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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SOMERSET COUNTY  
DOCKET NO. SM-L-1096-06

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| NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,                                | : |                     |
|  | : | <u>Civil Action</u> |
|  | : |                     |
|  | : | COMPLAINT           |
| Plaintiffs,  | : |                     |
| v.   | : |                     |
| HIGGINS DISPOSAL SERVICE, INC.; LISBETH HIGGINS, Individually; COVINO INDUSTRIAL DISPOSAL SERVICE, INC.; MIDCO WASTE SYSTEMS; and FMC CORPORATION, | : |                     |
| Defendants.  | : |                     |

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Plaintiffs New Jersey Department of Environmental Protection ("DEP") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the Plaintiffs"), having their principal office 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, 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 Higgins Disposal Superfund site in Franklin Township, Somerset 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 Higgins Disposal 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 at the Higgins Disposal 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 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 injuries to the natural resources of this 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 Higgins Disposal Service, Inc. ("Higgins Disposal Service") was, at all times relevant to this Complaint, a corporation organized under the laws of the State of New Jersey, with its last known principal place of business located at 121 Laurel Avenue, Franklin Township, New Jersey.

6. Defendant Lisbeth Higgins is an individual whose dwelling or usual place of abode is 121 Laurel Avenue, Franklin Township, New Jersey. Defendant Lisbeth Higgins is the widow of Clifford Higgins, Sr.

7. Defendant Covino Industrial Disposal Service, Inc. ("Covino Industrial"), is an inactive corporation organized under the laws of the State of New Jersey, with a last known principal place of business located at 521 Cozzens Lane, North Brunswick, New

Jersey.

8. Defendant Midco Waste Systems ("Midco"), formerly known as Middlesex Carting Corporation ("Middlesex Carting") (collectively, "Midco"), is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 5 Industrial Drive, New Brunswick, New Jersey.

9. In or about 1985, defendant Midco, then known as Middlesex Carting, and Covino Industrial acquired the assets of defendant Higgins Disposal and continued to engage in the same, or substantially the same, business activities as defendant Higgins Disposal until 1987, when Higgins Disposal was disbanded.

10. Defendants Midco and Covino Industrial are successors-in-interest to defendant Higgins Disposal Service.

11. FMC Corporation ("FMC") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1735 Market Street, Philadelphia, Pennsylvania.

#### AFFECTED NATURAL RESOURCE

##### Groundwater

12. 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.

13. Not only does ground water serve as a source of potable

water, it also serves as an integral part of the State's ecosystem.

14. 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.

15. 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.

16. 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.

17. There are more than 6,000 contaminated sites in New Jersey confirmed as having groundwater contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

18. The Higgins Disposal site consists of approximately 38 acres of real property located on Laurel Avenue (Kingston-Rocky Hill Road), Franklin Township, Somerset County, New Jersey, this property being also known and designated as Block 5.02, Lots 171 and 171Q, on the Tax Map of Franklin Township ("the Higgins Disposal 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. 010657.

19. From 1967 through November 1997, defendant Lisbeth Higgins owned the Higgins Disposal Property with her husband, Clifford Higgins, Sr.

20. Clifford Higgins, Sr. died in November 1997, leaving defendant Lisbeth Higgins as the sole owner of the Higgins Disposal Property, which she continues to own as of the filing of this Complaint.

21. A residence, a stable and other buildings associated with boarding and riding horses, outdoor riding and grazing areas, and a garage used for the repair of trucks and other commercial vehicles are presently located at the Higgins Disposal Property.

22. During the time Clifford Higgins, Sr. and defendant Lisbeth Higgins owned the Higgins Disposal 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 chloroform, chlorobenzene, trichloroethene ("TCE"), and tetrachloroethylene ("PCE"), and various heavy metals.

23. From approximately the 1950's until 1985, Clifford Higgins, Sr., operated defendant Higgins Disposal Service, Inc., a waste hauling business, on the Higgins Disposal Property and, at some point during this time, began operating a non-permitted landfill and a waste transfer station on the premises.

24. At various times between 1967 and 1985, chemical and other industrial wastes from defendant Higgins Disposal Service's customers, including defendant FMC, were disposed of at the Higgins Disposal Property, which wastes included "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.

25. In 1982, plaintiff DEP first investigated the Higgins Disposal Property in response to a report that an unpermitted transfer station and landfill were being operated there.

26. As a result of the 1982 investigation, plaintiff DEP issued an administrative order to defendant Higgins Disposal Service, ordering defendant Higgins Disposal Service to cease the unpermitted activities and to remove the wastes already on the Higgins Disposal Property.

27. In August 1985, plaintiff DEP received complaints from residents in the vicinity of the Higgins Disposal Property about medicinal-tasting tap water.

28. Plaintiff DEP subsequently sampled potable wells in the vicinity of the Higgins Disposal Property, the results of which revealed the presence of various volatile organic compounds in the water from certain of the wells, which substances including chloroform, TCE, 1,1,1 trichloroethane, and tetrachlorotethene.

29. In September 1986, DEP instituted an Interim Well Restriction Area ("IWRA") restricting the installation of new wells

for potable use in the vicinity of the Higgins Disposal Property, including the residences on Laurel Avenue.

30. From 1986 through 1990, plaintiff DEP and the Higginses sampled soils and ground water at the Site, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and ground water, which substances included volatile organic compounds and polychlorinated biphenyls ("PCBs").

31. In August 1990, 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.

32. In 1990, EPA began a Removal Assessment to determine if any emergency response actions were warranted before beginning the remedial investigation of the Site.

