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

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; COMMISSIONER OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	
Plaintiffs,	:	
v.	:	
	:	
CANRAD, INC.; UTBHL, INC. (f/k/a HANOVIA LAMP INC.); SUMO REALTY, INC.; JACINTO RODRIGUES; JOAQUINA RODRIGUES; "XYZ CORPORATIONS" 1 through 10; "John AND/OR JANE DOES" 1 through 10;	:	
Defendants.	:	

: CIVIL ACTION

: **VERIFIED COMPLAINT**

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 attorney, file this Complaint against defendants Canrad, Inc. ("Canrad"); UTBHL, Inc. (f/k/a Hanovia Lamp Inc.) ("UTBHL"); Sumo Realty, Inc. ("Sumo"); Jacinto Rodrigues; Joaquina Rodrigues; "XYZ Corporations" 1 through 10 (Names Fictitious); and "John and/or Jane Does" 1 through 10 (Names Fictitious) (collectively, Defendants), and allege as follows:

STATEMENT OF THE CASE

1. The Department seeks to compel the cleanup and remediation of hazardous substances discharged at a former manufacturing and industrial site located at 100 Chestnut Street, Newark, Essex County ("Site") and wherever contamination has migrated therefrom (collectively, "Contaminated Site").¹

2. For nearly a century, the Site has been used for various industrial and manufacturing operations, including the manufacturing of lamps and ultraviolet equipment by Canrad, UTBHL, and/or their predecessors.

3. The Site also contains an Industrial Establishment under the Industrial Site Recovery Act ("ISRA") because certain former owners and/or operators manufactured electric lamp bulbs and tubes. The Site has a long history, involving multiple owners and operators, and multiple transfers of ownership and/or operation. Certain of these transfers of ownership and/or operations of the

¹ Attached as Exhibit A is a map illustrating the Block and Lots of the Site for the Court's reference.

Site, and the cessation of operations, require the investigation and remediation of the Site pursuant to ISRA.

4. Investigation of the Site has revealed soil and ground water contaminated with various hazardous substances. The Site is comprised of two distinct portions – a developed portion containing residential homes on which a remedy to address the contamination has been implemented (though Sumo and Canrad have failed to monitor this remedy), and an undeveloped portion that has not been fully investigated and remediated. The Department seeks to enforce environmental laws and regulations on the developed and undeveloped portions of the Site.

5. The undeveloped portion of the Site is contaminated with tetrachloroethylene ("PCE"), trichloroethene ("TCE"), polychlorinated biphenyls ("PCBs"), vinyl chloride, 1,1-dichloroethene ("1,1-DCE"), cis-1,2-dichloroethene ("cis-1,2-DCE"), and other hazardous substances, which have exposed the surrounding community to public health hazards and caused environmental harm.

6. PCE and TCE are industrial solvents and exposure can harm the nervous system and negatively impact visual memory, color vision, and the ability to process information. Inhalation of PCE and TCE can cause headaches, vision problems, and problems with muscle coordination. Studies have also found that PCE and TCE exposure has been associated with several types of cancer including

bladder cancer, non-Hodgkin lymphoma, and multiple myeloma. Indeed, the EPA has classified PCE and TCE as likely to be carcinogenic to humans.

7. In 1998, Defendant Sumo purchased certain lots on the Site from Canrad and constructed residential homes. To address regulatory remediation requirements, engineering and institutional controls were used on the developed portion of the Site as part of the remedial action. Sumo used engineering controls including an impervious cover or two feet of clean fill to contain the contamination and prevent exposure to the contamination, and institutional controls, such as a deed notice, to provide the public notice that contamination remains on the developed portion of the Site. DEP required Sumo and Canrad to regularly inspect and maintain the engineering controls to ensure their effectiveness, but Sumo and Canrad have failed to comply with their obligations.

8. In 2002, Sumo purchased additional lots on the undeveloped portion of the Site and entered an ISRA Remediation Agreement ("2002 Remediation Agreement") with DEP in which Sumo agreed to remediate the Site and establish and maintain a remediation funding source.

9. Canrad and Sumo separately performed some remedial activities at the Site that confirmed the soil and ground water contamination; found that a discharge of hazardous substances

occurred at the Site; and identified the need for further investigation, including but not limited to hazardous vapor intrusion sampling of residential homes on and near the Site.

10. Canrad and Sumo abruptly stopped remediating the Site in 2009, having failed to conduct the vapor intrusion sampling of homes on and near the Site and not finishing remediation of contamination in seven Areas of Concern ("AOCs"). DEP conducted limited vapor intrusion sampling at one residence that granted DEP access at public cost to ensure residents' safety, but was unable to obtain access to the other residences.

11. The Site is located in an "overburdened community" within the meaning of N.J.S.A. 13:1D-138.² 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 pollutions, and accompanying increased negative public health impacts. The Site contains and is located in close proximity to residential properties and is also near an elementary school.

² "Overburdened community" means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency. N.J.S.A. 13:1D-158. The Site is located within Newark, which is listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-150.

12. 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.

13. To protect human health and the environment, the Department now brings this suit pursuant to the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-1 to -13, the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -50, the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -31, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), and the common law. Among other relief, the Department seeks: (1) to compel Defendants to remediate the discharges of hazardous substances that continue to exist at the 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; (4) specific performance of Sumo's 2002 Remediation Agreement with DEP; and (5) for other related relief.

PARTIES

14. 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.

15. DEP's enabling legislation, the Spill Act, the Brownfield Act, and ISRA empower it to institute legal proceedings to seek injunctive relief and to pursue additional civil penalties in Superior Court.

16. 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.

17. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. The Administrator is authorized to approve and pay any cleanup and removal costs the DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

18. Defendant Canrad is a corporation organized under the laws of the State of Delaware registered to do business in the State of New Jersey on August 20, 1970. Canrad's corporate status was revoked in New Jersey on December 1, 2005, for failure to submit annual reports.

19. Canrad's principal place of business was 100 Chestnut Street, Newark, New Jersey. Canrad's registered agent is Jeffrey D. Chelin, who has a mailing address of 505-260 Heath St. W, York, Ontario, Canada. Upon information and belief, Canrad has another agent that can accept service on its behalf, Corporation Service Company, located at 251 Little Falls Drive, Wilmington, Delaware. Canrad is currently the owner of Block 919, Lots 43.19 and 43.30.

20. Defendant UTBHL is a domestic for-profit corporation incorporated in the State of New Jersey on February 4, 1987. The entity changed its name from Hanovia Lamp Inc. ("Hanovia Lamp") to UTBHL on May 6, 1996. UTBHL's main business address was 100 Chestnut Street, Newark, New Jersey. Jeffrey Chelin is listed as the registered agent and Vice-President. UTBHL's corporate status was revoked on June 1, 2005, for failure to submit annual reports. UTBHL is a subsidiary of Canrad and both entities share officers.

21. Defendant Sumo is a corporation organized and existing under the laws of the State of New Jersey. Its business status was revoked on February 16, 2007, for failure to submit annual reports. Its registered agent is Jacinto Rodrigues, who has the mailing addresses 27 Prince Street, Elizabeth, New Jersey 07208 and 6 Conklin Lane, Warren, New Jersey 07059. Jacinto Rodrigues is the President of Sumo and Joaquina Rodrigues is the Vice-President. Sumo currently owns Block 919, Lots 1, 5, and 15.

22. Defendant Jacinto Rodrigues is an individual who resides at 6 Conklin Lane, Warren, New Jersey. Jacinto Rodrigues is the registered agent and President of Sumo. Upon information and belief, Jacinto Rodrigues was one of the individuals in charge of the day-to-day operations of Sumo, with the authority and control to correct violations of applicable laws and regulations, including compliance with the 2002 Remediation Agreement.

23. Defendant Joaquina Rodrigues is an individual who resides at 6 Conklin Lane, Warren, New Jersey. Joaquina Rodrigues is the Vice-President of Sumo. Upon information and belief, Joaquina Rodrigues also exercised authority and control over the day-to-day operations of Sumo to correct violations of applicable laws and regulations, including compliance with the 2002 Remediation Agreement.

24. "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.

25. "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

26. The Site is located at located at 100 Chestnut Street, Newark, and is designated as Block 919, Lots 1, 5, 15, 43.01-43.30 f/k/a Lots 1, 5, 15, 43, and 45 on the tax maps of Newark, Essex County. The developed portion of the Site contains Block 919, Lots 43.01-43.18 and 43.20-43.29. The undeveloped portion of the Site contains Block 919, Lots 1, 5, 15, 43.19, and 43.30.

27. The Site has had a litany of historical owners and operators that engaged in industrial and manufacturing operations across the entire Site dating back to approximately 1892.

A. Site Ownership and Operations: 1900s-1960s

28. From approximately 1892 until 1965, Flood and Conklin Manufacturing Company, or its divisions, operated an industrial facility on what is currently Block 919, Lots 43.01-43.30, where it manufactured and sold paints, varnishes, and paint products.

29. Around 1909, Hanovia Chemical and Manufacturing Company ("Hanovia Chemical") and The American Platinum Works (or successor corporations thereof) purchased portions of what at the time was designated as Block 919, Lots 1, 5, 15, 43, and 45.

30. Until 1958, Hanovia Chemical operated an industrial facility on Lots 1 and 15 where it manufactured items, including gold and decorating materials for ceramics, quartz glass, mercury quartz vapor lamps, and ultra-violet equipment.

31. American Platinum Works operated an industrial facility on Lot 5, and for some time on Lot 15 where it refined precious metals and manufactured related products through the 1960s.

32. On or about January 1, 1958, at least eight companies, including Hanovia Chemical and American Platinum Works, were merged into Baker & Co., Inc., a New Jersey corporation.

33. At or around the same time Baker & Co., Inc.'s name was changed to Engelhard Industries, Inc. (a New Jersey corporation).

34. Upon information and belief, Engelhard Industries, Inc. (a New Jersey corporation), or its divisions, operated on Block 919, Lots 1, 5 and 15 between 1957 and 1960.

35. Engelhard Industries, Inc. (a New Jersey corporation) continued Hanovia Chemical's lamp and ultraviolet equipment manufacturing operations at the Site in its Hanovia Lamp Division, and continued American Platinum Works' precious metals operations at the Site in its American Platinum and Silver Division.

36. Around March 1960, Engelhard Industries, Inc. (a New Jersey corporation) changed its name to Engelhard Hanovia, Inc. (a New Jersey corporation).

37. At or around the same time, Engelhard Hanovia, Inc. (a New Jersey corporation) transferred its precious metals business and properties, and certain other manufacturing operations and properties to its subsidiary, Engelhard Industries, Inc. (a Delaware corporation), in exchange for common stock and assumption of certain liabilities. The transfer included the American Platinum and Silver Division. Operations continued at Block 919, Lots 5 and 15 at the Site.

38. In 1966, Engelhard Hanovia, Inc. (a New Jersey corporation) merged with and into Engelhard Hanovia, Inc. (a Delaware corporation). The lamp and ultraviolet equipment manufacturing operations at the Site continued as the Hanovia Lamp Division of Engelhard Hanovia, Inc. (a Delaware corporation).

39. On or about September 27, 1967, Minerals & Chemicals Philipp Corporation merged with and into Engelhard Industries, Inc. (a Delaware corporation).

40. At or around the same time, Engelhard Industries, Inc. (a Delaware corporation) changed its name to Engelhard Minerals & Chemicals Corporation.

41. The precious metals operations at the Site are believed to have continued under the Engelhard Industries Division of Engelhard Minerals & Chemicals Corporation on Block 919, Lots 5, 15.

B. Site Ownership and Operations: 1970s-1980s

42. On or about August 1, 1970, Canrad Precision Industries, Inc., purchased the Hanovia Lamp Division of Engelhard Hanovia, Inc. (a Delaware corporation). Canrad Precision Industries, Inc., later known as Canrad-Hanovia, Inc., and then Canrad, continued the lamp and ultraviolet equipment manufacturing operations at the Site.

43. On December 29, 1970, Canrad purchased prior Block 919, Lot 43 from Engelhard Hanovia, Inc. (a Delaware corporation) and continued operating on the Site.

44. On February 2, 1971, Canrad purchased Block 919, Lot 1 from HD Properties (New Jersey), Inc.

45. On February 6, 1974, Canrad purchased Block 919, Lots 5 and 15 from Engelhard Minerals & Chemicals Corporation.

46. At or around that time, Engelhard Minerals & Chemicals Corporation ceased their precious metals operations at the Site.

47. Thereafter, Canrad expanded their operations to the entire area of the main buildings located on Block 919, Lots 1, 5, and 15.

48. On February 15, 1979, Canrad purchased prior Block 919, Lot 45 from Engelhard Minerals & Chemical Corporation.

49. Hanovia Lamp Inc., later renamed UTBHL, was incorporated in New Jersey on February 4, 1987. The entity, a subsidiary of Canrad, continued the lamp and ultraviolet equipment manufacturing

operations at the Site after its formation. Hanovia Lamp Inc. operated on Block 919, Lots 1, 5 and 15.

C. ISRA Triggering Events and Liability

50. ISRA requires owners and operators of facilities with specific industrial classifications to investigate and remediate the industrial establishment prior to property transfers, when the business ceases operations, or is sold.

51. An "Industrial Establishment" is defined as any place of business engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes if the place of business is associated with a range of "Standard Industrial Classification" ("SIC") numbers designated by ISRA. N.J.S.A. 13:1K-8. SIC numbers have been replaced by the North American Industry Classification System ("NAICS") codes. N.J.A.C. 7:26B-1.4.

