

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
R. J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs

By: Lisa J. Morelli
Attorney ID: 039951998
Deputy Attorney General
(609) 376-2945
lisa.morelli@law.njoag.gov

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: HUDSON
COUNTY
DOCKET NO. HUD-C-

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION and	:	
SHAWN LATOURETTE, COMMISSIONER	:	
OF NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	<u>Civil Action</u>
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	COMPLAINT FOR PENALTIES AND
	:	INJUNCTIVE RELIEF
PACE GLASS, INC.; EFSTATHIOS	:	
VALIOTOS, INDIVIDUALLY;	:	
BISHOP-JOHNSTON, LLC; RELIABLE	:	
PAPER RECYCLING, INC.; LEONARD	:	
PIRRELLO, INDIVIDUALLY; 1	:	
CAVEN POINT ROAD ASSOCIATES,	:	
LLC; "XYZ CORPORATIONS" 1-10;	:	
and "JOHN AND/OR JANE DOES" 1-	:	
10,	:	
	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection
("DEP") and Shawn LaTourette, Commissioner of DEP ("Commissioner")
(collectively, "Department"), 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 brought to remedy Defendants' noncompliance with environmental laws and regulations, which continue to expose the Jersey City community to pollution and other environmental and public health hazards.

2. For years, Pace Glass, Inc. ("Pace Glass") and its President, Efstathios Valiotis ("Valiotis") (collectively, "Pace Defendants"), unlawfully imported and stockpiled solid waste consisting of residue laden glass material on two Jersey City properties: one located on Bishop Street and the other located on Caven Point Avenue. The stockpiles, in some cases exceeding 40 feet in height, persist despite numerous enforcement actions taken against Defendants by state, county, and municipal regulators, and notwithstanding residents' concerns regarding noxious odors, dust, and fire hazards arising from the properties.

3. To ameliorate the illegal and noxious conditions at the Caven Point Avenue and Bishop Street properties, the Department seeks to compel Defendants' compliance with the Solid Waste Management Act ("SWMA"), N.J.S.A. 13:1E-1 to -48, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -65, and their implementing regulations, and seeks permanent injunctive relief, damages, fees, and civil penalties.

4. This action also seeks to compel compliance with the Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.24; the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -31; and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), and require the Pace Defendants and defendant Bishop-Johnston, LLC to remediate environmental contamination on their Bishop Street property in Jersey City.

5. The Bishop Street property is operated by the Pace Defendants, and the Caven Point Avenue property is operated by Reliable Paper Recycling, Inc. ("Reliable") and its President, Leonard Pirrello ("Pirrello") (collectively, "Reliable Defendants"). The Reliable Defendants allowed the illegal importation and stockpiling of contaminated glass material on the Caven Point Avenue property in exchange for consideration, in the form of rent payments, from the Pace Defendants. The Caven Point Avenue property contains massive piles of contaminated glass material as high as 40 feet, with over 300,000 cubic yards of solid waste glass material. The Bishop Street property also contains large piles of glass material contaminated with plastic, paper, and food debris.

6. Despite the Department's repeated administrative efforts – including issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") – as well as

efforts by Jersey City and Hudson County officials to compel compliance, neither the Pace Defendants nor the Reliable Defendants have made any effort to remove the massive piles of glass material from the two Jersey City sites.

7. Additionally, historic fill contaminated with arsenic, iron and other heavy metals is present at the Bishop Street property and poses an ongoing threat to public health and the environment.

8. Finally, Defendants have exposed source materials (including glass and glass residuals contaminated with plastic, paper, and food debris) to stormwater discharging to the waters of New Jersey without a New Jersey Pollutant Discharge Elimination System ("NJPDDES") permit for industrial stormwater runoff in violation of the WPCA, N.J.S.A. 58:10A-6.

9. Defendants' unabated stockpiling of solid waste consisting of glass and glass residuals contaminated with plastic, paper, food debris and other waste, and discharge of industrial stormwater runoff continue to jeopardize the environment and public health in the community. As reflected in complaints from nearby residents, the significant amounts of residuals and fine glass particles that have accumulated create dust and odor issues that adversely affect the health and quality of life of the community's residents.

10. The communities surrounding the Caven Point Avenue and Bishop Street properties are have significant low-income and minority populations such that they are considered "overburdened communities" within the meaning of N.J.S.A. 13:1D-158.¹ Historically, across New Jersey, such communities have been disproportionately exposed to high-polluting facilities and to the resultant threats of high levels of air, water, soil, and noise pollution, and accompanying increased negative public health impacts.

11. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health without regard to race, language, or income. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

12. With this action, the Department seeks to compel Defendants to comply with New Jersey's environmental statutes and regulations, to immediately remove and properly dispose of the

¹ "Overburdened community" means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency." N.J.S.A. 13:1D-158. The Caven Point Avenue and Bishop Street properties are located within areas of Jersey City that are listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-150.

stockpiled solid waste on the Caven Point Avenue and Bishop Street properties, to cease the discharge of industrial stormwater runoff without a NJPDES permit, and to pay damages, civil penalties, and the Department's expenses and costs of bringing this suit.

PARTIES

13. DEP is a principal department within the Executive Branch of the State government and is charged with enforcement of the SWMA and the WPCA.

14. The Commissioner is the Commissioner of the DEP, N.J.S.A. 58:10A-3, and is vested by law with various powers and authority, including those conferred by DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19. Shawn LaTourette is the current Commissioner of DEP.

