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**FILED**  
**TEAM #1**

**OCT 03 2005**

SUPERIOR COURT OF NJ  
COUNTY OF HUDSON  
CIVIL DIVISION #7

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

*Hud-L-4971-05*

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

Plaintiffs,

v.

PECHTER'S BAKING GROUP LLC;  
THE HARRISON GROUP, INC.;  
HARRISON DELIVERY COMPANY;  
HARRISON REALTY GROUP LLC;  
AMERIFOODS COMPANIES, INC.;  
HARDEL REALTY COMPANY;  
HARBAK REALTY COMPANY;  
JOSEPH J. SUPOR;  
"ABC CORPORATIONS" 1-10 (Names  
Fictitious), and  
"JOHN DOES" 1-10 (Names Fictitious),

Defendants.

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. 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 the discharge of hazardous substances at the Harrison Bakery site located in the Town of Harrison, Hudson 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 Harrison Bakery 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 at the Harrison Bakery 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 damage 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 Amerifoods Companies, Inc. (“Amerifoods”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 2060 Old Philadelphia Pike, Lancaster, Pennsylvania 17602.

6. Defendant Pechter’s Baking Group, L.L.C. (“Pechter’s”) is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 840 Jersey Street, Harrison, New Jersey 07029.

7. Defendant The Harrison Group, Inc. d/b/a Harrison Baking Company (“Harrison Baking Company”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 840 Jersey Street, Harrison, New Jersey 07029.

8. Defendant Hardel Realty Company (“Hardel”) is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 840 Jersey Street, Harrison, New Jersey 07029.

9. Defendant Amerifoods is the parent company of defendants Pechter’s, Hardel, and Harrison Baking Company and controls, or has controlled, defendant Pechter’s, defendant Hardel’s, and/or defendant Harrison Baking Company’s day-to-day operations.

10. Defendant Harrison Delivery Company (“Harrison Delivery”) is a corporation organized and existing under the laws of the State of New Jersey, with its last known principal place of business located at 840 Jersey Street, Harrison, New Jersey 07029.

11. Defendant Harrison Realty Group L.L.C. (“Harrison Realty”) is a limited liability company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 840 Jersey Street, Harrison New Jersey 07029.

12. Defendant Harbak Realty Company (“Harbak”) is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business located at 840 Jersey Street, Harrison, New Jersey 07029.

13. Defendant Joseph J. Supor (“Supor”) is an individual whose dwelling or usual place of abode is 154 Hunter Street, Lodi, New Jersey 07644-3137.

14. Defendants “ABC Corporations” 1-10, these names being fictitious, are entities whose identities cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, or otherwise related to, defendants Amerifoods, Pechter’s, Hardel, Harrison Baking Company, Harrison Delivery, Harrison Realty, and Harbak.

15. 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 partners, officers, directors, responsible corporate officials of, or are otherwise related to, defendants Amerifoods, Pechter’s, Hardel, Harrison Baking Company, Harrison Delivery, Harrison Realty, Harbak and Supor.

## AFFECTED NATURAL RESOURCE

### Ground Water

16. 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.

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

18. Ground water provides base flow to streams and other surface water bodies and influences surface water quality, wetland ecology, and the health of aquatic ecosystems.

19. 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.

20. Ground water is also used for commercial, industrial, and agricultural purposes.

21. There are more than 6,000 sites in New Jersey that have ground water confirmed to have been contaminated with hazardous substances.

## GENERAL ALLEGATIONS

22. The Harrison Bakery site consists of several parcels of real property located at or near 840 Jersey Street, in the Town of Harrison, Hudson County, which properties include those located at or near 847 Ann Street, and 101-107 and 11-15 Manor Avenue. These properties are also known and designated as Block 195, Lots 1 through 4 ("Block 195 Parcels"), Block 196, Lots 28, 29, and 30 ("Block 196 Parcels"), Block 197, Lots 9 through 21 ("Block 197 Parcels"), and Block 198, Lots 1 through 24 ("Block 198 Parcels"), on the Tax Map of the Town of Harrison (collectively, "the Property"), and all other areas where any hazardous substance

discharged there has come to be located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 012050.

