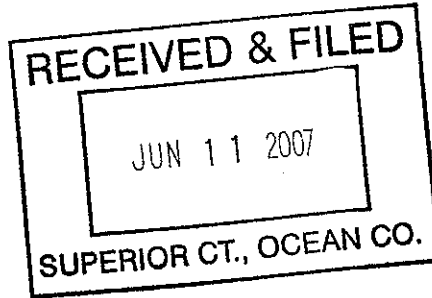


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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - OCEAN COUNTY
DOCKET NO. *02NL-1979-07*

NEW JERSEY DEPARTMENT OF :
ENVIRONMENTAL PROTECTION; THE : Civil Action
COMMISSIONER OF THE :
DEPARTMENT OF ENVIRONMENTAL : COMPLAINT
PROTECTION; and THE :
ADMINISTRATOR OF THE NEW :
JERSEY SPILL COMPENSATION :
FUND, :
Plaintiffs, :
v. :
GETTY PROPERTIES CORPORATION, :
and LEEMILT'S PETROLEUM, INC., :
Defendants. :

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") ("the Plaintiffs") having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New

Jersey, by way of Complaint against the above-named defendants, Getty Properties Corporation and Leemilt's Petroleum, Inc. ("the Defendants"), 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 hazardous substances at the Lakewood Getty property in Lakewood Township, Ocean 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 and pollutants at the Lakewood Getty site. Further, the Plaintiffs seek an order compelling 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 pollutants and hazardous substances at the Lakewood Getty 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 plaintiff 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 Getty Properties Corporation ("Getty Properties") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 125 Jericho Turnpike, Jericho, New York 11753.

7. Defendant Getty Properties was formerly known as Getty Petroleum Corporation ("Getty Petroleum"), until Getty Petroleum changed its name to Getty Properties in or about 1998.

8. Defendant Leemilt's Petroleum, Inc. ("Leemilt's") is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 1500 Hempstead Turnpike, East Meadow, New York 11554.

9. The Defendants are wholly-owned subsidiaries of Getty Realty Corporation, an active Maryland corporation with a principal place of business located at 125 Jericho Turnpike, Jericho, New York 11753.

NATURAL RESOURCES

10. 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.

11. 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.

12. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of pollutants and hazardous substances at the site.

AFFECTED NATURAL RESOURCES

Ground Water

13. 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.

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

15. 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.

16. 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.

17. 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.

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

Surface Water

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

20. 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.

21. 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.

Wetlands

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

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

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

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

GENERAL ALLEGATIONS

26. The Lakewood Getty site consists of approximately .4 acres of real property located at 100 River Avenue, Lakewood Township, Ocean County, this property being also known and designated as Block 412, Lot 1, on the Tax Map of Lakewood Township ("the Lakewood Getty 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. 001711.

27. The Lakewood Getty Property is located in a mixed-use residential and commercial area of Lakewood Township.

28. In 1952, Tulsa Petroleum Company ("Tulsa") purchased the Lakewood Getty Property from Acme Auto Supply, Inc., and continued to own it until 1978, when title passed to Ruth Abrams, Florence Mason, Beverly Coplon, Shirley Greenwald and Tobe Rosner.

29. In July 1992, the above-named individuals sold the Lakewood Getty Property to defendant Leemilt's, which was the owner of the Lakewood Getty Property as of the filing of this Complaint.

30. During the time that Ruth Abrams, Florence Mason, Beverly Coplon, Shirley Greenwald and Tobe Rosner owned the Lakewood Getty 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 benzene, toluene, ethylbenzene, xylenes ("BTEX") and methyl tertiary butyl ether ("MTBE").

31. Further, during the time that Ruth Abrams, Florence Mason, Beverly Coplon, Shirley Greenwald and Tobe Rosner owned the Lakewood Getty Property, "pollutants," as defined in N.J.S.A. 50:10A-3n., were "discharged" at the Lakewood Getty Property within the meaning of N.J.S.A. 58:10A-3e., which included MTBE and BTEX.

32. From as early as 1986 to the present, defendant Getty Properties has, under various names, operated a gasoline service station at the Lakewood Getty Property, which activities involved the storage, distribution and handling of hazardous substances and pollutants.

33. Records maintained by plaintiff DEP concerning the registration of the underground storage tanks ("USTs") at the Lakewood Getty Property indicate that as of 1986 the owner or operator of the facility was Power Test of New Jersey, Inc. ("Power Test").

34. Power Test was a subsidiary of Power Test Corporation, which in 1985 changed its name to Getty Petroleum Corporation.

35. Further, the UST certification questionnaires for 1988, 1989, 1990, 1992 and 1994, indicate that the owner or operator of the facility was defendant Getty Properties, then known as Getty Petroleum Corporation.

36. As of the filing of this Complaint, defendant Getty Properties was operating the gasoline service station at the Lakewood Getty Property.

37. During the time that Defendant Getty Properties has operated a gasoline service station at the Lakewood Getty Property, the company has generated, stored and handled hazardous substances and pollutants, certain of which were discharged there, which substances and pollutants included BTEX and MTBE.

