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

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NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION; THE :  
COMMISSIONER OF NEW JERSEY :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION; and THE ADMINISTRATOR :  
OF THE NEW JERSEY SPILL :  
COMPENSATION FUND, :

Plaintiffs,

v.

GOTTHELF KNITTING MILLS, INC.; :  
ITCA PARTNERS LP; "XYZ :  
CORPORATIONS" 1 through 10 (Names :  
Fictitious); "JOHN AND/OR JANE :  
DOES" 1 through 10 (Names :  
Fictitious), :

Defendants.

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CIVIL ACTION

**COMPLAINT**

Plaintiffs the 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") (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 attorney, file this Complaint against the above-named Defendants, and allege as follows:

**STATEMENT OF THE CASE**

1. This is a civil action pursuant to the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24; the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -20; and the common law, seeking reimbursement of the costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances and pollutants, specifically tetrachloroethylene ("PCE") and trichloroethylene ("TCE"), contaminating approximately 30 residential potable wells located around Prospect Street, Boonton, Morris County, New Jersey ("Prospect Street Ground Water Contamination Area").

2. Long-term exposure to PCE and TCE can affect the central nervous system, kidney, liver, immune system, male reproductive system, and a developing fetus.

3. The contamination of the potable wells presented an Immediate Environmental Concern causing DEP to spend public funds to protect residents' health and ensure that all residents had access to potable water.

4. From approximately 2009 to 2015, DEP conducted an Unknown Source Investigation ("USI") of the Prospect Street Ground Water Contamination Area to identify and investigate potential sources of the potable well contamination.

5. From the USI DEP determined that discharges of hazardous substances, including PCE and/or TCE, at the former Gotthelf Knitting Mills, Inc. ("GKM") facility, located at 677 Myrtle Avenue, Boonton, Morris County, New Jersey ("GKM Site"), were the source of the contamination affecting the potable wells within the Prospect Street Groundwater Contamination Area.

6. This action seeks to compel the Defendants to reimburse Plaintiffs for the unreimbursed clean-up and removal costs that DEP has incurred related to the remediation of the Prospect Street Ground Water Contamination Area.

#### **THE PARTIES**

7. DEP is a principal department within the executive branch of the New Jersey State government. DEP maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. DEP is 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. The Spill Act; the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -20; and

the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29, empower DEP to compel parties responsible for the discharge of hazardous substances to remediate the contamination, and recover costs incurred to remediate hazardous substance discharges using public funds.

8. The Commissioner is the Commissioner of DEP and maintains her principal office at 401 East State Street, Trenton, Mercer County, New Jersey. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of the WPCA. N.J.S.A. 58:10A-10.c.

9. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund") and maintains his principal office at 401 East State Street, Trenton, Mercer County, New Jersey. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs 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.

10. Defendant GKM was a New Jersey registered corporation established in 1953, with a main business address of 607-677 Myrtle Avenue, Boonton, New Jersey.

11. The last annual report for GKM was filed with the New Jersey Secretary of State on April 11, 2002, for business year

1999. The registered agent and President at the time was Alex Gotthelf.

12. On March 9, 2005, GKM filed a Certificate of Dissolution Without Assets with the State of New Jersey. It certified that it had no assets, had ceased doing business, did not intend to recommence doing business, had not made any cash or property distributions to shareholders within the past 24 months, and did not intend any distributions following dissolution.

13. Defendant ITCA Partners LP ("ITCA") is a limited partnership organized under the laws of the State of New Jersey on October 21, 1998, with a main business address of 607c Myrtle Avenue, Boonton, New Jersey. Alex Gotthelf is the registered agent and the current General Partner for ITCA. ITCA acquired the GKM Site on October 5, 1998.

14. Defendants "XYZ Corporations" 1 through 10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, tenants of, insurers of, or are otherwise related to the named Defendants, or are persons who otherwise participated in, or were responsible for, the discharge(s) of hazardous substances and/or pollutants at the GKM Site.

15. Defendants "John and/or Jane Does" 1 through 10, these names being fictitious, are individuals with identities that

cannot be ascertained as of the filing of this Complaint, certain of whom are persons who otherwise participated in, or were responsible for, the discharge(s) of hazardous substances and/or pollutants at the GKM Site.

