

MATTHEW J. PLATKIN  
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: Willis A. Doerr  
Deputy Attorney General  
Attorney ID No. 266042018  
(609) 376-2789  
Willis.Doerr@law.njoag.gov

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION;	:	SUPERIOR COURT OF NEW JERSEY
THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION;	:	LAW DIVISION -
And THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	MIDDLESEX COUNTY
	:	DOCKET NO.
Plaintiffs,	:	<u>Civil Action</u>
	:	<b>VERIFIED COMPLAINT</b>
v.	:	
SB MILLTOWN INDUSTRIAL REALTY HOLDINGS, L.L.C.; SB BUILDING GP, LLC; SB BUILDING ASSOCIATES LIMITED PARTNERSHIP; COBRA ENTERPRISES L.L.C.; UNITED STATES LAND RESOURCES L.P.; BERGER & BORNSTEIN, A PROFESSIONAL ASSOCIATION; LAWRENCE S. BERGER; XYZ CORPORATIONS 1-10, and JOHN AND/OR JANE DOES 1-10,	:	
Defendants.	:	

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Plaintiffs the New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "Department"), by and through their attorneys, file this complaint against Defendants SB Milltown Industrial Realty Holdings, L.L.C. ("SB Milltown"), SB Building Associates, Limited Partnership ("SB Building"); COBRA Enterprises L.L.C. ("COBRA Enterprises"); United States Land Resources, L.P. ("U.S. Land Resources"); SB Building GP, LLC ("SB GP"); Berger & Bornstein, A Professional Association ("Berger & Bornstein"); and Lawrence S. Berger, Esq. ("Berger") (collectively "Defendants"), and allege:

#### **STATEMENT OF THE CASE**

1. The Department brings this civil action to compel Defendants to remediate contamination resulting from a discharge of hazardous substances at a property located at 2 Ford Avenue in Milltown, New Jersey ("Property"), which has exposed the public and the environment to risk of harm. The Department also seeks reimbursement for costs of remediation incurred at and around the Property. The Property and all offsite areas impacted by the hazardous substances discharged thereon are collectively referred to as the "Contaminated Site."

2. During the demolition of three electrical transformers an unknown amount of transformer oil containing polychlorinated biphenyls ("PCBs") was discharged onto the Property and into nearby waterways.

3. The transformer oil, as a petroleum product, is a hazardous substance and threat to the environment and public health when discharged into the environment and public waterways. The PCBs in the transformer oil are also a hazardous substance and have been linked to a variety of cancers, skin conditions, adverse changes to the liver and thyroid, and neuro-developmental and neurobehavioral changes, posing a threat to public health and the environment.

4. Over the last six years, none of the Defendants have remediated the contamination resulting from the discharge at the Property in accordance with the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Site Remediation Reform Act ("SRRRA"), N.J.S.A. 58:10C-1 to -29, the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, or the Technical Requirements for Site Remediation ("Tech Rules"), N.J.A.C. 7:26E.

5. The Property is located across the street from residential and commercial properties, and the public waters into which the transformer oil was discharged abut residential properties and public parks. Because Defendants did not take the

required action to address the discharge, DEP took steps to contain the contamination and partially remediate the Contaminated Site to limit the risks to human health and the environment.

6. The community surrounding the Property has a significant low-income population such that it is considered an "overburdened community" within the meaning of N.J.S.A. 13:1D-158.1.<sup>1</sup> 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.

7. 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.

8. The Department brings this civil action under the Spill Act, the SRRA, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10a-1 to -73, and the common law to require Defendants to

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<sup>1</sup> "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 Milltown that is listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-159.

remediate the Contaminated Site, including the discharge of hazardous substances at the Property that spread to public waters; to recover from Defendants the costs that the Department has incurred, and will incur, related to those discharges; and to compel Defendants to pay civil penalties for their failures to comply with applicable law.

