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

\_\_\_\_\_  
NEW JERSEY DEPARTMENT OF :  
ENVIRONMENTAL PROTECTION; THE :  
COMMISSIONER OF NEW JERSEY :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION; and THE :  
ADMINISTRATOR OF THE NEW JERSEY :  
SPILL COMPENSATION FUND, :  
 :  
Plaintiffs, :

Civil Action  
COMPLAINT

v. :

PROGRESS PETROLEUM OF :  
PHILLIPSBURG, INC.; YANK :  
SHOIMER; INESSA SHOIMER; U & Y, :  
INC.; YFG INTERNATIONAL, INC.; :  
LEKCO, INC.; ARMINDER SINGH; :  
BALJIT KAUR; BALJINDER SINGH; :  
"ABC CORPORATIONS" 1-10 (Names :  
Fictitious); and "JOHN DOES" 1- :  
10 (Names Fictitious), :  
 :  
Defendants, :

\_\_\_\_\_  
Plaintiffs, the New Jersey Department of Environmental  
Protection (the "Department" or "DEP"), the Commissioner of the

New Jersey Department of Environmental Protection (the "Commissioner") and the Administrator of the New Jersey Spill Compensation Fund (the "Administrator") (collectively, the "Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorney, file this Complaint against the above-named Defendants, and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the New Jersey Spill Compensation and Control Act (the "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 -35, and the common law, for reimbursement of the costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the South Main and Hudson Site, also known as Express Fuel site, in Phillipsburg, Warren County, New Jersey.
2. This matter involves a property on which a gasoline service station has been in operation since at least the 1940s. During its operation, there have been numerous owners. In 1988, the first discharge of hazardous substances was documented and sampling results for soil vapor, soil, and groundwater on the

property and/or at neighboring properties indicated the presence of gasoline-related contaminants. In 2002, DEP directed the owners and prior owners to clean up the hazardous substances and conduct a remedial action at the Property. After none of the respondents complied with the Directive, DEP investigated the property and neighboring properties using public funds. Today, DEP continues to use public funds to operate a soil vapor extraction system on the property to prevent the hazardous vapors originating beneath the Property from entering neighboring buildings. DEP also has operated sub-slab vapor mitigation systems in two buildings neighboring the gas station where vapors were detected at levels exceeding the DEP indoor air screening level for multiple contaminants.

#### THE PARTIES

3. The Department is a principal department within the Executive Branch of the New Jersey 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.

4. The Commissioner is the Commissioner of the DEP, N.J.S.A. 58:10A-3, and is vested by law with various powers and authority, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D to -19.
5. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund (the "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.
6. Defendant Progress Petroleum of Phillipsburg, Inc. ("Progress Petroleum") is a now defunct corporation that was organized under the laws of the State of New Jersey with a principal place of business at 699 South Main Street, Phillipsburg, New Jersey 08865.
7. Defendant Yank Shoimer is an individual, whose last known residence was 6 Spruce Lane, Marlboro Township, New Jersey 07746.
8. Defendant Inessa Shoimer is an individual, whose last known principal residence was located at 105 Serpentine Drive, Morganville, New Jersey\_07746.

9. U & Y, Inc. was a corporation organized under the laws of the State of New Jersey, which was suspended by the Secretary of State on March 16, 1999, for failure to submit its annual reports. Its last known principal place of business was located at 41 Georgian Bay Drive, Morganville, New Jersey 07751.
10. YFG International, Inc. was a corporation organized under the laws of the State of New Jersey, with the last known principal place of business located at 212 Tracy Drive, Morganville, New Jersey 07751. YFG International, Inc. was suspended by the Secretary of State on March 16, 1999 for failure to submit annual reports.
11. Lekco, Inc. is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 168 South Main Street, Phillipsburg, New Jersey 08865.
12. Baljinder Singh is an individual, with a principal residence located at 412 Holmes Drive, Burlington, New Jersey 08016.
13. Baljit Kaur is an individual, with a principal residence located at 412 Holmes Drive, Burlington, New Jersey 08016.
14. Arminster Singh is an individual, with a principal residence located at 4063 Nazareth Pike, Bethlehem, Pennsylvania 18020.

