

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

By: Edward Devine
Deputy Attorney General
(609) 984-4863

Gordon C. Rhea, Esq.
Special Counsel to the Attorney
General
Richardson, Patrick, Westbrook
& Brickman, L.L.C.
1037 Chuck Dawley Boulevard,
Building A
Mt. Pleasant, SC 29464
(843) 727-6501

John K. Dema, Esq.
Special Counsel to the
Attorney General
Law Offices of John K. Dema,
P.C.
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-5008
(340) 773-6142

Barry A. Knopf, Esq.
Special Counsel to the Attorney
General
Cohn, Lifland, Pearlman, Herrmann
& Knopf, L.L.P.
Park 80 Plaza West-One
Saddle Brook, NJ 07663

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

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

AMERADA HESS CORPORATION;
ATLANTIC RICHFIELD COMPANY; BP
AMERICA, INC.; BP AMOCO
CHEMICAL COMPANY, INC.; BP
AMOCO CORPORATION; BP PRODUCTS
NORTH AMERICA, INC.;

:
: Civil Action

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: First Amended
: Complaint

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CHEVRONTEXACO CORPORATION; :
 CHEVRON U.S.A., INC.; CITGO :
 PETROLEUM CORPORATION; CITGO :
 REFINING & CHEMICAL COMPANY, :
 LP; COASTAL EAGLE POINT OIL :
 COMPANY; CONOCOPHILLIPS :
 COMPANY; CROWN CENTRAL :
 PETROLEUM CORPORATION; DUKE :
 ENERGY MERCHANTS, LLC; :
 EL PASO MERCHANT ENERGY- :
 PETROLEUM COMPANY; EQUILON :
 ENTERPRISES LLC; EQUISTAR :
 CHEMICALS, LP; EXXONMOBIL :
 CORPORATION; EXXONMOBIL OIL :
 CORPORATION; GEORGE E. WARREN :
 CORPORATION; GETTY PETROLEUM :
 MARKETING, INC.; GETTY :
 PROPERTIES CORP.; GIANT :
 YORKTOWN, INC.; GULF OIL :
 LIMITED PARTNERSHIP; IRVING :
 OIL CORPORATION; IRVING OIL :
 LIMITED; LYONDELL CHEMICAL :
 COMPANY; LYONDELL-CITGO :
 REFINING, LP; MARATHON :
 PETROLEUM Company LLC.; :
 MARATHON OIL COMPANY; MOBIL :
 CORPORATION; MOTIVA :
 ENTERPRISES, LLC; THE :
 PREMCOR REFINING GROUP INC.; :
 SHELL OIL COMPANY; SHELL OIL :
 PRODUCTS COMPANY LLC; SHELL :
 TRADING (US) COMPANY; SUNOCO :
 INC.; SUNOCO, INC. (R&M); :
 TEXACO, INC.; TEXACO REFINING :
 AND MARKETING (EAST); TEXACO :
 REFINING and MARKETING, INC.; :
 TMR COMPANY; TOSCO :
 CORPORATION; TOSCO REFINING :
 COMPANY, INC.; TOTAL :
 PETROCHEMICALS USA, INC.; TRMI :
 HOLDINGS INC.; ULTRAMAR :
 ENERGY, INC.; ULTRAMAR :
 LIMITED; UNOCAL CORPORATION; :
 VALERO ENERGY CORPORATION; :
 VALERO MARKETING and SUPPLY :
 COMPANY; VALERO REFINING AND :
 MARKETING; VITOL S.A.; and :

DOES 1-99,

:

Defendants.

Plaintiff New Jersey Department of Environmental Protection ("the Plaintiff"), having its principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, files this Complaint against the following Defendants: Amerada Hess Corporation, 1185 Avenue of Americas, New York, New York; Atlantic Richfield Company, 4101 Winfield Road, Warrenville, Illinois; BP America, Inc., 4101 Winfield Road, Warrenville, Illinois; BP Amoco Chemical Company, Inc., at 4101 Winfield Road, Warrenville, Illinois; BP Amoco Corporation, 4101 Winfield Road, Warrenville, Illinois; BP Products North America, Inc., 4101 Winfield Road, Warrenville, Illinois; ChevronTexaco Corporation, 6001 Bollinger Road, San Ramon, California; Chevron U.S.A., Inc., 6001 Bollinger Road, San Ramon, California; Citgo Petroleum Corporation, 6100 South Yale Avenue, Tulsa, Oklahoma; Citgo Refining & Chemical Company, LP, 6100 South Yale Avenue, Tulsa, Oklahoma; Coastal Eagle Point Oil Company, Rte. 130 and I-295, Westville, New Jersey; ConocoPhillips Company, 600 North Dairy Ashford, Houston, Texas; Crown Central Petroleum Corporation, 1 North Charles Street, Baltimore, Maryland; Duke Energy Merchants, LLC, 5400 Westheimer Court, Houston, Texas; El Paso Merchant Energy-Petroleum Company, 1001 Louisiana Street, Houston, Texas;

Equilon Enterprises LLC, 1100 Louisiana Street, Houston, Texas;
Equistar Chemicals, LP, 1221 McKinney Street, Houston, Texas;
ExxonMobil Corporation, 5959 Los Colinas Boulevard, Irving, Texas;
ExxonMobil Oil Corporation, 5959 Las Colinas Boulevard, Irving,
Texas; George E. Warren Corporation, 605 17th Street, Vero Beach,
Florida; Getty Petroleum Marketing, Inc., 1500 Hempstead Turnpike,
East Meadow, New York; Getty Properties Corp., 125 Jericho
Turnpike, Jericho, New York; Giant Yorktown, Inc., 23722 N.
Scottsdale Rd., Scottsdale, Arizona; Gulf Oil Limited Partnership,
90 Everett Avenue, Chelsea, Massachusetts; Irving Oil Corporation,
190 Commerce Way, Portsmouth, New Hampshire; Irving Oil Limited,
210 Crown Street/10 Sydney Street, Saint John, New Brunswick,
Canada; Lyondell Chemical Company, 1221 McKinney Street, Suite 700,
Houston, Texas; Lyondell-Citgo Refining, LP, 12000 Lawndale,
Houston, Texas; Marathon Petroleum Company LLC., 539 South Main
Street, Findlay, Ohio; Marathon Oil Company, 5555 San Felipe Road,
Houston, Texas; Mobil Corporation, 5959 Las Colinas Boulevard,
Irving, Texas; Motiva Enterprises, LLC, 1100 Louisiana Street,
Suite 1000, Houston, Texas; The Premcor Refining Group Inc., 8182
Maryland Ave., Clayton, Missouri; Shell Oil Company, One Shell
Plaza, 910 Louisiana, Houston, Texas; Shell Oil Products Company
LLC, 910 Louisiana Street, Houston, Texas; Shell Trading (US)
Company, 910 Louisiana, Houston, Texas; Sunoco Inc., 1209 Orange
Street, Wilmington, Delaware; Sunoco, Inc. (R&M), 1801 Market

Street, Philadelphia, Pennsylvania; Texaco, Inc., c/o ChevronTexaco Corp., San Ramon, California; Texaco Refining and Marketing (East), 1111 Bagby Street, Houston, Texas; Texaco Refining and Marketing, Inc., One Shell Plaza, 910 Louisiana Street, Houston, Texas; TMR Company, 6001 Bollinger Canyon Road, San Ramon, California; Tosco Corporation, 770 Plaza Office Building, Bartlesville, Oklahoma; Tosco Refining Company, Inc., 600 North Dairy Ashford, Houston, Texas; Total Petrochemicals USA, Inc., Total Plaza, 1201 Louisiana Street, Suite 1800, Houston, Texas; TRMI Holdings Inc., P.O. Box 6028, San Ramon, California; Ultramar Energy, Inc., One Valero Place, San Antonio, Texas; Ultramar Limited, 2200 McGill College, Montreal, Quebec, Canada; Unocal Corporation, 2141 Rosencrans Avenue, Suite 4000, El Segundo, California; Valero Energy Corporation, One Valero Place, San Antonio, Texas; Valero Marketing and Supply Company, One Valero Place, San Antonio, Texas; Valero Refining and Marketing, 1 Valero Place, San Antonio, Texas; Vitol S.A., 1100 Louisiana, Suite 5500, Houston, Texas; and Does 1-99 (hereinafter collectively, "Defendants") alleges as follows:

SUMMARY OF THE CASE

1. Plaintiff New Jersey Department of Environmental Protection, brings this action in order to protect and to remedy important state interests affected by widespread contamination of the waters of the State with methyl tertiary butyl ether ("MTBE"), a chemical used in some gasoline.

