

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

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SOMERSET COUNTY

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SOMERSET COUNTY

By: Adam K. Phelps
Deputy Attorney General
(609) 984-6640

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-959-07

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.

ACTIVE TRUCKING SERVICE, INC.;
BICOASTAL CORPORATION;
CHAPELTON INTERNATIONAL
COMPANY;
COMMERCIAL DEVELOPMENT
PROPERTIES, LLC; 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 ("the 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 cleanup and removal costs they have incurred, and will incur, as a result of the discharge of pollutants and hazardous substances at the Prospect Industries site in Bridgewater Township, Somerset 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 Prospect Industries 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 pollutants and hazardous substances at the Prospect Industries 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 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 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 Bicoastal Corporation ("Bicoastal") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1111 N. Westshore Boulevard, 200A, Tampa, Florida.

7. From 1963 to 1989, Bicoastal was known as the Singer Company ("Singer"), a corporation organized and existing under the laws of the State of New Jersey.

8. Prior to 1963, Singer was known as Singer Manufacturing Company ("Singer Manufacturing"), a corporation organized and existing under the laws of the State of New Jersey.

9. Defendant Chapelton International Company ("Chapelton") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 850 Boylston Street, Suite 1, Chestnut Hill, Massachusetts.

10. From 1995 through 1997 Chapelton was known as NDEP Corporation ("NDEP"), a corporation organized and existing under the laws of the State of Delaware.

11. From 1969 through 1995, NDEP was known as Prospect Industries Corporation ("Prospect"), a corporation organized and existing under the laws of the State of Delaware.

12. Defendant Active Trucking Service, Inc. ("ATS") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 15 Polhemus Street, Bridgewater, New Jersey.

13. Defendant Commercial Development Properties, LLC. ("Commercial") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 15 Polhemus Street, Bridgewater, New Jersey.

14. 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 partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, the Defendants named herein, and/or their predecessors.

NATURAL RESOURCES

15. 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.

16. 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.

17. 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 Prospect Industries site.

AFFECTED NATURAL RESOURCE

Ground Water

18. 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.

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

20. 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.

21. 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.

22. 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.

23. There are thousands of contaminated sites in New Jersey confirmed as having groundwater contaminated with hazardous substances.

GENERAL ALLEGATIONS

24. The Prospect Industries site consists of approximately 37 acres of real property located at 9 Finderne Avenue, Bridgewater Township, Somerset County, New Jersey, this property being also known and designated as Block 303, Lots 6, 6.01, and 10 on the Tax Map of the Township of Bridgewater ("the Prospect Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. G000003034.

25. Prior to 1942, the Prospect Property was vacant land.

26. In 1942, Singer Manufacturing, now known as defendant Bicoastal, bought the Prospect Property.

27. In 1963, Singer Manufacturing changed its name to Singer Company.

28. In March 1977, Singer sold the Prospect Property to Prospect, now known as defendant Chapelton, which owned the Prospect Property until June 1996.

29. From 1995 to 1997 Prospect, now known as defendant Chapelton, was known as NDEP.

30. In June 1996, NDEP sold the portion of the Prospect Property otherwise known and designated as Block 303, Lot 6, on the Tax Map of Bridgewater Township ("Lot 6") to defendant ATS as part of NDEP's Chapter 11 bankruptcy proceedings.

31. Defendant ATS continued to own the Lot 6 portion of the Prospect Property until July 2004, when Lot 6 was sold at a

sheriff's sale to James Fraydun, LLC ("Fraydun"), an active New York limited liability company, and Mr. Bridgewater, LLC ("Mr. Bridgewater"), an active New Jersey limited liability company which, as of the filing of this Complaint, are the owners of record of Lot 6.

32. Also in June 1996, defendant Commercial purchased the portion of the Prospect Property designated as Block 303, Lot 6.01, on Bridgewater Township's Tax Map ("Lot 6.01") from NDEP, now known as defendant Chapelton, as part of NDEP's Chapter 11 bankruptcy proceedings.

33. In August 2001, defendant Commercial sold the Lot 6.01 portion of the Prospect Property to Storage Development New Jersey-Bridgewater, LLC ("Storage Development"), an active New Jersey limited liability company.

34. As of the filing of this Complaint, Storage Development was the owner of record of the Lot 6.01 portion of the Prospect Property.