52. The Site contains an Industrial Establishment under ISRA because operations at the Site included the manufacturing of electric lamp bulbs and tubes, which is associated with SIC No. 3641/NAICS No. 335139. Through their involvement in transfers of ownership and/or operation of the Site, Canrad and UTBHL are liable to remediate the Site pursuant to ISRA.

53. There were three ISRA triggering events (i.e., events that trigger liability under ISRA) during Canrad's ownership of

the Site that, as noted below, required Canrad to investigate and ultimately remediate the Site.³

54. Despite these ISRA triggering events, the Site has not been fully remediated.

55. On September 2, 1987, in anticipation of a planned merger, Canrad submitted to DEP a General Information Submission ("GIS") for an ISRA triggering event. DEP assigned an ISRA case number, #E87752 ("1987 Triggering Event"), to this first ISRA triggering event.

56. In August 1988, ARC USA Acquisition Corporation, a wholly owned subsidiary of ARC International Corporation, was merged into Canrad, with Canrad being the surviving corporation and continuing operations at the Site.

57. Canrad entered an Administrative Consent Order ("ACO") with DEP relating to the 1987 Triggering Event on November 3, 1988, to allow for the merger before completion of the resulting remedial obligations.

58. UTBHL (f/k/a Hanovia Lamp) was the operator of the industrial establishment at the Site during the 1987 Triggering Event.

³ ISRA became effective on June 16, 1993. While the first triggering event occurred under the Environmental Cleanup Responsibility Act (ISRA's predecessor statute), for ease of reference DEP will use ISRA throughout the complaint.

59. On January 22, 1996, Canrad submitted a General Information Notice ("GIN") and Remediation Agreement application for Hanovia Lamp, to DEP in connection with a sale of assets between Canrad's subsidiary, Hanovia Lamp, and Gavenco L.L.C. -- another ISRA triggering event. DEP assigned ISRA case #E96030 to this second ISRA triggering event ("1996 Triggering Event"). UTBHL (f/k/a Hanovia Lamp) was the operator of the industrial establishment at the Site during the 1996 Triggering Event.

60. On January 30, 1996, Canrad and DEP entered a Remediation Agreement for the 1996 Triggering Event to allow the sale of assets between Canrad's subsidiary, Hanovia Lamp (operator), and Gavenco L.L.C. (buyer) to occur before compliance with all remediation obligations.

61. Gavenco L.L.C. continued the lamp and ultraviolet equipment manufacturing operations as a tenant on Block 919, Lots 1, 5 and 15 until spring 1997, when it moved to another facility in Union Township, New Jersey. Canrad was the owner of the Site during the 1996 Triggering Event.

62. In April 1996, Canrad submitted a Remediation in Progress Waiver ("RIP Waiver") application for the 1996 Triggering Event, which DEP approved on May 2, 1996.

63. DEP rescinded the RIP Waiver for the 1996 Triggering Event on August 3, 2023, because the RIP Waiver was predicated on compliance with the ISRA remedial obligations resulting from the

1987 Triggering Event. Remedial compliance as required by the 1987 Triggering Event remains outstanding.

64. In March 1997, Gavenco L.L.C. (d/b/a Hanovia Colight) submitted a GIN to DEP for the cessation of operations of Gavenco L.L.C., the last-known operator of an industrial establishment at the Site. DEP assigned ISRA case #E97114 to this third ISRA triggering event ("1997 Triggering Event").

65. Gavenco L.L.C. submitted a RIP Waiver Application to DEP for the 1997 Triggering Event in March 1997. DEP approved the RIP waiver on May 5, 1997.

66. DEP rescinded the RIP Waiver for the 1997 Triggering Event on August 7, 2023, because the RIP Waiver was predicated on compliance with the ISRA remedial obligations resulting from the 1987 Triggering Event. Remedial compliance as required by the 1987 Triggering Event remains outstanding. Canrad was the owner of the Site during the 1997 Triggering Event.

D. Failure to Comply with the Requirements of the Remedy Selection for the Developed Portion of the Site

67. In January 1998, Canrad subdivided former Block 919, Lots 43 and 45 into Lots 43.01 to 43.30, which is now the developed portion of the Site.

68. On June 8, 1998, Sumo purchased Block 919, Lots 43.01 to 43.18 and 43.20 to 43.29 from Canrad.

69. Sumo constructed multi-level residential structures on each of Lots 43.01 to 43.18 and 43.20 to 43.29 and began selling them as early as March 30, 1999.

70. Each of these developed lots was covered by restricted use No Further Action ("NFA") letters. The NFA letters do not absolve Defendants of their responsibility to remediate the entire Site, including the undeveloped portion of the Site (Lots 1, 5, 15, 43.19 and 43.30), including the need to obtain a Response Action Outcome ("RAO").

71. Institutional and engineering controls were placed on the developed lots as part of remedy selection. Institutional controls, such as a deed notice, provide the public notice that contamination remains onsite above DEP's remediation standards. Engineering controls, such as a cap, are part of remedy selection that allows contamination to remain onsite above DEP's remediation standards. Engineering controls are physical mechanisms to contain or stabilize the contamination and to protect against direct contact to the contamination. Here, the engineering controls are in the form of an impervious cover or two feet of clean fill. Engineering controls are required to be inspected and maintained to ensure their protectiveness, but Sumo and Canrad have failed to perform these actions to date.

72. Canrad and Sumo, as the persons responsible for monitoring the protectiveness of the engineering controls for

these developed lots, were responsible to submit the monitoring report and certification biennially in accordance N.J.A.C. 7:26E-8.4(c). N.J.A.C. 7:26E-8.5(c)3.

73. Canrad and Sumo failed to submit any monitoring reports and certifications pursuant to N.J.A.C. 7:26E-8.5(c)3.

74. On October 31, 2007, DEP sent Canrad a Notice of Violation for failure to submit the monitoring reports and certifications pursuant to N.J.A.C. 7:26E-8.5(c)3.

75. After the passage of SRRA, Sumo and Canrad, as the persons responsible for conducting the remediation on these developed lots, were responsible for obtaining a soil remedial action permit for these lots pursuant to N.J.A.C. 7:26C-7.4 no later than May 7, 2014.

76. Sumo and Canrad have failed to obtain a soil remedial action permit for these developed lots.

77. On April 28, 2022, DEP issued Sumo a Notice of Violation for failure to obtain a soil remedial action permit, along with failure to submit the necessary biennial certifications. N.J.A.C. 7:26C-7.6(a).

E. Failure to Fully Investigate and Remediate the Undeveloped Portion of the Site

78. In August 2001, Sumo submitted a Remediation Agreement application to DEP relating to the 1987 Triggering Event.

79. In May 2002, DEP and Sumo entered the 2002 Remediation Agreement.

80. Pursuant to the 2002 Remediation Agreement, Sumo agreed to remediate the Site and establish and maintain a remediation funding source to ensure sufficient funds to perform required remedial work and obtain an NFA letter.

81. On September 10, 2002, Sumo purchased Block 919, Lots 1, 5 and 15 from Canrad. Sumo currently owns these lots.

82. On or around September 24, 2004, the City of Newark acquired Block 919, Lots 43.19 and 43.30 via municipal property tax foreclosure.

83. On or around July 12, 2022, the Superior Court of New Jersey entered an order reversing the City of Newark's foreclosure on these two lots. Canrad is currently listed as the owner of Block 919, Lots 43.19 and 43.30. From approximately 1989 through 2009, Canrad and later Sumo conducted a remedial investigation that confirmed the presence of soil and groundwater contamination at the Site and documented the historic use and discharge of hazardous substances. However, Defendants have not completed the investigation and cleanup of the undeveloped portion of the Site (Block 919, Lots 1, 5, 15, 43.19 and 43.30) and seven areas of concern ("AOC") remain on these lots requiring remediation.

84. Ground water sampling of the undeveloped portion of the Site has revealed the presence of hazardous substances above remediation standards and that hazardous discharges have occurred.

85. Volatile organic compounds ("VOCs") such as 1,1-DCE, 1,1-dichloroethane ("1,1-DCA"), cis-1,2-DCE, benzene, ethylbenzene, toluene, and xylenes (collectively "BTEX"), TCE, and vinyl chloride were detected at concentrations exceeding DEP's Ground Water Quality Standards ("GWQS") on Block 919, Lots 5 and 43.19.

86. Vinyl chloride, TCE, and PCE, have been detected on Block 919, Lots 1 and 5 at levels above their respective GWQS.

87. 1,1-dichloroethene ("1,1-DCE") and 1,1,2-trichloroethane ("1,1,2-TCA") have also been detected in samples from Block 919, Lot 1 at levels above their respective GWQS.

88. Benzene, TCE, and vinyl chloride have been detected at levels above the Vapor Intrusion Ground Water Screening Levels on Block 919, Lot 5.

89. From the 1970s through 1996 when Canrad operated at the Site, it submitted Selected Substance Reporting information and Industrial Waste Survey information to DEP that recorded the use and storage of TCE at the Site. Canrad used TCE in its operations at the Site.

90. Soil sampling between 1989 and 1993 at Block 919, Lots 43.01 to 43.19 and 43.20 and 43.30 has confirmed the presence of

various hazardous substances, including but not limited to, total petroleum hydrocarbons ("TPHC"), total VOCs, total base neutral organic compounds, antimony, arsenic, cadmium, copper, lead, mercury, and zinc, all at concentrations that exceeded the DEP's cleanup criteria at that time.

91. Soil sampling between 2000 and 2007 at Block 919, Lot 5 revealed the presence of polycyclic aromatic hydrocarbons ("PAHs"), benzo[a]pyrene, benzo[k]fluoranthene, benzo[a]anthracene, and PCB Aroclor 1242 at concentrations that exceeded the DEP's cleanup criteria at that time.

92. A "Vapor Intrusion Remedial Investigation Workplan," dated July 2009, was prepared by Sumo. The workplan proposed collecting sub-slab soil gas samples and indoor air samples at eight properties on Chestnut Street.

93. DEP approved the workplan in a letter dated July 27, 2009, and instructed Sumo to submit a remedial investigation report on October 16, 2009.

94. A "Ground Water Remedial Investigation Workplan", dated November 2009, was prepared by Sumo and submitted to DEP on March 22, 2010.

95. On December 22, 2009, Sumo's counsel at the time sent a letter to DEP stating that access request letters had been sent to the eight property owners on Chestnut Street in October 2009, and

that Sumo had not been granted access by the property owners to conduct the required vapor intrusion sampling.

96. On March 21, 2011, DEP sent Jacinto Rodrigues of Sumo a Notice of Deficiency for the Ground Water Remedial Investigation Workplan submitted on March 22, 2010.

97. DEP's notice identified seven open AOCs, including ground water and vapor intrusion. DEP determined that Sumo needed to delineate the horizontal and vertical extent of ground water contamination at the Site and that Sumo failed to complete the vapor intrusion investigation of the eight previously identified properties on Chestnut Street that Sumo claimed had refused access. DEP further identified additional buildings that required vapor intrusion investigation.

98. Defendants stopped conducting the remediation of the Site around 2009 leaving seven open AOCs on Block 919, Lots 1, 5, 15, 43.19 and 43.30 that require investigation and remediation. Defendants also never performed the vapor intrusion investigation it identified as necessary in 2009, nor implemented the Ground Water Remedial Investigation Workplan submitted in 2010.

99. On January 24, 2012, DEP sent Sumo a letter stating that due to the enactment of the SRRA, N.J.S.A. 58:10C-1 to -29, in May 2009, Sumo was now obligated to retain a Licensed Site Remediation Professional ("LSRP"), to conduct the appropriate site cleanup, and satisfy all DEP timeframes, including the provisions of ISRA.

100. Defendants failed to submit the initial receptor evaluation by March 1, 2012.

101. Defendants failed to submit a remedial investigation report by May 7, 2014, as required by N.J.S.A. 58:10C-27. On February 22, 2019, DEP sent Sumo a Notice of Violation and Offer of Settlement for failure to comply with the applicable timeframes for sites subject to SRRA, N.J.S.A. 58:10C-27(a)3, and failure to comply with the requirements for direct oversight.

102. Defendants also failed to submit the remedial action report by May 6, 2021. N.J.S.A. 58:10C-27.

103. Defendants received compliance assistance phone calls, emails, or other communications from DEP reminding Defendants of their obligation to comply with all applicable remediation requirements.

104. On June 14, 2022, DEP sent Jacinto Rodrigues of Sumo a Notice of Potential Enforcement Action letter outlining Sumo's noncompliance with the 2002 Remediation Agreement and the Spill Act. To date, Sumo has not responded to this letter and remains in breach of its obligations pursuant to the 2002 Remediation Agreement.

105. Because Defendants did not conduct the vapor intrusion investigation identified in 2009, the Site was referred to DEP's Publicly Funded Response Element to use public funds to perform

the vapor intrusion investigation to protect public health and safety.

106. Between June 29, 2022, and September 19, 2022, DEP issued letters to seventeen residential addresses on or near the Site requesting access to conduct the vapor intrusion investigation.

107. DEP was granted access to one residence and vapor intrusion sampling was conducted on January 25, 2023, which did not exceed DEP's vapor intrusion screening criteria for the contaminants of concern that were tested.

108. Vapor intrusion investigations are still outstanding for the remaining residential properties and DEP may elect to conduct additional vapor intrusion sampling at these residential addresses or additional locations as warranted.

109. DEP has incurred and may continue to incur costs to investigate and remediate hazardous substances at and emanating from the Site.

