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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ATLANTIC COUNTY
	:	
Plaintiffs,	:	DOCKET NO.
	:	
	:	<u>Civil Action</u>
	:	
	:	COMPLAINT
	:	
	:	Jury Trial Demand
	:	
v.	:	
	:	
DEULL FUEL CO.; DEULL SERVICE CORP.; MCALLISTER FUELS; SOUTH JERSEY GAS COMPANY; VERIZON NEW JERSEY, INC.; and "ABC CORPORATIONS" 1-10 (Names Fictitious),	:	
	:	
Defendants.	:	

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

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

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 through -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 through -20, N.J.S.A. 2A:15-2, and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge and/or unsatisfactory storage or containment of hazardous substances and pollutants at the property located at 300 North Georgia Avenue, in Atlantic City, Atlantic County, New Jersey, also known and designated as Lots 1, 2, 3, and 4 of Block 387 on the Atlantic County tax maps (the "Property").

2. This case arises from the operation of a manufactured gas plant (MGP) near the banks of the Beach Thorofare, an intracoastal waterway that separates downtown Atlantic City from the marshland of Lakes Bay and Absecon Bay. As part of its operations, the MGP discharged hazardous substances onto the

property, which migrated into surface water and sediments. The property was also used for fuel storage and distribution operations. Today, the area remains polluted with numerous hazardous substances, including polycyclic aromatic hydrocarbons (PAH), naphthalene, benzene, arsenic, cyanide, and lead. Several of these hazardous substances have been linked to blood disorders and other serious health conditions. New Jersey is seeking natural resource damages for the injury to the sediments along the Beach Thorofare.

3. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at or emanating from the Property. Further, the Plaintiffs seek an order compelling the Defendants to perform, under the Department's oversight, or to fund the Department's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Property, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

Plaintiffs

4. The Department is a principal department within the Executive Branch of the New Jersey State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

5. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which the Department is vested with authority to protect, and to seek compensation for, any injury to the natural resources of this State. N.J.S.A. 58:10-23.11a.

6. The Commissioner is the Commissioner of the Department. N.J.S.A. 58:10-23.11b. In that capacity, the Commissioner is vested by law with various powers and authority, including those conferred by the Department's enabling legislation, N.J.S.A. 13:1D-1 through -19.

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

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

Defendants

8. Defendant Deull Fuel Company ("Deull Fuel") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 273 Canterbury Drive West, Palm Gardens, Florida.

9. Defendant Deull Service Corp. ("Deull Service") is a corporation organized under the laws of the State of New Jersey, with a principal place of business of 273 Canterbury Drive West, Palm Gardens, Florida.

10. Defendant McAllister Fuels is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 30 Mays Landing Road, Somers Point, New Jersey.

11. Defendant South Jersey Gas Company ("South Jersey Gas") is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at 1 South Jersey Plaza, Folsom, New Jersey.

12. Verizon New Jersey, Inc. ("Verizon New Jersey") is a corporation organized under the laws of the State of New Jersey,

having a principal place of business located at 540 Broad Street, Newark, New Jersey.

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

NATURAL RESOURCES

14. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water, and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

15. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs, streams, and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

16. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of hazardous substances and pollutants at, and emanating from, the Property.

AFFECTED NATURAL RESOURCES

Sediments

17. New Jersey's land and aquatic resources are comprised of unique and complex ecosystems.

18. Sediments are a critical example of New Jersey's ecological resources.

19. These sediments can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments, particularly in New Jersey's coastal areas, are part of the State's ecosystems that provide a living substrate for submerged and emergent flora, and support diverse invertebrate species, wading birds, and fish and shellfish populations.

GENERAL ALLEGATIONS

Site Description

20. The Property is located in a mixed, light industrial and commercial section of Atlantic City, and is bounded to the East by Georgia Avenue, to the South by Island Avenue, to the west by Block 387, Lots 5 and 6, and to the north by Atlantis Avenue.

21. The Property historically was used for MGP operations from about 1900 to about the 1950s.

22. The Property, as well as all other areas where any hazardous substance or pollutant discharged on the Property have come to be located (collectively referred to as the "Site"), have been designated by the Department as Site Remediation Program Interest Nos. 013405, 024812, and 030170.

23. One such area where hazardous substances and/or pollutants discharged at the Property came to be located is a nearby intra-coastal waterway known as the "Beach Thorofare."

