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

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.	:	
	:	
SC HOLDINGS, INC.; WASTE MANAGEMENT OF NEW JERSEY INC.; "ABC CORPS." 1-5 (Names Fictitious); and "JOHN DOES" 1-10 (Names Fictitious),	:	
	:	
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 ("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 Landfill & Development Company Superfund site in Lumberton, Mount Holly and Eastampton Townships, Burlington 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 operation of the sanitary landfill facility located at the Landfill & Development Company property.

2. 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 Landfill &

Development Company Property. 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 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 Landfill & Development Company property, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

3. 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.

4. 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.

5. 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.

6. 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.

7. Defendant SC Holdings, Inc. ("SC Holdings") is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 2625 Cumberland Parkway, Atlanta, Georgia, 30339.

8. On or about January 20, 1994, Landfill & Development Company merged with defendant SC Holdings, with defendant SC Holdings being the surviving entity.

9. Defendant Waste Management of New Jersey, Inc. 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.

10. On or about September 11, 1977, Waste Management of New Jersey, Inc., merged with Interstate Waste Removal Company, Inc., formerly known as DeLorenzo Paper Stock, Inc. ("DeLorenzo"), with

defendant Waste Management of New Jersey, Inc., being the surviving entity.

11. Defendants Waste Management of New Jersey, Inc., and SC Holdings are wholly-owned subsidiaries of Waste Management, Inc., a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1001 Fannin, Suite 4000, Houston, Texas 77002.

12. Defendants "ABC Corporations" 1-5, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, or are otherwise related to, the named defendants.

13. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom may be corporate officers, directors, shareholders or responsible corporate officials of one or more of the named defendants, or are persons who otherwise participated in, or were responsible for, the discharge of hazardous substances and pollutants at the Landfill & Development Company property, and the ownership and operation of the sanitary landfill facility located there.

NATURAL RESOURCES

14. 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.

15. 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.

16. 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 Landfill & Development Company property.

AFFECTED NATURAL RESOURCE

Ground Water

17. 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.

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

19. 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.

20. 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.

21. 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.

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

GENERAL ALLEGATIONS

23. The Landfill & Development Company Superfund site consists of approximately 200 acres of real property located on Route 38 in Eastampton, Lumberton and Mount Holly Townships, Burlington County, this property being also known and designated as Block 1401, Lots 1 and 18, on the Tax Map of Eastampton Township; Block 23, Lots 1 and 2, on the Tax Map of Lumberton Township; and Block 118, Lots 10, 11, 12, 15.02 and 16, on the Tax Map of Mount Holly Township ("the L&D Company 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. 000850.

24. The L&D Company Property is located within the drainage basin of Rancocas Creek, and within .25 miles of Smithville Lake.

25. In 1966, George Pettinos, Inc. ("Pettinos"), which ceased operating at the Site in or about 1968, bought the portions of the L&D Company Property designated as Block 1401, Lot 18, on the Tax Map of Eastampton Township, and Block 118, Lot 13, on the Tax Map of Mount Holly Township, these parcels being two of the eleven parcels that now make up the L&D Company Property.

26. In June 1973, DeLorenzo purchased the Pettinos parcels, and was the owner of record of these two parcels at the time this Complaint was filed, despite having merged in to defendant Waste Management, Inc.

27. Between 1985 and 1989, Landfill & Development Company acquired the other nine parcels that make up the L&D Company Property from various owners, including one or more of the ABC Corporation and John Doe defendants, and was the owner of record of these properties at the time this Complaint was filed, despite having merged into defendant SC Holdings.

28. During the time that Landfill & Development Company, DeLorenzo, and one or more of the ABC Corporation and John Doe defendants, owned portions of the L&D Company 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 1,2 dichloroethane ("1,2 DCA"), 2-butanone ("MEK"), 4-methyl-2-pentanone ("MIBK"), acetone, benzene, cis-1,2-dichloroethene, methylene chloride, toluene, vinyl

chloride, aluminum, arsenic, cadmium, iron, lead, manganese and thallium.

29. During the time that Landfill & Development Company, DeLorenzo, and one or more of the ABC Corporation and John Doe defendants, owned portions of the L&D Company Property, "pollutants," as defined in N.J.S.A. 58:10A-3e., were also "discharged" there within the meaning of N.J.S.A. 58:10A-3n., which included 1,2 DCA, MEK, MIBK, acetone, benzene, cis-1,2-dichloroethene, methylene chloride, toluene, vinyl chloride, aluminum, arsenic, cadmium, iron, lead, manganese and thallium.

