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SUPERIOR COURT BERGEN COUNTY
FILED

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DEPUTY CLERK

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-4511-07

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

Plaintiffs,

v.

JOHN ROTHSCHILD; MARIANNE
ROTHSCHILD; THE ROTHSCHILD
LIMITED PARTNERSHIP, a New
Jersey Corporation; GETTY
PROPERTIES CORPORATION; GETTY
PETROLEUM MARKETING, INC.;
ABC CORPORATIONS" 1-5 (Names
Fictitious); and "JOHN DOES"
1-5 (Names Fictitious),

Defendants.

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") ("the Plaintiffs") having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the costs and damages they have incurred, and will incur as a result of the discharge of hazardous substances and pollutants at the Montvale Getty property in Montvale Borough, Bergen County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Montvale Getty site. Further, the Plaintiffs seek an order compelling the Defendants to perform, under Plaintiff DEP's oversight, or to fund Plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of

the discharge of hazardous substances and pollutants at the Montvale Getty site, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10A-3. In this capacity, plaintiff Commissioner is vested by law with various powers and authority, including those conferred by plaintiff DEP's enabling legislation. N.J.S.A. 13:1D-1 to -19.

5. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any

cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

6. Defendant John Rothschild is an individual whose dwelling or usual place of abode is 39 Hering Road, Montvale, New Jersey 07645.

7. Defendant Marianne Rothschild is an individual whose dwelling or usual place of abode is 39 Hering Road, Montvale, New Jersey 07645.

8. Defendant Rothschild Family Limited Partnership ("Rothschild Partnership") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 128 Chestnut Ridge Road, Montvale, New Jersey 07645.

9. Defendant Getty Properties Corporation ("Getty Properties") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 125 Jericho Turnpike, Jericho, New York 11753.

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

11. Defendant Getty Petroleum Marketing, Inc. ("Getty Marketing"), is a corporation organized and existing under the laws

of the State of Maryland, with a principal place of business located at 1500 Hempstead Turnpike, East Meadow, New York 11554.

12. Defendants "ABC Corporations" 1-5, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are, or have been, the operators of the gasoline service station located at the Montvale Getty property.

13. Defendants "John Does" 1-5, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this complaint, certain of whom are, or have been, the operators of the gasoline service station located at the Montvale Getty property.

NATURAL RESOURCES

14. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

15. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

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

AFFECTED NATURAL RESOURCE

Ground Water

17. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

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

19. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

20. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

21. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

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

GENERAL ALLEGATIONS

23. The Montvale Getty site consists of approximately three (3) acres of real property located at 126-128 Chestnut Ridge Road, Montvale, Bergen County, this property being also known and designated as Block 2602, Lot 4, on the Tax Map of Montvale Borough ("the Montvale Getty Property"), and all other areas where any pollutant or hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 026436.

24. The Montvale Getty Property is located in a mixed commercial and residential area of Montvale. Also located on the Montvale Getty Property are a car wash and Dunkin Donuts shop.

25. In December 1966, defendants John Rothschild and Marianne Rothschild purchased the Montvale Getty Property from LeRoy and Violet Taylor.

26. In November 1996, defendants John and Marianne Rothschild transferred the Montvale Getty Property to defendant Rothschild Partnership, which, as of the filing of this Complaint, was the current owner of record of the Montvale Getty Property.

27. During the time that defendants John Rothschild, Marianne Rothschild and the Rothschild Partnership have owned the Montvale

Getty Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b, which substances include benzene, toluene, ethylbenzene, and xylenes ("BTEX"), methyl tertiary butyl ether ("MTBE"), and tertiary butyl alcohol ("TBA").

28. Further, during this period, "pollutants," as defined in N.J.S.A. 50:10A-3n., were "discharged" at the Montvale Getty Property within the meaning of N.J.S.A. 58:10A-3e., which pollutants included BTEX, MTBE and TBA.

29. From as early as 1971 to the present, various entities have operated a gasoline service station at the Montvale Getty Property.

30. Specifically, in late 1993, when plaintiff DEP first learned that hazardous substances and pollutants had been discharged from an underground storage tank ("UST") at the Montvale Getty Property, defendant Getty Properties owned the USTs and/or operated the service station.

31. From in or around 2003 to the present, defendant Getty Marketing, and/or one or more of the ABC defendants or John Doe defendants, have owned the USTs and/or operated the service station at the Montvale Getty Property.

32. During the time that defendant Getty Properties, Getty Marketing, and/or one or more of the ABC defendants or John Doe defendants, have owned or operated a gasoline service station and

related USTs at the Montvale Getty Property, they generated, stored and handled hazardous substances and pollutants, certain of which were discharged there, which hazardous substances and pollutants included the gasoline compounds BTEX, MTBE, and TBA.

33. On October 25, 1993, defendant Getty Properties, then Getty Petroleum, began an UST removal project at the Site, which involved the removal and replacement of three unleaded gasoline USTs.

