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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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

Plaintiffs,

v.

CHEMICAL WASTE MANAGEMENT,  
INC.; EARTHLINE COMPANY;  
FILCREST REALTY, INC.; ANTHONY  
GAESS; INMAR ASSOCIATES, INC.;  
KIN-BUC, INC.; SCA SERVICES,  
INC.; SCA SERVICES OF PASSAIC,  
INC.; TRANSTECH INDUSTRIES,  
INC.; WASTE MANAGEMENT, INC.;  
WASTE MANAGEMENT HOLDINGS,  
INC.; and WASTEQUID, INC.,

Defendants.

Hon. *CRW 4610* (SMA)

Civ. Action No.

COMPLAINT

Plaintiffs New Jersey Department of Environmental  
Protection ("DEP"), and the Acting Administrator, New Jersey Spill  
Compensation Fund ("Acting Administrator"), 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, say:

#### STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§9601, et seq., specifically Sections 107(a) and 113(g) of CERCLA, 42 U.S.C. §§9607(a) and 9613(g); and, pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 et seq. Plaintiffs DEP and Acting Administrator seek to recover the costs they have incurred, and will incur, for the release, or threatened release of hazardous substances at the Kin Buc Landfill Superfund site located in Edison Township, Middlesex County, New Jersey (the "Site"). Plaintiffs DEP and Acting Administrator also seek reimbursement under the Spill Act for the damages they have incurred, or will incur, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§9607(a) and 9613(b), 28 U.S.C. §1331, and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

3. Venue is proper in this district pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §9607(a) and 9613(b), and 28 U.S.C. §1391, because the release, or threatened release, of hazardous substances giving rise to the plaintiffs' claims occurred in this judicial district.

#### THE PARTIES

4. 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.

5. Plaintiff Acting 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 Acting 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 Chemical Waste Management, Inc. ("CWM") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 3001 Butterfield Road, Oak Brook, Illinois 60521. At times material hereto, CWM has done business in this judicial district.

7. Defendant Earthline Company ("Earthline") (f/k/a Environmental Services Company ("Environmental Services"), f/k/a or d/b/a Gaess Environmental Services Company ("Gaess Environmental")) is a partnership organized and existing under the laws of the State of New Jersey, with a principal place of business located at 3003 Butterfield Road, Oak Brook, Illinois 60521. At times material hereto, Earthline has done business in this judicial district.

8. Defendant Filcrest Realty, Inc. ("Filcrest") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 1703 East Second Street, Scotch Plains, New Jersey 07076. At times material hereto, Filcrest has done business in this judicial district.

9. Defendant Anthony Gaess ("Gaess") is an individual residing at 294 Red School House Road, Montvale, New Jersey 07645. At times material hereto, Gaess has done business in this judicial district.

10. Defendant Inmar Associates, Inc. ("Inmar") (f/k/a Inmar Realty, Inc.) is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 1703 East Second Street, Scotch Plains, New Jersey 07076. At times material hereto, Inmar has done business in this judicial district.

11. Defendant Kin-Buc, Inc. ("Kin-Bic") is a corporation organized and existing under the laws of the State of New Jersey,

with a principal place of business located at 200 Centennial Avenue, Piscataway, New Jersey 08854. At times material hereto, Kin-Buc has done business in this judicial district.

12. Defendant SCA Services, Inc. ("SCA Services") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 3003 Butterfield Road, Oak Brook, Illinois 60521. At times material hereto, SCA Services has done business in this judicial district.

13. Defendant SCA Services of Passaic, Inc. ("SCA Passaic") (f/k/a SCA Services of Edison, Inc. ("SCA Edison")) is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 3003 Butterfield Road, Oak Brook, Illinois 60521. At times material hereto, SCA Passaic has done business in this judicial district.

14. Defendant Transtech Industries, Inc. ("Transtech") (f/k/a Scientific, Inc. ("Scientific")) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 200 Centennial Avenue, Piscataway, New Jersey 08854. At times material hereto, Transtech has done business in this judicial district.