2. The "waters of the State," 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.

3. The waters of the State of New Jersey ("the State") whether located above or below ground, constitute limited, precious and invaluable public natural resources that are held in trust for the benefit of all New Jersey citizens, and for which the State of New Jersey has the authority and responsibility to protect, conserve and manage in the interest of present and future generations of its citizens.

4. The Defendants in this action are major oil and chemical companies that designed and/or manufactured MTBE and/or supplied gasoline within the State containing MTBE. The Defendants include MTBE manufacturers and refiners and major-brand marketers of gasoline containing MTBE, which was entered and continues to be entered into the stream of the State's commerce and which has injured and continues to injure the waters of the State.

5. Defendants' manufacture or use of MTBE in gasoline has created an unprecedented threat to both the surface and ground waters of the State (hereinafter "waters of the State"), including many public and private drinking water supplies. Unlike other gasoline constituents, MTBE contaminates and spreads in water resources quickly, and hides and resists removal and treatment,

thereby presenting a serious threat to waters throughout the State. MTBE has already contaminated numerous drinking water sources in the State and threatens to contaminate many more, as a result of normal and foreseen storage, and the purchase and use of gasoline by the State's residents.

6. In addition to producing and/or supplying MTBE or gasoline containing MTBE for importation into and/or for sale within the State, Defendants knowingly and willfully promoted, marketed and sold MTBE and gasoline and other petroleum products (hereinafter collectively, "gasoline") containing MTBE, when they knew or reasonably should have known that MTBE would be discharged into the environment and pollute the waters of the State in violation of New Jersey law, and would interfere with the State's interest in protecting and preserving surface and ground waters and threaten public health and welfare and the environment, as has occurred and is continuing to occur within the State.

7. The Defendants, among other things:

(a) designed, manufactured, formulated, refined, set specifications for, exchanged, promoted, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State), such that discharges of MTBE contaminate and threaten the waters of the State;

- (b) were legally responsible for and committed each of the multiple tortious and wrongful acts alleged in this Complaint;
- (c) participated in one or more enterprises to promote MTBE and/or gasoline containing MTBE, despite the availability of reasonable alternatives and their actual or constructive knowledge that the pollution alleged herein would be the inevitable result of their conduct; and
- (d) in doing the tortious and wrongful acts alleged in this Complaint, acted in the capacity of joint-venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent transferee, fraudulent transferor, controller, alter-ego, co-conspirator, licensee, licensor, patent holder and/or indemnitor of each of the named Defendants.

8. At all times relevant to this action, the Defendants together controlled virtually the entire market for gasoline containing MTBE in New Jersey.

9. To the extent any act or omission of any of the Defendants is alleged in this Complaint, the officers, directors, agents, employees or representatives of each such Defendant committed or authorized each such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of

the affairs of such Defendants, and did so while acting within the scope of their duties, employment or agency.

10. MTBE can cause significant adverse health effects, and, even at very low concentrations, can render drinking water foul, putrid and unfit for human consumption. As a result of these properties, MTBE and other Products (as defined below) have caused, are causing, and will continue to cause harm to the waters of the State. Remedying such harm has cost, is costing, and will cost the State a tremendous amount of financial and human resources that ultimately will adversely impact the State's financial and human resources for years to come.

11. Under New Jersey law Defendants are: strictly liable for manufacturing and supplying a defective product and failing to provide adequate warnings in connection therewith; liable for creating a public nuisance; strictly liable for discharging MTBE into the waters of the State or for being in any way responsible for the MTBE that was discharged into the waters of the State; liable for trespass upon the waters of the State; liable for negligently causing damage to the waters of the State; liable for unfair and deceptive business acts; and liable for all resulting damages, including all costs to investigate, cleanup and remove, monitor, prevent, abate, contain, and otherwise respond to any contamination or threatened contamination from MTBE, to restore and protect State waters, and to compensate the State for the lost

interim value and benefits of the waters of the State as a result of the contamination of the waters of the State. The State also alleges that certain Defendants are liable for enhanced damages to reflect the aggravating circumstances of such Defendants' wanton, malicious and oppressive conduct.

PLAINTIFF

12. Plaintiff is the State of New Jersey, Department of Environmental Protection, with principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Plaintiff brings this action as a trustee of the waters within New Jersey and pursuant to its police power, which includes, but is not limited to, its power to prevent pollution of the surface and ground waters of the State, to prevent nuisances and to prevent potential hazards to public health, welfare and the environment.

13. Plaintiff also has a significant property interest in the waters of the State and a statutory obligation to protect the quality of such waters. The contamination of waters of the State by MTBE constitutes injury to the environment and to property held in public trust by the State for which the State seeks damages in its capacity as *parens patriae* and under the public trust doctrine.

14. The Plaintiff seeks the recovery of any costs and damages that any private or public well owner has incurred and will incur as a result of discharges of MTBE, except, however, any water provider that has already filed an MTBE action.

15. To the extent that the Plaintiff has previously settled with one or more of the Defendants for particular natural resource damages at certain sites, such natural resources at such sites are not included in this Complaint.

DEFENDANTS

16. Amerada Hess Corporation ("Hess") is a Delaware corporation with its principal place of business at 1 Hess Plaza, Woodbridge, New Jersey, doing business in New Jersey.

17. Atlantic Richfield Company ("ARCO") is a Delaware corporation with its principal place of business at 4101 Winfield Road, Warrenville, Illinois, doing business in New Jersey.

18. BP America, Inc. ("BP America") is a Delaware Corporation with its principal place of business at 4101 Winfield Road, Warrenville, Illinois, doing business in New Jersey.

19. BP Amoco Chemical Company, Inc. ("BP Amoco Chemical") is a Delaware Corporation with its principal place of business at 4101 Winfield Road, Warrenville, Illinois, doing business in New Jersey.

20. BP Amoco Corporation ("BP Amoco") is an Indiana corporation with its principal place of business at 4101 Winfield Road, Warrenville, Illinois, doing business in New Jersey.

21. BP Products North America, Inc. ("BP Products NA") is a Maryland corporation with its principal place of business at 4101 Winfield Road, Warrenville, Illinois, doing business in New Jersey.

22. ChevronTexaco Corporation ("ChevronTexaco") is a Delaware

corporation with its principal place of business at 6001 Bollinger Road, San Ramon, California, doing business in New Jersey. On information and belief, ChevronTexaco was formed as a result of a merger in 2001 of Chevron Corporation and Texaco, Inc. On information and belief, ChevronTexaco owns and controls Defendant Chevron U.S.A., Inc.

23. Chevron U.S.A., Inc. ("Chevron U.S.A.") is a Pennsylvania corporation with its principal place of business at 575 Market Street, San Francisco, California, doing business in New Jersey. The term "Chevron" as used in this Complaint refers to ChevronTexaco and Chevron U.S.A.

24. Citgo Petroleum Corporation ("Citgo Petroleum") is a Delaware Corporation with its principal place of business at 6100 South Yale Avenue, Tulsa, Oklahoma, doing business in New Jersey.

25. Citgo Refining & Chemical Company, LP ("Citgo Refining & Chemical") is an Oklahoma limited partnership with its principal place of business at 6100 South Yale Avenue, Tulsa, Oklahoma, doing business in New Jersey.

26. Coastal Eagle Point Oil Company ("Coastal Eagle") is a Delaware corporation with its principal place of business in at Rte. 130 and I-295, Westville, New Jersey, doing business in New Jersey. Upon information and belief, Sunoco, Inc. acquired Coastal Eagle in 2003.

27. ConocoPhillips Company ("ConocoPhillips") is a Delaware corporation with its principal place of business at 600 North Dairy Ashford, Houston, Texas, doing business in New Jersey. On information and belief, ConocoPhillips was formed as a result of a merger in 2002 of Conoco, Inc. and Phillips Petroleum Company. On information and belief, ConocoPhillips is the successor corporation to Conoco, Inc. and Phillips Petroleum Company. On further information and belief, ConocoPhillips is the successor corporation to Tosco Corporation, including its subsidiary Tosco Refining LP, which was acquired by Phillips Petroleum Company in 2001.

28. Crown Central Petroleum Corporation ("Crown Central") is a Maryland corporation with its principal place of business at 1 North Charles Street, Baltimore, Maryland, doing business in New Jersey.

29. Duke Energy Merchants, LLC ("Duke Energy Merchants") is a Delaware limited liability corporation with its principal place of business at 5400 Westheimer Court, Houston, Texas, doing business in New Jersey.

30. El Paso Merchant Energy-Petroleum Company ("El Paso") is a Delaware corporation with its principal place of business at 1001 Louisiana Street, Houston, Texas, doing business in New Jersey.

31. Equilon Enterprises LLC ("Equilon") is a Delaware limited liability company with its principal place of business at 1100 Louisiana Street, Houston, Texas, doing business in New Jersey. On

information and belief, Equilon does business as Shell Oil Products US both individually and as successor to a merger to Equiva Services LLC.

