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NEW JERSEY DEPARTMENT OF : SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION and : LAW DIVISION -
the COMMISSIONER OF THE NEW : BERGEN COUNTY
JERSEY DEPARTMENT OF :
ENVIRONMENTAL PROTECTION, : DOCKET NO.

Plaintiffs, :

v. :

Civil Action

COMPLAINT

HEXCEL CORPORATION; FINE :
ORGANICS CORPORATION; XYZ :
CORPORATIONS 1-10; JOHN :
and/or JANE DOES 1-10, :

Defendants. :

:

Plaintiffs New Jersey Department of Environmental Protection
("DEP") and the Commissioner of the New Jersey Department of

Environmental Protection ("Commissioner") (collectively, "Department") having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against Defendants Hexcel Corporation, Fine Organics Corporation, XYZ Corporations 1-10 (Names Fictitious), and John and/or Jane Does 1-10 (Names Fictitious) (collectively, "Defendants"), allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the New Jersey 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, for reimbursement of the costs and damages the Department has incurred, and will incur, as a result of injury to natural resources caused by the discharge of hazardous substances and pollutants at the Hexcel Facility Site located at 205 Main Street, also known as block 81.01, lot 10.01 and block 161.01, lot 1.01, in the Borough of Lodi, Bergen County ("Site"). The Department seeks to recover the damages it has incurred, and will incur, including claims for natural resource damages ("NRD") as trustee of New Jersey's natural resources.

2. Hexcel Corporation and its related corporation, Fine Organics, have operated chemical manufacturing facilities at the Site for decades.

3. Hexcel triggered statutory and regulatory obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now the Industrial Site Recovery Act ("ISRA"), when it began preparing the Site for sale in 1984. Investigations before the sale, and in the years following the sale, have revealed widespread contamination of soil and groundwater and other natural resources at and around the Site, including contamination from volatile organic compounds ("VOCs"), polychlorinated biphenyls ("PCBs"), and petroleum products. For example, an approximately 3.64-acre area of contaminated groundwater in Bergen County extends beyond the boundaries of the Site.

4. VOCs, including perchloroethylene ("PCE") and trichloroethylene ("TCE"), percolate rapidly through soil and dissolve in groundwater. They can persist in groundwater for long periods of time and move quickly through urban environments, often causing harmful chemical vapors to seep into homes and businesses. Exposure to these substances has been linked to kidney dysfunction, respiratory tract irritation, and cognitive and neurological effects.

5. PCBs do not break down easily in the environment, instead remaining for long periods of time and cycling between air, water and soil. PCBs have been shown to cause damage to the immune

system, reproductive system, nervous system, and endocrine system in humans and wildlife, as well as increase the risk of cancer.

6. Petroleum products also pose threats to the environment and public health when they enter the soil and groundwater – fuel oil and its components persist for long periods of time, impeding plant growth and threatening birds and mammals with irritation and toxicity.

7. The community surrounding the Site has significant low-income and minority populations such that it is considered an “overburdened community” 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.

8. Residents of all communities should receive fair and equitable treatment in matters affecting their environment,

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 Site is located within an area of Lodi that is listed as an overburdened community on the Department’s website, pursuant to N.J.S.A. 13:1D-150.

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.

9. The Department brings this suit to compel Defendants to: (1) compensate the citizens of New Jersey for the lost value of groundwater (a natural resource of New Jersey (the "State")) that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Site; (2) pay damages the Department has incurred, and will incur, for groundwater that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Site; (3) to perform under the Department's oversight, or to fund the Department's performance of, any further assessment of groundwater that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants; and (4) for other related relief.

THE PARTIES

10. The DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect public health and safety. N.J.S.A. 13:1D-9. Its principal offices are located at 401 East State Street in the City of Trenton, County of Mercer, New Jersey.

11. In addition, the State of New Jersey is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction. N.J.S.A. 58:10-23.11a; see also N.J.S.A. 58:11A-2. The Department is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of the State. N.J.S.A. 58:10-23.11a (establishing liability and compensation for injury to natural resources held in trust by the State); N.J.S.A. 58:10-23.11u.b.(4) (the Department "may commence a civil action in Superior Court for . . . the cost of restoration and replacement, where practicable, of any natural resource damaged or destroyed by a discharge").