15. Defendants ABC Corporations 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, or are otherwise related to, defendants Progress Petroleum of Phillipsburg, Inc., Yank Shoimer, Inessa Shoimer, U & Y, Inc., YFG International, Inc., Lekco, Inc., Arminster Singh, Baljit Kaur, Baljinder Singh, and/or one or more of the John Doe defendants, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site, or are otherwise responsible for the discharges and violations alleged in this Complaint.
16. Defendants John Does 1-10, these names being fictitious, are 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 Progress Petroleum of Phillipsburg, Inc.; Yank Shoimer; Inessa Shoimer; U&Y, Inc.; YFG International; Inc, Lekco Inc.; Arminster Singh; Baljit Kaur and/or one or more of the ABC Corporation defendants, are other dischargers and/or persons "in any way responsible" for the hazardous substances

discharged at the Site, or are otherwise responsible for the discharges and violations alleged in this Complaint.

GENERAL ALLEGATIONS

17. The site that is the subject of this Complaint consists of approximately 0.24 acres of real property located at 168-172 South Main Street, Phillipsburg, Warren County, New Jersey, also known as Block 919, Lot 8 on the Tax Map of the Town of Phillipsburg, Warren County (the "Property") and all other areas where any hazardous substance discharged there has become located, (collectively, the "Site"), which DEP has also designated as Site Remediation Program Interest No. 0269252.
18. The Property is located in an older mixed commercial-residential area of Phillipsburg.
19. The Property overlooks the Delaware River, which is approximately 600 feet west-southwest of the Property and around 70 feet lower in elevation. Train tracks run along the Property's southern border and the Phillipsburg Union Station, which served multiple major railroads during the 19th and 20th centuries, is adjacent to the Property. The

building is a historical museum and a steam locomotive tourism railroad runs on the existing railroad tracks.

20. The Property is the former location of a "US Gas" branded gasoline station, where four underground storage tanks ("USTs") were used to dispense gasoline until 1988. One of those USTs was an 8,000 gallon unleaded tank in the southwest of the Property. A 4,000 gallon unleaded UST and two interconnected 3,000 gallon leaded USTs were located in the front of the Property. Since 1988, three USTs, including one 8,000 USTs and two 6,000 gallon USTs, installed in the rear of the Property, have been used to dispense gasoline.
21. The gasoline service station on the Property has also operated under various business names, including Clark Quality Gasoline, US Gas, and Express Fuel Company.
22. On April 1, 1947, Harry and Lucy Van Syckle, husband and wife, sold the Property to Atlantic Richfield Company, a Pennsylvania corporation now withdrawn by merger, which operated in New Jersey as a foreign corporation, for the consideration of \$35,000.
23. On March 18, 1974, Atlantic Richfield Company sold the Property to Albert and Linda Lewis, husband and wife, at a cost of \$23,500.



24. On August 18, 1988, Albert and Linda Lewis conveyed the Property to Defendant Progress Petroleum, a now revoked New Jersey corporation, for the consideration of \$250,000.
25. On August 26, 1994, Progress Petroleum conveyed the Property to Defendants Yank and Inessa Shoimer, then husband and wife for \$175,000.
26. Shortly thereafter, on September 12, 1994, Defendants Yank and Inessa Shoimer sold the Property to Defendant U & Y, Inc. for \$1.00. U & Y, Inc. listed the Shoimers' home address as its principal address in its corporation documents and is now a revoked New Jersey Corporation. Yank Shoimer was its registered agent.
27. On September 17, 1996, Defendant U & Y, Inc. sold the Property to Defendant YFG International, Inc., now a revoked New Jersey corporation, for the consideration of \$140,000.
28. On May 21, 1998, YFG International, Inc. conveyed the property to Lekco, Inc. a New Jersey corporation, at a purchase price of \$300,000.
29. On July 18, 2000, Lekco, Inc. sold the Property to Arminster Singh and Baljit Kaur, individuals at a cost of \$317,000.
30. In June 2001, Arminster Singh conveyed his half-interest in the Property to Baljinder Singh.