32. Equistar Chemicals, LP ("Equistar") is a Delaware limited partnership with its principal place of business at 1221 McKinney Street, Houston Texas, doing business in New Jersey. On information and belief, Equistar recently became a wholly owned subsidiary of Lyondell.

33. ExxonMobil Corporation ("ExxonMobil Corp.") is a New Jersey corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, doing business in New Jersey. On information and belief, ExxonMobil was formed as a result of a merger in 1999 of Mobil Oil Corporation and Exxon Corporation.

34. ExxonMobil Oil Corporation ("ExxonMobil Oil") is a New Jersey corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, doing business in New Jersey. The term "ExxonMobil" as used in this Complaint refers to ExxonMobil Corp., ExxonMobil Oil, and Mobil.

35. George E. Warren Corporation ("George E. Warren Corp.") is a Massachusetts corporation with its principal place of business at 605 17th Street, Vero Beach, Florida, doing business in New Jersey.

36. Getty Petroleum Marketing, Inc. ("Getty Petroleum") is a Maryland corporation with its principal place of business at 1500

Hempstead Turnpike, East Meadow, New York, doing business in New Jersey.

37. Getty Properties Corp.. ("Getty Properties") is a Delaware corporation with its principal place of business at 125 Jericho Turnpike, Jericho, New York 11753, doing business in New Jersey.

38. Giant Yorktown, Inc. ("Giant Yorktown") is a Delaware corporation with its principal place of business at 23722 N. Scottsdale Rd., Scottsdale, Arizona, doing business in New Jersey.

39. Gulf Oil Limited Partnership ("Gulf") is a Delaware limited partnership with its principal place of business at 90 Everett Avenue, Chelsea, Massachusetts, doing business in New Jersey.

40. Irving Oil Corporation ("Irving Oil Corp.") is a Maine corporation with its principal place of business at 700 Maine Street, Bangor, Maine, doing business in New Jersey.

41. Irving Oil Limited ("Irving Oil") is a Canadian corporation with its principal place of business at 210 Crown Street/10 Sydney Street, Saint John, New Brunswick, Canada, doing business in New Jersey. The term "Irving" as used in this Complaint refers to Irving Oil Corp. and Irving Oil.

42. Lyondell Chemical Company ("Lyondell Chemical") is a Delaware corporation with its principal place of business at 1221 McKinney Street, Suite 1600, Houston, Texas, doing business in New

Jersey. On information and belief, Lyondell owns and/or controls Lyondell-Citgo Refining, LP, which produces refined petroleum products, including gasoline.

43. Lyondell-Citgo Refining, LP ("Lyondell-Citgo") is a Texas limited partnership with its principal place of business at 12000 Lawndale, Houston, Texas, doing business in New Jersey.

44. Marathon Petroleum Company LLC. ("Marathon Petroleum") is a Delaware limited liability company with its principal place of business at 539 South Main Street, Findlay, Ohio, doing business in New Jersey. On information and believe, Marathon Ashland Petroleum Company LLC. changed its name to Marathon Petroleum Company LLC.

45. Marathon Oil Company ("Marathon Oil") is an Ohio corporation with its principal place of business at 5555 San Felipe Road, Houston, Texas, doing business in New Jersey.

46. Mobil Corporation ("Mobil") is a Delaware corporation with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas, doing business in New Jersey.

47. Motiva Enterprises, LLC ("Motiva") is a Delaware limited liability company with its principal place of business at 1100 Louisiana Street, Suite 1000, Houston, Texas, doing business in New Jersey. On information and belief, Motiva is a successor in interest to certain entities related to Defendant Shell Oil Company and Defendant Texaco Refining and Marketing, Inc., and is owned and/or controlled by Defendant Shell Oil Company.

48. The Premcor Refining Group Inc. ("Premcor") is a Delaware corporation with its principal place of business at 8182 Maryland Ave., Clayton, Missouri, doing business in New Jersey.

49. Shell Oil Company ("Shell Oil") is a Delaware corporation with its principal place of business at One Shell Plaza, 910 Louisiana Street, Houston, Texas, doing business in New Jersey. The term "Shell" as used herein refers to Motiva and Shell Oil.

50. Shell Oil Products Company LLC ("Shell Oil Products") is a Delaware limited liability corporation with its principal place of business at 910 Louisiana Street, Houston, Texas, doing business in New Jersey.

51. Shell Trading (US) Company ("Shell Trading US") is a Delaware Corporation with its principal place of business at 910 Louisiana, Houston, Texas, doing business in New Jersey.

52. Sunoco Inc. ("Sunoco Inc.") is a Pennsylvania corporation with its principal place of business at 1209 Orange Street, Wilmington, Delaware, doing business in New Jersey.

53. Sunoco, Inc. (R&M) ("Sunoco") is a Pennsylvania corporation with its principal place of business at 1801 Market Street, Philadelphia, Pennsylvania, doing business in New Jersey.

54. Texaco, Inc. ("Texaco, Inc.") is a Delaware corporation with its principal place of business at c/o ChevronTexaco Corp., San Ramon, California, doing business in New Jersey. Upon

information and belief, Texaco merged with Chevron in 2001 to form ChevronTexaco Corporation.

55. Texaco Refining and Marketing (East) "TRME" is a Delaware corporation with its principal place of business at 1111 Bagby Street, Houston, Texas 77002, doing business in New Jersey.

56. Texaco Refining & Marketing, Inc. ("Texaco") is a Delaware corporation with its principal place of business at One Shell Plaza, 910 Louisiana Street, Houston, Texas, doing business in New Jersey. On information and belief, Texaco is owned and/or controlled by Defendant Shell Oil.

57. TMR Company ("TMR") is a Delaware corporation with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California, doing business in New Jersey.

58. Tosco Corporation ("Tosco") is a Nevada corporation, with its principal place of business in 770 Plaza Office Building, Bartlesville, Oklahoma, doing business in New Jersey. On information and belief, ConocoPhillips is the successor corporation to Tosco Corporation, which was acquired by Phillips Petroleum Company in 2001.

59. Tosco Refining Company, Inc. ("Tosco Refining") is a Delaware Corporation, with its principal place of business at 600 North Dairy Ashford, Houston, Texas, doing business in New Jersey. On information and belief, ConocoPhillips is the successor

corporation to Tosco Refining, which was acquired by Phillips Petroleum Company in 2001.

60. Total Petrochemicals USA, Inc. ("Total") with its principal place of business at Total Plaza, 1201 Louisiana Street, Suite 1800, Houston, Texas, doing business in New Jersey.

61. TRMI Holdings Inc. ("TRMI Holdings") is a Delaware limited liability company with its principal place of business at P.O. Box 6028, San Ramon, California, doing business in New Jersey. Upon information and belief, TRMI Holdings Inc. was previously named Texaco Refining and Marketing, Inc.

62. Ultramar Energy, Inc. ("Ultramar Energy") is a Delaware corporation with its principal place of business at 512 Brroklyn Street, Morrisville, Vermont, doing business in New Jersey.

63. Ultramar Limited ("Ultramar") is a Canadian corporation with its principal place of business at 2200 McGill College, Montreal, Quebec, Canada, doing business in New Jersey.

64. Unocal Corporation, individually and formerly known as Union Oil Company of California ("Unocal"), is a Delaware corporation with its principal place of business at 2141 Rosencrans Avenue, Suite 4000, El Segundo, California, doing business in New Jersey.

65. Valero Energy Corporation ("Valero Energy") is a Delaware corporation with its principal place of business at 1 Valero Place, San Antonio, Texas, doing business in New Jersey. On information

and belief, Valero merged with Ultramar Diamond Shamrock Corporation in 2001, and, as a consequence of such merger, Valero owns and/or controls certain entities related to Ultramar Diamond Shamrock Corporation, including Defendants Ultramar Energy and Ultramar.

66. Valero Marketing and Supply Company ("Valero Marketing") is a Delaware corporation with its principal place of business at 1 Valero Place, San Antonio, Texas, doing business in New Jersey. The term "Valero" as used in this Complaint refers to Valero Energy, Valero Marketing, Ultramar and Ultramar Energy.

67. Valero Refining and Marketing ("Valero Refining and Marketing") is a Delaware corporation with its principal place of business at 1 Valero Place, San Antonio, Texas, doing business in New Jersey.

68. Vitol S.A. ("Vitol") is a Swiss corporation with its principal place of business at 1100 Louisiana, Suite 5500, Houston, Texas, doing business in New Jersey.