12. The Commissioner is the Commissioner of the DEP. N.J.S.A. 58:10-23.11b; N.J.S.A. 58:10A-3. In this capacity, the Commissioner is vested by law with various powers and authority, including those conferred by DEP's enabling legislation. N.J.S.A. 13:1D to -19. The Commissioner maintains a principal office at 401 East State Street in the City of Trenton, County of Mercer, New Jersey.

13. Defendant Hexcel Corporation ("Hexcel") is a corporation incorporated under the laws of the State of Delaware and registered to conduct business in New Jersey. Its principal place of business is located at 281 Tresser Blvd., 16th Floor, Stamford, Connecticut

06901. Hexcel owned and operated the Site that is the subject of this action.

14. Defendant Fine Organics Corporation ("Fine Organics") is a corporation organized under the laws of the State of Delaware. It has its principal place of business at 420 Kuller Road, Clifton, New Jersey 07011. Fine Organics also owned and operated the Site that is the subject of this action.

15. Defendants "XYZ Corporations" 1-10, 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, or are otherwise related to, the identified defendants in this matter and/or are also dischargers and/or persons in any way responsible for discharges of hazardous substances that caused contamination at or emanating from the Site.

16. Defendants "John and/or Jane Does" 1-10, these names being fictitious, are persons with identities that cannot be ascertained as of the filing of this Complaint, certain of which are responsible corporate officers of the identified defendants in this matter, and/or are also dischargers and/or persons in any way responsible for discharges of hazardous substances that caused contamination at and emanating from the Site.

NATURAL RESOURCES

17. The "natural resources" of the State include all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

18. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs, streams and bodies of surface water or groundwater, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

19. The natural resources of the State, including the waters of the State, have been injured as a result of the discharge of hazardous substances and pollutants at the Site.

20. Groundwater is an extremely important natural resource for the people of New Jersey. New Jersey's groundwater supplies more than 900 million gallons of water per day and provides approximately a third of New Jersey's population with drinking water.

21. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater is integral to nutrient recycling, water filtration, and storage and recharge for surface water bodies. Groundwater provides base flow to streams and other surface water bodies, and

influences surface water quality, wetland ecology, and the health of aquatic ecosystems.

22. Groundwater also prevents saltwater intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

23. Groundwater is a unique resource that supports the State's tourism industry by supporting local wildlife and providing ecosystem services, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

24. The Site, and wherever contamination from the Site has migrated, is defined as the "Contaminated Site." The groundwater at the Contaminated Site is classified as Class II-A under N.J.A.C. 7:9C-1.5(e). This classification means it is considered potable water and/or conversion (through treatment) to potable water. Class II-A waters also have secondary designated uses, including agricultural water and industrial water.

25. The Contaminated Site is located in the Northeast Watershed Region. Groundwater at the Site is near the surface, offering recharge to the Saddle River and other tributaries of the Passaic River in addition to ecosystem services such as nutrient cycling, water storage, and water filtration.

GENERAL ALLEGATIONS

Ownership and Operation of the Site

26. In 1944, Historic Fine Organics ("HFO"), predecessor in interest to Hexcel, acquired the Site, which was formerly part of the United Piece Dye Works complex in Lodi.

27. HFO owned and operated the Site as an industrial establishment, specifically a chemical manufacturing facility, from 1944 to 1973.

28. HFO manufactured and stored chemical products, including, but not limited to, pharmaceutical, organic, and inorganic chemicals at the Site.

29. In 1973, Defendant Hexcel merged with HFO and acquired the Site, including its chemical manufacturing facility operations.

30. Between 1973 and 1986, HFO was a part of the Hexcel Industrial Chemicals Group Subdivision, a branch of Hexcel. Hexcel continued operations, including the manufacture and storage of chemical products, at the Site during that time.

31. The Site is an "industrial establishment" as defined by N.J.S.A. 13:1K-8. Hexcel triggered statutory and regulatory obligations under ECRA when it began preparing the Site for sale in 1984.

