

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093  
Attorney for Plaintiffs

By: John F. Dickinson, Jr.  
Deputy Attorney General  
(609) 984-4654

Michael Connelly, Esq.  
Special Counsel to the Attorney General  
CONNELLY•BAKER•MASTON•  
WOTRING•JACKSON LLP  
700 Louisiana Street, Suite 1850  
Houston, Texas 77002-2778

Michael Gordon, Esq.  
Special Counsel to the Attorney General  
GORDON & GORDON  
80 Main Street  
West Orange, New Jersey 07052

Hugh Lambert, Esq.  
Special Counsel to the Attorney General  
LAMBERT & NELSON, PLC  
701 Magazine Street  
New Orleans, Louisiana 70130-3629

Dennis Reich, Esq.  
Special Counsel to the Attorney General  
REICH & BINSTOCK  
4265 San Felipe, Suite 1000  
Houston, Texas 77027



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

L9868-05

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

Plaintiffs,

v.

OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA  
SOLUTIONS, INC., MAXUS ENERGY  
CORPORATION, REPSOL YPF, S.A.,  
YPF, S.A., YPF HOLDINGS, INC., and  
CLH HOLDINGS,

Defendants.

Civil Action

COMPLAINT AND  
JURY DEMAND FOR TRIAL BY JURY

Plaintiffs, New Jersey Department of Environmental Protection (“DEP”) and Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “Plaintiffs”), by way of this Complaint against the above-named defendants, Occidental Chemical Corporation (“OCC”), Tierra Solutions, Inc. (“Tierra”), Maxus Energy Corporation (“Maxus”), Repsol YPF, S.A. (“Repsol”), YPF, S.A. (“YPF”), YPF Holdings, Inc. (“YPF Holdings”), and CLH Holdings (“CLH”) (collectively, “Defendants”), say:

#### STATEMENT OF THE CASE

1. For roughly twenty years, OCC and its predecessors-in-interest deliberately polluted the Passaic River with 2,3,7,8-Tetrachlorodibenzo-p-dioxin (“TCDD”) – a particularly potent form of dioxin – DDT and various other pesticides and chemicals. For an essentially equivalent period of time, OCC, Tierra, Maxus, Repsol, YPF, YPF Holdings, and CLH have orchestrated and implemented a strategy to delay and impede the clean-up and restoration of the Passaic River. As a direct result of OCC’s intentional releases and discharges into the Passaic River, and Defendants’ feat of delaying any real solution for another 20-plus years, TCDD has migrated throughout the lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill Van Kull, and into adjacent waters and sediments (collectively, the “Newark Bay Complex”). The sediments in the Newark Bay Complex are saturated with TCDD, yet not one teaspoon of TCDD-impacted sediment has been removed as part of a clean-up or restoration effort.

2. The consequences of Defendants’ actions are far-reaching and significant. The Newark Bay Complex has become one of the world's worst sites for TCDD contamination. TCDD concentrations recorded in blue crabs in the Newark Bay Complex may be the highest

ever discovered in aquatic animals. Because of this contamination, DEP has issued a complete ban on all fish and shellfish consumption from the Newark Bay Complex, though studies performed by Defendants themselves show that consumption continues. It is clear that the TCDD concentrations throughout the Newark Bay Complex present a real threat to human health and to the environment.

3. Similarly, Defendants have caused myriad and substantial economic injuries to the State, its citizens, and their natural resources. Defendants' TCDD has impacted commerce, industry, navigation, dredging, and disposal for decades. Likewise, the ecosystem and natural resources of the Newark Bay Complex have been significantly injured.

4. Accordingly, Plaintiffs now bring this action to recover past and future damages caused by Defendants' intentional and egregious conduct. This civil action is brought pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a to -23.11z (the "Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -37.23 (the "WPCA"), and New Jersey common law. In this action, Plaintiffs seek reimbursement of any and all cleanup and removal costs the State of New Jersey has incurred, and all such costs that the State of New Jersey will incur, alone and working in conjunction with federal agencies, as a result of Defendants' discharge of TCDD into the Newark Bay Complex. With respect to the groundwater and other natural resources of New Jersey that are in and around the Lister Site (as defined below), but excluding the natural resources of the Newark Bay Complex and those upland natural resources that have been, or may be in the future, injured as a result of the presence of TCDD and other hazardous substances in the Newark Bay Complex, (collectively, such upland resources are referred to herein as the "Upland Resources"), Plaintiffs also seek: (1) a declaratory judgment that Defendants are jointly and severally liable for the injuries to the Upland Resources that have

been, or may be in the future, caused as a result of Defendants' discharge of TCDD; (2) a declaratory judgment that Defendants are required to fund Plaintiffs' performance of assessment and restoration of the Upland Resources (whether alone or in conjunction with federal agencies) that have been, or may be in the future, injured as a result of Defendants' discharge of TCDD; and (3) damages for injury to the Upland Resources. Plaintiffs also seek compensatory damages, punitive damages, declaratory relief, and equitable relief as set forth herein.

#### THE PARTIES

5. Plaintiff DEP is a principal department within the Executive Branch of the State government vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. See N.J.S.A. 13:1D-9; see also Executive Order 40. Plaintiff DEP's principal office is located at 401 East State Street, Trenton, Mercer County, New Jersey.

6. In addition, the State of New Jersey is the trustee of all natural resources within its jurisdiction for the benefit of its citizens and is vested with the authority to protect this public trust. See N.J.S.A. 58:10-23.11a.

7. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). See N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, Plaintiff Administrator is authorized to approve and pay cleanup and removal costs Plaintiff DEP incurs, see 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, see N.J.S.A. 58:10-23.11j.d. Plaintiff Administrator's principal office is located at New Jersey Department of Environmental Protection, Environmental Claims Administration, 401 East State Street, P.O. Box 028, Trenton, New Jersey 08625-0028.