15. Defendant Waste Management, Inc. ("WMI") (a/k/a WMX Technologies, Inc. ("WMX")) is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1001 Fannin Street, Houston, Texas 77002. At

times material hereto, WMI has done business in this judicial district.

16. Defendant Waste Management Holdings, Inc. ("WMHI") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 3003 Butterfield Road, Oak Brook, Illinois 60521. At times material hereto, WMHI has done business in this judicial district.

17. Defendant Wastequid, Inc. ("Wastequid") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 3001 Butterfield Road, Oak Brook, Illinois 60521. At times material hereto, Wastequid has done business in this judicial district.

18. Each defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21), and N.J.S.A. 58:10-23.11b.

#### GENERAL ALLEGATIONS

19. The Site comprises approximately 200 acres of real property located at 383 Meadow Road, Edison Township, Middlesex County, New Jersey, this property being also known and designated as Block 400, Lot 3C on the Tax Map of Edison Township, and all other areas where any hazardous substance disposed of there has become located.

20. The Site includes several inactive waste disposal areas and is located within an industrial and commercial area zoned for

light industry. The Site is bordered on the west by the Raritan River, on the east by wetlands and the inactive IRL Landfill, on the south by the Edison Landfill, and on the north by the Edison Salvage Yard and a chemical manufacturing plant. Several residences are located approximately one-half mile northeast of the Site.

21. The Site includes three landfill mounds: (1) "Kin-Buc I," which covers approximately 30 acres and rises to a maximum height of about 93 feet; (2) "Kin-Buc II," which covers approximately 12 acres and rises to a maximum height of about 51 feet; and (3) "Mound B," which covers approximately 9 acres and rises to a maximum height of about 20 feet. The Site also includes, inter alia, a 14-acre "Low-Lying Area," a 50-acre area of tidal wetlands, and a tidal pool known as "Pool C."

22. From 1947 to 1977, several corporate and individual entities operated the Site as a landfill for liquid and solid municipal, industrial, and hazardous waste. From 1966 to 1976, Defendant Kin Buc and others operated the Site as a commercial hazardous and non-hazardous chemical waste disposal landfill, known as the "Kin Buc Landfill," which accepted liquids disposed of from tanker trucks, drummed liquid waste, solid waste, and municipal and industrial trash. Upon information and belief, the landfill continued to accept solid waste until 1977.

23. From 1973 to 1976, approximately 70 million gallons of liquid waste and 1 million tons of solid waste were disposed of at the Site.

24. From 1966 to 1977, materials that were, or contained, "hazardous substances," as defined in Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§9601(14), 9607(1), were "disposed of" at the Site within the meaning of Section 101(29) of CERCLA, 42 U.S.C. §9601(29).

25. There have been and continue to be, "releases," or "threatened releases," of hazardous substances at the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22), including but not limited to polychlorinated biphenyls ("PCBs"), metals, volatile organic compounds ("VOCs"), pesticides, cyanide, cadmium and polyaromatic hydrocarbons.

#### Relationship of Defendants to the Site

26. In 1963, Scientific was incorporated. Scientific, Inc. operated the Site from 1966 through 1977. In June 1986, by charter amendment, Scientific changed its name to Transtech.

27. Transtech held itself out to customers and the public as an operator of the former Kin-Buc Landfill at the Site. Transtech operated the Site at the time of disposal of hazardous substances there.

28. Transtech transported hazardous substances for disposal at the Site.



29. In 1965, Inmar was incorporated and Marvin Mahan and Robert Meagher became Inmar's principal officers.

30. In or about 1966, Inmar acquired a portion of the Site. Inmar owned a portion of the Site from that date until at least 1976. During the period of Inmar's ownership, hazardous substances were disposed of at the Site.