#### **GENERAL ALLEGATIONS**

16. The GKM Site, also known as Block 72.01, Lot 2.01, on the Tax Map of Boonton, which DEP has designated as Site Remediation Program Interest Number G000042728, is located in a commercially zoned area along the municipal boundary between the Town of Boonton and Montville Township. The GKM Site is bounded by Myrtle Avenue (Route 202) to the north, Interstate Route 287 to the south, residential properties to the east, and an industrial property to the west.

17. The 2.35-acre GKM Site is developed with two commercial buildings and parking areas. Wooded areas are located along the western and southern property boundary.

18. The hazardous substances discharged at the GKM Site have migrated offsite and impacted approximately 30 residential potable wells located within the Prospect Street Ground Water Contamination Area. DEP has designated the Prospect Street Ground Water Contamination Area as Site Remediation Program Interest Number G000060824.

19. The GKM Site and all offsite areas impacted by the hazardous substances discharged thereon, including, but not limited to, the Prospect Street Ground Water Contamination Area, are collectively referred to as the GKM Contaminated Site.

20. GKM began sweater manufacturing on the GKM Site in approximately 1957 when the Butler Knitting Mills, which had previously operated there, ceased operations. GKM later expanded its operations in the early 1960s, and again in approximately 1975. GKM continued operations until operations ceased in approximately January 1997.

21. New Jersey Right To Know ("RTK") records dated 1989 through 1992 showed that GKM used TCE, along with two fabric soaps that likely contained chlorinated solvents such as PCE and TCE.

22. The RTK records showed that TCE was stored in steel drums within the Main Building on the GKM site.

23. GKM's cessation of operations in 1997 triggered the Industrial Site Recovery Act ("ISRA"), which requires the remediation of certain industrial establishments prior to their sale or transfer or upon cessation operations.

24. On May 5, 1997, DEP received an ISRA General Information Notice ("GIN") and Preliminary Assessment Report ("PAR") from GKM for cessation of operations at the GKM Site. DEP assigned case number E97196 to the cessation of operations.

25. The PAR identified several areas of concern ("AOCs") at the GKM Site, including a 1,000-gallon #2 fuel oil underground storage tank ("UST"), three loading docks, a solid waste dumpster, and a boiler room. However, sampling was only conducted at the 1,000-gallon fuel oil UST that was removed on October 29, 1996.

26. The fuel oil UST was located near the northeastern corner of Building 3 close to Myrtle Avenue and stored fuel used in a boiler located within the adjacent Building 3.

27. On October 29, 1996, the UST was excavated and removed. Upon excavation, several corrosion holes were observed in the UST and reported to DEP, who assigned Incident Report Number 96-10-29-1227-33 to the discharge.

28. Soil excavation was completed and a temporary monitoring well was installed. No petroleum hydrocarbons were detected in any of the samples collected in that temporary well.

29. On November 22, 1996, a ground water sample was collected and analyzed for volatile organics and base neutrals. No volatile organics or base neutrals were detected in the sample. The excavation was then backfilled with clean stone.

30. Based upon review of the April 1997 PAR and the July 7, 1997 Negative Declaration Affidavit signed by Ida Gotthelf, CEO of GKM, DEP approved a No Further Action ("NFA") for the GKM Site on July 23, 1997.



Prospect Street Ground Water Contamination Area

31. In December 2000, potable well contamination was discovered at 1 Prospect Street, Montville Township, Morris County (Block 48, Lot 1), when a painting contractor noticed that water from the kitchen-tap had a strange odor.

32. On December 18, 2000, the Montville Township Health Department ("Township") notified DEP, who assigned Incident Report Number 00-12-18-1508-31 to the incident.

33. On December 20, 2000, the Township resampled the potable well at 1 Prospect Street and also sampled a neighboring potable well at Block 48, Lot 2. The Township detected concentrations of PCE in the potable water samples at 1 Prospect Street of up to 4,500 parts per billion ("ppb"), far in excess of the 1.0 ppb New Jersey Drinking Water Maximum Contaminant Level ("MCL") for PCE.

34. On December 21, 2000, the Township resampled the potable well at 1 Prospect Street and detected PCE concentrations of approximately 34,200 ppb in the samples.

35. To determine the extent of the contamination, the Township initiated an investigation and ultimately sampled 307 potable wells within Montville Township. Analysis of the samples revealed that approximately 30 potable wells around Prospect Street showed concentrations of contaminants, including the chlorinated solvents PCE, TCE and cis-1,2-dichloroethene ("cis-1,2-DCE"), above the relevant MCLs.