8. Defendant Occidental Chemical Company (“OCC”) is a corporation organized under the laws of the State of New York, with a principal place of business located at 5005 LBJ Freeway, Dallas, Texas 75380.

9. Maxus Energy Corporation (f/k/a Diamond Shamrock Corporation, f/k/a New Diamond Corporation) (“Maxus”) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380.

10. Tierra Solutions, Inc. (f/k/a Diamond Shamrock Chemical Land Holdings, f/k/a Chemical Land Holdings, Inc.) (“Tierra”) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816.

11. Repsol YPF, S.A. (“Repsol”) is, upon information and belief, a Spanish business entity with a principal place of business located at Paseo de la Castellana, 278-280, 28046 Madrid SPAIN.

12. YPF, S.A. (“YPF”) is, upon information and belief, an Argentinean business entity with a principal place of business located at Avenida Presidente Roque Saenz Pena, 777, C.P. 1364 Buenos Aires ARGENTINA.

13. YPF Holdings, Inc. (“YPF Holdings”) is, upon information and belief, a Delaware corporation with a principal place of business located at 1330 Lake Robbins Drive, The Woodlands, Texas 77380.

14. CLH Holdings (“CLH”) is, upon information and belief, a Delaware corporation with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380.

## OWNERSHIP HISTORY OF LISTER SITE

15. In 1940, Kolker Chemical Works, Inc. ("Kolker") acquired an approximate 3.4 acre tract of land located at 80 Lister Avenue, in the Ironbound section of Newark, Essex County, New Jersey, for the production of DDT and phenoxy herbicides. 80 Lister Avenue, together with the adjacent property at 120 Lister Avenue, is referred to herein as the "Lister Site." The Lister Site is located on the banks of the Passaic River.

16. In March 1951, Kolker was acquired by Diamond Alkali Company. Diamond Alkali Company owned and operated a portion of the Lister Site from 1951 until 1967. In 1967, Diamond Alkali Company merged with Shamrock Oil & Gas Company, and the company's name was changed to Diamond Shamrock Corporation ("DSC-1"). DSC-1 continued to operate that portion of the Lister Site until August 1969, and sold that portion of the Lister Site in March 1971.

17. In 1983, New Diamond Corporation was incorporated to be the holding company and parent of DSC-1. After the creation of New Diamond Corporation, DSC-1 changed its name to Diamond Chemicals Company on or about September 1, 1983. A few days later, New Diamond changed its name to Diamond Shamrock Corporation ("DSC-2"). On or about October 26, 1983, Diamond Chemicals Company changed its name to Diamond Shamrock Chemicals Company.

18. On September 4, 1986, DSC-2 sold all of the stock of Diamond Shamrock Chemicals Company to an affiliate of Occidental Chemical Company, Oxy-Diamond Alkali Corporation. Diamond Shamrock Chemicals Company then merged with Oxy-Diamond Alkali Corporation and was renamed Occidental Electrochemicals Corporation on or about September

29, 1986. Occidental Electrochemicals Company was then merged into its parent, Occidental Chemical Corporation, effective on or about November 30, 1987.

19. Through both the November 30, 1987 merger agreement and the operation of law, Occidental Chemical Corporation assumed and succeeded to the Diamond Alkali/DSC-1 liabilities now at issue in this case.<sup>1</sup> OCC knowingly accepted the benefits and liabilities of this transaction and is responsible for the prior acts of DSC-1. OCC is a “discharger” and a person “in any way responsible” under the Spill Act.

20. On April 30, 1987, shortly after its sale of the chemicals division to OCC, DSC-2 changed its name to Maxus Energy Corporation. As part of the September 4, 1986 transaction whereby Maxus sold Diamond Shamrock Chemicals Company to OCC, Maxus agreed to manage the environmental liabilities at DSC-1’s historical sites and to indemnify OCC from certain liabilities associated therewith. On information and belief, at various times Maxus had the authority to control and, in fact, controlled the environmental response at the Lister Site and in the Newark Bay Complex. Maxus is now a subsidiary of Spanish oil giant Repsol YPF, S.A. Maxus is a person “in any way responsible” under the Spill Act.

21. After TCDD contamination was discovered at the Lister Site, Tierra was created to reassume ownership of the property. Tierra acquired ownership of 120 Lister Avenue in 1984 and of 80 Lister Avenue in 1986. Maxus also transferred to Tierra – its sister company – most of Maxus’ obligations to OCC to manage the environmental affairs and liabilities flowing from the Lister Site. Tierra is a “discharger” and a person “in any way responsible” under the Spill Act.

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<sup>1</sup> Kolker Chemical Works, Inc., Diamond Alkali Company, Diamond Alkali Organic Chemicals Division, Inc., DSC-1, Diamond Chemicals Company, Diamond Shamrock Chemicals Company, Occidental Electrochemicals Company and Occidental Chemical Corporation are collectively referred to herein as “OCC.”

22. Tierra is a subsidiary of Repsol, YPF, YPF Holdings, and CLH (collectively the "Repsol Group"). The Repsol Group has made provisions to cover certain Maxus and Tierra liabilities associated with the Diamond-era production at the Lister Site. Additionally, on information and belief, the Repsol Group controls the environmental practices of Tierra and Maxus, and the Repsol Group has operated in a joint enterprise with all Defendants on these matters. Individually and collectively, the members of the Repsol Group are persons "in any way responsible" under the Spill Act.

