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

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

CIVIL ACTION

COMPLAINT

Plaintiffs,

v.

OOTZIE PROPERTIES-NWK, LLC; THE
2008 TRUST FOR THE GRANDCHILDREN
DATED 04/16/08; ANTHONY CERONE; D&J
TRUCKING & WASTE CO.; SHERWIN-
WILLIAMS COMPANY; BENJAMIN MOORE &
COMPANY; FORSUN URBAN RENEWAL
CORPORATION; SUN CHEMICAL
CORPORATION; ECOBAT RESOURCES NEW
YORK, LLC; "JOHN DOES" 1 THROUGH
10; and "ABC CORPORATIONS" 1
through 10,

Defendants.

Plaintiffs the New Jersey Department of Environmental
Protection ("DEP"), the Commissioner of DEP ("Commissioner"), and
the Administrator of the New Jersey Spill Compensation Fund

("Administrator") (collectively, "Department"), by and through their attorneys, file this Complaint against the above-named defendants, Ootzie Properties-NWK; LLC, The 2008 Trust for the Grandchildren Dated 4/16/08; Anthony Cerone; D&J Trucking & Waste, Co.; Sherwin-Williams Company; Benjamin Moore & Company; Forsun Urban Renewal Corporation; Sun Chemical Corporation; Ecobat Resources New York, LLC; John Does 1 through 10; and ABC Corporations 1 through 10 (collectively, "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. The Department brings this civil action to hold Defendants accountable for their improper disposal of hazardous substances, unlawful dumping, and failure to remediate the discharge of hazardous substances at an industrial site in the City of Newark, which has exposed the surrounding community to public health hazards and caused environmental harm for decades.

2. Defendants are current and former owners and operators of, or generators of industrial waste disposed of at, the property located along Avenue P presently known as Block 5020, Lots 14, 136, 138, and portions of Lot 131, on the tax map of the City of Newark, Essex County, New Jersey ("Site"), see Exhibit A. The Site, together with all other areas where any hazardous substances discharged at the Site have come to be located, is referred to herein as the "Contaminated Site."

3. Beginning in the early 1900s, portions of the Site were developed and used for industrial activities, including but not limited to, metal smelting and refining operations, and fat rendering and tallow operations. The industrial activities continued until in or around the 1970s.

4. Portions of the Site were also used as an illegal landfill for hazardous substances related to paint and chemical manufacturing during and subsequent to the period of industrial activity.

5. Decades of sampling confirm that the soil, groundwater, surface water, and/or sediment at the Site is contaminated with hazardous substances at concentrations exceeding applicable standards, including but not limited to, volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls ("PCBs"), metals, and petroleum hydrocarbons.

6. Exposure to those hazardous substances has been linked to miscarriages, birth defects, kidney damage, cardiovascular effects, cognitive and neurological effects, and cancers.

7. The community surrounding the Site, which includes the Essex County Correctional Center and commercial facilities, has a significant minority population 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, 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. Defendants' improper disposal of hazardous substances, unlawful dumping, and failure to remediate the discharge of hazardous substances at the Site continues to subject the local community to public health risks and other environmental hazards in violation of the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24; the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A.

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

58:10B-1 to -31, as amended by the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29; the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -20; and the Solid Waste Management Act, N.J.S.A. 13:1E-1 to -225 ("SWMA").

10. The Department therefore brings this action to compel Defendants to completely remediate any and all hazardous substances at the Contaminated Site, for the assessment of civil penalties, and reimbursement of costs expended by DEP.

PARTIES

11. DEP is a principal department in the Executive Branch of the State of New Jersey with offices at 401 East State Street, Trenton, New Jersey. DEP administers programs and enforces laws and regulations to conserve the natural resources of the State, to promote environmental protection, and to prevent pollution of the environment of the State. N.J.S.A. 13:1D-9.

12. Shawn LaTourette 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 is authorized to commence a civil action in Superior Court for appropriate relief for any violation of the Water Pollution Control Act, 58:10A-10c.

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 DEP incurs, N.J.S.A. 58:10-23f.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. The Commissioner and the Administrator maintain their principal offices at 401 East State Street, Trenton, New Jersey.

15. Defendant Ootzie Properties-NWK, LLC ("Ootzie") is a single member, limited liability company organized under the laws of New Jersey, with a main business address of 1800 Chapel Avenue West, Suite 320, Cherry Hill, New Jersey 08002. Ootzie purchased the portions of the Site currently identified as Block 5020, Lots 14 and 138 on approximately October 23, 2009. (See Exhibit A). Defendant Ootzie remains the current owner of these portions of the Site today.

16. Defendant Anthony Cerone ("Cerone") is an individual whose dwelling or usual place of abode is 1307 Atlantic Avenue Longport, New Jersey 08403. Defendant Cerone owned the portions of the Site currently identified as Block 5020, Lots 14 and 138 from approximately December 22, 2004 through October 20, 2009. (See Exhibit A).

17. Defendant The 2008 Trust for the Grandchildren dated April 16, 2008 is a trust created under the laws of Pennsylvania for the benefit of the minor relatives of Anthony Cerone and names Marie F. Cerone and Louis J. Cerone, II as trustees ("Trust").

The Trust owned the portions of the Site currently identified as Block 5020, Lots 14 and 138, from approximately September 2008 through October 20, 2009. (See Exhibit A).

18. Defendant D&J Trucking & Waste Co. ("D&J Trucking") was a corporation organized and existing under the laws of New Jersey with a last known address of 387 Avenue P, Newark, New Jersey 07105, also known as the Site. On information and belief, D&J Trucking's corporate charter was revoked on or around September 9, 1982. D&J owned, at different times, the portions of the Site currently identified as Block 5020, Lots 14, 136, and 138 (historically identified as Block 5020, Lots 14, 16, and 23) from approximately May 1958 through July 1968. (See Exhibit B).

19. Defendant Sherwin-Williams Company ("Sherwin-Williams") is a corporation organized and existing under the laws of Ohio, with a principal place of business at 101 Prospect Avenue, N.W., Cleveland, Ohio 44115. Sherwin-Williams engaged D&J Trucking to dispose of hazardous substances generated at its facility, located at Brown Street and Lister Avenue in the City of Newark, New Jersey, at the Site.

20. Defendant Benjamin Moore & Company ("Benjamin Moore") is a corporation organized and existing under the laws of New Jersey, with a principal place of business at 101 Paragon Drive, Montvale, New Jersey 07645. Benjamin Moore engaged D&J Trucking to dispose

of hazardous substances generated at its facility, located at 134 Lister Avenue in the City of Newark, New Jersey, at the Site.

21. Defendant Forsun Urban Renewal Corporation ("Forsun") was a corporation organized and existing under the laws of New Jersey, with a last known address of 200 Park Avenue, New York, New York 10016. Forsun owned the portion of the Site currently identified as Block 5020, Lot 14, 136, and 138 (historically identified as Block 5020, Lots 14, 16/23) from approximately July 8, 1968 through August 22, 1974. (See Exhibit C). Upon information and belief, Forsun was an affiliate of Sun Chemical Corporation, with both entities sharing multiple common corporate officers.

22. Defendant Sun Chemical Corporation ("Sun Chemical") is a corporation organized and existing under the laws of New Jersey, with a principal place of business at 35 Waterview Boulevard, Parsippany, New Jersey 07054. Sun Chemical's affiliate, Forsun, owned the portion of the Site currently identified as Block 5020, Lot 14, and parts of Block 5020, Lots 136 and 138 (historically identified as Block 5020, Lot 10, 14, 16, and 23), from approximately July 8, 1968 through August 22, 1974. (See Exhibit C). In addition, Sun Chemical engaged D&J Trucking to dispose of hazardous substances generated at its facility, located at 185 Foundry Street in the City of Newark, New Jersey, at the Site.