69. Does 1 through 99 are corporations, partnerships, associations, natural persons or other entities that are not presently known to the Plaintiff, certain of which are corporate successors to, predecessors of, assigns of, or are otherwise related to other Defendants, as well as manufacturers, refiners, blenders, distributors, suppliers, marketers, and retailers of MTBE. The true names and identities of Does 1 through 99 are not known to the Plaintiff, which therefore sues said Defendants by fictitious names.

Theories of Liability

70. Each Defendant is jointly and severally liable to the Plaintiff for all claims set forth in this Complaint and for all damages arising therefrom. In addition, or in the alternative to joint and several liability, market share liability may be an appropriate theory for liability in this case. Market share liability means that for all acts, omissions, and conduct set forth in this Complaint, and for all damages arising therefrom, each Defendant is liable to the Plaintiff in an amount equal to its respective share of the United States national market for the MTBE and gasoline containing MTBE.

71. Market share liability applies to this case to the extent that it may be impossible to identify the manufacturer or manufacturers who produced gasoline containing MTBE that has been distributed in New Jersey because the MTBE in such gasoline is

fungible and because Defendants control a substantial share of the market for such gasoline.

72. Identification may be impossible because Defendants trade, barter, or otherwise exchange gasoline containing MTBE with one another such that even when the source of an MTBE plume is identified, the identity of the manufacturer or manufacturers of the products forming the plume cannot be determined.

MTBE, Its Characteristics, and Its Risk to Surface and Ground Waters

73. MTBE is a chemical compound produced by combining methanol, a derivative of natural gas, and isobutylene, a by-product of the gasoline refining process. Because methanol and isobutylene are readily available compounds, MTBE is inexpensive to manufacture. As used in this Complaint, MTBE consists not only of methyl tertiary butyl ether, but also the degradation byproducts of and contaminants in commercial grade MTBE, including but not limited to tertiary butyl alcohol.

74. One way that MTBE contaminates the environment is through discharges, releases, leaks, overfills, and spills from gasoline storage and delivery systems, including, but not limited to, gasoline stations and gasoline storage, transfer, delivery, and dispensing systems ("gasoline storage and delivery systems").

75. As a result of its physical characteristics, MTBE finds unique pathways into the environment from gasoline storage and

delivery systems and is more readily discharged from such systems than conventional gasoline components.

76. Once discharged to the environment, MTBE's unique characteristics cause extensive environmental contamination and a corresponding threat to the public health and welfare beyond that caused by gasoline that does not contain MTBE. In particular, the fate and transport of MTBE in the subsurface differs significantly from that of gasoline constituents that have historically been of environmental and/or toxicological concern, specifically the "BTEX compounds" (benzene, toluene, ethylbenzene, and xylene).

77. When discharged into the environment, MTBE separates from other gasoline constituents in the presence of moisture. In contrast to the BTEX compounds, MTBE has a strong affinity for water, is easily dissolved and does not readily adhere to soil particles, making it more mobile and able to penetrate great distances from the source of the discharge.

78. In ground water, MTBE moves freely at approximately the rate of the water's movement, unlike BTEX compounds, which tend to adhere to soil and float on the surface of water. This makes MTBE more difficult to find and more difficult to remove or treat than BTEX compounds.

79. MTBE is also more persistent than BTEX compounds because it does not readily biodegrade in ground water. As a result, MTBE

is relatively more difficult and more expensive to remove from ground water.

80. In sum, when MTBE is discharged into the environment, it migrates farther and faster through soil and ground water, penetrates deeply into aquifers, resists biodegradation and results in persistent contamination that is more costly to address. As a result of these properties, MTBE has contaminated, and continues to contaminate and threaten, vast quantities of the ground water of the State.

81. MTBE also contaminates surface waters through discharges, releases, leaks, overfills and spills of gasoline associated with or incident to certain consumer and commercial activities.

82. It is likely that not all of the MTBE contamination of water resources in the State can be traced to a specific source.

History of MTBE Production and Sale by Defendants

83. Oil companies began blending MTBE into gasoline in the late 1970s. Initially used as an octane enhancer, MTBE was used throughout the 1980s at low concentrations in some gasoline by some refiners, primarily in high-octane grades.

84. In or about the late 1970s, the U.S. Environmental Protection Agency registered MTBE as a fuel additive that does not cause or contribute to the failure of any emission control device or system, pursuant to section 211 of the Clean Air Act, 42 U.S.C. § 7545 ("the CAA"). Such registration did not and does not

constitute endorsement, certification, or approval of MTBE as a fuel additive by any agency of the United States.

85. Refiners, including Defendants, significantly increased their use of MTBE in gasoline after 1990. In 1990, Congress established the Reformulated Gasoline Program ("RFG Program") in section 211(k) of the CAA, 42 U.S.C. § 7545(k). The RFG Program requires the use of reformulated gasoline in certain metropolitan areas with high carbon monoxide ("CO") levels.

86. The CAA requires areas of the country with the highest levels of ozone air pollution ("severe" non-attainment of the National Ambient Air Quality Standards ("NAAQS")) to implement the RFG Program. As of January 1, 1995, nine severe ozone non-attainment areas (including part of New Jersey) were required to implement this program. Although optional for Cape May and Atlantic counties, New Jersey implemented the RFG program statewide, for ease of gasoline distribution.

87. Refiners, including Defendants, were not required to add MTBE to their gasoline, but could introduce any oxygenate including, but not limited to, ethanol.

88. Reformulated gasoline containing significantly higher quantities of MTBE has been sold on a virtually universal basis throughout New Jersey since 1995.

Impact of MTBE on Waters of the State

89. MTBE contamination has injured and continues to injure and threaten the waters of the State, and threatens the health, safety and welfare of the citizens of the State.

90. Federal and other studies link MTBE to a variety of adverse health effects.

91. The State has established a health-based Primary Maximum Contaminant Level ("MCL") for MTBE of 70 parts per billion ("ppb").

92. The establishment of the health-based MCL for MTBE triggers certain state regulatory requirements if that level is exceeded in drinking water supplies. Such state requirements include, but are not limited to, required investigatory and remedial action to protect public health and the environment and remedial actions by public water suppliers.

93. In addition to the health and environmental risks posed by MTBE in drinking water supplies, MTBE can render water supplies undrinkable by changing the taste and odor of water. Many individuals can smell and/or taste MTBE in drinking water at levels well below the health-based MCL of 70 ppb.

94. MTBE has been found in drinking water supplies throughout the State in varying concentrations and at varying times. As of 2002, MTBE was present in 15 percent of public water supplies that were tested statewide and in more than 93 percent of domestic wells that were tested in the areas of Cranberry Lake, 43 percent of

domestic wells tested in the Highlands area and 29% of domestic wells tested in the Piedmont area of New Jersey.

95. As of 2003, preliminary results from a study of 400 public water supplies in New Jersey indicate that MTBE is present at some level in 15% of the public drinking water supplies that were tested.

96. A 1998 State study of Cranberry Lake and Lake Lackawanna indicates that MTBE is also present in surface waters that serve as drinking water sources for residents of the State.

97. The injuries to the waters of the State caused and/or threatened by Defendants' conduct as alleged herein constitute an unreasonable interference with natural resources that the State holds in trust for the benefit of its citizens. Such injuries also constitute damages to limited, precious and invaluable public natural resources in which the State has a significant property and quasi-sovereign interest. The State's unique interest in protecting the quality of its waters constitutes a reasonable basis for the State to seek damages for restoration of such waters.

State Regulation of MTBE

98. The State regulates MTBE as a hazardous substance under environmental statutes, including N.J.S.A. 58:10-23.11 et seq., as well as under other statutes and rules designed to protect the State's waters.

99. MTBE contamination is associated with all transportation, storage and use of gasoline containing MTBE.

100. The State provides funding for remediation, including investigation, individual third-party damages and other activities related to MTBE contamination in the State through State-administered pollution reimbursement funds, such as the Spill Fund under N.J.S.A. 58:10-23.11i, and through general funding.

101. The State has incurred and will continue to incur significant costs and expenses in addressing discharges of MTBE into the environment and into waters of the State.

Defendants Were Aware of the Harms MTBE's Addition Into Gasoline and Placement in New Jersey's Stream of Commerce Would Cause to the Ground and Surface Waters of the State

102. Among other things, the Defendants knew, or reasonably should have known, that:

- (a) the gasoline distribution and retail system throughout the State contained leaking gasoline storage and delivery systems;
- (b) MTBE is more readily discharged from gasoline storage and delivery systems than the constituents of conventional gasoline; and
- (c) discharges of MTBE into the environment would be an inevitable consequence of placing MTBE into the stream of commerce in the absence of precautionary measures to

prevent or mitigate such discharges - measures that the Defendants failed to take.