#### **PARTIES**

9. DEP is a principal department in the executive branch of the State. DEP maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the DEP by the aforementioned statutes, and through DEP's enabling legislation, N.J.S.A. 13:D-1 to -19, directing DEP to protect human health and the environment, DEP is empowered to compel parties to remediate contamination and to bring proceedings in Superior Court.

10. The Commissioner is the Commissioner of the DEP. N.J.S.A. 58:10-23.11b and 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-1 through -19.

11. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund") and maintains his principal office at 401 East State Street, Trenton, Mercer County, New Jersey. As the chief executive officer of the Spill

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

12. SB Building is a New Jersey partnership. Its principal business address is 237 South St., P.O. Box 2049, Morristown, New Jersey. SB Building currently owns the Property and is the corporate successor in interest of SB Milltown following a merger with SB Milltown in which SB Building was the surviving corporate entity. The general partners of SB Building are Berger & Bornstein, SB GP, and U.S. Land Resources. SB Building's registered agent is Lawrence Berger.

13. SB Milltown is a New Jersey limited liability company. Its principal business address is 237 South St., P.O. Box 2049, Morristown, New Jersey. SB Milltown owned the Property at the time of the discharge and hired COBRA Enterprises to conduct the demolition on the Property that led to the discharge. Prior to its merger with SB Building, SB Milltown's sole general partner was U.S. Land Resources. SB Milltown's registered agent is Lawrence Berger.

14. COBRA Enterprises is a New Jersey limited liability company. Its principal business address is 31 Cliffwood Drive, Allentown, New Jersey. At the time of the discharge, COBRA Enterprises was owned by Alex Abdalla.

15. U.S. Land Resources is a New Jersey partnership. Its principal business address is 237 South Street Morristown, New Jersey. U.S. Land Resources was the sole general partner of SB Milltown and is a general partner of SB Building. Lawrence Berger is a general partner of U.S. Land Resources.

16. SB GP is a New Jersey partnership. Its principal business address is 237 South Street, Morristown, New Jersey. SB GP is a general partner of SB Building.

17. Berger & Bornstein is a New Jersey corporation. Its principal business address is 237 South Street, P.O. Box 2049, Morristown, New Jersey. Berger & Bornstein is a general partner of SB Building. Lawrence Berger is the President of Berger & Bornstein.

18. Lawrence S. Berger, Esq., is a natural person and a resident of New Jersey. His principal business address is 237 South St. Morristown, New Jersey. Berger is the President of Berger & Bornstein, general partner of U.S. Land Resources, manager of SB GP, and, upon information and belief, is an agent, officer, official, or general partner of SB Milltown and SB Building. Upon information and belief, Berger is the individual in charge of the day-to-day activities of SB Milltown, SB Building, U.S. Land Resources, SB GP, and Berger & Bornstein, and has the authority to correct violations of applicable laws and regulations.

19. "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, insurers of, or are otherwise related to the Defendants.

20. "John and/or Jane Does" 1-10, these names being fictitious, are natural individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, Defendants and/or one or more of the "XYZ Corporation" defendants.

#### **FACTUAL ALLEGATIONS**

21. In October 2016, Defendant SB Milltown owned the Property, also known as Block 58.01, Lot 1.02, on the Milltown Borough Tax Map, which contained defunct industrial buildings and was previously the site of a factory owned by the tire manufacturer Michelin.

22. Upon information and belief, prior to October 4, 2016, and during SB Milltown's ownership of the Property, SB Milltown, or a partner, officer, director, agent and/or responsible corporate official thereof, contracted with COBRA Enterprises to perform demolition activities on the Property, which included the demolition of at least three electrical transformers.

23. On October 4, 2016, the Hazardous Materials Unit of the Middlesex County Office of Emergency Management and Preparedness notified the DEP Bureau of Emergency Response that the demolition of electrical transformers at the Property had caused an unknown amount of transformer oil to be spilled into the Lawrence Brook and Mill Pond, which connect to the nearby Farrington Lake.