110. On April 19, 2023, DEP issued to numerous respondents, including Defendants Canrad and Sumo, a Spill Act Directive ("2023 Directive") to undertake remediation activities, including: hiring a licensed site remediation professional; submitting to DEP a detailed initial Remediation Cost Review Form; establishing and maintaining a remediation funding source in the amount determined by the Detailed Cost Review; submitting to DEP the one percent Remediation Funding Source surcharge; conducting the remediation

in all areas of concern at the Contaminated Site, including the performance of a vapor intrusion investigation; remediating any structures identified as having vapor concern or immediate environmental concern; conducting a preliminary assessment/site investigation to identify the source or sources of soil and ground water contamination and submitting to DEP; completing the remedial investigation by delineating all soil and ground water contamination above DEP's respective remediation standards; completing the remedial action for soil and ground water after obtaining all required remedial action permits; conducting remediation of all areas of concern at the entire Contaminated Site; and submitting an entire site response action outcome for the entire Contaminated Site.

111. Defendants Canrad and Sumo did not respond or comply with the Directive.

112. When Canrad purchased the Site, the soil and ground water were contaminated with various "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, and "pollutants," as defined in N.J.S.A. 58:10A-3n at the time of acquisition.

113. When Sumo purchased Block 919, Lots 43.01-43.18 and 43.20-43.29 in June 1998 and Block 919, Lots 1, 5, and 15 in September 2022 from Canrad, the soil and ground water were contaminated with various "hazardous substances," as defined in

N.J.S.A. 58:10-23.11b and "pollutants," as defined in N.J.S.A. 58:10A-3n, which included PCE, TCE, and vinyl chloride.

114. Upon information and belief, Jacinto Rodrigues is in a position of control to ensure Sumo's legal and regulatory compliance, including compliance with the Spill Act.

115. Jacinto Rodrigues is the President of Sumo and signed the remedial investigation reports on behalf of Sumo that were submitted to DEP for review and approval.

116. He also certified the remedial investigation workplans submitted to DEP on behalf of Sumo between 2000 and 2009.

117. DEP copied Jacinto Rodrigues in all its correspondence to Sumo regarding deficiencies with the remedial investigation reports submitted to DEP and for noncompliance with the 2002 Remediation Agreement and other applicable statutes and regulations.

118. Jacinto Rodrigues is also associated with a number of "Sumo" businesses registered in New Jersey, including Sumo Enterprises, Inc., Jac and Jac, Inc., Sumo Companies, Inc., Sumo Real Estate Holdings Inc., and Sumo Urban Renewal Corp., which are all active and identify the registered agent's mailing address as 27 Prince Street, Elizabeth, New Jersey.

119. Upon information and belief, Joaquina Rodrigues is the Vice-President of Sumo and in a position of control to ensure

Sumo's legal and regulatory compliance, including compliance with the Spill Act.

120. Joaquina Rodrigues executed the 2002 Remediation Agreement identifying herself as the Vice-President of Sumo and bound Sumo to the terms and conditions of the Agreement, which requires the remediation of the Site.

121. Defendants XYZ Corporations 1-10 and/or John Does 1-10 contributed to the contamination present at the Site and/or owned, leased, or operated at the Site at the time that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b.

COUNT I

Violation Of ISRA, SRRA, And Brownfield Act (Against Sumo, Canrad, And UTBHL)

122. Plaintiffs repeat and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

123. 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 Defendants liable for their ISRA non-compliance and collect penalties assessed by the Court.

124. Under ISRA, an "owner" is defined as any person who owns the real property of an industrial establishment or who owns the industrial establishment. N.J.S.A. 13:1K-8.

125. Under ISRA, an "operator" is defined as any person, including users, tenants, or occupants, having and exercising direct actual control of the operations of an industrial establishment. N.J.S.A. 13:1K-8.

126. Pursuant to the Brownfield Act, N.J.S.A. 58:10B-1.3(a), and SRRA, N.J.S.A. 58:10C-1 to -29, Defendants are required to remediate the hazardous substances at the Site.

127. ISRA's plain language states that an owner or operator of an industrial site is "strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages resulting from the failure to implement the remediation action workplan." N.J.S.A. 13:1K-12.

128. As the owner of the Site, Canrad was responsible for complying with the ISRA remediation requirements, pursuant to N.J.A.C. 7:26B-3.3(a).

129. Canrad is an ISRA "owner" pursuant to N.J.A.C. 7:26B-1.4 because Canrad owned the real property when the 1987, 1996, and 1997 Triggering Events occurred.

130. Canrad executed the November 3, 1988 ACO with DEP relating to the 1987 Triggering Event agreeing to comply with ISRA, including investigating and remediating the Site and maintaining a remediation funding source.

131. Canrad executed a Remediation Agreement with DEP on January 30, 1996, relating to the 1996 Triggering Event agreeing to remediate the Site and maintain a remediation funding source.

132. Canrad, as the prior owner and operator of the Site, has not fulfilled its obligations under ISRA, N.J.S.A. 13:1K-6 to -14, to fully investigate and remediate the Site for the 1987, 1996, and 1997 Triggering Events. Canrad has also failed to maintain a remediation funding source as required by ISRA. N.J.A.C. 7:26B-3.3(c)(3), N.J.A.C. 7:26C-5.2(b).

133. UTBHL is an ISRA "operator" pursuant to N.J.A.C. 7:26B-1.4. UTBHL was the operator of the Site when the 1987 and 1996 Triggering Events occurred. As the operator, UTBHL is responsible for complying with the ISRA remediation requirements pursuant to N.J.A.C. 7:26B-3.3(a).

134. As a third-party condition of the sale of Block 919, Lots 1, 5, and 15 from Canrad to Sumo, Sumo entered the 2002 Remediation Agreement with DEP pursuant to ISRA in which it agreed to remediate the Site based on the 1987 Triggering Event. Sumo agreed to complete all applicable ISRA program requirements, including establishing a remediation funding source, and any other remedial measures. Sumo is therefore responsible for complying with the ISRA remediation requirements, pursuant to N.J.A.C. 7:26B-3.3(b).

135. Defendants were required pursuant to N.J.A.C. 7:26C-2.3(a)1&2 to retain a LSRP to perform the remediation of the Site.

136. To date, an LSRP has not been retained to perform the remediation.

137. Defendants were required, pursuant to SRRA, N.J.A.C. 7:26C-3.3(a) to submit a remedial investigation report. Defendants were also required pursuant to N.J.A.C. 7:26C-3.3(a)&(b) to comply with each applicable statutory and mandatory remediation timeframe including: submittal of the remedial investigation report, initial receptor evaluation report, submittal of the preliminary assessment report, submittal of the site investigation report, and submittal of the remedial action report.

138. Defendants have failed to comply with N.J.A.C. 7:26C-3.3(a) and (b).

139. Having failed to comply with N.J.A.C. 7:26C-3.3(a)&(b), Defendants were required to comply with the requirements of direct oversight, pursuant to N.J.A.C. 7:26C-14.2(b).

140. Defendants have failed to comply with the requirements of direct oversight pursuant to N.J.A.C. 7:26C-14.2(b).

141. Defendants were required to maintain a remediation funding source pursuant to N.J.A.C. 7:26B-3.4 to ensure the remediation of the Site.

142. Defendants have failed to maintain a remediation funding source.

143. Defendants were required to pay all applicable fees and oversight costs as required by the DEP pursuant to N.J.A.C. 7:26C-2.3(a)4.

144. Defendants have failed to pay all applicable fees and oversight costs.

WHEREFORE, The Commissioner demands judgment against Defendants Sumo, Canrad, and UTBHL:

- a. Ordering Defendants to comply with ISRA, including, but not limited to, requiring Defendants to remediate the Contaminated Site in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.S.A. 7:26C, the Brownfield Act, N.J.S.A. 58:10B-1.3(a), the SRRA, N.J.S.A. 58:10C-1 to -29, and all other applicable statutes and regulations;
- b. Ordering Defendants to maintain a remediation funding source to ensure the completion of the remediation of the Site pursuant to N.J.A.C. 7:26B-3.4;
- c. Ordering Defendants to pay all applicable fees and oversight costs pursuant to N.J.A.C. 7:26C-2.3(a)4;
- d. Ordering Defendants to comply with the requirements of direct oversight pursuant to N.J.A.C. 7:26C-14.2(b);

- e. Imposing upon Defendants, pursuant to N.J.S.A. 13:1K-13.1(e) and the Penalty Enforcement Law, a civil penalty of not more than \$25,000 per day, for its violations of ISRA;
- f. Awarding all costs recoverable under N.J.S.A. 13:1K-13.1(c)(2), including, but not limited to, the reasonable costs of preparing and litigating this matter;
- g. Awarding the Commissioner any other relief 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 II

**Violation Of The Spill Act And Brownfield Act
(As Amended By SRRA)
(Against Canrad, Sumo, Jacinto Rodrigues, And Joaquina
Rodrigues)**

145. Plaintiffs repeat and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

146. 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.

147. Pursuant to the Brownfield Act, N.J.S.A. 58:10B-1.3, and SRRA, N.J.S.A. 58:10C-1 to -29, Defendants are required to remediate the hazardous substances at the Site.

148. Specifically, N.J.S.A. 58:10B-1.3 provides that “[a]n owner or operator of an industrial establishment subject to the provisions [of ISRA], the discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of [of the Spill Act], . . . shall remediate the discharge of a hazardous substance.”

149. Under the Spill Act, 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 DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

150. The costs that Plaintiffs have incurred, or will incur, for the remediation of the Site are “cleanup and removal costs” within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable under N.J.S.A. 58:10-23.11u.b.(2), (4) and (5).

151. Failure to comply with a Directive issued by DEP pursuant to the Spill Act subjects non-compliant parties to liability,

jointly and severally, without regard to fault, in an amount up to three times the cleanup and removal costs that DEP and the Administrator have incurred, or will incur, as a result of the discharge of hazardous substances. N.J.S.A. 58:10-23.11.f.a(1).

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

153. Under N.J.S.A. 58:10-23.11g.c.(1), Defendants are liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, or will incur, in connection with the remediation of hazardous substances at the Site.

154. Defendants' failure to remediate discharges under ISRA also makes them persons in any way responsible pursuant to the Spill Act. N.J.S.A. 58:10-23.11g.c.

155. When Canrad purchased the Site, it knew or should have known that the soil and ground water were contaminated with various "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, and "pollutants," as defined in N.J.S.A. 58:10A-3n at the time of acquisition. Canrad is therefore a person in any way responsible for the discharged hazardous substances, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs that Plaintiffs have incurred, and will incur, to remediate the contamination at the Site, N.J.S.A. 58:10-

23.11g(c), and for the completion of the remediation of those discharges pursuant to N.J.S.A. 58:10B-1.3(a).

156. When Sumo purchased Block 919, Lots 43.01-43.18 and 43.20-43.29 in June 1998 and Block 919, Lots 1, 5, and 15 in September 2002 from Canrad, the soil and ground water were contaminated with various "hazardous substances," as defined in N.J.S.A. 58:10-23.11b and "pollutants," as defined in N.J.S.A. 58:10A-3n, which included PCE, TCE, and vinyl chloride. As such, Sumo is a person in any way responsible for the discharge of hazardous substances at the Site, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs that Plaintiffs have incurred, and will incur, to remediate the contamination at the Site, N.J.S.A. 58:10-23.11g(c), and for the completion of the remediation of those discharges pursuant to N.J.S.A. 58:10B-1.3(a) because Sumo knew or should have known of the contamination when it purchased these lots.

157. Jacinto Rodrigues is the registered agent and President of Sumo and, upon information and belief, exercises control over Sumo's legal and regulatory obligations, including compliance with the Spill Act and SRRA. Jacinto Rodrigues signed the remedial investigation reports on behalf of Sumo that were submitted to DEP for review and approval. DEP also issued Jacinto Rodrigues numerous enforcement documents highlighting Sumo's outstanding compliance and conducted compliance assistance outreach to Jacinto

Rodrigues in an attempt to bring the Site back into compliance. As such, Jacinto Rodrigues is a person in any way responsible for the discharge of hazardous substances at the Site, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs that Plaintiffs have incurred, and will incur, to remediate the contamination at the Site, N.J.S.A. 58:10-23.11g(c), and for the completion of the remediation of those discharges pursuant to N.J.S.A. 58:10B-1.3(a).

158. Joaquina Rodrigues is the Vice-President of Sumo and, upon information and belief, exercises control over Sumo's legal and regulatory obligations, including compliance with the Spill Act and SRRA. As such, Joaquina Rodrigues is a person in any way responsible for the discharge of hazardous substances at the Site, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs that Plaintiffs have incurred, and will incur, to remediate the contamination at the Site, N.J.S.A. 58:10-23.11g(c), and for the completion of the remediation of those discharges pursuant to N.J.S.A. 58:10B-1.3(a).

159. 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).

160. 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).

161. Defendants also violated the Brownfield Act and SRRA when they failed to complete a remedial investigation and a remedial action for the Site pursuant to N.J.A.C. 7:26B-3.3(a)&(b) and N.J.A.C. 7:26C.

162. Pursuant to N.J.A.C. 7:26C-3.3 and N.J.A.C. 7:26C-14.2, the Site is subject to direct oversight.

163. Defendants have failed to comply with the requirements of direct oversight. N.J.A.C. 7:26C-14.2.

164. Defendants Sumo and Canrad, by not complying with the 2023 Directive, are strictly liable, jointly and severally, in an amount up to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur, to remediate the discharges of hazardous substances at the Site. N.J.S.A. 58:10-23.11f.a(1).

