

Products, Inc. ("ESCO"); "XYZ Corporations" 1-10 (Names Fictitious); and "John and/or Jane Does" (Names Fictitious) (collectively, Defendants), and allege as follows:

STATEMENT OF THE CASE

1. This action is brought to compel the cleanup and remediation of hazardous substances illegally discharged at a former manufacturing and industrial site located at 171 Oak Ridge Road, West Milford, Passaic County ("Site") and wherever contamination has migrated therefrom (collectively, "Contaminated Site").

2. For nearly 60 years, Defendant ESCO owned and operated facilities on the Site utilized to manufacture custom and standard optical components. ESCO's manufacturing process used abrasives and solvents, including chlorinated volatile organic chemical degreasers.

3. In or around 1991, PCE was discovered in potable well water at the Site at levels in excess of DEP Class II-A Ground Water Quality Standards ("GWQS") and the New Jersey Primary Drinking Water Maximum Contaminant Levels ("MCLs"). ESCO was required to and ultimately installed a treatment system at the well.

4. Then, in 1998, potable well water sampling conducted from 21 off-site potable wells near the Site identified the

presence of PCE and TCE at levels above the applicable GWQs and MCLs in the potable well water of one off-site well.

5. During this same period, it was discovered that ESCO was discharging overflow from a malfunctioning septic system that received wastewater from sinks and drains within the building at the rear of the building to an overflow pipe to the ground.

6. To protect human health and the environment, the Department investigated, at significant expense to the public, the PCE and TCE contamination in the off-site well.

7. PCE and TCE are dangerous to human health and exposure to these substances has been linked to kidney dysfunction, respiratory tract irritation, and cognitive and neurological effects.

8. To date, ESCO has failed to satisfy its legal obligation to fully investigate and remediate the Contaminated Site.

9. The Department now brings this suit pursuant to the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -20, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31 ("Brownfield Act"), the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), and the Industrial Site Recovery Act, N.J.S.A. 13:1K-1 to -13 ("ISRA"): (1) to compel Defendants to remediate the discharges of hazardous substances that continue to exist at the Contaminated Site; (2) to

recover from Defendants the costs the Department has incurred and will incur to remediate the Contaminated Site; (3) for imposition of civil penalties on Defendants; and (4) for other related relief.

PARTIES

10. DEP is a 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 the public health and safety. N.J.S.A. 13:1D-9. DEP maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey.

11. Pursuant to the authority vested in DEP by its enabling legislation, the Spill Act, WPCA, the Brownfield Act, and ISRA, DEP is empowered to institute legal proceedings to seek injunctive relief and to pursue additional civil penalties in Superior Court.

12. The Commissioner is the Commissioner of 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-9. The Commissioner maintains his principal office at 401 East State Street, Trenton, Mercer County, New Jersey.

13. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c. and

d., and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

14. Defendant ESCO Products Inc., also known as "Esco Products, Inc." and "Esco Optics, Inc.," is a corporation organized and existing under the laws of the State of New Jersey, with a main business address of 95 Chamberlain Road, West Milford, Morris County, New Jersey.

15. "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, Defendants, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site.

16. "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, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site.

FACTUAL ALLEGATIONS

17. From 1955 to 2014, the Site, designated as Block 15901, Lot 7 on the tax map of the Township of West Milford, Program Interest Number 666474, was utilized by ESCO to manufacture custom and standard optical components. ESCO's manufacturing process used abrasives and solvents, including chlorinated volatile organic chemical degreasers.

18. Upon information and belief, ESCO has owned the Site since at least 1955.

19. On November 1, 1991, the City of Paterson Division of Health sent a letter to ESCO stating that a potable well on the Site (#PWS1615353) was classified as a non-transient, non-community public water supply well, and was therefore subject to periodic sampling for volatile organic compounds ("VOCs").

20. On November 21, 1991, ESCO collected a water sample from the potable well at the Site and discovered the presence of PCE at a concentration of 1.2 parts per billion (ppb), which is in excess of the Department's GWQS and MCL of 1.0 ppb. Additional contaminants, including cis-1,2-Dichloroethene, 1,1,1-Trichloroethane, and TCE were also detected at concentrations exceeding their respective laboratory reporting limits, but below DEP's GWQS and MCLs.

