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SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION

Docket No.:

CIVIL ACTION

**COMPLAINT
JURY TRIAL DEMAND**

Plaintiffs,

v.

HANDY & HARMAN; HANDY &
HARMAN ELECTRONIC
MATERIALS CORP.; STEEL
PARTNERS HOLDINGS, L.P.;
PLESSEY INCORPORATED;
CYCLE CHEM., INC f/k/a PERK
CHEMICAL CO., INC.; JOHN
DOES 1-100 (fictitious entities);
and ABC CORPORATIONS 1-100
(fictitious entities)

Defendants.

Plaintiffs New Jersey Department of Environmental Protection (the “Department”), the Commissioner of the New Jersey Department of Environmental Protection (the “Commissioner”), and the Administrator of the New Jersey Spill Compensation Fund (the “Administrator”) (collectively, “Plaintiffs”), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorneys, file this Complaint against the above-named defendants (the “Defendants”), and allege as follows:

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 through -23.24, the Water Pollution Control Act, (the “WPCA”), N.J.S.A. 58:10A-1 through -35, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances and pollutants at the Handy & Harman site, located at 20 Craig Rd., Montvale, Bergen County, New Jersey, this property being also known and designated as Block 1902, Lot 11 on the tax map of Montvale, New Jersey (the “Property”), and at all other areas

where hazardous substances and pollutants discharged at and from the Property have come to be located (the "Site").

2. This case arises from the operation of an electronic component manufacturing facility at the Property (the "Facility"). As a result of the Facility's operations, hazardous substances and pollutants were discharged at and from Property, which migrated into the ground water beneath the Property and to the surrounding areas. Today, the Site remains contaminated with numerous hazardous substances and pollutants, including trichloroethylene ("TCE"); perchloroethylene (a/k/a tetrachloroethylene) ("PCE"); cis-1,2-dichloroethylene ("cis-1,2-DCE"); vinyl chloride ("VC"); 1,1-dichloroethylene ("1,1-DCE"); 1,1,1-trichloroethane ("1,1,1-TCA"); 1,1,2,2-tetrachloroethane; 1,2-dichloroethane; bromoethane; and methylene chloride. Several of these hazardous substances and pollutants have been linked to cancers and other serious health conditions.

3. The costs and damages Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of the State that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at and from the Property. Further, the Plaintiffs seek an order compelling the Defendants to perform, under the Department's oversight, or to fund the Department'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 and pollutants at and from the Property, and to compensate the citizens of New Jersey for the lost value of any injured natural resource. The Complaint also seeks past costs expended by the Plaintiffs.

4. Electronics manufacturing operations at the Property involved the cleaning of electronic components in a degreasing process. Upon information and belief, the primary degreasing solvent used at the Facility from approximately 1966 to approximately 1985 was

TCE, however, 1,1,1-TCA, benzene, "Freon," and a kerosene-based solvent, "Unisolve," were also used during different time periods. TCE was also used throughout the Facility for cleaning parts, tools, machinery, floors, and hands. TCE was stored in two, 500-gallon above ground storage tanks ("ASTs") located behind the Facility, with waste TCE stored in drums throughout the Property. Numerous releases of TCE occurred both inside and outside the Facility between approximately 1966 and approximately 1985.

5. PCE was also used or stored at the Property as a result of the use of TCE, as the commercial grade TCE contained minor amounts of PCE, as well as 1,1,1-TCA and DCEs. PCE was also added to TCE at the Property by contamination from the piping of tank trucks making deliveries to the Property.

THE PARTIES

Plaintiffs

6. The Department is a principal department within the Executive Branch of the New Jersey 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.

7. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which the Department is vested with authority to protect, and seek compensation for, any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

8. The Commissioner is the Commissioner of the Department. N.J.S.A. 58:10-23.11b. In that capacity, the Commissioner is vested by law with various powers and authority, including those conferred by the Department's enabling legislation, N.J.S.A. 13:1D-1 through -19.

9. The 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 the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department 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.

Defendants

10. Defendant Handy & Harman Electronic Materials Corp. ("H&H Corp.") is a Florida corporation with a principal place of business located at 590 Madison Avenue, 32nd Floor, New York, New York 10022.

11. Defendant Handy & Harman is a New York corporation with a principal place of business located at 590 Madison Avenue, 32nd Floor, New York, New York 10022

12. Defendant Steel Partners Holdings L.P. ("Steel Partners") is a Delaware limited partnership with a principal place of business located at 590 Madison Avenue, 32nd Floor, New York, New York 10022.