103. The Defendants also knew, or reasonably should have known, that, unlike the constituents of conventional gasoline, MTBE, when discharged into the environment, would move great distances, mix easily with ground water, resist biodegradation, render drinking water unsafe and/or non-potable, and require significant expenses to find and remove from public and private drinking water supplies.

104. The Defendants further knew, or reasonably should have known, that various consumer and commercial activities, such as use of snowmobiles, motorized watercraft and lawnmowers, and operation of junkyards and vehicle maintenance and repair facilities, would result in discharges of MTBE into waters of the State.

105. Despite knowing the devastating risk of drinking water contamination posed by MTBE, and despite the availability of reasonable alternatives (including, but not limited to, adequate warnings), the Defendants failed to warn customers, retailers, regulators or public officials, including the State of New Jersey, and failed to take any other precautionary measures to prevent or mitigate such contamination. Instead, Defendants promoted MTBE, and gasoline containing MTBE, as environmentally sound products appropriate for widespread use. Moreover, certain Defendants engaged in separate and joint activities to suppress, conceal

and/or discredit studies and other information regarding the hazards of MTBE. Defendants' wrongful conduct, among other things, encouraged the State to participate in the federal reformulated gasoline program without a full understanding of the risks to the State's water resources, which resulted in:

- (a) a dramatic increase in the use and presence of gasoline containing MTBE in the State;
- (b) the consequent injuries to the waters of the State; and
- (c) the substantial damages incurred by the State in response thereto.

106. At all relevant times, the Defendants have represented to purchasers of MTBE and/or gasoline containing MTBE, as well as to the public and government agencies, that such products were environmentally sound and appropriate for widespread production, distribution, sale and use. Indeed, Defendants represented that gasoline containing MTBE could be handled in the same fashion as conventional gasoline, and required no special measures to protect against, respond to, or mitigate suspected discharges to the subsurface.

107. Defendants knew, or reasonably should have known, that:

- (a) MTBE would escape from gasoline storage and delivery systems more readily than the constituents of conventional gasoline;

- (b) gasoline storage facilities in the State were not designed to prevent any and all leakage of gasoline containing MTBE; and
- (c) the operators and users of gasoline storage and delivery systems either (i) were unaware of the special hazards posed by MTBE and the steps necessary to eliminate or mitigate those hazards, or (ii) would fail to take such steps.

108. Defendants further exacerbated the situation by continued unreasonable and negligent acts, including providing gasoline containing MTBE to gasoline stations without either providing appropriate warning or taking other precautions adequate to prevent or mitigate discharges of MTBE to the subsurface. Defendants did so despite the fact that they knew, or reasonably should have known, that discharges of MTBE were substantially certain to occur, because a substantial percentage of those gasoline stations would and, in fact, did:

- (a) place the gasoline into inadequate and leaking gasoline storage and delivery systems;
- (b) suffer the routine spillage of appreciable quantities of gasoline containing MTBE in connection with the filling of storage tanks and the use of gasoline dispensing systems;

- (c) fail to take adequate measures to monitor, detect, report, and respond to discharges of MTBE to soil, surface water and/or ground water; and
- (d) fail to take adequate precautions to investigate, contain and clean up and remove discharges of MTBE.

109. The widespread problems of gasoline spillage and leaking gasoline storage and delivery systems were well known to the Defendants prior to the introduction of MTBE into the State. At least as early as the mid-1960s, Defendants knew, or reasonably should have known, that gasoline storage and delivery systems generally suffer significant and widespread leaks and failures, and discharge gasoline products into the environment, including into ground water.

110. Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero not only knew about the widespread problems of leaking gasoline storage and delivery systems generally, but, at all times relevant to this action, had first-hand knowledge and experience regarding leaking gasoline storage and delivery systems and discharges of MTBE to ground water therefrom. These Defendants obtained such first-hand knowledge and experience because each of them owned and operated individual gasoline stations with leaking gasoline storage and delivery systems, including gasoline stations in the State, and/or exercised control over such gasoline stations through a

variety of means, including but not limited to written agreements, inspection rights, prescribing certain procedures and operating practices, prescribing specifications for products, conditions on sale of branded goods, agreements obligating such stations to acquire, store and sell gasoline containing MTBE, and training. Despite the first-hand knowledge that contamination of waters of the State with MTBE was the inevitable result of their conduct, these Defendants continued to refine, market, promote, and supply gasoline containing MTBE.

Defendants' Promotion of MTBE

111. Defendants, all of whom have promoted the use of gasoline containing MTBE for its purported environmental benefits, knew or should have known of the grave harm and threat to public health, safety and welfare and the environment represented by the proliferating use of MTBE, including (among other things): widespread pollution of surface and ground water with MTBE; contamination of public and private drinking water supplies by this harmful and noxious compound; the rendering of drinking water supplies unfit and unusable for consumption; and increased costs to the State in addressing MTBE contamination of drinking water supplies and other waters of the State.

112. The manufacturers, refiners and suppliers of MTBE and gasoline containing MTBE had a duty and breached their duty to evaluate and test MTBE adequately and thoroughly to determine its

environmental fate and transport characteristics and potential human health and environmental impacts before they produced and sold MTBE and gasoline containing MTBE. They also had a duty and breached their duty to minimize the environmental harm caused by MTBE and/or gasoline containing MTBE. Furthermore, they had a duty and breached their duty to take precautions, including warnings, necessary to ensure that gasoline containing MTBE was properly stored and that all necessary measures to promptly detect, contain, abate and respond to spills and leaks were instituted. Defendants failed to adequately evaluate, test, store, warn, mitigate or otherwise ensure that gasoline containing MTBE would not contaminate waters of the State. As a direct, indirect and proximate result of these failures, MTBE was discharged into the environment, causing and threatening to cause widespread contamination of the waters of the State.

113. In addition to the negligent and/or reckless conduct alleged herein, Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero also intentionally failed to warn downstream handlers, the public and government officials, including the State, as to the threat caused by MTBE and, by agreement and tacit understanding among them, each knowingly pursued or took an active part in a common plan, design and conspiracy to market and promote a product they knew to be dangerous to the environment. In particular, the

Defendants identified in this paragraph formed and participated in joint task-forces, committees and trade associations for the specific purposes of suppressing, concealing and minimizing information regarding MTBE hazards. These Defendants also engaged in separate and joint activity to mislead government agencies, including the State, as well as the public regarding these same dangers. Such Defendants' common plan, design and conspiracy, and the acts taken in furtherance of such common plan, design and conspiracy, are a direct, indirect and proximate cause of the MTBE contamination of the waters of the State.

COUNT I

(Strict Product Liability Based On Defective
Design Against All Defendants)

114. The State realleges paragraphs 1 through 113 above, and by this reference incorporates them as though set forth in full.

115. The Defendants designed, manufactured, formulated, promoted, marketed, distributed, exchanged and/or sold MTBE to refiners, including certain refiner/marketer Defendants, for use as a component of gasoline.

116. The Defendants designed, manufactured, formulated, refined, set specifications for, exchanged, promoted, marketed and/or otherwise supplied (directly or indirectly) gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State).

117. The Defendants represented, asserted, claimed and warranted that gasoline containing MTBE could be used in the same manner as gasoline not containing MTBE, and/or otherwise did not require any different or special handling or precautions.

118. Defendants knew that MTBE and/or gasoline containing MTBE were to be purchased and used without inspection for defects.

119. MTBE and/or gasoline containing MTBE are defective and unreasonably dangerous products because, among other things:

- (a) MTBE escapes more readily from gasoline storage and delivery systems than the constituents of conventional gasoline and other available and viable alternative gasoline additives.
- (b) MTBE causes extensive ground water contamination, as well as surface water contamination, when used in its foreseeable and intended manner.
- (c) Even at extremely low concentrations, MTBE renders drinking water putrid, foul, and unfit for purveying as drinking water to the public.
- (d) MTBE poses significant threats to the public health and welfare and the environment.
- (e) Defendants failed to conduct reasonable, appropriate or adequate scientific studies to evaluate the environmental fate and transport and the potential human health effects of MTBE.

- (f) At all times relevant to this action, feasible alternatives to MTBE that would have eliminated the unreasonable danger posed by gasoline containing MTBE, without excessive costs or loss of product efficiency, were available to Defendants.
- (g) Commercial grade MTBE is defectively manufactured when it contains and/or degrades into unnecessary but environmentally harmful impurities such as tertiary butyl alcohol.

(h) Any limited utility provided by the use of MTBE as a gasoline additive is greatly outweighed by the risks and dangers associated with MTBE described herein.

120. At all times relevant to this action, MTBE and/or gasoline containing MTBE were dangerous to an extent beyond that which would be contemplated by the ordinary consumer, and/or the risk of harm to public health and welfare and the environment posed by MTBE and/or gasoline containing MTBE outweighed the cost to Defendants of reducing or eliminating such risk.