23. Defendant Ecobat Resources New York, LLC ("Ecobat") is the corporate successor to Revere Smelting & Refining Corporation, a corporation formerly organized, existing, and doing business under the laws of Delaware, with a principal place of business at 2777 N. Stemmons Parkway, Suite 1850, Dallas, Texas 75207. Revere Smelting & Refining Corporation operated at a portion of the Site currently identified as parts of Block 5020, Lots 131 and 138 (historically identified as Block 5020, Lots 20, 21, 24, 28, and 32) at various times from approximately 1957 through 1970. (See Exhibits B and C).

24. Defendants "ABC Corporations" 1 through 10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, insurers of, or are otherwise related to, Defendants.

25. Defendants "John Does" 1 through 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 ABC Corporation defendants.

OWNERSHIP HISTORY AND OPERATIONS

26. Beginning in the early 1900s, various owners and operators developed the Site for industrial activities.

Industrial activities conducted at the Site included, but were not limited to, metal smelting and refining operations and fat rendering and tallow operations. The Site was also used as a landfill.

Defendant Ecobat's Ownership and Operations

27. From in or around 1970 to 1974, Revere Smelting & Refining Corporation conducted metal smelting and refining operations on the portions of the Site formerly known as Block 5020, Lots 20, 21, 24, 28, and 32. These Lots currently comprise parts of current Block 5020, Lots 131 and 138.

28. Revere Smelting & Refining Corporation's operations involved dismantling and melting batteries to recover antimony and lead. The structures used for the smelting and refining operations were located on lots currently known as portions of Block 5020, Lots 131 and 138 (historically identified as Lots 20, 21, and 28).

29. In or around the late 1960s and early 1970s, investigations by the New Jersey Department of Health showed that wastes and by-products from smelting and refining operations were discharged into lagoons on former Lots 24, 28, and/or 32 of the Site.

30. On approximately December 1, 1971, Revere Smelting & Refining Corporation changed its name to Revere Smelting & Refining Corporation of New Jersey.

31. In or around 1992, Revere Smelting & Refining Corporation of New Jersey changed its name back to Revere Smelting & Refining Corporation.

32. On approximately September 3, 2021, Revere Smelting & Refining Corporation converted to a limited liability company and became Revere Smelting & Refining, LLC.

33. On approximately October 26, 2021, Eco-Bat New York, LLC, a Delaware limited liability company, merged with Revere Smelting & Refining, LLC. The surviving entity from the merger is Revere Smelting & Refining, LLC.

34. On approximately November 19, 2021, Revere Smelting & Refining, LLC underwent a name change and became Ecobat Resources New York, LLC.

Defendant D&J Trucking's Ownership and Operations

35. In or around May 1958, Defendant D&J Trucking began purchasing lots comprising portions of the Site currently identified as all or part of Block 5020, 14, 136, and 138 (historically known as Block 5020, Lots 14, 16, and 23), and continued to own these portions of the Site at different times from approximately May 1958 through July 1968:

- a. From approximately May 1958 through August 1960, D&J Trucking owned all or parts of currently identified Block 5020, Lots 14, 136, and 138 (formerly known as Block 5020, Lot 16 and 23);

b. From approximately July 1960 through July 1968, D&J Trucking owned part of currently identified Block 5020, Lots 14 and 136 (formerly known as Block 5020, Lot 14).

36. D&J Trucking engaged in waste hauling and disposal operations at the Site from approximately the 1960s through the early-mid 1970s.

37. On behalf of its clients, including Defendants Sherwin-Williams, Benjamin Moore, and Sun Chemical Corporation, D&J Trucking collected and transported chemical and industrial wastes to various disposal locations in the City of Newark, including the Site.

38. D&J Trucking engaged in landfilling, open dumping, and creating lagoons for the disposal of liquid wastes at the Site.

39. Such hazardous substances collected and disposed of by D&J Trucking at the Site included paints, lacquers, paint removers, varnishes, and chemical and petroleum wastes.

40. Land surveys of the Site conducted in the late 1960s and/or early 1970s by surveyors Borrie, McDonald and Watson described the Site as a "paint dump", with various sheds on the Site filled with containers of paints, lacquers, paint removers and varnishes, and several hundred cases of paint containers. The surveyors observed many containers affixed with Sherwin-Williams and Benjamin Moore labels.

41. By letters dated December 14, 1974 and June 26, 1975, D&J Trucking informed DEP that it operated at the Site until approximately December 14, 1974.

42. Many of the hazardous substances discovered at the Site were consistent with waste materials generated by Defendants Sherwin-Williams, Benjamin Moore, and Sun Chemical, which utilized D&J Trucking's hauling and disposal services at the time it owned the Site.

Defendant Sherwin-Williams' Operations

43. Since at least the early 1900s, Defendant Sherwin-Williams has manufactured paints and related products at a facility located at Brown Street and Lister Avenue in the City of Newark. Hazardous substances used for its manufacturing operations include, but are not limited to, xylenes, phthalic anhydride, acrolein, formaldehyde, styrene, vinyl toluene, butyl alcohol, antimony, and chromium.

44. In May and September 1972, Sherwin-Williams submitted Stand-By Plans² to the DEP Bureau of Air Pollution Control stating that it utilized D&J Trucking's disposal services.

² Under N.J.A.C. 7:27-12.4, any person responsible for the operation of a source of air contamination must prepare standby plans designed to reduce or eliminate emissions of air contaminants.

45. On January 14, 1977, Sherwin-Williams submitted an Industrial Waste Survey to DEP further confirming it utilized D&J Trucking's disposal services.

46. On or around December 27, 1977, DEP met with a representative of Sherwin-Williams who confirmed that it disposed of approximately 250 drums of waste pigments, alkyd resins, off-specification paint and waste varnish through D&J Trucking every month.

47. Based on the documentation submitted by Sherwin-Williams to DEP, surveys conducted at the Site and sampling conducted at the Site, D&J Trucking disposed of Sherwin-Williams' waste at the Site.

Defendant Benjamin Moore's Operations

48. Since at least the 1930s, Defendant Benjamin Moore has manufactured paints and related products at a facility located at 134 Lister Avenue in the City of Newark.

49. Hazardous substances used for its manufacturing operations include, but are not limited to, ethylbenzene, toluene, xylenes, styrene, lead and compounds, chromium and compounds, naphtha, and zinc compounds.

50. On March 22, 1977, Benjamin Moore submitted an Industrial Waste Survey to DEP stating that it utilized D&J Trucking's disposal services.

51. On December 27, 1977, DEP met with a representative of Benjamin Moore who confirmed that it disposed of 150 55-gallon drums of waste pigments and alkyd resins using D&J Trucking.

52. Based on the documentation submitted by Benjamin Moore to DEP, surveys conducted at the Site, and sampling conducted at the Site, D&J Trucking disposed of Benjamin Moore's waste at the Site.

Defendant Sun Chemical's Ownership and Operations

53. From approximately September 30, 1964, through April 9, 1974, Sun Chemical owned the portion of the Site currently identified as Block 5020, Lot 136 (formerly known as Block 5020, Lot 10).

54. On July 8, 1968, Sun Chemical entered into an agreement to purchase properties from the Newark Housing Authority ("NHA") in conjunction with a redevelopment plan known as the Industrial River Urban Renewal Project. The contract of sale included portions of the Site currently identified as part of Block 5020, Lots 14, 136, and 138 (formerly known as Lots 14 and 16/23).

55. Pursuant to the agreement between NHA and Sun Chemical, by deed dated July 8, 1968, Forsun acquired the portions of the Site comprising parts of currently identified Block 5020, Lots 14, 136, and 138 (formerly known as Lots 14 and 16/23).

