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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MONMOUTH COUNTY  
DOCKET NO. mon-1-600-06

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NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION and : Civil Action  
THE ADMINISTRATOR OF THE NEW :  
JERSEY SPILL COMPENSATION : COMPLAINT  
FUND, :  
 :  
Plaintiffs, :  
 :  
v. :  
 :  
ARKEMA INC.; :  
HONEYWELL INTERNATIONAL, INC.; :  
and "ABC CORPORATIONS" 1-10 :  
(Names Fictitious), :  
 :  
Defendants. :  
\_\_\_\_\_

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 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, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the S.S. White site in Holmdel Township, Monmouth 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 hazardous substances at the S.S. White site, and to compel 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 S.S. White 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 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.

5. Defendant Arkema, Inc. ("Arkema") is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 2000 Market Street, Philadelphia, Pennsylvania 19103-3222.

6. In 1989, ELF Aquitaine S.A. acquired Penwalt Corporation ("Penwalt"), and was renamed in 1990, as Elf Atochem North America, Inc. ("Elf Atochem").

7. In 2000, Elf Atochem became ATOFINA Chemicals, Inc. ("ATOFINA"), which in 2004 changed its name to Arkema Inc., the defendant herein.

8. Defendant Arkema is the successor-in-interest to Elf Atochem, Penwalt and ATOFINA.

9. Defendant Honeywell is a corporation organized and existing under the laws of the State of New Jersey, with a

principal place of business located at 101 Columbia Road, Morristown, New Jersey 07962-1219.

10. In 1983, Allied Company ("Allied") acquired Bendix Aviation Corporation ("Bendix"), with the surviving entity being Allied Company.

11. In 1986, Allied merged with Signal Companies, with the surviving entity being Allied Signal Corporation ("Allied Signal").

12. In 1999, Honeywell merged with Allied Signal, with the surviving entity being Honeywell International, Inc., the defendant herein.

13. Defendant Honeywell is the successor-in-interest to Allied, Bendix and Allied Signal.

14. 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 predecessors or, successors to, or are otherwise related to, defendants Honeywell and Arkema.

#### AFFECTED NATURAL RESOURCES

##### Ground Water

15. 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.

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

17. 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.

18. 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.

19. 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.

20. There are more than 6,000 contaminated sites in New Jersey confirmed as having groundwater contaminated with hazardous substances.

#### GENERAL ALLEGATIONS

21. The S.S. White site consists of approximately 117 acres of real property located at 100 South Street, Holmdel Township, Monmouth County, New Jersey, this property being also known and designated as Block 3, Lot 2, on the Tax Map of Holmdel Township ("the S.S. White 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. 003261.

22. From 1959 through 1970, Bendix owned the S.S. White Property.

23. In 1970, Pennwalt acquired the S.S. White Property, which it continued to own until title was transferred to Elf Atochem in 1990.

24. As of the filing of this Complaint, Elf Atochem is the owner of record of the S.S. White Property.

25. During the time that Bendix, Pennwalt and Elf Atochem owned the S.S. White 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 germanium, selenium, silicon, arsenic, boron, gallium, metal oxides, sulfides, and various solvents.

26. From 1959 through 1970, Bendix operated a superconductor manufacturing plant at the S.S. White Property, which activities involved the use, storage and handling of "hazardous substances" as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included germanium, selenium, silicon, arsenic, boron, gallium, metal oxides, sulfides, and various solvents.

27. From 1970 through 1985, Pennwalt's wholly owned subsidiary, S.S. White Company ("S.S. White"), operated a dental

equipment manufacturing facility at the S.S. White Property, the operation of which involved the storage, use and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included halogenated solvents, degreasing sludges, ignitables, acidic and alkaline solutions, used metal cutting oil, ethyl acetate, xylene, tetrachloroethylene, nitrocellulose, chromium, thinners, strippers, varnish and paint sludges.

