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

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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.

CARBIDE/GRAPHITE GROUP, INC.;  
CHEVRON PHILLIPS CHEMICAL  
COMPANY, LP; EXXONMOBIL OIL  
CORPORATION; PFIZER, INC.; G-I  
HOLDINGS, INC.; HERCULES,  
INCORPORATED; MID-STATE  
TRADING COMPANY; MOBIL  
CHEMICAL COMPANY, INC.; OSRAM  
SYLVANIA, INC.; QUIGLEY  
COMPANY, INC.; RCA  
CORPORATION; RHODIA, INC.;  
R.K.D. OIL, INC.; RUTGERS  
ORGANICS CORPORATION; SIMON  
WRECKING COMPANY, INC; AND  
UNION CARBIDE CORPORATION,

Defendants.

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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 and/or unsatisfactory storage or containment of hazardous substances at the Sayreville Landfill site in Sayreville Borough, Middlesex County. Plaintiff DEP further brings this action pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 to -116 ("Sanitary Landfill Act"), for reimbursement of the damages it has incurred, and will incur, as a result of the improper operation of the sanitary landfill facility located at the Sayreville Landfill site. 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 and the operation of the sanitary landfill facility at the Sayreville Landfill 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 of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances and the operation of the sanitary landfill facility at the Sayreville Landfill site 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 Carbide/Graphite Group, Inc., ("Carbide") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 1635 Market Street, Philadelphia, Pennsylvania. Defendant Carbide is the successor company to Airco-Speer Co., who generated hazardous substances, certain of which were discharged at the Site.

7. Defendant Chevron Phillips Chemical Company LP, ("Chevron") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 10001 Six Pines Drive, The Woodlands, Texas. Defendant Chevron is the successor company to Chevron Chemical Company, who generated hazardous substances, certain of which were discharged at the Site.

8. Defendant ExxonMobil Oil Corporation ("ExxonMobil") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 800 Bell Street, Houston, Texas. Defendant ExxonMobil is the successor corporation to Mobil Oil Corporation, who generated hazardous substances, certain of which were discharged at the Site.

9. Defendant Osram Sylvania, Inc. ("Osram") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 100 Endicott Street, Danvers, Massachusetts. Defendant Osram is the successor corporation to GTE Products Corporation, who generated hazardous substances, certain of which were discharged at the Site.

10. Defendant Pfizer, Inc. ("Pfizer") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 150 E 42nd Street, New York, New York.

11. Defendant G-I Holdings, Inc. ("G-I Holdings") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 818 N Washington Street, Wilmington, Delaware. Defendant G-I Holdings is the successor company to GAF Corporation, who generated hazardous substances, certain of which were discharged at the Site.

12. Defendant Hercules, Incorporated ("Hercules") is a corporation organized and existing under the laws of the State of

Delaware, with a principal place of business located at 1313 N Market Street, Wilmington, Delaware.

13. Defendant Mid-State Trading Company ("Mid-State") is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 2525 Trenton Avenue, Williamsport, Pennsylvania.

14. Defendant Mobil Chemical Company, Inc. ("Mobil Chemical") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas.

15. Defendant Quigley Company, Inc. ("Quigley") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 150 East 42nd Street, New York, New York.

16. Defendant RCA Corporation ("RCA") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 3135 Easton Turnpike, Fairfield, Connecticut.

17. Defendant Rhodia, Inc. ("Rhodia") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 8 Cedar Brook Drive, Cranbury, New Jersey. Defendant Rhodia is a successor corporation of Rhone-Poulenc, Inc., who generated hazardous substances, certain of which were discharged at the Site.

18. Defendant R.K.D. Oil, Inc. ("R.K.D.") is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 12 N 7th Street, Allentown, Pennsylvania.

19. Defendant Rutgers Organic Corporation ("Rutgers") is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 201 Struble Road, State College, Pennsylvania. Rutgers is the successor corporation to Ruetgers-Nease Chemical Company, who generated hazardous substances, certain of which were discharged at the Site.

20. Defendant Simon Wrecking Company, Inc. ("Simon Wrecking") is a corporation organized and existing under the laws of the State of Pennsylvania, with a principal place of business located at 2525 Trenton Avenue, Williamsport, Pennsylvania.