165. Defendants Sumo and Canrad, as the persons responsible for monitoring the protectiveness of the remedy selection covering

Block 919, Lots 4.01-43.18 and 43.20-43.29, were required pursuant to N.J.A.C. 7:26E-8.5(c)3 to submit the certification and monitoring report required by N.J.A.C. 7:25E-8.5(c)1 and 2, according to the schedule outlined in N.J.A.C. 7:26E-8.4(c), to all parties. Sumo and Canrad were also required to submit any required fee per N.J.A.C. 7:26E-8.5 with the submittal of the Engineering and Institutional Controls Monitoring Report.

166. Defendants Sumo and Canrad have failed to submit any monitoring reports or certifications as required by N.J.A.C. 7:26E-8.5(c)3 and accompanying fee per N.J.A.C. 7:26E-8.5 that ensure the continued protectiveness of the institutional and engineering controls currently on Block 919, Lots 4.01-43.18 and 43.20-43.29.

167. By May 7, 2014, Canrad and Sumo, as persons responsible for conducting the remediation on Block 919, Lots 43.01-43.18 and 43.20-43.29 were required to apply for a remedial action permit in accordance with N.J.A.C. 7:26C-7.4. N.J.A.C. 7:26C-7.6(a). Canrad and Sumo were also required to pay the applicable remedial action permit application fees and the annual remedial action permit activity fees pursuant to N.J.A.C. 7:26C-4.6.

168. Defendants Canrad and Sumo have failed to apply for and receive a soil remedial action permit for Block 919, Lots 43.01-43.18 and 43.20-43.29 as required by N.J.A.C. 7:26C-7.6(a). Canrad and Sumo have also failed to pay the applicable remedial action

permit activity fees and the annual remedial action permit fees.
N.J.A.C. 7:26C-4.6.

169. 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).

170. 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.

171. 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 Plaintiffs demand judgment against Defendants
Canrad, Sumo, Jacinto Rodrigues, and Joaquina Rodrigues:

- a. Ordering Defendants to perform the cleanup and remediation of the Contaminated Site in conformance with the Brownfield Act, N.J.S.A. 58:10B-1.3(a), the Spill Act, N.J.S.A. 58:10-23.11 to -23.24, 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. Ordering Defendants Sumo and Canrad to reimburse the Plaintiffs, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs that Plaintiffs have incurred, or will incur for the Site following the issuance of the 2023 Spill Act Directive;
- d. Finding Defendants Sumo and Canrad liable, without regard to fault, in an amount equal to three times all cleanup and removal costs the Department will incur as a result of the discharge of hazardous substances at the Site;
- e. Ordering Defendants Canrad and Sumo to comply with N.J.A.C. 7:26E-8.5(c)3 and submit the certification and

monitoring reports for the protectiveness of the remedial action on Block 919, Lots 43.01-43.18 and 43.20-43.29, along with any fees as required by N.J.A.C. 7:26E-8.5;

- f. Ordering Defendants Canrad and Sumo to comply with N.J.A.C. 7:26C-7.6(a) and apply for a remedial action permit for the remedy selection covering Block 919, Lots 43.01-43.18 and 43.20-43.29, along with the applicable remedial action permit activity fees as required by N.J.A.C. 7:26C-4.6.
- g. Ordering Defendants to comply with direct oversight pursuant to N.J.A.C. 7:26C-14.2;
- h. Awarding the Department its costs and fees incurred in this action;
- i. 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;
- j. 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 Defendants shall answer the Department's Complaint within 35 days pursuant to R. 4:67-5;

- k. Awarding the Department any other relief the Court deems appropriate; and
- l. 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 III

Unjust Enrichment

172. Plaintiffs repeat and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

173. 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.

174. The Department has used and may continue to use public funds to remediate the contamination at and from the Site.

175. 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. Ordering Defendants to reimburse the Department for costs the Department has incurred, and may continue to incur in the future, to remediate the Site, with applicable interest; and
- c. Awarding the Department such other relief as the Court deems appropriate.

COUNT IV

**Specific Performance of the 2002 Remediation Agreement
(Against Sumo)**

176. Plaintiffs repeat and incorporate by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

177. Sumo entered the 2002 Remediation Agreement with DEP agreeing to complete the remediation of the Site, establish and maintain a remediation funding source to ensure the completion of such remediation, and submit an annual remediation funding source surcharge payment.

178. Sumo has not completed the remediation of the Site, established and maintained a remediation funding source, and submitted an annual remediation funding source surcharge payment, as required by the 2002 Remediation Agreement.

179. On June 14, 2022, DEP sent Sumo a letter pursuant to paragraph thirteen of the 2002 Remediation Agreement outlining

Sumo's failure to comply and the necessary steps Sumo must perform under the Remediation Agreement, the Spill Act, and SRRA.

180. Sumo has failed to respond to this letter.

181. The Department is entitled to relief for specific performance of the requirements of the 2002 Remediation Agreement.

WHEREFORE, the Department demands judgment against Defendant

Sumo:

a. Ordering specific performance of the 2002 Remediation Agreement including but not limited to:

i. Ordering Sumo to perform the remediation of the Site pursuant to N.J.A.C. 7:26B-3.3(b);

ii. Ordering Sumo to establish and maintain a remediation funding source pursuant to N.J.A.C. 7:26B-3.4;

iii. Ordering Sumo to submit any outstanding annual remediation funding source surcharge payments; and,

b. Awarding the Department such other relief as this Court deems appropriate.

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

By: Dianna E. Shinn
Dianna E. Shinn
Deputy Attorney General

DATED: September 28, 2023

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, the Court is advised that Dianna E. Shinn, 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 subject Site is involved in ongoing litigation brought by the Department in New Jersey Department of Environmental Protection et al. v. Chiquita Brands International, Inc., et al., Docket No. ESX-L-008038-19, which was instituted in the Superior Court of New Jersey, Law Division - Essex County regarding a site located at 34-48 Hermon Street, Newark, Essex County, New Jersey. Chiquita Brands International, Inc. filed a third-party complaint in that litigation claiming that the contamination located at 34-48 Hermon Street, Newark is from the upgradient Canrad Property, which is the subject matter of this Complaint.

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 the Plaintiffs at this time other than the litigation noted in the paragraph above, nor is any non-party known to the 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 Rule 4:5-1(b) (2).

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

By: Dianna E. Shinn
Dianna E. Shinn
Deputy Attorney General

DATED: September 28, 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
Attorney for Plaintiffs

By: Dianna E. Shinn
Dianna E. Shinn
Deputy Attorney General

DATED: September 28, 2023

VERIFICATION

ANN WOLF, by way of verification, states that:

1. I am an employee of the New Jersey Department of Environmental Protection ("DEP") and I am familiar with the facts and circumstances in this matter.

2. I am currently the Assistant Director of the Enforcement and Information Support Element within Contaminated Site Remediation and Redevelopment at DEP. My duties include enforcing New Jersey's environmental statutes and regulations pertaining to site remediation, including ISRA, the Spill Act, the Brownfield Act, and SRRA. I issue enforcement documents such as Directives, Administrative Orders, Notice of Civil Administrative Penalty Assessment, Municipal Summonses and settlement documents such as Administrative Consent Orders.

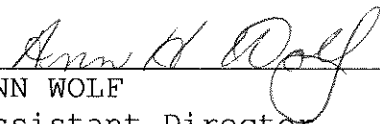
3. I oversee DEP's site remediation enforcement efforts against Defendants.

4. I have personal knowledge of the factual allegations contained in Paragraphs 2-5, 7-11, 13-23, 26-120, 130-132, 134, 136, 138, 140, 142, 144, 155-158, 163, 166, 168, 173-174, and 177-180 of the Verified Complaint, and I certify that these paragraphs are true and correct.

5. Attached to the Verified Complaint as **Exhibit B** is a true and correct copy of the May 6, 2002 Remediation Agreement entered between DEP and Sumo Realty, Inc.

6. Attached to the Verified Complaint as **Exhibit C** is a true and correct copy of the April 19, 2023, Spill Act Directive issued by DEP to Canrad, Inc. and Sumo Realty, Inc.

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements by me are willfully false that I am subject to punishment.



ANN WOLF
Assistant Director
Enforcement and Information Support
Element

DATED: September 27, 2023

**Exhibit A to
Verified
Complaint**

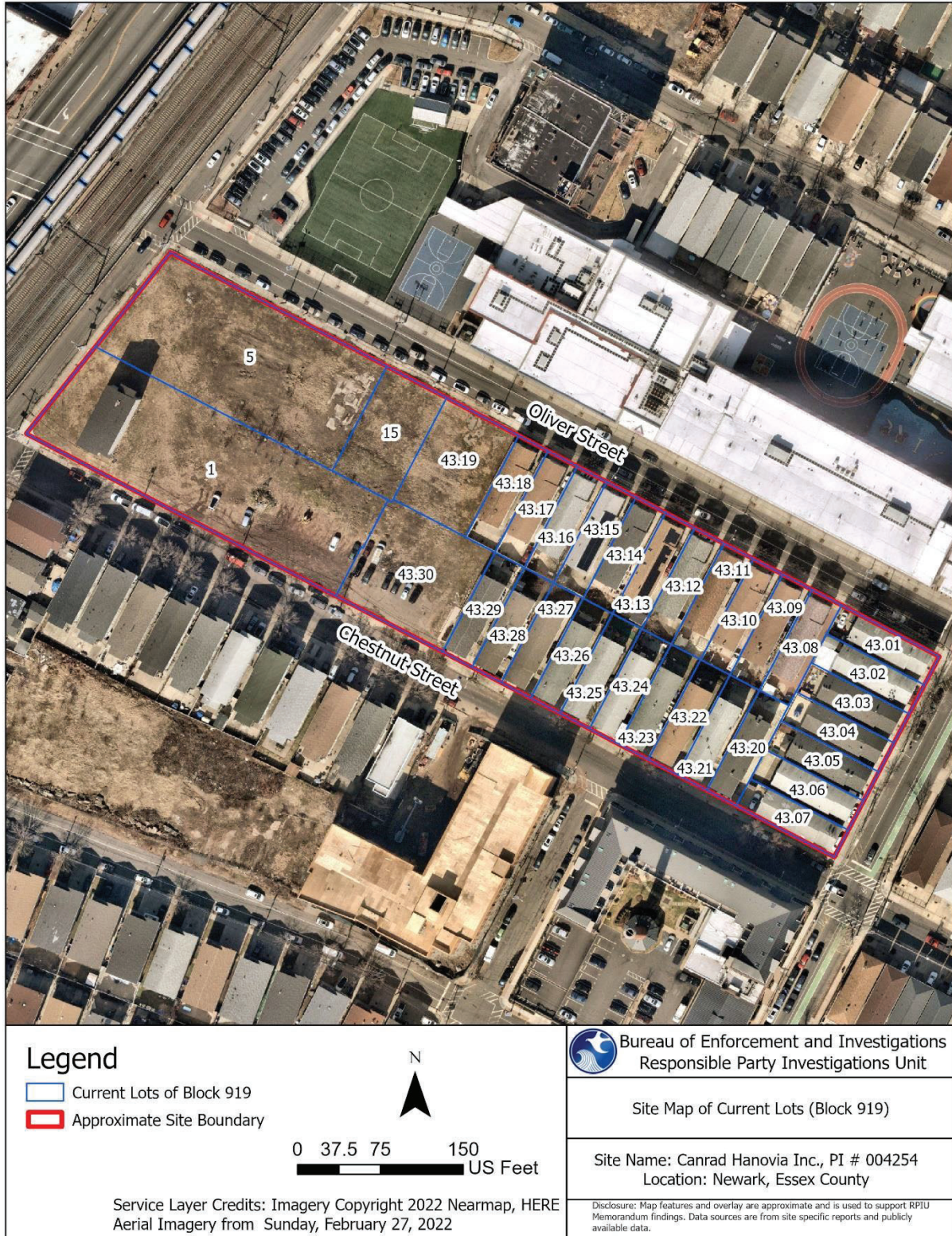


Figure 2: A map generated using Nearthmap’s imagery from February 27, 2022, which shows the Site’s boundaries (in red) and the approximate boundaries of current Block 919, Lots 1, 5, 15, and 43.01- 43.30 (in blue). The vacant structure on Lot 1 and parking area on Lot 43.30 are visible.



**Exhibit B to
Verified
Complaint**



State of New Jersey

Department of Environmental Protection

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

IN THE MATTER OF
THE NEWARK SITE
HANOVIA LAMP INC. : REMEDIATION
AND CANRAD INC : AGREEMENT

ISRA Case #87752

This Remediation Agreement is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "NJDEP") by N.J.S.A. 13:1D-1 et. seq., and the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et. seq., and duly delegated to the Assistant Director within the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Remediation Agreement was operated by Hanovia Lamp, Inc. ("Hanovia") and is owned by Canrad, Inc. ("Canrad"). It is located at 100 Chestnut Street and is designated as Block 919, Lots 1.01 through 1.21 on the tax maps of the City of Newark, Essex County, New Jersey (hereinafter the "Newark industrial establishment"). The Standard Industrial Classification ("SIC") number which best described the operations at the Newark industrial establishment is 3641.
2. On September 2, 1987, Canrad submitted to NJDEP the General Information Notice ("GIN") for a merger, ISRA Case # 87752. Canrad began remedial investigation/remediation at the Newark industrial establishment upon submission of the GIN.
3. Canrad entered into a Remediation Agreement formerly known as an Administrative Consent Order with NJDEP effective November 3, 1988 (the "Canrad RA"), ISRA Case # 87752. The Canrad RA allowed the merger of ARC USA Acquisition Corporation with and into Canrad prior to the completion of ISRA requirements. Canrad was the surviving entity after the merger. The operator under the Canrad was listed as Canrad, Inc., Hanovia Lamp Affiliate.
4. Hanovia Lamp, Inc. was a wholly-owned subsidiary of Canrad, Inc. On January 30, 1996, Canrad entered into a second Remediation Agreement with NJDEP, ISRA Case #E96030 (the "Canrad 1996 RA"). The Canrad 1996 RA allowed Canrad to sell all of the assets of Hanovia Lamp, Inc. at the Newark industrial establishment to Gavenco L.L.C. In addition, the Canrad 1996 RA amended the Canrad RA to reflect Hanovia Lamp, Inc. as the operator at the Newark industrial establishment.