31. On January 15, 2002, DEP issued a Spill Act Directive and Notice to Insurers ("Directive") naming as respondents: Atlantic Richfield Company; Progress Petroleum; Albert M. Lewis; Linda L. Lewis; Yank Shoimer; Inessa Shoimer; U & Y, Inc.; YFG International, Inc.; Arminster Singh; and Baljit Kaur.
32. The Directive required the respondents to cleanup and remove the discharges at the Site by entering into an Administrative Consent Order with DEP to conduct a remedial investigation and implement the appropriate remedial actions in order to protect human health and the environment and to reimburse DEP for its oversight of those activities.
33. The respondents did not comply with the Directive and DEP referred the case to DEP's publicly funded unit.
34. In 2003, Lekco, Inc., Vyatcheslav Cherkasov, and others sued Arminster Singh and Baljit Kaur on their mortgage note. Singh and Kaur were ordered to sell the Property through a Sheriff's sale to the Plaintiffs to satisfy their mortgage debt, plus interest, in the amount of \$412,123.47. Through the Sheriff's sale, the Property was conveyed back to Lekco, Inc.
35. Defendant Lekco Inc. continues to own the Property to the present time.

OPERATION OF THE STATION AND CONTAMINATION

36. Since at least 1948, and as early as 1925, a retail gasoline station has operated on the Property.
37. On or about December 1988, Progress Petroleum excavated three underground storage tanks ("USTs") from the Property. During that excavation, gasoline-like odors were detected.
38. On December 28, 1988 Progress Petroleum reported a discharge of gasoline to DEP's emergency hotline. DEP recorded the discharge as case number (88-12-28-1054).
39. Following removal of the tanks, Dunn Geoscience Corp. ("Dunn"), a consultant retained by Progress Petroleum, collected groundwater samples from two monitoring wells.
40. During the time that defendant Progress Petroleum owned the Property and/or operated there, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" within the meaning of N.J.S.A. 58:10-23.11b. Those substances included the gasoline-related compounds identified by Dunn in two ground water monitoring wells, specifically, benzene (280 micrograms per liter ("ug/L") or parts per billion ("ppb") and 750 ppb), toluene (1,880 ppb and 720 ppb), xylenes (7,360 ppb and 2,740 ppb), (collectively, "BTEX"), methyl tertiary butyl ether ("MTBE") (1,260 ppb and 4,450 ppb), and tertiary butyl alcohol ("TBA") (6,700 ppb and 25,000 ppb), and 1,1,1-

trichlorethane (35 ppb and 62 ppb) also were detected at concentrations in excess of DEP Ground Water Quality Standards ("GWQS").

41. In or around October 1989, Progress Petroleum submitted a Remedial Investigation Report ("RIR") to DEP, which reported the presence of gasoline-related compounds, including the hazardous substances listed above, in the ground water.
42. By letter dated October 19, 1989, DEP advised Progress Petroleum that the RIR submitted in October 1989 was deficient and instructed Progress Petroleum to correct the deficiencies and submit an RIR Addendum. Progress Petroleum never filed the RIR Addendum.
43. In December 1999, waste oil stored in drums at the Property spilled onto the ground. DEP was notified and assigned case number (99-12-30-1357-31).
44. In January 2002, plaintiff DEP issued a Spill Act Directive and Notice to Insurers ("Directive") pursuant to N.J.S.A. 58:10-23.11f.a. to the defendants, except Baljinder Singh who had not yet become an owner of the property, as well as Atlantic Richfield Company, and Albert and Linda Lewis. The Directive required the respondents to initiate remedial activities.