23. Defendant Harrison Realty has owned portions of the Block 195, 196, 198 Parcels for various periods of time between May 27, 1999 and the present, and continues to be the owner of record of that portion of the Property otherwise known and designated as Block 198, Lots 1, 2, 3, 4, 5, 6A, 7A, 8A, 9 through 13A, 15A, 16A, and 17 through 24, on the Tax Map of the Town of Harrison.

24. From on or about October 1, 1960 through May 27, 1999, defendant Hardel owned portions of the Block 195, 197 and 198 Parcels.

25. Defendant Harbak owned portions of the Block 195, 196, 197, and 198 Parcels at various times between October 3, 1947 and May 27, 1999.

26. Defendant Supor has owned portions of the Block 197 Parcels since June 15, 1998, and continues to be the owner of record of those parcels otherwise known and designated as Block 197, Lots 9-20, on the Tax Map of the Town of Harrison.

27. During the time that defendants Hardel, Harbak, Supor, Harrison Realty, and/or one or more of the ABC Corporation and/or John Doe defendants, have owned their respective portions of the 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. 58:10-23.11f.b.(2), which substances included benzene, dichloroethane, dichloroethene, ethyl benzene, methylene chloride, methyl tertiary butyl ether ("MTBE"), tertiary butyl alcohol ("TBA"), toluene, xylene, chloromethane, trichloroethene ("TCE"), tetrachloroethene ("PCE"), vinyl chloride, lead, 2-butanone, acetone, bromodichloromethane, 1,2,3-trichlorobenzene, dichlorobenzene, chlorobenzene, naphthalene, chloroform, pentane, and petroleum hydrocarbons.

28. From the 1930s through the present, defendants Amerifoods, Pechter's, Harrison Baking Company, and/or one of the ABC Corporation and/or John Doe defendants, have operated a large scale commercial baking facility on the Block 198 Parcels, 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, dichloroethane, dichloroethene, ethyl benzene, methylene chloride, MTBE, TBA, toluene, xylene, chloromethane, TCE, PCE, vinyl chloride, lead, 2-butanone, acetone, bromodichloromethane, 1,2,3-trichlorobenzene, dichlorobenzene, chlorobenzene, naphthalene, chloroform, pentane, and petroleum hydrocarbons.

29. From the 1950s through 1992, Harrison Delivery, a dissolved New Jersey corporation, operated a fleet of more than 100 delivery trucks and a truck repair and maintenance garage and underground gasoline storage tanks on the Block 197 Parcels.

30. Harrison Delivery's operations 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, dichloroethane, dichloroethene, ethyl benzene, methylene chloride, MTBE, TBA, toluene, xylene, chloromethane, TCE, PCE, vinyl chloride, lead, 2-butanone, acetone, bromodichloromethane, 1,2,3-trichlorobenzene, dichlorobenzene, chlorobenzene, naphthalene, chloroform, pentane, and petroleum hydrocarbons.

31. In 1981, the Harrison Fire Department initiated an investigation after a water supply well exploded during its installation at the Harrison Delivery facility on the Block 197 Parcels.

32. By letter dated June 2, 1981, plaintiff DEP requested that certain defendants test all underground storage tanks on the Block 197 Parcels, and install a monitoring well to test the ground water for contamination.

33. In response, certain defendants initiated a lengthy investigation into the petroleum contamination at and from the Lot 197 Parcels, which included the installation of three monitoring wells and a twelve-inch recovery well, during which, in 1981, 57 inches of free petroleum product were observed in one of the monitoring wells.

34. In 1993, plaintiff DEP notified defendant Harrison Baking Company of its potential responsibility for the hazardous substances discharged at the Block 197 Parcels, and invited defendant Harrison Baking Company to execute a memorandum of agreement with plaintiff DEP, pursuant to which defendant Harrison Baking Company would agree to investigate and remediate the Site.

