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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX 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. :

BAYER CROPSCIENCE INC. and :
"ABC CORPORATIONS" 1-10 (Names :
Fictitious), :
:

Defendants. :

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 defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of pollutants and the discharge of hazardous substances at the Factory Lane site in Middlesex Borough, Middlesex 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 Factory Lane 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, 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 authority, 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 Bayer CropScience Inc. ("BCS") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 2 TW Alexander Dr., Research Triangle Park, North Carolina 27709.

7. Defendant BCS is the successor-in-interest to Chipman Chemical Company, Rhodia, Inc., and/or Rhône-Poulenc Inc. ("RPI").

8. Defendants "ABC Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, or are otherwise related to, defendant BCS, or are in any way responsible for the discharge of pollutants and hazardous substances to the Raritan River and Green Brook.

NATURAL RESOURCES

9. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

10. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

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

AFFECTED NATURAL RESOURCES

Ground Water

12. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

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

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

15. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

16. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

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

Surface Water

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

19. 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.

20. 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

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

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

23. 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.

Wetlands

24. Wetlands are a critical example of New Jersey's ecological resources, which include land and aquatic resources comprised of unique and complex ecosystems.

25. New Jersey has approximately 730,000 acres of freshwater wetlands, and 250,000 acres of coastal wetlands.

26. Wetlands can sustain a wide diversity of plants and animals that are essential in a healthy food chain.

27. Wetlands perform many additional functions, including improvement of water quality, sediment trapping, groundwater recharge, shoreline protection, and protecting lands from flooding and erosion.

Biota

28. 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.

29. New Jersey is home to more than 2,000 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 of extinction, with a total of 331 vascular plant species listed as endangered and an additional 32 that have already been extirpated.

30. 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.

31. 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 bioaccumulation of toxic compounds.

32. 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.

33. 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.

34. 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

35. The Factory Lane site consists of approximately 3.5 acres of real property located at 5 Factory Lane, Middlesex Borough, Middlesex County, New Jersey, this property being also known and designated as Block 350, Lots 1 and 2, on the Tax Map of Middlesex Borough ("the 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. G000001656.

36. Portions of the Property are near the Raritan River and Green Brook. The Raritan River is the primary surface water body receiving discharges attributable to the Site, though the Plaintiffs contend that Green Brook likely has been impacted by the discharge of hazardous substances and pollutants as the Property as well.

37. From 1921 through 1972, defendant BCS's predecessors, Chipman Chemical Company, Rhodia, Inc., and/or RPI, owned the 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 arsenic, cadmium, copper, lead, mercury, aldrin, dieldrin, endrin, heptachlor, chlordane, lindane (gamma BHC), 4,4-DDT, toxaphene, 2,4-D, 2,4,5-T, and 2,4,5-TP (silvex).

38. From 1921 through 1972, defendant BCS's predecessors, Chipman Chemical Company, Rhodia, Inc. and/or RPI, also manufactured arsenic-based products, pesticides, fungicides, and herbicides at the Property, which involved the generation, storage, handling, and disposal of hazardous substances, certain of which were discharged there, which substances included arsenic, cadmium, copper, lead, mercury, aldrin, dieldrin, endrin, heptachlor, chlordane, lindane (gamma BHC), 4,4-DDT, toxaphene, 2,4-D, 2,4,5-T, and 2,4,5-TP (silvex).

39. From 1921 through 1972, defendant BCS's predecessors, Chipman Chemical Company, Rhodia, Inc. and/or RPI, also generated, stored, and handled "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" to the waters of the State within the

meaning of N.J.S.A. 58:10A-3e., which pollutants included arsenic, cadmium, copper, lead, mercury, aldrin, dieldrin, endrin, heptachlor, chlordane, lindane (gamma BHC), 4,4-DDT, toxaphene, 2,4-D, 2,4,5-T, and 2,4,5-TP (silvex).

40. At various times since 1972, hazardous substances and pollutants have been discharged at the Property to the waters of the State, including Green Brook and the Raritan River.

41. Plaintiff DEP initiated a preliminary investigation in 1979 that identified arsenic and pesticide contamination at the Property.