13. Defendant Plessey is a New York corporation with a principal place of business located at 333 Pierce Road, Suite 370, Itasca, Illinois 60143.

14. Defendant Cycle Chem, Inc. f/k/a Perk Chemical Co., Inc. ("Perk") is a New Jersey corporation with a principal place of business at 217 South First Street, Elizabeth, New Jersey 07206.

15. Defendants "ABC Corporations 1-100," 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(s), and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances and

pollutants discharged at and from the Property, or are otherwise responsible for the discharges and violations alleged in this Complaint.

16. Defendants “John Does 1-100,” these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and or responsible corporate officials of, or are otherwise related to, Defendant(s), and/or one or more of the ABC Corporation defendants, and/or are other dischargers and/or persons “in any way responsible” for the hazardous substances and pollutants discharged at and from the Property, or are otherwise responsible for the discharges and violations alleged in this Complaint.

NATURAL RESOURCES

17. 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.

18. 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.

19. 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, and emanating from, the Property.

AFFECTED NATURAL RESOURCES

Ground Water

20. 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.

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

22. 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.

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

24. 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.

25. There are thousands of sites in New Jersey where the ground water is contaminated with hazardous substances and pollutants.

Surface Water

26. Surface water is an extremely important natural resource for the people of New Jersey. Approximately 850 million gallons of surface water per day supply nearly half of New Jersey's population with drinking water.

27. Surface water in New Jersey is also used for other commercial and industrial uses, such as cooling water and electrical generation, boating, fishing, and transportation of goods and services.

28. The tourist and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

29. The Bear Brook is a natural stream located approximately 440 feet west of the Property and feeds into Woodcliff Lake.

30. The Mill Brook is a natural stream located approximately 460 feet east of the Property and feeds into the Pascack Brook.

31. Upon information and belief, hazardous substances and pollutants discharged from the Property have reached and are adversely impacting the Bear Brook.

GENERAL ALLEGATIONS

32. The Property, located at 20 Craig Road, Montvale, New Jersey, consists of approximately 3 acres of real property on the high point of a north-south trending ridge with land sloping to the east and west between the Bear Brook and Mill Brook drainage basins.

33. Beneath the Property is a forty to seventy foot thick glacial till, which overlies bedrock. Ground water within the till forms a shallow overburden aquifer ranging from ten to forty feet below grade. The overburden ground water flows toward the Mill and Bear Brooks, with shifts in flow rate over time.

34. The Property sits above a recharge zone for the Brunswick Aquifer, which is a source of municipal drinking water for both the Boroughs of Park Ridge and Woodcliff Lake.

35. Upon information and belief, prior to May 10, 1966, the Property was undeveloped, and used either as farmland or vacant.

36. On May 10, 1966, the Property was purchased by Montvale Customtool Specialty Co., Inc. ("Customtool, Inc."), a New Jersey corporation.

37. The Property was conveyed by Customtool Inc. to Alloys Unlimited Inc. ("Alloys Inc."), a New York corporation, by deed dated May 31, 1966.

38. The Property was conveyed by Alloys Unlimited, Inc. to Montvale Custom Tool,

Inc., a New Jersey Corporation, on June 1, 1966.

39. Alloys Inc. and Montvale Custom Tool, Inc. were then acquired by Plessey on June 19, 1970 through a series of mergers, which resulted in a single entity, Plessey. Through these mergers, Plessey became owner of the Property.

40. Plessey manufactured metal parts for the electronics industry until the Property was sold to H&H Corp. in March 1984.

41. On March 23, 1984, H&H Corp. purchased the Property from Plessey.

42. On March 18, 1987, H&H Corp. transferred the property to 20 Craig Road Associates.

43. On or about October 11, 2017, Steel Partners completed an exchange offer to obtain shares of Handy & Harman, Ltd., which included the acquisition of Defendants H&H and Handy & Harman, subsequently Steel Partners took complete control of H&H and Handy & Harman, making those companies wholly owned subsidiaries of Steel Partners.

44. Steel Partners is the successor-in-interest to H&H Corp. and Handy & Harman.

45. At all times relevant to this action, Handy & Harman exercised sole ownership and control over H&H Corp., including the oversight and direction of the use and disposal of hazardous substances at the Property.

46. At all times relevant to this action, Handy & Harman, H&H Corp., Plessey, and/or their predecessors utilized the Property for metal stamping operations.

47. At all times relevant to this action, Perk distilled, sold, and distributed chemical solvents. Perk supplied solvents to Defendants operating at the Property, and disposed of hazardous wastes generated at the Property.