56. On information and belief, Forsun was an affiliate of Sun Chemical. Forsun and Sun Chemical shared the same principal office address and were organized under the same management.

57. On information and belief, landfilling and disposal activities continued during Forsun's ownership of the Site. In or around 1972, a survey of the Site revealed thousands of paint cans and containers, including some affixed with Defendants' Sherwin-Williams and Benjamin Moore's labels.

58. Sun Chemical manufactured chemicals at a facility in the City of Newark at the time landfill and disposal operations by D&J Trucking occurred at the Site.

59. In an Industrial Waste Survey submitted to DEP in or around November 1977, Sun Chemical confirmed that it utilized D&J Trucking's disposal services.

60. On information and belief, D&J Trucking disposed of Sun Chemical's waste at the Site.

Newark Housing Authority's (NHA's) Ownership and Operations

61. NHA is a public entity with a principal office located at 500 Broad Street, Newark, New Jersey 07102. NHA owned the Site currently identified as Block 5020, 14, 131, 136, and 138 at different times from approximately July 8, 1968 through December 22, 2004.

62. In the mid to late 1960s, NHA initiated a project to redevelop all or portions of the Site pursuant to the federal Urban Renewal Act of 1949.

63. On June 22, 1968, NHA conducted a land survey at the Site to assess the potential for its development. While at the Site, the surveyors observed numerous containers bearing labels from Sherwin-Williams and Benjamin Moore.

64. On or around July 8, 1968, pursuant to the proposed redevelopment project, NHA acquired the portion of the Site currently identified as Block 5020, Lots 14 and 138 (formerly known as Block 5020, 14, 16, and 23). NHA immediately conveyed this portion of the Site to a private developer.

65. On or around April 20, 1970, NHA acquired the portion of the Site currently identified as Block 5020, Lots 131 and 138 (formerly known as Block 5020, Lots 20, 21, 24, 28, and 32).

66. On or around August 22, 1974, NHA re-acquired the portion of the Site currently identified as Block 5020, Lot 138, and parts of Lots 14 and 131 (formerly known as Block 5020 Lot 14 and 16/23).

67. As of August 1974, NHA owned all lots currently identified as Block 5020, Lots 14, 131, 138, and part of 136 and comprising the Site. NHA later acquired the remaining portions of Lot 136 in March 1978 and January 1979.

68. In or around 1980, NHA sold the portion of the Site currently identified as Block 5020, Lot 131 to Newark Economic Development Corporation.

69. In or around March 1982, NHA sold additional portions of the Site, currently identified as Block 5020, Lot 136 to Pfister Urban Renewal Corporation.

70. Subsequent investigations by DEP in or around January 1983, March 1983, and November 1983 confirmed the presence of drums and unpermitted disposal activities on parts of the Site currently identified as Block 5020, Lots 14 and 138.

71. As a result of observations made during inspections of the Site, DEP provided guidance to the NHA to address contamination at the Site.

72. In or around April 1985, NHA and DEP executed an Administrative Consent Order ("April 1985 ACO"), under which NHA agreed to investigate and remediate the Site.

73. Pursuant to the April 1985 ACO, NHA began investigation and remedial activities related to the contamination at the Site, which included:

- a. the excavation of over 1,450 drums containing various amounts of waste, three gas cylinders, phosphorous, and other wastes;

- b. Sampling activities confirming the presence of soil contamination, including but not limited, to arsenic, beryllium, cadmium, lead, mercury, and zinc;
- c. Groundwater sampling revealing the presence of hazardous substances above acceptable standards including, but not limited to arsenic, beryllium, cadmium, lead, mercury, zinc, 1,1,1-trichloroethane, 1,1-dichloroethane, 1,1-dichloroethylene, ethylbenzene, toluene, and xylenes; and
- d. Surface water and/or sediment sampling detecting PCBs above acceptable limits.

74. In or around May 1990, NHA retained EFP Associates to conduct a limited investigation to determine the Site conditions and to provide recommendations for additional remediation.

75. The findings of the May 1990 investigation confirmed the presence of soil contamination and subsurface volatile vapors/gases at the Site, and identified numerous magnetic anomalies that suggested the presence of metal objects buried at the Site.

76. On or around March 12, 1993, DEP submitted documentation to NHA, the principals of D&J Trucking, Benjamin Moore, Sherwin-Williams, and Revere Smelting & Refining Corporation, informing these responsible parties of their obligations to remediate the

Site; however, none of the responsible parties acted to address the contamination at the Site.

77. On or around December 22, 2004, NHA sold the remaining lots it owned comprising the Site, currently identified as Block 5020, Lots 14 and 138, to Defendant Cerone.

Defendants Cerone's, The Trust's, and Ootzie's Ownership

78. From approximately December 22, 2004, through approximately September 2008, Cerone owned the portions of the Site currently identified as Block 5020, Lots 14 and 138.

79. In approximately January 2008, GeoTrans, Inc., conducted a remedial investigation, on behalf of Cerone, of the portions of the Site currently identified as Block 5020, Lots 14 and 138.

80. Soil and groundwater sampling from the January 2008 remedial investigation confirmed contamination by metals, volatile compounds, semi-volatile organic compounds, and polychlorinated biphenyls.

81. Cerone did not remediate the contamination present at the Site.

82. On approximately April 16, 2008, the Trust was established.

83. On information and belief, at the time the Cerone's portions of the Site were conveyed to the Trust, the beneficiaries of the Trust were the minor relatives of Cerone.

84. In or around September 2008, Cerone executed a deed conveying his portion of the Site, currently identified as Block 5020, Lots 14 and 138, to the Trust.

85. On or around October 23, 2009, Ootzie acquired the portion of the Site currently identified as Block 5020, Lots 14 and 138. Ootzie remains the current owner of this portion of the Site.

86. To date, neither Ootzie nor any other Defendant has fulfilled its obligations to remediate the contamination at the Site.

Environmental Investigation and Sampling

87. In 1974 and 1976, Wilscore Core Boring Company and Genge Consultants conducted subsurface surveys in the form of borings and test pits on behalf of NHA to assess conditions for development.

88. The 1974 and 1976 surveys revealed waste materials, including chemical wastes, paint wastes, construction/demolition debris, and general household trash, among other waste. The test borings indicated that paint pigments existed in the soil column.

89. During a visit to the Site on May 24, 1976, a State employee observed approximately 300 to 400 drums, some marked "Hazardous Waste Chemicals" and at least one bearing a date of April 1976.

90. In or around 1977, Genge Consultants, on behalf of NHA, conducted an engineering survey of the Site. Genge Consultants drilled test borings and test pits and encountered chemical and paint waste, tin cans, auto parts, rubber hoses, rubber tires, wire, wood, tar, glass, concrete, plastic bags, plastics and cardboard barrels.

91. Environmental investigations conducted in the 1980s, 1990s, and 2000s confirmed the presence of soil, groundwater, surface water, and sediment contamination in the areas of the Site formerly owned and operated by Revere Smelting & Refining Corporation. Contamination in these areas included lead, antimony, and other substances commonly associated with smelting and refining operations.

92. Environmental investigations conducted in the 1980s, 1990s, and 2000s at the Site further confirmed the presence of soil, groundwater, surface water, and sediment contamination in areas formerly used for landfilling and disposal activities by D&J Trucking. Many of these hazardous substances found are consistent with those used in Sherwin-Williams' and Benjamin Moore's operations.

a. Hazardous substances found in soil from areas of the Site used by D&J Trucking included benzene, cis-1,2-dichloroethylene, chlorobenzene, ethylbenzene, PCE, xylenes, benzo(a)pyrene, 3,3'-dichlorobenzidine,

naphthalene, PCBs, antimony, arsenic, cadmium, copper, lead, nickel, and zinc.