21. Additional potable well sampling was performed at the Site on August 2, 1995, January 22, 1996, July 19, 1996, and May

4, 1998, and identified PCE in the groundwater above the GWQS and MCL of 1.0 ppb (at concentrations of 2.67 ppb, 1.37 ppb, and 3.71 ppb, and 1.34 ppb, respectively).

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

23. On July 3, 1996, a report of an illegal discharge of waste from a malfunctioning septic system at the Site was made to DEP by an anonymous former employee of ESCO. The anonymous caller claimed ESCO's septic system had been failing for at least three years, and that the caller has observed employees dumping various chlorinated solvents and polishing compounds into drains which went to the septic system. The caller also stated that ESCO had modified the septic system by digging a trench leading into the woods, thereby allowing the septage to run into the ground behind the facility. The Department assigned Incident Number 96-07-03-1414-13 to the reported discharge.

24. Following the anonymous call, the Passaic County Department of Health ("PCDH"), in consultation with DEP, conducted an inspection of the Site and found that Defendant had used chlorinated solvents in its manufacturing process, and had been discharging overflow from a malfunctioning septic system at the rear of the building to an overflow pipe to the ground. The septic

system received wastewater from sinks and drains within the building.

25. On July 8, 1996, a PCDH inspector observed the overflow pipe discharging wastewater and sewage at a steady rate, which was flowing into woods southeast of the Site. The wastewater was discolored and had an odor of sewage. Gary Steneken, president of ESCO, confirmed that the wastewater included non-contact cooling water from the degreasing machine. That same day, PCDH issued a Notice of Violation to ESCO for the unpermitted discharge of a pollutant to the waters of the State.

26. On June 25, 1998, as a follow-up to the multiple rounds of potable well samples collected at the Site demonstrating PCE still above the MCL, as well as to the 1996 report of VOCs discharged into the septic system at the Site, the PCDH issued a letter to ESCO, directing it to immediately cease use of potable water well #PSW1615353 and to install a system to treat the water to meet DEP's MCLs for potable water.

27. A July 23, 1998 inspection conducted by PCDH confirmed that ESCO installed a water treatment system on the potable well. On July 23, 1998, the exceedances of DEP's GWQS and the installation of the water treatment system were reported to the DEP Hotline by PCDH. The discharge notification concerning the Site was assigned Case Number 98-07-23-1133-06.

28. Between July 28, 1998, and September 22, 1998, in response to the detection of PCE in ESCO's Site well, twenty-two (22) potable well samples were collected by PCDH at twenty-one (21) potable wells across twenty (20) properties in the surrounding area.

29. Of the 21 potable wells tested, one potable well at 173 Oak Ridge Road exhibited exceedances of both PCE and TCE above their respective DEP GWQS and MCL of 1.0 ppb.

30. The sampling of the 22 potable wells and identification of PCE and TCE in the potable well at 173 Oak Ridge Road in excess of the respective GWQSs and MCLs was labeled Program Interest Number G000036266, and constitutes an Immediate Environmental Concern ("IEC") to the environment and/or the public health and safety.

31. In or around April 2015, the Department began an unknown source investigation to identify the sources of the potable well contamination at the Site and at 173 Oak Ridge Road.

32. The Department expended public funds to conduct and prepare a report documenting the results of an unknown source investigation that explored possible sources of the contamination and to sample additional potable wells. The Department concluded that the discharges at the Site were identified as a source of the contamination discovered in the Site's potable well and informed

ESCO by letter dated August 10, 2018, to Lee Steneken, President of ESCO.

33. On or about August 10, 2014, the building on the Site caught fire ("2014 Fire") and was subsequently demolished.

34. ESCO's operations at the Site immediately preceding the 2014 Fire were classified under the North American Industry Classification System ("NAICS") Code 333314, "Optical Instrument and Lens Manufacturing."

35. Due to the nature of ESCO's past operations at the Site, and the NAICS code used by ESCO, the Site is an "industrial establishment," as that term is defined under ISRA.

36. Immediately following the 2014 Fire, ESCO ceased operations at the Site, and never resumed operations there.

37. On or about December 1, 2014, more than three months after it ceased operations, ESCO filed a General Information Notice ("GIN") for the Site, and the Department assigned the Site ISRA case number E20140394.

