

JUN 14 2007

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL
OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

By: Mary Ellen Halloran
Deputy Attorney General
(609) 984-5016

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

L 3081 07

_____	:	
NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION; THE	:	<u>Civil Action</u>
COMMISSIONER OF THE NEW JERSEY	:	
DEPARTMENT OF ENVIRONMENTAL	:	COMPLAINT
PROTECTION; and THE	:	
ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION	:	
FUND,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
GETTY PROPERTIES CORPORATION;	:	
PATHMARK SUPERMARKETS, INC.;	:	
and PLAINBRIDGE, LLC,	:	
	:	
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 hazardous substances and pollutants at the Lawnside Getty site in Lawnside Borough, Camden 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 Lawnside 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 hazardous substances and pollutants at the Lawnside 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 Pathmark Stores, Inc. ("Pathmark"), formerly known as Supermarkets General Corporation, is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 200 Milik Street, Carteret, New Jersey 07008.

9. Defendant Plainbridge, LLC ("Plainbridge") is a limited liability company organized and existing under the laws of the State of Delaware, with a principal place of business located at 200 Milik Street, Carteret, New Jersey 07008.

10. In 1996, Trauts-South Plainfield, Inc. ("Trauts"), a New Jersey corporation, merged with defendant Plainbridge, with defendant Plainbridge being the surviving corporation.

11. Defendant Plainbridge is a wholly-owned subsidiary of defendant Pathmark.

NATURAL RESOURCES

12. 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.

13. 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.

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

AFFECTED NATURAL RESOURCE

Ground Water

15. 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.

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

17. 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.

18. 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.

19. 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.

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

GENERAL ALLEGATIONS

21. The Lawnside Getty site consists of approximately .5 acres of real property located at 100 Whitehorse Pike, Lawnside Borough, Camden County, this property being also known and designated as Block 94, Lots 1A, 1B & 2, on the Tax Map of Lawnside Borough ("the Lawnside Getty 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. 001728.

22. The Lawnside Getty Property, which is part of a Pathmark supermarket shopping center, is located in a mixed-use, commercial and residential area of Lawnside Borough.

23. By deed dated July 9, 1969, defendant Pathmark, then Supermarkets General, transferred title to the Lawnside Getty

Property to Bridge Stuart, Inc. ("Bridge Stuart"), which was then a wholly-owned subsidiary of defendant Pathmark.

24. On or about December 3, 1980, Bridge Stuart transferred title to the Lawnside Getty Property to Jersey Stuart, Inc., a New Jersey corporation, which then was a wholly-owned subsidiary of defendant Pathmark, then Supermarkets General.

25. By deed dated October 22, 1993, Jersey Stuart, Inc. transferred title to the Lawnside Getty Property to defendant Plainbridge, which then was a subsidiary of defendant Pathmark.

26. On or about March 8, 1994, Plainbridge transferred title to the Lawnside Getty Property to Trauts, a New Jersey corporation, with which defendant Plainbridge merged in 1996, with defendant Plainbridge being the surviving entity.

27. As of the filing of this Complaint, Trauts was the owner of record of the Lawnside Getty Property, despite defendant Plainbridge being the surviving entity from its 1996 merger with Trauts.

28. During the time that Jersey Stuart, Inc. owned the Lawnside 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 xylenes, methyl tertiary butyl ether ("MTBE") and tertiary butyl alcohol ("TBA").

29. Since in or about 1963, a gasoline service station has been located at the Lawnside Getty Property.

30. On or about December 9, 1988, defendant Getty Properties, then Getty Petroleum, informed plaintiff DEP of a leaking underground storage tank ("UST") at the Lawnside Getty Property.

31. In 1993, Getty Properties, then Getty Petroleum, divested the service station at the Lawnside Getty Property as part of a corporate merger.

32. The service station at the Lawnside Getty Property is now being operated as a LukOil service station.

33. During the time that defendant Getty Properties operated a gasoline service station at the Lawnside Getty Property, it generated, stored and handled hazardous substances, certain of which were discharged there, which substances included xylenes, MTBE and TBA.

34. Further, during the time that Getty Properties operated a gasoline service station at the Lawnside Getty Property, it generated, stored and handled "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10A-3n., which pollutants included xylenes, MTBE and TBA.

35. In December 1988, construction workers excavating to build an addition to the Pathmark supermarket on the Lawnside Getty Property discovered soils contaminated with petroleum products.

36. On or about December 9, 1988, defendant Pathmark, then Supermarkets General, notified plaintiff DEP of the petroleum discharge, and, through its own investigation, discovered a hole in one of the USTs at the Lawnside Getty Property.

37. On December 23, 1988, plaintiff DEP issued a Spill Act directive to defendant Pathmark, then Supermarkets General, pursuant to N.J.S.A. 58:10-23.11f.a.(1) ("December 1988 Directive"), directing defendant Pathmark to determine the source of the discharge, perform a site characterization, and determine the extent of any groundwater contamination at the Site.

38. In response to the December 1988 Directive, defendant Pathmark further investigated the source of the contamination, which investigation confirmed that hazardous substances and pollutants had discharged through a hole in one of the USTs at the Lawnside Getty Property.