35. During the time that defendant Bicoastal and defendant Chapelton owned the Prospect 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 chlorinated solvents, tetrachloroethene ("PCE"), trichloroethene ("TCE"), and benzene, toluene, ethylbenzene and xylene ("BTEX"),

heavy metals, gasoline, naphtha, and various oils, including hydraulic oils containing polychlorinated biphenyls ("PCBs").

36. Between 1942 and January 1977, Bicoastal, then known as Singer or Singer Manufacturing, manufactured electric motors, power tools and air conditioning parts at the Prospect Property for its sewing and appliance wares.

37. Defendant Bicoastal used, stored and otherwise handled hazardous substances at the Prospect Property, certain of which were discharged there, which substances included chlorinated solvents, benzene, xylene, gasoline, naphtha, and various oils, including hydraulic oils containing PCBs.

38. From March 1977 through January 1986, defendant Chapelton, then known as Prospect, manufactured steel containers and operated a painting facility at the Prospect Property, which involved the use, storage and handling of various hazardous substances, certain of which were discharged there, which substances included heavy metals, PCE, TCE, and BTEX.

39. At various time from July 24, 1977, through January 1986, defendant Chapleton, then known as Prospect, also used, stored and handled "pollutants," as defined in N.J.S.A. 58:10A-3n., at the Prospect Property, certain of which were "discharged" to the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants include heavy metals, PCE, TCE, and BTEX.

40. In 1998, defendant ATS received a permit from plaintiff DEP to operate a Class "B" recycling center on the Prospect property, involving the recycling of wood and wood materials, which permit expired on September 21, 2003.

41. Plaintiff DEP has been inspecting the Prospect Property since 1971, when plaintiff DEP determined that water run-off containing oils was flowing from a dump area at the Prospect Property into an adjacent ditch leading to the Raritan River.

42. DEP issued defendant Bicoastal, then Singer, an administrative order on February 25, 1971, requiring Singer to cease discharging pollutants into the Raritan River.

43. In a letter dated March 26, 1971, defendant Bicoastal, then Singer, stated that it was taking measures to abate further discharges into the Raritan River.

44. On or about August 1982, plaintiff DEP's personnel inspected the Prospect Property, during which they observed several hundred 55-gallon drums containing various waste materials that defendant Chapleton, then Prospect, was storing in the western portion of the premises.

45. Analytical results from soil sampling during the August 1982 inspection revealed the presence of various hazardous pollutants and substances in the soils, which substances included benzene, ethylbenzene, dichlorobenzene, naphthalene, toluene and xylenes.

46. In May and June 1983, DEP personnel again inspected the Prospect Property, and conducted ground water sampling, the analytical results of which revealed the presence of various hazardous substances, which substances included chloroform, 1,1 dichloroethane, 1,1 dichloroethylene, 1,2 dichloroethylene, ethylbenzene, xylene, trichloroethylene.

47. In August 1989, plaintiff DEP issued a Spill Act directive to defendants Bicoastal and Chapleton, then Singer and Prospect, directing defendants Bicoastal and Chapleton to perform a remedial investigation to determine the nature and extent of the contamination at the Site, and to remediate the contamination under plaintiff DEP's oversight.

48. On or about December 1990, plaintiff DEP and defendant Chapleton, then Prospect, entered into an Administrative Consent Order ("December 1990 ACO"), pursuant to which Prospect agreed to remediate the soils contamination at the Site, implement an immediate source control plan to prevent the migration of hazardous substances in the ground water, and conduct a remedial investigation to determine the nature and extent of the contamination at the Site.

49. In May 1995, plaintiff DEP and defendant Chapleton, then Prospect, amended the December 1990 ACO to add defendant ATS as a remediating party ("May 1995 ACO").

50. Under the May 1995 ACO, defendant ATS and/or one or more of the John Doe defendants assumed defendant Chapleton's, then Prospect, obligations under the December 1990 ACO to conduct the remedial investigation of the Site.

51. On September 28, 1995, plaintiff DEP issued defendant Chapleton, then Prospect, a "No Further Action Letter" for soils pursuant to N.J.A.C. 7:26C-1.3, memorializing plaintiff DEP's determination that Prospect had remediated the soils in accordance with DEP's soils cleanup standards.