35. In 1994, defendant Harrison Baking Company, on behalf of the then dissolved Harrison Delivery, submitted the results of its remedial investigation of the Block 197 Parcels completed to date, which showed soil and ground water contamination remains at the Site.

36. On October 19, 1994, plaintiff DEP informed defendant Harrison Baking Company of deficiencies with the remedial investigation of the Block 197 Parcels, and ordered defendant Harrison Baking Company to remedy the deficiencies and to submit a remedial action workplan within 90 days.

37. Defendant Harrison Baking Company did not remedy the deficiencies with the remedial investigation of, or submit the remedial action workplan for, the Block 197 Parcels as plaintiff DEP ordered.



38. On July 16, 1997, Harrison Baking Company submitted underground storage tank closure plans for tanks at the Harrison Baking Company facility on the Block 198 Parcels to plaintiff DEP, amended versions of which defendant Harrison Baking Company submitted to plaintiff DEP on October 14, 1997.

39. On November 11, 1997, defendant Amerifoods, through its consultant, Industrial Environmental Contracting, Inc. ("Industrial Environmental"), notified plaintiff DEP that it would be undertaking the remediation of the Harrison Delivery and Harrison Baking Company facilities on the Block 197 and Block 198 Parcels.

40. On October 28, 1998, defendant Amerifoods submitted a revised remedial investigation workplan for the Block 197 Parcels to plaintiff DEP, which plaintiff DEP conditionally approved on December 12, 1998.

41. In October 2000, defendants Harrison Baking Company and Pechter's submitted a Preliminary Assessment and Site Investigation Report pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, to plaintiff DEP, in which they summarized their investigation into the nature and extent of chlorinated volatile organic compound contamination in the catch basins, drainage troughs, hydraulic lifts, and underground storage tanks at the Site.

42. Sampling results from defendants Harrison Baking Company and Pechter's site investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and soils at the Site, which substances included benzene, dichloroethane, ethyl benzene, methylene chloride, MTBE, TBA, toluene, total xylenes, chloromethane, TCE, PCE, vinyl chloride, lead, 2-buteonine, acetone, bromodichloromethane, petroleum hydrocarbons, and chloroform.

43. On March 5, 2003, defendant Pechter's submitted a remedial action workplan to plaintiff DEP, in which defendant Pechter's described its plan to remediate the Site, which workplan plaintiff DEP conditionally approved on October 3, 2003.

44. The remedial action plaintiff DEP has approved for the Site primarily provides for remediation of contaminated soils through the use of soil vapor extraction/air sparging systems ("SVE/AS systems") with monitored natural attenuation, supplemented by magnesium peroxide, addressing groundwater contamination beyond the SVE/AS systems' zone of influence.

45. Plaintiff DEP has proposed a Classification Exception Area ("CEA") covering approximately four city blocks including the Property and the properties in the immediate vicinity, which would exclude the designated ground water for use as Class II-A potable water.

46. Plaintiff DEP has also proposed a Well Restriction Area for the Site, which would prohibit the installation and use of potable wells at and in the vicinity of the Property, for an indeterminate number of years to a depth of 150 feet.

47. Although defendant Pechter's, and others, have initiated the remediation of the Site, the groundwater and soils contamination continues.

#### FIRST COUNT

##### Spill Act

48. Plaintiffs repeat each allegation of Paragraphs 1 through 47 above as though fully set forth in its entirety herein.

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

50. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the Site.

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

52. 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 Property.

53. 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.

54. Defendants Amerifoods, Pechter's, Harrison Baking Company, Harrison Delivery, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, as dischargers, or successors-in-interest to or principals of the dischargers, of hazardous substances at the Property, 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 Site. N.J.S.A. 58:10-23.11g.c(1).

55. Defendants Amerifoods, Harrison Realty, Hardel, Harbak, Supor, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, as the owners, or successors-in-interest to, principals of, or persons otherwise related to the owners, of some or all of the Property at the time hazardous substances were discharged there, also 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 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 Site. N.J.S.A. 58:10-23.11g.c.(1).

