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

Plaintiffs,

v.

GIVAUDAN FRAGRANCES CORPORATION;
"ABC CORPORATIONS" 1-10 (Names
Fictitious); and
"JOHN DOES" 1-10 (Names Fictitious),

Defendants.

RECEIVED & FILED
SUPERIOR COURT OF NEW JERSEY

JAN 27 2006

PASSAIC COUNTY

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - PASSAIC COUNTY
DOCKET NO. PAS-L-423-06

Civil Action

COMPLAINT

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 (“the Defendants”), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of discharge of hazardous substances at the Givaudan site located in the City of Clifton, Passaic County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Givaudan site. The Plaintiffs further 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 hazardous substances at the Givaudan site.

THE PARTIES

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

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect

this public trust and to seek compensation for any injury to the natural resources of the State.

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 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 Givaudan Fragrances Corporation ("Givaudan") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 300 Waterloo Valley Road, Mt. Olive, New Jersey 07828.

6. On May 30, 2000, Givaudan Roure Corporation ("Givaudan Roure") merged into defendant Givaudan, with the surviving entity being Givaudan Fragrances Corporation, the defendant herein.

7. Defendant Givaudan is the successor-in-interest to Givaudan Roure.

8. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are the dischargers of hazardous substances at the Givaudan site, or are in any way responsible for the hazardous substances discharged there, including corporate successors to, predecessors of, or entities otherwise related to, defendant Givaudan.

9. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are the dischargers of hazardous substances at the Givaudan Property, or are in any way responsible for the hazardous substances discharged there, including partners, officers, directors, and/or

responsible corporate officials of, or persons otherwise related to, defendant Givaudan and/or one or more of the ABC Corporation defendants

AFFECTED NATURAL RESOURCE

Ground Water

10. 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.

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

12. 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.

13. 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.

14. 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.

15. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

16. The Givaudan site consists of approximately 31 acres of real property located at 125 Delawanna Avenue, City of Clifton, Passaic County, this property being also known and designated as Block 73.03, Lot 2, on the Tax Map of the City of Clifton ("the Givaudan

Property”), and all other areas where any hazardous substance discharged there has become located (collectively, “the Givaudan Site”), which plaintiff DEP has designated as Site Remediation Program Interest No. 000577.

17. The Givaudan Property is located in a mixed-use industrial and residential area, approximately .33 miles northwest of the Passaic River.

18. There are numerous industrial wells located within a 4-mile radius of the Givaudan Property, eight of which are located within a 1-mile radius of the Givaudan Property.

19. The ground water system beneath the Givaudan Site consists of two aquifers: an overburden aquifer and a bedrock aquifer, with ground water in the overburden aquifer flowing both to the northeast, toward the Passaic River, and to the southwest, and ground water in the bedrock aquifer generally flowing to the southeast, and toward the Passaic River.

20. Defendant Givaudan’s predecessor, Givaudan Roure, purchased the bulk of the Givaudan Property in 1913, and acquired the remainder in 1926 and 1931, respectively.

21. During the time Givaudan Roure owned the Givaudan 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 benzene, chlorobenzene, ethylbenzene, nitrobenzene, toluene, 1,2-dichloroethene, 1,2-dichloroethane, 1,1-dichloroethene, trichloroethene (“TCE”), 2,3,7,8-tetrachlorodibenzo-p-dioxin (“TCDD”) and vinyl chloride (“VC”).

22. Beginning in 1913 and ending in 1998, Givaudan Roure manufactured a variety of flavors, fragrances and specialty chemicals, including pharmaceutical intermediates and pesticides, at the Givaudan Property.

23. Givaudan Roure continually constructed, demolished and renovated the plant facilities, including drilling its first water supply well in 1917, at the Givaudan Property, and over the next 30 years, drilling six additional wells there.

24. From approximately 1950 to 1987, Givaudan Roure continuously extracted ground water from the on-site wells at the average rate of one million gallons per week.