121. At all times relevant to this action, the distribution, storage, and/or use of MTBE and/or gasoline containing MTBE and the risks and dangers associated therewith including the risk of harm to public health and welfare and the environment outweigh any limited utility provided by MTBE and/or gasoline containing MTBE.

122. At all times relevant to this action, MTBE and gasoline containing MTBE were used in a manner in which they were foreseeably intended to be used and without substantial change in their condition, and as a proximate result of the defects previously described, MTBE proximately caused the State to sustain the injuries and damages set forth in this Complaint.

123. As a direct and proximate result of Defendants' acts and omissions as alleged herein, the State has incurred, and will continue to incur, investigation, cleanup and removal, restoration,

treatment, monitoring, and other costs and expenses related to contamination of the waters of the State with MTBE, for which Defendants are strictly, jointly and severally liable.

124. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which Defendants are strictly, jointly and severally liable.

125. The injuries to the waters of the State caused and/or threatened by Defendants' acts and omissions as alleged herein are indivisible.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff New Jersey Department of Environmental Protection prays that this Court:

- a. Enter declaratory judgment against the Defendants, jointly and severally, for all costs to investigate, clean up and remove, restore, treat, monitor and otherwise respond to MTBE in the waters of the State, to restore such waters to their original condition, to compensate the citizens of New Jersey for the lost interim value and benefits of their natural resources during all times of injury caused by MTBE, and for such orders as may be necessary to provide full relief to

address risks to the State, including, but not limited to, the costs of:

- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
 - (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
 - (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;
- b. Enter an order assessing Defendants for all reasonable costs incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE;
- c. Enter an order assessing Defendants for all reasonable costs that will be incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE;
- d. Enter an order assessing Defendants for all damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE;

- e. Enter an order assessing Defendants for all compensatory damages for the lost interim value of the waters of the State as a result of the contamination of such waters with MTBE;
- f. Enter an order assessing Defendants for all other damages sustained by the State as a direct and proximate result of Defendants' acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State;
- g. Enter an order against Defendants for all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State;
- h. Enter an order assessing Defendants for punitive damages in an amount to be determined by this Court;
- i. Award plaintiff Commissioner her costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- j. Award plaintiff Commissioner such other relief as this Court deems appropriate.

COUNT II

(Public Nuisance Against All Defendants)

126. The State realleges paragraphs 1 through 125 above, and by this reference incorporates them as though set forth in full.

127. The negligent, reckless, intentional and ultrahazardous activity of Defendants alleged herein has resulted in the contamination and pollution of the waters of the State as alleged herein, and constitutes a public nuisance.

128. The public nuisance caused, contributed to, maintained, and/or participated in by Defendants has substantially and unreasonably interfered with, obstructed and/or threatened, among other things, the State's significant property and statutory obligations in and for the waters of the State, the State's ability to protect, conserve and manage the waters of the State, which are by law precious and invaluable public natural resources held by the State in trust for the benefit of the public, as well as the rights of the people of the State to enjoy a water supply free from unacceptable health risk, taste, odor, pollution and contamination.

129. Each Defendant has, at all times relevant to this action, caused, maintained, participated in and/or assisted in the creation of such public nuisance. Among other things, each Defendant is a substantial contributor to such public nuisance as follows:

- (a) Defendant Lyondell manufactured, promoted and supplied MTBE to refiners when it knew, or reasonably should have known, that: (i) the refiners would in turn blend the MTBE into gasoline; (ii) such gasoline containing MTBE

would then be placed into leaking gasoline storage and delivery systems, including those in the State; (iii) MTBE would be released even more readily than the constituents of conventional gasoline from gasoline storage and delivery systems; and (iv) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate ground water, including drinking water supplies, and, ultimately, be difficult and costly to find and remove from the water.

- (b) The other Defendants refined, marketed and/or otherwise supplied gasoline containing MTBE that was delivered into the State (and areas affecting the waters of the State), when they knew, or reasonably should have known, that:
- (i) such gasoline would be placed into leaking gasoline storage and delivery systems; (ii) MTBE would be released even more readily than the constituents of conventional gasoline from gasoline storage and delivery systems; and
 - (iii) when released into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate ground water, including drinking water supplies, and, ultimately, be difficult and costly to remove from the water.

- (c) Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero had first-hand knowledge and experience regarding leaking gasoline storage and delivery systems and release of MTBE to ground water therefrom. These Defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or controlled individual gasoline stations with leaking gasoline storage and delivery systems, including gasoline stations in the State.
- (d) Defendants manufactured, refined, marketed, promoted, and/or otherwise supplied MTBE and/or gasoline containing MTBE to downstream handlers when they knew, or reasonably should have known, that MTBE would: (i) be released into the environment from commercial and consumer uses and sources in the State other than gasoline storage and delivery systems; and (ii) contaminate the waters of the State.
- (e) Despite their knowledge that contamination of the waters of the State with MTBE was the inevitable consequence of their conduct as alleged herein, Defendants failed to provide any warnings or special instructions, or take any other precautionary measures to prevent or mitigate such contamination.

(f) Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero engaged in separate and joint activities to suppress, conceal and/or minimize information regarding the hazards of MTBE in order to mislead government agencies, including the State, and the public regarding the hazards of MTBE.

130. The public nuisance caused, contributed to, maintained, and/or participated in by Defendants has caused and/or threatens to cause substantial injury to the waters of the State, in which the State has significant property rights, trust responsibilities, and statutory obligations.

131. The contamination of the waters of the State with MTBE alleged herein has varied over time and has not yet ceased. MTBE continues to threaten, migrate into and enter the waters of the State.

132. As a direct and proximate result of Defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur substantial costs including, but not limited to, costs relating to:

- (a) the investigation and cleanup and removal of the discharged MTBE;
- (b) the restoration of waters of the State contaminated by discharges of MTBE and gasoline containing MTBE;

- (c) the compensation of the citizens of New Jersey for the for the lost interim value of the waters of the State as a result of the contamination of such waters with MTBE and
- (d) the institution of corrective measures including, but not limited to, monitoring of all public and private drinking water supplies for the presence of MTBE, provision of interim water supplies to residents whose water supplies have been contaminated due to such discharges, the establishment of acceptable sources of potable water to injured members of the public, and other necessary remedial actions, all at significant expense, loss, and damage.

133. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages, for which Defendants are jointly and severally liable.

134. The injuries to the waters of the State caused and/or threatened by Defendants' acts and omissions as alleged herein are indivisible.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff New Jersey Department of Environmental Protection prays that this Court:

- a. Enter declaratory judgment against the Defendants, jointly and severally, for all costs to investigate, clean up and remove, restore, treat, monitor and otherwise respond to MTBE in the waters of the State, to restore such waters to their original condition, to compensate the citizens of New Jersey for the lost interim value and benefits of their natural resources during all times of injury caused by MTBE, and for such orders as may be necessary to provide full relief to address risks to the State;
- b. Enter an order assessing Defendants for all reasonable costs incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE, including, but not limited to, the costs of:
 - (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
 - (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
 - (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;

- c. Enter an order assessing Defendants for all reasonable costs that will be incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE, including, but not limited to, the costs of:
- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
 - (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
 - (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;
- d. Enter an order assessing Defendants for all damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE;
- e. Enter an order assessing Defendants for all compensatory damages for the lost interim value of the waters of the State as a result of the contamination of such waters with MTBE;
- f. Enter an order assessing Defendants for all other damages sustained by the State as a direct and proximate result

- of Defendants' acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State;
- g. Enter an order against Defendants for all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State;
 - h. Enter an order assessing Defendants for punitive damages in an amount to be determined by this Court;
 - i. Award plaintiff Commissioner her costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
 - j. Award plaintiff Commissioner such other relief as this Court deems appropriate.

COUNT III

(Strict Liability Under N.J.S.A. 58:10-23.11 et seq.
Against All Defendants)

135. The State realleges paragraphs 1 through 134 above, and by this reference incorporates them as though set forth in full.

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

137. MTBE is a hazardous substance as defined in N.J.S.A. 58:10-23.11b.

138. The discharge of any hazardous substance into the surface water or ground water of this State, or onto the lands of the State, is prohibited. N.J.S.A. 58:10-23.11c.

139. 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).

140. 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 strictly 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). Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L. 1976, c. 141 (C.58:10-23.11f).

141. Defendants are in any way responsible for MTBE and gasoline containing MTBE that was discharged into the waters or onto the land of the State in violation of N.J.S.A. 58:10-23.11 et seq. and regulations duly adopted by the State.