21. Defendant Union Carbide Corporation ("Union Carbide") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 2030 Dow Center, Mildand, Michigan.

#### NATURAL RESOURCES

22. 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.

23. 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.

24. 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 Sayreville Landfill site.

#### AFFECTED NATURAL RESOURCES

##### Ground Water

25. 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.

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

27. 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.

28. 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.



29. 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.

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

#### Wetlands

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

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

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

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

#### GENERAL ALLEGATIONS

35. The Sayreville Landfill site consists of approximately 35 acres of real property located on Jernee Mill Road, Sayreville, Middlesex County, New Jersey, this property being also known and designated as Blocks 56, 57.02, 57.04 and 57.05, Lots 1.01, 2.02,

and 1, respectively, on the Tax Map of Sayreville ("the Sayreville Landfill 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. 134979.

36. Defendant Quigley purchased portions of the Site, currently known as Block 57.02, Lot 1, on or about 1923, before conveying said portions to defendant Pfizer in 1975.

37. Defendant Hercules also owned portions of the Site, Blocks 57.04 and 57.05, Lot 1, since approximately 1974, before conveying said portions to the Borough of Sayreville ("Borough") on November 8, 1995.

38. Defendant Pfizer also owned portions of the Site, 57.02, Lot 1, since approximately 1975, before conveying said portions to Borough in 1997.

39. Borough has owned and been acquiring the various portions of the Site listed above since approximately 1995 and currently is the sole owner the entire Site.

40. Prior to obtaining title to the Site, Borough leased the Site from defendant Quigley in 1971 until approximately 1977, for the operation of a landfill.

41. From approximately 1974 through 1995, defendant Hercules owned portions of the Site, 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. and "not satisfactorily stored or contained" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2)., which substances included benzene, paraethyltolueune, pentachlorophenol, chloroform, para-methylstyrene, methylbromide, carbon tetrachloride, pentane methanol and dichlorophenol, volatile organic compounds, pesticides and acids.

42. From 1923 through 1975, defendant Quigley owned portions of the Site, 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. and "not satisfactorily stored or contained" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2)., which substances included benzene, paraethyltolueune, pentachlorophenol, chloroform, para-methylstyrene, methylbromide, carbon tetrachloride, pentane methanol and dichlorophenol, volatile organic compounds, pesticides and acids.

43. From 1975 through 1997, defendant Pfizer owned a portion of the Site, 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. and "not satisfactorily stored or contained" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2)., which substances included benzene, paraethyltolueune, pentachlorophenol, chloroform, para-

methlystyrene, methylbromide, carbon tetrachloride, pentane methanol and dichlorophenol, volatile organic compounds, pesticides and acids.

44. From 1971 through approximately 1977, Borough operated a sanitary landfill at the Site.

45. From 1974 through 1977, defendant Carbide's predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

46. From 1974 through 1977, defendant Chevron's predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

47. From 1974 through 1977, defendant ExxonMobil's predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

48. From 1974 through 1977, defendant G-I Holdings' predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which

were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

49. From 1974 through 1977, defendant Mobil Chemical generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

50. From 1974 through 1977, defendant Osram's predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

51. From 1974 through 1977, defendant RCA generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

52. From 1974 through 1977, defendant Rhodia or its predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

53. From 1974 through 1977, defendant Rutgers' predecessor generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were

"discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

54. From 1974 through 1977, defendant Union Carbide generated materials that were, or contained "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, certain of which were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b.

55. Defendants Carbide, Chevron, ExxonMobil, GAF, G-I Holdings, Mobil Chemical, Osram, RCA, Rhodia, Rutgers, Union Carbide, including any of the above defendants' predecessors, all generated hazardous substances that were discharged at the Site and will herein after be referred to as the ("Generator Defendants").

56. At various times during the period of 1974 through 1977, defendant Mid-State transported materials to the Site that were, or contained, hazardous substances, certain of which were discharged there within the meaning of N.J.S.A. 58:10-23.11b.