31. Filcrest was incorporated in 1967. From 1967 to June 1986, Filcrest was a wholly-owned subsidiary of Scientific. In June 1986, by charter amendment, Scientific changed its name to Transtech. From June 1986 to the present, Filcrest has been a wholly-owned subsidiary of Transtech.

32. In 1969, Filcrest acquired a portion of the Site. Upon information and belief, Filcrest continued to own a portion of the Site until at least 1977. During the period of Filcrest's ownership, hazardous substances were disposed of at the Site.

33. Kin-Buc was incorporated in 1966 for the purpose of acquiring and operating the former Kin-Buc Landfill at the Site. From 1966 to June 1986, Kin-Buc was a wholly-owned subsidiary of Scientific. From June 1986 (when Scientific changed its name to Transtech) to the present, Kin-Buc has been a wholly-owned subsidiary of Transtech.

34. From 1966 until 1976, Kin-Buc operated the Site as a commercial hazardous and non-hazardous chemical waste disposal landfill, which accepted liquids disposed of from tanker trucks,

drummed liquid waste, solid waste, and municipal and industrial trash.

35. Kin-Buc filed registration and operational statements with Plaintiff New Jersey Department of Environmental Protection for the waste disposal facility at the Site, including such statements for the reporting years 1973, 1974, 1975, and 1976.

36. Upon information and belief, Kin-Buc operated the Site at the time of the disposal of the hazardous substances there.

37. Wastequid was a wholly-owned subsidiary of Scientific from prior to September 1975 to June 1986. Upon information and belief, Transtech sold Wastequid to SCA Services, Inc. in 1986.

38. SCA Passaic (f/k/a SCA Edison) has been a wholly-owned subsidiary of SCA Services from prior to September 1975 and continuing to the present.

39. On September 2, 1975, Wastequid and SCA Passaic (then known as SCA Edison), and their parent corporations SCA Services and Scientific, entered into a written agreement (the "Partnership Agreement") forming a partnership (then known as Environmental Services), which came to be known as Earthline. As general partners of Earthline, Wastequid and SCA Passaic each transported hazardous substances to the Site and disposed of hazardous substances there.

40. From September 1975 to July 1976, Earthline transported wastes, including hazardous substances, to the Site for disposal.

Earthline, and Wastequid and SCA Passaic as general partners, upon information and belief, operated the Site at the time of the disposal of hazardous substances there.

41. WMI was incorporated in 1971.

42. CWM was incorporated in 1978 as a subsidiary of WMI (then known as WMX).

43. In 1984, WMI acquired a controlling share (60%) of SCA Services.

44. As of 1988, CWM had acquired Earthline, Wastequid, and SCA Passaic.

45. Upon information and belief, after a reasonable opportunity for further investigation and discovery, the evidence will show that CWM succeeded to the liabilities of SCA Services for the Site.

46. In 1998, WMI was merged into USA Waste Services, Inc. ("USA Waste"). At the time of the merger, the "old" WMI changed its name to WMHI, and USA Waste changed its name to WMI (or the "new" WMI).

47. By virtue of the 1998 merger, WMHI acquired the "old" WMI's subsidiaries, including CWM and SCA Services, and WMHI became a wholly-owned subsidiary of the "new" WMI.

48. Upon information and belief, after a reasonable opportunity for further investigation and discovery, the evidence will show that both WMHI and WMI have each succeeded to the

liabilities of SCA Services for the Site and have each assumed by agreement or merger all or a portion of the Site-related obligations and liabilities of Transtech, Filcrest, Kin-Buc, Inmar, and Gaess, including without limitation their obligations and liabilities, pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for the response costs incurred by Plaintiffs in connection with the Site.

49. From September 1975 to July 1976, Gaess was the Chief Executive Officer ("CEO") and/or the principal operating officer of Earthline (f/k/a Environmental Services, f/k/a Gaess Environmental Services), as well as an employee of SCA Services. From September 1975 to July 1976, Gaess managed and controlled waste disposal operations at the Site during the time of disposal of hazardous substances there.

