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May 20, 2004

VIA FACSIMILE

Mr. Samuel J. Palmisano
President and CEO
IBM Corporation
1 New Orchard Road
Armonk, NY 10504

RE: New Jersey Department of Environmental Protection, et al v. International Business
Machines Corporation

Dear Mr. Palmisano:

This Office represents the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund. Enclosed is a courtesy copy of a complaint sent today for filing in the Superior Court of New Jersey, Middlesex County, against International Business Machines Corporation.

Please be advised that this facsimile copy of the complaint is being provided for informational purposes only and that this office does not consider acceptance of this facsimile copy to be acceptance of service.

Should you wish to discuss this matter, please do not hesitate to contact me at the number above.

Cordially,

ALLAN KANNER & ASSOCIATES, P.L.L.C.

By: 

Allan Kanner, Esq.

Special Counsel to the N.J. Attorney General

EBC/wrf

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION -MIDDLESEX COUNTY
DOCKET NO.

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	<u>Civil Action</u>
ADMINISTRATOR, NEW JERSEY	:	
SPILL COMPENSATION FUND,	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
INTERNATIONAL BUSINESS	:	
MACHINES CORPORATION,	:	
	:	
Defendant.	:	

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 defendant, say:

STATEMENT OF THE CASE

1. 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 and 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 International Business Machines Corp. ("IBM") site located in South Brunswick Township, Middlesex County, New Jersey, and to compel the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharge of hazardous substances at or from the IBM site.

THE PARTIES

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

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

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("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 IBM, is a corporation organized under the laws of the State of New York, with a principal place of business located at 1 New Orchard Road, Armonk, New York 10504.

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

AFFECTED NATURAL RESOURCE

Groundwater

7. Groundwater 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.

8. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

9. Groundwater 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.

10. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

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

GENERAL ALLEGATIONS

12. The IBM property consists of approximately 65 acres of real property located at 431 Ridge Road, South Brunswick Township, Middlesex County, this property being also known and designated as Block 33, Lots land 2, on the Tax Map of South Brunswick Township, Middlesex County ("the IBM Property"), and all other areas where any hazardous substance discharge there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 006936.

13. Defendant IBM acquired the IBM Property in 1956, and sold the property in 1995.

14. From 1956 through 1985, when IBM ceased manufacturing operations on the property, defendant IBM operated a computer punch card and ink ribbon manufacturing and printing facility on the IBM

Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, were "discharged" at and from the IBM Property within the meaning of N.J.S.A. 58:10-23.11b.

15. In 1977, South Brunswick Township's water supply well SB-11, located approximately 2,000 feet east of the IBM Property, was found by the plaintiff DEP to be contaminated with chlorinated cleaning solvents.

16. From 1977 through 1978, the plaintiff DEP and South Brunswick Township jointly conducted an investigation, which involved sampling, the results of which revealed the presence of various hazardous substances, including 1,1,1-trichloroethane, trichloroethene, tetrachloroethene, and 1,1-dichloroethene, in the soils and groundwater at and underlying the Site.

17. Among the suspected sources of this contamination were the facility's septic system and dry wells, as well as product and waste storage areas, including the 17 underground storage tanks and the drum storage pad.

18. On or about May 15, 1980 defendant IBM entered into an Administrative Consent Order ("May 15, 1980 ACO") with plaintiff DEP, which required defendant IBM to remediate the soils and groundwater at and underlying the Site under plaintiff DEP's oversight.

19. While defendant IBM has since commenced the remediation required under the May 15, 1980 ACO, the groundwater contamination continues.

FIRST COUNT

Spill Act

20. Plaintiffs repeat each allegation of Paragraphs 1 through 19 above as though fully set forth in its entirety herein.

21. Plaintiffs have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the IBM Property.

22. 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.

23. The Defendant, as the discharger of hazardous substances at the IBM Property, is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, 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 discharges of hazardous substances at the IBM Property. N.J.S.A. 58:10-23.11g.c.(1).

24. The Defendant, as the owner of the IBM Property at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, 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 discharges of hazardous substances at the IBM Property. N.J.S.A. 58:10-23.11g.c.(1).

25. 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); 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).

26. 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 Defendant to reimburse the Plaintiffs, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the IBM Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the IBM Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the IBM Property by performing, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and compensatory restoration of, any natural resource injured by the discharge of hazardous substances at the IBM 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

27. Plaintiffs repeat each allegation of Paragraphs 1 through 26 above as though fully set forth in its entirety herein.

28. Groundwater is a natural resource of the State held in trust by the State.

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

30. The contamination of groundwater 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.

31. As long as groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

32. Until the groundwater is restored to its pre-injury quality, the Defendant is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean groundwater.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

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

33. Plaintiffs repeat each allegation of Paragraphs 1 through 32 above as though fully set forth in its entirety herein.

34. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

35. The Defendant is liable for trespass, and continued trespass, since hazardous substances were first discharged at the IBM Property.

36. As long as groundwater remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

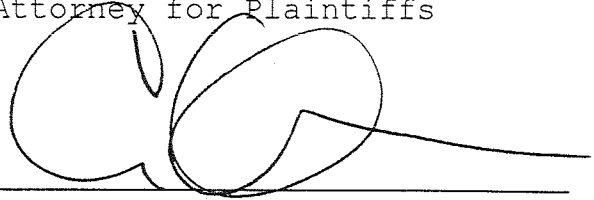
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured

by the discharges of hazardous substances at the IBM Property, with applicable interest;

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

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



By: _____

By: Allan Kanner
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Dated: May 20, 2004

DESIGNATION OF TRIAL COUNSEL


Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. MER-L-343-04. Otherwise, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding 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).

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

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Dated: May 20, 2004