57. At various times during the period of 1974 through 1977, defendant R.K.D. transported materials to the Site that were, or contained, hazardous substances, certain of which were discharged there within the meaning of N.J.S.A. 58:10-23.11b.

58. At various times during the period of 1974 through 1977, defendant Simon Wrecking transported materials to the Site that were, or contained, hazardous substances, certain of which were discharged there within the meaning of N.J.S.A. 58:10-23.11b.

59. Defendants Mid-State, R.K.D. and Simon Wrecking all transported hazardous substances to the Site, that were discharged there and will herein after be referred to as the ("Transporter Defendants").

60. From 1974 through 1977, the Generator Defendants also generated hazardous substances, the generation of which involved the generation of "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 benzene, paraethyltolueune, pentachlorophenol, chloroform, para-methlystyrene, methylbromide, carbon tetrachloride, pentane methanol and dichlorophenol, volatile organic compounds, pesticides and acids.

61. From 1971, through 1977, Borough operated a sanitary landfill at the Sayreville Property, during which time "solid wastes," within the meaning of N.J.S.A. 13:1E-3a., were "disposed of" at the Site, within the meaning of N.J.S.A. 13:1E-3c.

62. Certain of the solid wastes disposed of at the Sayreville Landfill Property were deposited on, or in, the land as fill for the purpose of permanent disposal or storage for a period exceeding six months, thereby creating a "sanitary landfill facility" at the Site within the meaning of N.J.S.A. 13:1E-3q.

63. On September 8, 1983, the Sayreville Landfill Property was added to the U.S. Environmental Protection Agency's National Priorities List as a hazardous waste site.

64. From August 1986 through mid-1990, Plaintiff DEP conducted a Remedial Investigation/Feasibility Study for the Site.

65. On June 19, 1986, plaintiff DEP issued a Spill Act directive ("Directive I") to defendants Chevron, Hercules, Mid-State, Mobil Chemical, Pfizer, Quigley, Rhodia, R.K.D., Rutgers, Simon Wrecking and to the Borough of Sayreville pursuant to N.J.S.A. 58:10-23.11f.a., directing the above defendants and the Borough to fund the remedial investigation/feasibility study of the Site.

66. Several of the parties who were issued Directive I subsequently informed plaintiff DEP that they would comply with Directive I by funding the remedial investigation/feasibility study of the Site.

67. On August 7, 1989, plaintiff DEP issued another Spill Act directive ("Directive II") to defendants Mid-State, Rhodia, R.K.D., Simon Wrecking and Union Carbide pursuant to N.J.S.A. 58:10-23.11f.a., directing the above defendants to fund supplementary remedial investigation/feasibility study work of the Site.

68. On October 28, 1986, defendants Chevron, Hercules, Mobil Chemical, Quigley, Pfizer, Rutgers, and the Borough, along with Plaintiff DEP, entered into an Administrative Consent Order ("ACO")



wherein the non-Plaintiff signatories of the ACO funded the remedial investigation/feasibility study at the Site.

69. On September 18, 1989, plaintiff DEP issued another Spill Act directive ("Directive III") to defendants Chevron, Hercules, Mobil Chemical, Quigley, Pfizer and Rutgers, and the Borough pursuant to N.J.S.A. 58:10-23.11f.a., directing the above defendants to fund supplementary remedial investigation/feasibility study work at the Site.

70. On September 28, 1990, the United States Environmental Protection Agency signed a Record of Decision ("ROD") of the selected remedial measures for the Site.

71. From October 1, 1990 through March 15, 1991, Plaintiff DEP sought to negotiate the performance of remedial measures for the Site selected in the ROD with various defendants, which efforts were unsuccessful.

72. On April 1, 1991, Plaintiff DEP determined to cease negotiating the performance of the remedial measures for the Site selected in the ROD and to perform the task itself.

73. On April 16, 1991, plaintiff DEP issued another Spill Act directive ("Directive IV") to defendants Carbon, GAF, Osram, RCA, Hercules, Mid-State, Mobil Chemical, Pfizer, Rhodia, Rutgers and Union Carbide, including any of the above defendants predecessors, and also to the Borough, pursuant to N.J.S.A. 58:10-23.11f.a.,

directing the above defendants and the Borough to fund the additional costs of the remedial measures estimated in the ROD.