32. In January 1986, Hexcel entered into an Administrative Consent Order ("ACO") with the Department. The ACO allowed Hexcel to proceed with the sale of its Industrial Chemicals Group Subdivision to Defendant Fine Organics Corporation, including the Site, but also required Hexcel to investigate and remediate the Contaminated Site under ECRA subject to the approval of the Department.

33. In 1986, Hexcel and Fine Organics divided, and Hexcel sold its Industrial Chemicals Group Subdivision to the now-separate Fine Organics.

34. Defendant Fine Organics owned and operated the chemical manufacturing facility at the Site, continuing to manufacture and store chemical products, from 1986 to 1998.

35. In 1999, all structures at the Site, apart from one warehouse, were demolished to render the soil and groundwater accessible for more extensive remediation. The remaining warehouse was demolished in or around July 2015.

36. The Department designated the Contaminated Site as Site Remediation Program Interest Number 005821, ISRA Case Number 97140 (former ECRA Case Number E86009). Defendant Hexcel is the responsible party that conducted the remediation under the ECRA/ISRA case.

Contamination at the Site

37. Hexcel and its hired consultants conducted investigations into contamination at the Site between 1984 and 1986. The investigations confirmed contamination from VOCs, PCBs, petroleum products (specifically fuel oil), and semi-volatile organic compounds ("SVOCs").

38. The groundwater at the Contaminated Site is impacted with chlorinated VOCs including, but not limited to, perchloroethylene ("PCE") and trichloroethylene ("TCE").

39. In 1984, the Department received reports of leaking fuel oil drums and spills at the Site.

40. Around May 1984, TenEch Environmental Engineers, Inc., consultants retained by Hexcel, investigated fuel oil contamination of groundwater and soil at the Contaminated Site.

41. The 1984 investigation detected fuel oil contamination in the groundwater at the Contaminated Site, and traced the source of the fuel oil contamination to leaking above-ground and underground storage tanks.

42. Fuel oil, as a "petroleum product," is a "hazardous substance" as defined by N.J.S.A. 58:10-23.11b. The release of fuel oil into the soil and groundwater constitutes a "discharge" under the Spill Act. N.J.S.A. 58:10-23.11b.

43. Fuel oil is a "pollutant" as defined by N.J.S.A. 58:10A-3(n). The release of fuel oil constituted a "discharge" under the WPCA. N.J.S.A. 58:10A-3(e).

44. Further investigations in June 1985 and August 1985 by Princeton Aqua Science ("PAS") and in December 1985 by Environ Corporation, both retained by Hexcel, confirmed the presence of fuel oil contamination and detected further contamination from PCBs and VOCs (including PCE, TCE, methylene chloride, and 1,1,1 trichloroethane) at the Contaminated Site.

45. PAS traced the PCB and VOC contamination to leaks and/or spills from Hexcel's storage tanks as well as Hexcel's ongoing use of the chemicals at the Site.

46. PCBs are "hazardous substances" as defined by N.J.S.A. 58:10-23.11b. The release of PCBs constitutes a "discharge" under the Spill Act. N.J.S.A. 58:10-23.11(b).

47. PCBs are "pollutants" as defined by N.J.S.A. 58:10A-3(n). The release of PCBs constitutes a "discharge" under the WPCA. N.J.S.A. 58:10A-3(e).

48. PCE, TCE, methylene chloride, and 1,1,1 trichloroethane are "hazardous substances" as defined by N.J.S.A. 58:10-23.11b. The release of these VOCs constitutes a "discharge" under the Spill Act. N.J.S.A. 58:10-23.11(b).

49. PCE, TCE, methylene chloride, and 1,1,1 trichloroethane are "pollutants" as defined by N.J.S.A. 58:10A-3(n). The release of these VOCs constitutes a "discharge" under the WPCA. N.J.S.A. 58:10A-3(e).