28. In 1985, Penwalt closed the S.S. White manufacturing facility, thereby triggering its obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

29. Beginning in 1985, Pennwalt, defendant Arkema's predecessor, undertook various remediation activities at the Site, which activities included the removal of underground storage tanks, the excavation and removal of contaminated soils, and groundwater remediation, which activities Pennwalt undertook pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. §§6901 to -6992.

30. In a December 1989, plaintiff DEP confirmed that Penwalt had completed all RCRA closure activities at the Site, and no longer operated a hazardous waste facility there.

31. In October 1990, plaintiff DEP concluded that Elf Atochem, defendant Arkema's predecessor, had satisfied its ECRA obligations for the Site.

32. In August 1994, Elf Atochem entered into a Memorandum of Agreement with plaintiff DEP, pursuant to which Elf Atochem agreed to monitor the ground water at the Site, submit a remedial action workplan and report to plaintiff DEP, perform the above activities under DEP's oversight, and reimburse plaintiff DEP for the costs associated with overseeing these activities.

33. From 1994 through 2000, Elf Atochem performed a remedial investigation to determine the nature and extent of the groundwater contamination at the Site.

34. Sampling results from the remedial investigation revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, which substances included tetrachloroethane ("PCE"), trichloroethene ("TCE") and other volatile organic compounds ("VOCs").

35. In August 2000, ATOFINA, defendant Arkema's predecessor, submitted a Remedial Investigation Report to DEP, in which ATOFINA summarized the findings from the remedial investigation.

36. In November 2002, DEP approved two separate Classification Exception Areas (CEA's), which exclude the designated ground water for use as potable water sources.



37. The CEA for the Firing Range area of the S.S. White Property is for the Block 3, Lot 8, portion of the S.S. White Property, and extends to a depth of 25 feet, with an estimated duration of 41.8 years as of the filing of this Complaint.

38. The CEA for the underground storage tank area ("UST-2 area") is for the Block 3, Lot 2, portion of the S.S. White Property, and extends to a depth of 65 feet, with an estimated duration of 34.3 years as of the filing of this Complaint.

39. Although defendant Arkema and its predecessors have performed various remediation activities at the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

40. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 39 above as though fully set forth in its entirety herein.

41. Defendants Arkema Inc. and Honeywell International are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

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

43. 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.

44. 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.

45. The Defendants are, or are otherwise related to, the dischargers of hazardous substances at the S.S. White Property, and, thus, 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 S.S. White Property. N.J.S.A. 58:10-23.11g.c.(1).

46. The Defendants are, or are otherwise related to, the owners of the S.S. White Property at the time hazardous substances were discharged there, and, thus, also are 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 S.S. White Property.  
N.J.S.A. 58:10-23.11g.c.(1).

47. 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).

48. 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 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 S.S. White 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 S.S. White Property;
- c. Enter judgment against defendant Arkema, compelling defendant Arkema to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the S.S. White Property;
- d. 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 S.S. White 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 S.S. White Property;

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

SECOND COUNT

Public Nuisance

49. Plaintiffs repeat each allegation of Paragraphs 1 through 48 above as though fully set forth in its entirety herein.

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

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

52. 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 these natural resources.

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

54. 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 at the S.S. White 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 at the S.S. White Property;
- c. Enter judgment against defendant Arkema, compelling defendant Arkema to abate, under plaintiff DEP's oversight, the nuisance by performing any further cleanup of hazardous substances discharged at the S.S. White Property;
- d. 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 at the S.S. White 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 S.S. White Property;

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

### THIRD COUNT

#### Trespass

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

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

57. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the S.S. White Property.

58. 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 at the S.S. White 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 at the S.S. White Property;
- c. Enter judgment against defendant Arkema, compelling defendant Arkema to cease, under plaintiff DEP's oversight, the trespass by performing any further cleanup of hazardous substances discharged at the S.S. White Property;
- d. 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 at the S.S. White 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 S.S. White Property;

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

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_

  
Adam Phelps  
Deputy Attorney General

Dated:

DESIGNATION OF TRIAL COUNSEL


Pursuant to R. 4:25-4, the Court is advised that Adam 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).

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Adam Phelps  
Deputy Attorney General

Dated:

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