74. From 1986 through mid-1990, plaintiff DEP or its contractors performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which plaintiff DEP and its contractors investigated the nature and extent of the contamination at the Site.

75. In 1991, a second ACO was executed between defendants Hercules, Mobil Oil, Pfizer, Quigley, Rhodia and Rutgers, and also the Borough, and plaintiff DEP, requiring the above parties to conduct cleanup activities at the Site, disposing of Directive IV issues.

76. Sampling results from the remedial investigation revealed the presence of various pollutants and hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water and wetlands at the Site, which include benzene, paraethyltolueune, pentachlorophenol, chloroform, para-methylstyrene, methylbromide, carbon tetrachloride, pentane methanol and dichlorophenol, volatile organic compounds, pesticides and acids.

77. In 1990, Plaintiff DEP approved a Remedial Action for the Site pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E-5.2, which described the proposed remedial action, and how plaintiff DEP determined the proposed remedial action is the most appropriate

alternative for the Site. The remedial action was completed in September 1999 with the approval of a Remedial Action Report.

78. The remedial action plaintiff DEP approved for the Site primarily provided for the excavation and removal of drums containing hazardous substances, capping the landfill and installing a stormwater control system and methane gas collection system, followed by monitoring.

79. Although plaintiff DEP, in conjunction with some of the named Defendants herein, has initiated the remedial investigations and remedial actions for the Site, the ground water and wetlands remain contaminated.

#### FIRST COUNT

##### Spill Act

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

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

82. 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).

83. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge and/or unsatisfactory storage or containment of hazardous substances is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged and/or not satisfactorily stored or contained, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

84. The Plaintiffs 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 Sayreville Landfill Property.

85. 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.

86. The Generator Defendants are the generators of hazardous substances that were discharged at the Sayreville Landfill Property, and are persons in any way responsible for the discharge of 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 Sayreville Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

87. The Transporter Defendants are the dischargers of hazardous substances at the Sayreville Landfill 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 Sayreville Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

88. Defendants Quigley, Pfizer, and Hercules, as owners of the Sayreville Landfill Property at the time hazardous substances were discharged there, are also 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 Sayreville Landfill Property. N.J.S.A. 58:10-23.11g.c.(1).

89. 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).

90. 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 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 the plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Sayreville Landfill 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 Sayreville Landfill Property;
- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling the Defendants to perform, under plaintiffs DEP and Administrator's oversight, or to fund plaintiffs DEP and Administrator's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Sayreville Landfill Property and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- d. Award the plaintiffs DEP and Administrator their costs and fees in this action; and
- e. Award the plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

91. The Plaintiffs repeat each allegation of paragraph nos. 1 through 90 above as though fully set forth in its entirety herein.

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

93. 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.

94. 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.

95. 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 Sayreville Landfill Property.



96. 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).

97. The Transporter Defendants discharged pollutants at the Sayreville Landfill Property, which discharge was 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 Sayreville Landfill Property. N.J.S.A. 58:10A-6a.

98. 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 Sayreville Landfill 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. Enter an order assessing the Transporter 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;
- b. Enter declaratory judgment against the Transporter 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;
- c. Enter an order assessing the Transporter 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 Sayreville Landfill Property;

- d. Enter declaratory judgment against the Transporter 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 Sayreville Landfill Property;
- e. Enter an order assessing the Transporter 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 Sayreville Landfill Property;
- f. Enter declaratory judgment against the Transporter 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 Sayreville Landfill Property;

- g. Enter an order assessing the Transporter 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 the Transporter Defendant 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;
- h. Enter declaratory judgment against the Transporter Defendants, without regard to fault, assessing the transporter 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 the Transporter Defendants have enjoyed, or any other benefit that will accrue to them as a result of having violated the Water Pollution Control Act;
- i. Award plaintiff Commissioner her costs and fees in this action; and

j. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Sanitary Landfill Act

99. The Plaintiffs repeat each allegation of paragraph nos. 1 through 98 above as though fully set forth in its entirety herein.