15. DEP and the Commissioner maintain their principal offices at 401 East State Street in Trenton, New Jersey.

16. Defendant Pace Glass owns and operates, or formerly operated, a "Class A" recycling facility located at 88-94 Bishop Street, Jersey City, identified as Block 15402, Lot 6, and at 537-543 Johnston Avenue, Jersey City, identified as Block 15402, Lot 2, and at 545-549 Johnston Avenue, Jersey City, identified as Block 15402, Lot 1, on the Tax Map of Jersey City (these three lots are collectively referred to as the "Bishop Street Site"). The facility recovers and processes, or recovered and processed, post-consumer glass (glass already used once by consumers) that requires

additional screening and processing to recover material for end markets.

17. Pace Glass is a New Jersey corporation. On information and belief, Pace Glass's principal place of business is 31-10 37th Avenue, Suite 500, Long Island City, New York, 11101-2112. Pace Glass may also do, or may have done, business at 73-75 Cornelison Avenue, Jersey City, and 75 Bishop Street, Jersey City.

18. Defendant Valiotis, also known as George Valiotis, is the Chief Executive Officer ("CEO") and President of Pace Glass.

19. Defendant Bishop-Johnston, LLC is a New Jersey limited liability company with a listed business address of 302 Main Street, Paterson, New Jersey, and is the owner of the Bishop Street Site. Upon information and belief, the managing members of Bishop-Johnston, LLC are Michael Mahoney (deceased) and Valiotis.

20. Defendant Reliable owns and operates a "Class A" recycling facility located at 1 Caven Point Avenue, Jersey City, identified as Block 24301, Lot 6, on the Tax Map of Jersey City ("Caven Point Site"). Reliable is a generator of paper, cardboard, plastic, wood, and Styrofoam recyclables.

21. Defendant Pirrello is and was the President and owner of Reliable during all relevant times, and was named individually in DEP's administrative enforcement actions against Reliable and Pace.

22. Defendant 1 Caven Point Road Associates, LLC, is a New Jersey limited liability company and is the current owner of the Caven Point Site. Its listed business address is 1 Caven Point Avenue, Jersey City.

23. 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, or are otherwise related to the named defendants, or are entities who otherwise participated in, or were responsible for, the operation of a solid waste facility on the Bishop Street Site and/or the Caven Point Site without a permit.

24. Defendants "John and/or Jane Does" 1 through 10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are persons who participated in, or were responsible for, the operation of a solid waste facility on the Bishop Street Site and/or the Caven Point Site without a permit.

GENERAL ALLEGATIONS

A. Glass Recycling Process

25. In the United States, recycling is generally through single-stream curbside collection. Single stream means glass is comingled with plastic, newspaper, cardboard, and other types of recyclables.

26. Sorting of these recyclable materials, which often includes non-recyclable trash, happens via a combined manual-plus-automated multistep process at a materials recovery facility ("MRF"). MRFs separate glass from commingled collection system materials and send it to glass processing facilities for further processing.

27. The glass processing facilities use high-speed technology sorters and other technology to remove contaminant materials from the glass, and then sort the glass by color and size.

28. The amount of such contaminant (residual) material varies depending on the technology and cleaning equipment in operation at the MRFs and the curbside collection program. This non-glass residual material generally contains organics (food debris) and other contaminants such as paper and plastic.

29. In addition to residual material, MRFs also generate crushed glass particles known as "fines." Glass fines are often unsuitable for use in manufacturing due to the particles being too small, or contaminated with ceramic, stoneware, pyrex, or plastic. They also have residual amounts of organics and contaminants that limit their use, result in odor and bacterial issues, and generate leachate if exposed to stormwater.

30. The output of the glass recycling process will be different streams of glass separated by color or any combination

of the three main colors - flint (clear), amber (brown), and green - as well as residual material and fines.

31. Sorted and crushed, furnace-ready recycled glass is referred to as cullet, and is an extremely valuable material in the glass container manufacturing process.

32. The residual material, mostly contaminants such as paper, plastic, and organics with a small amount of glass, must be disposed at a landfill. N.J.S.A. 13:1E-9.3, N.J.A.C. 7:26A-1.1(d). Glass fines with organics and contaminants that limit its use also often goes to a landfill.

33. Unprocessed or partially processed glass material from MRFs, including residual and glass fines material has been stockpiled and abandoned at the Caven Point and Bishop Street Sites. Also stockpiled on these sites are small amounts of glass cullet.

B. Pace Glass's and Reliable's Activities at the Caven Point and Bishop Street Sites

34. On information and belief, in 2014 Valiotis, along with other persons, including Michael Mahoney, purchased 100% of the shares of Pace Glass.

35. Pursuant to a 2014 lease agreement, Pace Glass leased a five-acre portion of the Caven Point Site from Reliable for the storage of MRF glass, residuals, and glass fines. On information and belief, the 2014 lease agreement is signed on behalf of

Reliable by defendant Pirrello, who made the decision to lease the property to the Pace Defendants in exchange for payment of monthly rent, which Pirrello benefitted from.

36. Pace Glass and Reliable also entered into a Subcontract Agreement whereby Reliable authorized Pace Glass to accept, store, and process Class A recyclable materials, including post-consumer glass, at the Caven Point Site.

37. Valiotis told DEP inspectors investigating the Caven Point Site in 2014 that this was a temporary arrangement, and that all material would be transferred, stored, and processed at the Bishop Street Site once it began operating.

38. Bishop-Johnston, LLC acquired the Bishop Street Site on June 5, 2014.

39. The Bishop Street Site recycling facility began operating in 2016. The Pace Glass Defendants imported and stockpiled MRF glass material and residuals, and glass fines at the Bishop Street Site, where these materials remain today. There are also small piles of glass cullet at the Bishop Street Site.

40. Despite beginning operations at the Bishop Street Site in 2016, the Pace Glass Defendants continued to use the Caven Point Site to store unprocessed or partially processed MRF materials from the Bishop Street facility. In addition, the MRF glass material, residuals, and glass fines left over from 2014 and 2015 remained at the Caven Point Site.