24. The Beach Thorofare is an intra-coastal waterway used for recreational purposes, and is located less than 200 feet west and northwest of the Property.

Historical Operations on the Site

25. Lots 1 and 2 of Block 387 were acquired by Consumers Gas and Fuel Company ("Consumers Gas") in the late 1800s or early

1900s, and were the location of an MGP facility operated by Consumer Gas, known as the Florida Avenue manufactured gas plant ("Florida Avenue MGP").

26. An MGP is an industrial facility that extracts combustible gases from feedstock material, such as coal or oil, by heating them in an oxygen-free environment.

27. MGP gases historically were used as fuel for street lamps, but largely due to the construction of long-distance natural gas pipelines, the manufactured gas industry ended in the United States roughly in the middle of the twentieth century.

28. During Consumer Gas' operation of the Florida Avenue MGP, several above-ground fuel tanks, and a warehouse were located on Lot 2.

29. C.H. Giest acquired Consumers Gas in 1909 and merged it with another company to form the Atlantic City Gas Company ("AC Gas") in 1910.

30. In 1918, AC Gas consolidated its gas manufacturing operations northeast of the Property at Kirkman Avenue, which was known as the Kirkman Avenue manufactured gas plant and/or the Michigan Avenue manufactured gas plant ("Kirkman Avenue MGP"), but continued to use the Florida Avenue MGP to support the consolidated plant operations.

31. During the early 1920s, AC Gas constructed a 1.5 million gallon above-ground storage tank on Lot 2 (the "Large Tank"), and in the 1930s, constructed a pump house near the Large Tank.

32. AC Gas used the Large Tank to supply the Kirkman Avenue MGP with crude oil or bunker C (No. 6) fuel oil via underground pipes for use in the Kirkman Avenue MGP's operations.

33. Lot 1 featured a telescoping tank used to store gas manufactured at the Kirkman Avenue site. This tank was removed between the 1970s and the 1990s.

34. Through a series of mergers and acquisitions, AC Gas became South Jersey Gas ("SJ Gas"). SJ Gas continued the manufactured gas operations at the Kirkman Avenue location until about the 1950s.

35. During the time that SJ Gas produced manufactured gas at the Kirkman Avenue MGP, it continued to use the equipment at the Florida Avenue MGP to support the operations at the Kirkman Avenue MGP.

36. SJ Gas conveyed Lot 1 to New Jersey Bell, which later became Verizon New Jersey, Inc. ("Verizon New Jersey"), in the 1960s, after demolition of several MGP structures located on the lot.

37. Thereafter, New Jersey Bell constructed an office building with storage and vehicle maintenance facilities, including several underground storage tanks for motor fuel, on Lot 1.

38. Deull Fuel operated a fuel distribution business on various portions of the Property beginning in approximately 1940.

39. In or about 1948, Dora H. Deull acquired Lot 4 from the Barab family.

40. In or about 1967, Deull Fuel acquired Lot 3 from the Atlantic City Improvement Authority.

41. Deull Fuel's operations on the Property expanded over time, and by 1978, after Dora H. Deull conveyed Lot 4 to Deull Fuel, Deull Fuel owned Lot 2, Lot 3 and Lot 4 and conducted operations thereon.

42. In 1984, Deull Fuel conveyed Lot 2, Lot 3 and Lot 4 to Deull Service Corp. ("Deull Service").

43. Deull Service remains the current owner of Lots 2, 3 and 4.

44. Deull Fuel continued to operate its fuel distribution business on Lots 2, 3, and 4 after Deull Service assumed ownership of the parcels.

45. In approximately 2002, Deull Fuel sold a substantial portion of its accounts receivable to McAllister Fuel, but retained several accounts for which it continued its fuel distribution business until approximately 2003.

46. After acquiring a substantial portion of Deull Fuel's accounts in approximately 2002, McAllister Fuel used one or more of Lots 2, 3 and 4 to store product for its own fuel distribution business until approximately 2004.

47. The Large Tank and the smaller tanks located on Lot 4 were dismantled in approximately 2008.

Discharges and Contamination at the Site

48. Historical manufactured gas production, fuel distribution, and fuel storage operations have profoundly contaminated the Property and surrounding areas, including the Beach Thorofare.

49. A 1906 investigation by the State Sewerage Commission concluded that the Beach Thorofare was badly polluted by waste tar and oil discharged from the Florida Avenue MGP, then-operated by Consumer Gas.