5. Hanovia Lamp, Inc. ceased operations at the Newark industrial establishment in January 1996. On or about May 1, 1996, NJDEP issued a remediation in progress waiver to Canrad for ISRA Case #E96030.

6. Canrad filed for Bankruptcy docket # ESX-C-128-01 on April 5th 2001.

7. On August 29, 2001, Sumo Realty Inc submitted to NJDEP an application for a Remediation Agreement pursuant to N.J.A.C. 7:26B-4.1. Sumo Realty Inc. requested in its application for a Remediation Agreement to allow Sumo Realty Inc acquire title to the Newark industrial establishment for the purpose of redeveloping the property and assume any and all obligations of Canrad under the Canrad RA.

A. Transaction:

Seller: Canrad Inc., a Delaware corporation

Buyer: Sumo Realty Inc., a New Jersey corporation

B. Person(s) executing this Remediation Agreement and responsible for conducting the remediation of the Newark industrial establishment.

Lead Responsible Person:

Name: Sumo Realty Inc.
Business: A New Jersey corporation
Address: 626 Schuyler Avenue
Kearny, New Jersey 07032
Telephone No. (201) 998-0500

8. Consolidation of Responsible Parties' ISRA Obligations

A. NJDEP and the Sumo Realty Inc. expressly agree that the terms and conditions of this Remediation Agreement shall apply to the industrial establishment listed in Paragraph 1 above. Furthermore, NJDEP and Sumo Realty Inc. agree to administer and complete all applicable ISRA program requirements, including the remediation funding source requirements and any other remedial measures undertaken pursuant to this Remediation Agreement and ISRA, for the industrial establishment.

B. The Canrad RA shall remain in full force and effect until the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by Sumo Realty Inc. of written notice from the NJDEP that Sumo Realty Inc. have demonstrated, to the satisfaction of NJDEP, that Sumo Realty Inc. have completed the substantive and financial obligations imposed by this Remediation Agreement.

9. By entering into this Remediation Agreement, Sumo Realty Inc. neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Remediation Agreement.

AGREEMENT

I. Remediation

1. Sumo Realty Inc. agrees to remediate the Newark industrial establishment and to submit the following documents as established below:
 - A. Within thirty (30) calendar days after the effective date of this Remediation Agreement, Sumo Realty Inc. shall submit a schedule for all remedial actions for the Newark industrial establishment in accordance with N.J.A.C. 7:26E.
 - B. The NJDEP will review all documents in accordance with N.J.A.C. 7:26B and N.J.A.C. 7:26E.
2. If NJDEP determines any submittal made under this section is inadequate or incomplete, the NJDEP shall provide Sumo Realty Inc. with written notification of each deficiency, and Sumo Realty Inc. shall revise and resubmit the required information within thirty (30) calendar days, or longer as authorized by NJDEP, from receipt of such notification.
3. If the NJDEP determines that no further action is required at the Newark industrial establishment, Sumo Realty Inc. shall submit a negative declaration, in accordance with N.J.A.C. 7:26B-6.7, within thirty (30) calendar days or longer as authorized by NJDEP from receipt of the NJDEP's request for the submission of the negative declaration.
4. Nothing in this Remediation Agreement shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the Newark industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.
5. If at any time that this Remediation Agreement is in effect the NJDEP determines that the requirements of N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, Sumo Realty Inc. shall conduct such additional remediation as the NJDEP directs.
6. The NJDEP will consider a request for an extension of time to perform any requirement under this Remediation Agreement, provided that any extension request is submitted to the NJDEP fourteen (14) calendar days prior to any applicable deadline to which the extension request refers.

II. Remediation Funding Source

7. Sumo Realty Inc. shall establish and maintain a remediation funding source in a form pursuant to N.J.A.C. 7:26C-7 in the amount of **\$750,000.00**.
8. Upon submission of the remediation funding source and annually thereafter, Sumo Realty Inc. shall submit a remediation funding source surcharge payment in an amount equal to one percent of the required amount of the remediation funding source. Sumo Realty Inc. shall submit to the NJDEP a cashier's or certified check payable to the "New Jersey Economic Development Authority" for the full amount of the remediation funding source surcharge. No surcharge is due on the amount of the remediation funding source established as self-guarantee or the amount of the remediation funding source that is established by financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.
9. Whenever the remediation cost increases, Sumo Realty Inc. shall cause the amount of the remediation funding source to be increased to an amount at least equal to the new estimate within thirty (30) calendar days.
10. Whenever the remediation cost decreases, Sumo Realty Inc. may file a written request to NJDEP to decrease the amount in the remediation funding source. If NJDEP approves, Sumo Realty Inc. may decrease the remediation funding source upon receipt of NJDEP's written approval to the person who established the remediation funding source and to the person or institution providing the remediation funding source.
11. NJDEP shall return the remediation funding source established upon Sumo Realty Inc. submission of a substitute remediation funding source or upon NJDEP's issuance of a no further action letter for the Newark industrial establishment.
12. NJDEP has agreed to release the remediation funding source in the amount \$750,000.00 upon Sumo Realty Inc.'s establishment of a new remediation funding source and execution of this Remediation Agreement.
13. In the event that NJDEP determines that Sumo Realty Inc. has failed to perform any of its obligations under this Remediation Agreement or ISRA, NJDEP shall notify Sumo Realty Inc. in writing of the obligation(s) with which it has not complied and Sumo Realty Inc. shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) calendar days or longer as authorized by NJDEP from receipt of such notification. If Sumo Realty Inc. fails to revise and resubmit the required information within the schedule established above, NJDEP may perform the remediation in place of Sumo Realty Inc. making disbursements from the remediation funding source and may pursue any additional rights and remedies in accordance with N.J.S.A. 58:10B-3(g). Nothing in this paragraph shall prevent NJDEP from seeking civil or civil administrative penalties, costs and damages or any other legal or equitable relief against Sumo Realty Inc.

III. Project Coordination

14. Within seven (7) calendar days after the effective date of this Remediation Agreement, Sumo Realty Inc. shall submit to the NJDEP the name, title, address and telephone number of the individual who shall be Sumo Realty Inc.'s technical contact for the NJDEP for all matters concerning this Remediation Agreement and Sumo Realty Inc. shall designate an agent for the purpose of service for all matters concerning this Remediation Agreement and shall provide the NJDEP with the agent's name and address.

15. Unless otherwise directed by NJDEP, any submission to be made to NJDEP in accordance with this Remediation Agreement and ISRA shall be directed to:

Division of Responsible Party Site Remediation
Industrial Site Evaluation Element
401 East State Street
P.O. Box 432
Trenton, NJ 08625-0028

IV. Oversight Cost Reimbursement

16. All submissions required pursuant to this Remediation Agreement shall be accompanied by all appropriate fees pursuant to N.J.A.C. 7:26B-8.

17. Within thirty (30) calendar days after receipt from the NJDEP of a written summary, conforming to N.J.A.C. 7:26B-8.2, of the NJDEP's oversight costs, including all accrued interest incurred pursuant to the paragraph below, determined pursuant to N.J.A.C. 7:26B-8, Sumo Realty Inc. shall submit to the NJDEP a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEP Form 062A in accordance with N.J.A.C. 7:26B-8.4, for the full amount of the NJDEP's oversight costs. Nothing contained in the paragraph shall be construed to limit or restrict any person's ability to contest any oversight costs calculated pursuant to N.J.A.C. 7:26B-8.2(d) in accordance with the oversight cost review procedures at N.J.A.C. 7:26B-8.3.

18. Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

V. Force Majeure

19. If any event specified in the following paragraph occurs which Sumo Realty Inc. believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this Remediation Agreement, Sumo Realty Inc. shall notify the NJDEP in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as

appropriate, referencing this paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. Sumo Realty Inc. shall take all necessary action to prevent or minimize any such delay.

20. The NJDEP will extend in writing the time for compliance for a period no longer than the delay resulting from such circumstances as determined by the NJDEP only if:

(a) Sumo Realty Inc. has complied with the notice requirements of the preceding paragraph;

(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of Sumo Realty Inc.; and

(c) Sumo Realty Inc. has taken all necessary action to prevent or minimize any such delay.

21. The burden of proving that any delay is caused by circumstances beyond the control of Sumo Realty Inc. and the length of any such delay attributable to those circumstances shall rest with Sumo Realty Inc.

22. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by Sumo Realty Inc. in fulfilling the requirements of this Remediation Agreement;

(c) Contractor's breach, unless Sumo Realty Inc. demonstrates that such breach falls within paragraph 20 above; and

(d) Failure to obtain access required to implement this Remediation Agreement, unless denied by a court of competent jurisdiction.

VI. Reservation of Rights

23. By entering into this Remediation Agreement, the NJDEP does not waive its right to seek, assess or collect civil or civil administrative penalties or any other legal or equitable relief against Sumo Realty Inc. for past, present and future violations by Sumo Realty Inc. of any New Jersey environmental statutes or regulations.

24. The NJDEP reserves the right to require Sumo Realty Inc. to take or arrange for the taking of any and all additional measures if the NJDEP determines that such actions are necessary to protect human health or the environment.

25. Sumo Realty Inc. admits that it has agreed to comply with the terms of this Remediation Agreement. Neither the entry into this Remediation Agreement nor the conduct of Sumo Realty Inc. hereunder, shall be construed as any admission of fact, fault or liability by the Sumo Realty Inc. under any applicable laws or regulations.

26. Except as otherwise set forth herein, by the execution of this Remediation Agreement, the NJDEP does not release any person, including without limitation Canrad, from any liabilities or obligations such person may have pursuant to ISRA and the ISRA regulations, or any other applicable authority, nor does the NJDEP waive any of its rights or remedies pursuant thereto.

VII. General Provisions

27. No modification or waiver of this Remediation Agreement shall be valid except by written amendment to this Remediation Agreement duly executed by Sumo Realty Inc. and the NJDEP. Any amendment to this Remediation Agreement shall be executed by the NJDEP and Sumo Realty Inc. The NJDEP reserves the right to require the resolution of any outstanding violations of ISRA or this Remediation Agreement prior to executing any such amendment.

28. This Remediation Agreement shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the industrial establishment or site shall alter signatory's responsibilities under this Remediation Agreement.

29. Sumo Realty Inc. agrees not to contest the authority or jurisdiction of the NJDEP to issue this Remediation Agreement; Sumo Realty Inc. further agrees not to contest the terms or conditions of this Remediation Agreement except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the NJDEP to enforce the provisions of this Remediation Agreement.

30. Sumo Realty Inc. shall provide to the NJDEP written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least five (5) calendar days prior to such action. Sumo Realty Inc. shall also provide written notice to the NJDEP of a filing of a petition for bankruptcy no later than five business days after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations.

31. For persons executing this Remediation Agreement on behalf of a corporate entity, Sumo Realty Inc. shall submit to the NJDEP, along with the executed original Remediation Agreement, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind Sumo Realty Inc. to the terms of this Remediation Agreement.

32. Sumo Realty Inc. expressly agrees that in the event that Sumo Realty Inc. fails or refuses to perform any obligation(s) under this Remediation Agreement as determined by the NJDEP, the NJDEP shall have the right to exercise any option or combination of options available to the NJDEP under this Remediation Agreement, or any other statute.

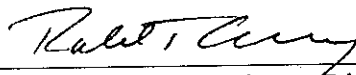
33. Except as otherwise provided, the requirements of this Remediation Agreement shall be deemed satisfied upon the receipt by Sumo Realty Inc. of written notice from the NJDEP that Sumo Realty Inc. has demonstrated, to the satisfaction of the NJDEP, that Sumo Realty Inc. has completed the substantive and financial obligations imposed by this Remediation Agreement. Such written notice shall not relieve Sumo Realty Inc. from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this Remediation Agreement.

34. Compliance with the terms of this Remediation Agreement shall not excuse any Person(s) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ISRA through this Remediation Agreement. The execution of this Remediation Agreement shall not excuse any Person(s) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that the Person(s) obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Remediation Agreement if the terms and conditions of any such permit are more stringent than the terms and conditions of this Remediation Agreement. Should any of the measures to be taken by the Person(s) during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then the Person(s) shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.

35. This Remediation Agreement shall be effective upon the execution of this Remediation Agreement by the NJDEP and Sumo Realty Inc.. Sumo Realty Inc. may consummate the transaction described at Paragraph 7.A above, upon the execution of this Remediation Agreement. Sumo Realty Inc. shall return a fully executed Remediation Agreement to the NJDEP together with the signature authorization required above within five business days from the effective date.

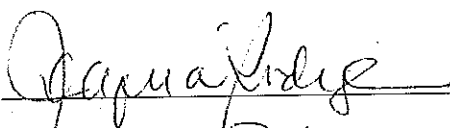
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 4/18/02

By: 
Ronald T. Corcory, Assistant Director
Responsible Party Cleanup Element

SUMO REALTY INC.

