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

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

Plaintiffs, :

v. :

EXXONMOBIL CORPORATION; :
SHOTMEYER BROTHERS PETROLEUM :
CORPORATION; ESTATE OF HENRY :
SHOTMEYER; ROUTES 94 & 515, :
VERNON L.P.; CHARLES :
SHOTMEYER, As General Partner :
in Defendant Routes 94 & 515 :
Vernon, L.P., and :
Individually; HENRY SHOTMEYER :
JR., As General Partner in :
Defendant Routes 94 & 515 :
Vernon, L.P., and :
Individually; CONOCOPHILLIPS :
CORPORATION; FOREST AVENUE :
CORPORATION; and "ABC :
CORPORATIONS" 1-5 (Names :
Fictitious), :

Defendants. :

S 50356 -07
Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("the Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("the Administrator") ("the Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendants ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of the discharge of pollutants and hazardous substances at the Mobil Property and Exxon Property sites in Vernon Township, Sussex County. 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 pollutants and hazardous substances at the Mobil Property and Exxon Property sites. Further, the Plaintiffs seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund

plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the former Mobil Oil Property and Exxon Property sites, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

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

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

4. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. and N.J.S.A. 58:10A-3. In this capacity, plaintiff Commissioner is vested by law with various powers and authority, including those conferred by plaintiff DEP's enabling legislation. N.J.S.A. 13:1D-1 to -19.

5. Plaintiff 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 chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

6. Defendant ExxonMobil Corporation ("ExxonMobil") is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas, 75039.

7. On or about November 30, 1999, Exxon Corporation ("Exxon") merged with Mobil Oil Company ("Mobil"), with the surviving entity being defendant ExxonMobil.

8. Defendant Shotmeyer Brothers Petroleum Corporation ("Shotmeyer Brothers") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 10 Wagaraw Road, Hawthorne, New Jersey 07506.

9. Defendant Estate of Henry Shotmeyer ("Estate of Shotmeyer") is the estate of Henry Shotmeyer, Sr., an individual who died on or about February 10, 2005, the address for which is Estate of Shotmeyer, c/o Charles Shotmeyer, 935 Scioto Drive,

Franklin Lakes, New Jersey and which is being named as a defendant in this Complaint pursuant to N.J.S.A. 2A:15-4.

10. Defendant Routes 94 & 515 Vernon, L.P. is a limited partnership organized and existing under the laws of the State of New Jersey, with a principal place of business at 10 Wagaraw Road, Hawthorne, New Jersey 07506.

11. Defendant Charles Shotmeyer is an individual whose dwelling or usual place of abode is 935 Scioto Drive, Franklin Lakes, New Jersey 07417.

12. Defendant Henry Shotmeyer, Jr. is an individual whose dwelling or usual place of abode is 439 Russell Avenue, Wyckoff, New Jersey 07481.

13. At all times relevant to this Complaint, defendants Charles Shotmeyer and Henry Shotmeyer, Jr. were general partners of defendant Routes 94 & 515 Vernon, L.P.

14. Defendant ConocoPhillips Corporation ("ConocoPhillips") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 600 North Dairy Ashford Road, Houston, Texas 77079.

15. In 2001, Tosco Marketing Company ("Tosco") merged with Phillips Petroleum Corporation, with the surviving entity being known as Phillips Petroleum Corporation.

16. In 2002, Conoco, Inc. and Phillips Petroleum Corporation merged, with defendant ConocoPhillips being the surviving entity.

17. Defendant Forest Avenue Corporation is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 10 Wagaraw Road, Hawthorne, New Jersey 07506.

18. Defendants "ABC Corporations" 1-5, 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 above-named defendants.

NATURAL RESOURCES

19. 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.

20. 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.

21. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of pollutants and hazardous substances at the former Mobil and former Exxon Properties.

AFFECTED NATURAL RESOURCE

Ground Water

22. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

23. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

24. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

25. Ground water provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

26. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

27. There are thousands of sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

GENERAL ALLEGATIONS

Former Mobil Station Site

28. The former Mobil Station site consists of approximately .3 acres of real property located at 312 Route 94, Vernon Township, Sussex County, New Jersey, this property being also known and designated as Block 144, Lot 29, on the Township of Vernon's Tax Map ("the Mobil Property"), and all other areas where any hazardous substance or pollutant discharged there has become located (collectively, "the Mobil Site").

