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

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION;	:	
THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION;	:	<u>Civil Action</u>
and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	COMPLAINT
Plaintiffs,	:	
v.	:	
NASCOLITE CORPORATION and "ABC CORPORATIONS" 1-10 (Names Fictitious),	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") ("the Plaintiffs"), having their principal offices at 401 East State

Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances and pollutants at the Nascolite Corporation site in the City of Millville, Cumberland County.

2. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Nascolite Corporation 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 of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Nascolite Corporation site, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

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

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

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

6. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

7. Defendant Nascolite Corporation ("Nascolite") is a corporation formerly organized and existing under the laws of the State of New Jersey, with a principal place of business formerly located at Doris Avenue, Millville, New Jersey 11753.

8. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which were generators of materials containing hazardous substances that were discharged at the Nascolite Property.

NATURAL RESOURCES

9. 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.

10. 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.

11. 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 Nascolite site.

AFFECTED NATURAL RESOURCE

Ground Water

12. 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.

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

14. 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.

15. 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.

16. 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.

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

GENERAL ALLEGATIONS

18. The Nascolite Site consists of approximately 17.5 acres of real property located on Doris Avenue, City of Millville, Cumberland County, this property being also known and designated as Block 234, Lot 60, on the Tax Map of the City of Millville ("the Nascolite 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. G000001919.

19. In May 1952, James and Julius Villano of Elizabeth, New Jersey, purchased the Nascolite Property from George and Marjorie McCloskey.

20. In 1969, the Villanos transferred title to the Nascolite Property to defendant Nascolite. Although defendant Nascolite is currently inactive, the corporation is still the owner of record of the Nascolite Property.

21. During the time that defendant Nascolite owned the Nascolite Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included MMA and volatile organic compounds ("VOCs") such as vinyl chloride, benzene, toluene, and trichloroethene, and lead.

22. From 1953 to 1980, Nascolite reclaimed scrap acrylic material and used it in the manufacture of polymethyl methacrylate

("MMA") sheets, commonly known as plexiglass. As part of the manufacture of plexiglass, solid scrap acrylic, virgin MMA monomer and liquid waste MMA were used as raw materials.

23. Waste waters from the non-contact cooling water, wash water, and floor washdown were discharged into a drainage ditch behind the plant running parallel to the Conrail railroad tracks.

24. In addition, liquid wastes from the distillation of scrap acrylic were stored in underground storage tanks on the Nascolite Property, which wastes contained MMA compounds and other hazardous substances as defined in N.J.S.A. 58:10-23.11b.

25. Liquid wastes leaked from the underground storage tanks into the soils and ground water at the Site.

26. During the time that defendant Nascolite operated a manufacturing facility at the Nascolite Property, it generated, stored and handled hazardous substances, certain of which were discharged there, which substances included MMA, VOCs and lead.

27. Further, during the time that defendant Nascolite operated a manufacturing facility at the Nascolite Property, it generated, stored and handled "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10A-3n., which pollutants included MMA, VOCs, and lead.

28. Environmental concerns at the Nascolite Property came to light in October 1979, when the Cumberland County Department of

Health received complaints from a neighboring business concerning odors from their well water.

29. Plaintiff DEP subsequently investigated the Nascolite Property, and discovered the nonpermitted discharge of wastewater into the ditch behind the manufacturing plant.

30. Plaintiff DEP sampled the wastewater discharge, the results of which sampling revealed the presence of phenols, MMA, and high chemical oxygen demand.

31. Based upon sampling results, and observations of its personnel, plaintiff DEP issued defendant Nascolite an Administrative Order and Notice of Civil Penalty Assessment on February 26, 1980 ("February 1980 AONOCAPA"), requiring defendant Nascolite to cease discharging its wastewater into the ditch.

32. Shortly after receiving the February 1980 AONOCAPA, defendant Nascolite terminated its manufacturing operations.

33. In September 1981, defendant Nascolite entered into an Administrative Consent Order ("ACO") with plaintiff DEP, requiring defendant Nascolite to install and sample the ground water from three monitoring wells in order to determine the extent of groundwater contamination at the Nascolite Property. The ACO also required defendant Nascolite to remove all accumulated wastewater, sludges, and contaminated soils from the drainage ditch.