50. Numerous subsequent investigations and delineation efforts confirmed unacceptably high levels of VOCs, PCBs, and petroleum products, among other contaminants at the Contaminated Site. These efforts included: sampling and reporting done in 1993 (Summary of Soil Investigations and Conceptual Cleanup Plan Proposal); 1997 (Preliminary Assessment Report); 1999 (Remedial Action Workplan Addendum); 2002 (Remedial Action Workplan Addendum, Project Status Report); 2003 (Report and Sediment and Surface Water Sampling Program); 2005 (Project Status Report); 2008 (Status Report and Workplan Addendum, Self-Implementation plan); 2009 (Vapor Intrusion Report); 2010 (Remedial Investigation Report and Workplan Addendum, Vapor Intrusion Monitoring Plan, Interim Remedial Action Workplan for Dual Phase Extraction Thermal Enhancement); 2011 (Remedial Investigation Report, Remedial Action Workplan Addendum); 2012 (LNAPL Free Product Remedial Investigation); 2013 (Permit-By-Rule Applications); 2014 (Permit-By-Rule Application, Indoor Air Sampling Results Letter), and 2015 (Soil Remedial Investigation Report - Remedial Action Report).

51. Hexcel's investigations and reporting (detailed in the previous paragraph) led the Department to delineate a larger impacted area constituting the Contaminated Site.

52. Hexcel retained Haley & Aldrich to manage its remediation efforts, specifically relying on Christopher Schmitt as its designated licensed site remediation professional ("LSRP") for the Contaminated Site. See N.J.S.A. 58:10C-2.

53. On December 12, 2013, Hexcel and Fine Organics entered a consent judgment with the Department, the Administrator of the Spill Fund, and several co-defendant corporate entities, in order to partially resolve their liability and receive a limited credit towards their NRD liability for contribution to the contamination of the Newark Bay Complex, which consists of a 17-mile reach of the Passaic River, Newark Bay, Arthur Kill, Kill van Kull, certain reaches of the lower Hackensack River, and certain waters and sediments related to the U.S. Environmental Protection Agency's ("EPA") Diamond Alkali Superfund Process that could be linked to the Site or the Contaminated Site.

54. The consent judgment reserved to the Department the right to pursue "Other Actions" against third party defendants, such as defendants Hexcel and Fine Organics, relating to the discharge of hazardous substances at or emanating from their upland

Site when those discharges did not come to be located in the Newark Bay Complex.

55. The consent judgment therefore did not resolve Hexcel's or Fine Organics's liability for natural resource damages to groundwater at the Contaminated Site.

56. In 2016, a groundwater Classification Exception Area ("CEA") with an area of 3.64 acres was established on the Contaminated Site. A CEA delineates the areal extent of groundwater pollution in a localized area - here, the CEA is coterminous with the Contaminated Site.

57. Hexcel conducted remediation of the Contaminated Site between 1987 and 2016, including further investigation and delineation of the source of the contamination at the Contaminated Site, excavation of soils from the Site to remove high concentrations of PCBs and VOCs, and removal and disposal of over 53,000 gallons of contaminated groundwater from the Site.

58. Hexcel employed dual-phase extraction ("DPE"), which used a high-vacuum system to remove both contaminated groundwater and soil vapor from the Contaminated Site. The extraction efforts focused on areas in which PCB concentration exceeded the EPA Low-Occupancy Criteria of 100mg/Kg.

59. After the DPE activities in 2013, Hexcel retained Land N Sea Environmental Services, Inc. to conduct excavation activities to remove contaminated soils and groundwater.

60. In 2013, Hexcel obtained a New Jersey Pollutant Discharge Elimination System ("NJPDDES") discharge to groundwater permit by rule.

61. Between July 2013 and April 2014, Hexcel's consultants implemented an in-situ chemical oxidation ("ISCO") remediation program to comply with its NJPDDES permit by rule for groundwater. The ISCO remediation involved adding a sodium persulfate oxidant to the soil and groundwater to neutralize or destroy organic contaminants like VOCs.

62. Hexcel implemented another ISCO program between September and December 2014 to treat remaining VOC contamination in the soil and groundwater.

63. In May 2016, Hexcel submitted a Remedial Investigation Report ("2016 RIR"), which detailed the hazardous substances that were used by Hexcel and Fine Organics at the Site and that have been detected in the soil and groundwater at the Contaminated Site.