25. Givaudan Roure engaged in chemical manufacturing activities at the Givaudan Property, which activities involved the generation, storage, handling and disposal of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included benzene, chlorobenzene, ethylbenzene, nitrobenzene, toluene, 1,2-dichloroethene, 1,2-dichloroethane, 1,1-dichloroethene, TCE, TCDD and VC.

26. In March 1987, plaintiff DEP and Givaudan Roure entered into an Administrative Consent Order ("ACO"), pursuant to which Givaudan Roure was obligated to delineate the nature and extent of ground water contamination at the Givaudan Site.

27. In June 1987, plaintiff DEP issued Givaudan Roure a Notice of Civil Administrative Penalty Assessment for the improper analysis and storage of hazardous wastes at the Givaudan Property.

28. In October 1988, plaintiff DEP issued a Notice of Civil Administrative Penalty Assessment to Givaudan Roure for exceeding the pH limits of its New Jersey Pollutant Discharge Elimination System ("NJPDES") permit.

29. In January 1989, plaintiff DEP issued Givaudan Roure a second Notice of Civil Administrative Penalty Assessment for the improper storage and labeling of hazardous waste containers at the Givaudan Property.

30. In July 1990, Givaudan Roure submitted an Underground Storage Tank ("UST") Closure Plan to plaintiff DEP for the removal of 46 USTs and 15 above-ground storage tanks at the Givaudan Property.

31. In November 1990, plaintiff DEP issued Givaudan Roure a Notice of Civil Administrative Penalty Assessment for again exceeding its NJPDES permit limits for pH and petroleum hydrocarbons ("PHCs").

32. In April 1997, Givaudan Roure announced the closure of the manufacturing facility at the Givaudan Property, which activities Givaudan Roure discontinued in July 1998.

33. Givaudan Roure's decision to cease manufacturing activities at the Givaudan Property triggered its obligations under the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14. Additionally, plaintiff DEP required Givaudan Roure to continue complying with the March 1987 ACO.

34. Givaudan Roure subsequently entered into a Remediation Agreement, effective January 1, 1998, with plaintiff DEP.

35. From August 1998 through December 1999, Givaudan Roure conducted numerous remedial activities at the Givaudan Site, which activities included the removal of the chemical sewer system, a stormwater retention pond, manholes, catch basins, cesspools, USTs and septic tanks.

36. Givaudan Roure has also sampled the soils and ground water at the Site, the results of which have revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and ground water, which substances include various volatile organic compounds ("VOCs"), semivolatile organic compounds ("SVOCs"), and inorganic compounds.

37. On December 15, 2000, plaintiff DEP approved a Remedial Action Selection Report for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action, and how plaintiff DEP determined the proposed remedial action is the most appropriate alternative for the Givaudan Site.

38. The remedial action plaintiff DEP has approved for the Givaudan Site primarily provides for biosparging, a remedy for enhanced bioremediation using air delivered through horizontal wells.

39. Defendant Givaudan completed the installation of the biosparging wells in January 2002, and initiated the biosparging process in May 2003.

40. Defendant Givaudan's most recent analytical results from November 2004, indicate the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the ground water at the Givaudan Site, which substances include 1,2-dichloroethane, benzene, chlorobenzene, cis-1,2-dichloroethene, tetrachloroethene, TCE and VC.

41. Upon completing the biosparging component of the remediation plaintiff DEP has approved for the Givaudan Site, defendant Givaudan is expected to establish a groundwater Classification Exception Area, which will exclude the designated groundwater from use as a potable water source.

42. Although defendant Givaudan and its predecessor, Givaudan Roure, have initiated the remediation of the Givaudan Site, the ground water and soils contamination continues.

FIRST COUNT

Spill Act

43. Plaintiffs repeat each allegation of Paragraphs 1 through 42 above as though fully set forth in its entirety herein.

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

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

46. 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 Givaudan Site.

47. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Givaudan Property.