36. The contamination of the potable wells constituted an Immediate Environmental Concern under N.J.A.C. 7:26E-1.8 requiring immediate steps to address the risk to public health.

37. Because of the contamination, many residents within the Prospect Street Ground Water Contamination Area connected to the existing public water lines with the assistance of the Township.

38. DEP installed Point of Entry Treatment Systems ("POETS") on the wells supplying those residences that could not immediately connect to public water. DEP also provided funding to have those residences connected to the public water supply.

39. In 2002, the DEP delineated the extent of the Prospect Street Ground Water Contamination Area and determined that it included a total of 49 developed lots.

40. By 2002, all impacted residents within the Prospect Street Ground Water Contamination Area were connected to public water using public funds.

41. By the end of 2004, all potable wells within the Prospect Street Ground Water Contamination Area were sealed using public funds.

42. In 2007 and 2008, as part of DEP's initial source investigation/receptor evaluation, indoor air and sub-slab soil gas samples were collected by the DEP.

43. Analysis of the samples showed elevated concentrations of PCE in sub-slab soil gas samples and/or indoor air samples collected from the basements of three residences.

44. PCE was detected at concentrations up to 41  $\mu\text{g}/\text{m}^3$  and 68  $\mu\text{g}/\text{m}^3$  in sub-slab soil gas samples collected at 221 and 237 Fulton Street, Boonton. PCE, TCE, and cis-1,2-DCE were detected in a sub-slab soil gas sample collected beneath 1 Prospect Street, Montville Township at concentrations of 120  $\mu\text{g}/\text{m}^3$ , 16  $\mu\text{g}/\text{m}^3$  and 19  $\mu\text{g}/\text{m}^3$ , respectively. One of the samples exceeded the then-applicable 34  $\mu\text{g}/\text{m}^3$  DEP Residential Soil Gas Screening Level for PCE.

45. Indoor air samples collected in December 2007 at 237 Fulton Street exhibited concentrations of PCE within the basement air above the then-applicable 3.0  $\mu\text{g}/\text{m}^3$  DEP Indoor Air Screening Level.

46. Confirmatory sampling by DEP in August 2008 did not detect PCE within the indoor air, but the sub-slab sample contained PCE in concentrations above the then-applicable 34  $\mu\text{g}/\text{m}^3$  DEP Residential Soil Gas Screening Level.

47. The Residential Indoor Air Screening Level and the Residential Soil Gas Screening Levels were changed to 9  $\mu\text{g}/\text{m}^3$  and 470  $\mu\text{g}/\text{m}^3$ , respectively, in 2013.

48. In April and August 2007, DEP collected direct push point ground water samples in the area of 1 Prospect Street. Sample locations included: GP-1 located behind the residence near the

sound barrier wall for Route 287; GP-2 located near the southwest corner of the house; GP-3 located near the driveway along Prospect Street; GP-4 located approximately 20 feet northeast of GP-3; and GP-10 located in the northeastern portion of the GKM Site.

49. Both the shallow and deep ground water samples collected by DEP exhibited PCE at concentrations exceeding New Jersey's Ground Water Quality Standards ("GWQS"); with deeper groundwater samples exhibiting higher concentrations.

50. In addition to the ground water sampling, DEP conducted passive soil gas sampling within the Prospect Street area in December 2007. Analysis of the samples revealed elevated concentrations of PCE including 182  $\mu\text{g}/\text{m}^3$  at a sampling point along the sound barrier wall for Route 287, closest to the GKM Site, and 9  $\mu\text{g}/\text{m}^3$  at two other sample locations.

#### Unknown Source Investigation

51. From approximately 2009 to 2015, DEP conducted a USI of the Prospect Street Ground Water Contamination Area to identify and investigate potential sources of the potable well contamination.

52. The investigation included a review of aerial photographs, New Jersey industrial directories, New Jersey Right To Know records, reports of discharges/incidents, waste manifest records, DEP's Site Remediation databases, and files concerning nearby facilities, as well as county and municipal records. The

USI also included a review of ground water, soil gas, and indoor air sampling data from DEP's previous sampling events in April 2007, June 2007, December 2007, and August 2008.