142. As a direct or indirect result of such violations, the State has incurred, is incurring, and will continue to incur substantial costs including, but not limited to, costs relating to:

- (a) the investigation and cleanup and removal of the discharged MTBE;
- (b) the restoration of waters of the State contaminated by discharges of MTBE and gasoline containing MTBE;
- (c) the compensation of the citizens of New Jersey for the for the lost interim value and benefits of the waters of the State as a result of the contamination of such waters with MTBE; and
- (d) the institution of corrective measures including, but not limited to, monitoring of all public and private drinking water supplies for the presence of MTBE, provision of interim water supplies to residents whose water supplies have been contaminated due to such discharges, the establishment of acceptable sources of potable water to injured members of the public, and other necessary remedial actions, all at significant expense, loss, and damage.

143. The costs and damages the Plaintiff has incurred, and will incur, are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

144. Defendants are strictly, jointly and severally liable for any and all such cleanup and removal costs and damages that the State has incurred and will incur as a result of Defendants' actions.

145. The injuries to the waters of the State caused and/or threatened by Defendants' violations as alleged herein are indivisible.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff New Jersey Department of Environmental Protection prays that this Court:

- a. Enter declaratory judgment against the Defendants, jointly and severally, for all costs to investigate, clean up and remove, restore, treat, monitor and otherwise respond to the discharge of MTBE into the waters of the State, to restore such waters to their original condition, to compensate the citizens of New Jersey for the lost interim value and benefits of their natural resources during all times of injury caused by MTBE, and for such orders as may be necessary to provide full relief to address risks to the State.
- b. Enter an order assessing Defendants for all reasonable costs incurred related to investigation, cleanup and removal, treatment, monitoring, and restoration, directly or indirectly resulting from the discharge of MTBE into

the waters of the State, including, but not limited to,
the costs of:

- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
- (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
- (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;

c. Enter an order assessing Defendants for all reasonable costs that will be incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE, including, but not limited to, the costs of:

- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
- (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
- (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;

- d. Enter an order assessing Defendants for all damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE;
- e. Enter an order assessing Defendants for all other damages sustained by the State as a direct and proximate result of Defendants' acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State.
- f. Enter an order against Defendants for all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State;
- g. Award plaintiff Commissioner her costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- h. Award plaintiff Commissioner such other relief as this Court deems appropriate.

COUNT IV

(Strict Liability Under N.J.S.A. 58:10A-1 et seq.
Against All Defendants)

146. The Plaintiff realleges paragraphs 1 through 145 above and by reference incorporates them as though set forth in full.

147. Each Defendant is a "person" within the meaning of N.J.S.A. 58:10A-3.

148. MTBE and gasoline containing MTBE are "pollutants" as defined in N.J.S.A. 58:10A-3.

149. 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 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.

150. 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.

151. Defendants stored, processed, and handled pollutants, certain of which were "discharged" to the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants included MTBE and gasoline containing MTBE.

152. As a direct or indirect result of such violations, the State has incurred, is incurring, and will continue to incur substantial costs including, but not limited to, costs relating to:

- (a) the investigation and cleanup and removal of the discharged MTBE;
- (b) the restoration of waters of the State contaminated by discharges of MTBE and gasoline containing MTBE;
- (c) the compensation of the citizens of New Jersey for the for the lost interim value and benefits of the waters of the State as a result of the contamination of such waters with MTBE; and
- (d) the institution of corrective measures including, but not limited to, monitoring of all public and private drinking water supplies for the presence of MTBE, provision of interim water supplies to residents whose water supplies have been contaminated due to such discharges, the establishment of acceptable sources of potable water to injured members of the public, and other necessary remedial actions, all at significant expense, loss, and damage.

153. Plaintiff 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 MTBE and gasoline containing MTBE.

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

155. Defendant discharged pollutants, 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 MTBE and gasoline containing MTBE. N.J.S.A. 58:10A-6a.

156. Pursuant to N.J.S.A. 58:10A-10c., Plaintiff 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, 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 New Jersey Department of Environmental Protection prays that this Court:

- a. Enter declaratory judgment against the Defendants, jointly and severally, for all costs to investigate, clean up and remove, restore, replace, treat, monitor and otherwise respond to the discharge of MTBE into the waters of the State, to restore such waters to their original condition, to compensate the citizens of New Jersey for the lost interim value and benefits of their natural resources during all times of injury caused by MTBE, and for such orders as may be necessary to provide full relief to address risks to the State.
- b. Enter an order assessing Defendants for all reasonable costs incurred related to investigation, cleanup and removal, treatment, monitoring, restoration, and replacement directly or indirectly resulting from the

discharge of MTBE into the waters of the State, including, but not limited to, the costs of:

- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
- (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
- (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;

c. Enter an order assessing Defendants for all reasonable costs that will be incurred related to the investigation, cleanup and removal, restoration, replacement, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE, including, but not limited to, the costs of:

- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
- (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
- (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;

- d. Enter an order assessing Defendants for all damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE;
- e. Enter an order assessing Defendants for all other damages sustained by the State as a direct and proximate result of Defendants' acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State.
- f. Enter an order against Defendants for all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State;
- g. Award plaintiff Commissioner her costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- h. Award plaintiff Commissioner such other relief as this Court deems appropriate.

COUNT V

(Trespass Against All Defendants)

157. The State alleges paragraphs 1 through 156 above, and by this reference incorporates them as though set forth in full.

158. The State is the owner and/or actual possessor of property rights, and interests in the waters of the State, which the State holds in trust for the benefit of its citizens. These property rights and interests include, but are not limited to, a statutory responsibility to protect the quality of such waters from contamination and pollution.

159. Defendants manufactured, refined, marketed and/or otherwise supplied MTBE and/or gasoline containing MTBE.

160. Among other things, Defendants caused MTBE to enter, invade, intrude upon and injure the waters of the State as follows:

- (a) Defendant Lyondell manufactured, promoted and supplied MTBE to refiners when it knew that it was substantially certain that: (i) the refiners would in turn blend the MTBE into gasoline; (ii) such gasoline containing MTBE would then be placed into leaking gasoline storage and delivery systems, including those in the State; (iii) MTBE would be discharged even more readily than the constituents of conventional gasoline from gasoline storage and delivery systems; and (iv) when discharged into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate ground water and surface water, including drinking water supplies, and, ultimately, be difficult and costly to find and remove from the water.

- (b) The other Defendants refined, marketed and/or otherwise supplied gasoline containing MTBE that was delivered into the State (or areas affecting the waters of the State), when they knew that it was substantially certain that:
- (i) such gasoline would be placed into leaking gasoline storage and delivery systems;
 - (ii) MTBE would be discharged even more readily than the constituents of conventional gasoline from gasoline storage and delivery systems;
 - and (iii) when discharged into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate ground water, including drinking water supplies, and, ultimately, be difficult and costly to remove from the water.
- (c) Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero had first-hand knowledge and experience regarding leaking gasoline storage and delivery systems and discharges of MTBE to ground water therefrom. These Defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or controlled individual gasoline stations with leaking gasoline storage and delivery systems, including gasoline stations in the State.

- (d) Defendants manufactured, refined, marketed, promoted and/or otherwise supplied MTBE to downstream handlers when they knew that it was substantially certain that MTBE would: (i) be discharged into the environment from commercial and consumer uses and sources in the State other than gasoline storage and delivery systems; and (ii) contaminate the waters of the State.
- (e) Despite their knowledge that ground water and surface water contamination with MTBE was the inevitable consequence of their conduct as alleged herein, Defendants failed to provide any warnings or special instructions, or take any other precautionary measures to prevent or mitigate such contamination.
- (f) Defendants Hess, Citgo, Chevron, ConocoPhillips, ExxonMobil, Gulf, Lyondell, Shell, Sunoco, Texaco, Unocal and Valero engaged in separate and joint activities to suppress, conceal and/or minimize information regarding the hazards of MTBE in order to mislead government agencies, including the State, and the public regarding the hazards of MTBE.

161. The contamination of the waters of the State with MTBE alleged herein has varied over time and has not yet ceased. MTBE continues to threaten, migrate into and enter the waters of the State.

162. The State has not consented to, and does not consent to, the trespass alleged herein. Defendants knew or reasonably should have known that the State would not consent to this trespass.

163. As a direct and proximate result of Defendants' acts and omissions, the State has incurred, is incurring, and will continue to incur investigation, cleanup and removal, restoration, treatment, and monitoring costs and expenses related to contamination of the waters of the State with MTBE, for which Defendants are jointly and severally liable.

164. As a further direct and proximate result of the acts and omissions of the Defendants, the State has sustained and will sustain other substantial expenses and damages, for which Defendants are jointly and severally liable.