30. During the period that Landfill & Development Company, DeLorenzo, and one or more of the ABC Corporation and John Doe defendants, owned portions of the L&D Company Property, "solid wastes," as defined in N.J.S.A. 13:1E-3a., were "disposed of" there within the meaning of N.J.S.A. 13:1E-3c.

31. Certain of the solid wastes disposed of at the L&D Company Property during this period were deposited on, or in, the land as fill for a period of more than six months, thereby creating a "sanitary landfill facility" within the meaning of N.J.S.A. 13:1E-3q.

32. In or around 1962, Pettinos began accepting and disposing of demolition wastes at the L&D Company Property.

33. In 1968, Mount Holly Township leased the portion of the L&D Company Property located within its borders for landfilling

municipal, industrial and commercial wastes, and treated sewage sludge and, upon doing so, began accepting these wastes there.

34. In July 1970, Landfill & Development Company entered into a lease agreement with Mount Holly Township, whereby Landfill & Development Company agreed to landfill municipal solid wastes from Mount Holly at the L&D Company Property.

35. In 1976, Landfill & Development Company expanded its landfilling operations to include the Eastampton section of the L&D Company Property.

36. Landfill & Development Company continued operating a sanitary landfill at the L&D Company Property until on or about December 31, 1986, when the landfill's permitted capacity was met.

37. During the time that Landfill & Development Company and one or more of the ABC Corporation and John Doe defendants operated the landfill at the L&D Company Property, hazardous substances and pollutants were discharged there, which included 1,2 DCA, MEK, MIBK, acetone, benzene, cis-1,2-dichloroethene, methylene chloride, toluene, vinyl chloride, aluminum, arsenic, cadmium, iron, lead, manganese and thallium.

38. Also during the period that Landfill & Development Company and one or more of the ABC Corporation and John Doe defendants operated the landfill at the L&D Company Property, solid wastes were disposed of there, certain of which were deposited on, or in, the land as fill for a period exceeding six months.

39. Landfill & Development Company first discovered ground water contamination at the Site in 1973.

40. In September 1984, the federal Environmental Protection Agency ("EPA") placed the Site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. §§9601 to -9675.

41. The NPL, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list EPA promulgates of hazardous waste sites that pose the greatest threat to the human health and safety, and the environment.

42. On or about June 28, 1985, plaintiff DEP issued a New Jersey Pollutant Discharge Elimination System ("NJPDES") permit to Landfill & Development Company, requiring the company to institute a groundwater monitoring program on the L&D Company Property.

43. The NJPDES Permit plaintiff DEP issued to Landfill & Development Company required the company to install and monitor 26 groundwater monitoring wells to evaluate the status and impact of the landfill on ground water at the Site.

44. In issuing the NJPDES permit, plaintiff DEP intended to use the data from the sampling Landfill & Development Company performed to help in determining the impact to ground water from the landfill, and to determine whether any threat to public health or safety existed due to then current or past landfill practices.

45. In February 1985, and pursuant to the NJPDES permit, Landfill & Development Company sampled the ground water from various monitoring wells on and near the L&D Company Property.

46. In February 1986, Landfill & Development Company submitted a report to plaintiff DEP concerning the 1985 sampling, which confirmed that the ground water contained various hazardous substances and pollutants, including arsenic, cadmium, lead, benzene, chlorobenzene, ethylene dichloride, methylene chloride, vinyl chloride and 1,2 trans-dichloroethylene.

47. On May 30, 1986, plaintiff DEP issued a Spill Act directive ("1986 Directive") to Landfill & Development Company pursuant to N.J.S.A. 58:10-23.11f.a., directing Landfill & Development Company to fund a remedial investigation and feasibility study ("Phase I RI/FS") to determine the nature and extent of the contamination at the Site, and to evaluate the remediation alternatives for addressing the contamination.

48. On or about January 27, 1988, Landfill & Development Company informed plaintiff DEP that it would comply with the 1986 Directive by funding plaintiff DEP's performance of the Phase I RI/FS, which was memorialized in an Administrative Consent Order dated January 27, 1988 ("1988 ACO").

49. From 1986 through 1988, plaintiff DEP undertook the Phase I RI/FS, during which time DEP investigated the nature and extent of the contamination at the Site.

50. Sampling results from the Phase I RI revealed the presence of various pollutants and hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and soils at the Site, which included 1,2-trans-DCA, toluene, benzene, methylene chloride, chlorobenzene, ethylbenzene, 1,2 DCA, acrolein, chloroethane and vinyl chloride.