38. ESCO's cessation of operations at the Site following the 2014 Fire triggered certain obligations it was required to fulfill under ISRA and its governing regulations, N.J.A.C. 7:26B, including, sending notification of its decision to cease operations to DEP no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first; remediating the Industrial

Establishment in accordance with the ISRA Regulations, N.J.A.C. 7:26B, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C ("ARRCS"), and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; and issuing a final remediation document for the entire Industrial Establishment.

39. On November 19, 2015, as amended and supplemented on March 17, 2017, ESCO's licensed site remediation professional ("LSRP") issued a Response Action Outcome for ISRA Case E20140394. But the RAO was deficient and the LSRP withdrew it on October 16, 2018, as requested by the Department in its August 10, 2018 letter.

40. On November 19, 2018, the LSRP issued a RAO for select areas of concern at the Site.

41. On May 18, 2020, the LSRP issued an RAO for ISRA Case E20140394.

42. In multiple e-mail communications ranging from November 17, 2021 to June 9, 2022, the Department requested that the LSRP withdraw both the November 19, 2018 and May 18, 2020 RAOs and all supporting documentation which was also deficient. On June 9, 2022, the LSRP withdrew both the November 19, 2018 and May 18, 2020 RAOs and all supporting documentation.

COUNT I

Violation of the Spill Act

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

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

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

46. Defendant ESCO, as the person whose action or omission resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous substances at the Site, is a "discharger," and as the owner of the Site at the time hazardous substances were discharged there, is also a person "in any way responsible," and is therefore responsible, 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).

47. Defendants XYZ Corporations 1-10, who could not be identified as of the filing of this complaint, are dischargers or persons "in any way responsible" for discharged hazardous substances and are therefore liable, jointly and severally,

without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1).

48. Defendants John and/or Jane Does 1-10, who could not be identified as of the filing of this complaint, are dischargers or persons "in any way responsible" for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1).

49. To date, Defendants have not fulfilled their SRRA and Spill Act obligations. Specifically, Defendants have failed to (1) submit a Preliminary Assessment/Site Investigation ("PA/SI") by the mandatory timeframe of August 9, 2016, N.J.A.C. 7:26C-3.2(b)1(ii); (2) submit an IEC Source Control Report by the mandatory timeframe of November 9, 2021, N.J.A.C. 7:26C-3.3(b)3; (3) comply with Direct Oversight Provision at N.J.A.C. 7:26C-14.2(b) after missing the August 9, 2016 PA/SI mandatory timeframe; and (4) comply with the Remedial Investigation Report ("RIR") regulatory timeframe of November 6, 2021, N.J.A.C. 7:26E-4.10(a)1(ii)2.¹

¹ Although under the Spill Act and SRRA these violations actually began to accrue much earlier than the dates referenced herein, the Department has decided to rely on the regulatory deadlines that were set as a result of August 10, 2014 ISRA-triggering cessation of operations.

50. DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for a civil penalty not to exceed \$50,000 per day for each violation, with each day's continuance of the violation constituting a separate violation, N.J.S.A. 58:10-23.11u.d; for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

51. Pursuant to the Penalty Enforcement Law and R. 4:70-2, penalties under the Spill Act 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.

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

WHEREFORE, the Department demands judgment against Defendants:

- a. Ordering Defendants to perform the cleanup and remediation of the Contaminated Site in conformance with

- the SRRA, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- b. Finding Defendants liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department has incurred, is incurring, and may in the future incur, to remediate the hazardous substances discharged on, and emanating from, the Site;
 - c. Awarding the Department its costs and fees incurred in this action;
 - d. Imposing upon Defendants, pursuant to N.J.S.A. 58:10-23.11u.a, N.J.S.A. 58:10-23.11u.d, and R. 4:70, a civil penalty for Defendants' violations of the Spill Act;
 - e. 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 R. 4:67-5;
 - f. Awarding the Department any other relief the Court deems appropriate; and
 - g. Reserving the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Contaminated Site.

COUNT II

Violation of the Water Pollution Control Act

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

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

55. 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.

56. Defendant ESCO, as the person whose action or omission resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous substances at the Site, is a "discharger," and is therefore strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.

57. 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 which led to the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10c.(2); and reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects on 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); 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).