53. In addition, as part of the USI, DEP performed United States Environmental Protection Agency-funded Preliminary Assessments ("PA") and Site Investigations ("SI") at several potential source sites including, but not limited to, the GKM, Aeropanel, Route 287 Dump, Boonton Shopping Center, and the former Auto Valet sites.

54. On November 17 and 18, 2010, DEP conducted passive soil gas sampling at the GKM Site and sub-slab soil gas sampling at three nearby residential properties and along the southbound shoulder of Route 287.

55. Analysis of the samples revealed elevated concentrations of PCE within the soil gas at sample points along the eastern side of the Main Building compared to sampling locations along the western side of the GKM Site, residential properties, and along Route 287. The highest concentrations of PCE were detected near the boiler room bump-out/waste water piping exit of the Main Building at the GKM Site.

56. During a February 2011 DEP sampling event, DEP personnel observed several floor drains within the Main Building. It appeared these floor drains were connected and would have collected

and directed any waste liquids from the central portion of the building toward the eastern wall and exiting at the boiler room.

57. Soil and ground water samples collected from this area exhibited high concentrations of volatile organics, in particular chlorinated solvents PCE, TCE and cis-1,2-DCE.

58. A ground water sample collected just outside, east of the boiler room at a depth of 16 feet exhibited PCE concentrations of 440,000 micrograms per liter ("µg/L"), TCE of 3,841 µg/L, and cis-1,2-DCE of 30,278 µg/L, all far exceeding the respective GWQS of 1.0 µg/L, 1.0 µg/L and 70.0 µg/L.

59. Sampling within the Main Building near a floor drain located in the area of the boiler room also detected high concentrations of PCE (concentrations up to 200,000 µg/L) and other chlorinated solvents.

60. A soil sample collected at a depth of 3.5 feet below the concrete slab within the Main Building exhibited PCE at 0.63 milligrams per kilogram ("mg/kg") exceeding the 0.005 mg/kg DEP's Default Impact to Ground Water Soil Screening Level.

61. Based on field observations and the sampling results, DEP determined that a discharge of chlorinated solvents occurred within the area of the Main Building's boiler room at the GKM Site. DEP assigned Incident Report Number 11-03-21-0934-12 to the discharge.

62. In addition to the impacted soil and ground water within the area of the Main Building's boiler room, a soil sample collected by DEP south of the building exhibited PCE at 290 mg/kg, exceeding the 0.005 mg/kg default Impact to Ground Water Soil Screening Level and the 2.0 mg/kg Residential Direct Contact Soil Remediation Standard.

63. Analysis of DEP's February 2011 ground water samples revealed high concentrations of PCE (440,000 µg/L) in two ground water samples collected at a depth of 0 to 16 feet. This concentration of PCE was more than 950 times higher than the highest background concentration and is 440,000 times higher than the 1.0 µg/L GWQS for PCE.

64. Analysis of the deeper ground water samples taken by DEP from a boring located within the Main Building next to a floor drain located within the vicinity of the boiler room at depths of 17 to 20 feet and 27 feet revealed concentrations of PCE as high as 160,000 µg/L. DEP's sampling technicians noted strong odors emanating from this boring. The shallow ground water sample exhibited high concentrations of chlorinated solvents, including PCE up to 200,000 µg/L; cis-1,2-DCE up to 46,392 µg/L; TCE up to 3,995 µg/L; and vinyl chloride up to 3,283 µg/L.

65. The concentrations of chlorinated solvents in samples taken by DEP during the November 2010 and February 2011 sampling events were at concentrations significantly above background and

above the DEP GWQS and Drinking Water MCLs. Those elevated concentrations confirmed that chlorinated solvents had been discharged to soil and ground water at the GKM Site.

66. The results and conclusions of DEP's 2010 and 2011 sampling events were detailed in DEP's April 2011 SIR.

67. On May 4, 2011, DEP mailed ITCA a copy of the April 2011 SIR and advised ITCA that DEP had determined the GKM Site was a source of the potable well contamination within the Prospect Street Ground Water Contamination Area.

68. On June 2, 2011, DEP sent a letter to ITCA advising that DEP had rescinded the July 23, 2007 NFA issued to GKM based upon the April 2011 SIR and DEP's observation of floor drains within the onsite building that were not reported in GKM's 1997 ISRA cessation of operations PAR.

69. DEP directed ITCA to remediate the discharges of hazardous substances at the GKM Site in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

#### ITCA's Remedial Efforts

70. On July 9, 2011, ITCA retained Thomas Bambrick, of First Environment Inc., as the licensed site remediation professional to oversee the remediation of the GKM Site.