#### HAZARDOUS SUBSTANCES PRODUCED AT THE LISTER SITE

23. OCC owned the Lister Site from 1940 through 1971. From the mid-1940s through 1969, OCC manufactured agricultural chemicals at a portion of the Lister Site, including dichlorodiphenyltrichloroethane ("DDT") and phenoxy herbicides. DDT production began before the end of World War II and continued through the late-1950s when OCC's DDT operations were consolidated at its Greens Bayou Plant in Houston, Texas.

24. Production of phenoxy herbicides commenced in 1948 and continued through the summer of 1969. Two chemicals manufactured at the Lister Site were 2,4-dichlorophenoxyacetic acid ("2,4-D") and 2,4,5-trichlorophenoxyacetic acid ("2,4,5-T"). TCDD (or 2,3,7,8-tetrachlorodibenzo-p-dioxin) is a particularly toxic form of dioxin that was formed as a by-product of the 2,4,5-T process.

25. Like many other constituents used, produced, and discarded at the Lister Site, DDT, 2,4-D, 2,4,5-T and TCDD all constitute "hazardous substances," as defined in N.J.S.A. 58:10-23.11b.



OCC'S OPERATIONS AND PRACTICES AT THE LISTER SITE

26. As has been previously held by the courts of New Jersey, OCC's operations at the Lister Site offer a glimpse of an exceedingly rare type of corporate citizen: one that both undertook a "deliberate course of pollution [constituting] intentional conduct" and one that had the "subjective knowledge of harm" posed by the TCDD in its discharges and emissions. Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167, 215-16 (App. Div. 1992).

27. As laid out by the New Jersey Appellate Division, OCC's production practices at the Lister Site were notorious:

a. Almost from the day production of the phenoxy herbicides commenced in 1948, the workers at the Lister Site experienced chloracne (a disfiguring disease typically involving open and closed comedones, pustules, cysts and blisters on the face, armpits, and groin).

b. By 1955, OCC was aware that its processes were causing the chloracne and was advised to reduce its air contamination and to insist upon personnel and plant cleanliness. These suggestions were either ignored or poorly implemented.

c. In the Autumn of 1959, OCC was advised that a German chemical manufacturer had discovered that TCDD was the causative agent of chloracne and that decreasing OCC's reaction temperature in the 2,4,5-T manufacturing process would substantially reduce the production of TCDD. OCC was offered a two-step process by which TCDD could be eliminated – or at least appreciably reduced – in the 2,4,5-T manufacturing process. OCC instead decided to run the process at a higher temperature

than recommended because reducing the autoclave temperature would also reduce production volumes and, therefore, OCC's profits.

d. In 1960, a reaction in the autoclave – whose temperature was “out of control” – caused an explosion that destroyed the larger of the two process buildings on the Lister Site. Following the explosion, OCC rebuilt the destroyed manufacturing process building. OCC had the opportunity to employ improved processes and techniques to lower the TCDD production, but again chose not to do so to avoid incurring capital costs and ensure increased profitability.

e. Throughout its years of operation, vapors produced by the 2,4,5-T process were vented into the atmosphere on a daily basis. OCC's emissions from the scrubber unit would literally “pit” the paint on the cars in the parking lot – appearing as if acid had been thrown on them. Only in 1967 did OCC construct a carbon tower designed to remove TCDD in its process and finished product at or below a level of one part per million. Even after the carbon tower was installed, there was no decrease in the chloracne among the workers: monitoring reports from 1968 and 1969 showed dioxin levels in OCC's process and finished product at up to 9.6 parts per million and employees recall finished product with up to 80 parts per million.

See Diamond Shamrock Chems. Co., 258 N.J. Super. at 181-87, 212-13.

28. OCC's production processes were not reflective of the industry norm at the time. In fact, records indicate that OCC's products consistently contained more TCDD than their competitors' products.

29. Similarly, New Jersey's courts have determined that OCC's waste management and environmental practices underscore the intentional nature of its behavior:

a. A number of former plant workers testified that OCC's waste management policy essentially amounted to "dumping everything" into the Passaic River.

b. From the mid-1940s through 1955, all waste products from chemical processes were either directly discharged or ultimately released into the Passaic River.

c. In 1956, discharges from the Lister Site plant were directed to an industrial sewer line, but the evidence demonstrates that not all of the effluent from the plant was actually directed into the line.

d. In fact, so much DDT waste water was directed into the Passaic River that a mid-river "mountain" of DDT was created. Employees were directed to wade surreptitiously into the Passaic River at low tide and "chop up" the deposits so that they would not be seen by passing boats.

e. In the old – but undamaged – building where OCC manufactured 2,4-D and 2,4,5-T, OCC's "heedless indifference to the environmental damage which resulted from its manufacturing operations" continued after the 1960 explosion. The floors of the old building would accumulate so much 2,4-D and 2,4,5-T that twice-monthly they would be washed down with sulfuric acid, with the waste water flowing into trenches that ran outside the building and into the Passaic River. Routine blockages in the trenches and waste water pits would also cause effluent to back up and migrate into the Passaic River. The concrete floor would be replaced every few years because it was turned to "dust" through the acid-washing process.

f. The "sloppy practices" tolerated by OCC management were also evident from the various leaks in the autoclave room and the pipes that ran between the two manufacturing buildings. Likewise, the pipelines along the 2,4,5-T process units

constantly became clogged. Employees were then directed to break and steam clean the clogged lines. The material washed from the pipelines was discharged onto the ground or directly into the Passaic River.

g. The 10,000 gallon storage tanks on the Lister Site were routinely cleaned of amine, butyl-T, 2,4-D, and 2,4,5-T by shoveling out the residue at the bottoms of the tanks once or twice a month. In this process, both liquid and solid waste fell onto the ground where the waste would be washed away.

