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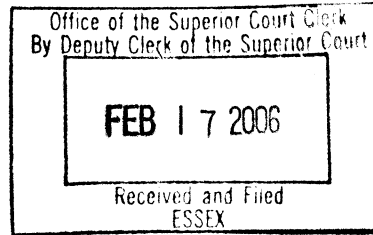
NEW JERSEY DEPARTMENT OF:  
ENVIRONMENTAL PROTECTION and  
THE ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

v.

VIACOM, INC.;  
PHILLIPS ELECTRONICS NORTH  
AMERICA CORPORATION;  
"ABC CORPORATIONS" 1-10 (Names  
Fictitious), and  
"JOHN DOES 1-10" (Names Fictitious),

Defendants.



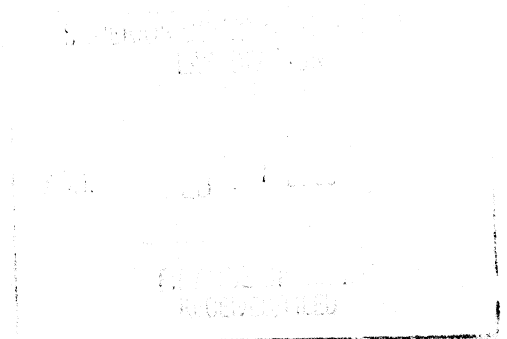
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – ESSEX COUNTY  
DOCKET NO.

ESX L 1486-06

Civil Action

COMPLAINT



Plaintiffs New Jersey Department of Environmental Protection (“DEP”) and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “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. 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, and the common law, for reimbursement of the clean up and removal costs and damages they have incurred, and will incur, as a result of discharge of hazardous substances at the Bloomfield Lamp Manufacturing site located in the Township of Bloomfield, Essex 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 at the Bloomfield Lamp Manufacturing 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 at the Bloomfield Lamp Manufacturing site.

#### 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 the State. N.J.S.A. 58:10-23.11a.

4. 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 clean up 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 made from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Phillips Electronics North America Corporation ("Phillips") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1251 Avenue of the Americas, New York, New York 10020.

6. In 1987, North American Phillips Lighting Corporation ("North American") merged into defendant Phillips, with defendant Phillips being the surviving entity.

7. Defendant Phillips is the successor-in-interest to North American.

8. Defendant Viacom, Inc. ("Viacom") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1515 Broadway, New York City, New York 10036.

9. In 1995, the Westinghouse Corporation ("Westinghouse") acquired the CBS Corporation ("CBS") (formally known as CBS, Inc. and Columbia Broadcasting System, Inc.), with the surviving entity being Westinghouse, which then changed its name to CBS Corporation in 1997.

10. CBS merged with defendant Viacom in 1999, with defendant Viacom being the surviving entity.

11. Defendant Viacom is the successor-in-interest to Westinghouse and CBS.

12. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities the identities of which cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, or are otherwise related to, defendants Phillips and Viacom, and/or their predecessors.

13. Defendants "John Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, defendants Phillips and Viacom, one or more of the ABC Corporation Defendants, and/or their predecessors.

AFFECTED NATURAL RESOURCE

Ground Water

14. 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.

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

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

17. Ground water also provides cycling and nutrient movement, prevents salt intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water

levels in freshwater wetlands.

18. 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.

19. There are more than 6,000 contaminated sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

20. The Bloomfield Lamp Manufacturing site consists of approximately 14 acres of real property located at 1 Westinghouse Plaza, Bloomfield, New Jersey, Essex County, this property being also known and designated as Block 97, Lot 1, on the Tax Map of the Township of Bloomfield ("the Bloomfield Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Bloomfield Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 008190.

21. The Bloomfield Site is located within the Newark Basin of the piedmont physiographic providence of New Jersey.

22. The bedrock at the Bloomfield Site is comprised of strata of the Brunswick Formation, which is the principal ground water aquifer in Essex County.

23. The ground water generally flows beneath the Bloomfield Property from west to east, and discharges into local streams.

24. The Bloomfield Property was purchased by Westinghouse Electric & Manufacturing Co., a predecessor of Westinghouse, in 1936 from Westinghouse Lamp Company.

25. As of the date of the filing of this Complaint, Westinghouse Electric & Manufacturing Co. remains the owner of record of the Bloomfield Property.

26. During the time that defendant Viacom's predecessors, including Westinghouse Electric & Manufacturing Co., owned the Bloomfield Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., where "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included: chloroform, 1,2-dichloroethene ("1,2-DCE"), 1,2-dichloroethane ("1,2-DCA"), 1,1-dichloroethene ("1,1-DCE"), perchloroethene ("PCE"), Trichloroethylene ("TCE"), vinyl chloride, arsenic, mercury, and uranium.

27. Prior to World War II, Westinghouse Electric Company, a predecessor of Westinghouse Electric & Manufacturing Co., operated a facility at the Bloomfield Property primarily devoted to engineering, research and the development of electric lamps, which activities involved the use of radioactive materials, primarily thorium, for manufacturing metallic wire and components for lamp filaments.

28. During World War II, Westinghouse Electric Company produced uranium at the Bloomfield Property for the Manhattan Project.