38. On March 11, 1992, a representative of defendant Getty Properties, then known as Getty Petroleum Corporation, reported to plaintiff DEP that unleaded gasoline had been discharged from an UST at the Lakewood Getty Property.

39. Defendant Getty Properties identified the cause of the release as a broken piping junction, which defendant Getty Properties subsequently repaired.

40. In April 1992, DEP issued a Spill Act directive (April 1992 Directive") to defendant Getty Properties, then known as Getty Petroleum Corporation, pursuant to N.J.S.A. 58:10-23.11f.a., directing defendant Getty Properties to perform a remedial investigation for the Site, and to restore any natural resource

injured as a result of the discharge of hazardous substances at the Lakewood Getty Property.

41. Defendant Getty Properties responded to the April 1992 Directive by installing ten groundwater monitoring wells for sampling to characterize groundwater quality at the Site and by commencing a remedial investigation of the Site.

42. While installing the ten monitoring wells, defendant Getty Properties detected liquid-phase petroleum hydrocarbons ("LPH") in the ground water from two monitoring wells, in response to which defendant Getty Properties performed hand bailing of free product from these wells from 1992 to 1995.

43. Sampling that defendant Getty Properties performed during the remedial investigation confirmed the presence of various hazardous substances and pollutants in the soils and ground water at concentrations exceeding plaintiff DEP's cleanup criteria, which substances included BTEX and MTBE.

44. During the remedial investigation, defendant Getty Properties also discovered the presence of benzene and other petroleum compounds at concentrations exceeding plaintiff DEP's cleanup criteria on property across the street from the Lakewood Getty Property, on which Peterson's Sunset Cabin, a restaurant, was located, and in the surface water of wetlands located behind the restaurant, which plaintiff DEP attributes to the discharge of hazardous substances and pollutants at the Lakewood Getty Property.

45. Defendant Getty Properties completed the on-site remedial investigation in 1995, and submitted its findings to plaintiff DEP in a Remedial Action Workplan ("RAWP") in January 1996, in which defendant Getty Properties proposed a pump-and-treat system to remediate the on-site ground water, and a vapor extraction system for remediating the soils.

46. In the January 1996 RAWP, defendant Getty Properties, proposed the establishment of a Classification Exception Area ("CEA") and a Well Restriction Area ("WEA") for the Site, which would restrict usage of the designated ground water, and restrict the installation of new potable wells within its boundaries.

47. Plaintiff DEP approved the proposed RAWP on February 1, 1996, but required defendant Getty Properties to conduct an investigation of the off-site contamination, and submit a RAWP addendum addressing this contamination, which defendant Getty Properties submitted to plaintiff DEP in January 1997.

48. In the January 1997 RAWP addendum, which plaintiff DEP approved in February 1997, defendant Getty Properties established a bioremediation program to treat the soils and ground water, and a pump-and-treat system on the Peterson's Sunset Cabin property to eliminate the direct discharge of contaminated ground water into the wetlands area there.

49. In the January 1997 RAWP addendum, defendant Getty Properties also proposed a larger CEA to include the off-site contamination, which plaintiff DEP subsequently approved.

50. The CEA plaintiff DEP has approved measures 3.76 acres, and has a duration of indeterminate length due to the presence of benzene at levels exceeding plaintiff DEP's cleanup criteria.

51. Defendant Getty Properties discontinued the vapor extraction system for the on-site soils in 2000, and the pump-and-treat system for the on-site groundwater contamination in 2001.

52. In 2001, defendant Getty Properties sought, and received, approval from plaintiff DEP for natural attenuation with continued semi-annual sampling for the remaining on-site groundwater contamination.

53. Defendant Getty Properties discontinued the off-site remediation system in 2002, and, also, received approval from plaintiff DEP for natural attenuation with semi-annual sampling of the remaining off-site groundwater contamination.

54. In May 2006, plaintiff DEP informed defendant Getty Properties of its concerns with higher levels of benzene and tentatively identified compounds ("TICs") than defendant Getty properties had previously reported in the ground water from one of the off-site monitoring wells.

55. Plaintiff DEP further directed defendant Getty Properties to propose a more active remediation method for this contamination,

and to take additional groundwater samples from four other monitoring wells and a recovery well.

56. In November 2006, defendant Getty Properties proposed conducting an enhanced fluid recovery ("EFR") program to reduce contaminant concentrations in the ground water in the area surrounding the affected off-site monitoring well.

57. As of the filing of this Complaint, plaintiff DEP has not approved defendant Getty Properties' proposal, and is awaiting the additional sampling information requested from defendant Getty Properties in May 2006.

58. On or about April 3, 2007, plaintiff DEP directed defendant Getty Properties to undertake a Baseline Ecological Evaluation ("BEE") and an Ecological Risk Assessment ("ERA") pursuant to N.J.A.C. 7:26E-4.7 and 4.8 and N.J.A.C. 7:14B-8, to identify environmentally sensitive natural resources such as the wetlands, and to identify potential contaminant migration pathways.

59. As of the filing of this Complaint, defendant Getty Properties had not informed plaintiff DEP as to whether it will perform the BEE and ERA as directed.