Deull Fuel - Lots 2, 3 and 4

50. In March 1979, the Department received reports of #2 fuel oil being dumped on the ground at the Property.

51. In response to the Department's investigation of the March 1979 reports, John Deull, a principal and/or officer of Deull Fuel and/or Deull Service, acknowledged that discharges occurred during Deull Fuel's occupancy of Lots 2, 3 and 4.

52. At some point in the 1980s, a company known as "George's Fuel" caused a fuel spill in the process of filling a truck at the Property, resulting in a discharge to the Beach Thorofare.

53. In March 1986, a storm sewer pipe located at the terminus of Atlantis/Georgia Avenues, which aligns with and receives runoff from the Property, was observed by Department personnel to be discharging oil to the Beach Thorofare.

54. In the course of an investigation to identify the source of the March 1986 oil discharge to the Beach Thorofare, a Department inspector observed a hose connected to the Large Tank located on Lot No. 2 extending to a basin filled with a black oil-like material and contaminated sediment.

55. At the time of the March 1986 inspection of the Property, the Department's inspector questioned John Deull about the oil-like material in the basin, but was not provided with an explanation of what the material was or why it was there. Thereafter, at the direction of the Department's inspector, Deull

Fuel removed the oil-like material and contaminated sediment from the basin.

56. During the March 1986 inspection, the Department's inspector also observed several areas of petroleum-stained soil near the Large Tank and the associated pump house, which the inspector identified as resulting from poor operational and housekeeping practices.

57. In response to the March 1986 Department investigation, the Department issued a Notice of Violation (NOV) to Deull Fuel for the discharge of hazardous substances (N.J.S.A. 58:10-23.11c) and failure to notify the Department of the discharge (N.J.S.A. 58:10-23.11e).

58. On April 3, 1986, Department investigators reported the presence of brown water with a heavy sheen during an inspection of Deull Fuel's excavation of the stained, contaminated soil near the Large Tank that had been observed during the March 1986 inspection.

59. Based on the observations made during the April 3, 1986 inspection, the Department required the excavation and removal of further contaminated soils. Deull Fuel subsequently reported that one to two feet of petroleum contaminated soil had been removed from an area near the northeast corner of the pump house associated with the Large Tank.

60. Deull Fuel subsequently acknowledged that a series of spills and discharges by Deull Fuel in the vicinity of the pump house had occurred during unloading activity, which contributed to the soil contamination found near the pump house.

61. A follow up inspection by Department investigators on April 7, 1986 revealed the presence of a heavy oil sheen in the excavation area, and Deull Fuel was again advised that further excavation was required.

62. On June 11, 1987, the Department required Deull Fuel Co. to conduct groundwater sampling.

63. In August of 1987, consultant Bell Environmental ("Bell"), on behalf of Deull Fuel, installed four shallow monitoring wells on the Property, designated BEC-1S through BEC-4S.

64. After samples from the monitoring wells were collected in September 1987 for analysis, elevated concentrations of benzene and petroleum hydrocarbons were detected in all four wells.

65. The highest concentration of benzene was found in well BEC-3S, which was located northwest of the Large Tank.

66. Napthalene was also detected in BEC-3S at a concentration exceeding the Department's Ground Water Quality Standards.

67. Low concentrations of PCA was also detected in BEC-3S.

68. Bell concluded that many of the compounds identified from the samples were typical of petroleum hydrocarbons and/or coal gasification residues.

69. A sample from well BEC-2S located north of the Large Tank exhibited elevated levels of trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,2-trichloroethane, and cis-1,3-dichloropropane.

70. Bell installed additional monitoring wells BEC-5S, BEC-6S, and BEC-7S in June 1988, and samples collected from wells BEC-1S, BEC-2s, BEC-5S, BEC-6S and BEC-7S were found to contain elevated levels of benzene.

71. The June 1988 sampling also revealed elevated concentrations of benzo(a)anthracene, benzo(a)pyrene, and benzo(b)fluoranthrene in the sample from BEC-7S.

72. Other wells were found to contain light non-aqueous phase liquids ("LNAPLs").

73. Fingerprint analysis of the soil samples and free-phase product from one of the monitoring wells revealed that the contaminants were consistent with both No. 2 fuel oil and coal tar.

74. Thereafter, Lots 2, 3 and 4 became the confirmed, or suspected source, of at least eight discharges of petroleum-like substances to the Beach Thorofare over the next several years.