WHEREFORE, the Commissioner demands judgment against Defendant ESCO:

- a. Ordering Defendant ESCO to remove, correct, or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants;
- b. Entering an order requiring Defendant ESCO, without regard to fault, to pay DEP for its reasonable costs incurred for any investigation, inspection, or monitoring survey, that led to establishment of the violation, including the costs of preparing and litigating this case;
- c. Finding Defendant ESCO, without regard to fault, and 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;

- d. Entering an order requiring Defendant ESCO, without regard to fault, to pay DEP all reasonable costs it will incur removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Site;
- e. Awarding the Commissioner his costs and fees in this action;
- f. Assessing civil penalties as provided by N.J.S.A. 58:10A-10e against each of the Defendant ESCO for its failure to remediate the Contaminated Site;
- g. Awarding the Commissioner such other relief as the Court deems appropriate; and
- h. Reserving the right to bring a claim in the future for natural resources damages arising out of the discharge of hazardous substances at the Site.

COUNT III

Violation of the Industrial Site Recovery Act

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

59. Defendant ESCO is an "owner" and an "operator" within the meanings of those terms in ISRA, found at N.J.S.A. 13:1K-8.

60. The Site is an "industrial establishment" within the meaning of N.J.S.A. 13:1K-8.

61. ISRA provides that:

The owner or operator of an industrial establishment planning to close operations or transfer operations shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations, as applicable.

[N.J.S.A. 13:1K-9.a.]

62. The 2014 Fire at the Site resulted in the "closing [of] operations" at the Site as of August 10, 2014, for purposes of N.J.S.A. 13:1K-8.

63. To date, ESCO has not fulfilled its SRRA and ISRA obligations. Specifically, ESCO has failed to (1) submit a Preliminary Assessment/Site Investigation ("PA/SI") by the mandatory timeframe of August 9, 2016, N.J.A.C. 7:26C-3.2(b)1(ii); (2) submit an IEC Source Control Report by the mandatory timeframe of November 9, 2021, N.J.A.C. 7:26C-3.3(b)3; (3) comply with Direct Oversight Provision at N.J.A.C. 7:26C-14.2(b) after missing the August 9, 2016 PA/SI mandatory timeframe; and (4) comply with the Remedial Investigation Report ("RIR") regulatory timeframe of November 6, 2021, N.J.A.C. 7:26E-4.10(a)1(ii)2.

64. Defendant ESCO further violated ISRA when it failed to notify the DEP of its decision to close operations at the Site in writing by August 15, 2014. N.J.A.C. 7:26B-3.2.

65. Pursuant to N.J.S.A. 13:1K-13.1(a)(2) and (c), the Commissioner is empowered to initiate an action in Superior Court to hold Defendant liable for its ISRA non-compliance and collect penalties assessed by the Court.

WHEREFORE, the Department demands judgment against Defendant ESCO:

- a. Ordering Defendant ESCO to immediately: submit a PA/SI, submit an IEC Source Control Report, comply with the Direct Oversight Provision at N.J.A.C. 7:26C-14.2(b), and submit an RIR.
- b. Ordering Defendant ESCO to comply with ISRA, including, but not limited to, remediating the Contaminated Site in accordance with 13:1K-6 to -14, N.J.A.C. 7:26E, N.J.S.A. 58:10B-1.3(b), and all remediation statutes and regulations;
- c. Imposing upon Defendant ESCO, pursuant to N.J.S.A. 13:1K-13.1(e), a civil penalty for its violations of ISRA;
- d. Awarding all costs recoverable under 13:1K-13.1(c)(2), including, but not limited to, the reasonable costs of preparing and litigating this matter;
- e. Awarding the Department any other relief the Court deems appropriate; and

f. Reserving the right to bring a claim in the future for natural resources damages arising out of the discharge of hazardous substances at the Site.

COUNT IV

Violation of the Brownfield and Contaminated Site Remediation Act (as Amended by SRRA)

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

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

68. As amended by SRRA (P.L. 2009, c. 60, §30, effective May 7, 2009), the Brownfield Act provides in part that the owner or operator of an industrial establishment subject to P.L. 1983, c.300 (C.13:1K-6 et al.), or 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:

An owner or operator of an industrial establishment subject to P.L. 1983, c.300 (C.13:1K-6 et al.), the 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.]