45. Because Respondents to the Directive failed to comply with the Directive, DEP referred the matter to its publicly funded unit to undertake remedial actions at the Property using public funds.
46. As part of a development plan, in 2005, the Township of Phillipsburg ("Township") planned to purchase the Property and entered into a Memorandum of Agreement with DEP to investigate and remediate the Site. The Township retained TRC Raviv Associates ("Raviv"), who conducted a preliminary assessment and site investigation. Raviv conducted passive soil vapor sampling, took 17 soil borings and sampled two monitoring wells, finding exceedances of the most stringent of DEP's Soil Cleanup Criteria ("SCC"), as well as exceedances of the GWQS for various volatile organic compounds ("VOCs") and lead.
47. Raviv installed six on-site and 26 off-site soil vapor probes. The off-site results indicated the presence of low levels of benzene, BTEX, and total petroleum hydrocarbons ("TPH") at various locations. On-site results showed elevated levels of benzene, BTEX, and TPH at the Property.
48. Soil boring results indicated exceedances in three areas on the Property. Along the western edge of the Property, lead was found in SB-12 at 440 milligrams per kilogram ("mg/kg")

or parts per million ("ppm"), above DEP's SCC of 400 ppm. On the eastern border of the Property, results from SB-1, which was drilled immediately adjacent to an above ground heating oil tank, showed exceedances for TPH at a level of 13,500 ppm, above the SCC of 10,000 ppm. Results from SB-5, drilled next to the location of two former 2,000 gallon kerosene USTs, showed Xylene at 21 ppm, above the SCC of 10 ppm.

49. The two monitoring wells, both of which are located on the northeast of the Property, indicated exceedances of the GWQS. Results from MW-1, at the far northeastern corner of the Property, showed Benzene at 1.3 parts per billion ("ppb") above the GWQS of 1 ppb; B(2-eH)P at 5 ppb, above the GWQS of 3 ppb; and lead at 9.7/4.8 ppb, above the GWQS of 5 ppb. Approximately 20 to 25 feet south/southwest of MW-1 is MW-2, which revealed exceedances of B(2-eH)P at 8 ppb, above the GWQS of 3ppb and Lead at 5.3 ppb, above the GWQS of 5 ppb.
50. Raviv concluded that the concentration of contaminants historically detected in the monitoring wells had decreased since their installation in 1989 but suggested further ground water investigation beneath the area of the former USTs and recommended assessing ground water quality beneath areas confirmed to have soil contamination, if that contamination was confirmed to extend to the water table.

51. The Township did not purchase the Property.
52. On June 3, 2005, DEP issued a Field Notice of Violation to "Benz Inc./US Gas," for various regulatory violations, requiring Ilya Troshin, the owner or operator of the Property to submit evidence of financial responsibility , as well as records for release detection monitoring.
53. On November 1, 2005 DEP issued a Field Notice of Violation to "Benz Inc./Clark," , citing multiple violations of the Underground Storage Tank Act and requiring the immediate shutdown of operations at the Property. Operations resumed after Lekco, Inc. repaired the vapor recovery system two weeks later.
54. In late 2005, occupants of buildings near the Property filed complaints with the Warren County Health Department regarding gasoline odors. At the direction of the Warren County Health Department, pressure tests on the USTs and vents were conducted at the Property. Four major vapor leaks from the UST system were identified. The air complaints were referred to the Warren County Health Department or the DEP's Air Program for investigation.
55. In 2006, DEP sought but was unable to gain access to the Property to conduct a remediation. Litigation ensued, and by order dated July 17, 2006 bearing Docket No. L-263-06, the

Superior Court ordered Lekco, Inc. to provide the Department with immediate and continuing access to the Property to perform a remedial action, including any related drilling, maintenance and monitoring, permanently enjoining Lekco, Inc. from interfering with DEP and its contractors' performance of the remedial action.