48. Metal stamping operations at the Property utilized coils of metal weighing

between 100 and 250 pounds, which were loaded into an off-coiler and fed into a power press that would stamp the metal into the desired shape.

49. The stamping process resulted in both finished product and scrap metal.

50. Finished product sometimes underwent a degreasing process, which utilized a solvent, TCE.

51. Handy & Harman, H&H Corp., and Plessey stored TCE on the Property in two, 500-gallon ASTs abutting the Facility's "degreasing room."

52. Liquid TCE would be pumped from the ASTs into two vapor degreasers, which would heat the liquid, causing hot TCE vapors to rise.

53. Stamped finished product would be placed in baskets and cycled through the hot TCE vapor.

54. After degreasing, the TCE, which was contaminated or spent in the process, would be pumped into 55-gallon drums that were stored in a fenced area on the Property outside the Facility.

55. The machinery utilized in the stamping process was lubricated by oil.

56. New oil was received in 55-gallon drums and stored in the Facility's oil storage room.

57. When oil changes were completed on machinery, old oil was drained from the machinery and stored in 55-gallon drums which, when full, would be stored in the same fenced area as the waste TCE.

58. Pursuant to the Environmental Cleanup Responsibility Act ("ECRA") n/k/a the Industrial Site Recovery Act, a subsurface investigation of the Property was initiated as a part of the ownership transfer between Plessey and H&H Corp.

59. In the course of the ECRA investigation, soil borings were completed beneath the location of the ASTs, which indicated TCE concentrations of up to 25,544 parts per billion (“ppb”) at a depth of 18 to 24 inches below grade.

60. As a result of the discovery of TCE in the soils on the Property, 70 cubic yards of soil were excavated from the TCE storage area in January 1987, with excavation depths ranging from 5 to 9 feet below grade.

61. Soil samplings taken after soil excavation found TCE concentrations of up to 2,582 ppb, resulting in an additional 35 cubic yards of soil being excavated from the area in March 1987.

62. Soil samples taken after the second excavation revealed TCE concentrations of approximately 770 ppb.

63. TCE’s presence in soil samples taken after the second excavation also indicated that TCE from the storage area had migrated into the ground water beneath the Property.

64. A soil gas survey on the Property in 1990 found that the former TCE storage area and an injection well utilized at the Property were the sources for TCE discharges into the soil and ground water beneath the Property.

65. Testing of overburden ground water at the Property showed TCE levels as high as 75,000 ppb in the ground water.

66. Ground water testing of the Property’s injection well showed TCE concentrations as high as 11,000 ppb.

67. Testing of bedrock ground water beneath the Property showed TCE levels as high as 23,000 ppb.

68. The current Groundwater Quality Criterion for TCE is 1 ppb.

69. As a result of the contamination at the Property, the Department has created two separate Classification Exception Area/Well Restriction Areas (“CEA/WRA”), which are utilized to restrict the use of ground water in an area.

70. The first CEA/WRA applies to an overburden TCE plume that encompasses the majority of the Property, and extends over 600 feet off the property, primarily to the south and south east, to a depth of approximately 60 feet.

71. The second CEA/WRA applies to a bedrock TCE plume that encompasses the entire Property, and extends over 8,000 feet off the Property to the south to a depth of approximately 700 feet, with a width of approximately 4,000 feet.

72. The contamination of the Brunswick Aquifer by Defendants has led to the closure of municipal drinking wells, as well as the installation of filtration systems to municipal wells, which supply clean drinking water for public consumption.

73. As a result of the contamination of the Brunswick Aquifer by Defendants, the Spill Fund has expended in excess of \$348,435 related to the contamination of municipal drinking wells in the Borough of Park Ridge.

FIRST COUNT

Spill Compensation and Control Act

74. The Plaintiffs repeat each allegation of the preceding paragraphs as though fully set forth in their entirety herein.

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

76. 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 for fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-

23.11g(c).

77. Defendants are dischargers of hazardous substances at and from the Property, and/or successors to dischargers of hazardous substances at and from 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 Department and the Administrator 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 and from the Property. N.J.S.A. 58:10-23.11g.c(1).

78. Defendants H&H Corp., Handy & Harman, Steel Partners, and Plessey, as the owners of the Property at the time hazardous substances discharged therefrom, and/or as successors to the owners of the Property at the time hazardous substances discharged therefrom, are persons in any way responsible for the discharged hazardous substances at the Site, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages at the Site, including lost value and reasonable assessment costs, that the Department and the Administrator have incurred, and will incur at the Site, 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 and from the Property. N.J.S.A. 58:10-23.11g.c(1). This liability is separate and in addition to the aforementioned Defendants' liability as dischargers as alleged in the preceding paragraphs.