71. In July and August 2011, First Environment conducted soil sampling at the GKM Site. The collected soil samples exhibited strong odors and elevated photo ionization detector



readings, which indicated to DEP that volatile organic compounds were likely present in the samples. Analysis of the soil samples found PCE at concentrations up to 15,000 mg/kg in the soil.

72. On July 28, 2011, four shallow monitoring wells with a maximum depth of 15 feet were installed on-site. Samples collected on August 15, 2011 revealed PCE at concentrations exceeding the GWQS in three of the four wells at concentrations ranging from 11 µg/L to 190,000 µg/L.

73. On December 28, 2011, ITCA sampled three newly installed on-site monitoring wells. Analysis of the samples revealed PCE at concentrations up to 1,800 µg/L in one of the wells.

74. In December 2011, ITCA conducted additional soil sampling and detected PCE in one of the samples at a concentration exceeding DEP's default Impact to Ground Water Soil Screening Level of 0.005 mg/kg.

75. On May 11, 2012, two monitoring wells were abandoned and a replacement well was installed on October 11, 2012.

76. In June 2012, ITCA submitted a Preliminary Assessment/Site Investigation Report, Remedial Investigation Report, and Remedial Action Workplan to DEP. The report summarized the site investigation activities to date and detailed ITCA's proposed actions to be taken to remediate the GKM Site, including removal of the PCE contaminated soil and groundwater associated

with the floor drain collection system and ongoing chemical oxidation treatment of the contaminated groundwater.

77. On April 5, 2012, ITCA submitted a Chemical Oxidation Feasibility Study Permit-by-Rule Request to treat the soil and groundwater contamination at the GKM Site.

78. On July 16, 2012, DEP issued the requested permit to conduct chemical oxidation treatment of the soil and groundwater contamination at and emanating from the GKM Site.

79. In September 2012, approximately 583 cubic yards of impacted soils were excavated and removed from the boiler room area.

80. After excavation, clean gravel and two injection sumps were installed, and an activated persulfate compound was injected to begin the treatment of the soil and groundwater contamination.

81. ITCA sampled the monitoring wells six months after injection of the chemical oxidizers. The sampling results revealed a PCE concentration of 97,000 µg/L.

82. In February 2013, ITCA conducted indoor air and sub-slab soil gas sampling within the larger on-site building at the GKM Site.

83. The sampling revealed concentrations of PCE above DEP's Non-Residential Soil Gas Screening Level in four of the six sub-slab samples collected. The highest concentration was detected in the sample collected in the area of the floor drain collection

system area at 285,000  $\mu\text{g}/\text{m}^3$ . All of the indoor air samples collected exhibited detectable concentrations of PCE; however, none exceeded the 47  $\mu\text{g}/\text{m}^3$  Non-Residential Indoor Air Screening Level.

84. On April 24, 2014, ITCA conducted confirmatory indoor air sampling within the larger on-site building at the GKM Site. Analysis of the samples revealed PCE at a concentration of 200  $\mu\text{g}/\text{m}^3$ , exceeding DEP's Non-Residential Indoor Air Screening Level, confirming a complete vapor intrusion pathway affecting the indoor air within the building.

85. In a report dated August 2014, ITCA submitted a Vapor Concern Mitigation Plan for the GKM Site to DEP. In the report, ITCA proposed to install an active sub-surface depressurization system to mitigate the vapor intrusion contamination affecting the indoor air within the on-site building.

86. In a March 9, 2015 e-mail, First Environment advised DEP that the sub-surface depressurization system would be installed in April 2015.

87. On February 15, 2017, ITCA submitted a request pursuant to N.J.A.C. 7:26C-3.5 to lengthen the regulatory timeframe for the Remedial Investigation Report for the entire site from March 19, 2017 to March 19, 2020, due to the presence of groundwater contamination at the GKM Site.

88. On August 22, 2019, pursuant to N.J.A.C. 7:26C-3.2(b), ITCA requested an extension of the regulatory timeframe for the Remedial Investigation Report from March 19, 2020 to March 19, 2022, to obtain access to offsite properties for sampling and based on ground water consolidated aquifer and groundwater contaminant plumes.

89. DEP has expended and will continue to expend public funds to address the Prospect Street Ground Water Contamination Area.