34. In May 1982, defendant Nascolite removed approximately 10 cubic yards of contaminated soils from the Nascolite Property, which defendant Nascolite shipped offsite for disposal.

35. Plaintiff DEP's personnel collected and analyzed groundwater samples from the three on-site monitoring wells in 1981 and in 1983. Sampling results showed significant concentrations of volatile compounds in the ground water.

36. Between 1981 and 1983, plaintiff DEP's personnel conducted numerous inspections of the Nascolite Property in an effort to determine the source of the groundwater contamination.

37. During these inspections, plaintiff DEP's personnel identified over 100 55-gallon drums and a number of USTs containing distillation residues at the Nascolite Property. When these USTs were finally removed from the Nascolite Property, it was noted that one of them had been perforated numerous times on the bottom.

38. In September 1983, the federal Environmental Protection Agency ("EPA") placed Site on the National Priorities List pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. §§9601 to -9675. The NPL, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list EPA promulgates of hazardous waste sites that pose the greatest threat to the human health and safety, and the environment.

39. In November 1984, plaintiff DEP initiated a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to Section 104 of CERCLA, 42 U.S.C.A. §9604, to determine the nature and extent of the contamination at the Site, and to develop and evaluate remedial alternatives for the contamination.

40. Between 1985 and 1987, plaintiff DEP installed 19 additional monitoring wells as part of the RI to enable plaintiff DEP to determine the nature and extent of groundwater contamination.

41. Plaintiff DEP later sampled the ground water from the monitoring wells at the Site, along with seven privately owned wells in the vicinity of the Nascolite Property, and the Millville municipal water supply well.

42. Sampling results showed MMA and other volatile organic compounds ("VOCs") (e.g., bis(2-ethylhexyl) phthalate, di-n-butyl phthalate, benzene, toluene, ethylbenzene and trichloroethene) at concentrations exceeding plaintiff DEP's groundwater quality standards. Floating MMA product was found on top of the water table in one monitoring well that contained exceedingly high levels of MMA and bis(2ethylhexyl) phthalate and di-n-butyl phthalate.

43. Sampling from the off-site wells revealed no contaminants except in the ground water at one privately-owned well upgradient from the Nascolite Property, which contaminants EPA ruled out as coming from the Nascolite Property.

44. During the RI, plaintiff DEP further sampled waste materials and surface and subsurface soils at the Site.

45. Samples taken from the UST excavation pit revealed levels of MMA and bis(2-ethylhexyl) phthalate at levels exceeding plaintiff DEP's cleanup criteria. Samples of waste materials from inside the two remaining USTs on the Nascolite Property were found to contain VOCs including toluene, ethylbenzene, and bis(2ethylhexyl) phthalate at levels exceeding plaintiff DEP's cleanup criteria. Two samples taken from inside the USTs and from the UST excavation pit revealed the presence of high lead concentrations.

46. During the RI, plaintiff DEP dug 15 test pits and took 19 shallow and deep soil borings at the Site. Sampling results taken from various locations around the Nascolite Property revealed the presence of high lead concentrations, but no VOCs at concentrations exceeding plaintiff DEP's cleanup criteria.

47. Soil samples taken from the drainage ditch, into which the Nascolite plant had discharged wastewater, also contained lead and VOCs at concentrations exceeding plaintiff DEP's cleanup criteria, though the VOCs were detected at lower concentrations than was lead.

48. From November 1987 to March 1988, EPA removed more than 100 55-gallon drums from the Nascolite Property. During this

period, EPA also excavated the remaining USTs, and transported them from the Site for disposal.

49. At the conclusion of the RI/FS, EPA and plaintiff DEP determined that while they could select a groundwater remedy based on the available data, additional data were necessary to more completely determine the nature and extent of the contamination in the soils, buildings and debris on the Nascolite Property.

