

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

By: John F. Dickinson, Jr.  
Deputy Attorney General  
(609) 984-4654

Michael T. Howell Esq.  
Dennis C. Reich, Esq.  
Special Counsel to the Attorney General  
REICH & BINSTOCK, LLP  
4265 San Felipe, Suite 1000  
Houston, TX 77027  
(713) 622-7271

Special Counsel to the Attorney General  
CONNELLY • BAKER • WOTRING •  
JACKSON, LLP  
700 Louisiana Street  
Suite 1850  
Houston, TX 77002-2778  
(713) 980-1700

Michael Gordon, Esq.  
Special Counsel to the Attorney General  
GORDON & GORDON, PC  
505 Morris Avenue  
Springfield, NJ 07081  
(973) 467-2400

Special Counsel to the Attorney General  
LAMBERT & NELSON, PLC  
701 Magazine Street  
New Orleans, Louisiana 70130-3629  
(504) 581-1750

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

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. :

OCCIDENTAL CHEMICAL :  
CORPORATION (f/k/a Hooker Chemicals & :  
Plastics Corporation), :

Defendant. :

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 defendant, Occidental Chemical Corporation (f/k/a Hooker Chemicals & Plastics Corporation) (“the Defendant”), say:

#### STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (the “Spill Act”), 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 pollutants and hazardous substances at the Polyone site in Burlington City, Burlington 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 pollutants and hazardous substances at the Polyone site. Further, the Plaintiffs seek an order compelling the Defendant 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 pollutants and hazardous substances at the Polyone 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 authorities, 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 Occidental Chemical Corporation ("OCC") is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 5005 LBJ Freeway, Dallas, Texas 75380.

7. Defendant OCC was formerly known as Hooker Chemicals & Plastics Corporation ("Hooker").

## NATURAL RESOURCES

8. 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.

9. 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.

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

## AFFECTED NATURAL RESOURCES

### Ground Water

11. 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.

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

13. 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.

14. 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.

15. 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.

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

#### Surface Water

17. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

18. Surface water, like ground water, is a unique resource that is used for other commercial and industrial purposes, such as cooling water and electrical generation, commercial fishing, and transportation of goods and services.

19. The tourist and recreation industries, including boating, fishing and swimming, which are vital to the economy of this State, depend on clean waters and beaches.

#### Sediments

20. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

21. Sediments are a critical example of New Jersey's ecological resources.

22. These sediments can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments, particularly in New Jersey's coastal areas, are part of the State's ecosystems that provide a living substrate for submerged and emergent flora, and support diverse invertebrate species, wading birds, and fish and shellfish populations.

#### Biota

23. New Jersey's ecosystems—forests, lakes, rivers, wetlands, agricultural lands,

coastal estuaries, pinelands, and grasslands—are among the most complex and diverse in the nation.

24. New Jersey is home to 2,117 plant species, including entire communities of rare flora that can be found nowhere else in the world. Approximately 15 percent of the native plant species in New Jersey, however, are now at risk at of extinction, with a total of 331 vascular plant species listed as endangered and an additional 32 that have already been extirpated.

25. New Jersey wildlife includes close to 900 species, including 90 mammal species, 79 reptile and amphibian species, more than 400 fish species, and approximately 325 species of birds.

26. Approximately 1.5 million shorebirds and as many as 80,000 raptors make migratory stopovers here each year. At least 17 percent of New Jersey's native vertebrate species and 24 percent of its native invertebrate species are at risk of extinction. Several threatened and endangered raptor species have difficulty breeding because of the bioaccumulaion of toxic compounds.

27. New Jersey's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for all cultural and economic activity in the state.

28. New Jersey's ecosystems, however, are vulnerable to pollution, degradation and destruction from the discharge of hazardous substances. Contamination from the discharge of hazardous substances and pollutants is one of the major causes of biodiversity loss.

29. Natural resource injuries to biota in New Jersey negatively impact not only the individual species directly involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future.