75. On December 28, 1989, the Department was notified of an oil sheen in the bay off of Georgia Avenue in Atlantic City, and subsequent investigations revealed a valve had been left open on an oil/water separator system operated by Deull Fuel, permitting untreated oil and water to discharge directly to the storm sewer system.

76. After the December 28, 1989 incident, Department issued Notices of Violation to Deull Fuel for a discharge of hazardous substances, and failure to report the discharge, and Deull Fuel retained contractor Clean Venture to deploy booms to contain the discharge at the storm sewer outfall.

77. On February 3, 1990, the Department received notification of a sheen on the water at the Beach Thorofare, and upon further investigation, which included excavations along the shoreline, petroleum product was found in the groundwater, and a petroleum sheen was observed in two other locations.

78. During the February 1990 investigation, petroleum saturated soil was also observed near the storm sewer line adjacent to Deull Fuel.

79. Based on the observations made during the February 1990 investigation, it was concluded that the soil along the bay area was saturated with petroleum-based substances, originating from discharges from Deull Fuel's storage tanks and/or historical manufactured gas plant operations on the Property.

80. In several 1991 incidents, the New Jersey State Marine Police and/or others notified the Department's emergency hotline of a sheen in the water in the Beach Thorofare, in which the source was identified as runoff from the Property.

81. On December 1, 1992, Deull Fuel executed an Administrative Consent Order requiring Deull Fuel to investigate and remediate contamination present at or emanating from Lots 2, 3 and 4 ("1992 ACO").

82. Investigations taken by Deull Fuel pursuant to the 1992 ACO confirmed substantial contamination arising from discharges at Lots 2, 3, and 4.

83. Bell Environmental, on behalf of Deull Fuel, performed a phase I remedial investigation from October 1993 to early 1994, which consisted of, among other things, surface water sampling at the Beach Thorofare, subsurface soil sampling, implementation of a groundwater monitoring program, LNAPL sampling, and removal of four underground tanks on Lot 4.

84. The underground tanks removed from Lot 4 included one 290-gallon gasoline tank, one 290-gallon kerosene tank, one 550-gallon fuel oil tank, and one 550-gallon gasoline tank.

85. At the time the tanks were removed, a sheen was observed in ground water at the tank excavation site, and field screening indicated that a discharge had occurred.

86. Post excavation samples were collected from the tank excavations and analyzed for parameters consistent with former tank contents; one or more samples exhibited elevated concentrations (above current soil cleanup standards and criteria) of volatile and/or semi-volatile organic compounds, including methyl tertiary butyl ether ("MTBE"), tertiary butyl alcohol ("TBA"), methylene chloride, naphthalene, and 2-methylnaphthalene.

87. Detectable levels of xylenes and 4-methyl-2-pentanone were also identified in one or more of the post-excavation samples.

88. Soil sampling conducted during Bell's remedial investigation revealed benzene, xylene, and PAH contamination consistent with manufactured gas plant operations on the Property.

89. Groundwater sampling conducted during the remedial investigation revealed contamination similar to that of the soil sampling, in addition to arsenic and lead contamination on the Property.

90. One well near the Large Tank drew several inches of LNAPL, and another well between the Large Tank and the smaller aboveground tanks on Lot 4 drew two feet of LNAPL.

91. Fingerprint analysis of the groundwater samples revealed that the LNAPL drawn from the monitoring wells was primarily diesel fuel or fuel oil with some coal tar residues.

92. The LNAPL samples contained 1, 4 di(alkylamino) anthraquinone, a dye compound which, as of October 1993, was required to be added to certain high sulfur diesel and fuel oils, indicative of a very recent discharge to the Property.

93. A follow up inspection taken after the groundwater sampling revealed leakage in the bottom and shell of the Large Tank located on Lot 2; it was determined that 1,4-di(alkylamino)anthraquinone found in LNAPL samples collected during Bell's investigation was associated with fuel oil leaking from the seams of the Large Tank.

94. A hydropunch investigation was conducted during December 1994, including the installation of eight borings, to further delineate the LNAPL plume; observations made during this investigation indicated that LNAPL was present in borings aligned along the southern portion of Lot 2 and the northern portion of Lot 3.

95. The December 1994 investigation also revealed that the thickness of the LNAPL increased relative to the proximity to monitoring well BEC-4S, located in the southern corner of Lot 2, between the Large Tank on Lot 2 and the above ground product tank field located on Lot 4. Several above ground fuel oil storage tanks used for the former manufactured gas plant operations were also located in this area during the early and mid-1900s.