- b. Hazardous substances detected in groundwater from areas of the Site used by D&J Trucking included benzene, cis-1,2-dichloroethylene, chlorobenzene, ethylbenzene, PCE, toluene, trichloroethylene ("TCE"), xylenes, benzo(a)pyrene, bis-2-ethylhexyl phthalate, 4-chloroaniline, naphthalene, PCBs, antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, and zinc.

93. In June 1985, the Cavanaugh Group conducted soil sampling at the Site on behalf of NHA. The results of the soil samples confirmed contamination above applicable criteria at that time. In addition, that same data also exceeds applicable standards for those compounds today, including arsenic at 86,703 parts per million ("ppm") (exceeding 19 ppm); lead at 63,007 ppm (exceeding 90 ppm); mercury at 137 ppm (exceeding 0.10 ppm); and zinc at 4,674 ppm (exceeding 930 ppm).

94. Additional investigations by NHA in 1986 identified paint pigments in every test boring conducted at the Site, at varying depths.

95. On January 11, 1988, pursuant to the United States Environmental Protection Agency's protocol, DEP completed a

Preliminary Assessment of the Site, which summarized the sampling conducted in June 1988.

96. The concentrations of lead in most soil samples on areas of the Site formerly identified as Block 5020, Lots 20, 21, 24 and/or 28, and currently identified as Block 5020, Lot 138 and a portion of Lot 131, exceeded 1,000 ppm, with the highest samples exceeding 63,000 ppm. Soil Remediation Standards for the Migration for Groundwater Exposure Pathway for lead at this Site are 90 ppm.

97. Surface water sampling summarized in the January 11, 1988 Preliminary Assessment also confirmed exceedances of applicable criteria, including levels of benzene at 15 parts per billion ("ppb") (exceeding 3.3 ppb); TCE at 22 ppb (exceeding 12.0 ppb); vinyl chloride at 41.8 ppb (exceeding 8.1 ppb); and tetrachloroethylene at 6.65 ppb (exceeding 1.6 ppb).

98. Groundwater sampling conducted at the Site also confirmed exceedances of the GWQS for 1,1-dichloroethylene, arsenic, lead, and naphthalene, among other contaminants.

99. The groundwater at and surrounding the Site is classified as a Class IIA Ground Water, which means that it is expected to be potable with standard water treatment. However, the concentrations at the Site exceed Class IIA Ground Water Quality Standards for specific hazardous substances including, but not limited to, benzene, toluene, xylenes, trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), naphthalene, PCBs, arsenic,

lead, and mercury, and cannot be potable with standard water treatment.

100. The levels of contamination at the Site could result in human health impacts such as damage to the kidneys, brain, and nervous system.

COUNT I

**Violation of the Spill Act and Brownfield Act
(as amended by SRRA)**

(Against All Defendants)

101. DEP and the Administrator repeat each allegation of the foregoing paragraphs above as though fully set forth herein.

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

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

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

104. Contamination, as defined by N.J.S.A. 58:10-23.11, means any discharged hazardous substance, hazardous waste as defined

pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3).

105. The contamination at the Contaminated Site has not been remediated in violation of the Spill Act. N.J.S.A. 58:10-23.11.c.

106. Defendants D&J Trucking, Benjamin Moore, Sherwin-Williams, Forsun, Sun Chemical, and Ecobat are dischargers or persons in any way responsible for the hazardous substances discharged on the Site, as defined by N.J.S.A. 58:10-23.11. As such, they are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by DEP and the Spill Fund to remediate the Contaminated Site.

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

In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.

108. Defendants The Trust, Anthony Cerone, and Ootzie acquired the Site after September 14, 1993, and as a purchaser of previously contaminated property, knew or should have known that hazardous substances had been discharged on the Site prior to its acquisition of the property. Therefore, Defendants The Trust,

Anthony Cerone, and Ootzie are strictly liable, jointly and severally, without regard to fault under N.J.S.A. 58:10-23.11g.c.(3) for all cleanup and removal costs incurred by DEP and the Spill Fund to remediate the hazardous substances discharged on the Site.

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

- a. For injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);
- b. For the costs incurred for any investigation, cleanup or removal, and for the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2);
- c. For any other related costs incurred by the Department under the Spill Act; and
- d. For the assessment of civil penalties for violations of the Spill Act, N.J.S.A. 58:10-23.11u.d.

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

111. As amended by SRRRA, N.J.S.A. 58:10C-1 to -29, the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous

substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances. N.J.S.A. 58:10B-1.3.a.

112. Defendants are "persons" as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

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

114. 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.a.

115. A discharger or person in any way responsible for a hazardous substance under the Spill Act is required to remediate the discharge of a hazardous substance pursuant to N.J.S.A. 58:10B-1.3a.

116. Here, Defendants failed to comply with N.J.S.A. 58:10B-1.3.a, as Defendants have not completed remediation of the Contaminated Site.

117. 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.

118. Pursuant to N.J.S.A. 58:10-23.11u.a and N.J.S.A. 58:10-23.11u.d, Defendants are also subject to civil penalties of up to \$50,000.00 per day for their violations of the Spill Act.

WHEREFORE, Plaintiffs DEP and the Administrator demand judgment from this Court:

- a. Finding that Defendants are liable and obligated to remediate the Contaminated Site pursuant to N.J.S.A. 58:10B-1.3a, and in violation of N.J.S.A. 58:10B-1.3a for their failure to do so;
- b. Finding Defendants liable, jointly and severally, without regard to fault, for any cleanup and removal costs and damages incurred by DEP as a result of the discharge of hazardous substances at the Site;
- c. Ordering Defendants to reimburse DEP, without regard to fault, for all cleanup and removal costs DEP and the Administrator have incurred as a result of the discharge of hazardous substances at the Site, with applicable interest;
- d. Ordering Defendants to complete the remediation at the Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3, SRRA, and all other applicable statutes and regulations and/or DEP directives;

- e. Ordering the Defendants to immediately retain, and maintain, a Licensed Site Remediation Professional to implement the remediation of this Site;
- f. Assessing civil penalties as provided by N.J.S.A. 58:10-23.11u.d against each of the Defendants for their failure to remediate the Site;
- g. Awarding DEP its costs and fees in this action;
- h. Awarding DEP any other relief this Court deems appropriate; and
- i. Reserving DEP and the Administrator's rights to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

Count II

Violation of the WPCA

(Against Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10)

119. The Department repeats each allegation of the foregoing paragraphs above as though fully set forth herein.

120. Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, and Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10, are "persons" within the meaning of the WPCA. N.J.S.A. 58:10A-3.

121. It is unlawful for any person to discharge any pollutant into the groundwaters of the State, 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 WPCA, 33 U.S.C.A. 1251 to 1387. N.J.S.A. 58:10A-6(a).

122. The unauthorized discharge of pollutants into the groundwaters of the State is a violation of the WPCA for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6(a).

123. Plaintiff Commissioner has incurred, and will incur, costs and damages as a result of the discharge of pollutants at the Site.

124. Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10 discharged and/or otherwise permitted discharges of pollutants at the Site, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6(a), nor exempt pursuant to N.J.S.A. 58:10A-6(d) or N.J.S.A. 58:10A-6(p), and they are liable, without regard to fault, for all costs and damages incurred by the Commissioner for the discharges at the Site of pollutants into the groundwaters of the State. N.J.S.A. 58:10A-6.

125. The John Doe Corporate Officers were responsible for the conduct of Defendants that directly led to the discharges to the ground waters of the State at the Site, and they exercised sufficient authority over Defendants to prevent or correct the occurrence of those discharges and to correct Defendants' subsequent failure to perform the remediation, but failed to do so.

