

ALLAN KANNER & ASSOCIATES, P.L.L.C.

701 Camp Street
New Orleans, Louisiana 70130
(504) 524-5777
FAX: (504) 524-5763

May 20, 2004

VIA FACSIMILE

Mr. Gary Krall
President and CEO
Reichhold, Inc.
2400 Ellis Road
Durham, NC 27703

RE: New Jersey Department of Environmental Protection, et al v. Reichhold, Inc.

Dear Mr. Krall:

This Office represents the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund. Enclosed is a courtesy copy of a complaint sent today for filing in the Superior Court of New Jersey, Union County, against Reichhold, Inc.

Please be advised that this facsimile copy of the complaint is being provided for informational purposes only and that this office does not consider acceptance of this facsimile copy to be acceptance of service.

Should you wish to discuss this matter, please do not hesitate to contact me at the number above.

Cordially,

ALLAN KANNER & ASSOCIATES, P.L.L.C.

By: 

Allan Kanner, Esq.
Special Counsel to the N.J. Attorney General

EBC/wrf

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

By: Allan Kanner
Special Counsel to the Attorney General
701 Camp Street
New Orleans, LA 70130
(504) 524-5777
(504) 524-5763 Fax

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

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	<u>Civil Action</u>
ADMINISTRATOR, NEW JERSEY	:	
SPILL COMPENSATION FUND,	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
REICHHOLD, INC.,	:	
	:	
Defendant.	:	

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

STATEMENT OF THE CASE

1. 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"), and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at two Reichhold sites located in Elizabeth, Union County, New Jersey and Newark, Essex County, New Jersey, and to compel the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharge of hazardous substances at or from the Reichhold Elizabeth and Reichhold Newark sites.

THE PARTIES

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

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

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("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.

5. Defendant Reichhold, Inc., is a corporation organized under the laws of the State of Delaware, with a principal place of business located in Newark, New Jersey.

6. Reichhold, Inc. was previously known as, and is the successor in interest to Reichhold Chemicals, Inc.

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

AFFECTED NATURAL RESOURCE

Groundwater

8. Groundwater 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.

9. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

10. Groundwater also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization,

prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

11. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

12. There are more than 6,000 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

GENERAL ALLEGATIONS

Reichhold Elizabeth Property

13. The Reichhold Elizabeth property consists of approximately 17 acres of real property located at 726 Rockefeller Street, Elizabeth, Union County, this property being also known and designated as Block 4L, Lots 63,67 and 838 on the Tax Map of the City of Elizabeth, Union County ("the Reichhold Elizabeth Property"), and all other areas where any hazardous substance is discharged there has become located (collectively, "the Reichhold Elizabeth Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 007303.

14. From 1936 until the present, Reichhold, Inc. has owned the Reichhold Elizabeth Property, during which time it discharged hazardous substances at the Property.

15. Industrial operations (primarily metals manufacturing) on the Reichhold Elizabeth Property began in the early 1900s. Reichhold, Inc. began resins and chemical operations in 1936. In 1991, all operations were shut down and all but three structures

were demolished. The Property is presently used for warehouse storage of raw materials and finished products.

16. From approximately 1936 until 1991, Reichhold, Inc. manufactured several types of resins and chemicals on the Reichhold Elizabeth Property (including beckamines, lustralite, alkyds, polyesters, PVA emulsions, plastisizers, maleic anhydride, phtallic anhydride, styresols, phenol-formaldehyde resins and peroxidol-epoxidized soybean oil), during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Reichhold Elizabeth Property within the meaning of N.J.S.A. 58:10-23.11b.

17. In 1987, pursuant to the Environmental Cleanup Responsibility Act, now the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., Reichhold, Inc. was required to remediate all discharges at the Reichhold Elizabeth Property.

18. Sampling results and inspections revealed the presence of various hazardous substances in the soils and groundwater at and underlying the Site, including various volatile organic compounds (primarily benzene, ethyl, toluene and xylene compounds), and other contaminants of concern such as total petroleum hydrocarbon, and lead.

19. Defendant, Reichhold Inc., is currently addressing the soil and groundwater contamination at the Elizabeth Site, under plaintiff DEP's oversight, pursuant to an Administrative Consent Order dated September 1987. Groundwater contamination continues.