69. Defendants are "persons" within the meaning of N.J.S.A. 58:10B-1.

70. As set forth in Count I of the Complaint, Defendants are persons liable under the Spill Act.

71. As set forth in Count III of the Complaint, Defendant ESCO is an owner and an operator of an industrial establishment liable under ISRA.

72. As persons liable under the Spill Act and ISRA, Defendants, pursuant to N.J.S.A. 58:10B-1.3a of the Brownfield Act, have affirmative obligations, jointly and severally, to remediate the hazardous substances discharged on the Site and emanating therefrom.

73. In violation of N.J.S.A. 58:10B-1.3.a, Defendants have not complied with their obligation under N.J.S.A. 58:10B-1.3.a to remediate the Site and wherever contamination has migrated therefrom.

74. In addition, the Brownfield Act provides, in pertinent part:

No later than three years after the date of enactment of P.L. 2009, c. 60 [SRRA] (C:58:10C-1 et seq.), a person responsible for conducting the remediation, no matter when the remediation is initiated, shall comply with the provisions of [N.J.S.A. 58:10B-1.3.b].

[N.J.S.A. 58:10B-1.3. c.(3).]

75. As defined in N.J.S.A. 58:10B-1, a "person responsible for conducting the remediation" includes, inter alia, "the owner or operator of an industrial establishment subject to P.L. 1983, c.300 (C.13:1K-6 et al.), for the remediation of a discharge," as well as "any other person who discharges a hazardous substance or is in any way responsible for a hazardous substance pursuant to section 9 of P.L.1976, c. 14 (C.58:10-23.11g), that was discharged at a contaminated site." In other words, "a person responsible for conducting the remediation" includes any person liable under the Spill Act or ISRA.

76. As persons liable under the Spill Act and ISRA, Defendants are persons responsible for conducting the remediation of the Site and the extent of contamination migrating therefrom.

77. As persons responsible for conducting the remediation, Defendants were required to comply with the remediation requirements enumerated in N.J.S.A. 58:10B-1.3.b on or before May 7, 2012. N.J.S.A. 58:10B-1.3.c.(3).

78. To date, Defendants have failed to comply with the remediation requirements enumerated in N.J.S.A. 58:10B-1.3.b.

79. 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 against Defendants:

- a. Finding Defendants liable and obligated, pursuant to N.J.S.A. 58:10B-1.3, to remediate the Contaminated Site;
- b. Finding Defendants in violation of N.J.S.A. 58:10B-1.3 for their failure to remediate the Site and wherever contamination has migrated therefrom;
- c. Awarding the Department its costs of investigating the discharge of hazardous substances on the Contaminated Site, and its costs of preparing and litigating this action, together with interest, to the full extent allowed by law;
- d. Granting the Department such other relief as the Court deems just, equitable, and appropriate; and
- e. Reserving the right to bring a claim in the future for natural resources damages arising out of the discharge of hazardous substances at the Site.

COUNT V

Unjust Enrichment

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

81. Defendants have failed to perform or fund the remediation required to address the contamination at the Contaminated Site, which they are required by law to do.

82. Having avoided performing or funding the remediation required to address the contamination at the Contaminated Site, Defendants have been unjustly enriched.

WHEREFORE, the Department demands judgment against the Defendants:

- a. Finding that Defendants have been unjustly enriched as a result of failing to perform or fund the remediation required to address the contamination at the Contaminated Site;
- b. Finding Defendants are liable for all other compensatory and consequential damages; and
- c. Awarding the Department such other relief as this Court deems appropriate.

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

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 Plaintiffs

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

DATED: April 20, 2023

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 Rule 1:38-7(b).

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY ~~COB~~
Attorney for New Jersey Department of
Environmental Protection

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

DATED: April 20, 2023

VERIFICATION

I, Gillian Schwert, by way of certification, state that:

1. I am an Enforcement Manager within the New Jersey Department of Environmental Protection's Bureau of Enforcement & Investigations, Division of Enforcement, Technical & Financial Support, Contaminated Site Remediation & Redevelopment.
3. I certify that the factual allegations contained in Paragraphs 17-18, 20-21, 23-30, and 49 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.



Gillian Schwert
Enforcement Manager
NJ Department of
Environmental Protection

DATED: April 19, 2023