79. Defendants H&H Corp., Handy & Harman; Steel Partners, and Plessey, as the knowing purchasers of the Property, real property at and from which hazardous substances were previously discharged, are persons in any way responsible for discharged hazardous substances, and/or successors to persons in any way responsible for 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 Department and the Administrator have incurred, and will continue to incur, to assess, mitigate, restore or replace any natural resource of the State that has been, or may be, injured as a result of the discharge of hazardous substances at and from the Property. N.J.S.A. 58:10-23.11g.c(2).

80. The Department and the Administrator have incurred, and may continue to incur, costs at the Site as a result of the discharge of hazardous substances at and from the Property.

81. The Administrator has either certified, or may certify for payment, valid claims made against the Spill Fund concerning the Site, and has approved, or may approve, appropriations for the Site.

82. The Department and the 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 and from the Property.

83. The costs that the Department and the Administrator have incurred, and will incur, for the Property are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

84. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department 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 the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b(5).

85. Pursuant to N.J.S.A. 58:10-23.11q., the 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, the Plaintiffs pray that this Court:

- a. Order each Defendant to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages they have incurred, including lost value and reasonable assessment costs for any natural resource of this State injured as a result of the discharge of hazardous substances at and from the Property, with applicable interest;
- b. Enter declaratory judgment against each Defendant, jointly and severally, without regard to fault, for all cleanup and removal costs and damages that the Plaintiffs will incur, including lost value and reasonable assessment cost, for any natural resource of this State injured as a result of the discharge of hazardous substances at and from the Property;
- c. Enter declaratory judgment against each Defendant, jointly and severally, without regard to fault, compelling them to perform any further cleanup of the Property in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws, regulations, and guidance;
- d. Enter judgment against each Defendant, jointly and severally, without regard to fault, compelling them to perform, under the Department's oversight, or to fund the Department's performance of an assessment of any natural resource that has

been, or may be, injured as a result of the discharge of hazardous substances at and from the Property, and compelling each Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- 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

Water Pollution Control Act

86. The Commissioner repeats each allegation of the Complaint above as though fully set forth in its entirety herein.

87. Defendants are “persons” within the meaning of N.J.S.A. 58:10a-3.

88. 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 the Commissioner pursuant to the WPCA, 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 - 1387. N.J.S.A. 58:10a-6(a).

89. The unauthorized discharge of pollutants is a violation of the WPCA for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10a-6(a).

90. Defendants, and/or their predecessors at the Property, discharged pollutants at and from 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 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.

91. The Department has incurred, and will continue to incur, costs as a result of the discharge of pollutants at and from the Property.

92. The Department 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 and from the Property.

93. The costs and damages the Department has incurred, and will incur, for the Property are recoverable within the meaning of N.J.S.A. 58:10a-10c(2) - (4).

94. Pursuant to N.J.S.A. 58:10a-10(c), the Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10a-10(c)(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. 58:10a-10(c)(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-10(c)(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 and from the Property, N.J.S.A. 58:10a-10(c)(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-10(c)(5).

PRAYER FOR RELIEF

WHEREFORE, the Commissioner prays that this Court:

- a. Enter an order assessing 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 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 the establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter an order assessing Defendants, without regard to fault, for all compensatory damages and other actual damages incurred for any natural resource 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 and from the Property;
- d. Enter declaratory judgment against Defendants, without regard to fault, assessing all compensatory damages and other actual damages for natural resources of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at and from the Property;
- e. Enter an order assessing 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 that Defendants H&H Corp., Handy & Harman, Steel Partners, Plessey, and Perk have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the WPCA;

- f. Enter declaratory judgment against Defendants, without regard to fault, assessing them 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 that they have enjoyed or any other benefit that will accrue to them as a result of having violated the WPCA;
- g. Award the Commissioner her costs and fees in this action; and
- h. Award the Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

95. The Plaintiffs repeat each allegation of the preceding paragraphs as though fully set forth in their entirety herein.

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

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

98. The ground water and surface water contamination at and from the Property constitutes a physical invasion of public property and an unreasonable and substantial

interference, both actual and potential, with the exercise of the public's common right to this natural resource.