41. The amount of MRF glass material, residuals, and glass fines at the Caven Point Site is massive: the Department estimates there are over 300,000 cubic yards of material, with some piles exceeding 40 feet in height.

42. In 2016, the Hudson Regional Health Commission received multiple complaints of dust and odors coming from the glass material stockpiles at the Caven Point Site and the Bishop Street Site. In response, the Hudson Regional Health Commission issued Pace Glass Notices of Penalty Assessment on June 3, 2016 and September 29, 2016.

43. DEP inspected the Caven Point Site in October 2018, and observed large piles, estimated at more than 300,000 cubic yards, of residual, not fully processed glass material consisting of crushed glass contaminated with plastic and paper.

44. DEP later issued a Notice of Violation ("NOV") to Pirrello, Reliable, Michael Mahoney, and Pace Glass on March 26, 2019, requiring them to submit a plan within 30 days to remove and dispose of the glass material in the stockpiles on the Caven Point Site, and to cease taking any additional materials to the Caven Point Site.

45. During a subsequent inspection in April 2019 at the Caven Point Site, DEP observed that the stockpiled glass material still had not been removed.

46. On May 8, 2019, Pace Glass responded to DEP's March 26, 2019 NOV stating that the residual material is set for "further processing (refinement) to bring it to its viable market." This statement demonstrates that the material in question is not fully processed and has not been recycled to an end market within a period of less than six months from the time of deposit at the Caven Point Site, as required by the SWMA regulations. N.J.A.C. 7:26A-1.1(d).

47. With regard to the unprocessed or partially processed MRF glass material (post-consumer glass) at the Caven Point Site, Pace Glass maintained that this material is "clean fill" pursuant to N.J.A.C. 7:26A-1.4 and, therefore, does not constitute solid waste. DEP's regulations, however, provide no such exemption for "clean fill" material.

48. On July 3, 2019, the Jersey City Department of Housing, Economic Development & Commerce issued NOVs to Pace Glass, Valiotis, Reliable Group, LLC, and Pirrello for violation of Jersey City zoning laws based on excessive storage of waste and recyclable materials at the Caven Point Site, in violation of the prohibition on any use which produces corrosive, toxic or noxious fumes, odors, dust, waste or other objectionable features to as to be detrimental to the public health, safety or general welfare.

49. On July 30, 2019, Pace Glass, Valiotis, Michael Mahoney, Reliable Paper, Pirrello, and 1 Caven Point Associates, LLC, were

arraigned on charges brought against them by Jersey City for over 20 summonses for waste-related city code violations, State health code violations, and nuisance due to improper waste storage at the Caven Point Site.

50. On November 12, 2019, inspectors from the Hudson Regional Health Commission confirmed the solid waste material was still on the Caven Point Site, and the volume of the material had not been reduced.

51. Michael Mahoney, the Vice President of Pace Glass, passed away suddenly on February 25, 2020.

52. Valiotis, as President and CEO of Pace Glass, actively participated in the operations of Pace Glass, including the operation of illegal solid waste facilities at the Caven Point and Bishop Street Sites. Valiotis controlled Pace Glass and was in a position to prevent it from importing and stockpiling the solid waste material or to attempt to obtain a SWF Permit.

53. On information and belief, around June 2020, Pace Glass ceased day-to-day operations and laid off all of its employees.

54. On August 26, 2020, DEP issued an AONOCAPA naming Pace Glass, Valiotis, Reliable, and Pirrello as Respondents.

55. The AONOCAPA stated that approximately 300,000 or more cubic yards of residual, not fully processed, post-consumer material consisting of crushed glass and pieces of plastic and paper had been left on the Caven Point Site beginning in 2014,

well beyond the six-month limit for storing such materials. Therefore, the materials constitute solid waste as defined by the SWMA Rules, N.J.A.C. 7:26-1.6, that must be managed in accordance with the SWMA and SWMA regulations.

56. The AONOCAPA further stated that the storage of this solid waste at the Caven Point Site continues, and constitutes operation of a solid waste facility without a permit in violation of the SWMA Rules, N.J.A.C. 7:26-2.8(f). It also generates malodors (consistent with food residues) and dust (consistent with fine particles).

57. The AONOCAPA assessed a civil administrative penalty of \$50,000, and ordered Respondents Reliable, Pirrello, Pace Glass, and Valiotis to submit a corrective action plan to remove and properly recycle or dispose of the glass and glass-derived material at the Caven Point Site within 30 days.

58. Defendants Reliable, Pirrello, Pace Glass, and Valiotis failed to comply with the AONOCAPA.

59. Defendants filed a timely hearing request with the Department's Office of Legal Affairs ("OLA"). Those requests remain pending in the OLA.

60. As of October 1, 2021, none of the glass material has been removed from the Caven Point Site.

61. On information and belief, beginning in May 2021, several fires broke out on the waste piles at the Caven Point Site

due to the warmer weather. Additionally, on information and belief, the piles are not far from an adjoining property that houses a film soundstage, which, on a windy day, could be at risk for fire damage if the waste is not removed expeditiously. Further, on information and belief, firetrucks were called to Caven Point Site over the weekend of May 15 and 16, 2021, and there were fires at the Site during the week of May 10, 2021.

62. On June 15, 2021, Defendants Pace Glass and Valiotis entered into an in-court settlement with the Jersey City Prosecutor's Office, whereby they agreed to pay a \$10,000 fine. Jersey City agreed to dismiss the June 2019 municipal charges against Reliable and Pirrello.

C. Site Contamination Issues due to Historic Fill at the Bishop Street Site

63. In 2015, during construction of a new building foundation at the Bishop Street Site, two underground storage tanks ("USTs") were discovered.