48. The costs and damages the Plaintiffs have incurred, and will incur, for the Givaudan Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

49. Defendants Givaudan, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, are dischargers, and/or the successors-in-interest to the dischargers, of hazardous substances at the Givaudan Property, 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 by the discharge of hazardous substances at the Givaudan Property. N.J.S.A. 58:10-23.11g.c.(1).

50. Defendant Givaudan, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, as the owners, or as a successors-in-interest to the owners, of the Givaudan Property at the time hazardous substances were discharged there, also are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost

value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Givaudan Property. N.J.S.A. 58:10-23.11g.c.(1).

51. 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); for 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).

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

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

- c. Enter judgment against defendant Givaudan, compelling defendant Givaudan to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Givaudan Property;
- d. 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 Givaudan 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 Givaudan Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

53. Plaintiffs repeat each allegation of Paragraphs 1 through 52 above as though fully set forth in its entirety herein.

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

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

56. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

57. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

58. Until the ground water 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 ground 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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Givaudan Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Givaudan Property;
- c. Enter judgment against defendant Givaudan, compelling Defendant Givaudan to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Givaudan Property;
- d. 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 Givaudan 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 Givaudan Property;
- e. Award the Plaintiffs their costs and fees in this action; and
 - f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

59. Plaintiffs repeat each allegation of Paragraphs 1 through 58 above as though fully set forth in its entirety herein.

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

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

62. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

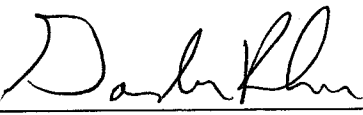
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

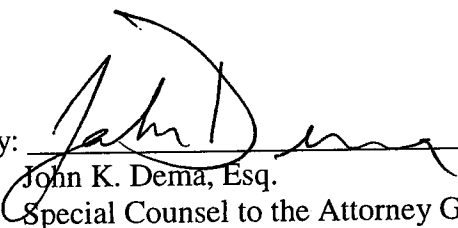
- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Givaudan Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Givaudan Property;
- c. Enter judgment against defendant Givaudan, compelling defendant Givaudan to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Givaudan Property;
- d. 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 Givaudan 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 Givaudan Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

RICHARDSON, PATRICK, WESTBROCK
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Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.
Attorneys for Plaintiffs

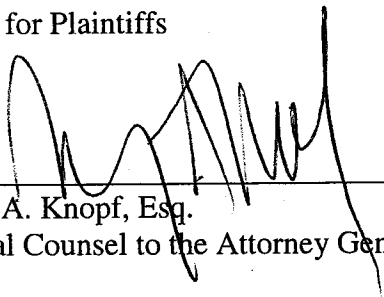
By: 
Gordon C. Rhea, Esq.
Special Counsel to the Attorney General

By: 
John K. Dema, Esq.
Special Counsel to the Attorney General

Dated:

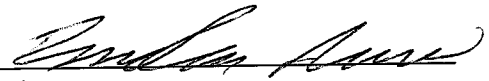
Dated:

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Special Counsel to the Attorney General

Dated: January 18, 2006

NANCY KAPLEN
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Attorney for Plaintiffs

By: 
Brendan Ruane
Deputy Attorney General

Dated: January 18, 2006

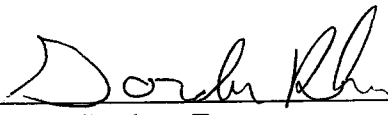
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, Barry A. Knopf, Leonard Kaufmann, and Scott E. Kauff, Special Counsel to the Attorney General, are 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 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).

RICHARDSON, PATRICK, WESTBROCK
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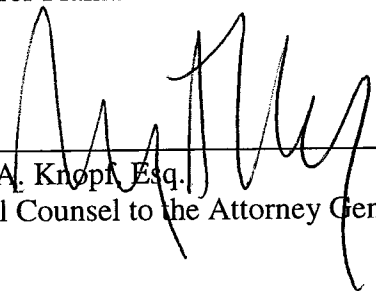
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Dated: 1/18/06