96. BEC-4S was also located near the former MGP facilities on adjacent Lot 1.

97. In late 1997 and 1998, petroleum discharges were again observed in the Beach Thorofare.

98. Deull Fuel disclaimed responsibility for these petroleum discharges, but informed the Department that it would maintain booms at the storm drain outfall as a preventative measure.

99. At roughly the same time, Deull Fuel retained a firm, Subsurface Evaluations, to install soil borings, trenches, and a product recovery system on Lots 2, 3, and 4.

100. The product recovery system operated through at least 2007, and recovered roughly 9,000 gallons of free phase product, with a rate of recovery falling over time.

101. In 2006, the Department again learned of a sheen on the Beach Thorofare, and determined that Lots 2, 3 and/or 4 were the source.

102. In 2006, the Department also discovered that several of the monitoring wells installed by Deull Fuel were damaged or in disrepair, and demanded that Deull Fuel repair the wells and deploy a boom to address the sheen. Deull Fuel did not comply with the Department's demand.

103. Thereafter, after several notices of violation were issued to Deull Fuel, the Department issued a Directive to Deull Fuel in April 2007, requiring it to pay \$275,000 for the Department to take over the operation of the monitoring wells and the groundwater treatment systems ("April 2007 Directive").

104. In October 2007, after Deull Fuel's continued failure to comply with notices and deficiency letters issued by the Department, the April 2007 Directive, and the 1992 Administrative Consent Order, the Department issued Deull Fuel another Directive, ordering it to pay \$775,000 for the Department to conduct required investigations and remediation activities ("October 2007 Directive").

105. After Deull Fuel's failure to comply with the October 2007 Directive, the Department retained contractors to undertake remediation activities on Lots 2, 3, and 4.

106. A Laser Induced Fluorescence ("LIF") investigation by the Department's contractor Kleinfelder East, Inc. ("Kleinfelder") in late 2008 or 2009 identified several areas on the Property likely to be contaminated by NAPLs. These areas included the former pump house on Lot No. 2, the north side of the Large Tank on Lot No. 2, the aboveground tank farm on Lot No. 4, and an oil/water separator on Lot. No. 4.

107. The LIF also identified NAPL in the central and eastern portions of Lots 2, 3, and 4 as a diesel fuel-like product, and NAPL in the western portion of Lots 2, 3 and 4 as bunker C fuel, creosote, and/or coal tar.

108. Soil sampling conducted on the Property by Kleinfelder in August 2011 confirmed the presence of arsenic, lead, cyanide, benzene, toluene, ethylbenzene, and other contaminants, including PCA, and various petroleum hydrocarbons.

109. Groundwater sampling conducted by Kleinfelder in August 2011 from 33 temporary well points installed on the Property revealed elevated concentrations of benzene in all samples, with

the highest concentrations found southwest of the location of the Large Tank, near the western border with Lot 2.

110. PAHs were also detected in a majority of the groundwater samples, with the highest concentrations of PAH found in samples obtained from Lot 1 near the former MGP facilities, as well as on Lot 2 near the location of the Large Tank.

111. One groundwater sample collected near the former location of the Large Tank contained over 20,000 parts per billion of petroleum hydrocarbons.

112. Samples taken from near the former above ground tank farm on Lot 4 also exhibited elevated levels of petroleum hydrocarbons.

113. Additional groundwater monitoring wells were installed on the Property by Kleinfelder in April 2012, and groundwater samples were collected from both the newly installed wells and existing wells during June and July 2012.

114. Elevated levels of volatile organic compounds, semi-volatile organic compounds (including naphthalene and PAH), arsenic, lead, cyanide and total petroleum hydrocarbons were found in a majority of the monitoring wells; the concentrations of these contaminants generally increased from the eastern portion of the

site of Deull Fuel's operations on Lots 2, 3 and 4 toward the area of former MGP operations.

115. Kleinfelder collected samples of NAPL from monitoring points and recovery sumps on the Property in September 2012, which were found to contain LNAPLs and DNAPLs.

116. The DNAPLs and their constituent contaminants appeared in increasing frequency toward Lot 1 (Verizon New Jersey property), and appear to be associated with manufactured gas plant operations.