64. Defendant Pace Glass retained a Licensed Site Remediation Professional ("LSRP") to oversee removal of the tanks, and the LSRP eventually submitted a UST Closure and Site Investigation Report and a Response Action Outcome ("RAO") report to DEP.

65. During these activities, the LSRP identified historic fill at the site containing elevated concentrations of arsenic, iron, manganese, and sodium, as well as other metals.

66. The LSRP notified Pace Glass of this historic fill as part of the December 18, 2018 UST Closure and Site Investigation Report, and the November 19, 2019 RAO. The LSRP advised Pace Glass that the RAO does not include the remediation of contamination in the form of historic fill, which must be remediated in accordance with N.J.A.C. 7:26E, Technical Requirements for Site Remediation.

67. The Department has assigned the Bishop Street Site Site Remediation and Waste Management Program Interest ("PI") number 694325.

68. A Remedial Investigation Report ("RIR") for the contaminated historic fill was due June 2, 2021, but was not submitted. Annual remediation fees of \$3,600 are also currently due.

D. Stormwater Issues at the Caven Point and Bishop Street Sites

69. Pace Glass's operations at the Bishop Street and Caven Point Sites fall under Standard Industrial Code ("SIC") 5093, Scrap and Waste Materials, Establishments primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials.

70. Pace Glass therefore falls within the category of facilities considered to be engaging in industrial activity for the purposes of the NJPDES Permit regulations for stormwater discharges, and was required to obtain a NJPDES Permit for such discharges at the Bishop Street and Caven Point Sites unless all of the stormwater from areas related to processing or materials storage is discharged to a combined sewer or sanitary system which has a NJPDES Permit. N.J.A.C. 7:14A-24.7(a); N.J.A.C. 7:14A-24.2(a)(2).

71. The Reliable Defendants, by virtue of their control of the Caven Point Site, also were required to obtain a NJPDES Permit for stormwater discharges at that site.

72. Defendants have failed to eliminate the exposure of solid waste materials, including the glass and glass residual stockpiles and associated food and plastic debris, to stormwater discharges, and otherwise failed to comply with the WPCA, as detailed herein. Following stormwater events, pollutants are swept off of the contaminated stockpiles and into local stormwater inlets.

73. At no point in time have any of the Defendants obtained a NJPDES permit for either the Bishop Street Site or the Caven Point Site, in violation of the WPCA.

COUNT I

**Violation of the SWMA by the Pace Defendants and
Bishop-Johnston, LLC**

74. The Department incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

75. The SWMA prohibits any "person" from operating a solid waste facility without a permit or authorization from DEP. N.J.S.A. 13:1E-5; N.J.A.C. 7:26-2.8(e)-(f).

76. "Person" is defined to include (among others) individuals, companies, corporations, and corporate officials. N.J.A.C. 7:26-1.4.

77. A solid waste facility is "any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, recycling, recovering or disposing of solid waste[.]" N.J.A.C. 7:26-1.6.

78. "Solid Waste" is defined to include "garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for source separated recyclable materials" N.J.S.A. 13:1E-3. See also N.J.A.C. 7:26-1.6 (regulatory definition of solid waste).

79. The Pace Defendants have imported to the Caven Point and Bishop Street Sites material that consists of crushed glass,

residuals, glass fines, and associated food and plastic debris. This material meets the definition of solid waste under the SWMA and the SWMA Rules. N.J.S.A. 13:1E-3; N.J.A.C. 7:26-1.6.

80. The crushed glass, residuals, glass fines, and associated food and plastic debris do not constitute source separated recyclable material because the SWMA rules, subject to certain exceptions not applicable here, expressly provide that "unprocessed recyclable materials, post-consumer materials, and used or abandoned materials" that are deposited on lands of the State "for any period exceeding six months, including by stockpiling, staging or storing, are solid waste that shall be managed in accordance with the Solid Waste rules" N.J.A.C. 7:26A-1.1(d). The subject material has been stockpiled at the Caven Point Site since at least 2014, and at the Bishop Street Site since at least 2016.

81. The SWMA Rules provide that "[n]o person shall begin construction or operation of a solid waste facility without obtaining a SWF [solid waste facility] permit" subject to certain exemptions not applicable here. N.J.A.C. 7:26-2.8(f).

82. Defendants Pace Glass, Valiotos, and Bishop-Johnston, LLC are "persons" under the SWMA rules.

83. The Pace Defendants do not have, nor have they sought to attain, a SWF permit for either the Caven Point Site or the Bishop

Street Site, nor does Defendant Bishop-Johnston, LLC have a SWF permit for the Bishop Street Site.

84. Consequently, the Pace Defendants and Defendant Bishop-Johnston, LLC have operated and are operating a solid waste facility without a SWF permit, in violation of the SWMA and SWMA Rules. N.J.A.C. 7:26-2.8(f); N.J.S.A. 13:1E-9.

85. The SWMA provides DEP with the authority to institute an action in the Superior Court for temporary and permanent relief enjoining conduct in violation of the SWMA or SWMA Rules. N.J.S.A. 13:1E-9(d).

86. The SWMA provides DEP with the authority to seek civil penalties not to exceed \$50,000 per day in Superior Court for any violation of the SWMA or SWMA Rules. N.J.S.A. 13:1E-9(f).