56. Between January 2006 and June 2007, DEP collected indoor air, outdoor air, and subsurface vapor samples at neighboring buildings and confirmed that contaminant vapors far exceeded the Indoor Screening Levels at four neighboring properties for MTBE, at levels as high as 1,950 ug/m<sup>3</sup> above the Residential Indoor Air Screening level of 2 ug/m<sup>3</sup>, and for Benzene as high as 4.5 ug/m<sup>3</sup> above the Residential Screening Level of 2 ug/m<sup>3</sup>. DEP installed vapor treatment systems in the basement of two of the neighboring buildings, which house 160, 162, 164 and 166 South Main Street. Additionally, DEP installed a vapor extraction system, consisting of 13 vapor extraction wells at the Property, along its northern border. Indoor air sampling results at the neighboring buildings improved, but the upper floors still showed exceedances.
57. On October 30, 2007, DEP issued a Field Notice of Violation to Clark Fuel, citing numerous regulatory violations,



including the lack of a required spill prevention bucket, and imposed a delivery ban until environmental screening could be conducted to determine if the area around the missing spill containment bucket was contaminated.

58. In January 2009, DEP contracted with Louis Berger ("Berger") to complete the Remedial Investigation at the Site, and Berger prepared a Site Sampling and Investigation Plan. The purpose of the investigation was to document Site conditions, identify the source of the gasoline-related Volatile Organic Compounds ("VOC") contamination at the Property, and investigate possible off-site sources for the groundwater contamination and delineate the extent of that contamination.
59. In December 2010, Berger installed six on-site and 26 off-site Gore module soil vapor probes. Off-site samples indicated the presence of low levels of benzene, BTEX, and Total Petroleum Hydrocarbons ("TPH") at various locations and Berger determined that further soil investigation off-site was unnecessary. On-site samples, however, indicated elevated levels of benzene, BTEX and TPH at the Property. Therefore, DEP and Berger decided to install soil borings at the Property to further investigate.

60. On March 24, 2011 DEP observed an equipment violation at the Property and issued Lekco, Inc. a Notice of Violation and Delivery Ban.
61. Eleven soil borings samples were taken at the Property in February 2011, and the sampling confirmed exceedances of Aluminum, and Beryllium, above the DEP's Impact to Ground Water Soil Remediation Standards ("IGWSRS"). Berger concluded that the metals exceedances were likely attributable to the turbidity of the sample.
62. Additionally, Berger found Semi-Volatile Organic Compound ("SVOC") exceedances above IGWSRS in two soil borings at the one to two foot interval, suggesting that the contaminant levels may be attributable to anthropogenic pollutants, such as asphalt, surficial runoff, or historic fill material. Berger concluded that gasoline-related contaminants were not present in the soil samples.
63. In order to identify the vertical and horizontal extent of the ground water contamination, Berger conducted three well-sampling events.
64. In April 2011, Berger sampled three existing on-site wells (MW-1, MW-2, and MW-H2) and located an existing well, MW-H1 during installation activities.

65. In June 2013, Berger sampled one newly installed down gradient monitoring well, MW-3, added to evaluate potential migration of groundwater contamination off-site, as well as five existing on-site wells, including the three wells tested in April and MW-H1 that was located in April.
66. In September 2013, Berger sampled the six on-site monitoring wells again. Prior to both the June and September sampling events, depth to water measurements were taken at each well allowing Berger to determine that ground water was generally flowing in a southwest direction toward the Delaware River.
67. The results of all three sampling events showed exceedances of the GWQS for various metals, however, the results in excess of the GWQS decreased over time. Berger noted that the three metals exceedances in September 2013 (arsenic, manganese, and sodium) have been shown to be present in natural background concentrations above the GWQS in the region. With regard to an exceedance for aluminum, Berger determined that that result was due to the turbidity of the sample.
68. In a letter dated January 29, 2014, DEP stated that it had reviewed Berger's report and, based on Berger's finding that contamination was no longer detected in the monitoring wells, indicated to Berger that no further action or involvement by Berger was required under its contract with DEP.

69. On September 25, 2014, DEP filed a first priority lien against the Property in the amount of \$2,362,910.15, which was docketed as DJ187009-14 on October 2, 2014.
70. In July 2016, DEP conducted soil sampling at the Property. Gasoline-related contaminants were identified in trace amounts, including Toluene at .015 to .071 ppm, below the IGWSSL of 7 ppm and total Xylenes at .0033 to .087 ppm below the IGWSSL of 19 ppm.