100. Defendants Quigley, Hercules and Pfizer are persons who "owned" and/or "operated" the sanitary landfill facility located at the Sayreville Landfill Property within the meaning of N.J.S.A. 13:1E-102b.

101. Plaintiff DEP has incurred, and will continue to incur, costs resulting from the operation of the sanitary landfill facility located at the Sayreville Landfill Property.

102. Plaintiff DEP has 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 disposal of solid wastes at the Sayreville Landfill Property.

103. As the owners of the sanitary landfill facility at the Sayreville Landfill Property, defendants Quigley, Hercules and Pfizer are liable, jointly and severally, for the sanitary landfill facility's proper operation and closure as required by law, and for any damages, either direct or indirect, proximately resulting from

the operation of the sanitary landfill facility at the Sayreville Landfill Property, and including lost value and reasonable assessment costs, that plaintiff DEP has 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 operation of the sanitary landfill facility at the Sayreville Landfill Property. N.J.S.A. 13:1E-103.

104. Pursuant to N.J.S.A. 13:1E-9b. and d., plaintiff DEP may bring an action in the Superior Court for the costs of any investigation, inspection or monitoring survey, and the reasonable costs of preparing and litigating the case, N.J.S.A. 13:1E-9d.(2); the costs to remove, correct or terminate any adverse effects upon water and air quality, N.J.S.A. 13:1E-9d.(3); compensatory damages, including the lost value and assessment costs, that plaintiff DEP incurs for any natural resource of this State that has been, or may be, injured as a result of the operation of the sanitary landfill facility located at the Sayreville Landfill Property, N.J.S.A. 13:1E-9d.(3); and for any other actual damages. N.J.S.A. 13:1E-9d.(4).

PRAYER FOR RELIEF

**WHEREFORE,** plaintiff DEP prays that this Court:

- a. Order the defendants Quigley, Hercules and Pfizer to reimburse plaintiff DEP, jointly and severally, for all direct and indirect damages, and including lost value and

reasonable assessment costs for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the Sayreville Landfill Property, with applicable interest;

- b. Enter declaratory judgment against the defendants Quigley, Hercules and Pfizer, jointly and severally, for all direct and indirect damages, including lost value and reasonable assessment costs that plaintiff DEP will incur for any natural resource of this State injured as a result of the operation of the sanitary landfill facility at the Sayreville Landfill Property;
- c. Award plaintiff DEP its costs and fees in this action; and
- d. Award plaintiff DEP such other relief as the Court deems appropriate.

#### FOURTH COUNT

##### Public Nuisance

105. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 104 above as though fully set forth in its entirety herein.

106. Ground water and wetlands are natural resources of the State held in trust by the State for the benefit of the public.

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

108. The groundwater and/or wetlands 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.

109. As long as the ground water and/or wetlands remain contaminated due to the Defendants' conduct, the public nuisance continues.

110. Until the ground water and/or wetlands 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 and/or wetlands.

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 plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Sayreville 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 Sayreville Property;
- c. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiffs DEP and Administrator's oversight, or to fund plaintiffs DEP and Administrator's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Sayreville Landfill 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;
- d. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- e. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

FIFTH COUNT

Trespass

111. The plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 110 above as though fully set forth in its entirety herein.

112. Ground water and/or wetlands are natural resources of the State held in trust by the State for the benefit of the public.

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

114. As long as the ground water and/or wetlands remain contaminated, the Defendants' trespass continues.

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 plaintiffs DEP and Administrator have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Sayreville Landfill 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 Sayreville Property;
- c. Enter judgment against the Defendants, compelling the Defendants to perform, under plaintiffs DEP and Administrator's oversight, or to fund plaintiffs DEP and Administrator's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances at the Sayreville Landfill Property and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- d. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- e. 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: Lauren Caruso Garofalo  
Lauren Caruso Garofalo  
Deputy Attorney General

Dated: 6/28/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Lauren Caruso Garofalo, 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).

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

By: Lauren Caruso Garofalo  
Lauren Caruso Garofalo  
Deputy Attorney General

Dated: 6/28/07