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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - HUDSON COUNTY  
DOCKET NO. L-611-03

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
ACTING ADMINISTRATOR, NEW  
JERSEY SPILL COMPENSATION  
FUND,

Plaintiffs,

v.

SYNCON RESINS INCORPORATED;  
A&S TRANSPORTATION CO.; AGWAY,  
INC.; DISCH CONSTRUCTION CO.,  
INC.; ESSEX CHEMICAL CORP.;  
BENJAMIN E. FARBER; FARNOW,  
INC.; LINDE-GRIFFITH  
CONSTRUCTION CO; and  
SPECTRASERV, INC.;

Defendants.

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Civil Action

COMPLAINT

**FILED**  
TEAM #1

**JAN 31 2003**

**SUPERIOR COURT OF NJ  
COUNTY OF HUDSON  
CIVIL DIVISION #4**

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and Acting Administrator, New Jersey Spill Compensation Fund ("Administrator"), 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, say:

STATEMENT OF THE CASE

1. Plaintiffs DEP and Administrator bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, to recover the cleanup and removal costs they have incurred, and will incur, as a result of the discharge and/or unsatisfactory storage or containment of hazardous substances at the Syncon Resins Superfund site located in Kearny Township, Hudson County, New Jersey (the "Syncon Resins Superfund site" or the "Site"). Plaintiffs DEP and Administrator also seek reimbursement under the Spill Act for the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

THE PARTIES

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

3. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund,

plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

4. Defendant A & S Transportation Company ("A&S") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 75 Jacobus Avenue, Kearny, NJ 07032.

5. Defendant Agway, Incorporated ("Agway") is a corporation organized under the laws of the State of New York, with a principal place of business located at 333 Butternut Drive, Dewitt, NY 13214.

6. Defendant Disch Construction Company, Incorporated ("Disch") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 108 Bellevue Avenue, Summit, NJ 07901.

7. Defendant Essex Chemical Corporation ("Essex") is a corporation organized under the laws of the State of Michigan, with a principal place of business located at 2030 Dow Center, Midland, MI 48674.

8. Defendant Benjamin E. Farber ("Farber") is an individual whose dwelling or usual place of abode is 13893 LaHarve Drive, West Palm Beach, FL 33410.

9. Defendant Farnow, Incorporated ("Farnow") was a corporation organized under the laws of the State of New Jersey,

with a principal place of business located at 77-83 Jacobus Avenue, Kearny, NJ 07032.

10. Defendant Linde-Griffith Construction Company ("Linde-Griffith") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 152 Passaic Street, Newark, NJ 07104.

11. Defendant Spectraserv Incorporated ("Spectraserv") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 75 Jacobus Avenue Kearny, NJ 07032.

12. Defendant Syncon Resins, Incorporated ("Syncon") was a corporation organized under the laws of the State of New Jersey, whose certificate of corporation was voided, that had a principal place of business located at 550 Broad Street Newark, NJ 07102.

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

#### GENERAL ALLEGATIONS

14. The Syncon Resins Superfund site consists of approximately 15 acres of real property located at 77-89 Jacobus Avenue, Kearny Township, Hudson County, New Jersey, this property being also known and designated as Block 289, Lots 12, 13 and 13R on the Tax Map of Kearny Township, and all other areas where any hazardous substance discharged there has become located.

15. Materials that were, or contained, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10-23.11f.a.(1) and N.J.S.A. 58:10-23.11f.b.(3).

16. Materials that were, or contained, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were not satisfactorily stored or contained at the Syncon Resins Superfund site within the meaning of N.J.S.A. 58:10-23.11f.b.(2), certain of which were "discharged" within the meaning of N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10-23.11f.a.(1)/N.J.S.A. 58:10-23.11f.b.(3).

17. On various occasions from 1980 through 1982, plaintiff DEP inspected the Site and observed thousands of drums, many of which were leaking, as well as two on-site waste water lagoons. Moreover, spills were evident throughout the site.

18. In December 1981, DEP personnel observed two pipes on the property next to the Site at 75 Jacobus Avenue where defendant Spectraserv (formerly known as Modern Transportation) operates a licensed hazardous waste transfer, disposal and storage facility ("TSDF"), discharging liquids directly into a catch basin.

19. In April and May 1982, DEP personnel sampled the soils from four test pits, several monitoring wells and an abandoned production well, the analysis of which revealed various organic

compounds and PCBs. Various metals, organic compounds and PCBs were found at different locations throughout the shallow aquifer.

20. In September 1983, the United States Environmental Protection Agency ("EPA") added the Site to the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B. The NPL, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C.A. §9605(a), is a list EPA promulgates of hazardous waste sites that pose the greatest threat to the human health and safety and the environment.