COUNT I

SPILL ACT

71. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 70 above as though fully set forth in their entirety herein.
72. Except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, 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).
73. The costs that Plaintiffs have incurred, and will incur, for remediation of the Property 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).

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

75. Defendant Progress Petroleum is a "discharger" as the owner and operator of the USTs from which hazardous substances were discharged, and is a person "in any way responsible" as an owner of the Property at the time hazardous substances were discharged there, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

76. Defendants Yank Shoimer, Inessa Shoimer, U & Y, Inc., YFG International, Inc., Lekco, Inc., Baljinder Singh, Armander Singh, and Baljit Kaur, as purchasers of contaminated Property that knew or should have known about the contamination at the time of their acquisition of the Property, are persons "in any way responsible" for hazardous substances, and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the

discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

77. Defendant Lekco, Inc., as the current owner of the Property and a purchaser of contaminated Property that knew or should have known about the contamination at the time of its acquisition of the Property, is a person "in any way responsible" for hazardous substances, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).
78. By failing to comply with the Department's Directive and Notice to Insurers, Progress Petroleum, Yank Shoimer, Inessa Shoimer, U & Y, Inc., YFG International, Inc., Lekco, Inc., Arminster Singh, and Baljit Kaur are strictly liable, without regard to fault, in an amount up to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur in the future, to remediate the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11f.a.(1).
79. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department 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 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).

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

WHEREFORE, Plaintiffs request judgment in their favor:

- a) Ordering the Defendants, jointly and severally, without regard to fault, to reimburse Plaintiffs for all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;
- b) Ordering Defendants Progress Petroleum; Yank Shoimer; Inessa Shoimer; U & Y, Inc.; YFG International; Inc, Lekco Inc.; Arminder Singh; and Baljit Kaur to reimburse Plaintiffs, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous

substances at the Property, with applicable interest;

- c) Entering declaratory judgment against the Defendants jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at and from the Property;
- d) Entering declaratory judgment against Defendants Progress Petroleum; Yank Shoimer; Inessa Shoimer; U & Y, Inc.; YFG International; Inc, Lekco Inc.; Arminster Singh; and Baljit Kaur, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at the Property;
- e) Entering declaratory judgment against the Defendants compelling them to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- f) Awarding Plaintiffs their costs and fees incurred in this action; and



- g) Awarding Plaintiffs any other relief this Court deems appropriate;
- h) Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

COUNT II

WATER POLLUTION CONTROL ACT

- 81. The Plaintiffs repeat each allegation of paragraph nos. 1 through 80 above as though fully set forth in its entirety herein.
- 82. Defendants are "persons" within the meaning of N.J.S.A. 58:10A-3.
- 83. The unauthorized discharge of pollutants is a violation of the Water Pollution Control Act for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.
- 84. The Commissioner has incurred, and will incur, costs and damages as a result of the discharge of pollutants at the Property.

85. The costs and damages the Commissioner has incurred, and will incur, for the Site are recoverable within the meaning of N.J.S.A. 58:10A-10c.(2) to (4).
86. Pursuant to 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 the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10c.(2); and 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); 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, plaintiff Commissioner prays that this Court:

- a) Permanently enjoin Defendant Progress Petroleum, the ABC Corp. and/or the John Doe defendants by requiring defendants to remove, correct, or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants;
- b) Enter an order assessing Defendant Progress Petroleum, the ABC Corp. and/or the John Doe defendants, without regard to fault, the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c) Enter declaratory judgment against Defendant Progress Petroleum, the ABC Corp. and/or the John Doe defendants, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to the establishment of the violation, including the costs of preparing and litigating the case;
- d) Enter an order assessing Defendant Progress Petroleum, the ABC Corp. and/or the John Doe

defendants, without regard to fault, for all reasonable costs incurred for removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Property;

e) Enter declaratory judgment against Defendant Progress Petroleum, the ABC Corp. and/or the John Doe defendants, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Property;

f) Enter an order assessing Defendant Progress Petroleum, the ABC Corp. and/or the John Doe defendant, without regard to fault, for the actual amount of any economic benefits they have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits defendants have enjoyed as a result of a competitive market advantage, or any other benefit

they have received as a result of having violated the WPCA;