64. On October 5, 2016, Hexcel obtained a Response Action Outcome ("RAO") for the Contaminated Site, recognizing completion of remediation activities. As stated in the RAO, "full payment

has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4."

65. The RAO did not consider or determine the injury to natural resources or natural resource damages at the Contaminated Site.

66. The "natural resources" of the State, as defined in N.J.S.A. 58:10-23.11b, including the waters of the State, have been injured by the discharges of hazardous substances at the Contaminated Site.

67. The Department has incurred damages, including lost value and reasonable assessment costs, for natural resources that have been injured by the discharge of hazardous substances at and emanating from the Site. N.J.S.A. 58:10-23.11u.b.(4).

68. Groundwater has not been returned to its pre-discharge condition at the Contaminated Site. It is currently undergoing monitored natural attenuation, which will allow the groundwater to recover over time through its own natural processes. It will not reach its pre-discharge condition for decades.

69. This action therefore seeks to recover the Department's costs and damages related to "restoration and replacement . . . of any natural resource damaged or destroyed by [the] discharge[s]," as well as "the reasonable costs of preparing and successfully litigating" this action. N.J.S.A. 58:10-23.11u.b.(4).

FIRST COUNT

Spill Act

70. The Department repeats each allegation of the previous paragraphs as though set forth in their entirety.

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

72. Except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.

73. Except as otherwise exempted under N.J.S.A. 58:10-23.11g12, which is not applicable here, the discharge of hazardous substances is a violation of the Spill Act, for which the discharger or person in any way responsible for the discharged hazardous substance, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

74. The Department has incurred, and may continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Site.

75. The Defendants are dischargers, and/or are the successors to dischargers, of hazardous substances at the Site, and are liable, jointly and severally, without regard to fault, for certain costs and damages, including lost value and reasonable assessment costs, that the Department has incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

76. The Defendants, as owners of the Site at the time hazardous substances were discharged there, and/or as successors to the owners of the Site at the time hazardous substances were discharged there, are also persons "in any way responsible" for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for certain costs and damages, including lost value and reasonable assessment costs, that the Department has incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

77. Defendants Hexcel and Fine Organics, as knowing purchasers, and/or as successors to the knowing purchasers of the Site, a property at which hazardous substances were previously

discharged, are also persons "in any way responsible" for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for certain costs and damages, including lost value and reasonable assessment costs, that the Department has incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(3).

78. The Department may bring an action in Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for certain costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other damages the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

79. Additionally, pursuant to N.J.S.A. 58:10-23.11e, "[a]ny person who may be subject to liability for a discharge which occurred prior to or after the effective date of the act of which this act is amendatory shall immediately notify the department. Failure to so notify shall make persons liable to the penalty provisions of section 22 of this act." In turn, pursuant to N.J.S.A. 58:10-23.11u.d, "[a]ny person who violations a provision of P.L. 1976, c. 141 (C. 58:10-23.11 et seq.), or a court order

issued pursuant thereto, or who fails to pay a civil administrative penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day's continuance of the violation shall constitute a separate violation."

PRAYER FOR RELIEF

WHEREFORE, the Department prays that this Court:

- a. Order the Defendants to reimburse the Department, jointly and severally, without regard to fault, for the costs and damages they have incurred, including lost value and reasonable assessment costs for any groundwater (as a natural resource of the State) that was injured as a result of the discharge of hazardous substances at or emanating from the Site, with applicable interest;
- b. Finding each Defendant liable, jointly and severally, without regard to fault, for costs and damages the Department will incur, including lost value and reasonable assessment costs, for any groundwater (a natural resource of this State) that was injured as a result of the discharge of hazardous substances at or emanating from the Site;

- c. Ordering the Defendants, jointly and severally, without regard to fault, to perform, under Department oversight, or to fund the Department's performance of, any further assessment of any groundwater that has been, or may be, injured as a result of the discharge of hazardous substances at the Site, and compelling each Defendant to compensate the citizens of New Jersey for the lost value of any injured groundwater.
- d. Assess civil penalties of up to \$50,000 per violation per day for Defendants' failure to timely notify the Department of all discharges at the Site;
- e. Award the Department its costs and fees in this action; and
- f. Award the Department such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

80. The Commissioner repeats each allegation of the previous paragraphs as though set forth in their entirety.

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

82. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., which are not applicable here, 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 ("NJPDDES") permit issued by the Commissioner pursuant to the WPCA, or pursuant to a valid National Pollutant Discharge Elimination System permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251 - 1387. N.J.S.A. 58:10A-6a.