21. From May 1985 through August 1986, plaintiff DEP performed a remedial investigation of the Site pursuant to N.J.S.A. 58:10-23.11f.a., during which plaintiff DEP investigated the nature and extent of the contamination.

22. Sampling results from the remedial investigation revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria including: organic compounds, metals, PCBs, and pesticides in the groundwater, surface water, soils, and sediments at and underlying the Site.

23. On September 29, 1986, EPA, with plaintiff DEP's concurrence, issued a Record of Decision ("1986 ROD"), in which EPA documented and explained the preferred remedy to address the contaminated soil, groundwater, surface water and sediments at and underlying the Site.

24. The remedial action EPA selected in the 1986 ROD, to which DEP concurred, primarily provides for: a) the removal of the materials in the storage tanks and other vessels, b) the decontamination of the buildings and storage tanks, c) the removal of the lagoon liquids, d) removal of grossly contaminated soil, e) the installation of a gravel cover to allow natural flushing of the underlying soil and groundwater contaminants, f) the collection and treatment of shallow groundwater, and g) the performance of supplemental studies to evaluate methods to enhance the effectiveness of the remedy. The remedial design was completed in January 1989.

25. From 1989 until 1993, plaintiff DEP performed several activities at the Site, including removing thousands of small containers from the laboratory, fencing the Site, and disposing of the contents of the storage tanks and some contaminated soil.

26. During that time, DEP also decontaminated the buildings and storage tanks, and installed the gravel cover and slurry wall.

27. In late 1993, DEP disposed of approximately 100 above ground storage tanks, their related piping and other scrap metal.

28. In November 1997, DEP delineated approximately 30,000 cubic yards of soil contaminated with free and residual product at concentrations above DEP's cleanup criteria.

29. In July 1998, DEP issued a Focused Feasibility Study Report in which it identified and evaluated six alternatives to enhance the existing remedy.

30. From October 1993 through the present, DEP has operated and maintained the remedy under a series of contracts and will continue to do so in the future.

31. In September 2000, EPA and DEP issued the Record of Decision for Operable Unit 2 ("ROD II"), the second of two operable units selected for the Site.

32. The major components of the ROD II remedy include: a) excavation and drainage of approximately 30,000 cubic yards of soil; b) removal and disposal of buried debris; c) installation of a drainage layer at the bottom of the excavations; d) treatment/disposal of drained free product from the excavated material; e) addition of soil amendments to the excavated soil before backfilling; f) possible restoration of natural hydraulic conditions and discontinuation of the contaminated water treatment system; and, g) establishment of institutional controls to ensure continued commercial/industrial use of the property.

33. In August 1989, plaintiff DEP issued a directive ("1989 Directive") to defendants Agway, Disch, Essex, Farber, Farnow, Syncon and other entities who are not parties to this litigation, pursuant to N.J.S.A. 58:10-23.11f.a., directing the recipients, including the defendants, to fund the remedial action.



34. None of the recipients, including the defendants complied with the 1989 Directive.

35. On September 15, 1995, plaintiff Administrator filed a first priority lien (Docketed Judgment No. DJ-206355-95) against the real property comprising the Site pursuant to N.J.S.A. 58:10-23.11f.

36. On September 15, 1995, plaintiff Administrator also filed a non-priority lien (Docketed Judgment No. DJ-206355-95) against all revenues and other real and personal property of the defendant Benjamin Farber pursuant to N.J.S.A. 58:10-23.11f.

37. On January 11, 1999, plaintiff Administrator filed an amended first priority lien (Docketed Judgment No. DJ-206355-95) against the real property comprising the Site, and simultaneously filed an amended non-priority lien (Docketed Judgment No. DJ-206355-95) against the revenues and all other real and personal property of the defendant Benjamin Farber.

#### FIRST COUNT

38. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 37 above as though fully set forth in its entirety herein.

39. Plaintiff DEP has incurred, and will continue to incur, costs concerning the Site.

40. Plaintiff Administrator has approved, and will continue to approve appropriations to remediate the Site.

41. Plaintiffs DEP and Administrator have also incurred, and will continue to incur, damages, including reasonable assessment costs, for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Site.

42. The costs and damages plaintiffs DEP and Administrator have incurred, and will incur, including any claims paid from the Spill Fund, for the Syncon Resins Superfund site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

43. From 1935 through 1966, defendant Agway individually and through its predecessor, Cooperative Grange League Federation, Incorporated, owned Lots 13 and 13R of the real property comprising the Site, during which time it discharged materials there that were, or contained, hazardous substances within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

44. From 1961 through 1972, Farnow manufactured varnishes, latexes and alkyd resins on Lot 12 of the Site, the operation of which involved the handling of materials that were, or contained, hazardous substances, certain of which the defendant Farnow discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

45. In addition, from 1967 through present, defendant Farnow has owned Lots 13 and 13R of the real property comprising the Site, during which time it discharged or allowed the discharge of materials there that were, or contained, hazardous substances within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