51. On July 9, 1990, plaintiff DEP and Landfill & Development Company entered into another Administrative Consent Order ("1990 ACO"), wherein Landfill & Development Company agreed to assume responsibility for completing the remaining Phase I RI/FS tasks identified in the 1988 ACO, including a second remedial investigation ("Phase II RI") to determine site hydrogeology, evaluate the risks posed by the landfill to human health and the environment in the vicinity of the L&D Company Property, and development of a remedial action plan to address the contamination.

52. Landfill & Development Company performed the Phase II RI from 1990 through 1995.

53. In October 1996, plaintiff DEP issued Landfill & Development Company a Solid Waste Closure and Post-Closure Plan Approval for the landfill.

54. As part of the approved closure plan, Landfill & Development Company agreed to install and maintain a clay liner on the landfill to prevent further migration of contaminants, a leachate collection system, and a methane gas collection system.

55. Landfill & Development Company has completed these tasks, and is obligated to maintain these systems through the post-closure period, which runs until 2018.

56. On September 30, 2004, plaintiff DEP, with EPA's concurrence, issued a Record of Decision ("September 2004 ROD") for the Site, in which DEP documented and explained the preferred remedy to address the contaminated soils and ground water at the Site.

57. The September 2004 ROD primarily provides for the continued maintenance of the landfill closure system; the construction, operation and maintenance of a groundwater extraction system to provide hydraulic containment and enhanced aerobic treatment whereby leachate and ground water would be re-circulated into the landfill along with air injection to enhance contaminant degradation; long-term groundwater monitoring; decommissioning the residential water-supply wells downgradient of the landfill; extending the municipal water supply line to areas downgradient of the landfill; and continued maintenance of site security.

58. In January 2006, Landfill & Development Company submitted a revised remedial action work plan ("RAWP") to plaintiff DEP, which plaintiff DEP approved in July 2006, subject to Landfill & Development Company addressing several technical issues plaintiff DEP had raised.

59. As of the filing of this Complaint, Waste Management Inc., on behalf of Landfill & Development Company, was implementing the remedy selected in the September 2004 ROD under plaintiff DEP and EPA's oversight, including designing and beginning construction of the groundwater extraction and reinjection system, and supplying the affected residences with bottled water until the municipal water supply line is extended to them.

60. Although Waste Management Inc., on behalf of Landfill & Development Company, has undertaken the remediation of the Site, the ground water and soils contamination continues.

FIRST COUNT

Spill Act

61. The 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 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 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).

65. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the L&D Company Property.

66. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may continue to 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 L&D Company 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. Defendants SC Holdings, Waste Management of New Jersey and one or more of the ABC Corporation and John Doe defendants,

are, or the successors-in-interest to, the dischargers of hazardous substances at the L&D Company Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the L&D Company Property. N.J.S.A. 58:10-23.11g.c.(1).

70. Defendants SC Holdings, Waste Management of New Jersey, and one or more of the ABC Corporation and John Doe Defendants, as the owners, or the successors-in-interest to the owners, of portions of the L&D Company Property at the time hazardous substances were discharged there, the transporters of the hazardous substances discharged there, or the generator of the hazardous substances discharged there, also are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the L&D Company Property. N.J.S.A. 58:10-23.11g.c.(1).

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 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 L&D Company Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the L&D Company Property;
- c. Enter judgment against defendant SC Holdings, compelling defendant SC Holdings to perform any further cleanup of hazardous substances discharged at the L&D Company 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 of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the L&D Company Property, 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.

SECOND COUNT

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

74. Defendants SC Holdings and one or more of the ABC and John Doe defendants, are "persons" 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 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 L&D Company Property.

78. 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).

79. Defendants SC Holdings, and one or more of the ABC Corporation Defendants are, or are the successors-in-interest to, a discharger of pollutants at the L&D Company Property, which discharges were 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 are 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 L&D Company Property. N.J.S.A. 58:10A-6a.

80. 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 L&D Company 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 permanently enjoin defendant SC Holdings and one or more of the ABC Corporation and John Doe defendants by requiring these Defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing defendant SC Holdings and one or more of the ABC Corporation and John Doe defendants, 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 SC Holdings and one or more of the ABC Corporation and John Doe defendants, 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 SC Holdings and one or more of the ABC Corporation and John Doe defendants, 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 L&D Company Property;
- e. Enter declaratory judgment against defendant SC Holdings, and one or more of the ABC Corporation and John Doe defendants, 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 L&D Company Property;
- f. Enter an order assessing defendant SC Holdings, and one or more of the ABC Corporation and John Doe defendants, 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 L&D Company Property;