52. In April 1996, defendant ATS and/or one or more of the John Doe defendants proposed establishing a Classification Exception Area ("CEA") for the Site, which would restrict usage of the designated ground water.

53. Defendant ATS and/or one or more of the John Doe defendants proposed doing so because dichloroethene ("DCA"), trichloroethane, TCE and benzene concentrations exceeded plaintiff DEP's cleanup criteria.

54. On August 1, 1996, plaintiff DEP approved the proposed CEA for the Site with a total area of 1,716,000 square feet, or approximately 39.4 acres, and an estimated duration of 10 years (i.e., until August 1, 2006).

55. Defendant ATS and/or one or more of the John Doe defendants ceased remediating the Site in or about December 1999.

56. On March 30 2000, plaintiff DEP issued a notice of violation to defendant ATS for violating the terms of the May 1995 ACO.

57. In October 2000, DEP issued defendant ATS an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") for failing to post a remediation funding source, failing to pay oversight costs in the amount of \$123,500, and failing to submit quarterly reports, which penalties and costs remain outstanding.

58. Pursuant to the May 1995 ACO, in the event defendant ATS fails to perform any of its obligations, the December 1990 ACO will become operative and in full force and effect.

59. Due to defendant ATS's failure to comply with the May 1995 ACO, the December 1990 ACO is enforceable against defendant Chapelton.

60. After conducting additional groundwater sampling in 2005 and 2006, plaintiff DEP approved another CEA for the Site on July 17, 2006 ("July 2006 CEA").

61. The July 2006 CEA, which is for DCA, trichloroethane, PCE, TCE and benzene, has a total area of 1,716,000 square feet, or approximately 39.4 acres, and an estimated duration of 6.3 years (i.e., until December, 2012).

62. Although defendant Chapleton and defendant ATS have initiated the remediation of the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

63. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 62 above as though fully set forth in its entirety herein.

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

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

66. 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.

67. 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).

68. 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).

69. 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 Prospect Property.

70. 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.

71. Defendants Bicoastal and Chapelton are the dischargers of hazardous substances at the Prospect 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 Prospect Property. N.J.S.A. 58:10-23.11g.c.(1).

72. Defendants Bicoastal and Chapelton, as the owners of the Prospect Property at the time hazardous substances were discharged there, also 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 Prospect Property. N.J.S.A. 58:10-23.11g.c.(1).

73. Defendants ATS, Commercial, and/or one or more of the John Doe defendants, as the knowing purchasers of some or all of the Prospect Property, a property at which hazardous substances were previously discharged, 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 Prospect Property. N.J.S.A. 58:10-23.11g.c.(3).

74. 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).

75. 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.

76. The discharge of hazardous substances at the Prospect Property is also a violation of the Spill Act, for which a penalty of not more than \$50,000 per day may be assessed pursuant to N.J.S.A. 58:10-23.11u.d. Further, each day the violation continues is a separate violation.

77. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(c) and N.J.S.A. 58:10-23.11u.d., plaintiff DEP may bring a summary action in the Superior Court against anyone who violates a provision of the Spill Act for a civil penalty.

78. Defendants ATS and Chapleton have violated the Spill Act for which violations plaintiff DEP is authorized to assess penalties.

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 Prospect Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, 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 will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Prospect Property.
- c. Order defendants Chapleton and ATS to reimburse the Plaintiffs, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Site for defendants' failure to comply with the terms of the December 1990 ACO and May 1995 ACO;
- d. Enter declaratory judgment against the defendants Chapleton and ATS, jointly and severally, without regard

to fault, in an amount equal to three times any cleanup and removal costs that the Plaintiffs will incur for the Site;

- e. 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 Prospect Industries 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 Prospect Property;
- f. Order the Defendants to pay plaintiff DEP all penalties to which plaintiff DEP is entitled;
- g. Award the Plaintiffs their costs and fees in this action; and
- h. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

79. Plaintiffs repeat each allegation of paragraph nos. 1 through 78 above as though fully set forth in its entirety herein.

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

81. 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.

82. 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.

83. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of pollutants at the Prospect Property.

84. 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 Prospect Property.

85. 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).

86. Defendant Chapelton is the discharger of pollutants at the Prospect 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 are liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Prospect Property. N.J.S.A. 58:10A-6a.

