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

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
Plaintiffs,	:	
v.	:	
MALLINCKRODT BAKER, INC.,	:	
Defendant.	:	

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Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (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 Mallinckrodt Baker, Inc., ("the Defendant"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of pollutants and the discharge and/or unsatisfactory storage or containment of hazardous substances at the J.T. Baker site in Phillipsburg, Warren County. Plaintiff DEP further brings this action pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 to -116 ("Sanitary Landfill Act"), for reimbursement of the damages it has incurred, and will incur, as a result of the improper operation of the sanitary landfill facility located at the J.T. Baker site. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances and the operation of the sanitary landfill facility at the J.T. Baker site. Further, the Plaintiffs seek an order compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance

of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances and the operation of the sanitary landfill facility at the J.T. Baker site, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

#### THE PARTIES

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 this State. N.J.S.A. 58:10-23.11a.

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

5. 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.

6. Defendant Mallinckrodt Baker, Inc. ("MBI" or "the Defendant") is a corporation, organized and existing under the laws of the State of New Jersey, with a principal place of business located at 9 Roszel Road, Princeton, New Jersey, 08540.

7. Defendant MBI is the successor corporation to J.T. Baker, Inc. On or about June 29, 1995, J.T. Baker Inc. changed its name to Mallinckrodt Baker, Inc.

8. MBI's predecessor, J.T. Baker Inc., was formally known as J.T. Baker Chemical Company, before it changed its name to J.T. Baker Inc. on or about July 7, 1987.

#### NATURAL RESOURCES

9. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

10. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs,

streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

11. The natural resources of this State, specifically the ground water, surface water, soils and sediments at the Site, have been injured as a result of the discharge of pollutants and hazardous substances at the J.T. Baker Property.

AFFECTED NATURAL RESOURCES  
Ground Water

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 thousands of sites in New Jersey confirmed as having ground water contaminated with pollutants and hazardous substances.

#### Surface Water

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

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

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

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

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

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

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

#### Sediment Resources

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

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

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

#### GENERAL ALLEGATIONS

28. The J.T. Baker site consists of approximately 120 acres of real property located at 600 North Broad Street, Phillipsburg, Warren County, New Jersey, this property being also known and designated as Block 101, Lots 3, 5, 6, 8, 9, 10, 17 and 18; Block 103, Lots 1 and 7; Block 104, Lot 1; and Block 105, Lot 5, on the Tax Map of the Town of Phillipsburg, and additionally, Block 4.05, Lots 1,2,3; and Block 5, Lot 4 on the Tax map of Lopatcong Township, ("the J.T. Baker Property"), and all other areas where

any pollutant or hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 003295.

29. Since June 2, 1904, the Defendant or its predecessors has owned the J.T. Baker Property, during which time "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. and/or "not satisfactorily stored or contained" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2)., which substances include volatile organic compounds, diethylether, petroleum hydrocarbons, lead, chloroform, tetrachloroethylene, 1,1,1, trichloroethane, dichlorodiphenyl trichloroethane (DDT) and benzene.

30. Since 1904, Defendant MBI or its predecessors also operated a chemical manufacturing facility and a landfill at the J.T. Baker Property, the operation of which involved the generation, storage and handling 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. and/or "not satisfactorily stored or contained" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2)., which substances include volatile organic compounds, diethylether, petroleum hydrocarbons, lead, chloroform, tetrachloroethylene, 1,1,1, trichloroethane, dichlorodiphenyl trichloroethane (DDT) and benzene.

31. Since 1904, the Defendant MBI or its predecessors also operated a chemical manufacturing facility and a landfill at the J.T. Baker Property, the operation of which involved the generation, storage and handling of "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" to the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants include volatile organic compounds, diethylether, petroleum hydrocarbons, lead, chloroform, tetrachloroethylene, 1,1,1, trichloroethane, dichlorodiphenyl trichloroethane (DDT) and benzene.

32. Since 1904 Defendant MBI or its predecessors operated a chemical manufacturing facility and a landfill at the J.T. Baker Property, during which time "solid wastes," within the meaning of N.J.S.A. 13:1E-3a., were "disposed of" at the J.T. Baker Property, within the meaning of N.J.S.A. 13:1E-3c.