117. Kleinfelder ultimately concluded that both Deull Fuel and historical MGP operations have contaminated the Site.

Verizon New Jersey - Lot 1

118. After acquiring Lot 1 from SJ Gas in the 1960s, Verizon New Jersey removed the underground storage tanks from Lot 1 in the 1990s.

119. An investigation to evaluate potential impacts from the Verizon New Jersey underground motor fuel storage tanks that had been located on Lot 1 revealed significant petroleum related soil and groundwater contamination.

120. Among the contaminants detected during the investigation on Lot 1 were volatile organic compounds like benzene, toluene, ethylbenzene, and xylenes, semi-volatile organic compounds related to MGP operations, fuel oil, and motor fuel.

121. The contaminants detected during the Lot 1 investigation were also identified on downgradient properties.

SJ Gas Investigations

122. The site investigations commissioned by Deull Fuel have overlapped investigations commissioned by SJ Gas conducted pursuant a September 9, 1992 Administrative Consent Order (the "September 1992 ACO").

123. The September 1992 ACO required SJ Gas to undertake remedial investigations, feasibility studies, and if necessary, remedial actions associated with former MGP operations on the Property.

124. Pursuant to the September 1992 ACO, SJ Gas conducted several environmental investigations at the Property.

125. The investigations conducted pursuant to the September 1992 ACO have confirmed significant contamination on the Property as a result of historical operations.

126. A soil investigation conducted in 1993 and 1994 revealed exceedances of the Department's Residential and Non-Residential Soil Cleanup Criteria for volatile organic compounds, including benzene and xylene, and semivolatile organic compounds in many soil samples collected across the Property.

127. Soil borings reported the presence of DNAPL across the Property, and samples collected from monitoring wells have revealed LNAPL present in the groundwater underlying the site.

128. SJ Gas also conducted Phase 2 remedial investigation field activities related to the former MGP operations on the Property between October 1995 and February 1996, and a Phase 2 Remedial Investigation Report (RIR) was prepared by Atlantic Environmental Services ("Atlantic") on behalf of SJ Gas and submitted to the Department on August 22, 1996.

129. The August 22, 1996 Phase 2 RIR noted, in pertinent part, that based on site investigation data obtained to date, "it is apparent that MGP-related impacts are present in site soils and groundwater."

130. On September 10, 1997, Atlantic, on behalf of SJ Gas, submitted a Phase 2 Addendum Letter Work Plan, proposing to conduct additional soil investigations and a groundwater screening program.

131. On May 19, 1998, Atlantic, on behalf of SJ Gas, provided the Department with a DNAPL Delineation Plan, proposing additional soil borings to determine the extent of the DNAPL contamination.

132. The activities proposed in the September 10, 1997 Work Plan and the May 19, 1998 DNAPL Delineation Plan were implemented

by environmental consultant McLaren-Hart/Jones, Inc. on behalf of SJ Gas as the Supplemental Phase 2 Remedial Investigation for the Property.

133. A Revised Phase 2 RIR was submitted to the Department by McLaren-Hart/Jones on behalf of SJ Gas in January 2001.

134. The Revised Phase 2 RIR concluded, in pertinent part, that "[p]lant investigations on the former Florida Avenue MGP site conducted by [South Jersey Gas], Deull Fuel, and Bell-Atlantic (Verizon) have identified impacts to soils, groundwater, and Beach Thorofare sediments."

135. Other investigations conducted by SJ Gas and Deull Fuel have also concluded that their respective operations on the Property have contributed to the contamination of the Site.

136. For example, McLaren-Hart/Jones, an environmental consultant for SJ Gas, concluded that the former operations at the Florida Avenue MGP and Deull Fuel's operations on Lots 2, 3, and 4 contributed to documented contamination, the impacts of which may be commingled.

137. Similarly, Paul D. Sakson Associates, Inc., an environmental consultant retained by Deull Fuel, concluded that Site contamination was widespread and has arisen from historical

manufactured gas plant operations at the Florida Avenue MGP, as well as Deull Fuel operations.

138. Investigation and remedial activities into the effects of former operations at the Florida Avenue MGP are continuing to date.

FIRST COUNT

SPILL ACT

139. The Department and the Administrator repeat each allegation of Paragraphs Nos. 1 through 138 above as though fully set forth in their entirety herein.

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

141. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that has been discharged, 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.

142. The Department and the Administrator have incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Property.

143. The Administrator has either certified, or may certify for payment, valid claims made against the Spill Fund concerning the Site, and further, has approved, or may approve, appropriations for the Site.