87. 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 Prospect 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. Temporarily and permanently enjoin defendant Chapleton by requiring the defendant Chapleton to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing defendant Chapleton, 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 Chapleton, 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 Chapleton, 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 Prospect Property;
- e. Enter declaratory judgment against defendant Chapleton, 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 Prospect Property;
- f. Enter an order assessing defendant Chapleton, 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 Prospect Property;
- g. Enter declaratory judgment against defendant Chapleton, 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 Prospect Property;

- h. Enter an order assessing defendant Chapleton, 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 defendant Chapleton 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 defendant Chapleton, without regard to fault, assessing defendant Chapleton 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 defendant Chapleton 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

88. Plaintiffs repeat each allegation of paragraph nos. 1 through 87 above as though fully set forth in its entirety herein.

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

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

91. The groundwater 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 this natural resource.

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

93. 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 cleanup and removal costs and 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 Prospect Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and 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 Prospect 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 Prospect 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 Prospect Property;

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

FOURTH COUNT

Trespass

94. Plaintiffs repeat each allegation of Paragraphs 1 through 93 above as though fully set forth in its entirety herein.

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

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

97. 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 cleanup and removal costs and 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 Prospect Property, with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and 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 Prospect 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 Prospect 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 Prospect Property;
- d. Award the Plaintiffs their costs and fees in this action;
and

e. Award the Plaintiffs such other relief as this Court deems appropriate.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Adam K. Phelps
Deputy Attorney General

Dated: 06/07/07

DESIGNATION OF TRIAL COUNSEL

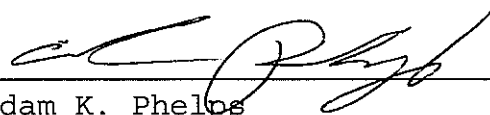
Pursuant to R. 4:25-4, the Court is advised that Adam K. Phelps, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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).

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Adam K. Phelps
Deputy Attorney General

Dated: 06/07/09



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division - Civil Part pleadings (not motions) under Rule 4:5-1.
Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USER'S USE ONLY	PAYMENT TYPE:	CK	CG	CA
CHG/CK NO.				
AMOUNT:				
OVERPAYMENT:				
BATCH NUMBER:				

ATTORNEY/PRO SE NAME Adam K. Phelps, Deputy Attorney General	TELEPHONE NUMBER (609) 984- 6640	COUNTY OF VENUE Monmouth
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FIRM NAME (if applicable) Office of the Attorney General, Department of Law & Public Safety, Division of Law	DOCKET NUMBER (When available) Not Assigned 2959-07
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OFFICE ADDRESS Division of Law Richard J. Hughes Justice Complex P.O. Box 093 Trenton, NJ 08625	DOCUMENT TYPE Complaint
JURY DEMAND <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

NAME OF PARTY (e.g. John Doe, Plaintiff) New Jersey Department of Environmental Protection and Administrator, New Jersey Spill Compensation Fund, Plaintiffs	CAPTION New Jersey Department of Environmental Protection and Administrator, New Jersey Spill Compensation Fund v. Active Trucking Service, Inc., Bicoastal Corporation, Chapelton International Company, Commercial Development Properties, LLC., and "John Does" 1-5 (names fictitious)
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CASE TYPE NUMBER (See reverse side for listing) 156	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.
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RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS
---	-----------------------------

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN
--	--

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input checked="" type="checkbox"/> OTHER (explain) Regulatory <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS
--	---

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

RECEIVED/FILED
 SUPERIOR COURT
 COUNTY OF MONMOUTH
 JAN 11 2004
 10:00 AM

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION: _____
--	--

WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE: _____
---	----------------------------------

ATTORNEY SIGNATURE:

SOMERSET COUNTY SUPERIOR COURT
40 NORTH BRIDGE STREET
1ST FLR PO BOX 3000
SOMERVILLE NJ 08876-1262

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (908) 231-7000
COURT HOURS

DATE: JUNE 12, 2007
RE: NJ ENVIRONMENTAL PROTECTION VS ACTIVE TRUCKING
DOCKET: SOM L -000959 07

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON VICTOR ASHRAFI

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001
AT: (908) 231-7055.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

~~ADMINISTRATOR OF NJ SPILL~~

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ATTORNEY GENERAL
ATTN - ADAM PHELPS
25 W. MARKET ST.
PO BOX 112
TRENTON, NJ 08625

JUTMORO