**COUNT I**

**Spill Act**

90. DEP and the Administrator repeat and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

91. PCE, TCE, and cis-1,2-DCE are "hazardous substances" as defined in N.J.S.A. 58:10-23.11b.

92. Any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, 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.(1), except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here.

93. The Administrator has approved, and may approve in the future, appropriations from the Spill Fund for the remediation of the Prospect Street Ground Water Contamination Area.

94. The costs DEP and the Administrator have incurred, and will incur, for the remediation of the Prospect Street Ground Water Contamination Area are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable pursuant to N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).

95. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

96. As the operator of the GKM Site at the time hazardous substances were discharged thereon, GKM is a discharger or a person in any way responsible for hazardous substances, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs that DEP and the Administrator have incurred, and will incur, related to the discharge of hazardous substances at the GKM Site, including the cleanup and removal costs that DEP and the Administrator have incurred, and will incur, related to the Prospect Street Ground Water Contamination Area. N.J.S.A. 58:10-23.11g.c.(1).

97. As a purchaser of the previously contaminated GKM Site that knew or should have known about the contamination at the time of its acquisition, ITCA is a person in any way responsible for hazardous substances, and is therefore liable, jointly and

severally, without regard to fault, for all cleanup and removal costs that DEP and the Administrator have incurred, and will incur, related to the GKM Contaminated Site, including the cleanup and removal costs that DEP and the Administrator have incurred, and will incur, related to the Prospect Street Ground Water Contamination Area. N.J.S.A. 58:10-23.11g.c.(1).

98. XYZ Corporations 1-10, are dischargers and/or persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs DEP and the Administrator have incurred, and will incur, and/or are parties that bear financial responsibility related to the GKM Contaminated Site, including the cleanup and removal costs DEP and the Administrator have incurred, and will incur, related to the Prospect Street Ground Water Contamination Area. N.J.S.A. 58:10-23.11g.c.(1).

99. John and/or Jane Does 1-10 are dischargers and/or persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs DEP and the Administrator have incurred, and will incur, related to the GKM Contaminated Site, including the cleanup and removal costs DEP and the Administrator have incurred, and will incur,

related to the Prospect Street Ground Water Contamination Area.  
N.J.S.A. 58:10-23.11g.c.(1).

100. 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 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 DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

101. The Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund pursuant to N.J.S.A. 58:10-23.11q.

**WHEREFORE**, DEP and the Administrator demand judgment in their favor:

- a. Ordering GKM, ITCA, XYZ Corporations 1-10, and John and/or Jane Does 1-10, jointly and severally, without regard to fault, to reimburse DEP and the Administrator for all cleanup and removal costs DEP and the Administrator have incurred related to the GKM Contaminated Site, including the cleanup and removal costs DEP and the Administrator have incurred related to the Prospect Street Ground Water Contamination Area, with applicable interest;

- b. Finding GKM, ITCA, XYZ Corporations 1-10, and John and/or Jane Does 1-10, liable, jointly and severally, without regard to fault, for all cleanup and removal costs DEP and the Administrator will incur related to the GKM Contaminated Site, including the cleanup and removal costs DEP and the Administrator will incur related to the Prospect Street Ground Water Contamination Area;
- c. Awarding DEP and the Administrator their costs and fees incurred in this action;
- d. Awarding DEP and the Administrator any other relief this Court deems appropriate; and
- e. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the GKM Contaminated Site.

**COUNT II**

**Water Pollution Control Act**

102. The Commissioner repeats and incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

103. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6.d. 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 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. §§1251 to 1387. N.J.S.A. 58:10A-6.a.

104. 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).

105. PCE, TCE, and cis-1,2-DCE are "pollutants" as defined in N.J.S.A. 58:10A-3(u).

106. Defendants are "persons" within the meaning of N.J.S.A. 58:10A-3.

107. GKM discharged pollutants at the GKM Site; these discharges were neither permitted under N.J.S.A. 58:10A-6.a., nor exempted under N.J.S.A. 58:10A-6.d. or N.J.S.A. 58:10A-6.p.

108. The pollutants discharged at the GKM Site migrated off-site and contaminated the potable wells within the Prospect Street Ground Water Contamination Area.

109. The Commissioner has incurred, and will incur, costs and damages in relation to the Prospect Street Ground Water Contamination Area because of the discharges of pollutants at the GKM Site.