Date: 5/6/02

By: 
JOAQUINA RODRIGUES
Print Full Name Signed Above
V- President
Title

**Exhibit C to
Verified
Complaint**



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
CONTAMINATED SITE REMEDIATION & REDEVELOPMENT

SHAWN M. LATOURETTE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

401 EAST STATE STREET
P.O. BOX 420, MAIL CODE 401-06
TRENTON, NEW JERSEY 08625-0420
Tel. (609) 292-1250 • Fax (609) 777-1914
www.nj.gov/dep
www.nj.gov/dep/srp/

IN THE MATTER OF	:
	:
CANRAD HANOVIA INC.	:
100 CHESTNUT STREET,	:
CITY OF NEWARK,	:
ESSEX COUNTY	:
PROGRAM INTEREST NO. 004254	: DIRECTIVE AND NOTICE TO INSURERS
	:
and	:
	:
BASF CATALYSTS LLC	:
	:
and	:
	:
CITIGROUP GLOBAL MARKETS	:
HOLDINGS INC.	:
	:
and	:
	:
ENGELHARD HANOVIA INC,	:
(A DELAWARE CORPORATION)	:
	:
and	:
	:
HANOVIA SPECIALTY LIGHTING LLC	:
	:
and	:
	:
CANRAD, INC.	:
	:
and	:
	:
SUMO REALTY, INC.	:

This Directive and Notice to Insurers is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department") by N.J.S.A. 13:1D-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director of the Enforcement and Information Support Element pursuant to N.J.S.A. 13:1B-4. This Directive and Notice to Insurers is issued to notify the above-captioned Respondents that the Department, pursuant to the Spill Compensation and Control Act, has determined that it is necessary to clean up and remove hazardous substance discharges, and in order to notify the Respondents that the Department believes them to be responsible for the hazardous substances that were discharged and/or the remediation of the discharges.

To protect public health and the environment, the Department requires a full understanding of Respondents' historical development, transport, use, storage, release, discharge, and/or disposal of hazardous substances at the Site. Therefore, the Department is directing that Respondents provide a complete accounting of their historical activities at the Site with respect to hazardous substances, including, but not limited to, the usage of polycyclic aromatic hydrocarbons ("PAHs"), tetrachloroethylene ("PCE"), 1,1,1-trichloroethane ("1,1,1-TCA"), trichloroethylene ("TCE"), 1,1-dichloroethene ("1,1-DCE"), 1,1-dichloroethane ("1,1-DCA"), cis-1,2-dichloroethene ("cis-1,2-DCE"), vinyl chloride, polychlorinated biphenyls ("PCBs") and benzene, toluene, ethylbenzene and xylene ("BTEX").

FINDINGS

The Site

1. The Canrad Hanovia Inc site (the "Site") is located at 100 Chestnut Street, Block 919, Lots 1, 5, 15, 43.01-43.30 f/k/a Lots 1, 5, 15, 43 and 45, on the tax maps of Newark City, Essex County (hereinafter "the Site"). The Site and all other areas to which any hazardous substances discharged on the Site have migrated are collectively referenced hereinafter as the "Contaminated Site."

Ownership and Operational History of the Site

2. Around 1909, Hanovia Chemical and Manufacturing Company ("Hanovia Chemical") and The American Platinum Works ("American Platinum Works"), New Jersey corporations, purchased portions of current Block 919, Lots 1 and 5. Hanovia Chemical, American Platinum Works, or successor corporations thereof, purchased additional portions of Block 919 in the subsequent decades and at one point in time owned each of prior Block 919, Lots 1, 5, 15, 43, and 45.
3. From approximately 1892 until 1965, Flood & Conklin Manufacturing Company ("Flood & Conklin"), or its divisions, operated an industrial facility at the Site, where it manufactured and sold paints, varnishes, and paint products. Flood and Conklin's

operations began on or around current Block 919, Lots 43.21-43.30 and later grew to include nearly all current Block 919, Lots 43.01-43.30. Most of the structures that housed Flood & Conklin's operations were razed and replaced with a parking lot around 1968.

4. From approximately 1909 until 1958, Hanovia Chemical operated an industrial facility at the Site, on or around current Block 919, Lots 1 and 15, where it manufactured items including liquid gold and decorating materials for ceramics, quartz glass, mercury quartz-vapor lamps, and ultra-violet equipment.
5. From approximately 1909 until 1958, American Platinum Works operated an industrial facility at the Site, on or around current Block 919, Lot 5, and, for a period of time, on Lot 15, where it refined precious metals and manufactured products from them.
6. On or about January 1, 1958, at least eight (8) companies, which included Hanovia Chemical and American Platinum Works, were merged into Baker & Co., Inc., a New Jersey corporation. At or around the same time Baker & Co., Inc.'s name was changed to Engelhard Industries, Inc. (a New Jersey corporation). Upon information and belief, Engelhard Industries, Inc. (a New Jersey corporation), or its divisions, operated on Block 919, Lots 1, 5 and 15 between 1957 and 1960, and used hazardous substances such as PAHs, PCE, 1,1,1-TCA, TCE and PCBs during operations at the Site.
7. Engelhard Industries, Inc. (a New Jersey corporation) continued Hanovia Chemical's lamp and ultraviolet equipment manufacturing operations at the Site in its Hanovia Lamp Division and continued American Platinum Works' precious metals operations at the Site in its American Platinum and Silver Division.
8. Around March 1960, Engelhard Industries, Inc.'s (a New Jersey corporation) name was changed to Engelhard Hanovia, Inc. (a New Jersey corporation). At or around the same time, Engelhard Hanovia, Inc. (a New Jersey corporation) transferred its precious metals business and properties, and certain other manufacturing operations and properties to its subsidiary, Engelhard Industries, Inc. (a Delaware corporation), in exchange for common stock and assumption of certain liabilities. The transfer included the American Platinum and Silver Division and operations continued at Block 919, Lots 5 and 15 at the Site.
9. In 1966, Engelhard Hanovia, Inc. (a New Jersey corporation) merged with and into Engelhard Hanovia, Inc. (a Delaware corporation). The lamp and ultraviolet equipment manufacturing operations at the Site continued as the Hanovia Lamp Division of Engelhard Hanovia, Inc. (a Delaware corporation)
10. On or about September 27, 1967, Minerals & Chemicals Philipp Corporation merged with and into Engelhard Industries, Inc. (a Delaware corporation). At or around the same time, Engelhard Industries, Inc.'s (a Delaware corporation) name was changed to Engelhard Minerals & Chemicals Corporation. The precious metals operations at the Site are believed to have continued under the Engelhard Industries Division of Engelhard Minerals & Chemicals Corporation on Block 919, Lots 5, 15. Upon information and belief, Engelhard

Minerals & Chemicals Corporation used hazardous substances such as PAHs, metals, PCE, 1,1,1-TCA, TCE and PCBs during operations at the Site.

11. On or about August 1, 1970, Canrad Precision Industries, Inc. purchased the Hanovia Lamp Division of Engelhard Hanovia, Inc. (a Delaware corporation). Canrad Precision Industries, Inc., later known as Canrad-Hanovia, Inc. and then Canrad Inc. (hereinafter Canrad Inc.), continued the lamp and ultraviolet equipment manufacturing operations at the Site.
12. On December 29, 1970, Canrad Inc. purchased prior Block 919, Lot 43 from Engelhard Hanovia, Inc. (a Delaware corporation) and continued operating on the Site.
13. On February 2, 1971, Canrad Inc. purchased Block 919, Lot 1 from HD Properties (New Jersey), Inc. On February 6, 1974, Canrad Inc. purchased Block 919, Lots 5 and 15 from Engelhard Minerals & Chemicals Corporation. At or around that time, Engelhard Minerals & Chemicals Corporation ceased their precious metals operations at the Site. Thereafter, Canrad Inc. expanded their operations to the entire area of the main buildings located on Block 919, Lots 1, 5, and 15.
14. On February 15, 1979, Canrad Inc. purchased prior Block 919, Lot 45 from Engelhard Minerals & Chemical Corporation.
15. During the 1970s when Canrad Inc. operated at the Site, it submitted Selected Substance Reporting information and Industrial Waste Survey information to the Department that recorded the use and storage of TCE at the Site and disposal of waste containing TCE from the Site. The Selected Substance Reporting information noted that TCE was used to degrease parts prior to painting.
16. Hanovia Lamp Inc., later UTBHL, Inc., was incorporated in New Jersey on February 4, 1987. The entity, a subsidiary of Canrad Inc., continued the lamp and ultraviolet equipment manufacturing operations at the Site after its formation. Hanovia Lamp Inc. operated on Block 919, Lots 1, 5 and 15.
17. On September 2, 1987, in connection with the planned sale of property (f/k/a Block 919, Lots 1, 5, 15, 43 and 45), Canrad, Inc. submitted to the Department a General Information Submission ("GIS"), which was assigned Environmental Cleanup Responsibility Act ("ECRA") case #E87752. However, that sale did not occur and Canrad, Inc.'s counsel sent a letter to the Department, dated January 12, 1988, requesting that this ECRA case remain active while they look for a new purchaser. In August 1988, ARC USA Acquisition Corporation, a wholly owned subsidiary of ARC International Corporation, was merged into Canrad, Inc., with Canrad, Inc. being the surviving corporation. Upon information and belief, Canrad, Inc. is currently insolvent.
18. On January 22, 1996, a General Information Notice ("GIN") and Remediation Agreement application were submitted to the Department in connection with a sale of assets between

Canrad, Inc.'s subsidiary, Hanovia Lamp Inc., and Gavenco, L.L.C. ISRA case #E96030 was assigned.

19. On January 30, 1996, a Remediation Agreement for ISRA case #E96030 was executed between Canrad Inc. and the Department to allow the sale of assets between Canrad, Inc.'s subsidiary, Hanovia Lamp Inc. (seller), and Gavenco, L.L.C. (buyer) to occur. Gavenco L.L.C. continued the lamp and ultraviolet equipment manufacturing operations at the Site until spring 1997, when it moved to another facility in Union Township, NJ. The structures on Block 919, Lots 1, 5, and 15 that had housed the industrial operations were razed starting circa 1998.
20. Between approximately 1892 and approximately 1997, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, were "discharged" at the Site within the meaning of N.J.S.A. 58:10-23.11b. Upon information and belief, historical operations at the Site used and/or stored hazardous substances including, but are not limited to, PAHs, PCE, 1,1,1-TCA, TCE, 1,1-DCE, 1,1-DCA, cis-1,2-DCE, vinyl chloride, PCBs and BTEX.
21. In March 1997, a GIN was submitted to the Department for the cessation of operations of Gavenco, L.L.C. at the Site. ISRA case #E97114 was assigned.
22. In January 1998, Canrad Inc. subdivided Block 919, Lots 43 and 45 into Lots 43.01 to 43.30. On June 8, 1998, Sumo Realty, Inc. purchased Block 919, Lots 43.01 to 43.18 and 43.20 to 43.29 from Canrad Inc. Sumo Realty, Inc. constructed multi-level residential structures on each of the Lots and began selling them as early as March 30, 1999.¹
23. In August 2001, a Remediation Agreement application was submitted to the Department by Sumo Realty, Inc. for the sale of Block 919, Lots 1.01-1.21 between Canrad, Inc. and Sumo Realty, Inc. In May 2002, a Remediation Agreement for ISRA case #E87752 was executed between the Department and Sumo Realty, Inc.
24. On September 10, 2002, Sumo Realty, Inc. purchased Block 919, Lots 1, 5 and 15 from Canrad Inc. Sumo Realty, Inc. owns these lots as of the issuance date of this Directive.
25. On or around September 24, 2004, the City of Newark acquired Block 919, Lots 43.19 and 43.30 via municipal property tax foreclosure. On or around July 12, 2022, the Superior Court of New Jersey entered an order reversing the City of Newark's foreclosure on the two lots. Canrad, Inc. is currently listed as the owner of Block 919, Lots 43.19 and 43.30.

¹ The Department issued restricted use No Further Action ("NFA") letters for Lots 43.01 to 43.18 and 43.20 to 43.29 in 1999. This Directive does not cover, and does not direct the Respondents named in this Directive to address, those NFAs or unmet obligations, if any, arising from those NFAs. Further, the Department does not waive, and expressly reserves, the right to take appropriate enforcement actions with respect to those NFAs and any such unmet obligations.

Responsible Parties

26. BASF Catalysts LLC, Citigroup Global Markets Holdings Inc., Engelhard Hanovia Inc., Hanovia Specialty Lighting LLC, Canrad, Inc., and Sumo Realty, Inc., hereinafter referred to as (“Respondents”) are responsible for the remediation of the discharges of hazardous substances at the Contaminated Site and the costs the Department has incurred, and may incur, responding to this threat to public health, safety and the environment.

BASF Catalysts, LLC

27. BASF Catalysts LLC is a limited liability company organized and existing under the laws of the State of Delaware and doing business in the State of New Jersey, with a registered agent of CT Corporation System, and mailing address of 820 Bear Tavern Road, Ewing, New Jersey 08628.
28. On or around May 18, 1981, Engelhard Minerals & Chemicals Corporation transferred all of the assets and liabilities of its Engelhard Industries Division and its Minerals & Chemicals Division to its subsidiary Porocel Corporation. At or around the same time Porocel Corporation’s name was changed to Engelhard Corporation.
29. In or around June 2006, BASF AG, later BASF SE, acquired Engelhard Corporation. Engelhard Corporation was converted into an LLC and on or around August 1, 2006, its name was changed to BASF Catalysts LLC.
30. BASF Catalysts LLC is a successor to the Engelhard Industries Division and the Minerals & Chemicals Division of the former Engelhard Minerals & Chemicals Corporation and all its liabilities arising out of the discharges of hazardous substances at the Site.