144. The Department and the Administrator also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Property.

145. The costs that the Department and the Administrator have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

146. Defendants SJ Gas, Deull Fuel, and Verizon New Jersey are dischargers of hazardous substances at the Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that Department and the Administrator have incurred, and will incur, to assess, mitigate, restore or replace any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c(1).

147. Defendant McAllister Fuel, as the successor in interest to discharger Deull Fuel, is a discharger or person in any way responsible for the discharge of hazardous substances at Lots 2, 3, and 4, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Department and the Administrator have incurred, and will incur, to assess, mitigate, restore or replace any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c(1).

148. Defendants SJ Gas, Verizon New Jersey, Deull Fuel, and Deull Service, as the owners of portions of the Deull Fuel site at the time hazardous substances were discharged there, are persons in any way responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs that the Department and the Administrator have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as the result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c(1).

149. Defendants Verizon New Jersey, Deull Fuel, and Deull Service, as the knowing purchasers of contaminated parcels of the Property, parcels at which hazardous substances were previously discharged, are persons in any way responsible for discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Department and the Administrator have incurred, and will incur, to assess, mitigate, restore or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c(2).

150. Deull Fuel, by not complying with the Directives issued to it, is strictly liable in an amount up to three times the cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Department and the Administrator have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as the result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11.f.a(1).

151. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a), and N.J.S.A. 58:10-23.11u.b., the Department may bring an action in the Superior

Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

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

PRAYER FOR RELIEF

WHEREFORE, the Department and the Administrator pray that this Court:

- a. Order each Defendant to reimburse the Department and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs and damages they have incurred, including lost value and reasonable assessment costs for any natural resource of this State injured as a result of the discharge of hazardous substances at the Property, with applicable interest;
- b. Enter declaratory judgment against each Defendant, jointly and severally, without regard to fault, for all cleanup

- and removal costs and damages that the Department and the Administrator will incur, including lost value and reasonable assessment cost, for any natural resource of this State injured as a result of the discharge of hazardous substances at the Site;
- c. Enter declaratory judgment against each Defendant, jointly and severally, without regard to fault, compelling them to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- d. Enter judgment against each Defendant, jointly and severally, without regard to fault, compelling them to perform, under the Department's oversight, or to fund the Department's performance of an assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Property, and compelling each Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award the Department and the Administrator their costs and fees in this action; and

f. Award the Department and the Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

153. The Commissioner repeats each allegation of paragraph nos. 1 through 152 above as though fully set forth in its entirety herein.

154. Defendant Deull Fuel is a "person" within the meaning of N.J.S.A. 58:10A-3.

155. Defendant Verizon New Jersey is a "person" within the meaning of N.J.S.A. 58:10A-3.

156. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., which are not applicable here, it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit issued by the Commissioner pursuant to the WPCA, or pursuant to a valid National Pollutant Discharge Elimination System permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§ 1251 - 1387. N.J.S.A. 58:10A-6a.

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

158. The Department has incurred, and will continue to incur, costs as a result of the discharge of pollutants at the Site.

159. The Department also has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Site.

160. The costs and damages the Department has incurred, and will incur, for the Site are recoverable within the meaning of N.J.S.A. 58:10A-10c.(2)-(4).

161. Deull Fuel discharged pollutants on Lots 2, 3, and 4, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and are liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants on Lots 2, 3, and 4. N.J.S.A. 58:10A-6af.

162. Verizon New Jersey discharged pollutants on Lot 1, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and are liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants on Lot 1. N.J.S.A. 58:10A-6af.

163. Pursuant to N.J.S.A. 58:10A-10c., the Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10c.(2); any reasonable cost incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c.(3); compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants, N.J.S.A. 58:10A-10c.(4); and the actual amount of any economic benefits accruing to the violator

from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).f.