165. The injuries to the waters of the State caused and/or threatened by Defendants' acts and omissions as alleged herein are indivisible.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff New Jersey Department of Environmental Protection prays that this Court:

- a. Enter declaratory judgment against the Defendants, jointly and severally, for all costs to investigate, clean up and remove, restore, treat, monitor and otherwise respond to the discharge of MTBE into the waters of the State, to restore such waters to their

original condition, to compensate the citizens of New Jersey for the lost interim value and benefits of their natural resources during all times of injury caused by MTBE, and for such orders as may be necessary to provide full relief to address risks to the State.

- b. Enter an order assessing Defendants for all reasonable costs incurred related to investigation, cleanup and removal, treatment, monitoring, and restoration, directly or indirectly resulting from the discharge of MTBE into the waters of the State, including, but not limited to, the costs of:
- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
 - (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
 - (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;
- c. Enter an order assessing Defendants for all reasonable costs that will be incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the

contamination of the waters of the State with MTBE, including, but not limited to, the costs of:

- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
- (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
- (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;

- d. Enter an order assessing Defendants for all damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE;
- e. Enter an order assessing Defendants for all other damages sustained by the State as a direct and proximate result of Defendants' acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State.
- f. Enter an order against Defendants for all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State;

- g. Enter an order assessing Defendants for punitive damages in an amount to be determined by this Court;
- h. Award plaintiff Commissioner her costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- i. Award plaintiff Commissioner such other relief as this Court deems appropriate.

COUNT VI

(Negligence Against All Defendants)

166. The State realleges paragraphs 1 through 165 above, and by this reference incorporates them as though set forth in full.

167. Defendants had a duty to the State to exercise due care in the design, manufacture, formulation, handling, control, disposal, marketing, sale, testing, labeling, use, and instructions for use of MTBE and/or gasoline containing MTBE.

168. Defendants so negligently, carelessly, and recklessly designed, manufactured, formulated, handled, labeled, instructed, controlled (or failed to control), tested (or failed to test), marketed, sold and otherwise distributed MTBE and gasoline containing MTBE that they breached their duties and directly and proximately caused MTBE to contaminate and threaten the waters of the State, resulting in the damages alleged in this Complaint.

169. Defendants failed to conduct reasonable, appropriate or adequate scientific studies to evaluate the environmental fate and transport characteristics of MTBE, and/or the likelihood that use of MTBE as a component of gasoline would pollute public water supplies, render drinking water unusable and unsafe, and threaten public health and welfare and the environment.

170. Defendant Lyondell, among other things, manufactured, promoted and/or otherwise supplied MTBE to refiners when it knew, or reasonably should have known, that:

- (a) the refiners would in turn blend the MTBE into gasoline;
- (b) such gasoline containing MTBE would then be placed into leaking gasoline storage and delivery systems, including those in the State;
- (c) MTBE would be discharged even more readily than the constituents of conventional gasoline from gasoline storage and delivery systems; and
- (d) when discharged into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate ground water and surface water, including drinking water supplies, and, ultimately, be difficult and costly to find and remove from the water.

171. The other Defendants among other things, refined, marketed and/or otherwise supplied gasoline containing MTBE that

was delivered into the State and/or in areas affecting waters of the State, when they knew, or reasonably should have known, that:

- (a) such gasoline would be placed into leaking gasoline storage and delivery systems;
- (b) MTBE would be discharged even more readily than the constituents of conventional gasoline from gasoline storage and delivery systems; and
- (c) when discharged into the subsurface, MTBE would spread farther and faster than other components of gasoline, resist biodegradation, contaminate ground water and surface water including drinking water supplies, and, ultimately, be difficult and costly to remove from the water.

172. Defendants Hess, Citgo, Chevron, ConocoPhillips, El Paso, ExxonMobil, Gulf, Irving, Shell, Sunoco, Texaco, Unocal and Valero also had first-hand knowledge and experience regarding leaking gasoline storage and delivery systems and releases of MTBE to ground water therefrom. These Defendants obtained such first-hand knowledge and experience because each of them owned, operated and/or controlled individual gasoline stations with leaking gasoline storage and delivery systems, including gasoline stations in the State.

173. Defendants manufactured, refined, marketed, promoted and/or otherwise supplied MTBE and/or gasoline containing MTBE to

downstream handlers when they knew, or reasonably should have known, that MTBE would: (a) be discharged into the environment from commercial and consumer uses and sources in the State other than gasoline storage and delivery systems; and (b) contaminate the waters of the State.

174. Despite their knowledge that ground water and surface water contamination with MTBE was the inevitable consequence of their conduct as alleged herein, Defendants failed to provide any warnings or special instructions, or take any other precautionary measures to prevent or mitigate such contamination.

175. In light of the facts alleged herein, Defendants breached their duty to use due care in the design, manufacture, formulation, handling, control, marketing, sale, testing, labeling, use, and instructions for use of MTBE and/or gasoline containing MTBE.

176. As a direct and proximate result of Defendants' acts and omissions as alleged herein, the State has incurred, is incurring, and will continue to incur investigation, cleanup and removal, treatment, monitoring, and restoration costs and expenses related to contamination of the waters of the State with MTBE, for which Defendants are jointly and severally liable.

177. As a further direct and proximate result of the acts and omissions of the Defendants alleged in this Complaint, the State has sustained and will sustain other substantial expenses and damages for which Defendants are jointly and severally liable.

178. The injuries to the waters of the State caused and/or threatened by Defendants' acts and omissions as alleged herein are indivisible.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff New Jersey Department of Environmental Protection prays that this Court:

- a. Enter declaratory judgment against the Defendants, jointly and severally, for all costs to investigate, clean up and remove, restore, treat, monitor and otherwise respond to the discharge of MTBE into the waters of the State, to restore such waters to their original condition, to compensate the citizens of New Jersey for the lost interim value and benefits of their natural resources during all times of injury caused by MTBE, and for such orders as may be necessary to provide full relief to address risks to the State.
- b. Enter an order assessing Defendants for all reasonable costs incurred related to investigation, cleanup and removal, treatment, monitoring, and restoration, directly or indirectly resulting from the discharge of MTBE into the waters of the State, including, but not limited to, the costs of:
 - (1) past and future testing all public and private drinking water supplies for the presence of MTBE;

- (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
 - (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;
- c. Enter an order assessing Defendants for all reasonable costs that will be incurred related to the investigation, cleanup and removal, restoration, treatment, and monitoring, directly or indirectly resulting from the contamination of the waters of the State with MTBE, including, but not limited to, the costs of:
- (1) past and future testing all public and private drinking water supplies for the presence of MTBE;
 - (2) past and future treatment of all water supplies containing detectable levels of MTBE until restored to non-detectable levels and provision of alternate water supplies, where appropriate; and
 - (3) past and future monitoring of surface and ground waters to detect the presence of MTBE;
- d. Enter an order assessing Defendants for all damages in an amount at least equal to the full cost of restoring the waters of the State to their original condition prior to the contamination of such waters with MTBE;

- e. Enter an order assessing Defendants for all other damages sustained by the State as a direct and proximate result of Defendants' acts and omissions alleged herein, according to proof, including but not limited to remedial, administrative, oversight and legal expenses and compensation for damage to waters of the State.
- f. Enter an order against Defendants for all appropriate injunctive relief to abate or mitigate the MTBE contamination of waters of the State;
- g. Award plaintiff Commissioner her costs and fees in this action, including reasonable attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- h. Award plaintiff Commissioner such other relief as this Court deems appropriate.

COHN, LIFLAND, PEARLMAN, HERMANN
& KNOPF, L.L.P.
Attorneys for Plaintiffs
Special Counsel to the Attorney

ANNE MILGRAM
ATTORNEY GENERAL
Attorney for Plaintiffs

By: _____
Barry A. Knopf, Esq.
Special Counsel to the
Attorney General

By: George Schlosser
George Schlosser
Deputy Attorney General

Dated:

Dated: 6/29/07

RICHARDSON, PATRICK, WESTBROOK &
BRICKMAN, L.L.C.
Attorneys for Plaintiffs
Special Counsel to the
Attorney General

LAW OFFICES OF JOHN K. DEMA,
P.C.
Attorneys for Plaintiffs
Special Counsel to the
Attorney General

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Edward Devine, Deputy Attorney General, and Gordon C. Rhea, John K. Dema, Barry A. Knopf, Scott E. Kauff, Matthew Thiesing, and Leonard Z. Kaufmann, Special Counsel to the Attorney General, are hereby designated as trial counsel for the Plaintiffs in this action.

DEMAND FOR JURY TRIAL

A jury trial is demanded, pursuant to R. 4:35-1(A), on all counts so triable.

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, with the exception of In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, Master File No. 1:00-1898, MDL1358 (SAS), M21-98, (S.D.N.Y.), 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
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: George Schlosser
George Schlosser
Deputy Attorney General

Dated: 4/29/07