Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the ISP Property;

- c. Enter judgment against defendant ISP, compelling defendant ISP to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the ISP Property, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at the ISP Property to its pre-discharge condition, under plaintiff DEP's oversight;
- d. 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 and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the ISP Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award the plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

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

By: Mark D. Oshinskie
Mark D. Oshinskie
Deputy Attorney General

Dated: 6/27/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark D. Oshinskie, 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: Mark D. Oshinskie
Mark D. Oshinskie
Deputy Attorney General

Dated: 6/27/07