Citigroup Global Markets Holdings Inc.

31. Citigroup Global Markets Holdings Inc. is a corporation organized and existing under the laws of the State of New York, with a principal executive office at 388 Greenwich Street, New York, New York 10013.
32. On or around May 21, 1981, Engelhard Minerals & Chemicals Corporation changed its name to Phibro Corporation.
33. On or around July 1, 1999, Salomon Smith Barney Holdings Inc., which had once been Phibro Corporation, merged into SSBHI Merger Company Inc., a New York Corporation. At or around the same, time SSBHI Merger Company Inc.’s name was changed to Salomon Smith Barney Holdings Inc. On or around April 3, 2003, Salomon Smith Barney Holdings Inc.’s name was changed to Citigroup Global Markets Holdings Inc.
34. Citigroup Global Markets Holdings Inc. is a corporate successor to Salomon Smith Barney Holdings Inc. (a Delaware corporation), formerly Engelhard Minerals & Chemicals

Corporation, and all its liabilities arising out of the discharges of hazardous substances at the Site.

Engelhard Hanovia, Inc. (a Delaware corporation)

35. Engelhard Hanovia, Inc. (a Delaware corporation) is a corporation organized and existing under the laws of the State of Delaware and doing business in the State of New Jersey, with a registered agent of CT Corporation System, and mailing address of 820 Bear Tavern Road, Ewing, New Jersey 08628.
36. Engelhard Hanovia, Inc. (a Delaware corporation) is the former owner of the lamp and ultraviolet equipment manufacturing operations at the Site and is a corporate successor to Engelhard Hanovia, Inc. (a New Jersey corporation), formerly Engelhard Industries, Inc. (a New Jersey corporation), and all of its liabilities arising out of the discharges of hazardous substances at the Site.

Hanovia Specialty Lighting LLC

37. Hanovia Specialty Lighting LLC is a limited liability company organized and existing under the laws of the State of New Jersey. It may be conducting business under the fictitious names Hanovia, Colight, or Hanovia Colight. Its registered agent is Liming Du and the registered agent mailing address is 6 Evans Street, Fairfield, NJ 07004.
38. Hanovia Specialty Lighting LLC is believed to have purchased the assets of Gavenco L.L.C., the last industrial operator at the Site, and may be responsible for all of its liabilities arising out of the discharges of hazardous substances at the Site.

Canrad, Inc.

39. Canrad Inc. is a corporation organized under the laws of the State of Delaware that filed to do business in the State of New Jersey on August 20, 1970. On January 30, 1996, a Remediation Agreement for ISRA case #E96030 was executed between Canrad Inc. and the Department to allow the sale of assets between Canrad, Inc.'s subsidiary, Hanovia Lamp Inc. (seller), and Gavenco, L.L.C. (buyer) to occur. On June 8, 1998, Sumo Realty, Inc. purchased Block 919, Lots 43.01 to 43.18 and 43.20 to 43.29 from Canrad Inc. On September 10, 2022, Canrad, Inc., through its Receiver, Richter Consulting, Inc., conveyed Block 919, Lots 1, 5, and 15 to Sumo Realty, Inc. Canrad, Inc. currently owns Block 919, Lots 43.19 and 43.30. Upon information and belief, Canrad, Inc. is currently insolvent.

Sumo Realty, Inc.

40. Sumo Realty, Inc. is a corporation organized and existing under the laws of the State of New Jersey. Its business status was revoked on February 16, 2007, for failure to submit annual reports. Its registered agent is Jacinto Rodrigues, who has the mailing addresses 27 Prince Street, Elizabeth, NJ 07208 and 6 Conklin Lane, Warren, NJ 07059. Jacinto

Rodrigues is the President of Sumo Realty, Inc. and Joaquina Rodrigues is the Vice-President of Sumo Realty, Inc.

HISTORY AND CONFIRMATION OF HAZARDOUS DISCHARGES

Contamination in Soil and Ground Water at the Site and the Contaminated Site

41. Between 1989 and 1993, Canrad, Inc. submitted numerous "Report of ECRA Sampling Plan Results" reports, prepared by Handex Environmental Management, Inc. ("Handex"), to the Department. These reports confirmed the presence of soil and ground water contamination at the Site and documented the historic use of hazardous substances.
- a. Sampling from Area of Concern ("AOC") I (Block 919, Lots 43.01 to 43.19 and 43.20 and 43.30) confirmed the presence of various hazardous substances in soil, including but not limited to, TPHC, total volatile organic compounds, total base neutral organic compounds, antimony, arsenic, cadmium, copper, lead, mercury, and zinc, all at concentrations that exceeded the Department's cleanup criteria at that time.
 - b. Four monitoring wells were installed (MW-1 through MW-4). Volatile organic compounds such as benzene, 1,1-dichloroethene, 1,1-dichloroethane, cis-1,2-dichloroethene, ethylbenzene, toluene, TCE, xylenes and vinyl chloride were detected in MW-3 and MW-4 which were located on Block 919 Lots 5 and 43.19. The above noted substances were all detected at concentrations exceeding their Ground Water Quality Standards ("GWQS") at that time.
42. Between 1992 and 2000, Canrad Inc. and their environmental consultants continued remedial activities at the Site. Reports by Handex and Vectre Corporation, now known as TRC Vectre Corporation ("Vectre"), submitted during this period include but are not limited to the following:
- June 1993 Report of ECRA Sampling Plan results,
 - August 1994 Remedial Investigation Report ("RIR"),
 - July 1995 Remedial Action Workplan ("RAW"),
 - August 1996 Remedial Investigation Workplan ("RIW"),
 - October 1997 Remedial Action Report ("RAR"), BTEX AOC,
 - December 1997 RAR Addendum Classification Exception Area/Well Restriction Area
 - June 1999 RIR/RIW; and
 - June 2000 RIR Addendum

A majority of remedial actions undertaken during this time were focused on four (4) AOCs: Area I, BTEX contamination in ground water, chlorinated volatile organic compounds ("CVOCs") in ground water, and free phase liquid petroleum hydrocarbons.

- a. Area I – Soils: Consists of Block 919, Lots 43.01-43.19 and 43.20-43.30. This includes the area in which lead had been detected at 6,990 mg/kg, also referred to as the “lead hotspot”. PAHs, such as benzo[a]anthracene, benzo[a]pyrene, and benzo[k]fluoranthene, were detected at levels above their respective Residential Direct Contact Soil Cleanup Criteria (“RDCSCC”) and Non-Residential Direct Contact Soil Cleanup Criteria (“NRDCSCC”). Multiple metals such as arsenic and lead were detected in samples above their respective RDCSCC.
- b. BTEX Contamination in ground water: In 1992, soil borings were conducted in the vicinity of MW-4 (Block 919, Lot 43.19) that showed BTEX contamination extended upgradient to MW-5, where two (2) empty underground storage tanks (“USTs”) found in 1990 were located on Block 919, Lot 5. In a July 1994 sampling event, toluene was the highest BTEX concentration in an air sampling, which was detected at 2,700mg/m³. Sampling events were conducted during years 1997-2000 that showed levels of benzene ranging from 5.6-130 ug/L, toluene from 14-32,000 ug/L, ethylbenzene from 12-1,300 ug/L and xylenes from 4.2-3,060 ug/L, all exceeding the Department’s GWQC. Vectre conducted excavation activities that caused MW-4 to be destroyed and once the excavation was backfilled, MW-4A was installed. In 1997, Vectre sampled MW-4A and results indicated benzene at 83 ug/L, which exceeded its Class II-A Ground Water Quality Criterion (“GWQC”) of 1 ug/L. This well was later destroyed during site development work and MW-4R was installed in March 2000 in the vicinity of MW-4A.
- c. CVOC Contamination in Ground water: In 1995, Handex collected samples from five (5) basement sumps in the Canrad, Inc. structures on Block 919, Lots 1, which detected CVOCs in four (4) out of five (5) sumps at levels above their respective GWQS. CVOCs included vinyl chloride (highest concentration of 130 ug/L), TCE (highest concentration of 240 ug/L) and PCE (highest concentration of 40 ug/L). In 1998, four (4) soil borings and stainless steel well points were installed near MW-3 (Block 919, Lot 5). Cis-1,2-DCE was detected at 56 mg/kg, above its Impact to Ground Water Soil Cleanup Criteria (“IGWSCC”). CVOCs detected in ground water included TCE, PCE, vinyl chloride, cis-1,2-DCE, 1,1,1-TCA, 1,1-DCE and 1,1-DCA. Vectre noted that there were two (2) distinct plumes of CVOCs in ground water at the Site. The northern plume existed near MW-3 (Block 919, Lot 5) and consisted mainly of TCE, vinyl chloride and cis-1,2-DCE while the second plume was on the southern portion of the Site and consisted of TCE, vinyl chloride, cis-1,2-DCE, PCE, 1,1,1-TCA, 1,1-DCE and 1,1-DCA.
- d. Free Phase Liquid Petroleum Hydrocarbons (LPH): LPH was regularly observed on MW-1, MW-3, and MW-13 in the northern courtyard area on Block 919, Lots 5 and 15, and occasionally in MW-2 (located on the sidewalk near Block 919, Lot 5) and MW-12 (Block 919, Lot 5). This area is known as AOC D, which is where two USTs were located and abandoned in place. Holes in at least one of the abandoned USTs were discovered in previous investigations.

43. In or around 2000, Cilli Environmental Group, LLC (“CEG”) collected twelve (12) soil samples in Area D (located on Block 919, Lot 5) on behalf of Sumo Realty, Inc. Seven (7) PAHs were detected in samples above their respective RDCSCC. Ground water samples were also collected at three (3) monitoring well points (MP-1 to MP-3) on Block 919, Lot 5 and benzene, CVOCs and naphthalene were detected above their respective GWQS in one or more samples. TCE was detected in samples from all three (3) monitoring points with a maximum concentration of 34,900 ug/L in MP-3.
44. In 2002, CEG installed five (5) temporary wells near MW-16 (located on Block 919, Lot 1) and collected ground water samples that detected benzene, TCE, PCE and vinyl chloride all at levels above their respective GWQS.
45. In 2003, CEG collected ground water samples from vertical delineation borings along Chestnut Street, downgradient of MW-16 on Block 919, Lot 1, which contained CVOCs at levels above their respective GWQS. TCE was detected at 6,830 ug/L at 35 feet below grade. Vinyl chloride, 1,1-DCE, and PCE were detected in samples from one or more of the borings at levels above their respective GWQS.
46. Between 2004 and 2006, CVOCs such as TCE, PCE, vinyl chloride, 1,1-DCE, cis-1,2-DCE, trans-1,2-DCE, and 1,1,2-trichloroethane were detected above their respective GWQS in all of the monitoring wells sampled (MW-2 [Block 919, Lot 5], MW-3 [Block 919, Lot 5], MW-4R [Block 919, Lot 4.19/4.30], MW-16 [Block 919, Lot 1], MW-17 [on the sidewalk near Block 919, Lot 1]), except MW-14 which was located off-site. In 2004, TCE (1,102 ug/L), PCE (1.6 ug/L), vinyl chloride (30.8 ug/L), and cis-1,2-DCE (366 ug/L) were all detected at levels about their GWQS.
47. In the May 2007 Remedial Investigation Report/Remedial Action Workplan submitted by CEG on behalf of Sumo Realty, Inc., five (5) soil borings were installed around Area D (Block 919, Lot 5) and two (2) samples were collected from each boring in February 2007. CEG reported that total petroleum hydrocarbons (“TPHC”) were detected above the NJDEP Cleanup Criteria of 10,000 mg/kg in four (4) samples and was detected above the NJDEP Action Level of 1,000 mg/kg. Benzo[a]pyrene was detected in one of the soil samples at 0.707 mg/kg, which exceeded its RDCSCC of 0.66 mg/kg. Two (2) soil borings were installed within the former UST excavation and one (1) grab sample was collected from each boring. Multiple PAHs, which included benzo[a]anthracene, benzo[a]pyrene, and benzo[k]fluoranthene, were detected above their respective RDCSCC in one or both samples. In addition, the PCB Aroclor 1242 was detected at 1.35 mg/kg, above its RDCSCC of 0.49 mg/kg in one of the samples. Four (4) soil borings were installed around MP-3 in February 2007; one (1) soil sample was collected from each boring from the six (6) inch interval exhibiting the highest photo-ionization detector (“PID”) reading. TCE was detected at 5.1 mg/kg in one of the samples and cis-1,2-DCE was detected at 3.72 mg/kg in another sample. Both exceeded their respective IGWSCCs, which was 1 mg/kg.
48. In or around 2007, monitoring well MW-3R, was installed upgradient on the sidewalk within approximately 3-5 feet of where MW-3 had been located on Block 919, Lot 5. In March 2007, CEG collected ground water samples on behalf of Sumo Realty, Inc. from

(MW-2 [Block 919, Lot 5], MW-3R [on the sidewalk near Block 919, Lot 5], MW-16 [Block 919, Lot 1], MW-17 [on the sidewalk near Block 919, Lot 1] and MW-18 [upgradient to the Site]). The table below summarizes the results from the 2007 ground water sampling (in ug/L). Results for MW-14 were not included since CVOCs were non-detect. Instead, MW-4R, last sampled in 2004, was included. Benzene, TCE, and vinyl chloride were detected at levels above the Vapor Intrusion Ground Water Screening Levels (“VIGWSL”).