WHEREFORE, the Department demands judgment in its favor:

a. Finding the Pace Defendants in violation of the SWMA for operating a solid waste facility at the Bishop Street and Caven Point Sites without a SWF permit, and finding Defendant Bishop-Johnston, LLC in violation of the SWMA for operating a solid waste facility at the Bishop Street Site without a SWF permit;

b. Ordering the Pace Defendants to immediately cease importing and processing solid waste at the Caven Point and Bishop Street Sites without a SWF permit, and ordering Defendant Bishop-Johnston, LLC to immediately cease importing

and processing solid waste at the Bishop Street Site without a SWF permit;

c. Ordering the Pace Defendants to submit to the Department, within 15 days, a plan to properly remove all solid waste on the Caven Point and Bishop Street Sites, and to dispose of the solid waste at a DEP-approved solid waste facility within Hudson County unless they obtain approval from the Hudson County Improvement Authority to dispose of the waste outside Hudson County; and ordering Defendant Bishop-Johnston, LLC to take the foregoing actions with respect to the Bishop Street Site;

d. Directing Defendants Pace Glass, Valiotos, and Bishop-Johnston, LLC to commence implementation of the plan within 10 days of the Department's approval of the plan;

e. Requiring Defendants Pace Glass, Valiotos, and Bishop-Johnston, LLC to pay penalties pursuant to N.J.S.A. 13:1E-9(f) for each day of their continuing failure to comply with the requirements of the SWMA, in an amount to be determined by the Court;

f. Requiring Defendants Pace Glass, Valiotos, and Bishop-Johnston, LLC to pay the costs of any investigation, inspection, or monitoring survey incurred by the Department which led to the establishment of the SWMA violations set

forth above, and for the reasonable costs of preparing and litigating this action pursuant to N.J.S.A. 13:1E-9(d)2);

g. Requiring Defendants Pace Glass, Valiotos, and Bishop-Johnston, LLC to pay any costs incurred by the Department in removing, correcting, or terminating the adverse effects upon water and air quality resulting from violations of the SWMA and its implementing regulations pursuant to N.J.S.A. 13:1E-9(d) (3);

h. Requiring Defendants Pace Glass, Valiotos, and Bishop-Johnston, LLC to pay compensatory damages for any loss or destruction of wildlife, fish, or aquatic life, and for any other actual damages caused by any violation of the SWMA and its implementing regulations pursuant to N.J.S.A. 13:1E-9(d) (4); and

i. Awarding such other relief as the Court deems just, equitable, and appropriate.

COUNT II

Violation of the SWMA by the Reliable Defendants

87. The Department incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

88. The SWMA prohibits any "person" from operating a solid waste facility without a permit or authorization from DEP. N.J.S.A. 13:1E-5; N.J.A.C. 7:26-2.8(e)-(f).

89. "Person" is defined to include (among others) individuals, companies, corporations, and corporate officials. N.J.A.C. 7:26-1.4.

90. A solid waste facility is "any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, recycling, recovering or disposing of solid waste[.]" N.J.A.C. 7:26-1.6.

91. "Solid Waste" is defined to include "garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for source separated recyclable materials" N.J.S.A. 13:1E-3. See also N.J.A.C. 7:26-1.6 (regulatory definition of solid waste).

92. Pursuant to a lease and subcontract agreement, the Reliable Defendants knowingly allowed the Pace Defendants to import and stockpile material consisting of crushed glass, residuals, glass fines, and associated food and plastic debris to the Caven Point Site, where it remains today. This material meets the definition of solid waste under the SWMA and the SWMA Rules. N.J.S.A. 13:1E-3; N.J.A.C. 7:26-1.6.

93. The crushed glass, residuals, glass fines, and associated food and plastic debris do not constitute source separated recyclable material because the SWMA rules, subject to

certain exceptions not applicable here, expressly provide that "unprocessed recyclable materials, post-consumer materials, and used or abandoned materials" that are deposited on lands of the State "for any period exceeding six months, including by stockpiling, staging or storing, are solid waste that shall be managed in accordance with the Solid Waste rules" N.J.A.C. 7:26A-1.1(d). The subject material has been stockpiled at the Caven Point Site since at least 2014.

94. The SWMA Rules provide that "[n]o person shall begin construction or operation of a solid waste facility without obtaining a SWF [solid waste facility] permit" subject to certain exceptions not present here. N.J.A.C. 7:26-2.8(f).

95. The Reliable Defendants do not have, nor have they sought to attain, a SWF permit for the Caven Point Site.

96. Consequently, the Reliable Defendants have operated and are operating a solid waste facility without a SWF permit, in violation of the SWMA and SWMA Rules. N.J.A.C. 7:26-2.8(f); N.J.S.A. 13:1E-9.

97. The SWMA provides DEP with the authority to institute an action in the Superior Court for temporary and permanent relief enjoining conduct in violation of the SWMA or SWMA Rules. N.J.S.A. 13:1E-9(d).

98. The SWMA provides DEP with the authority to seek civil penalties not to exceed \$50,000 per day in Superior Court for any violation of the SWMA or SWMA Rules. N.J.S.A. 13:1E-9(f).

WHEREFORE, the Department demands judgment in its favor:

- a. Finding the Reliable Defendants in violation of the SWMA for operating a solid waste facility without a SWF permit;
- b. Ordering the Reliable Defendants to immediately cease any importation and processing of solid waste at the Caven Point Site without a SWF permit;
- c. Ordering the Reliable Defendants to submit to the Department, within 15 days, a plan to properly remove all solid waste on the Caven Point Site and dispose of the solid waste at a DEP-approved solid waste facility within Hudson County unless they obtain approval from the Hudson County Improvement Authority to dispose of the waste outside Hudson County;
- d. Directing the Reliable Defendants to commence implementation of the plan within 10 days of the Department's approval of the plan;
- e. Requiring the Reliable Defendants to pay penalties pursuant to N.J.S.A. 13:1E-9(f) for each day of their continuing failure to comply with the requirements of the SWMA, in an amount to be determined by the Court;

f. Requiring the Reliable Defendants to pay the costs of any investigation, inspection, or monitoring survey incurred by the Department which led to the establishment of the SWMA violations set forth above, and for the reasonable costs of preparing and litigating this action pursuant to N.J.S.A. 13:1E-9(d)2);

g. Requiring the Reliable Defendants to pay any costs incurred by the Department in removing, correcting, or terminating the adverse effects upon water and air quality resulting from violations of the SWMA and its implementing regulations pursuant to N.J.S.A. 13:1E-9(d) (3);

h. Requiring the Reliable Defendants to pay compensatory damages for any loss or destruction of wildlife, fish, or aquatic life, and for any other actual damages caused by any violation of the SWMA and its implementing regulations pursuant to N.J.S.A. 13:1E-9(d) (4); and

i. Awarding such other relief as the Court deems just, equitable, and appropriate.