24. DEP staff arrived at the Property that same day and observed three electrical transformers that were damaged and overturned near a storm drain at the rear of the Property with transformer oil pooling around the base of the transformers.

25. The approximate coordinates that DEP staff found the overturned transformers at was  $40^{\circ}26'56.10''N$ ,  $74^{\circ}26'19.30''W$ .

26. DEP staff spoke with Alex Abdalla, the owner of COBRA Enterprises, and determined that COBRA Enterprises or a partner, officer, director, agent, and/or responsible corporate official thereof caused the transformers to become damaged and overturned in that position, during the course of performing demolition work at the Property.

27. DEP staff observed that the transformers had an inscribed plate stating that each transformer could hold approximately 380 gallons of transformer oil.

28. DEP staff observed that the bulk of the spilled transformer oil had entered a nearby storm drain basin that leads directly to Mill Pond and Lawrence Brook.

29. DEP staff inspected the outfall pipe connected to the storm drain. There was a strong odor of sewage and puddles of amber colored transformer oil in the water, matching the characteristics of the transformer oil observed in and around the overturned transformers.

30. DEP staff further observed a surface spill of transformer oil that extended from the vicinity of the storm drain basin in a northeasterly direction across the paved surfaces terminating in a grassy area within approximately 25 feet of the waters of Mill Pond and Lawrence Brook.

31. DEP staff issued an emergency fishing closure for some of the affected waters.

32. Testing of the transformer oil collected from the Property on behalf of DEP by Cycle Chem, Inc., found that the transformer oil contained PCBs, a hazardous substance under the Spill Act.

33. DEP staff issued field directives to Alex Abdalla and Lawrence Berger, informing them of their responsibility for the discharge and directing them to engage a licensed site remediation professional ("LSRP") to contain the spill and conduct a remediation of the Contaminated Site.

34. On October 4, 2016, Abdalla initially engaged Insurance Restoration Specialists, which began a cleanup of the Contaminated Site. But, on October 6, 2016, Insurance Restoration Specialists

ceased work at the Property because COBRA Enterprises had failed to pay for their services.

35. Neither Abdalla, Berger, any company or association associated with either of them, nor any other responsible party ever engaged a LSRP or took any other required remedial action at any point subsequent to Insurance Restoration Specialists discontinuing work on October 6, 2016.

36. Because no responsible party commenced remediation of the Contaminated Site, DEP authorized the use of Spill Fund monies and other state resources to contain the discharge and remove as much transformer oil as it could in under an emergency action. Not all of the transformer oil was removed, however. On October 6, 2016, DEP retained a contractor, Allstate Power Vac, to continue the cleanup of the Contaminated Site.

37. Allstate Power Vac continued remediation activities at the Contaminated Site under DEP supervision until October 25, 2016.

38. Because Defendants are responsible for the discharge, as dischargers of hazardous substances, persons in any way responsible for the discharge of hazardous substances at the Property, and/or as responsible corporate officers thereof, Defendants are obligated under the Spill Act and the SRRA to complete the remediation of the Contaminated Site and to reimburse DEP for costs it incurred in containing the discharge and partially remediating the Contaminated Site.

39. As a fundamental initial step in the remediation process, Defendants were required to and must now retain a LSRP to conduct all necessary work pursuant to the Spill Act and the SRRA, N.J.S.A. 58:10C-1 to -29. Defendants failed to do so.

40. On July 11, 2022, SB Milltown and SB Building merged. SB Building became the surviving corporate entity and corporate successor to SB Milltown. SB Building remains the current owner of the Property.

41. Two related legal actions were previously initiated in the Borough of Milltown Municipal Court on March 13, 2017, against COBRA Enterprises and a corporation related to the Defendants, Alsol Corp. See State of New Jersey, Department of Environmental Protection v. Alsol Corp. Complaint No. 1212-SF-004765; State of New Jersey, Department of Environmental Protection v. COBRA Enterprises LLC Complaint No. 1212-SF-004764. The municipal complaint issued to COBRA Enterprises was voluntarily withdrawn by DEP, and the complaint issued to Alsol Corp. was dismissed as moot, after DEP determined that it had misidentified the block and lot on which the spill occurred.