### GENERAL ALLEGATIONS

30. The Polyone site consists of approximately 187 acres of real property located at 1804 River Road, Burlington City, Burlington County, New Jersey, this property being also known and designated as Block 154, Lot 12-YB, on the Tax Map of the City of Burlington ("the Polyone 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. 002023.

31. Ditches and pipes located at the Site discharge, or have discharged to Bustleton Creek, which is tidally influenced by the Delaware River.

32. From 1967 through 1999, the Defendant owned the Polyone Property, during which time "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 vinyl chloride monomer ("VCM"), bis (2-ethylhexyl), phthalate, dichloroethene ("DCE"), polychlorinated biphenyls ("PCBs"), perchloroethylene (a/k/a tetrachloroethylene)("PCE"), trichloroethylene ("TCE"), trichloroflouromethane, and polyaromatic hydrocarbons ("PAHs").

33. From 1967 through 1999, the Defendant also operated a PVC sheeting/calendaring facility at the Polyone Property, the operation of which involved the generation, storage and handling of hazardous substances, certain of which were discharged there, which substances included VCM, bis (2-ethylhexyl), phthalate, DCE, PCBs, PCE, TCE, trichloroflouromethane, and PAHs.

34. From 1967 through 1999, the Defendant also generated, stored and handled "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which the Defendant "discharged" to

the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants included VCM, bis (2-ethylhexyl), phthalate, DCE, PCBs, PCE, TCE, trichloroflouromethane, and PAHs.

35. On various occasions plaintiff DEP's personnel inspected the Polyone Property, and determined that pollutants and hazardous substances had been discharged there, which hazardous substances and pollutants included PVC resin powders, resin pellets, shredded calendar material (a/k/a waste sheet stock), VCM, bis (2-ethylhexyl) phthalate, DCE, PCBs, PCE, and TCE, trichlorofluoromethane, and PAHs.

36. Other investigations at the Site have indicated the presence of PCBs, including Aroclor 1242, in sediments, including those within Bustleton Creek, and a number of carcinogenic PAHs, including: acenaphthene, chrysene, fluoranthene, naphthalene, phenanthrene, and pyrene.

37. The Defendant's February 1999 sale of the Polyone Property to Geon, now known as Polyone, triggered the Defendant's obligations under the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -14 ("ISRA").

38. From 1998 through 2003, the Defendant performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which OCC investigated the nature and extent of the contamination at the Site.

39. Sampling results from the remedial investigation revealed the presence of various pollutants and hazardous substances at concentrations exceeding DEP's cleanup criteria in the ground water and soils at the Site.

40. In December 2003, plaintiff DEP approved a Remedial Action Implementation Report for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remediation of the Site.



41. The remediation plaintiff DEP approved for the Site primarily involves the removal and disposal of some of the contaminated soils, and the short-term, active remediation of the contaminated ground water, which activities are ongoing.

42. Although the Defendant has initiated the remediation of the Site, groundwater, soils surface water, sediments and biota contamination continues.

### FIRST COUNT

#### Spill Act

43. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 42 above as though fully set forth in its entirety herein.

44. The Defendant is a “person” within the meaning of N.J.S.A. 58:10-23.11b.

45. 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).

46. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, the discharge and/or unsatisfactory storage or containment 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).

47. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the Site.

48. 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.

49. 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 Polyone Property.

50. The costs and damages 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.

51. The Defendant is the discharger of hazardous substances at the Property, and is liable, 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 Polyone Property. N.J.S.A. 58:10-23.11g.c.(1).

52. The Defendant, as the owner of the Polyone Property at the time hazardous substances were discharged there, also is a person in any way responsible for the discharged hazardous substances, and is liable, with 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 Polyone Property. N.J.S.A. 58:10-23.11g.c.(1).

53. 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).

54. 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 Defendant to reimburse plaintiffs DEP and Administrator, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Polyone Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and 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 Polyone Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform any further cleanup of hazardous substances discharged at the Polyone Property,

including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at the Polyone Property, including restoring any injured resource to its pre-discharge condition, under plaintiff DEP's oversight;

- d. Enter judgment against the Defendant, without regard to fault, compelling the Defendant 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 Polyone Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

## SECOND COUNT

### Water Pollution Control Act

55. The Plaintiffs repeat each allegation of paragraphs nos. 1 through 54 above as though fully set forth in its entirety herein.