COUNT III

**Violation of the WPCA by the Pace Defendants and
Bishop-Johnston, LLC**

99. The Department incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

100. Pace Glass's operations at both the Bishop Street and Caven Point Sites fall under Standard Industrial Classification ("SIC") 5093, Scrap and Waste Materials, Establishments primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials.

101. Pace Glass accordingly falls within the category of facilities considered to be engaging in industrial activity for the purposes of the NJPDES Permit regulations for stormwater discharges. 40 C.F.R. 122.26(b)(14)(vi). Therefore, a NJPDES Permit was required for such discharges at the Bishop Street and Caven Point Sites unless all of the stormwater from areas related to processing or materials storage is discharged to a combined sewer or sanitary system which has a NJPDES Permit. N.J.A.C. 7:14A-24.7(a); N.J.A.C. 7:14A-24.2(a)(2).

102. On information and belief, not all of the stormwater from areas related to processing or materials storage at the Bishop Street or Caven Point Sites is discharged to a combined sewer or sanitary system which has a NJPDES Permit.

103. It is unlawful for any "person" to discharge any pollutant except in conformity with a valid NJPDES permit issued by DEP, as stated in the NJPDES rules promulgated under the WPCA. N.J.S.A. 58:10A-6(a); N.J.A.C. 7:14A-2.1(d).

104. "Person" is defined to include (among others) individuals, corporations, firms, and any responsible corporate officials. N.J.S.A. 58:10A-3; N.J.A.C. 7:14A-1.2.

105. A "pollutant" is "any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State." N.J.S.A. 58:10A-3(n). Pollutant includes both hazardous and nonhazardous pollutants.

106. Discharge "means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant into the waters of the State. . . . Discharge includes release of any pollutant into a municipal treatment works." N.J.S.A. 58:10A-3(e).

107. The Pace Defendants and Defendant Bishop-Johnston, LLC are each "persons" under the WPCA and its implementing regulations. N.J.S.A. 58:10A-3; N.J.A.C. 7:14A-1.2.

108. The Pace Defendants and Defendant Bishop-Johnston, LLC have never applied for or obtained a NJPDES permit for their operations at the Caven Point or Bishop Street Sites.

109. The Pace Defendants and Defendant Bishop-Johnston, LLC have failed to eliminate the exposure of solid waste materials, including the glass and glass residual stockpiles and associated food and plastic debris, to stormwater discharges and otherwise failed to comply with the WPCA, as detailed herein. Following stormwater events, pollutants are swept off of the contaminated stockpiles and into local stormwater inlets.

110. Any costs and damages the Commissioner will incur because of the discharge of pollutants at either the Bishop Street or Caven Point Sites are recoverable under the WPCA, N.J.S.A. 58:10A-10(c)(2)-(4).

111. Any person who violates the WPCA shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute a separate violation the WPCA. N.J.S.A. 58:10A-10(e).

112. Pursuant to the WPCA, the Commissioner may seek injunctive relief, N.J.S.A. 58:10A-10c(1); 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); 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); compensatory damages for any loss or destruction of wildlife, fish, or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge, 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).

WHEREFORE, the Department demands judgment in its favor:

a. Ordering the Pace Defendants and Defendant Bishop-Johnston, LLC to remove, correct, and/or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants, by taking actions including but not limited to, storing all glass materials, residuals, and glass fines in a manner that prevents any exposure to stormwater;

b. Ordering the Pace Defendants and Defendant Bishop-Johnston, LLC to reimburse the Department's 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;

- c. Ordering the Pace Defendants and Defendant Bishop-Johnston, LLC to reimburse all reasonable costs that will be incurred by the Department for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violations, including the costs of preparing and litigating the case;
- d. Ordering the Pace Defendants and Defendant Bishop-Johnston, LLC to reimburse all reasonable costs that may be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Caven Point and Bishop Street Sites;
- e. Awarding the Department its costs and fees in this action;
- f. Ordering the Pace Defendants and Defendant Bishop-Johnston, LLC to pay a civil penalty pursuant to the WPCA, N.J.S.A. 58:10A-10(e);
- g. Awarding the Department such other relief as this Court deems just, equitable, and appropriate; and
- h. Reserving Plaintiffs' rights to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Bishop Street Site.

COUNT IV

Violation of the WPCA by the Reliable Defendants

113. The Department incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

114. Pace Glass's operations at the Caven Point Site fall under SIC 5093, Scrap and Waste Materials, Establishments primarily engaged in assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials.

115. Pace Glass's operations accordingly fall within the category of facilities considered to be engaging in industrial activity for the purposes of the NJPDES Permit regulations for stormwater discharges. 40 C.F.R. 122.26(b)(14)(vi). Therefore, a NJPDES Permit was required for such discharges at the Caven Point Site unless all of the stormwater from areas related to processing or materials storage is discharged to a combined sewer or sanitary system which has a NJPDES Permit. N.J.A.C. 7:14A-24.7(a); N.J.A.C. 7:14A-24.2(a)(2).