33. Certain of the solid wastes disposed of at the J.T. Baker Property were deposited on, or in, the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, thereby creating a "sanitary landfill facility" at the J.T. Baker Property within the meaning of N.J.S.A. 13:1E-3q.

34. On various occasions since 1986, personnel from plaintiff DEP inspected the Site and observed violations of plaintiff DEP's regulations.

35. On April 9, 1987, plaintiff DEP issued a Spill Act directive ("Directive") to the Defendant pursuant to N.J.S.A. 58:10-23.11f.a., directing the Defendants to perform a remedial action for the Site and the assessment of any natural resource that has been, or may be, injured as a result of the discharges of pollutants and hazardous substances at the J.T. Baker Property.

36. The Defendant informed plaintiff DEP that it would comply with the Directive by performing remediation for the Site, including the assessment of any natural resource that has been, or may be, injured as a result of the discharges of pollutants and hazardous substances at the J.T. Baker Property.

37. From 1991 through the present, the Defendant undertook the performance of a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Defendant investigated the nature and extent of the contamination at the Site.

38. Sampling results from the remedial investigation revealed the presence of various pollutants and hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, surface water, soils and sediments at the Site, which pollutants are hazardous substances, including, volatile organic compounds, diethylether, petroleum hydrocarbons, lead, chloroform, tetrachloroethylene, 1,1,1, trichloroethane, dichlorodiphenyl trichloroethane (DDT) and benzene.

39. On or about May 22, 1987, plaintiff DEP approved a Cleanup Plan 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 that the proposed remedial action is the most appropriate alternative for the Site.

40. The remedial action plaintiff DEP has approved for the Site primarily provides for the cleanup, removal and decontamination of hazardous substances, as well as quarterly groundwater monitoring.

41. Although the Defendant has initiated the remedial investigation and remedial action for the Site, the ground water and surface water remains contaminated.

#### FIRST COUNT

##### Spill Act

42. The Plaintiffs repeat each allegation of paragraph nos. 1 through 41 above as though fully set forth in its entirety herein.

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

44. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault for all

cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.(c).

45. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge and/or unsatisfactory storage or containment of hazardous substances is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged and/or not satisfactorily stored or contained is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

46. 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 J.T. Baker Property.

47. 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.

48. The Defendant is the discharger of hazardous substances at the J.T. Baker Property, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that 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 J.T. Baker Property. N.J.S.A. 58:10-23.11g.c.(1).

49. The Defendant, as the owner of the J.T. Baker Property at the time hazardous substances were discharged there, is also 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 J.T. Baker Property. N.J.S.A. 58:10-23.11g.c.(1).

50. 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).

51. 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, 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 J.T. Baker Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, 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 J.T. Baker Property;
- c. Enter judgment against the Defendant, compelling the Defendant, to perform any further cleanup of hazardous substances discharged at the J.T. Baker Property under plaintiff DEP's oversight;

- d. Enter judgment against the Defendant, jointly and severally, without regard to fault, compelling the Defendant 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 J.T. Baker Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- 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

Water Pollution Control Act

52. The Plaintiffs repeat each allegation of paragraph nos. 1 through 51 above as though fully set forth in its entirety herein.

53. The Defendant is a "person" within the meaning of N.J.S.A. 58:10A-31.

54. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit issued by plaintiff Commissioner pursuant to the Water Pollution Control Act, or pursuant to a valid National Pollutant Discharge Elimination System permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§1251 to - 1387. N.J.S.A. 58:10A-6a.

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

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

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

58. The Defendant discharged pollutants at the J.T. Baker Property, which discharge was neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and is liable, without regard to fault, for

all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the J.T. Baker Property. N.J.S.A. 58:10A-6a.

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

any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).

PRAYER FOR RELIEF

**WHEREFORE**, plaintiff Commissioner prays that this Court:

- a. Temporarily and/or permanently enjoin the Defendant by requiring the Defendant to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing the Defendant, without regard to fault, for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter declaratory judgment against the Defendant, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- d. Enter an order assessing the Defendant, without regard to fault, for all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the J.T. Baker Property;

- e. Enter declaratory judgment against the Defendant, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the J.T. Baker Property;
- f. Enter an order assessing the Defendant, without regard to fault, for all compensatory damages and other actual damages incurred for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the J.T. Baker Property;
- g. Enter declaratory judgment against the Defendant, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the J.T. Baker Property;
- h. Enter an order assessing the Defendant, without regard to fault, for the actual amount of any economic benefits it has accrued, including any savings realized from avoided capital or noncapital costs, the return it has earned on the amount of avoided costs, any benefits the Defendant has enjoyed as a result of a competitive market

advantage, or any other benefit it has received as a result of having violated the Water Pollution Control Act;

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

### THIRD COUNT

#### Sanitary Landfill Act

60. The Plaintiffs repeat each allegation of paragraph nos. 1 through 59 above as though fully set forth in its entirety herein.