50. In a prior action, the District Court for the District of New Jersey found that Kin-Buc, Inmar, Filcrest, and Scientific were owner/operators at the Site, and that Earthline and Wastequid were transporters to the Site within the meaning of CERCLA Sections 107(a)(2) and 107(a)(4). See Earthline Co. v. Kin-Buc, Inc., et al., Civ. No. 83-4226 (D.N.J. April 13, 1984).

#### Site Cleanup and Enforcement Activities

51. Beginning in 1976, the United States Environmental Protection Agency ("EPA") investigated the Site in connection with an oil spill, and discovered hazardous substances at the Site.

52. In 1979, the United States on behalf of EPA brought a civil action against Kin-Buc, Scientific, SCA Services, Wastequid, SCA Passaic, Earthline, Filcrest, Inmar, Marvin Mahan, Robert Meagher, and Gaess, under the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., and the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. §401 et seq.

53. In a 1980 settlement between the United States and Kin-Buc related to the 1979 action, Kin-Buc agreed to install a landfill cap on Kin-Buc I and initiate long-term monitoring. However, Kin-Buc did not agree to remediate the Site or to control further migration of contaminants. In 1980, EPA commenced its own cleanup activities under the Clean Water Act.

54. In 1983, 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. §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.

55. EPA issued a series of four unilateral administrative orders (UAO), under Section 106(a) of CERCLA, 42 U.S.C. §9606(a):

(a) The first UAO (EPA Docket No. II-CERCLA 30102), issued on September 23, 1983 ("1983 UAO") named the following entities as Respondents: Gaess; Marvin Mahan; Robert Meagher;

Earthline; Filcrest; Inmar; Kin-Buc; SCA Services; SCA Passaic; Scientific; and Wastequid. The 1983 UAO required Respondents to perform a removal program, a remedial investigation and feasibility study ("RI/FS"), a remedial action, operation and maintenance ("O&M"), and long-term monitoring.

(b) The second UAO (EPA Docket No. II-CERCLA-60105), issued on March 25, 1986 ("1986 UAO") named the following entities as Respondents: Gaess; Marvin Mahan; Robert Meagher; Earthline; CWM; Filcrest; Inmar; Kin-Buc; SCA Services; SCA Passaic; Scientific; and Wastequid. The 1986 UAO amended Paragraph 33 of the 1983 UAO, regarding performance of a Feasibility Study at the Site.

(c) The third UAO, issued on September 21, 1990 (EPA Index No. II-CERCLA-00114) ("1990 UAO") named the following entities as Respondents: Gaess; Marvin Mahan; Robert Meagher; Earthline; CWM; Filcrest; Inmar; Kin-Buc; SCA Services; SCA Passaic; Transtech (f/k/a Scientific); and Wastequid. The 1990 UAO amended the 1986 UAO and the 1983 UAO. The 1990 UAO, inter alia, required Respondents to undertake a remedial design and remedial action ("RD/RA") for OU I and an RI/FS for OU II.

(d) The fourth UAO, issued on November 19, 1992 (EPA Index No. II-CERCLA-93-0101) ("1992 UAO") named the following entities as Respondents: Gaess; Marvin Mahan; Robert Meagher; Earthline;

CWM; Filcrest; Inmar; Kin-Buc; SCA Services; SCA Passaic; Transtech; and Wastequid. The 1992 UAO required a remedial design, remedial construction, wetlands restoration, O&M, and long-term monitoring for OU II.

56. On August 1, 1988, the United States District Court for the District of New Jersey entered a consent decree with approximately 200 parties, which had arranged for the disposal of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3), in United States v. Absolute Fire Protection Co., Inc., et al., Civ. No. 38-2087 (D.N.J.) Under the consent decree, the United States recovered approximately \$5 million, response costs incurred at the Site to that date.