126. Under N.J.S.A. 58:10A-10c, 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 a violation of the WPCA, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10c(2); any reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action 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 from this Court:

- a. Ordering Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10 to remove, correct, and/or terminate the adverse effects upon water quality resulting from the unauthorized discharges of pollutants into the ground waters of the State;
- b. Ordering Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10, without regard to fault, to reimburse the Commissioner for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of their violation of the WPCA, including the costs of preparing and litigating this case;
- c. Ordering Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10, without regard to fault, to reimburse the Commissioner for all reasonable costs that may have been incurred for removing, correcting or terminating the adverse effects upon water quality resulting from their unauthorized discharge of pollutants into the waters of the State;

- d. Awarding the Commissioner his costs and fees in this action;
- e. Awarding the Commissioner such other relief as this Court deems appropriate; and
- f. Reserving the Commissioner's right to bring a claim against Defendants D&J Trucking, Forsun, Sun Chemical, Ecobat, Benjamin Moore, Sherwin-Williams, ABC Corporations 1-10, and John Does 1-10 in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

Count III

Violation of the SWMA

(Against Defendants D&J Trucking and Ootzie)

127. DEP repeats each allegation of the foregoing paragraphs above as though fully set forth herein.

128. Regulations promulgated pursuant to the SWMA prohibit the operation of a solid waste disposal facility and disposal of solid waste without first obtaining a Solid Waste Facility Permit from the DEP. N.J.A.C. 7:26-2.8(e) - (f).

129. Paint cans, containers, and construction/demolition debris meet the definition of "solid waste" under N.J.A.C. 7:26-1.6.

130. Defendants D&J Trucking and Ootzie unlawfully disposed of, and/or stored paint cans, containers, construction/demolition

debris, and other solid waste at the Site in violation of N.J.A.C. 7:26-2.8(e) - (f) without a SWF Permit.

WHEREFORE, DEP demands judgment from this Court:

- a. Finding Defendants D&J Trucking and Ootzie in violation of the SWMA for unlawfully disposing of and/or storing solid waste and operating a solid waste facility without a SWF Permit;
- b. Requiring Defendants D&J Trucking and Ootzie to pay penalties pursuant to N.J.S.A. 13:1E-9(f) for their continuing failure to comply with the requirements of the SWMA;
- c. Awarding DEP compensatory damages for any loss or destruction of wildlife, fish or aquatic life, as authorized by N.J.S.A. 13:1E-9(d) (4);
- d. Requiring Defendants D&J Trucking and Ootzie to pay all costs associated with this action; and
- e. Such other relief as the Court deems just and proper.

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Carley A. Doyle
Carley A. Doyle
Deputy Attorney General

DATED: August 24, 2022

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Plaintiffs at this time, nor is any non-party known to Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

/s/ Carley A. Doyle

Carley A. Doyle

Deputy Attorney General

DATED: August 24, 2022

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

Undersigned counsel further certifies that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1.38-7(b).