42. The results of monitoring well samples plaintiff DEP collected in September 1981, revealed arsenic and other hazardous substances and pollutants in the ground water beneath the Property at concentrations exceeding plaintiff DEP's drinking water standards.

43. On June 22, 1982, plaintiff DEP directed RPI to submit a remediation plan within 30 days, and agree to fund the implementation of the plan.

44. On July 19, 1982, RPI submitted a proposal to DEP to conduct a field investigation of the Property. The proposal included the installation and sampling of ground water monitoring wells, and the collection of soil samples at the Site.

45. In December 1982 and April 1983, plaintiff DEP again sampled the ground water from monitoring wells at the Site, the results of which again revealed the presence of arsenic and other hazardous substances and pollutants at concentrations exceeding plaintiff DEP's .

46. On September 22, 1983 RPI submitted a report to plaintiff DEP, in which RPI proposed further investigation of the contamination at the Site, and discussed conceptual remedial alternatives to address the contamination.

47. On or about November 21, 1984, plaintiff DEP informed RPI that the September 1983 report was deficient because of insufficient data to support the remedial alternative RPI was proposing.

48. On February 4, 1985, RPI submitted a revised remediation proposal to plaintiff DEP, in which RPI attempted to address the concerns that plaintiff DEP noted with respect to the September 1983 report.

49. On July 22, 1985, plaintiff DEP informed RPI that the February 1985 proposal was also inadequate, and in August 1985, provided RPI with documentation outlining the necessary tasks that RPI had to undertake concerning the remediation proposal, as revised.

50. In 1986, pursuant to the Water Pollution Control Act, RPI and plaintiff DEP entered into an Administrative Consent Order ("1986 ACO"), in which RPI agreed to conduct a Remedial Investigation/Feasibility Study, implement the remedial action alternative selected by plaintiff DEP, and remediate the contamination at the Site.

51. Since 1986, RPI has performed remedial investigations and remedial actions, including the removal of contaminated soils, primarily from drainage ditches.

52. On or about December 19, 1997, defendant BCS submitted a Remedial Action Workplan ("1997 RAWP") for the Site to plaintiff DEP, which plaintiff DEP conditionally approved on August 3, 1998.

53. The 1997 RAWP, as approved, presented the conceptual remedial approach for all impacted media at the Site, subsequent to which defendant BCS attempted to develop design details for each component of the site-wide remedial program in various RAWPs for specific properties and areas of contamination.

54. The remedial action for the Site primarily provides for capping of soils, installation of low-permeability liners along the drainage ditches, with underlying subdrains to collect perched groundwater beneath the ditches, and a groundwater recovery system for the bedrock ground water.

55. On March 1, 2007, defendant BCS submitted a Revised Baseline Ecological Evaluation ("Revised BEE") for the Site to plaintiff DEP pursuant to N.J.A.C. 7:26E-3.11(a), in which defendant BCS concluded that contaminants of ecological concern exist, environmentally sensitive natural resources (i.e., surface water and sediments of the Raritan River and Green Brook, wetlands, and biota) exist, and potential contaminant pathways to environmentally sensitive natural resources exist.

56. The 2007 BEE findings necessitate an Ecological Risk Assessment ("ERA") pursuant to N.J.A.C. 7:26E-4.7(a) to characterize the extent of contamination along contaminant migration pathways and within environmentally sensitive natural resources at the Site, which include sediments, surface water, sediments and biota.

57. As of the filing of this Complaint, defendant BCS has not performed the ERA.

58. Although BCS has initiated the remediation of the Site, the ground water, soils, surface water, sediments, and biota remain contaminated almost 30 years after such contamination was first discovered.

59. The Property continues to be an ongoing source of contamination to the ground water, surface water, sediments, wetlands and biota, including the surface water, sediments and biota of the Raritan River and Green Brook.

FIRST COUNT

Spill Act

60. The Plaintiffs repeat each allegation of paragraph nos. 1 through 59 above as though fully set forth in its entirety herein.

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

62. 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).

63. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge 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).

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

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

66. Plaintiffs DEP and Administrator 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 Property.

67. The costs and damages plaintiffs DEP and Administrator 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.

68. Defendant BCS and one or more of the ABC Corporation defendants are, or are the successors-in-interest to, the dischargers of hazardous substances at the 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 Property. N.J.S.A. 58:10-23.11g.c.(1).