57. In September 1988, EPA issued a Record of Decision ("ROD") that divided the Site remediation into two "operable units" ("OUs"). The first OU ("OU I") consisted of the Kin-Buc I and II mounds, portions of the Low-Lying Area, and Pool C. The second OU ("OU II") consisted of areas impacted by contamination migrating from the OU I areas, including Mound B, other portions of the Low-Lying Area, Edmonds Creek, Mill Brook, Martins Creek, and the wetlands associated with Edmonds Creek.

58. The September 1988 ROD ("OU I ROD") also selected a remedy for OU I, addressing source control measures. That remedy included: (1) maintenance and upgrading of the Kin-Buc I landfill

cap, and installation of a cap over Kin-Buc II, Pool C, and portions of the Low-Lying Area; (2) installation of a slurry wall surrounding the source area; (3) collection and off-site incineration of oily phase leachate; (4) collection and on-site treatment of aqueous phase leachate and groundwater from within the slurry wall area, and discharge of treated water to the Raritan River; (5) a landfill gas extraction and flare system; (6) O&M; and (7) periodic monitoring.

59. In September 1992, EPA issued a ROD which selected a remedy for OU II addressing impacts from contaminant migration at or from the Site ("OU II ROD"). That remedy included: (1) excavation of PCB-contaminated sediments; (2) consolidation of the excavated sediments within the OU I containment system; (3) restoration of wetlands areas affected by the excavation; and (4) long-term monitoring of ground and surface water to ensure the effectiveness of the remedy.

60. After additional investigation, EPA determined that drums needed to be removed from the Mound B portion of the landfill, previously designated as part of OU II. The first phase of the Mound B excavation began in April 2001.

#### FIRST CLAIM FOR RELIEF

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



62. The Site is a location where hazardous substances have been deposited, stored, disposed of, placed or otherwise come to be located, and thus is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

63. There have been "releases" or "threatened releases" of "hazardous substances," within the meaning of Sections 101(14), 101(22) and 107(a) of CERCLA, 42 U.S.C. §§9601(14), 9601(22), 9607(a), into the environment at and from the Site.

64. Each Defendant in this action is a "person," within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§9601(21), 9607(a).

65. Plaintiff DEP has incurred, and will continue to incur, costs to respond to the release, or threatened release, of hazardous substances at the Site.

66. Plaintiff Acting Administrator has certified, and will continue to certify, for payment, valid claims made against the New Jersey Spill Fund and, further, has approved, and will continue to approve, other appropriations from the Spill Fund to respond to the release, or threatened release, of hazardous substances at the Site.

67. The costs Plaintiffs DEP and Acting Administrator have incurred, and will incur, for the Site are "response costs" within the meaning of Section 101(25) and 107(a)(4)(A) of CERCLA, 42 U.S.C. §§9601(25) and 9607(a)(4)(A).

68. The response costs related to the Site, which were incurred by Plaintiffs DEP and Acting Administrator are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. §9607(a) and 40 C.F.R. Part 300.

69. Kin-Buc is a current "owner" of the Site within the meaning of Sections 101(20) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(20), 9607(a)(1), and was an owner of the Site "at the time of disposal," of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

70. As owner of the Site, Defendant Kin-Buc is a person who, pursuant to Section 107(a)(1)(A) of CERCLA, 42 U.S.C. §9607(a)(1)(A), is liable to Plaintiffs DEP and Acting Administrator for all response costs the plaintiffs have incurred, and will incur for the Site.

71. Defendants Filcrest and Inmar each was an owner of the Site at the time of disposal of hazardous substances, within the meaning of Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20), 9607(a)(2).

72. As owners of the Site at the time hazardous substances were disposed of there, Defendants Filcrest and Inmar each are persons who, pursuant to Section 107(a)(2)(A) of CERCLA, 42 U.S.C. §9607(a)(2)(A), are liable to Plaintiffs DEP and Acting

Administrator for all response costs the plaintiffs have incurred, and will incur, for the Site.