### **Count I**

#### **Violation of the Spill Act**

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

43. Petroleum products and PCBs are "hazardous substances" as defined in N.J.S.A. 58:10-23.11b.

44. Any person who discharges a hazardous substance, or is in any way responsible for the discharge of a hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1), except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here.

45. The costs that the Department has incurred, and will incur, for the remediation of the Contaminated Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable pursuant to N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).

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

47. SB Milltown, as the owner and operator of the Property at the time hazardous substances were discharged therefrom, and as the party that hired COBRA Enterprises to conduct the demolition on the Property, is a discharger and a person in any way responsible for a discharge of hazardous substances, and is therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will

incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

48. SB Building, as the corporate successor to SB Milltown, as the surviving corporate entity following a merger with SB Milltown effective July 11, 2022, and as the current owner of the Property, is a person in any way responsible for a discharge of hazardous substances, and is therefore liable, jointly and severally without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1). SB Building is further responsible for all liability incurred by SB Milltown, including SB Milltown's liability incurred as the owner and operator of the Property at the time hazardous substances were discharged thereon.

49. COBRA Enterprises, as an entity whose actions directly caused a discharge of hazardous substances at the Property, is a discharger and/or a person in any way responsible for a discharge of hazardous substances, and is therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the

Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

50. U.S. Land Resources, as the sole general partner of SB Milltown and as a general partner of SB Building, and as an entity that controls both SB Milltown and SB Building, is a person in any way responsible for a discharge of hazardous substances, and is therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

51. SB GP, as a general partner of SB Building, and as an entity that controls SB Building, is a person in any way responsible for a discharge of hazardous substances, and is therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

52. Berger & Bornstein, as a general partner of SB Building, and as an entity that controls SB Building, is a person in any way responsible for a discharge of hazardous substances, and is

therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

53. Lawrence Berger as President of Berger & Bornstein, general partner of U.S. Land Resources, manager of SB GP, which is in turn the general partner of SB Building, and as an agent, officer, official, or partner of SB Milltown and SB Building, is a person in any way responsible for a discharge of hazardous substances, and is therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

54. "XYZ Corporations" 1-10, are dischargers and/or persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will

incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

55. "John and/or Jane Does" 1-10 are dischargers and/or persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, to remediate the Contaminated Site in accordance with the Spill Act, the SRRA, the ARRCs, and the Tech Rules, as well as for all cleanup and removal costs the Department has incurred, and will incur, related to remediating the Contaminated Site. N.J.S.A. 58:10-23.11g.c.(1).

56. To date, Defendants have not fulfilled their SRRA and Spill Act obligations. Specifically, Defendants have failed to (1) retain an LSRP by November 17, 2016, N.J.A.C. 7:26C-2.3(a)1, 2; (2) comply with the Initial Receptor Evaluation mandatory timeframe of October 4, 2018; (3) comply with Direct Oversight Provision at N.J.A.C. 7:26C-14.2(b) beginning on January 4, 2019; (4) comply with the Remedial Investigation Report mandatory timeframe of October 4, 2021, N.J.A.C. 7:26C-3.3(b); and (5) comply with the Remedial Action Report timeframe of October 3, 2022, N.J.A.C. 7:26C-3.3(b).

57. DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating this

action, N.J.S.A. 58:10-23.11u.b.(2); for its unreimbursed costs of restoring and replacing any natural resource damaged or destroyed by the discharge, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

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

59. Pursuant to N.J.S.A. 58:10-23.11u.d, Defendants are subject, upon order of the Court, to a civil penalty of up to \$50,000 per day for their failure to remediate the Contaminated Site, as appropriate. Each day the violation continues is a separate and distinct violation. Pursuant to the Penalty Enforcement Law and R. 4:70-2, these penalties may be collected in a summary proceeding. However, while the Spill Act permits an award of penalties upon a summary proceeding, as authorized by R. 4:67-5, the Department requests that the Court conduct a plenary hearing to determine the penalty award in this matter.