34. During this project, defendant Getty Properties discovered soils that were contaminated with petroleum products, which soils Getty Petroleum excavated and removed from the Montvale Getty Property.

35. Post-excavation sampling by defendant Getty Properties revealed the presence of various hazardous substances and pollutants in the soils in the excavation and the piping trench areas at concentrations exceeding plaintiff DEP's cleanup criteria, which included xylenes, ethylbenzene and total volatile organic compounds.

36. Defendant Getty Properties eventually excavated and removed approximately 900 tons of contaminated soils from the Montvale Getty Property.

37. On June 15, 1994, plaintiff DEP issued a directive to defendant Getty Properties, then Getty Petroleum, pursuant to N.J.S.A. 58:10-23.11f.a. ("June 1994 Directive"), directing

defendant Getty Properties to perform a remedial investigation to determine the nature and extent of the contamination at the Site.

38. In September 1994, defendant Getty Properties initiated the remedial investigation, sampling results from which revealed the presence of hazardous substances and pollutants in the soils and ground water at concentrations exceeding plaintiff DEP's cleanup criteria, which substances and pollutants included BTEX compounds.

39. Defendant Getty Properties submitted the findings from its investigation to plaintiff DEP in a Remedial Investigation Report dated January 31, 1995.

40. In April 1995, plaintiff DEP issued a second Spill Act directive to defendant Getty Properties ("April 1995 Directive"), then Getty Petroleum, directing defendant Getty Properties to perform additional soils and ground water investigations, and to submit a Remedial Action Workplan ("RAWP") for remediating the Site.

41. Sampling results from these additional investigations confirmed the presence of hazardous substances and pollutants in the soils and ground water at concentrations exceeding plaintiff DEP's cleanup criteria, which included not only BTEX compounds, but also MTBE and TBA compounds.

42. In February 1997, defendant Getty Properties submitted a RAWP to plaintiff DEP, in which defendant Getty Properties proposed

remediating the contamination at the Site through monitored natural attenuation.

43. On or about March 5, 1997, plaintiff DEP conditionally approved the defendant Getty Properties' RAWP as a Remedial Investigation Workplan ("RIW"), and directed defendant Getty Properties to perform additional groundwater monitoring to demonstrate an overall decreasing trend in contaminant concentrations before plaintiff DEP would approve a natural attenuation program for the Site.

44. Because soil samples from defendant Getty Properties' investigation indicated concentrations of xylenes above plaintiff DEP's cleanup standards, plaintiff DEP further required defendant Getty Properties to continue to collect yearly soil samples to determine whether contaminants were degrading at the Site.

45. On or about March 24, 2000, defendant Getty Properties submitted a RAWP addendum to plaintiff DEP, in which defendant Getty Properties noted that contaminant levels in the ground water were not decreasing, and proposed addressing the groundwater contamination through monthly withdrawals and off-site disposal of the contaminated ground water.

46. Defendant Getty Properties further noted in its RAWP addendum that contaminant concentrations in the soils were decreasing, and proposed a natural attenuation remedy for the impacted soils.

47. On June 30, 2000, plaintiff DEP approved defendant Getty Properties' RAWP addendum conditioned upon defendant Getty Properties installing additional monitoring wells to complete the delineation of the groundwater contaminant plume, and upon defendant Getty Properties continuing to sample the soils to determine whether contaminants they contained were naturally degrading.

48. After receiving sampling results indicating that contaminant levels in the soils had diminished to levels below the applicable cleanup standards, on January 8, 2001, plaintiff DEP advised defendant Getty Properties that no further remediation was necessary for the soils at the Site, subject to defendant Getty Properties demonstrating that contaminant concentrations in ground water were decreasing.

49. When groundwater contaminant concentrations at the Site remained above plaintiff DEP's cleanup standards, plaintiff DEP, by letter dated September 20, 2001, directed defendant Getty Properties to take additional steps to determine the nature and extent of the groundwater contamination.

50. In response to plaintiff DEP's directive, defendant Getty Properties continued the groundwater sampling, extraction and off-site disposal through early 2005.

51. By letter dated April 14, 2005, defendant Getty Properties advised plaintiff DEP that excessive contaminant

concentrations in groundwater samples from three monitoring wells at the Site indicated that a release of gasoline occurred from the station's UST field sometime in 2004.

52. By letter dated May 25, 2005, plaintiff DEP directed Getty Properties to evaluate other remediation methodologies to address the contamination at the Site, including more frequent extraction and off-site disposal of contaminated ground water.

53. In its most recent Remedial Action Progress Report, dated January 27, 2007, defendant Getty Properties reported that contaminant concentrations in the ground water were decreasing, and proposed continuing the monthly withdrawals of contaminated ground water, which activities were ongoing as of the filing of this Complaint.

54. Pursuant to the 1997 RAWP, as amended, defendant Getty Properties established a 6.3-acre Classification Exception Area ("CEA"), which restricts the use of the affected ground water within its boundaries, which has a 33-year duration beginning with the initial discharge discovery in 1993.