- g. Enter declaratory judgment against defendant SC Holdings, and one or more of the ABC Corporation and John Doe defendants, 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 L&D Company Property;
- h. Enter an order assessing defendant SC Holdings, and one or more of the ABC Corporation and John Doe defendants, without regard to fault, for the actual amount of any economic benefits they or their predecessors-in-interest have accrued, including any savings realized from avoided capital or noncapital costs, the return they or their predecessors-in-interest have earned on the amount of avoided costs, any benefits they have enjoyed as a result of a competitive market advantage, or any other benefit they or their predecessors-in-interest have received as a result of having violated the Water Pollution Control Act;

- i. Enter declaratory judgment against defendant SC Holdings, and one or more of the ABC Corporation and John Doe defendants without regard to fault, assessing these Defendants for the actual amount of any economic benefits that will accrue to them, 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 they or their predecessors-in-interest have enjoyed, or any other benefit that will accrue to them as a result of their or their predecessors-in-interest 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

81. The Plaintiffs repeat each allegation of paragraph nos. 1 through 80 above as though fully set forth in its entirety herein.

82. Defendants SC Holdings, Waste Management of New Jersey, and one or more of the ABC Corporation and John Doe defendants, are or are the successors-in-interest to, a person, who "owned" and/or

"operated" the sanitary landfill facility located at the L&D Company Property within the meaning of N.J.S.A. 13:1E-102b.

83. Plaintiff DEP has incurred, and will continue to incur, costs resulting from the operation of the sanitary landfill facility located at the L&D Company Property.

84. Plaintiff DEP has also certified, or may certify for payment, valid claims made against the Sanitary Landfill Facility Contingency Fund concerning the sanitary landfill facility at the L&D Company Property.

85. Plaintiff DEP has incurred, and may 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 L&D Company Property.

86. As the owners, or the successors-in-interest to the owners, of the sanitary landfill facility at the L&D Company Property, defendants SC Holdings, Waste Management of New Jersey, and one or more of the ABC Corporation and John Doe defendants, are 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 L&D Company Property, including claims paid from the Sanitary Landfill Facility Contingency Fund, and 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 L&D Company Property. N.J.S.A. 13:1E-103.

87. As the operators, or the successors-in-interest to the operators, of the sanitary landfill facility at the L&D Company Property, defendants SC Holdings, Waste Management of New Jersey, and one or more of the ABC Corporation and John Doe defendants are 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 L&D Company Property, including claims paid from the Sanitary Landfill Facility Contingency Fund, and including lost value and reasonable assessment costs, that the 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 L&D Company Property. N.J.S.A. 13:1E-103.

88. 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 and/or closure of the sanitary landfill facility located at the L&D Company 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 Defendants to reimburse plaintiff DEP, jointly and severally, for all direct and indirect damages, including claims paid from the Sanitary Landfill Facility Contingency Fund, and 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 L&D Company Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, for all direct and indirect damages, including claims to be paid from the Sanitary Landfill Facility Contingency Fund, and 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 L&D Company 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

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

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

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

92. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

93. As long as the ground water remains contaminated due to the Defendants' conduct, or the conduct of their predecessors-in-interest, the public nuisance continues.

94. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued

maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the L&D Company Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the L&D Company Property;
- c. Enter judgment against defendant SC holdings, compelling defendant SC holdings to abate the nuisance by performing any further cleanup of pollutants and hazardous

substances discharged at the L&D Company Property under plaintiff DEP's oversight;

- d. Enter judgment against the Defendants, 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 L&D Company 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

95. The Plaintiffs repeat each allegation of paragraph nos. 1 through 94 above as though fully set forth in its entirety herein.

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

97. The Defendants are liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the L&D Company Property.

98. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

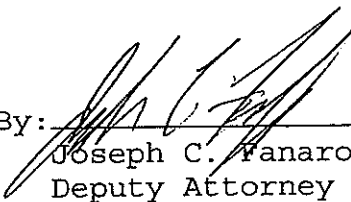
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the L&D Company Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the L&D Company Property;
- c. Enter judgment against defendant SC Holdings, compelling the defendant SC Holdings to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the L&D Company Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the L&D Company Property, 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: 
Joseph C. Fanaroff
Deputy Attorney General

Dated: 6/25/07

DESIGNATION OF TRIAL COUNSEL

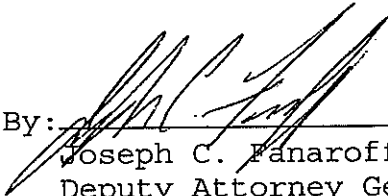
Pursuant to R. 4:25-4, the Court is advised that Joseph C. Fanaroff, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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: 
Joseph C. Panaroff
Deputy Attorney General

Dated:

6/25/07