73. Defendant Transtech was an "operator" of the Site at the time of disposal of hazardous substances, within the meaning of Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20), 9607(a)(2), and was a "transporter" of hazardous substances to the Site, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. §9607(a)(4).

74. Defendant Earthline, its general partners Wastequid and SCA Passaic, and SCA Services each is a transporter of hazardous substances to the Site, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. §9607(a)(4), and upon information and belief, after a reasonable opportunity for further investigation and discovery, the evidence will show that each is also an "operator" of the Site at the time of disposal of hazardous substances, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

75. As an operator of the Site at the time of disposal of hazardous substances or who by contract, agreement or otherwise accepted hazardous substances for transport to the Site, which it selected, Defendant Transtech, Earthline, Wastequid, SCA Passaic, and SCA Services, each is a person who, pursuant to Sections 107(a)(2)(A) and 107(a)(4)(A) of CERCLA, 42 U.S.C. §§9607(a)(2)(A), 97607(a)(4)(A), is liable to Plaintiffs DEP and Acting

Administrator for all response costs the plaintiffs have incurred, and will incur, for the Site.

76. Upon information and belief, after a reasonable opportunity for further investigation and discovery, the evidence will show that WMI, WMHI, and CWM each is, or has assumed the obligations and liabilities of, an "owner or operator" of the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2), and was a "transporter" of hazardous substances within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. §9607(a)(4).

77. As an owner or operator of the Site at the time of disposal of hazardous substances or who by contract, agreement or otherwise accepted hazardous substances for transport to the Site, which it selected, Defendants WMI, WMHI, and CWM each is a person who, pursuant to Sections 107(a)(2)(A) and 107(a)(4)(A) of CERCLA, 42 U.S.C. §§9607(a)(2)(A), 9607(a)(4)(A), is liable to Plaintiffs DEP and Acting Administrator for all response costs the plaintiffs have incurred, and will incur, for the Site.

78. Gaess was an operator of the Site at the time of disposal of hazardous substances, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

79. As an operator at the Site at the time hazardous substances were disposed of there, Defendant Gaess is a person who, pursuant to Section 107(a)(2)(A) of CERCLA, 42 U.S.C.

§9607(a)(2)(A), is liable to Plaintiffs DEP and Acting Administrator for all response costs the plaintiffs have incurred, and will incur, for the Site.

80. Pursuant to Section 113(g) of CERCLA, 42 U.S.C. §9613(g), Plaintiffs DEP and Acting Administrator are further entitled to a declaratory judgment that the defendants are liable for all response costs the plaintiffs may incur for the Site, because the defendants are liable to the plaintiffs under Section 107 of CERCLA, 42 U.S.C. §9607.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs DEP and the Acting Administrator pray that this Court:

a. Order the defendants to reimburse Plaintiffs DEP and Acting Administrator for all response costs Plaintiffs DEP and Acting Administrator have incurred for the Site, with applicable interest;

b. Enter declaratory judgment against the defendants, for all response costs Plaintiffs DEP and Acting Administrator will incur for the Site;

c. Award Plaintiffs DEP and Acting Administrator their costs and fees in this action; and

d. Award Plaintiffs DEP and Acting Administrator such other relief as this Court deems appropriate.

SECOND CLAIM FOR RELIEF

81. Plaintiffs DEP and Acting Administrator repeat each and every allegation of paragraph nos. 1 through 80 above as though fully set forth in its entirety herein.

82. At relevant times, materials that were, or contained, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10-23.11f.a.(1).

83. As a result of the discharge, Plaintiff DEP has incurred, and will continue to incur, costs to remediate the Site.

84. Plaintiff Acting Administrator has certified, and will continue to certify, for payment, valid claims made against the Spill Fund concerning the Site and, further, has approved, and will continue to approve, other appropriations to remediate the Site.