39. In March 1989, at the direction of plaintiff DEP, defendant Getty Properties, then Getty Petroleum, embarked on a sampling program to more fully determine the extent of soils and ground water contamination at the Site, the results of which revealed the presence of various hazardous substances and pollutants in the ground water and soils at concentrations exceeding plaintiff DEP's cleanup criteria, which substances included benzene, ethylbenzene, and toluene, which are BTEX constituents, MTBE, TBA, and lead.

40. In July 1996, defendant Getty Properties, Bridge Stuart, and an entity or individual doing business as US Gas/Lawnside Service Station ("the Remediating Parties"), submitted a Remedial Action Workplan ("July 1996 RAWP") to plaintiff DEP, in which they proposed remediating the Site by utilizing a soil vapor extraction system and monitored natural attenuation for the affected ground water.

41. On June 1, 1998, plaintiff DEP approved the July 1996 RAWP for the soils contamination, but declined to approve the proposed groundwater remedy, and, in so doing, instructed the Remediating Parties to conduct a groundwater remedial investigation ("RI"), and revise the Classification Exemption Area ("CEA") proposed in the RAWP to conform with the RI findings.

42. In 1999, in response to plaintiff DEP's concerns, the Remediating Parties submitted an addendum to the July 1996 RAWP, which plaintiff DEP approved on or about January 24, 2000.

43. The July 1996 RAWP, as amended, primarily provides for the installation of a combined air sparging and soil vapor extraction system to address both soils and groundwater contamination at the Site, which activities are ongoing.

44. In April 2000, plaintiff DEP approved the Remediating Parties' revised CEA, which restricts the use of the affected groundwater within its boundaries, which is approximately 4.4

acres, and has an estimated duration of 46 years, or until April 2046.

45. Although the Remediating Parties have undertaken the remediation of the Site, the soils and groundwater contamination continues.

FIRST COUNT

Spill Act

46. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 45 above as though fully set forth in its entirety herein.

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

48. 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).

49. 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).

50. The Plaintiffs have incurred, or may incur, costs as a result of the discharge of hazardous substances at the Lawnside Getty Property.

51. 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.

52. 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 Lawnside Getty Property.

53. 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.

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

55. Defendant Pathmark, as the successor-in-interest to Jersey Stuart, the owner of the Lawnside Getty Property at the time hazardous substances were discharged there, 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 Lawnside Getty Property. N.J.S.A. 58:10-23.11g.c.(1).

56. Defendant Plainbridge, as the knowing purchaser of the Lawnside 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 Lawnside Getty Property. N.J.S.A. 58:10-23.11g.c.(3).

57. 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).

58. 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 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 Lawnside 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 the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Lawnside Getty Property;

- c. Enter judgment against defendant Getty Properties, compelling defendant Getty Properties to perform any further cleanup of hazardous substances discharged at the Lawnside Getty Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, 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 Lawnside 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 Lawnside Getty Property;
- e. Award the Plaintiffs their costs and fees in this action; and,
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

59. Plaintiff Commissioner repeats each allegation of paragraph nos. 1 through 58 above as though fully set forth in its entirety herein.

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

61. 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.

62. 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.

63. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of pollutants at the Lawnside Getty Property.

64. 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 Lawnside Getty Property.

65. 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).

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

67. 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 Lawnside 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 Lawnside 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 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 Lawnside 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 Lawnside 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 Lawnside 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 Lawnside 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

68. The Plaintiffs repeat each allegation of paragraph nos. 1 through 67 above as though fully set forth in its entirety herein.

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

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

71. The groundwater contamination at the Lawnside Getty Property 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.

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

73. 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 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 hazardous substances and pollutants at the Lawnside 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 and pollutants at the Lawnside 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 and pollutants discharged at the Lawnside 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 and pollutants at the Lawnside 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 and pollutants at the Lawnside Getty Property;
- e. Award the Plaintiffs their costs and fees in this action; and,
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

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

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

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

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

PRAYER FOR RELIEF

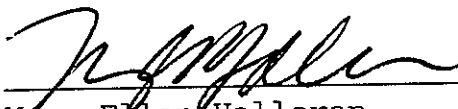
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all 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 hazardous substances and pollutants at the Lawnside 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 and pollutants at the Lawnside Getty Property;
- c. Enter judgment against Defendants, compelling the Defendants to cease the trespass by performing any further cleanup of hazardous substances and pollutants

discharged at the Lawnside Getty Property, under plaintiff DEP's oversight;

- d. Enter judgment against the defendant Getty Properties, compelling defendant Getty Properties to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances and pollutants at the Lawnside 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 and pollutants at the Lawnside Getty Property;
- 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: 
Mary Ellen Halloran
Deputy Attorney General

Dated: June 13, 2007

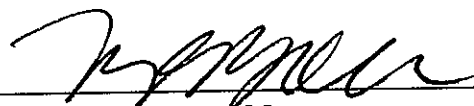
DESIGNATION OF TRIAL COUNSEL

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 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: 
Mary Ellen Halloran
Deputy Attorney General

Dated: June 13, 2007

LawnsideGettyComplaint 053107.wpd