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

100. Until the ground water and surface water is restored to its pre-injury quality, Defendants are liable for the creation, and the continued maintenance of, a public nuisance in contravention of the public's common right to clean ground water and surface water.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Order each Defendant to reimburse Plaintiffs for all cleanup and removal costs and damages that the Plaintiffs have incurred, including the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property with applicable interest;
- b. Enter declaratory judgment against each Defendant for all cleanup and removal costs and damages that Plaintiffs may incur, including the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property;
- c. Enter declaratory judgment against each Defendant, compelling each Defendant to perform, under the Department's oversight, or to fund the Department'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 and pollutants

at and from the Property, including compelling each Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;

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

FOURTH COUNT

Trespass

101. The Plaintiffs repeat each allegation of the preceding paragraphs as though fully set forth in their entirety herein.

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

103. The hazardous substances and pollutants in the ground water and surface water constitute a physical invasion of natural resources held in trust by the without permission or license.

104. The Defendants are liable for trespass, and continued trespass, because the hazardous substances and pollutants in the ground water and surface water at the Site resulted from discharges of hazardous substances and pollutants at and from the Property.

105. As long as the ground water and surface water remains contaminated, the Defendants' trespass continues.

106. Until the ground water and surface water is restored to its pre-discharge condition, the Defendants are liable for trespass, and continued trespass upon public property.

107. The State, as trustee of natural resources, including ground water and surface water, is authorized to prosecute claims for injuries to natural resources located at the Site arising from the physical invasion by hazardous substances and pollutants.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Order the Defendants to reimburse Plaintiffs for all cleanup and removal costs and damages that the Plaintiffs have incurred, including the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages that Plaintiffs may incur including, the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property;
- c. Enter declaratory judgment against the Defendants, compelling the Defendants to perform, under the Department's oversight, or to fund Department'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 and pollutants at and from the Property, including compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- d. Award Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

FIFTH COUNT

Negligence

108. The Plaintiffs repeat each allegation of the preceding paragraphs as though fully set forth in their entirety herein.

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

110. Defendants and/or their predecessors owed a duty to the Plaintiffs and the public to refrain from discharging hazardous substances and pollutants at and from the Property.

111. The Defendants' conduct, and/or the conduct of their predecessors, illegally and improperly discharging hazardous substances and pollutants at and from the Property, breached their duty to the Plaintiffs and the public.

112. Defendants' breach of their duty to refrain from discharging hazardous substances and pollutants at and from the Property created a foreseeable risk of contaminating the ground water underneath, and in the vicinity of, the Property, and created a public health risk for nearby communities who utilized the ground water as a drinking water source.

113. As a result of Defendants' negligence, and/or the negligence of the Defendants' predecessors at and from the Property, the Plaintiffs have incurred costs, and may continue to incur costs, at the Site, and natural resources have been injured, all of which were proximately caused by the Defendants and/or the Defendants' predecessors at the Property.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Order the Defendants to reimburse Plaintiffs for all cleanup and removal costs and damages that the Plaintiffs have incurred, including the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a

result of the discharge of hazardous substances and pollutants at and from the Property with applicable interest;

- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages that Plaintiffs may incur including, the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property;
- c. Enter declaratory judgment against the Defendants, compelling the Defendants to perform, under the Department's oversight, or to fund the Department'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 and pollutants at and from the Property, including compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- d. Award Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

SIXTH COUNT

Strict Liability

114. The Plaintiffs repeat each allegation of the preceding paragraphs as though fully set forth in their entirety herein.

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

116. During the time that the Defendants and their predecessors maintained manufacturing facilities at the Property, hazardous substances and pollutants, including TCE and

PCE, were stored at the Property, and discharged at and from the Property into the natural resources of the State including, but not limited to, the soils, ground water and surface water, thereby causing damage to and destruction of the natural resources.

117. Additionally, Defendant Perk, at all times relevant hereto, was a manufacturer, distributor and expert hired regarding the disposal of hazardous substances at the Property.

118. By storing and discharging hazardous substances and pollutants, including TCE, at and from the Property and into the State's natural resources in such manner as to cause said damage and destruction, Defendants engaged in an abnormally dangerous activity for which they are strictly liable.

PRAAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Order the Defendants to reimburse Plaintiffs for all cleanup and removal costs and damages that the Plaintiffs have incurred, including the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages that Plaintiffs may incur including, the lost value of, and reasonable assessment costs for, any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at and from the Property;
- c. Enter declaratory judgment against the Defendants, compelling the Defendants to perform, under the Department's oversight, or to fund the Department'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 and pollutants at and from the Property, including compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

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

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Robert M. Donchez

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Robert M. Donchez, Esq.

Dated: December 18, 2019

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Richard D. Meadow, Esq. is hereby designated as trial counsel for the Plaintiffs in this action.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

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).

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Dated: December 18, 2019