See Diamond Shamrock Chems. Co., 258 N.J. Super, at 181-87.

30. As a result of OCC's practices at the Lister Site, TCDD has been found in the soil at and around the Lister Site, in the groundwater under and around the Lister Site, and in the Newark Bay Complex. Defendants failed to notify Plaintiff DEP of the discharges of TCDD and other hazardous substances at and from the Lister Site as required by N.J.S.A. 58:10-23.11e.

31. Based upon the foregoing, the New Jersey courts have already found that the subjective knowledge of OCC was proven, as a matter of fact: OCC knew "the nature of the chemicals it was handling," knew that "they were being continuously discharged into the environment," and knew that "they were doing at least some harm," Diamond Shamrock Chems. Co., 258 N.J. Super, at 210-15 (OCC's "deliberate course of pollution constituted intentional conduct with the corresponding intentional injury inextricably intertwined").

32. OCC clearly "discharged" TCDD and other hazardous substances within the meaning of N.J.S.A. 58:10-23.11b. Defendants have also conducted operations on the Lister Site that involved the generation, storage, and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b.

33. By the judgment of the trial court and the affirming decision of the New Jersey Appellate Division in Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167, 215-16 (App. Div. 1992), Defendants are collaterally estopped from relitigating the nature and extent of the intentional discharges into the Passaic River and Newark Bay Complex.

#### THE REGULATORY HISTORY

34. The Lister Site. In 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy, targeting facilities that produced 2,4,5-T and its herbicide derivatives for soil sampling and testing for dioxins.

35. After DEP learned of the TCDD contamination at the Lister Site, then-New Jersey Governor Thomas H. Kean issued Executive Order 40, authorizing DEP to engage in emergency measures "necessary to fully and adequately protect the health, safety and welfare of New Jersey citizens." Pursuant to Executive Order 40, DEP issued an administrative order on June 13, 1983, requiring OCC to implement certain stabilization measures at the Lister Site to prevent further TCDD migration off-site. Two subsequent administrative consent orders were entered between DEP and OCC in 1984 to address the Lister Site itself.

36. In 1987, EPA selected an interim remedy for the Lister Site. Under a 1990 Consent Decree with EPA and DEP, OCC and Tierra submitted designs for the interim remedy on the Lister Site. The construction of the *interim* remedy was just recently completed in 2001. The interim remedy is to be periodically reevaluated.

37. The Newark Bay Complex. Under an Administrative Order on Consent (AOC) executed with EPA on April 20, 1994, Tierra agreed to study a six-mile stretch of the Passaic River and to determine: (1) the spatial distribution and concentrations of the TCDD and other contaminants in the Passaic River, (2) the primary human and ecological receptors of the

contaminated sediments, and (3) the transport of contaminated sediment within the six-mile stretch.

38. However, after approximately ten years, this study has not yet been completed. By entering into the 1994 AOC, Tierra and the other Defendants agreed to undertake a proper investigation of the extent and impacts of the TCDD contamination emanating from the Lister Site into the lower six miles of the Passaic River. Defendants instead devoted their resources to various attempts to shift blame away from their activities on the Lister Site and onto other parties and chemicals.

39. Defendants concentrated their resources on manipulating the focus of the investigation away from TCDD and to mislead the regulators. When Defendants initially conducted sampling and reported data to the Government, they did not even include or mention TCDD – the driving force behind the entire study. Likewise, in maps submitted to the regulators as part of the investigation, the Lister Site was inexplicably left off the map and not even identified.

40. Defendants have also attempted to bias the results of the investigation and testing that they controlled. For example, EPA instructed Defendants not to undertake certain studies because EPA was concerned that the results would be misleading and incorrect and would understate the risk to human health and the environment caused by OCC's TCDD. Defendants nonetheless conducted the studies.

41. Defendants' efforts appear geared to justify a predetermined conclusion that there is no increased risk to human health or the environment posed by the TCDD and, therefore, that the TCDD may remain in the Newark Bay Complex.

42. Certain key aspects of the investigation of the lower six miles of the Passaic River were removed from Defendants' control by EPA letter dated January 30, 2001. However, effective June 22, 2004, EPA entered into a new AOC with OCC and about 30 other parties to fund \$10 million of a \$19 million study of the 17-mile stretch of the Passaic River from the Dundee Dam to Newark Bay. Pursuant to a separate agreement, the United States Army Corps of Engineers ("USACE") and New Jersey Department of Transportation ("NJDOT") are to contribute \$9 million of the cost of this study, though the USACE's funding has recently come into doubt.

43. Following the filing of a notice of Citizen's Suit for the TCDD impacts in Newark Bay, OCC entered into a separate AOC with EPA on February 13, 2004 to begin another study of the impacts of the Lister Site, this time focusing on Newark Bay and adjacent waters. By entering into the AOC, Defendants deprived courts of jurisdiction to hear the Citizen's Suit. This AOC provides that EPA will maintain oversight control of the Newark Bay investigation.

44. On September 19, 2003, Plaintiff DEP issued a Spill Act directive (the "Interim Directive") to OCC, Maxus, Tierra, and others pursuant to N.J.S.A. 58:10-23.11f.a., directing these entities to assess any natural resource that has been, or may be, injured as a result of the discharges of TCDD from the Lister Site.

45. Plaintiff DEP and NJDOT have investigated and are investigating the nature and extent of the contamination in the Newark Bay Complex, dredging options, and disposal techniques.