85. The costs Plaintiffs DEP and Acting Administrator 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.

86. As a result of the discharge, "natural resources" as defined in N.J.S.A. 58:10-23.11b., were also damaged or destroyed.

87. Plaintiffs DEP and Acting Administrator have incurred, and will continue to incur, damages for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site. These damages include the costs Plaintiffs DEP and the Spill Fund have incurred, and will incur, to

assess the damage to, or destruction of, any natural resource, and the costs the plaintiffs have incurred, and will incur, to restore or replace, or oversee the restoration or replacement of, the natural resource.

88. The defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

89. At relevant times, the defendants have owned, and/or operated at, the real property comprising the Site, or have transported hazardous substances to the real property comprising the Site, during which time materials there that were, or contained, hazardous substances were not satisfactorily stored or contained there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were discharged at the Site, within the meaning of N.J.S.A. 58:10-23.11f.a.(1) and/or N.J.S.A. 58:10-23.11f.b.(3).

90. As dischargers of hazardous substances at the Site, the defendants are persons who are liable, jointly and severally, without regard to fault, for all costs Plaintiffs DEP and Acting Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11g.c.(1).

91. As persons responsible for materials that were, or contained, hazardous substances, certain of which were not satisfactorily stored or contained at the Site, the defendants are liable, jointly and severally, without regard to fault, for all

costs Plaintiffs DEP and Acting Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11g.c.(1).

92. As dischargers of hazardous substances at the Site, the defendants are persons who are liable, jointly and severally, without regard to fault, for all damages Plaintiffs DEP and Acting Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11g.c.(1).

93. As persons responsible for materials that were, or contained, hazardous substances, certain of which were discharged or not satisfactorily stored or contained at the Site, the defendants are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, Plaintiffs DEP and Acting Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11g.c.(1).

94. 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 a civil action for the costs of any investigation, cleanup or removal, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); the costs of restoring or replacing, where practicable, any natural resource damaged or destroyed by a discharge, N.J.S.A. 58:10-23.11u.b.(4); and for any



other costs Plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

95. Pursuant to N.J.S.A. 58:10-23.11q., Plaintiff Acting Administrator is authorized to bring an action for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs New Jersey Department of Environmental Protection and the Acting Administrator, New Jersey Spill Compensation Fund, pray this Court:

a. Order the defendants to reimburse Plaintiffs DEP and Acting Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs the plaintiffs have incurred for the Site, plus applicable interest;

b. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for any cleanup and removal costs Plaintiffs DEP and Acting Administrator may incur for the Site;

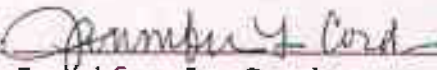
c. Order the defendants to reimburse Plaintiffs DEP and Acting Administrator, jointly and severally, without regard to fault, for all damages Plaintiffs DEP and Acting Administrator have incurred for any natural resource of this State damaged or destroyed by the contamination at the Site, including assessment costs, plus applicable interest;

d. Enter declaratory judgment against the defendants, jointly and severally, without regard to fault, for all damages Plaintiffs DEP and Acting Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Site;

e. Award Plaintiffs DEP and Acting Administrator their costs and fees in this action; and

f. Award Plaintiffs DEP and Acting Administrator such other relief as this Court deems appropriate.

DAVID SAMSON  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

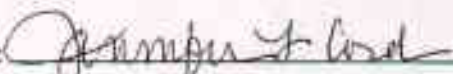
By:   
Jennifer L. Cordes  
Deputy Attorney General

Dated: September 23, 2002

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with L. Civ. R. 11.2, that the matters in controversy in this action are currently the subject of a pending action in United States District Court, Civil Action No. 02-2077 (DMC). There are no non-parties known to Plaintiffs at this time who should be joined in this action, or who is subject to joinder. If, however, any such non-party later becomes known to Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court.

DAVID SAMSON  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Jennifer L. Cordes  
Deputy Attorney General

Dated: September 23, 2002