69. Defendant BCS and one or more of the ABC Corporation defendants are, or are the successors-in-interest to, the owners of the Property at the time hazardous substances were discharged there, and, therefore, 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 Property. N.J.S.A. 58:10-23.11g.c.(1).

70. 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).

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the 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 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 Property;
- c. Enter judgment against defendant BCS, compelling defendant BCS to perform any further cleanup of hazardous substances discharged at the Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund

plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants 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 considers appropriate.

SECOND COUNT

Water Pollution Control Act

72. The Plaintiffs repeat each allegation of paragraph nos. 1 through 71 above as though fully set forth in its entirety herein.

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

74. 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.

75. 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.

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

77. 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 Property.

78. 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).

79. Defendant BCS and one or more of the ABC Corporation defendants are, or are the successors-in-interest to, persons that discharged pollutants at the 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, therefore, 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 Property. N.J.S.A. 58:10A-6a.

80. 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 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. Permanently enjoin defendant BCS and one or more of the ABC Corporation defendants by requiring defendant BCS and one or more of the ABC Corporation defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing defendant BCS and one or more of the ABC Corporation defendants, 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 BCS and one or more of the ABC Corporation defendants, 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 BCS and one or more of the ABC Corporation defendants, 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 Property;
- e. Enter declaratory judgment against defendant BCS and one or more of the ABC Corporation defendants, 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 Property;
- f. Enter an order assessing defendant BCS and one or more of the ABC Corporation defendants, 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 Property;
- g. Enter declaratory judgment against defendant BCS and one or more of the ABC Corporation defendants, 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 Property;
- h. Enter an order assessing defendant BCS and one or more of the ABC Corporation defendants, without regard to fault, for the actual amount of any economic benefits

they have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits defendant BCS and one or more of the ABC Corporation defendants have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the Water Pollution Control Act;

- i. Enter declaratory judgment against defendant BCS and one or more of the ABC Corporation defendants, without regard to fault, assessing defendant BCS and one or more of the ABC Corporation defendants for the actual amount of any economic benefits that will accrue to them, 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 BCS and one or more of the ABC Corporation defendants have enjoyed, or any other benefit that will accrue to them 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

81. The Plaintiffs repeat each allegation of paragraph nos. 1 through 80 above as though fully set forth in its entirety herein.

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

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

84. The ground water, surface water, sediments, wetlands 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.

85. As long as the ground water, surface water, sediments, wetlands and biota remain contaminated due to the Defendants' conduct, and that of their predecessors-in-interest, the public nuisance continues.

86. Until the ground water, surface water, sediments, wetlands and biota are restored to their 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, surface water, sediments, wetlands and biota.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants 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, that 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 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 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 Property;
- c. Enter judgment against defendant BCS, compelling defendant BCS to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, 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 Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants 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 the plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

87. The Plaintiffs repeat each allegation of paragraph nos. 1 through 86 above as though fully set forth in its entirety herein.

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

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

90. As long as the ground water, surface water, sediments, wetlands and biota remain contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

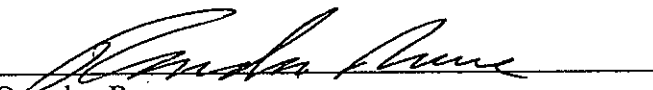
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- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that plaintiffs DEP and Administrator will incur for any natural

resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Property;

- c. Enter judgment against defendant BCS, compelling defendant BCS to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the Property, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, 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 Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants 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.

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL OF
NEW JERSEY
Attorney for Plaintiffs

By: 
Brendan Ruane
Deputy Attorney General

Dated: 6/28/02


DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Barry A. Knopf, Scott E. Kauff, and Leonard Z. Kaufmann, Special Counsel to the Attorney General, are 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).

ANNE MILGRAM
FIRST ASSISTANT ATTORNEY GENERAL OF
NEW JERSEY
Attorney for Plaintiffs

By: 
Brendan Ruane
Deputy Attorney General

Dated: 0/28/07