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

57. 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.

58. 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.

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

60. Plaintiff DEP also has incurred, or may 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 Polyone Property.

61. 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).

62. The Defendant discharged pollutants at the Polyone Property, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and 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 Polyone Property. N.J.S.A. 58:10A-6a.

63. 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 Polyone 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. Enjoin the Defendant by requiring the Defendant to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at the Polyone Property, including restoring any injured resource to its pre-discharge condition;
- b. Enter an order assessing the Defendant, 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 the Defendant, 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 the Defendant, 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 Polyone Property;
- e. Enter declaratory judgment against the Defendant, 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 Polyone Property;
- f. Enter an order assessing the Defendant, 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 Polyone Property;
- g. Enter declaratory judgment against the Defendant, 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 Polyone Property;

- h. Enter an order assessing the Defendant, without regard to fault, for the actual amount of any economic benefits it has accrued, including any savings realized from avoided capital or noncapital costs, the return it 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 it has received as a result of having violated the Water Pollution Control Act;
- i. Enter declaratory judgment against the Defendant, without regard to fault, assessing the Defendant 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 it 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

64. The Plaintiffs repeat each allegation of paragraph nos. 1 through 63 above as though fully set forth in its entirety herein.

65. Ground water, surface water, sediments and biota are natural resources of the State held in trust by the State for the benefit of the public.



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

67. The groundwater, surface water, sediments and biota contamination at the 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 these natural resources.

68. As long as the ground water, surface water, sediments and biota remain contaminated due to the Defendant's conduct, the public nuisance continues.

69. Until the ground water, surface water, sediments and biota are restored to their pre-injury quality, the Defendant is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to these resources.

#### PRAYER FOR RELIEF

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

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

- c. Enter judgment against the Defendant, compelling the Defendant to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the Polyone Property, including 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 Polyone Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant 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 pollutants and hazardous substances at the Polyone Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

#### FOURTH COUNT

##### Trespass

70. The Plaintiffs repeat each allegation of paragraph nos. 1 through 69 above as though fully set forth in its entirety herein.

71. Ground water, surface water, sediments and biota are natural resources of the State held in trust by the State for the benefit of the public.

72. The Defendant is liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the Polyone Property.

73. As long as the ground water, surface water, sediments and biota remain contaminated, the trespass continues.

PRAYER FOR RELIEF


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

- a. Order the Defendant to reimburse plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Polyone Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and 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 pollutants and hazardous substances at the Polyone Property;
- c. Enter judgment against the Defendant, compelling the Defendant to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the Polyone Property, including 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 Polyone Property, under plaintiff DEP's oversight;


- d. Enter judgment against the Defendant, compelling the Defendant 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 pollutants and hazardous substances at the Polyone Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award the plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award the 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:   
\_\_\_\_\_  
John F. Dickinson, Jr.  
Deputy Attorney General

Dated: JUNE 20, 2007

GORDON & GORDON, PC  
Special Counsel to the Attorney General

By:   
\_\_\_\_\_  
Michael Gordon, Esq.

Dated: 6/21/07

DESIGNATION OF TRIAL COUNSEL

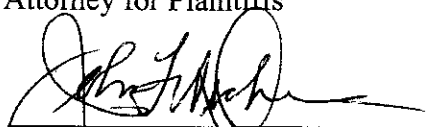
Pursuant to R. 4:25-4, the Court is advised that Michael Gordon, Esq., is hereby designated as trial counsel for Plaintiffs in this action.

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: \_\_\_\_\_

  
John F. Dickinson, Jr.  
Deputy Attorney General

Dated: JUNE 20, 2007

GORDON & GORDON, PC  
Special Counsel to the Attorney General

By:   
Michael Gordon, Esq.

Dated: 6/21/07