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

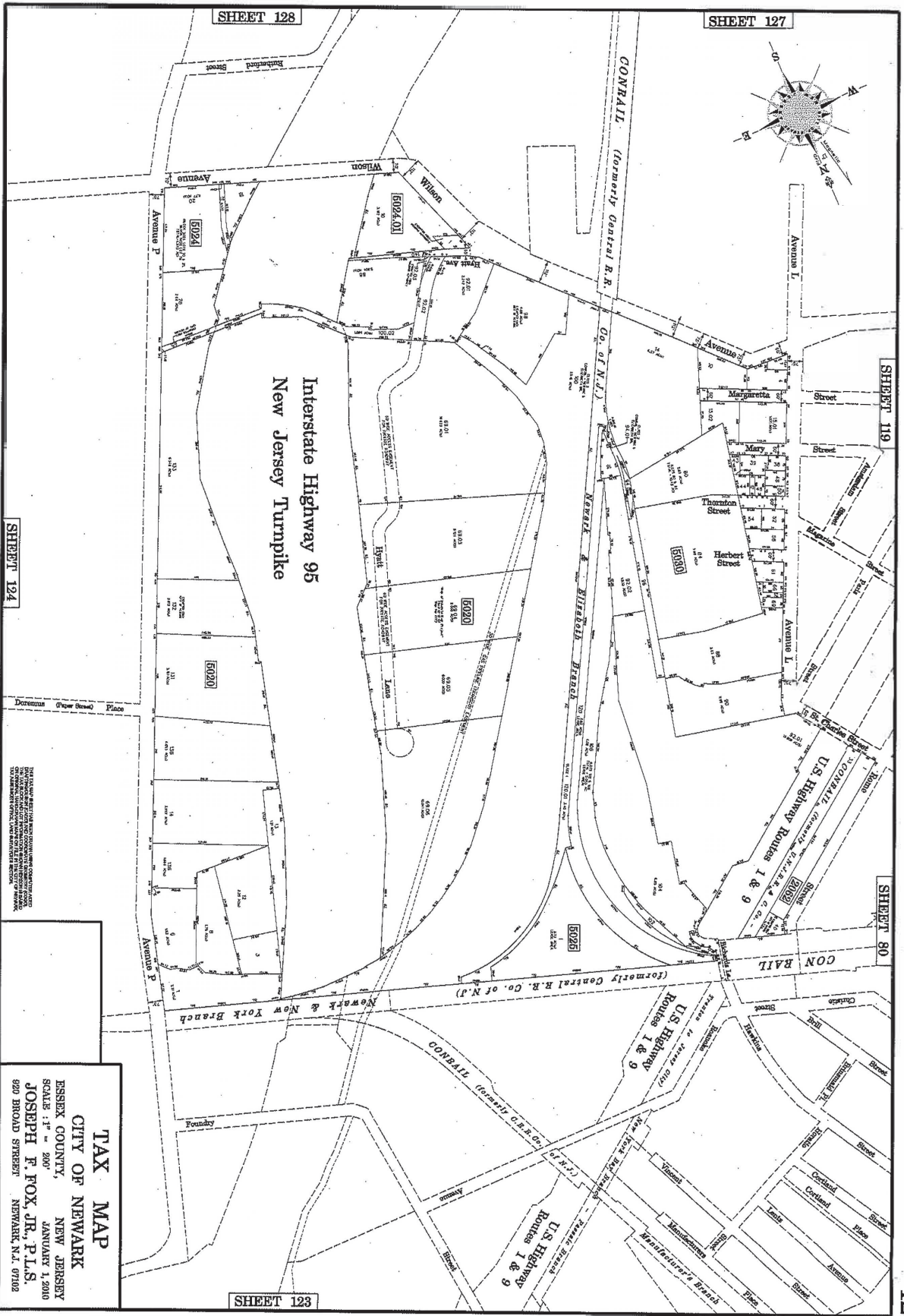
/s/ Carley A. Doyle

Carley A. Doyle

DATED: August 24, 2022

Deputy Attorney General

EXHIBIT A



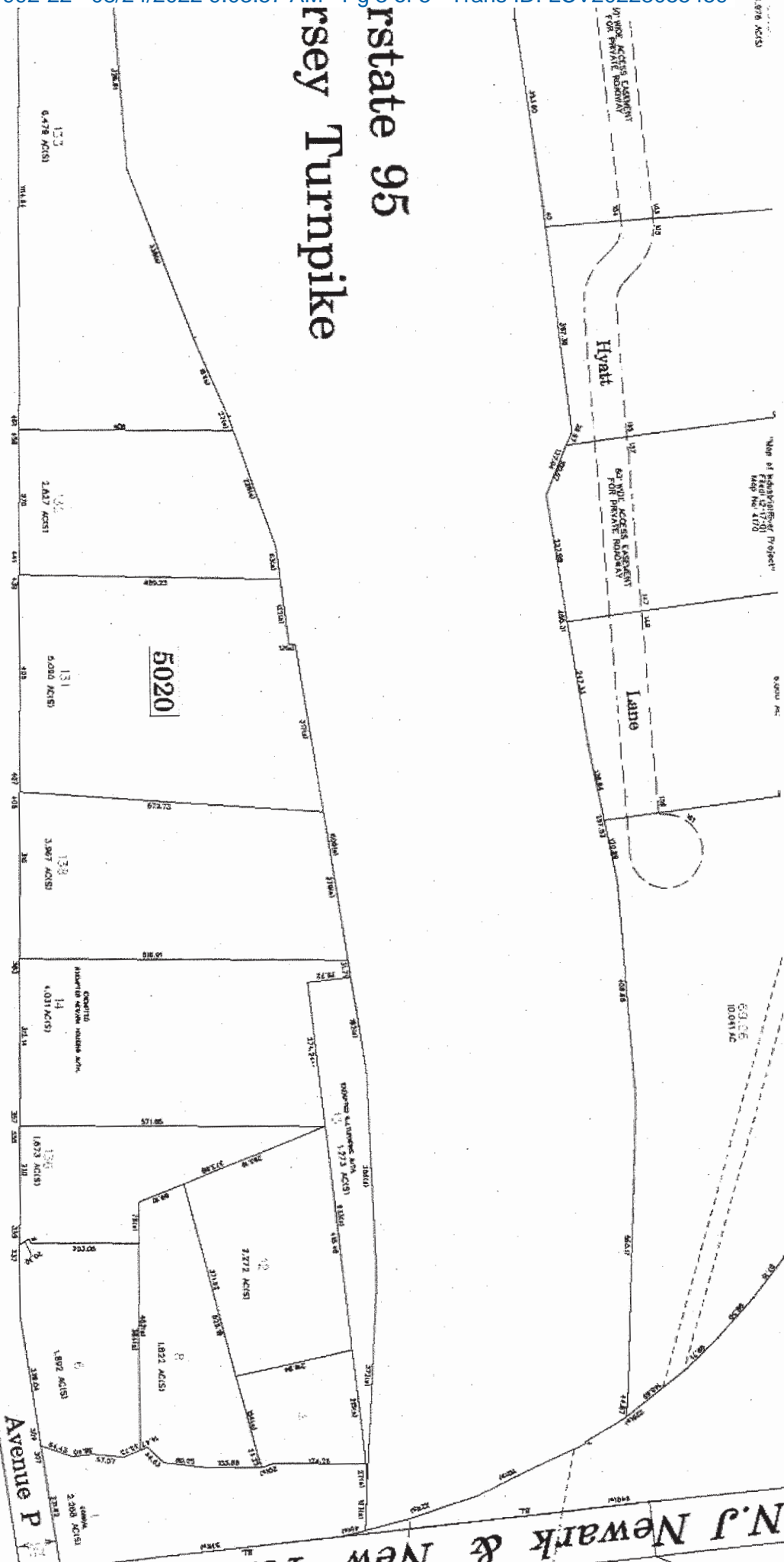
TAX MAP
CITY OF NEWARK
 ESSEX COUNTY, NEW JERSEY
 SCALE: 1" = 200'
 JANUARY 1, 2010
JOSEPH F. FOX JR., P.L.S.
 929 BROAD STREET NEWARK, N.J. 07102