55. Although defendant Getty Properties has undertaken the remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

56. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 55 above as though fully set forth in its entirety herein.

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

58. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.(c).

59. 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).

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

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

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

62. The Plaintiffs also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Montvale Getty Property.

63. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

64. Defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, are the dischargers of hazardous substances at the Montvale Getty Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Montvale Getty Property. N.J.S.A. 58:10-23.11g.c.(1).

65. Defendants John Rothschild, Marianne Rothschild and the Rothschild Partnership, as the owners of the Montvale Getty Property at the time hazardous substances were discharged there,

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

66. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

67. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Montvale Getty Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Montvale Getty Property;
- c. Enter judgment against defendant Getty Properties, compelling defendant Getty Properties to perform any further cleanup of hazardous substances discharged at the Montvale Getty Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Montvale Getty Property, by performing, under plaintiff DEP's oversight,

or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Montvale Getty Property;

- e. Award the Plaintiffs their costs and fees in this action; and,
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

68. Plaintiff Commissioner repeats each allegation of paragraph nos. 1 through 67 above as though fully set forth in its entirety herein.

69. Defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, are "persons" within the meaning of N.J.S.A. 58:10A-31.

70. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit issued by plaintiff Commissioner pursuant to the Water Pollution Control Act, or pursuant to a valid National Pollutant Discharge Elimination

System permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§1251 to -1387. N.J.S.A. 58:10A-6a.

71. 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.

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

73. Plaintiff DEP also has incurred, and or will incur, costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Montvale Getty Property.

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

75. Defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and/or one or more of the John Doe defendants, discharged pollutants at the Montvale Getty Property, which discharge was neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and is liable, without regard to fault, for all costs and damages, including compensatory damages and any other

actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Montvale Getty Property. N.J.S.A. 58:10A-6a.

76. Pursuant to N.J.S.A. 58:10A-10c., plaintiff Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10c.(2); any reasonable cost incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c.(3); compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Montvale Getty Property, N.J.S.A. 58:10A-10c.(4); and the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).

PRAYER FOR RELIEF

WHEREFORE, plaintiff Commissioner prays that this Court:

- a. Permanently enjoin defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, by requiring these Defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Montvale Getty Property;
- b. Enter an order assessing defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter declaratory judgment against defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;

- d. Enter an order assessing defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, for all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Montvale Getty Property;
- e. Enter declaratory judgment against defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Montvale Getty Property;
- f. Enter an order assessing defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, for all compensatory damages and other actual damages incurred for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Montvale Getty Property;

- g. Enter declaratory judgment against defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Montvale Getty Property;
- h. Enter an order assessing defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, for the actual amount of any economic benefits these Defendants have accrued, including any savings realized from avoided capital or noncapital costs, the return these Defendants have earned on the amount of avoided costs, any benefits these Defendants have enjoyed as a result of a competitive market advantage, or any other benefit these Defendants have received as a result of having violated the Water Pollution Control Act;
- i. Enter declaratory judgment against defendant Getty Properties, defendant Getty Marketing, one or more of the ABC Corporation defendants, and one or more of the John Doe defendants, without regard to fault, assessing these

Defendants for the actual amount of any economic benefits that will accrue to them, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage these Defendants have enjoyed, or any other benefit that will accrue to these Defendants as a result of having violated the Water Pollution Control Act;

- j. Award plaintiff Commissioner her costs and fees in this action; and
- k. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

77. The Plaintiffs repeat each allegation of paragraph nos. 1 through 76 above as though fully set forth in its entirety herein.

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

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

80. The groundwater contamination at the Montvale Getty Property constitutes a physical invasion of public property and an

unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

81. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

82. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

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

- State injured as a result of the discharge of hazardous substances and pollutants at the Montvale Getty Property;
- c. Enter judgment against defendant Getty Properties, compelling defendant Getty Properties to abate the nuisance by performing any further cleanup of hazardous substances and pollutants discharged at the Montvale Getty Property, under plaintiff DEP's oversight;
 - d. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances and pollutants at the Montvale Getty Property by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances and pollutants at the Montvale Getty Property;
 - e. Award the Plaintiffs their costs and fees in this action;
and,
 - f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

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

- Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Montvale Getty Property;
- c. Enter judgment against the Defendants, compelling the Defendants to cease the trespass by performing any further cleanup of hazardous substances and pollutants discharged at the Montvale Getty Property under plaintiff DEP's oversight;
 - d. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances and pollutants at the Montvale Getty Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances and pollutants at the Montvale Getty Property;
 - e. Award the Plaintiffs their costs and fees in this action; and,
 - f. Award the Plaintiffs such other relief as this Court deems appropriate.

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Mary Ellen Halloran
Deputy Attorney General

Dated: June 12, 2007

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b) (2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b) (2).

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY
GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Mary Ellen Halloran
Deputy Attorney General

Dated: June 12, 2007

Montvale Getty Complaint (final).wpd