60. Although defendant Getty Properties has undertaken the remediation of the Site, the groundwater, wetlands and surface water contamination continues.

FIRST COUNT

Spill Act

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

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

63. 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).

64. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge 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 is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

65. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the Lakewood Getty Property.

66. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning

the Site, and further, may approve other appropriations for the Site.

67. 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 Lakewood Getty Property.

68. 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.

69. Defendant Getty Properties is the discharger of hazardous substances at the Lakewood Getty 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 Lakewood Getty Property. N.J.S.A. 58:10-23.11g.c.(1).

70. Defendant Leemilt's, as the knowing purchaser of the Lakewood Getty Property, a property at which hazardous substances were previously discharged, 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 Lakewood Getty Property. N.J.S.A. 58:10-23.11g.c.(3).

71. 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).

72. 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 plaintiffs DEP and Administrator, jointly and severally, without regard to

- fault, for all damages, including lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Lakewood Getty Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all damages, including lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Lakewood Getty Property;
- c. Enter judgment against defendant Getty Properties to compel defendant Getty properties to perform any further cleanup of hazardous substances discharged at the Lakewood Getty Property under Plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling 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 Lakewood Getty 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 plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award the plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

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

74. Defendant Getty Properties is a "person" within the meaning of N.J.S.A. 58:10A-31.

75. 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.

76. 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.

77. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of pollutants at the Lakewood Getty Property.

78. Plaintiff DEP also 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 Lakewood Getty Property.

79. 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).

80. Defendant Getty Properties discharged pollutants at the Lakewood Getty 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 Lakewood Getty Property. N.J.S.A.
58:10A-6a.

81. 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 Lakewood Getty 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. Permanently enjoin defendant Getty Properties by requiring defendant Getty Properties to remove, correct, or terminate the adverse effects upon water quality

resulting from any unauthorized discharge of pollutants at the Lakewood Getty Property;

- b. Enter an order assessing defendant Getty Properties, 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 defendant Getty Properties, 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 defendant Getty Properties, 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 Lakewood Getty Property;
- e. Enter declaratory judgment against defendant Getty Properties, 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 Lakewood Getty Property;

- f. Enter an order assessing defendant Getty Properties, 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 Lakewood Getty Property;
- g. Enter declaratory judgment against defendant Getty Properties, 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 Lakewood Getty Property;
- h. Enter an order assessing defendant Getty Properties, without regard to fault, for the actual amount of any economic benefits the Defendant has accrued, including any savings realized from avoided capital or noncapital costs, the return the Defendant 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 the Defendant has received as a result of having violated the Water Pollution Control Act;

- i. Enter declaratory judgment against defendant Getty Properties, without regard to fault, assessing defendant Getty Properties 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 the Defendant 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

Public Nuisance

82. The Plaintiffs repeat each allegation of paragraph nos. 1 through 81 above as though fully set forth in its entirety herein.

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

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

85. The contamination of these natural resources 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.

86. As long as these resources remain contaminated due to the Defendants' conduct, the public nuisance continues.

87. Until these resources are restored to their 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 and surface water and healthy wetlands.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse plaintiffs DEP and Administrator for all damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Lakewood Getty Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all damages, including restitution for unjust enrichment,

lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Lakewood Getty Property;

- c. Enter judgment against defendant Getty Properties, compelling defendant Getty Properties to abate the nuisance by performing any further cleanup of hazardous substances discharged at the Lakewood Getty Property, under Plaintiff DEP's oversight;
- 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 Lakewood Getty 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 Lakewood Getty Property;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and,
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

88. The Plaintiffs repeat each allegation of paragraph nos. 1 through 87 above as though fully set forth in its entirety herein.

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

90. The Defendants are liable for trespass, and continued trespass, since hazardous substances and pollutants were discharged at the Lakewood Getty Property.

91. As long as the ground water, surface water or wetlands remains contaminated, the Defendants' trespass continues.

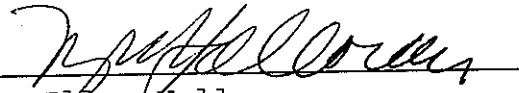
PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs has incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Lakewood Getty Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all 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 Lakewood Getty Property;
- c. Enter judgment against defendant Getty Properties, compelling defendant Getty Properties to cease the trespass by performing any further cleanup of hazardous substances discharged at the Lakewood Getty Property, under Plaintiff DEP's oversight;
- 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 Lakewood Getty 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 Lakewood Getty Property;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and,
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Mary Ellen Halloran
Deputy Attorney General

Dated: June 8, 2007

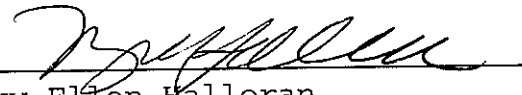
DESIGNATION OF TRIAL COUNSEL

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 Plaintiff 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 Plaintiff at this time, nor is any non-party known to the Plaintiff 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 Plaintiff, 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).

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: 
Mary Ellen Halloran
Deputy Attorney General

Dated: June 8, 2007

LakewoodGettyComplaint 00660 (final).wpd