46. Sampling results from investigations reveal the presence of TCDD at extremely high concentrations.

47. Although Plaintiff DEP has initiated the preliminary assessment of the natural resource damages in the Newark Bay Complex, the contamination continues. DEP is working with federal trustees in assessing, valuing, and seeking compensation for the injuries to the State of New Jersey's natural resources. Accordingly, Plaintiffs are not, at this time, seeking damages or other relief for injuries to the natural resources in the Newark Bay Complex in this action. Likewise, Plaintiffs are not, at this time, seeking damages or other relief for injuries to the natural resources in the upland areas around the Lister Site and Newark Bay Complex which were, or may be in the future, caused by the presence of hazardous substances in the Newark Bay Complex.

#### CONTAMINATION OF THE NEWARK BAY COMPLEX

48. The Newark Bay Complex now constitutes one of the worst TCDD contaminated sites in the world. TCDD is a persistent substance that remains in the environment long after discharge. Further, it bioaccumulates and/or biomagnifies in the food chain and the environment. The levels of TCDD in the Newark Bay Complex, and in its fish and shellfish, present an endangerment to human health, the environment, and the well-being of the people of the State of New Jersey.

49. TCDD in the Newark Bay Complex is clearly traceable to the Lister Site. There is a clear TCDD signal in the Passaic River, Newark Bay and beyond, which is unmistakably tied to the Lister Site and the actions of Defendants.

50. Portions of the Passaic River near the Lister Site constitute an ongoing source of TCDD contamination throughout the remainder of the Newark Bay Complex. High levels of TCDD are intermittently released from the Passaic River in storm and other high water events



that scour the river bottom. Unacceptable levels of TCDD are also persistently discharged from the surface sediments in the Passaic River to the remainder of the Newark Bay Complex.

#### UPLAND RESOURCES

51. The Upland Resources include, but are not limited to, all upland lands and groundwater under and around the Lister Site and other such resources owned, managed, held in trust, or otherwise controlled by the State, but excluding the natural resources of the Newark Bay Complex and those upland natural resources that have been, or may be, injured as a result of the presence of TCDD and other hazardous substances in the Newark Bay Complex. The Upland Resources are vital natural resources of the State and citizens of New Jersey, which have been injured as a result of the discharges at the Lister Site.

#### FIRST COUNT

##### Spill Act

52. Plaintiffs repeat each allegation of paragraphs 1 through 51 above as though fully set forth in its entirety herein.

53. Each Defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

54. The State of New Jersey has incurred, and will continue to incur, costs as a result of the discharge of TCDD into the Newark Bay Complex and Upland Resources. These costs include, but are not limited to, the costs of investigation, cleanup and removal, reasonable costs of preparing and successfully litigating this action, and any other costs incurred pursuant to the Spill Act, N.J.S.A. 58:10-23.11a to -23.11z.

55. The State of New Jersey has incurred, and will continue to incur, damages as a result of the discharge of TCDD into the Newark Bay Complex and Upland Resources. These damages include, but are not limited to, the cost of restoring, repairing, or replacing real or

personal property, the lost income from the time the property is damaged to the time it is restored, repaired or replaced, and the reduction in value of the property by comparison with its value prior thereto.

56. The State of New Jersey has also incurred, and will continue to incur, costs for the Upland Resources that have been, or may be, injured as a result of the discharge of TCDD at the Lister Site. These natural resource costs include, but are not limited to, the cost of assessment, restoration, and replacement of the injured Upland Resources.

57. The State of New Jersey has also incurred, and will continue to incur, damages for the Upland Resources that have been, or may be, injured as a result of discharge of TCDD at the Lister Site. These natural resource damages include, but are not limited to, the lost value of the injured Upland Resources.

58. Plaintiff Administrator has certified, and may certify for payment, valid claims made against the Spill Fund concerning the TCDD contamination of the Newark Bay Complex and Upland Resources, and further has approved, and may approve, other appropriations from the Spill Fund to address the TCDD contamination of the Newark Bay Complex and Upland Resources:

59. The costs and damages the State of New Jersey has incurred, and will incur, for the Newark Bay Complex and Upland Resources are "cleanup and removal costs," within the meaning of N.J.S.A. 58:10-23.11b, including: all costs associated with the (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources. The cleanup and

removal costs include those program costs directly related to the cleanup and removal of the discharge and, with respect to the recovery of past costs, any indirect costs incurred by the State of New Jersey. N.J.S.A. 58:10-23.11b.

60. OCC is a "discharger" and a person "in any way responsible" for hazardous substances (TCDD) discharged to the Newark Bay Complex and Upland Resources, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs, including, but not limited to, the costs of investigation, cleanup and removal, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, the reasonable costs of preparing and successfully litigating this action, any other costs incurred pursuant to the Spill Act, the cost of restoring, repairing or replacing real or personal property, the lost income from the time the property is damaged to the time it is restored, repaired or replaced, the reduction in value of the property by comparison with its value prior thereto, the cost of assessment, restoration and replacement of the injured Upland Resources, the lost value of the injured Upland Resources, and expenditures made by the State of New Jersey.

61. Maxus is a person "in any way responsible" for hazardous substances (TCDD) discharged into the Newark Bay Complex and Upland Resources, has insured and/or provided evidence of financial responsibility for responsible parties and work associated with the discharge of hazardous substances (TCDD) into the Newark Bay Complex and Upland Resources, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including, but not limited to, the costs of investigation, cleanup and removal, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, the reasonable costs of preparing and successfully

litigating this action, any other costs incurred pursuant to the Spill Act, the cost of restoring, repairing or replacing real or personal property, the lost income from the time the property is damaged to the time it is restored, repaired or replaced, the reduction in value of the property by comparison with its value prior thereto, the cost of assessment, restoration and replacement of the injured Upland Resources, the lost value of the injured Upland Resources, and expenditures made by the State of New Jersey.