50. EPA, with plaintiff DEP's concurrence, chose to divide the proposed remediation into multiple operable units. The first operable unit ("OU-1") would address the groundwater contamination, while the second operable unit ("OU-2") would address the contaminant sources, namely, the buildings, soils and debris.

51. On March 31, 1988, EPA, with plaintiff DEP's concurrence, issued a Record of Decision for OU-1 ("OU-1 ROD"), in which EPA documented and explained the preferred remedy to address the contaminated ground water at the Site.

52. The remedy selected in the OU-1 ROD primarily provided for the installation of an alternate water supply to residences whose private wells were threatened by the potential migration of contaminants from the Nascolite Property; the construction, installation and operation of an on-site groundwater treatment and reinjection system; and for additional studies to determine appropriate remedial measures for the contaminated soils and on-site buildings.

53. EPA conducted a supplemental RI/FS in March 1988 to more fully characterize the Site and to identify remedial alternatives for soils and structures.

54. In March 1991, EPA issued a RI/FS report, which stated that the primary contaminant detected in the soils was lead. On-site structures, which by then were abandoned and in a dilapidated state, were contaminated with asbestos and asbestos-contaminated materials.

55. On June 28, 1991, EPA, with plaintiff DEP's concurrence, issued a Record of Decision for OU-2 ("OU-2 ROD") for the Site. The remedy EPA selected in the OU-2 ROD primarily provided for the stabilization/solidification of contaminated soils and replacement of the solidified soils at the Site, demolition of the abandoned buildings with related asbestos abatement and disposal, and the restoration of the contaminated wetlands.

56. On or about March 31, 1989, EPA and two parties entered into an Administrative Order on Consent ("1989 AOC"), pursuant to which these companies installed the alternate water supply line required in the OU-1 ROD.

57. On September 24, 1990 and on August 9, 1994, EPA issued Unilateral Administrative Orders ("UAOs") to twelve parties, including defendant Nascolite, ordering them to undertake the design, construction and operation of the groundwater treatment system as part of OU-1.

58. These parties, with the exception of defendant Nascolite, completed the remedial design in June 1995 and the construction of the treatment system in August 1996, and, as of the filing of this Complaint, are performing the operation and maintenance of the groundwater remediation system.

59. EPA performed the remedial design for OU-2, which it completed in February 1995.

60. EPA and plaintiff DEP conducted the OU-2 remedial action, the first phase of which involved the demolition and removal of the dilapidated structures and the related asbestos abatement, which phase was completed in early 2000.

61. The second phase of the OU-2 remedial action, which included sampling the soils, revealed that the volume of contaminated soils was much greater than originally identified, and more widely distributed throughout the Site. In addition, the sampling indicated that the soils were contaminated with MMA, which was not anticipated at the time EPA issued the OU-2 ROD in 1991.

62. As a result of the findings from the OU-2 soil sampling, and other differing site conditions, EPA chose to address soils contamination by excavating the contaminated soils, and removing them for off-site disposal and, if necessary, treatment.

63. EPA commenced the soils excavation and disposal in December 2002, which EPA substantially completed by September 2003. During this period, EPA excavated and removed approximately 42,000

cubic yards of contaminated soils, which it transported off-site for treatment and/or disposal. Post-excavation sampling results indicated that all of the source materials were successfully removed.

64. Restoration activities, including restoration of the impacted wetlands through replanting of wetlands vegetation, have also been completed.

65. On September 30, 2004, EPA issued an Explanation of Significant Differences ("ESD"), in which it set forth the basis for the additional soils work. The additional work amounted to removing three times the amount of contaminated soils than EPA originally predicted, thus significantly increasing EPA and plaintiff DEP's costs for OU-2.

66. While contaminated soils and other surface materials have been removed from the Nascolite Property, the groundwater contamination continues.

67. In mid-2006, EPA asked the parties conducting the OU-1 groundwater remedy to establish a Classification Exception Area ("CEA") for the Site, which, when established, would restrict groundwater usage within its boundaries.

68. As of the filing of this Complaint, the parties performing the OU-1 groundwater remedy have not proposed a CEA for the Site.