61. The Defendant or its predecessors is a person who "owned" and/or "operated" the sanitary landfill facility located at the J.T. Baker Property within the meaning of N.J.S.A. 13:1E-102b.

62. Plaintiff DEP has incurred, and will continue to incur, costs resulting from the operation of the sanitary landfill facility located at the J.T. Baker Property.

63. Plaintiff DEP has 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 disposal of solid wastes at the J.T. Baker Property.

64. As the owner and operator of the sanitary landfill facility at the J.T. Baker Property, the Defendant is liable, jointly and severally, for the sanitary landfill facility's proper operation and closure as required by law, and for any damages, either direct or indirect, proximately resulting from the operation of the sanitary landfill facility at the J.T. Baker Property, including lost value and reasonable assessment costs, that plaintiff DEP has 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 operation of the sanitary landfill facility at the J.T. Baker Property. N.J.S.A. 13:1E-103.

65. Pursuant to N.J.S.A. 13:1E-9b. and d., plaintiff DEP may bring an action in the Superior Court for the costs of any investigation, inspection or monitoring survey, and the reasonable costs of preparing and litigating the case, N.J.S.A. 13:1E-9d. (2); the costs to remove, correct or terminate any adverse effects upon water and air quality, N.J.S.A. 13:1E-9d. (3); compensatory damages, including the lost value and assessment costs, that plaintiff DEP incurs for any natural resource of this State that has been, or may be, injured as a result of the operation of the sanitary landfill facility located at the J.T. Baker Property, N.J.S.A. 13:1E-9d. (3); and for any other actual damages. N.J.S.A. 13:1E-9d. (4).

PRAYER FOR RELIEF

WHEREFORE, plaintiff DEP prays that this Court:

- a. Order the Defendant to reimburse plaintiff DEP, jointly and severally, for all direct and indirect damages, including lost value and reasonable assessment costs for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the J.T. Baker Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, jointly and severally, for all direct and indirect damages, including lost value and reasonable assessment costs that plaintiff DEP will incur for any natural resource of this

- State injured as a result of the operation of the sanitary landfill facility at the J.T. Baker Property;
- c. Award plaintiff DEP its costs and fees in this action; and
  - d. Award plaintiff DEP such other relief as the Court deems appropriate.

FOURTH COUNT

Public Nuisance

66. The Plaintiffs repeat each allegation of paragraph nos. 1 through 65 above as though fully set forth in its entirety herein.

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

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

69. The groundwater, sediments and surface water contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

70. As long as the ground water, sediments, and surface water remain contaminated due to the Defendant's conduct, the public nuisance continues.

71. Until the ground water, sediments and surface water are restored to their 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 ground water, surface water and sediments.

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 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 pollutants and hazardous substances at the J.T. Baker 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 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 pollutants and hazardous substances at the J.T. Baker Property;

- c. Enter judgment against the Defendant, compelling the Defendant to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the J.T. Baker Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the J.T. Baker Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

FIFTH COUNT

Trespass

72. The Plaintiffs repeat each allegation of paragraph nos. 1 through 71 above as though fully set forth in its entirety herein.

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

74. The Defendant is liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the J.T. Baker Property.

75. As long as the ground water, sediments, and surface water remain 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 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 pollutants and hazardous substances at the J.T. Baker 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 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 pollutants and hazardous substances at the J.T. Baker Property;

- c. Enter judgment against the Defendant, compelling the Defendant to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the J.T. Baker Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the J.T. Baker Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- e. Award the Plaintiffs their costs and fees in this action;  
and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

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

By: Lauren Caruso Garofalo  
Lauren Caruso Garofalo  
Deputy Attorney General

Dated: 6/28/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Lauren Caruso Garofalo, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

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

By: Lauren Caruso Garofalo  
Lauren Caruso Garofalo  
Deputy Attorney General

Dated: 6/28/07