62. Tierra is a “discharger” and a person “in any way responsible” for hazardous substances (TCDD) discharged into the Newark Bay Complex and Upland Resources, has insured and/or provided evidence of financial responsibility for responsible parties and work associated with the discharge of hazardous substances (TCDD) into the Newark Bay Complex and Upland Resources, and is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including, but not limited to, the costs of investigation, cleanup and removal, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, the reasonable costs of preparing and successfully litigating this action, any other costs incurred pursuant to the Spill Act, the cost of restoring, repairing or replacing real or personal property, the lost income from the time the property is damaged to the time it is restored, repaired or replaced, the reduction in value of the property by comparison with its value prior thereto, the cost of assessment, restoration and replacement of the injured Upland Resources, the lost value of the injured Upland Resources, and expenditures made by the State of New Jersey.

63. Repsol, YPF, YPF Holdings, and CLH Holdings are persons “in any way responsible” for hazardous substances (TCDD) discharged into the Newark Bay Complex and Upland Resources, have insured and/or provided evidence of financial responsibility for

responsible parties and work associated with the discharge of hazardous substances (TCDD) into the Newark Bay Complex and Upland Resources, and are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including, but not limited to, the costs of investigation, cleanup and removal, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, the reasonable costs of preparing and successfully litigating this action, any other costs incurred pursuant to the Spill Act, the cost of restoring, repairing or replacing real or personal property, the lost income from the time the property is damaged to the time it is restored, repaired or replaced, the reduction in value of the property by comparison with its value prior thereto, the cost of assessment, restoration and replacement of the injured Upland Resources, the lost value of the injured Upland Resources, and expenditures made by the State of New Jersey.

64. Defendants' discharges of TCDD into the Newark Bay Complex were the result of Defendants' gross negligence and/or willful misconduct, within the knowledge and privity of the owner, operator, or person in charge. The \$50,000,000.00 maximum limitation codified at N.J.S.A. 58:10-23.11g.b. is therefore inapplicable to any action against Defendants. Further, Defendants are jointly and severally liable for the full amount of damages.

65. Pursuant to the Spill Act, Plaintiffs may bring an action in the Superior Court for injunctive relief, for unreimbursed investigation, cleanup and removal costs, including the reasonable direct and indirect costs of preparing and successfully litigating the action, for the cost of restoring, repairing or replacing real or personal property, lost income from the time the property is damaged to the time it is restored, and the reduction in value of the property caused by the discharge by comparison with its value prior thereto, for natural resource restoration and replacement costs for the Upland Resources, for any unreimbursed costs or damages paid from

the Spill Fund, and for any other unreimbursed costs or damages the State of New Jersey incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs pray that this Court:

- a. Order Defendants to pay or reimburse Plaintiffs for all unreimbursed costs that the State of New Jersey has incurred, separately or in conjunction with federal agencies, as a result of the discharges of TCDD, including, but not limited to, all cleanup and removal costs, other costs of investigation, cleanup and removal, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, any unreimbursed costs or damages paid from the Spill Fund, and any other costs incurred pursuant to the Spill Act, N.J.S.A. 58:10-23.11a to -23.11z, with applicable interest;
- b. Enter declaratory judgment against Defendants for all unreimbursed costs that the State of New Jersey may incur in the future, separately or in conjunction with federal agencies, as a result of the discharges of TCDD, including, but not limited to, all cleanup and removal costs, other costs of investigation, cleanup and removal, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, any unreimbursed costs or damages paid from the Spill Fund, reasonable costs of preparing and successfully litigating this action, and any other costs incurred pursuant to the Spill Act, N.J.S.A. 58:10-23.11a to -23.11z;
- c. Order Defendants to pay and reimburse Plaintiffs for all damages that the State of New Jersey and its citizens have incurred, and may incur in the future, including,

but not limited to, the cost of restoring, repairing, or replacing real or personal property, the lost income from the time the property is damaged to the time it is restored, repaired or replaced, and the reduction in value of the property by comparison with its value prior thereto, with applicable interest;

- d. Order Defendants to pay and reimburse Plaintiffs for the injuries to the Upland Resources of the State of New Jersey that have been, or may be in the future, injured as a result of the discharge of TCDD in, on or under the Lister Site, including, but not limited to, the cost of assessment, restoration and replacement of the injured Upland Resources;
- e. Assess civil penalties as provided by N.J.S.A. 58:10-23.11u and its predecessors against Defendants for Defendants' failure to notify Plaintiff DEP of the discharges of TCDD and other hazardous substances as required by N.J.S.A. 58:10-23.11e;
- f. Award Plaintiffs their reasonable direct and indirect costs and fees for preparing and successfully litigating this action; and
- g. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint.

SECOND COUNT

Water Pollution Control Act

66. Plaintiff DEP repeats each allegation of paragraphs 1 through 65 above as though fully set forth in its entirety herein.

67. OCC is a "person" within the meaning of N.J.S.A. 58:10A-3.

68. OCC discharged pollutants (TCDD) into the Newark Bay Complex within the meaning of N.J.S.A. 58:10A-3 & 58:10A-6.

69. The Commissioner of Environmental Protection or his authorized representative has determined that OCC violated provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 to 37.23 and its predecessors.

70. The State of New Jersey has incurred, and will continue to incur, costs as a result of the discharge of TCDD into the Newark Bay Complex. These costs include, but are not limited to, the cost of any investigation, inspection, or monitoring survey which led to the establishment of the violation, the cost incurred in removing, correcting or terminating the adverse effects upon water quality resulting from the unauthorized discharge of TCDD, and the reasonable direct and indirect costs of preparing and litigating this action.

71. The State of New Jersey has incurred, and will continue to incur, damages as a result of the discharge of TCDD into the Newark Bay Complex.