33. During the Removal Assessment, EPA discovered PCBs in the surface soils of an indoor riding ring on the Higgins Disposal Property, which contamination resulted from a lighting ballast falling to the ground during a earlier fire inside the ring.

34. EPA subsequently excavated and removed the contaminated soils and disposed of them at an approved facility.

35. Beginning in or about 1992, EPA performed a remedial



investigation of the Site pursuant to Section 104 of CERCLA, 42 U.S.C.A. §9604, to determine the nature and extent of the contamination.

36. During the course of the remedial investigation, EPA discovered buried wastes in a field on the Higgins Disposal Property, which wastes included drums, laboratory glassware and plastic containers, certain of which containers held various hazardous substances.

37. By the end of 1996, EPA excavated a total of more than 7,000 containers and nearly 13,000 tons of contaminated soils from the Site, which EPA removed and then disposed of at permitted facilities.

38. Near the completion of the Remedial Investigation, EPA discovered additional buried waste containers in the landfill area of the Higgins Disposal Property, prompting EPA to perform a more comprehensive investigation, which revealed that various buried containers and other materials were located throughout the landfill area.

39. Sampling results from the remedial investigation revealed the presence of various hazardous substances exceeding the applicable cleanup standards in the soils and ground water at the Site, which substances included chloroform, chlorobenzene, tetrachloroethene, TCE, pesticides, PCBs, and semi-volatile compounds such as 1,2-dichlorobenzene and 1,2-dichlorobenzene.

40. Following the completion of the remedial investigation, EPA issued its Feasibility Study report pursuant to 42 U.S.C.A. §9604, in which EPA evaluated remedial alternatives for the Site, and recommended the preferred remedy, the primary components of which involved extracting the contaminated ground water, piping it to the nearby Higgins Farm Superfund site for treatment, and connecting the residences in the vicinity of the Higgins Disposal Property, including those on Laurel Avenue, to the public water supply system.

41. In 1997, EPA issued a Record of Decision for the Site ("1997 ROD"), in which EPA documented and explained the preferred remedy to address the contamination at the Site, which remedy primarily provided for the extraction and transport by pipeline of the contaminated ground water from the Site to the Higgins Farm Superfund site where the ground water would be treated and re-injected into the soils.

42. In March 1998 defendant FMC and EPA entered into an Administrative Order on Consent, pursuant to which defendant FMC agreed to remove the contaminated soils, buried containers and other materials from the landfill area of the Higgins Farm Property.

43. From August 1998 to June 1999, defendant FMC removed 34,000 tons of soils, debris and non-native materials, and 16,000 containers from the landfill area of the Higgins Farm Property,

many of which were found to contain hazardous substances.

44. Concurrent to the landfill removal action, pursuant to an EPA Unilateral Administrative Order, defendant FMC also installed a water supply line to provide an alternative supply of water to affected residences in the vicinity of the Higgins Farm Property, including those along Laurel Avenue.

45. In December 2002, in response to new site information generated following the issuance of the 1997 ROD, EPA issued an Explanation of Significant Differences for the Site, in which EPA, with plaintiff DEP's concurrence, eliminated the transportation and off-site treatment component of the selected remedy in favor of constructing a facility on the Higgins Disposal Property to treat the contaminated ground water.

46. Defendant FMC subsequently entered into an agreement with EPA to design and construct the remedy selected in the 1997 ROD, as amended, which remedy defendant FMC is performing under EPA and plaintiff DEP's oversight.

47. Although defendant FMC has initiated the design phase of the preferred remedy, as amended, for the Site, the ground water and soils remain contaminated.

#### FIRST COUNT

##### Spill Act

48. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 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, and will continue to incur, costs as a result of the discharge of hazardous substances at the Higgins Disposal Property.

51. Plaintiff Administrator has certified, and may continue to 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.

52. The Plaintiffs 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 Higgins Disposal 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 Higgins Disposal Service, Midco, and Covino Industrial, are or are the successors to, the dischargers of hazardous substances at the Higgins Disposal 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 as a result of the discharge of hazardous substances at the Higgins Disposal Property. N.J.S.A. 58:10-23.11g.c.(1).

55. Defendant Lisbeth Higgins, as an owner of the Higgins Disposal Property at the time hazardous substances were discharged there, is a person in any way responsible for the discharged hazardous substances, 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 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 Higgins Disposal Property. N.J.S.A. 58:10-23.11g.c.(1).

56. Defendant FMC, as a generator of hazardous substances that were discharged at the Higgins Disposal Property, is a person in any way responsible for the discharged hazardous substances, 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 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 Higgins

Disposal Property. N.J.S.A. 58:10-23.11g.c.(1).

57. 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).

58. 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 Higgins Disposal 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 Higgins Disposal Property;
- c. Enter judgment against defendant FMC, compelling defendant FMC to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Higgins Disposal 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 Higgins Disposal 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 Higgins Disposal 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

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

62. 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.

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

64. 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 Higgins Disposal 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 Higgins Disposal Property;
- c. Enter judgment against defendant FMC, compelling defendant FMC to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the Higgins Disposal 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 Higgins Disposal 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 Higgins Disposal 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

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

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

67. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Higgins Disposal Property.

68. 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 Higgins Disposal 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 Higgins Disposal Property;
- c. Enter judgment against defendant FMC, compelling defendant FMC to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the Higgins Disposal 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 Higgins Disposal 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 Higgins Disposal 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.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Mary Ellen Halloran  
Mary Ellen Halloran  
Deputy Attorney General

Dated: July 19, 2006

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DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mary Ellen Halloran, 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).

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Mary Ellen Halloran  
Mary Ellen Halloran  
Deputy Attorney General

Dated: July 19, 2006

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