29. In February 1967, Cities Service Oil Company ("Cities Service") purchased the Mobil Property from Albert and Henry Shotmeyer.

30. On September 22, 1975, defendant Shotmeyer Brothers Petroleum Corporation ("Shotmeyer Brothers") purchased the Mobil Property from Cities Service. That same day, Shotmeyer Brothers conveyed title to the Mobil Property to Henry Shotmeyer, Sr., and Charlotte Shotmeyer, both of whom are now deceased.

31. In 1992, Henry Shotmeyer, Sr. conveyed title to the Mobil Property to defendant Routes 94 & 515 Vernon, L.P., which was the owner of record of the Mobil Property as of the filing of this Complaint.

32. During the time that defendant Shotmeyer Brothers, Henry Shotmeyer, Sr., Charlotte Shotmeyer, and defendant Routes 94 & 515 Vernon, L.P. owned the Mobil Property, "hazardous substances," as

defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included benzene, toluene, ethylbenzene and xylene ("BTEX") compounds, tetrachloroethene ("TCE") tert-butyl-alcohol ("TBA"), lead and methyl tertiary-butyl ether ("MTBE").

33. Further, during the time that defendant Shotmeyer Brothers, Henry Shotmeyer, Sr., Charlotte Shotmeyer, and defendant Routes 94 & 515 Vernon, L.P., owned the Mobil Property, "pollutants" as defined in N.J.S.A. 58:10A-3n., were also "discharged" there within the meaning of N.J.S.A. 58:10A-3e., which pollutants included BTEX, TCE, TBA and MTBE.

34. From September 22, 1975 through January 2, 1987, defendant Shotmeyer Brothers operated a gas station and underground storage tank ("UST") field at the Mobil Property, which included four gasoline USTs and a waste oil UST.

35. Beginning on or about January 2, 1987, Mobil entered into a lease with defendant Shotmeyer Brothers, whereby Mobil began operating the service station at the Mobil Property.

36. Mobil replaced the on-site USTs in 1988, and continued operating the service station until February 7, 2000, when Tosco began operating the service station.

37. Tosco, and later, defendant ConocoPhillips, operated the service station until May 2004, when the station was divested to

LUKOIL as a result of the 2002 Phillips Petroleum Corporation and Conoco, Inc. merger, which created defendant ConocoPhillips.

38. During the time that defendant Shotmeyer Brothers, Mobil, Tosco and ConocoPhillips operated the service station at the Mobil Property, they discharged hazardous substances and pollutants there, which substances included BTEX compounds, tetrachloroethene TCE, TBA and MTBE.

39. On or about April 3, 1984, plaintiff DEP received a report of gasoline odors in the water taken from the supply well at the Mobil Property. The odors were from a sink in a restroom at the gas station.

40. On April 10, 1984, the Sussex County Health Department ("SCHD") received a report of gasoline odors from the National Community Bank of New Jersey, which was located in close proximity to the Mobil Property at the intersection of Routes 94 and 515.

41. The SCHD investigated two USTs at the Mobil Property, and confirmed the presence of water in both tanks, which suggested that the tanks were leaking.

42. On or about April 21, 1984, defendant Shotmeyer Brothers excavated and removed the USTs without notifying either the SCHD or plaintiff DEP, and replaced them with four 4,000-gallon gasoline storage tanks, and one 550-gallon waste oil storage tank.

43. On July 2, 1984, the SCHED received a complaint from residents of a home near the Mobil Property, about a strong odor and the taste of gasoline in their drinking water.

44. On July 20, 1984, plaintiff DEP obtained the analytical results of groundwater samples collected from the complainants' potable well, which revealed the presence of gasoline-type petroleum hydrocarbons in the water.

45. In November 1984, plaintiff DEP installed three monitoring wells on the Mobil Property, during the installation of one of which ("MW #1"), gasoline odors were noted by those present.

46. On December 19, 1984, DEP issued a Spill Act directive pursuant to N.J.S.A. 58:10-23.11f.a. ("1984 Directive"), directing defendant Shotmeyer Brothers to address various environmental concerns that plaintiff DEP's personnel observed during previous investigations of the Mobil Property.

47. DEP sampled ground water from the monitoring wells at the Mobil Property in early 1985, the results of which revealed the presence of benzene, lead, ethylbenzene and toluene in the ground water from all three wells at levels above the relevant cleanup criteria.