46. From 1961 through present, defendant Benjamin Farber has owned Lot 12 of the Syncon Resins Superfund Site during which time materials that were, or contained, hazardous substances were discharged there within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

47. In addition, defendant Benjamin Farber in his capacity as the President and majority shareholder of Farnow, was responsible for the activities giving rise to the discharge of hazardous substances at the Site within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

48. From 1968 through 1975, defendant Linde-Griffith Construction Company, Incorporated leased approximately 3,200 square feet of Lot 13 and part of a building there. While there, defendant Linde-Griffith's operation involved the handling of materials that were, or contained, hazardous substances, certain of which the defendant Linde-Griffith discharged within the meaning of N.J.S.A. 58:10.11f.a.(1).

49. From 1972 through 1982, defendant Syncon Resins operated a resins manufacturing facility at the Site, the operation of which involved the storage, processing, and handling of materials that were, or contained, hazardous substances, certain of which the defendant Syncon Resins discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

50. Defendant Disch Construction Company, performed maintenance dredging of the Passaic River for defendant Essex Chemical Corporation at Essex's Doremus Avenue facility in Newark.

51. In 1983, Disch deposited approximately 3,000 cubic yards of dredge spoils on the Syncon Resins Superfund Site. The dredge spoils contained hazardous substances that the defendant Disch discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

52. Defendant Essex generated materials that were, or contained, hazardous substances, certain of which were discharged at the Site within the meaning of N.J.S.A. 58:10-23.11f.a.(1).

53. Defendant Spectraserv, formerly known as Modern Transportation, is a licensed hazardous waste transfer, disposal and storage facility ("TSDF") located next to the Site at 75 Jacobus Avenue, Kearny.

54. The operation of Spectraserv's facility involved the handling of materials that were, or contained, hazardous substances, certain of which the defendant Spectraserv discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1) on the Syncon Resins Superfund Site.

55. The defendant A&S transported materials to the Spectraserv facility that were, or contained, hazardous substances, certain of which were discharged within the meaning of N.J.S.A. 58:10-23.11f.a.(1) at the Syncon Resins Superfund Site.

56. As persons responsible for materials that were, or contained, hazardous substances, certain of which were discharged at the Site, the defendants are liable, jointly and severally, without regard to fault, for all costs plaintiffs DEP and Administrator have incurred, and will incur, to remediate the Site. N.J.S.A. 58:10-23.11.g.c.(1).

57. By [REDACTED] with the [REDACTED], defendants Agway, Disch, Essex, Benjamin Farber, Farnow, and Syncon are also persons who are liable in an amount equal to three times the cleanup and removal costs plaintiffs DEP and Administrator have incurred, and will incur, for the Syncon Resins Superfund site. N.J.S.A. 58:10-23.11f.a(1).

58. As dischargers of hazardous substances at the Site, the defendants are persons who are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred, and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

59. As persons responsible for materials that were, or contained, hazardous substances, certain of which were discharged at the Site, the defendants are liable, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred,

and will incur, to restore or replace any natural resource of this State damaged or destroyed by the contamination at the Site. N.J.S.A. 58:10-23.11.g.c.(1).

60. 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 its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

61. 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 the Plaintiffs have incurred for the Syncon Resins Superfund site, with applicable interest;

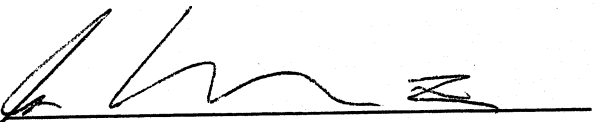
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for any cleanup and removal costs plaintiffs DEP and Administrator may incur for the Syncon Resins Superfund site;
- c. Order the defendants Agway, Disch, Essex, Farber, Farnow, and Syncon to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs plaintiffs DEP and Administrator have incurred for the Syncon Resins Superfund site;
- d. Enter declaratory judgment against the defendants Agway, Disch, Essex, Farber, Farnow, Syncon, jointly and severally, without regard to fault, in an amount equal to three times any cleanup and removal costs plaintiffs DEP and Administrator may incur for the Syncon Resins Superfund site;
- e. Order the Defendants to reimburse plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP and Administrator have incurred for any natural resource of this State damaged or destroyed by the contamination at the Site, with applicable interest;
- f. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs, plaintiffs DEP

and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Site; and

g. Award plaintiffs DEP and Administrator their costs and fees in this action; and

h. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

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

By:   
James Aversano III  
Deputy Attorney General

Dated: 11/30/03

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that James Aversano III, Deputy Attorney General, is hereby designated as trial counsel for 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 plaintiffs at this time, nor is any non-party known to 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 plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

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

By 

James Aversano III  
Deputy Attorney General

Dated: 1/30/03