FIRST COUNT

Spill Act

69. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 68 above as though fully set forth in its entirety herein.

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

71. 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.

72. 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).

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

74. 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.

75. 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 Nascolite Property.

76. 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.

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

78. Defendants "ABC Corporations" 1-20, as generators of hazardous substances that were discharged at the Nascolite Property, 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 Nascolite Property. N.J.S.A. 58:10-23.11g.c.(1).

79. 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).

80. 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 plaintiffs DEP and Administrator, jointly and severally, without regard to

fault, for all damages, including lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Nascolite 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 plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Nascolite Property;
- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling them 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 Nascolite Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment of any natural resource injured as a result of the discharge of hazardous substances at the Nascolite Property;
- d. Award plaintiffs DEP and Administrator their costs and fees in this action; and,

- e. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

81. Plaintiff Commissioner repeats each allegation of paragraph nos. 1 through 80 above as though fully set forth in its entirety herein.

82. Defendant Nascolite is a "person" within the meaning of N.J.S.A. 58:10A-31.

83. 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.

84. 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.

85. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of pollutants at the Nascolite Property.

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

87. 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).

88. Defendant Nascolite discharged pollutants at the Nascolite 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 Nascolite Property. N.J.S.A. 58:10A-6a.

89. 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 Nascolite 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. Enter an order assessing defendant Nascolite, 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;
- b. Enter declaratory judgment against defendant Nascolite, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which will lead to establishment of

the violation, including the costs of preparing and litigating the case;

- c. Enter an order assessing defendant Nascolite, 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 Nascolite Property;
- d. Enter declaratory judgment against defendant Nascolite, 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 Nascolite Property;
- e. Enter an order assessing defendant Nascolite, 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 Nascolite Property;
- f. Enter declaratory judgment against defendant Nascolite, 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 Nascolite Property;

- g. Enter an order assessing defendant Nascolite, without regard to fault, for the actual amount of any economic benefits the Defendant has accrued, including any savings realized from avoided capital or noncapital costs, the return the Defendant has earned on the amount of avoided costs, any benefits the Defendant has enjoyed as a result of a competitive market advantage, or any other benefit the Defendant has received as a result of having violated the Water Pollution Control Act;
- h. Enter declaratory judgment against defendant Nascolite, without regard to fault, assessing defendant Nascolite for the actual amount of any economic benefits that will accrue to it, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage the Defendant has enjoyed, or any other benefit that will accrue to the Defendant as a result of having violated the Water Pollution Control Act;
- i. Award plaintiff Commissioner her costs and fees in this action; and

- j. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

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

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

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

93. The groundwater contamination at the Nascolite 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.

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

95. 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 plaintiffs DEP and Administrator for all damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Nascolite 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 plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Nascolite Property;
- c. 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 Nascolite Property by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any

further assessment of any natural resource injured as a result of the discharge of hazardous substances and pollutants at the Nascolite Property;

- d. Award plaintiffs DEP and Administrator their costs and fees in this action; and,
- e. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

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

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

98. The Defendants are liable for trespass, and continued trespass, since hazardous substances and pollutants were discharged at the Nascolite Property.

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

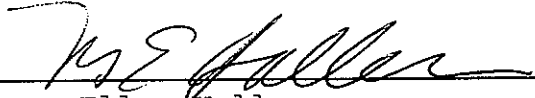
PRAYER FOR RELIEF

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- b. Enter declaratory judgment against the Defendants for all damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Nascolite Property;
- c. Enter judgment against the Defendants, compelling 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 Nascolite Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment of any natural resource injured as a result of the discharge of hazardous substances and pollutants at the Nascolite Property;

- d. Award plaintiffs DEP and Administrator their costs and fees in this action; and,
- e. Award plaintiffs DEP and Administrator 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 25, 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, except that the

Plaintiffs may later seek to recover their unreimbursed costs and damages for the Site by filing a separate civil action, or seeking to amend this Complaint, once the Plaintiffs' potential causes of action for such relief accrue. 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 25, 2006

Complaint 062207(Final).wpd