- g) Enter declaratory judgment against Defendant Progress Petroleum, the ABC Corp. and/or the John Doe defendants without regard to fault, assessing defendants for the actual amount of any economic benefits that will accrue to them, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage defendants have enjoyed, or any other benefit that will accrue as a result of having violated the Water Pollution Control Act;
- h) Award the Commissioner her costs and fees in this action; and
- i) Award the Commissioner such other relief as this Court deems appropriate.
- j) Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right to bring a claim in the future for natural

resource damages arising out of the discharge of hazardous substances at the Property.

COUNT III

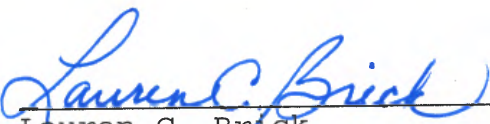
UNJUST ENRICHMENT

87. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 86 above as though fully set forth in their entirety herein.
88. To establish unjust enrichment, a plaintiff must show both that defendant received a benefit and that retention of that benefit without payment would be unjust.
89. Plaintiffs have used and will continue to use public funds to remediate the contamination at the Site.
90. Plaintiffs' expenditure of public funds for the remediation of the Site, which otherwise would have been Defendants' obligation to fully fund or perform, has unjustly enriched the Defendants.
91. Defendants have failed to complete the remediation of the Site, causing the Plaintiffs to expend public funds. Therefore, Defendants are required by law and by equity to reimburse Plaintiffs accordingly.

WHEREFORE, Plaintiffs request judgment in their favor:

- a) Declaring that all the Defendants have been unjustly enriched by the Plaintiffs' expenditure of public funds to remediate the Site;
- b) Ordering all the Defendants to reimburse Plaintiffs for costs Plaintiffs have incurred, and will incur, to remediate the Site, with applicable interest;
- c) Entering judgment against all the Defendants for all other compensatory and consequential damages; and
- d) Awarding the Plaintiffs such other relief as this Court deems appropriate.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:   
\_\_\_\_\_  
Lauren C. Brick  
Deputy Attorney General

Dated: December 6, 2018

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

The undersigned counsel certifies that the matters in controversy in this action are currently the subject of the following actions:

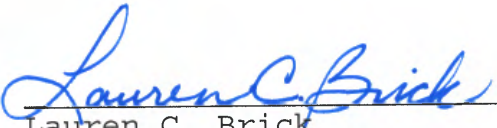
1. New Jersey Department of Environmental Protection v. Atlantic Richfield Company, 08 Civ. 00312 (SDNY) (SAS).  
This is an action seeking compensation for the destruction of natural resources by the hazardous substance, MTBE. To the Plaintiffs' knowledge, none of the Defendants are defendants in this action.
2. In re: Methyl Tertiary Butyl Ether ("MTBE") Product Liability Litigation, MDL 1358 (SDNY) (SAS). This is an action seeking compensation for the destruction of natural resources by the hazardous substance, MTBE. To the Plaintiffs' knowledge, none of the Defendants are defendants in this action.



3. New Jersey Department of Environmental Protection v. Amerada Hess Corp., 15 Civ. 6468 (DNJ) (FLW). This is an action seeking compensation for the destruction of natural resources by the hazardous substance, MTBE. To the Plaintiffs' knowledge, none of the Defendants are defendants in this action.

The undersigned counsel further certifies that the matters in controversy in this action are not currently the subject of any other pending action in any court or arbitration proceeding known to the State at this time, nor is any non-party known to the State at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such matter or non-party later becomes known, 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).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Lauren C. Brick  
Deputy Attorney General

Dated: December 6, 2018