116. On information and belief, not all of the stormwater from areas related to processing or materials storage at the Caven Point Site is discharged to a combined sewer or sanitary system which has a NJPDES Permit.

117. The Reliable Defendants control the property identified as the Caven Point Site. The Reliable Defendants entered into a lease agreement and subcontract agreement with the Pace Defendants

allowing the latter to store the piles of glass material consisting of residuals and glass fines, and a small amount of glass cullet, at the Caven Point Site. In return, the Reliable Defendants received monetary consideration. The Reliable Defendants also control the conveyance systems on the Caven Point Site for managing and discharging stormwater.

118. It is unlawful for any "person" to discharge any pollutant except in conformity with a valid NJPDES permit issued by DEP, as stated in the NJPDES rules promulgated under the WPCA. N.J.S.A. 58:10A-6(a); N.J.A.C. 7:14A-2.1(d).

119. "Person" is defined to include (among others) individuals, corporations, firms, and any responsible corporate officials. N.J.S.A. 58:10A-3; N.J.A.C. 7:14A-1.2.

120. A "pollutant" is "any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State." N.J.S.A. 58:10A-3(n). Pollutant includes both hazardous and nonhazardous pollutants

121. Discharge "means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant

into the waters of the State. Discharge includes release of any pollutant into a municipal treatment works." N.J.S.A. 58:10A-3(e).

122. "Discharger" means any person, corporation, municipality, sewerage authority or other entity, who causes or allows any discharge. N.J.A.C. 7:14A-1.2.

123. The Reliable Defendants are "persons" under the WPCA and its implementing regulations. N.J.S.A. 58:10A-3; N.J.A.C. 7:14A-1.2.

124. The WPCA does not distinguish between those who add and those who convey what is added by others. Therefore, the Reliable Defendants are liable under the WPCA for unlawful stormwater discharges that occurred at the Caven Point Site.

125. The Reliable Defendants have never applied for or obtained a NJPDES permit for operations at the Caven Point Site.

126. The Reliable Defendants have failed to eliminate the exposure of solid waste materials, including the glass and glass residual stockpiles and associated food and plastic debris, to stormwater discharges and otherwise failed to comply with the WPCA, as detailed herein. Following stormwater events, pollutants are swept off of the contaminated stockpiles and into local stormwater inlets.

127. Any costs and damages the Commissioner will incur because of the discharge of pollutants at the Caven Point Site are recoverable under the WPCA, N.J.S.A. 58:10A-10(c)(2)-(4).

128. Any person who violates the WPCA shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute a separate violation the WPCA. N.J.S.A. 58:10A-10(e).

129. Pursuant to the WPCA, the Commissioner may seek injunctive relief, N.J.S.A. 58:10A-10c(1); 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); 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); compensatory damages for any loss or destruction of wildlife, fish, or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge, 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).

WHEREFORE, the Department demands judgment in its favor:

- a. Ordering the Reliable Defendants to remove, correct, and/or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants, by taking actions including but not limited to, storing all glass materials, residuals, and glass fines in a manner that prevents any exposure to stormwater;
- b. Ordering the Reliable Defendants to reimburse the Department's 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;
- c. Ordering the Reliable Defendants to reimburse all reasonable costs that will be incurred by the Department for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violations, including the costs of preparing and litigating the case;
- d. Ordering the Reliable Defendants to reimburse all reasonable costs that may be incurred for removing, correcting, or terminating the adverse effects upon water

quality resulting from any unauthorized discharge of pollutants at the Site;

e. Awarding the Department its costs and fees in this action;

f. Ordering the Reliable Defendants to pay a civil penalty pursuant to the WPCA, N.J.S.A. 58:10A-10(e);

g. Awarding the Department such other relief as this Court deems just, equitable, and appropriate; and

h. Reserving Plaintiffs' rights to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Bishop Street Site.

COUNT V

Violation of the Spill Act, the Brownfield Act, and the SRRA by the Pace Defendants and defendant Bishop-Johnston, LLC

130. The Department incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

131. The above-referenced contaminated historic fill on the Bishop Street Site has not been remediated and its presence is prohibited by, and in violation of, the Spill Act. N.J.S.A. 58:10-23.11.c.

132. The Pace Defendants and Defendant Bishop-Johnston, LLC are "persons" within the meaning of the Spill Act. N.J.S.A. 58:10-23.11b.

133. The strict liability provision of the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), provides in pertinent part:

[A]ny person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c. 141 (C:58:10-23.11f).

134. The Pace Defendants and Defendant Bishop-Johnston, LLC are dischargers or persons in any way responsible for the hazardous substances discharged on the Bishop Street Site as a result of the presence of contaminated historic fill within the meaning of N.J.S.A. 58:10-23.11g.c.(1). As such, they are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Spill Fund to remediate the Bishop Street Site.

135. Furthermore, N.J.S.A. 58:10-23.11g.c.(3) of the Spill Act provides, in part:

In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to

fault, for all cleanup and removal costs no matter by whom incurred.

136. Defendant Bishop-Johnston, LLC acquired the Bishop Street Site after September 14, 1993, and as a purchaser of previously contaminated property, knew or should have known that hazardous substances had been discharged on the Bishop Street Site prior to its acquisition of the property. Therefore, Bishop-Johnston, LLC is strictly liable, jointly and severally, without regard to fault under N.J.S.A. 58:10-23.11g.c.(3) for all cleanup and removal costs incurred by the Department and the Spill Fund to remediate the hazardous substances discharged on the property as a result of the historic fill.