125

Vol 5

126

State 95 Turnpike

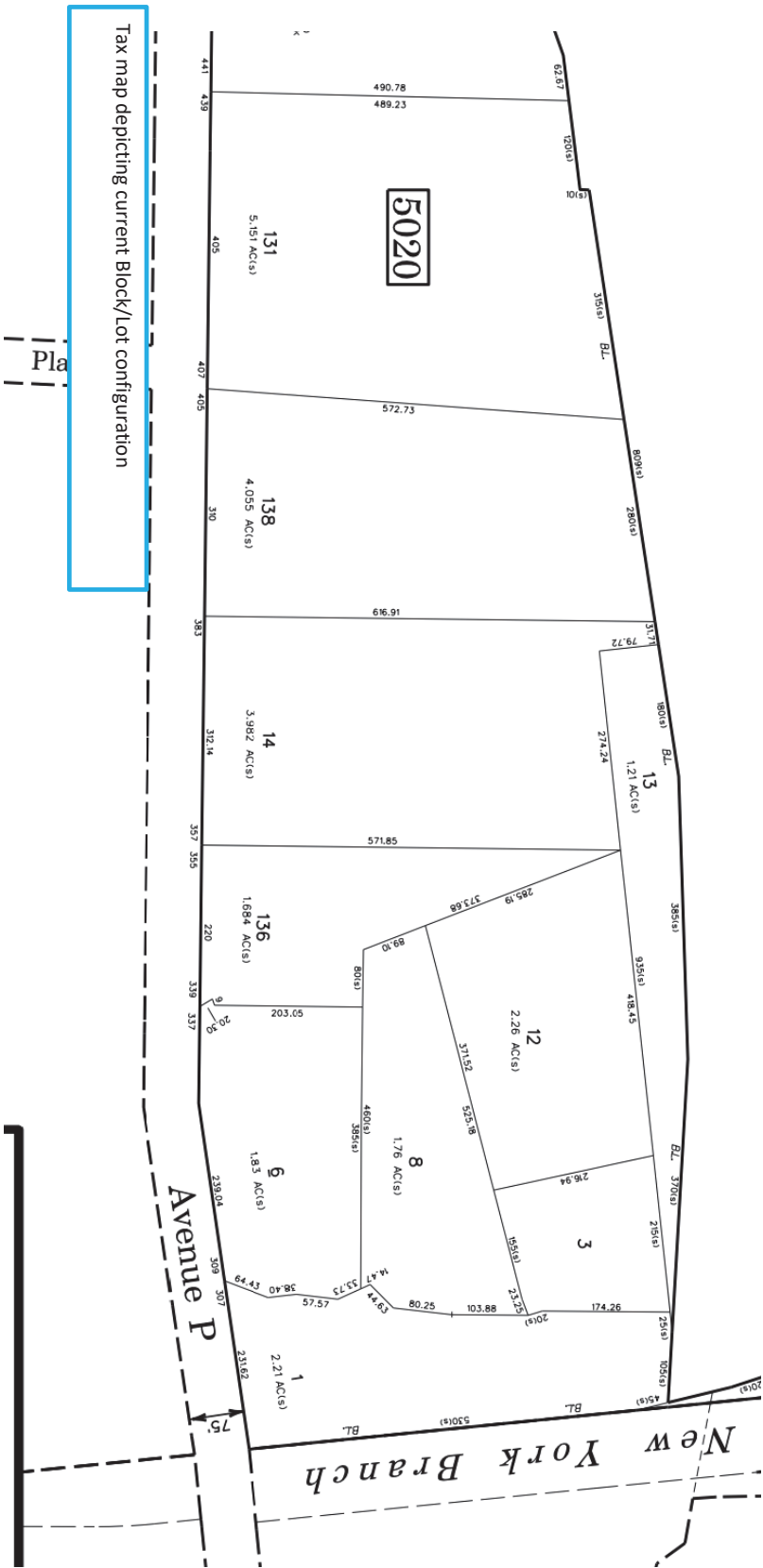


Place

Avenue P

N.J. Newark & New York

Tax map depicting current Block/Lot configuration



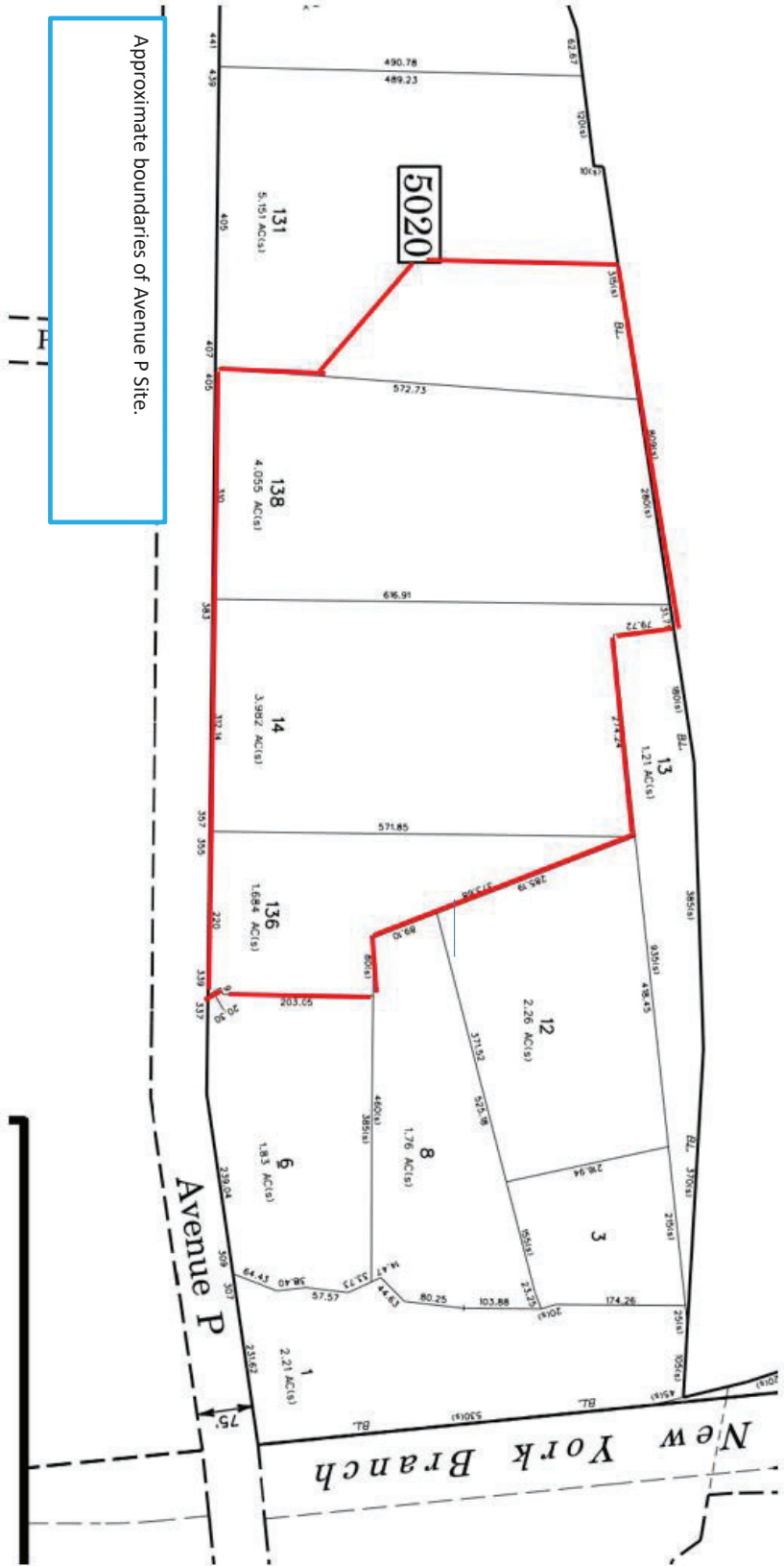


EXHIBIT B

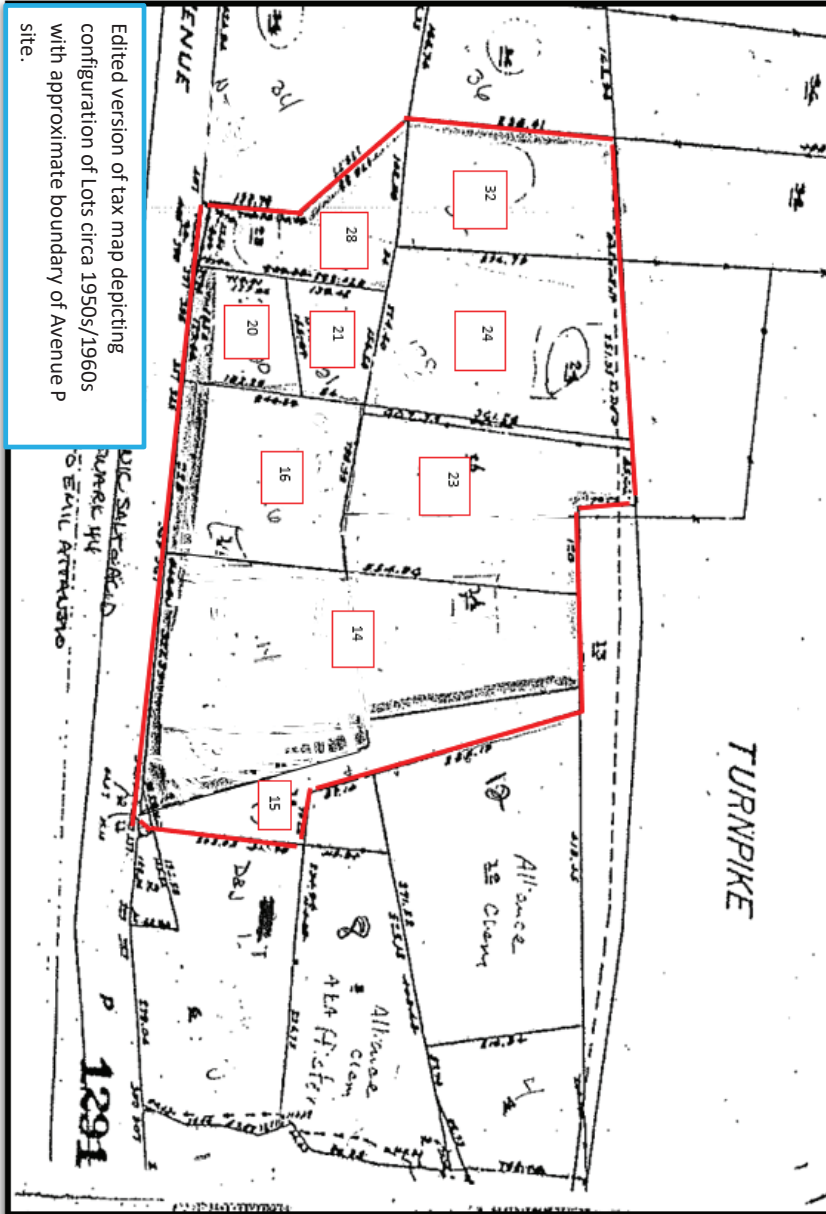
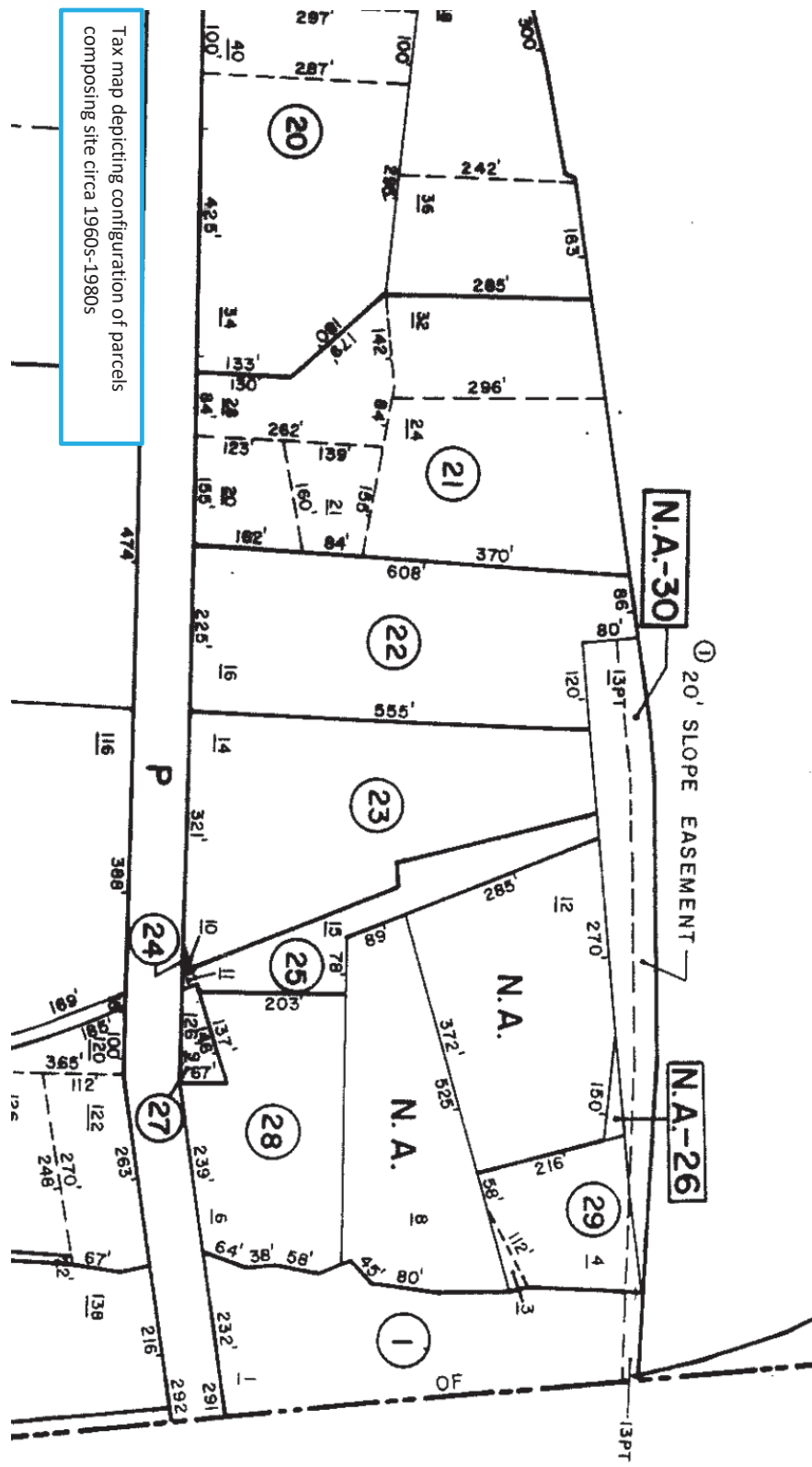
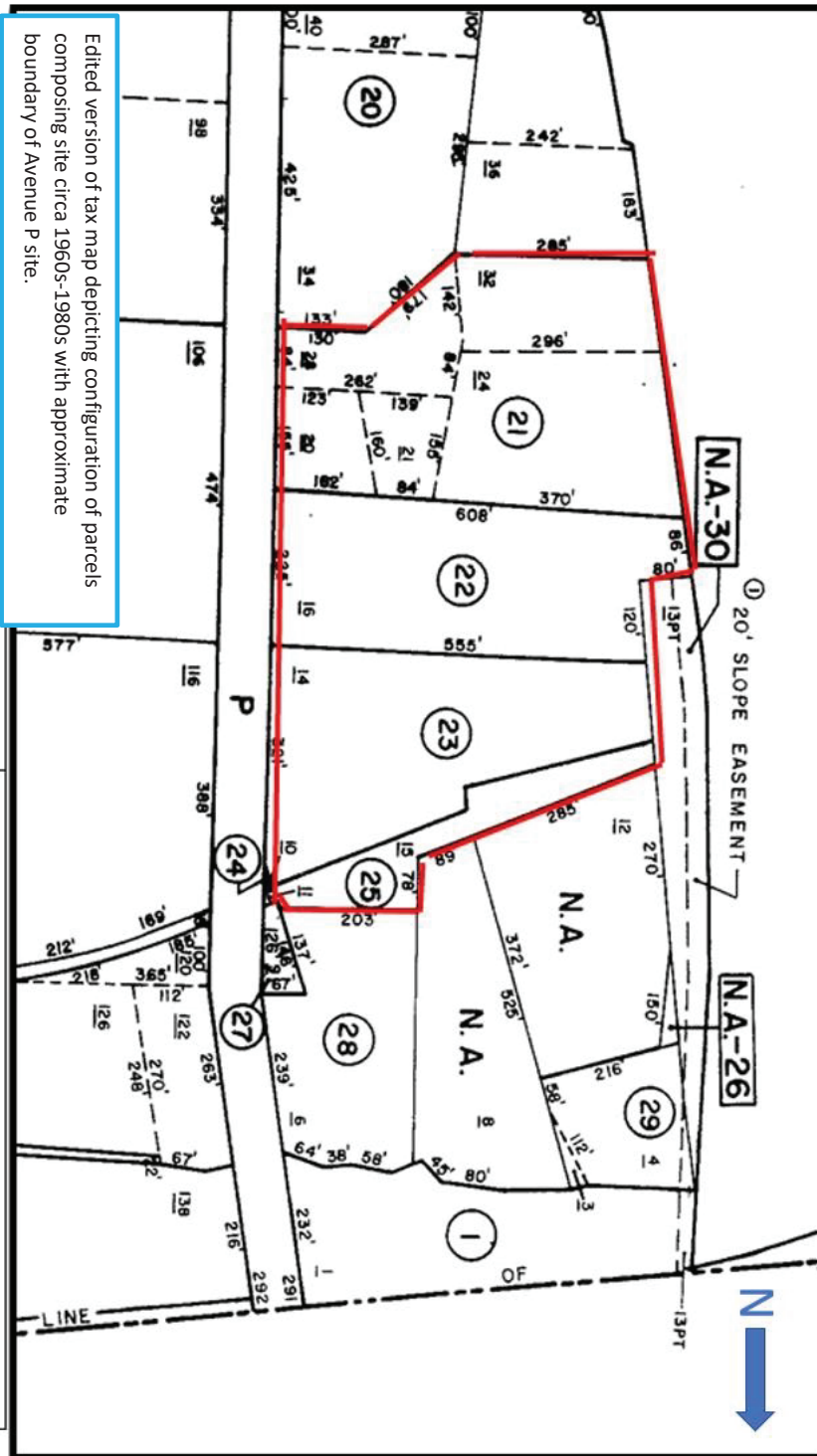


EXHIBIT C



Tax map depicting configuration of parcels composing site circa 1960s-1980s



Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-004992-22

Case Caption: NJ DEPT. ENVIRO. PROTECTION VS
OOTZIE PROPRTIE

Case Initiation Date: 08/24/2022

Attorney Name: CARLEY A DOYLE

Firm Name: ATTORNEY GENERAL LAW

Address: 25 MARKET STREET PO BOX 93

TRENTON NJ 08625

Phone: 6093762965

Name of Party: PLAINTIFF : NJ Dept. Enviro. Protection

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE
LITIGATION

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: NJ Dept. Enviro. Protection?
NO

Are sexual abuse claims alleged by: Commissioner NJ DEP? NO

Are sexual abuse claims alleged by: Administrator NJ Spill Fund?
NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

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)

08/24/2022
Dated

/s/ CARLEY A DOYLE
Signed