PRAYER FOR RELIEF

WHEREFORE, the Commissioner prays that this Court:

- a. Permanently enjoin Deull Fuel and Verizon New Jersey, by requiring them to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing Deull Fuel and Verizon New Jersey, without regard to fault, for the reasonable costs for any investigation, inspection, or monitoring survey, leading to establishment of the violation, including the costs of preparing and litigating the case;
- c. Enter declaratory judgment against Deull Fuel and Verizon New Jersey, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey leading

to establishment of the violation, including the costs of preparing and litigating the case;

- d. Enter an order assessing Deull Fuel and Verizon New Jersey, without regard to fault, for all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- e. Enter declaratory judgment against Deull Fuel and Verizon New Jersey, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- f. Enter an order assessing Deull Fuel and Verizon New Jersey, without regard to fault, for all compensatory damages and other actual damages incurred for any natural resource of this State that has been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants;
- g. Enter declaratory judgment against Deull Fuel and Verizon New Jersey, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that will be lost or

destroyed as a result of the unauthorized discharge of pollutants;

- h. Enter an order assessing Deull Fuel and Verizon New Jersey, without regard to fault, for the actual amount of any economic benefits they have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits Deull Fuel and Verizon New Jersey have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the WCPA;
- i. Enter declaratory judgment against Deull Fuel and Verizon New Jersey, without regard to fault, assessing those Defendants for the actual amount of any economic benefits that will accrue to them, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage it has enjoyed, or any other benefit that will accrue to them as a result of having violated the WCPA;

- j. Award the Commissioner her costs and fees in this action;
and
- k. Award the Commissioner such other relief as this Court
deems appropriate.

THIRD COUNT

Public Nuisance

164. Plaintiffs repeat each allegation of the foregoing paragraphs as if fully set forth in their entirety herein.

165. Sediments are a natural resource of the State held in trust by the State for the benefit of the public.

166. The use, enjoyment, and existence of uncontaminated natural resources are rights common to the general public.

167. The sediment contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

168. As long as the sediments of the Site remain contaminated due to the Defendants' conduct, the public nuisance continues.

169. Until the sediments are restored to their pre-discharge quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean sediments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- a. Order the Defendants to reimburse Plaintiffs for all cleanup and removal costs and damages that these Plaintiffs have incurred, including the lost value, and reasonable assessment costs for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, compelling them to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- c. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, the lost value, and reasonable assessment costs, that plaintiffs Department and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Property;

- d. Enter judgment against the Defendants compelling the Defendants to perform, under the Department's oversight, or to fund the Department's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Property, and compelling Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

170. Plaintiffs repeat each allegation of the foregoing paragraph nos. 1 through 169 as if fully set forth in their entirety herein.

171. Sediments are a natural resource of the State held in trust by the State for the benefit of the public

172. The hazardous substances in the sediments at the Site constitute a physical invasion of public property without permission or license.

173. Each Defendant is liable for trespass, and continued trespass, because the hazardous substances in the sediments at the Site resulted from discharges of hazardous substances and pollutants at the Property.

174. As long as the sediments of the Site remain contaminated due to the Defendants' conduct, the trespass continues.

175. Until the sediments are restored to their pre-discharge quality, the Defendants are liable for trespass, and continued trespass, upon public property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- a. Order Defendants to reimburse Plaintiffs for all cleanup and removal costs and damages that Plaintiffs have incurred, including the lost value, and reasonable assessment costs for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages that Plaintiffs will incur, including the lost value, and reasonable assessment costs for any natural resource of this State

injured as a result of the discharge of hazardous substances and pollutants at the Property;

- c. Enter declaratory judgment against the Defendants, compelling them to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- d. Enter judgment against the Defendants compelling Defendants to perform, under the Department's oversight, or to fund the Department's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Property, and compelling Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- d. Award Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Thomas Lihan
Thomas Lihan
Deputy Attorney General

Dated: August 1, 2018

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Thomas Lihan, Deputy Attorney General, is hereby designated as trial counsel for the 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 the Plaintiffs at this time, 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 the 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).

GURBIR S. GREWAL
ATTORNEY GENERAL
OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Thomas Lihan
Thomas Lihan
Deputy Attorney General

Dated: August 1, 2018

Civil Case Information Statement

Case Details: ATLANTIC | Civil Part Docket# L-001839-18

Case Caption: N.J. DEPT. OF ENV. P ROTECTION VS
DEULL FUEL CO.

Case Initiation Date: 08/01/2018

Attorney Name: THOMAS P LIHAN

Firm Name: ATTORNEY GENERAL LAW

Address: 25 MARKET STREET PO BOX 93
TRENTON NJ 08625

Phone:

Name of Party: PLAINTIFF : N.J. Dept. of Env. Protection

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE
LITIGATION

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

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

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

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

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

If yes, is that relationship:

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

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

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

08/01/2018
Dated

/s/ THOMAS P LIHAN
Signed