Compound	MW-2	MW-3R	MW-4R	MW-16	MW-17	MW-18	Current GWQS	Current VIGWSL
Benzene	ND	46.6	ND	1.15	1.15	1.2	1	23
1,1-DCE	ND	5.64	1.8	ND	ND	ND	1	26
Cis-1,2-DCE	ND	ND	366	ND	ND	ND	70	-
PCE	3.51	ND	1.6	ND	1.47	ND	1	36
TCE	319	44.8	1,102	34.9	110	ND	1	3
Vinyl chloride	11.7	733	30.8	ND	47.5	55.9	1	1
VO TICs	211	1390	-	456	71.9	8,450	500	-

49. A “Vapor Intrusion Remedial Investigation Workplan”, dated July 2009, was prepared by CEG for Sumo Realty, Inc. The workplan proposed collecting sub-slab soil gas samples and indoor air samples at eight (8) properties on Chestnut Street. The Department approved the workplan in a letter dated July 27, 2009, and instructed Sumo Realty, Inc. to submit a remedial investigation report on October 16, 2009.
50. A “Ground Water Remedial Investigation Workplan”, dated November 2009, was prepared by CEG for Sumo Realty, Inc. and submitted to the Department on March 22, 2010.
51. On December 22, 2009, Sumo Realty, Inc.’s counsel sent a letter to the Department that noted access request letters had been sent to the eight property owners on Chestnut Street in October 2009 and that Sumo Realty, Inc. had not been granted access by the property owners to conduct the required vapor intrusion sampling.
52. On March 21, 2011, the Department sent Jacinto Rodrigues of Sumo Realty, Inc. a Notice of Deficiency for the Ground Water Remedial Investigation Workplan submitted on March 22, 2010, which identified seven open AOCs, including ground water and vapor intrusion. The Department determined that Sumo Realty, Inc. needed to delineate the horizontal and vertical extent of ground water contamination at the Site and that Sumo Realty, Inc. failed to complete the vapor intrusion investigation of the previously identified eight (8) properties on Chestnut Street noted in paragraph 49 above and the Department further identified additional buildings that required vapor intrusion investigation.
53. On February 22, 2019, the Department issued a Notice of Violation and Offer of Settlement to Sumo Realty, Inc. for failure to comply with the applicable timeframes for sites subject to N.J.S.A. 58:10C-27(a)3 and failure to comply with the requirements for direct oversight.

54. Sumo Realty, Inc. received compliance assistance phone calls, emails, or other communications from the Department reminding Sumo Realty, Inc. of its obligation to comply with all applicable remediation requirements.
55. On June 14, 2022, the Department sent Jacinto Rodrigues of Sumo Realty, Inc. a Notice of Potential Enforcement Action letter outlining Sumo Realty, Inc.'s noncompliance with the Remediation Agreement and the Spill Act.
56. Between June 29, 2022, and September 19, 2022, the Department issued letters to the residential addresses below requesting site access to conduct a vapor intrusion investigation. The Department was granted access to 63 Oliver St. and vapor intrusion sampling was conducted on January 25, 2023. No vapor intrusion was identified. Vapor intrusion investigations are still outstanding for the remaining residential properties.

Address	Block & Lot
89 Chestnut St. (Residential)	920; 7.05
91 Chestnut St. (Residential)	920; 7.06
93-95 Chestnut St. (Residential)	920; 7.07
97 Chestnut St. (Residential)	920; 7.08
99 Chestnut St. (Residential)	920; 7.09
101 Chestnut St. (Residential)	920; 7.10
103 Chestnut St. (Residential)	920; 7.11
107 Chestnut St. (Residential)	920; 7.12
109 Chestnut St. (Residential)	920; 7.13
111 Chestnut St. (Residential)	920; 7.14
116 Chestnut St. (Residential)	919; 43.29
118 Chestnut St. (Residential)	919; 43.28
122-124 Chestnut St. (Residential)	919; 43.26
55-57 Oliver St. (Residential)	919; 43.18
59 Oliver St. (Residential)	919; 43.17
61 Oliver St. (Residential)	919; 43.16
63 Oliver St. (Residential)	919; 43.15
TOTAL	17 Properties

Responsibility for Cleanup and Removal Costs

57. The substances referenced in the paragraphs above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58.10-23.11b.

58. The Respondents are responsible for the hazardous substances that were discharged at the Site and for the remediation of the hazardous substances that were discharged to the lands and waters of the state.
59. Pursuant to N.J.S.A. 58.10-23.11g.c, any 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 by the Department. The Respondents are persons who discharged a hazardous substance or are in any way responsible for the discharge of a hazardous substance and are strictly liable, without regard to fault, for all cleanup and removal costs.
60. Pursuant to N.J.S.A. 58.10-23.11f., whenever any hazardous substance is discharged, the Department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of such discharge, or may direct any person in any way responsible for the hazardous substance to clean up and remove, or arrange for the cleanup and removal of the discharge.
61. The Department is authorized to seek and obtain information from persons related to discharges or potential discharges of pollutants into the waters of the State, discharges of hazardous substances, and disposal of solid waste. Pursuant to the Water Pollution and Control Act ("WPCA"), the Department is empowered to assess a person's compliance with the Act, and may request from any person who has information relevant to discharges of pollutants to provide certain documents and/or information to the Department. N.J.S.A. 58:10A-5(a)-(b), -10.3(a). Additionally, pursuant to the Spill Act, persons who may be subject to liability for discharges must immediately notify the Department of same. N.J.S.A. 58:10-23.11e.

DIRECTIVE

62. Within seven (7) calendar days after receipt of this Directive and Notice to Insurers, the Respondents shall reply to the Department pursuant to N.J.A.C. 7:26C-9.11(f), stating their responses to this Directive and Notice to Insurers. The responses shall be sent to Ann H. Wolf, Assistant Director, Enforcement & Information Support Element, Contaminated Site Remediation & Redevelopment, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey, 08625-0420.
63. The Department hereby directs the Respondents to clean up and remove the hazardous substances discharged at the Site by taking the following actions. Note the timeframes specified herein do not represent an extension to any past due timeframes and the Department reserves the right to pursue penalties back to the original due dates:
- a. Within thirty (30) days after receipt of this Directive and Notice to Insurers, retain a Licensed Site Remediation Professional ("LSRP") to perform the remediation for the entire Contaminated Site;

- b. Within forty-five (45) days after receipt of this Directive and Notice to Insurers, notify the Department, in accordance with N.J.A.C. 7:26C-2.3(a)2, of the name and license information of the LSRP that has been hired to perform the remediation;
- c. Within sixty (60) days after receipt of this Directive and Notice to Insurers, submit a detailed initial Remediation Cost Review Form, prepared and certified by the LSRP retained to oversee remediation of the entire Contaminated Site and annually thereafter, pursuant to N.J.A.C. 7:26C-5.10 for the full cost of remediation of the Contaminated Site;
- d. Within sixty (60) days after receipt of this Directive and Notice to Insurers, establish and maintain a remediation funding source in the form of a line of credit, letter of credit, or remediation trust fund pursuant to N.J.A.C. 7:26C-5 in the amount determined by a detailed cost review pursuant to N.J.A.C. 7:26C-5.10 for the full cost of remediation of the Contaminated Site;
- e. Within sixty (60) days after receipt of this Directive and Notice to Insurers, and annually thereafter, submit to the Department the one percent (1%) remediation funding source surcharge with the remediation funding source, pursuant to N.J.A.C. 7:26C-5.9;
- f. Conduct the remediation at all areas of concern at the Contaminated Site pursuant to N.J.A.C. 7:26-2.3, including but not limited to the following:
 - 1) Within one hundred fifty (150) days after receipt of this Directive and Notice to Insurers, conduct a vapor intrusion investigation, in accordance with N.J.A.C. 7:26E-1.15, and specifically conduct vapor intrusion investigations and sampling at:
 - i. 89 Chestnut St. (Block 920, Lot 7.05)
 - ii. 91 Chestnut St. (Block 920, Lot 7.06)
 - iii. 93-95 Chestnut St. (Block 920, Lot 7.07)
 - iv. 97 Chestnut St. (Block 920, Lot 7.08)
 - v. 99 Chestnut St. (Block 920, Lot 7.09)
 - vi. 101 Chestnut St. (Block 920, Lot 7.10)
 - vii. 103 Chestnut St. (Block 920, Lot 7.11)
 - viii. 107 Chestnut St. (Block 920, Lot 7.12)
 - ix. 109 Chestnut St. (Block 920, Lot 7.13)
 - x. 111 Chestnut St. (Block 920, Lot 7.14)
 - xi. 116 Chestnut St. (Block 919, Lot 43.29)
 - xii. 118 Chestnut St. (Block 919, Lot 43.28)
 - xiii. 122-124 Chestnut St. (Block 919, Lot 43.26)
 - xiv. 55-57 Oliver St. (Block 919, Lot 43.18)
 - xv. 59 Oliver St. (Block 919, Lot 43.17)
 - xvi. 61 Oliver St. (Block 919, Lot 43.16)

- xvii. 63 Oliver St. (Block 919, Lot 43.15)
- xviii. Any other buildings located within 100 feet of a structure identified as showing an immediate environmental concern or vapor concern conditions due to the contaminants of concern or showing sub-slab soil gas concentrations that exceed soil gas screening levels for those contaminants; or any other buildings within 100 feet of a location exceeding the ground water screening level of the contaminants of concern.

2) If a vapor concern and/or immediate environmental concern condition is identified at any structure, remediate pursuant to N.J.A.C. 7:26E-1.11, as applicable.

- g. Within one hundred twenty (120) days after receipt of this Directive and Notice to Insurers, conduct a preliminary assessment/site investigation and submit to the Department the preliminary assessment/site investigation report pursuant to N.J.A.C. 7:26E-3 to identify the source or sources of soil and ground water contamination;
 - h. Within two (2) years after receipt of this Directive and Notice to Insurers, complete a remedial investigation report pursuant to N.J.A.C. 7:26E-4;
 - i. Within six (6) years after receipt of this Directive and Notice to Insurers, submit an entire site response action outcome pursuant to N.J.A.C. 7:26C-6.2 that includes, but is not limited to, a final remedial action report after obtaining all required remedial action permits.
64. The Respondents shall pay all applicable fees and Department oversight costs.
65. The Respondents shall provide access to all applicable documents concerning remediation to the Department.
66. The Respondents shall enter into an Administrative Consent Order memorializing their agreement to comply with this Directive and Notice to Insurers.
67. The Respondents shall provide the Department with copies of all insurance policies for this Site including, but not limited to, all insurance policies required as financial responsibility pursuant to 40 CFR Part 280 and N.J.A.C. 7:14B-15.
68. Each Respondent, within twenty-one (21) days of receipt of this Directive and Notice to Insurers, shall provide the following information to the Department regarding its historic use of hazardous substances at the Site, including but not limited to, PAHs, PCE, 1,1,1-TCA, TCE, 1,1-DCE, 1,1-DCA, cis-1,2-DCE, vinyl chloride, PCBs and BTEX.:
- a. Identify and describe all hazardous substances, supplied, transported, stored, used, treated, disposed, and/or discharged at the Site and specifically identify the location at the Site;

- b. Identify the nature, extent, source and location of discharges of all hazardous substances into the water and lands of the State at the Site;
- c. The Respondent's ability to pay for, or perform, the cleanup and removal of hazardous substances at the Site.

69. This Directive and Notice to Insurers is not a formal enforcement order, a final agency action or a final legal determination that a violation has occurred. This Directive and Notice to Insurers is not subject to pre-enforcement review and may not be appealed or contested.

NOTICE

70. If the Respondents fail to comply with this Directive and Notice to Insurers, the Department may conduct the remediation using public funds.
71. Failure to comply with this Directive and Notice to Insurers will increase the potential liability of the Respondents to the Department to an amount equal to three (3) times the cost of arranging for the cleanup and removal of the discharge pursuant to the Spill Compensation and Control Act, pursuant to N.J.S.A. 58:10-23.11f.a.(1).
72. As authorized by N.J.S.A. 58:10-23.11u., the Department may issue an order to require compliance with the Spill Compensation and Control Act and/or assess penalties of up to \$50,000 per day and/or pursue a court action if the Respondents fail to comply with this Directive and Notice to Insurers. Each day of violation constitutes an additional, separate and distinct violation of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

RESERVATION OF RIGHTS

73. The Department reserves the right to direct the Respondents to take or arrange for the taking of any and all additional remediation that the Department determines to be necessary to protect the public health and safety of the environment and to seek reimbursement and treble damages for all costs incurred in taking such additional remediation.
74. The Respondents are advised that the discharges referenced in this Directive and Notice to Insurers may also constitute violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and that the Respondents may, therefore, be subject to the penalties prescribed for violations of these Acts. The Department reserves all rights and remedies under those statutes as well as all other applicable statutes not set forth herein and the common law of New Jersey, including its right to bring an action in the Superior Court for appropriate relief.

NOTICE TO INSURERS

75. BE ON NOTICE THAT, pursuant to N.J.S.A. 58:10-23.11s, any claims for costs of cleanup or civil penalties by the State and any claim for damages by any injured person may be brought directly against the bond, insurer or any other person providing evidence of

financial responsibility. The Respondents are therefore urged to contact such insurers and notify them of the issuance of this Directive and Notice to Insurers.

Date: 4/19/2023

Ann H. Wolf

Ann H. Wolf, Assistant Director
Enforcement & Information Support Element