**WHEREFORE**, the Department demands judgment in its favor:

- a. Ordering Defendants, jointly and severally, without regard to fault, to reimburse DEP and the Administrator for all cleanup and removal costs DEP and the Administrator have incurred related to the Contaminated Site, including the cleanup and removal costs DEP and

the Administrator have incurred related to the Contaminated Site, with applicable interest;

- b. Finding Defendants liable, jointly and severally, without regard to fault, for all cleanup and removal costs DEP and the Administrator will incur related to the Contaminated Site, including the cleanup and removal costs DEP and the Administrator will incur related to the Prospect Street Ground Water Contamination Area;
- c. Imposing upon Defendants, pursuant to N.J.S.A. 58:10-23.11u.a; N.J.S.A. 58:10-23.11u.d, and Rule 4:70, a civil penalty for Defendants' violation of the Spill Act;
- d. In the alternative, ordering that, should the Defendants' penalty liability not be resolved in a summary proceeding, this action shall proceed as a plenary action and defendant shall answer the Department's complaint within 35 days pursuant to Rule 4:67-5;
- e. Awarding DEP and the Administrator their costs and fees incurred in this action;
- f. Awarding DEP and the Administrator any other relief this Court deems appropriate; and

- g. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising from the discharge at the Contaminated Site.

**Count II**

**Violation of the Water Pollution Control Act**

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

61. 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 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.

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

63. Lawrence Berger is also considered a "person" within the meaning of N.J.S.A. 58:10A-3 as the responsible corporate official of SB Milltown, SB Building, SB GP, U.S. Land Resources, and Berger & Bornstein.

64. 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.

65. DEP has incurred, and will continue to incur, costs from the discharge of pollutants at the Contaminated Site.

66. DEP also has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, harmed by the discharge of pollutants at the Contaminated Site.

67. The costs and damages DEP has incurred, and will incur, for the Contaminated Site are recoverable within the meaning of N.J.S.A. 58:10A-10c.

68. Defendants discharged pollutants at the Property, which were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and are liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that have been, or may be, lost or destroyed as a result of the discharge of pollutants at the Property. N.J.S.A. 58:10A-6a.

69. 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); any reasonable cost incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c.(3); compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Property, 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).

70. Pursuant to N.J.S.A. 58:10A-10e, Defendants are subject, upon order of the Court, to a civil penalty of up to \$50,000 per day for their failure to remediate the Contaminated Site, as appropriate. Each day the violation continues is a separate and distinct violation.

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

- a. Entering a Permanent Injunction against Defendants, without regard to fault, requiring them to remove,

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

- b. Entering an order requiring Defendants, without regard to fault, to pay DEP its reasonable costs incurred for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Finding Defendants, without regard to fault, liable for all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- d. Entering an order requiring Defendants, without regard to fault, to pay DEP all reasonable costs it incurred removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Contaminated Site;
- e. Assessing civil penalties as provided by N.J.S.A. 58:10A-10e against each of the Defendants for their failure to remediate the Contaminated Site;
- f. Awarding the Commissioner his costs and fees in this action;

- g. Awarding the Commissioner such other relief as this Court deems appropriate; and
- h. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising from the discharge at the Contaminated Site.

**Count III**

**Unjust Enrichment**

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

72. Defendants have failed to perform or fund the remediation of a hazardous discharge at the Contaminated Site.

73. The Department has used and may continue to use public funds to remediate the Contaminated Site.

74. The Department's expenditure of public funds for the remediation of the Contaminated Site, which was and is these Defendants' obligation to fully fund and/or perform, has unjustly enriched Defendants.

75. Defendants have not reimbursed the Department for the funds the Department has spent to conduct the remediation of the Contaminated Site.