72. Pursuant to N.J.S.A. 58:10A-10c., Plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, N.J.S.A. 58:10A-10c.(2); for the reasonable costs of preparing and litigating this case, N.J.S.A. 58:10A-10c.(2); for any reasonable cost incurred by the State of New Jersey in removing, correcting or



terminating the adverse effects upon water quality, N.J.S.A. 58:10A-10c.(3); for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by the unauthorized discharge, N.J.S.A. 58:10A-10c.(4); and for the actual amount of any economic benefits accruing to the violator from a violation, N.J.S.A. 58:10A-10c.(5).

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff DEP prays that this Court:

- a. Order OCC to pay or reimburse Plaintiff DEP for all unreimbursed costs that the State of New Jersey has incurred, separately or in conjunction with federal agencies, as a result of OCC's discharges of TCDD, including, but not limited to, the cost of any investigation, inspection, or monitoring survey which led to the establishment of the violation and the cost incurred in removing, correcting, or terminating the adverse effects upon water quality resulting from the unauthorized discharge of TCDD, with applicable interest;
- b. Enter declaratory judgment against OCC for all unreimbursed costs that the State of New Jersey may incur, separately or in conjunction with federal agencies, as a result of OCC's discharges of TCDD, including, but not limited to, the cost of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and the cost incurred in removing, correcting, or terminating the adverse effects upon water quality resulting from the unauthorized discharge of TCDD;
- c. Order OCC to pay and reimburse Plaintiff DEP for all damages that the State of New Jersey has incurred, and may incur in the future, as a result of OCC's

discharges of TCDD, including compensatory damages for any loss or destruction of the Upland Resources or other actual damages caused by the unauthorized discharge, with applicable interest, but excluding natural resource damages caused to the Newark Bay Complex or as a result of the presence of TCDD and other hazardous substances in the Newark Bay Complex;

- d. Order OCC to pay Plaintiff DEP in an amount equal to the actual amount of economic benefit that accrued, and continues to accrue, to OCC as a result of the violations of the Water Pollution Control Act, with applicable interest. Such economic benefits include, but are not limited to, the amount of any savings realized from avoided capital or non-capital costs resulting from the violations, the return earned or that may be earned on the amount of avoided costs, and any benefits accruing to OCC as a result of a competitive market advantage enjoyed by reason of the violations, and any other benefits resulting from the violations.
- e. Award Plaintiff DEP the reasonable direct and indirect costs and fees for preparing and litigating this action; and
- f. Award Plaintiff DEP such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint.

THIRD COUNT

Public Nuisance

73. Plaintiffs repeat each allegation of paragraphs 1 through 72 above as though fully set forth in its entirety herein.

74. The use, enjoyment, and existence of the Newark Bay Complex and surrounding areas are rights common to the general public.

75. Defendants released and discharged hazardous substances (TCDD) into the Newark Bay Complex and surrounding areas and had an affirmative obligation to remedy the results of such discharges.

76. The TCDD contamination of the Newark Bay Complex and surrounding areas resulting from Defendants' releases and discharges of TCDD constitutes a physical invasion of public and private property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to the use and enjoyment of the Newark Bay Complex and surrounding areas.

77. Defendants' releases and discharges, and failure to remedy the releases and discharges, of TCDD have caused and continue to cause a significant interference with the public health, public safety, public peace, public good and the public convenience.

78. Defendants' releases and discharges, and failure to remedy the releases and discharges, of TCDD were in violation of New Jersey law at the time of the releases, discharges and inaction.

79. As long as the Newark Bay Complex and surrounding areas remain contaminated with Defendants' TCDD, the public nuisance continues.

80. Until the Newark Bay Complex and surrounding areas are remediated, Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean natural resources.

81. Defendants' conduct was willful, wanton, and without regard to the rights of Plaintiffs and the State and the citizens of New Jersey.

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff DEP prays that this Court:

- a. Order Defendants to pay or reimburse Plaintiff DEP for all costs the State of New Jersey has incurred, separately or in conjunction with federal agencies, as a result of the public nuisance caused by Defendants' releases and discharges of TCDD, and their failure to remedy the releases and discharges, with applicable interest;
- b. Enter declaratory judgment against Defendants for all costs that the State of New Jersey may incur, separately or in conjunction with federal agencies, as a result of the public nuisance caused by Defendants' releases and discharges of TCDD and their failure to remedy the releases and discharges;
- c. Order Defendants to pay and reimburse Plaintiff DEP for all damages that the State of New Jersey has incurred, and may incur in the future, as a result of the public nuisance caused by Defendants' releases and discharges of TCDD and their failure to remedy the releases and discharges, with applicable interest.
- d. Order Defendants to make restitution for their unjust enrichment and pay Plaintiff DEP in an amount equal to the actual amount of economic benefits that accrued and continue to accrue to Defendants as a result of Defendants' manufacturing and environmental practices, releases and discharges of hazardous substances to

the Newark Bay Complex, and the nuisance created thereby, with applicable interest. Such economic benefits include, but are not limited to, the amount of any savings realized from avoided capital or non-capital costs resulting from Defendants' actions, the return earned or that may be earned on the amount of avoided costs, any benefits accruing to Defendants as a result of a competitive market advantage enjoyed by reason of Defendants' actions, and any other benefits resulting from Defendants' actions;

- e. Order Defendants to pay Plaintiff DEP punitive damages in an amount to be determined by the trier of fact; and
- f. Award Plaintiff DEP such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint.

#### FOURTH COUNT

##### Trespass

82. Plaintiffs repeat each allegation of paragraphs 1 through 81 above as though fully set forth in its entirety herein.

83. Defendants are liable for trespass, and continued trespass, because Defendants released and discharged and failed to remedy the releases and discharges of TCDD into the Newark Bay Complex and surrounding areas.