29. In 1964, Westinghouse was issued a permit by the Atomic Energy Commission to conduct research and development with thorium and uranium and to manufacture thorium-tungsten wire.

30. In February 1983, Westinghouse sold the lamp manufacturing business to defendant Phillips' predecessor, North American, which North American continued at the Bloomfield Property in the facility it was leasing from Westinghouse.

31. North American also continued producing thorium-tungsten wire at the Bloomfield Property until 1984.

32. In 1986, North American ceased all operations at the Bloomfield Property, at which time Westinghouse resumed control of the manufacturing facilities.

33. Defendant Phillips' and Viacom's predecessors, including Westinghouse and North American, certain of the ABC Corporation and/or certain of the John Doe defendants, engaged in manufacturing activities at the Bloomfield Property which activities involved the generation, storage, handling, and disposal of "hazardous substances," as defined in N.J.S.A. 59:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included chloroform, 1,2-DCE, 1,2-DCA, 1,1-DCE, PCE, TCE, vinyl chloride, arsenic, mercury, and uranium.

34. The proposed sale of the Bloomfield Property by Westinghouse Electric & Manufacturing Co., triggered Westinghouse Electric & Manufacturing Co.'s obligations under the Environmental Cleanup and Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

35. In 1988, Westinghouse submitted an application for a license to decommission the on-site buildings to the Nuclear Regulatory Commission ("NRC").

36. In compliance with ECRA, Westinghouse submitted its two-part application form consisting of a General Information Submission ("GIS") and a Site Evaluation Submission ("SES") to plaintiff DEP in January and April 1986.

37. In May 1987, plaintiff DEP conditionally approved an amended sampling plan submitted by Westinghouse to determine the nature and extent of the groundwater contamination at the Bloomfield Site.

38. The soil and groundwater investigations at the Bloomfield Site were conducted by Westinghouse in three phases, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the soils and ground water, which substances included volatile organic compounds ("VOCs"), arsenic, and radiologicals, including uranium.

39. As a result of its investigation, Westinghouse identified the primary sources of groundwater contamination at the Bloomfield Site as leaking underground storage tanks ("USTs"), contaminated soils, and underground water reservoirs.

40. Defendant Viacom and/or its predecessors, including CBS, were subsequently required to conduct additional investigations of the Bloomfield Site pursuant to plaintiff DEP's conditional approval of the amended sampling plan.

41. In March 1993, plaintiff DEP conditionally approved defendant Westinghouse's plan for remediating the Bloomfield Site, which plan primarily provide for the extraction and treatment of contaminated ground water, the continued monitoring of the ground water, and the implementation of a Classification Exception Area ("CEA") for the site.

42. In November 1994, Westinghouse submitted its Groundwater Remedial Action Work Plan ("RAP") to plaintiff DEP, which plan provided for the establishment of a CEA, the extraction and treatment of contaminated ground water from the aquifer underlying the Bloomfield Site, the continued monitoring of the ground water, and the removal of contaminated soils.



43. From 1993 through 2004, defendant Viacom and/or its predecessor, Westinghouse, demolished the on-site building and removed the debris, removed radioactively impacted sewer piping, excavated and removed contaminated soils, placed asphalt and concrete covers over certain contaminated areas to prevent the further migration of contaminants, closed and removed USTs, and monitored the ground water.

44. Other than for the groundwater treatment facility, the Bloomfield Property is vacant land, approximately 75% of which is covered by impervious surfaces (i.e., asphalt and concrete).

45. Defendant Viacom has yet to propose a CEA, which would exclude the designated ground water from use as a potable water source, to plaintiff DEP for approval, and, as such, the duration and extent of the CEA is unknown as of the filing of this Complaint.

46. Although defendant Viacom and its predecessors have initiated the remediation of the Bloomfield Site, the groundwater and soils contamination continues.

#### FIRST COUNT

##### Spill Act

47. Plaintiffs repeat each allegation of paragraphs 1 through 46 above as though fully set forth in its entirety herein.

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

49. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Bloomfield Property.

50. Plaintiff, Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Bloomfield Site and, further, has approved, and may continue to approve, other appropriations for the Bloomfield Site.

51. The Plaintiffs 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 Bloomfield Property.

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

53. Defendants Viacom and Phillips, certain of the ABC Corporation Defendants, and/or certain of the John Doe Defendants, are dischargers, and/or the successors-in-interest to the dischargers, of hazardous substances at the Bloomfield 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 by the discharge of hazardous substances at the Bloomfield Property. N.J.S.A. 58:10-23.11g.c.(1).

54. Defendant Viacom, as a successor-in-interest to the owners of the Bloomfield Property at the time hazardous substances were discharged there, is also a person in any way responsible for the discharged hazardous substances, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Bloomfield Property. N.J.S.A. 58:10-23.11g.c.(1).

55. 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, clean up and removal costs, including the reasonable costs of

preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); for 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).

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

#### PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Bloomfield Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all clean up and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Bloomfield Property;
- c. 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 Bloomfield 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 Bloomfield Property;

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

## SECOND COUNT

### Public Nuisance

57. Plaintiffs repeat each allegation of paragraphs 1 through 56 as though fully set forth in its entirety herein.

58. Ground water is a natural resources of the State held in trust by the State.

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

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

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

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

## PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including unjust enrichment, lost value, and reasonable assessment