**WHEREFORE,** the Department demands judgment in its favor:

- a. Finding that Defendants have been unjustly enriched by the Department's expenditure of public funds to partially remediate the Contaminated Site;
- b. Ordering Defendants to reimburse the Department for all cleanup and removal costs that the Department has incurred, and will incur, to perform the partial remediation of the Contaminated Site, with applicable interest;
- c. Finding Defendants liable for all other compensatory and consequential damages; and
- d. Awarding the Department such other relief as the Court deems appropriate.

#### **Count IV**

##### **Public Nuisance**

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

77. Public surface waters are a natural resource of the State held in trust by the State for the benefit of the public.

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

79. The surface water contamination from the Property constitutes a physical invasion of public property and an

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

80. The public nuisance continues for as long as the surface water remains contaminated due to Defendants' conduct.

81. Defendants are liable for the creation of a public nuisance in contravention of the public's common right to clean surface water.

**WHEREFORE**, the Department demands judgment in its favor:

- a. Ordering Defendants to reimburse the Department for all cleanup and removal costs the Department has incurred, and will incur, to abate the public nuisance created by the discharge of hazardous substances at the Contaminated Site;
- b. Awarding the Department its costs and fees in this action;
- c. Awarding the Department such other relief as the Court deems appropriate; and
- d. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising from the discharge at the Contaminated Site.

**Count V**

**Trespass**

82. The Department repeats and incorporates by reference

each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

83. Public surface waters are a natural resource of the State held in trust by the State for the benefit of the public.

84. The surface water contamination from the Property constitutes a physical invasion of public property held in trust by the State without permission or license.

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

86. As long as the surface water remains contaminated, the Defendants' trespass continues.

87. The Department, as trustee of natural resources, including surface water, is authorized to prosecute claims for injuries to natural resources arising from the physical invasion by hazardous substances and pollutants.

**WHEREFORE,** the Department demands judgment in its favor:

- a. Ordering Defendants to reimburse the Department for all cleanup and removal costs the Department has incurred, and will incur, related to the discharge of hazardous substances at the Contaminated Site;
- b. Awarding the Department its costs and fees in this action;

- c. Awarding the Department such other relief as the Court deems appropriate; and
- d. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising from the discharge at the Contaminated Site.

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiff

By: s/ Willis A. Doerr  
Willis A. Doerr  
Deputy Attorney General

DATED: April 20, 2023

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, the Court is advised that Willis A. Doerr, 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 Rule 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 Rule 4:28, or who is subject to joinder pursuant to Rule 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 Rule 4:5-1(b)(2).

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiff

By: s/ Willis A. Doerr  
Willis A. Doerr  
Deputy Attorney General

DATED: April 20, 2023

**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 Rule 1:38-7(b).

MATTHEW J. PLATKIN  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiff

By: s/ Willis A. Doerr  
Willis A. Doerr  
Deputy Attorney General

DATED: April 20, 2023

**VERIFICATION**

I, Todd Kast, by way of certification, state that:

1. I am an Emergency Response Specialist with the New Jersey Department of Environmental Protection Emergency Response Program in the Bureau of Emergency Response South.
3. I certify that the factual allegations contained in Paragraphs 23-30 and 32-34 of the Verified Complaint are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

/s/ Todd Kast

Todd Kast  
Emergency Response Specialist  
New Jersey Department of  
Environmental Protection  
Bureau of Emergency Response

DATED: April 19, 2023

**VERIFICATION**

I, Nadine Drake, by way of certification, state that:

1. I am an Enforcement Manager with the New Jersey Department of Environmental Protection's Contaminated Site Remediation & Redevelopment Program, Enforcement Information Support Element.
3. I certify that the factual allegations contained in Paragraphs 9-22 and 38-39, and 56 of the Verified Complaint are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

/s/ Nadine M. Drake  
Nadine Drake  
Enforcement Manager  
Enforcement and Information  
Support Element  
Contaminated Site &  
Redevelopment Program

DATED: April 19, 2023