56. 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).

57. 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 by the discharge of hazardous substances at the 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 by the discharge of hazardous substances at the Property;

c. 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 Site, 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 by the discharge of hazardous substances at the Property;

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

SECOND COUNT

Public Nuisance

58. Plaintiffs repeat each allegation of Paragraphs 1 through 57 above as though fully set forth in its entirety herein.

59. Ground water is a natural resource of the State held in trust by the State.

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

61. The contamination of ground water 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.

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

63. 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 lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Property, with applicable interest;

b. Enter declaratory judgment against the Defendants 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 by the discharge of hazardous substances at the 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 Site, 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 by the discharge of hazardous substances at the Property;

d. Award the Plaintiffs their costs and fees in this action; and

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

### THIRD COUNT

#### Trespass

64. Plaintiffs repeat each allegation of Paragraphs 1 through 63 above as though fully set forth in its entirety herein.

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

66. The Defendants are liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Property by defendants Pechter's, Amerifoods,

Harrison Baking Company, Harrison Delivery, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants.

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

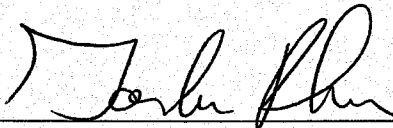
PRAYER FOR RELIEF

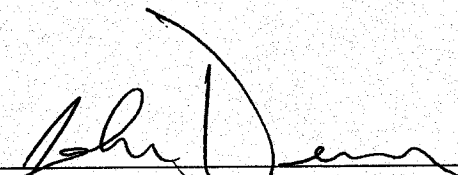
**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharge of hazardous substances at the Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants 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 by the discharge of hazardous substances at the 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 Site, 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 by the discharge of hazardous substances at the 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.

RICHARDSON, PATRICK, WESTBROOK  
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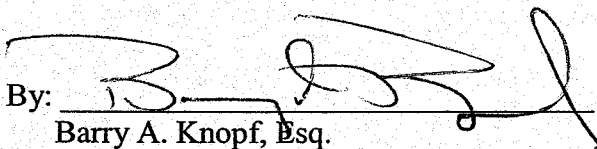
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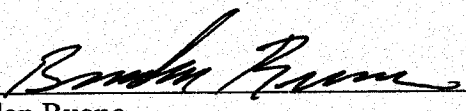
Dated:

Dated:

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PETER C. HARVEY  
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Attorney for Plaintiffs

By:   
Barry A. Knopf, Esq.  
Special Counsel to the Attorney General

By:   
Brendan Ruane  
Deputy Attorney General

Dated:

Dated: 9-29-05

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, Barry A. Knopf, 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

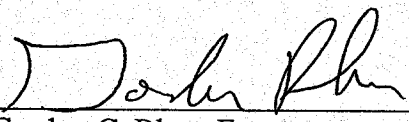
Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or

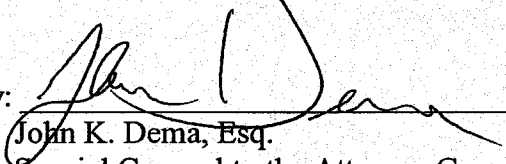


who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party or new issue, including claims to recover other cleanup and removal costs, later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, L.L.C.  
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By:   
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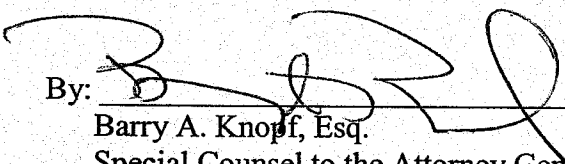
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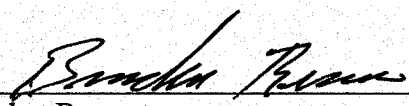
Dated:

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COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP  
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By:   
Brendan Ruane  
Deputy Attorney General

Dated:

Dated: 9/29/05