83. 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-6a.

84. The Commissioner has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for any groundwater, as a natural resource of this State, that has been, or may be, lost or destroyed by the discharge of pollutants at the Site.

85. The costs and damages the Commissioner has incurred, and will incur, for the Contaminated Site are recoverable within the meaning of N.J.S.A. 58:10A-10c.(2) and (4).

86. Defendants Hexcel and Fine Organics discharged pollutants at the Site, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p. Defendants Hexcel and Fine Organics are therefore liable, without regard to fault, for all

costs and damages, including compensatory damages and any other actual damages for any groundwater (a natural resource of this State) that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Site. N.J.S.A. 58:10A-6a.

87. The Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10c.(2); compensatory damages and any other actual damages for groundwater, as a natural resource of this State, that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Site, N.J.S.A. 58:10A-10c.(4); and the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).

88. The release of fuel oil causing soil contamination constitutes a "discharge" under the WPCA as a pollutant was

released "onto land or into wells from which it might flow or drain into [the waters of the State]." N.J.S.A. 58:10A-3(e).

PRAYER FOR RELIEF

WHEREFORE, the Commissioner prays that this Court:

- a. Order the Defendants Hexcel and Fine Organics, without regard to fault, to reimburse the Commissioner for his reasonable costs, including the costs of preparing and litigating this case;
- b. Finding Defendants Hexcel and Fine Organics liable, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- c. Order the Defendants Hexcel and Fine Organics, without regard to fault, to pay to the Commissioner all compensatory damages and other actual damages incurred by the Commissioner for any groundwater, as a natural resource of this State, that has been, or may be, lost or destroyed by the unauthorized discharge of pollutants at the Site;
- d. Finding Defendants Hexcel and Fine Organics liable, without regard to fault, assessing all compensatory

damages and other actual damages for any groundwater, as a natural resource of this State, that has been, or may be, lost or destroyed by of the unauthorized discharge of pollutants at the Site;

- e. Order Defendants Hexcel and Fine Organics, without regard to fault, to pay to the Commissioner the actual amount of any economic benefits that have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits that Defendants Hexcel and Fine Organics have enjoyed as a result of a competitive market advantage, or any other benefit they have received from violation of the WPCA;
- f. Finding Defendants Hexcel and Fine Organics liable, without regard to fault, assessing those Defendants for the actual amount of any economic benefits that will accrue to them, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage those Defendants have enjoyed, or any other benefit that will accrue to them from violation of the WPCA;

- g. Award plaintiff Commissioner his costs and fees in this action; and
- h. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Strict Liability

89. The Department repeats each allegation in the previous paragraphs as though set forth in its entirety.

90. During the period of time that the Defendants were engaged in chemical storage and manufacturing at the Site, hazardous substances were stored at, discharged at, and emanating from the Site into the natural resources of the State, including groundwater, thereby causing damage to and destruction of natural resources.

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

PRAYER FOR RELIEF

WHEREFORE, the Department prays that this Court:

- a. Order each Defendant to reimburse the Department, jointly and severally, without regard to fault, for

- costs and damages, including loss of use or value and reasonable assessment costs, that the Department has incurred for any natural resource of this State injured by the discharges of hazardous substances and pollutants at or emanating from the Site, with applicable interest;
- b. Finding each Defendant liable, jointly and severally, without regard to fault, for costs and damages, including loss of use or value and reasonable assessment costs, the Department will incur for groundwater, as a natural resource of this State, that was injured by the discharges of hazardous substances and pollutants at or emanating from the Site;
- c. Order each Defendant, jointly and severally, without regard to fault, to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances and pollutants at the Site and Contaminated Site, by performing under the Department's oversight, or by funding the Department's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances and pollutants at or emanating from the Site;

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

FOURTH COUNT

Public Nuisance

92. The Department repeats each allegation in the previous paragraphs as though set forth in its entirety.

93. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public. The Department is vested with the duty to protect, and the authority to pursue compensation for, injury to the State's natural resources.

94. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public. The groundwater contamination at the Contaminated Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

95. As long as the groundwater remains contaminated due to the Defendants' conduct, the public nuisance continues.

96. Until the groundwater is restored to its pre-injury condition, the Defendants are liable for the creation, and

continued maintenance, of a public nuisance in contravention of the public's common right to clean groundwater.

PRAYER FOR RELIEF

WHEREFORE, the Department prays that this Court:

- a. Order the Defendants to reimburse the Department for all costs and damages that the Department has incurred, including the lost value and reasonable assessment costs for groundwater, as a natural resource of this State, that has been injured by the discharge of hazardous substances and pollutants at or emanating from the Site with applicable interest;
- b. Finding the Defendants liable for costs and damages, including lost value and reasonable assessment costs, that the Department will incur for any groundwater, a natural resource of this State, that has been injured by the discharge of hazardous substances and pollutants at or emanating from the Site;
- c. Finding each Defendant liable for, and compelling each Defendant to perform, under the Department's oversight, or to fund the Department's performance of, any further assessment of groundwater that has been, or may be, injured by the discharge of hazardous substances and pollutants at or emanating from the Site, including

- compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured groundwater;
- d. Award the Department their costs and fees in this action; and
 - e. Award the Department such other relief as this Court deems appropriate.

FIFTH COUNT

Trespass

97. The Department repeats each allegation in the previous paragraphs as though set forth in its entirety.

98. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public. The Department is vested with the duty to protect, and the authority to pursue compensation for, injury to the State's natural resources.

99. The hazardous substances in the groundwater at the Contaminated Site constitute a physical invasion of public property without permission or license.

100. Each Defendant is liable for trespass, and continued trespass, because the hazardous substances and pollutants in the groundwater at the Contaminated Site resulted from discharges of hazardous substances and pollutants at the Site.

101. As long as the groundwater remains contaminated due to the Defendants' conduct, each Defendant's trespass continues.

102. Until the groundwater is restored to its pre-discharge condition, the Defendants are liable for trespass, and continued trespass, upon public property.

PRAYER FOR RELIEF

WHEREFORE, the Department prays that this Court:

- a. Order the Defendants to reimburse the Department for costs and damages that the Department has incurred, including the lost value and reasonable assessment costs for groundwater, as a natural resource of this State, that has been injured by the discharge of hazardous substances and pollutants at or emanating from the Site, with applicable interest;
- b. Finding the Defendants liable for costs and damages that the Department may incur, including the lost value and reasonable assessment costs for any groundwater, as a natural resource of this State, injured by the discharge of hazardous substances and pollutants at the Site and Contaminated Site;
- c. Order the Defendants to perform, under Department oversight, or to fund the Department's performance of, any further assessment of any natural resource that has been, or may be, injured by the discharge of hazardous substances and pollutants at or emanating from the Site,

and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured groundwater;

- d. Award the Department its costs and fees in this action;
- e. Award the Department such other relief as this court deems appropriate.

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Jessica L. Palmer
Jessica L. Palmer
Deputy Attorney General
Attorney ID No. 031222009
Erin M. Hodge
Deputy Attorney General
Attorney ID No. 272052018

Dated: April 4, 2022

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Erin M. Hodge, Deputy Attorney General, is hereby designated as trial counsel for plaintiffs in this action.

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).

R. 4:5-1(b) (2) CERTIFICATION REGARDING
OTHER PROCEEDINGS AND PARTIES

Undersigned counsel certifies that the matters in controversy in this action are currently not 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 to Plaintiffs, an amended certification will be filed and served upon all other parties and filed with this court in accordance with R. 4:5-1(b) (2).

JURY DEMAND

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

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Jessica L. Palmer
Jessica L. Palmer
Deputy Attorney General
Attorney ID No. 031222009
Erin M. Hodge
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Dated: April 4, 2022