Reichhold Newark Property

20. The Reichhold Newark property consists of approximately 1.5 acres of real property located at 46 Albert Avenue, Newark, Essex County, this property being also known and designated as Block 2448, Lot 29 on the Tax Map of the City of Newark ("the Reichhold Newark Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Reichhold Newark Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 015922.

21. Reichhold, Inc. has owned the Reichhold Newark Property since the early 1900s, during which time it discharged hazardous substances at the Property.

22. Industrial operations (primarily chemicals manufacturing) on the Newark Property began in the early 1900s.

23. Reichhold, Inc. manufactured various types of alkyd resins on the Reichhold Newark Property, during which time "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Reichhold Newark Property within the meaning of N.J.S.A. 58:10-23.11b.

24. Following the removal of six underground storage tanks in November 1992, two groundwater monitoring wells were installed on the Reichhold Newark Property.

25. Sampling results from the Reichhold Newark Property revealed the presence of various hazardous substances in the soils and groundwater at and underlying the Site, including free product and dissolved benzene, toluene, ethyl benzene and xylene.

26. Defendant Reichhold, Inc. has undertaken the cleanup of some soils at and underlying the Site pursuant to an Administrative Consent Order dated July 25, 1985 under Plaintiff DEP's oversight, but has not implemented any remedial action for the contaminated groundwater. As such, the groundwater contamination continues unremediated.

FIRST COUNT

Spill Act

27. Plaintiffs repeat each allegation of Paragraphs 1 through 26 above as though fully set forth in its entirety herein.

28. Plaintiffs have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Reichhold Elizabeth Property and the Reichhold Newark Property.

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

30. The Defendant, as the owner of the Reichhold Elizabeth and Reichhold Newark Properties at the time hazardous substances were discharged there, is liable without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Reichhold Elizabeth

Property and the Reichhold Newark Property. N.J.S.A. 58:10-23.11g.c.(1).

31. The Defendant, the discharger of hazardous substances at and from the Reichhold Elizabeth and Reichhold Newark Properties, is a person, liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property. N.J.S.A. 58:10-23.11g.c.(1).

32. 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); 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).

33. 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 the Plaintiffs, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property, by performing, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark 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.

SECOND COUNT

Public Nuisance

34. Plaintiffs repeat each allegation of Paragraphs 1 through 33 above as though fully set forth in its entirety herein.

35. Groundwater is a natural resource of the State held in trust by the State. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

36. The contamination of groundwater at the Sites 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.

37. As long as groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

38. Until the groundwater is restored to its 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 clean groundwater.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark 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 use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Reichhold Elizabeth and Newark Properties, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark 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.

THIRD COUNT

Trespass

39. Plaintiffs repeat each allegation of Paragraphs 1 through 38 above as though fully set forth in its entirety herein.

40. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

41. The Defendant is liable for trespass, and continued trespass, since hazardous substances were first discharged at and from the Reichhold Elizabeth and Reichhold Newark Properties.

42. As long as groundwater remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark 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 use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark Property, by performing under plaintiff DEP's oversight, or funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Reichhold Elizabeth Property and the Reichhold Newark 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.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____

Allan Kanner
Special Counsel to the
Attorney General
701 Camp Street
New Orleans, LA 70130
(504) 524-5777
(504) 524-5763 Fax

Dated: May 20, 2004

DESIGNATION OF TRIAL COUNSEL

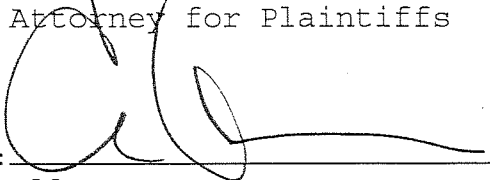
Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

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 may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. MER-L-343-04. Otherwise, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding 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 or new issue, including

claims to recover other cleanup and removal costs, 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).

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By:  _____

Allan Kanner
Special Counsel to the
Attorney General
701 Camp Street
New Orleans, LA 70130
(504) 524-5777
(504) 524-5763 Fax

Dated: May 20, 2004