84. As long as the Newark Bay Complex and surrounding areas remain contaminated with Defendants' TCDD, Defendants' trespass continues.

85. Defendants' conduct was willful, wanton, and without regard to the rights of Plaintiffs and the State and the citizens of New Jersey.

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff DEP prays that this Court:

- a. Order Defendants to pay or reimburse Plaintiff DEP for all costs the State of New Jersey has incurred as a result of the trespass to the Newark Bay Complex and surrounding areas, with applicable interest;
- b. Enter declaratory judgment against Defendants for all costs that the State of New Jersey may incur as a result of the trespass to the Newark Bay Complex and surrounding areas;
- c. Order Defendants to pay and reimburse Plaintiff DEP for all damages the State of New Jersey has incurred, and may incur in the future, as a result of the trespass to the Newark Bay Complex and surrounding areas, with applicable interest.
- d. Order Defendants to make restitution for their unjust enrichment and pay Plaintiff DEP in an amount equal to the actual amount of economic benefits that accrued and continue to accrue to Defendants as a result of Defendants' manufacturing and environmental practices, releases and discharges of hazardous substances to the Newark Bay Complex and surrounding areas, and the trespass created thereby, with applicable interest. Such economic benefits include, but are not limited to, the amount of any savings realized from avoided capital or non-capital costs resulting from Defendants' actions, the return earned or that may be earned on the amount of avoided costs, any benefits accruing to Defendants as a result of a

competitive market advantage enjoyed by reason of Defendants' actions, and any other benefits resulting from Defendants' actions;

- e. Order Defendants to pay Plaintiff DEP punitive damages in an amount to be determined by the trier of fact; and
- f. Award Plaintiff DEP such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal or remedial action within the Newark Bay Complex in response to this Complaint.

#### FIFTH COUNT

##### Strict Liability

86. Plaintiffs repeat each allegation of paragraphs 1 through 85 above as though fully set forth in its entirety herein.

87. Toxic wastes are inherently abnormally dangerous and their release, disposal and/or discharge is an abnormally dangerous activity.

88. Defendants are strictly liable for their abnormally dangerous activity because Defendants released, disposed of and discharged toxic wastes (TCDD) from and at the Lister Site and into the Newark Bay Complex and surrounding areas.

89. Defendants' conduct was willful, wanton, and without regard to the rights of Plaintiffs and the State and the citizens of New Jersey.

#### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff DEP prays that this Court:

- a. Order Defendants to pay or reimburse Plaintiff DEP for all costs that the State of New Jersey has incurred as a result of the release, disposal and/or discharge of


toxic wastes (TCDD) to the Newark Bay Complex and surrounding areas, with applicable interest;

- b. Enter declaratory judgment against Defendants for all costs that the State of New Jersey may incur in the future as a result of the release, disposal and/or discharge of toxic wastes to the Newark Bay Complex and surrounding areas;
- c. Order Defendants to pay and reimburse Plaintiff DEP for all damages that the State of New Jersey has incurred, and may incur in the future, as a result of the release, disposal and/or discharge of toxic wastes to the Newark Bay Complex and surrounding areas, with applicable interest.
- d. Order Defendants to make restitution for their unjust enrichment and pay Plaintiff DEP in an amount equal to the actual amount of economic benefits that accrued and continue to accrue to Defendants as a result of Defendants' manufacturing and environmental practices, and disposal, releases and/or discharges of toxic wastes to the Newark Bay Complex and surrounding areas, with applicable interest. Such economic benefits include, but are not limited to, the amount of any savings realized from avoided capital or non-capital costs resulting from Defendants' actions, the return earned or that may be earned on the amount of avoided costs, any benefits accruing to Defendants as a result of a competitive market advantage enjoyed by reason of Defendants' actions, and any other benefits resulting from Defendants' actions;
- e. Order Defendants to pay Plaintiff DEP punitive damages in an amount to be determined by the trier of fact; and




f. Award Plaintiff DEP such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint.

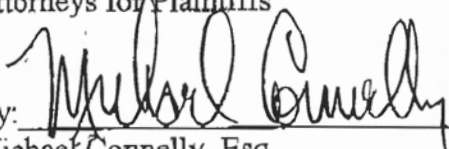
PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:  \_\_\_\_\_  
John F. Dickinson, Jr., Esq.  
Deputy Attorney General

GORDON & GORDON  
Attorneys for Plaintiffs

By:  \_\_\_\_\_  
Michael Gordon, Esq.  
Special Counsel to the Attorney General

CONNELLY•BAKER•MASTON•  
WOTRING•JACKSON LLP  
Attorneys for Plaintiffs

By:  \_\_\_\_\_  
Michael Connelly, Esq.  
Special Counsel to the Attorney General

Dated: November 22, 2005

DEMAND FOR TRIAL BY JURY

Plaintiff DEP hereby demands a trial by jury on all issues involving the causes of action in the Third Count (Public Nuisance), Fourth Count (Trespass), and Fifth Count (Strict Liability).

DESIGNATION OF TRIAL COUNSEL

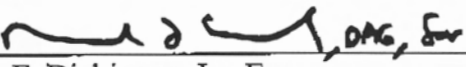
Pursuant to R. 4:25-4, the Court is advised that Michael Gordon of Gordon & Gordon, Special Counsel to the Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.


CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

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

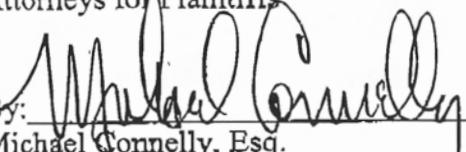
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