137. Under N.J.S.A. 58:10-23.11u of the Spill Act, the Department may bring a civil action in the Superior Court against any person who has violated the Spill Act, or any rule, regulation, plan, information request, access request, order, or directive promulgated or issued pursuant thereto:

a. For injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);

b. For the costs incurred for any investigation, cleanup or removal, and for the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2);

c. For any other related costs incurred by the Department under the Spill Act; and

d. For the assessment of civil penalties for violations of the Spill Act, N.J.S.A. 58:10-23.11u.d.

138. Effective January 6, 1998, the Legislature enacted the Brownfield Act, N.J.S.A. 58:10B-1 to -20.

139. As amended by SRRA (P.L. 2009, c. 60, §30, effective May 7, 2009), the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances:

[T]he discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of subsection c. of section 8 of P.L.1976, c. 141 [the Spill Act] (C.58:10-23.11g) . . . shall remediate the discharge of a hazardous substance.

[N.J.S.A. 58:10B-1.3.a.]

140. The Pace Defendants and Defendant Bishop-Johnston, LLC are "persons" as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

141. As persons liable under the Spill Act, the Pace Defendants and Defendant Bishop-Johnston, LLC, pursuant to N.J.S.A. 58:10B-1.3.a of the Brownfield Act, have affirmative obligations, jointly and severally, to remediate the hazardous

substances discharged on the Bishop Street Site as a result of the historic fill.

142. As persons responsible for conducting the remediation, the Pace Defendants and Defendant Bishop-Johnston, LLC were required to comply with the remediation requirements enumerated in N.J.S.A. 58:10B-1.3.b.

143. The Pace Defendants and Defendant Bishop-Johnston, LLC did not comply with N.J.S.A. 58:10B-1.3.b.(1), (2), (3) and (5): they did not retain an LSRP with respect to the contaminated historic fill, notify the Department of the LSRP's retention, remediate the contamination without the prior approval of the Department, or pay all applicable fees.

144. As provided in N.J.S.A. 58:10B-1.3.b.(8), a person responsible for conducting the remediation must meet the mandatory remediation timeframes and expedited site-specific timeframes established by the Department pursuant to N.J.S.A. 58:10C-28.

145. Pursuant to N.J.S.A. 58:10C-28, the Department promulgated the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS") regulations, N.J.A.C. 7:26C. The ARRCS regulations establish: (a) the mandatory remediation time frame for submitting an initial receptor evaluation, N.J.A.C. 7:26C-3.3(b)2; and (b) the mandatory remediation time frame for completing a remedial investigation of the subject property and

submitting a remedial investigation report, N.J.A.C. 7:26C-3.3(b)5.

146. As persons responsible for conducting the remediation, the Pace Defendants and Defendant Bishop-Johnston, LLC are in violation of N.J.S.A. 58:10B-1.3.c(3). Specifically, the Pace Defendants and Defendant Bishop-Johnston, LLC: (1) failed to retain an LSRP within 45 days of dismissal of the prior LSRP as required by N.J.A.C. 7:26C-2.3(a)(2); (2) failed to submit a remedial investigation report by the regulatory deadline of June 1, 2021 as required by N.J.A.C. 7:26C-3.3(b)(5); and (3) failed to pay annual remediation fees as required by N.J.A.C. 7:26C-4.3.

147. Any person who fails to comply with the provisions of N.J.S.A. 58:10B-1.3 of the Brownfield Act shall be liable and subject to the enforcement provisions established in N.J.S.A. 58:10-23.11.u of the Spill Act. N.J.S.A. 58:10B-1.3.e.

WHEREFORE, the Department demands judgment in its favor:

a. Finding the Pace Defendants and Defendant Bishop-Johnston, LLC liable and obligated to remediate the Bishop Street Site pursuant to N.J.S.A. 58:10B-1.3.a, and in violation of N.J.S.A. 58:10B-1.3.a for their failure to do so;

b. Finding the Pace Defendants and Defendant Bishop-Johnston, LLC liable, jointly and severally, without regard

to fault, for all cleanup and removal costs no matter by whom incurred, pursuant to N.J.S.A. 58:10-23.11g.c.(1);

c. Finding the Pace Defendants and Defendant Bishop-Johnston, LLC liable and obligated pursuant to N.J.S.A. 58:10B-1.3.c.(3) to comply with each of the above-cited remediation requirements of N.J.S.A. 58:10B-1.3.b, and in violation of N.J.S.A. 58:10B-1.3.c.(3) and N.J.S.A. 58:10B-1.3.b for their failure to do so;

d. Directing the Pace Defendants and Defendant Bishop-Johnston, LLC to hire an LSRP within fifteen days and remediate the Bishop Street Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3, SRRA, and all remediation statutes, regulations and/or DEP directions;

e. Assessing civil penalties against the Pace Defendants and Defendant Bishop-Johnston, LLC pursuant to N.J.S.A. N.J.S.A. 58:10-23.11u.d, for their violations of the above-cited remediation requirements of N.J.S.A. 58:10B-1.3, and applicable Department regulations;

f. Awarding the Department any costs it may incur to investigate the discharge of hazardous substances on the Bishop Street Site and emanating from the property, and its costs of preparing and litigating this action, together with interest, to the full extent allowed by law;

g. Granting the Department such other relief as this Court deems just, equitable and appropriate; and

h. Reserving the Plaintiffs' rights to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Bishop Street Site.

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Lisa J. Morelli
Lisa J. Morelli
Deputy Attorney General

Dated: October 8, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Lisa J. Morelli, 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).

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

/s/ Lisa J. Morelli

Lisa J. Morelli
Deputy Attorney General

DATED: October 8, 2021

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

Undersigned counsel further certifies 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).

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

/s/ Lisa J. Morelli
Lisa J. Morelli
Deputy Attorney General

DATED: October 8, 2021