110. The costs and damages the Commissioner has incurred, and will incur, for the Prospect Street Ground Water Contamination

Area are recoverable within the meaning of N.J.S.A. 58:10A-10.c.(2)-(4).

111. 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); the reasonable costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10.c.(2); the reasonable costs 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); 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).

**WHEREFORE**, the Commissioner demands judgment in her favor:

- a. Entering a Permanent Injunction against GKM, XYZ, Corporations 1-10, and John and/or Jane Does 1-10, without regard to fault, requiring them to remove,

correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge(s) of pollutants at the GKM Site;

- b. Entering an order requiring defendants GKM, XYZ Corporations 1-10, and John and/or Jane Does 1-10, without regard to fault, to pay DEP its reasonable costs incurred for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Finding GKM, XYZ Corporations 1-10, and John and/or Jane Does 1-10 liable, without regard to fault, for all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- d. Entering an order requiring GKM, XYZ Corporations 1-10, and John and/or Jane Does 1-10, without regard to fault, to pay DEP all reasonable costs it incurred removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the GKM Site;

- e. Finding GKM, XYZ Corporations 1-10, and John and/or Jane Does 1-10 liable, without regard to fault, for all reasonable costs DEP will incur removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the GKM Site that impacted the potable wells within the Prospect Street Ground Water Contamination Area;
- f. Entering an order requiring GKM, XYZ Corporations 1-10, and John and/or Jane Does 1-10, without regard to fault, to pay 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 these Defendants have enjoyed as a result of a competitive market advantage, or any other benefit they have received from having violated the WPCA;
- g. Finding GKM, XYZ Corporations 1-10, and John and/or Jane Does 1-10 liable, without regard to fault, 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 to them as a result of a competitive market advantage these Defendants have enjoyed, or any other

benefit that will accrue to them as a result of having violated the WPCA;

- h. Awarding the Commissioner her costs and fees in this action;
- i. Awarding the Commissioner such other relief as this Court deems appropriate; and
- j. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the GKM Contaminated Site.

### COUNT III

#### **Unjust Enrichment**

112. The Plaintiffs repeat and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

113. GKM and ITCA have failed to reimburse DEP for its cleanup and removal costs related to the Prospect Street Ground Water Contamination Area.

114. Plaintiffs have used and will continue to use public funds to address the potable well contamination within the Prospect Street Ground Water Contamination Area.

115. Plaintiffs' expenditure of public funds for the remediation of the Prospect Street Ground Water Contamination

Area, which was and is these Defendants' obligation to fully fund and/or perform, has unjustly enriched GKM and ITCA.

116. The Defendants have not reimbursed Plaintiffs for the funds Plaintiffs have spent to conduct the remediation of the potable well contamination within the Prospect Street Ground Water Contamination Area.

**WHEREFORE**, Plaintiffs demand judgment in their favor:

- a. Finding that GKM, ITCA, XYZ Corporations 1-10, and John and/or Jane Does 1-10 have been unjustly enriched by Plaintiffs' expenditure of public funds to perform the remediation of the potable well contamination within the Prospect Street Ground Water Contamination Area;
- b. Ordering GKM, ITCA, XYZ Corporations 1-10, and John and/or Jane Does 1-10 to reimburse Plaintiffs for the costs Plaintiffs have incurred, and will incur, to perform the remediation of the potable well contamination within the Prospect Street Ground Water Contamination Area, with applicable interest;
- c. Finding GKM, ITCA, XYZ Corporations 1-10, and John and/or Jane Does 1-10 liable for all other compensatory and consequential damages; and
- d. Awarding the Plaintiffs such other relief as this Court deems appropriate.

- e. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the GKM Contaminated Site.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

Dated: December 18, 2020

By: S/ Buffy L. Wilson  
Buffy L. Wilson  
Deputy Attorney General

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the Court is advised that Buffy L. Wilson, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

**CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES**

The undersigned counsel certifies that the matters in controversy in this action are not currently the subject of any other pending action in any court or arbitration proceeding known to the State at this time, nor is any non-party known to the State 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 matter or non-party later becomes known, 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).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

Dated: December 18, 2020

By: S/ Buffy L. Wilson  
Buffy L. Wilson  
Deputy Attorney General



**CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

Dated: December 18, 2020

By: S/ Buffy L. Wilson  
Buffy L. Wilson  
Deputy Attorney General