48. Further, on April 25, 1985, plaintiff DEP's personnel observed a .25 inch layer of separate phase product in one of the monitoring wells on the Mobil Property.

49. In or about March 16, 1987, Mobil maintenance personnel reported one foot of free gasoline product in one of the on-site monitoring wells.

50. On June 22, 1988, Mobil submitted a report to plaintiff DEP confirming that a significant plume of gasoline-based product had migrated from the Mobil Property.

51. In fact, between 1987 and 1989, roughly 4,069 gallons of gasoline were unaccounted for at the Mobil Property.

52. In August 1988, in response to the 1984 Directive, Mobil initiated active and passive recovery of separate phase hydrocarbons ("SPH") at the Mobil Property, which recovered approximately 450 gallons of SPH through March 1989.

53. On October 24, 1988, plaintiff DEP issued Mobil an emergency New Jersey Pollutant Discharge Elimination System ("NJPDES") permit to expedite the start-up of a recovery system for gasoline floating on the water table.

54. The NJPDES permit allowed Mobil to discharge groundwater effluent pumped from three recovery wells into a local storm water line that discharged via overland flow before infiltrating the groundwater table. ReInjection occurred via an overland flow discharge downgradient of the recovery wells.

55. In December 1988, Mobil removed the four 4,000-gallon USTs and one 550-gallon waste oil UST from the Mobil Property, and

installed four 10,000-gallon gasoline USTs, and one 1,000-gallon waste oil UST there.

56. In May 1989, eighteen potable wells located in the vicinity of the Mobil Property were sampled, the results of which revealed the presence of MTBE, a gasoline additive, in the ground water from fourteen of the eighteen wells. Those wells shown to be impacted by gasoline constituents were fitted with point of entry treatment ("POET") systems.

57. On July 2, 1990, an abandoned 500-gallon leaded gasoline tank was removed from the Mobil Property.

58. On August 27, 1997, plaintiff DEP issued Mobil was issued a Spill Act directive and notice to insurers, informing Mobil that it was not in compliance with its NJPDES permit and that certain recovery wells were offline, and directing Mobil to correct these conditions.

59. On December 10, 1997, Mobil submitted a proposed Remedial Action Workplan ("RAWP") to plaintiff DEP for the on-site soils and groundwater contamination, and for delineating the extent of off-site contamination.

60. On July 2, 1998, plaintiff DEP approved Mobil's RAWP, which described the proposed remedial action, and how plaintiff DEP determined the proposed remedial action was the most appropriate alternative for the Site.

61. The remedial action plaintiff DEP approved for the Mobil Property primarily provided for remediation of the soils and groundwater contamination through utilization of a soil vapor extraction ("SVE") system, air sparging, and a groundwater recovery and treatment system. The RAWP also provided for the quarterly sampling of the potable wells to which the POET systems were connected.

62. In August 2001, when Tosco was operating a service station on the Mobil Property, the Department of Transportation ("DOT") replaced a storm water pipe at a Veterans of Foreign Wars ("VFW") Hall located near the Mobil Property.

63. During the replacement of the storm water pipe, DOT workers encountered gasoline vapors, which plaintiff DEP concluded were linked to the Mobil Property, which was upgradient from the VFW Hall, and which recently had a discharge of gasoline from a UST dispenser pump.

64. A second surface discharge of gasoline was reported to plaintiff DEP on September 14, 2001.

65. In February 2002, Tosco entered into a memorandum of agreement ("2002 MOA") with plaintiff DEP, whereby Tosco agreed to investigate and, if necessary, remediate any contamination resulting from the discharges.

66. In February 2003, defendant ConocoPhillips, who had taken over operation of the Mobil Property as part of its acquisition of

Tosco, reported another discharge incident to plaintiff DEP, which involved gasoline being discharged to the paved surface of the Mobil Property during a rain event. The discharge migrated to the local storm water system, which led to an open field containing wetlands. Based on discussions with the Vernon Health Department, plaintiff DEP concluded that more than 10 gallons of gasoline were discharged.

67. Defendant ConocoPhillips subsequently agreed to further investigate this discharge pursuant to the 2002 MOA to which Tosco was a party, which investigation is ongoing.

Former Exxon Station Site

68. The former Exxon Station site consists of approximately 1 acre of real property located at 311 Route 94, Vernon Township, Sussex County, New Jersey, this property being also known and designated as Block 148, Lots 6 and 7, on the Township of Vernon's Tax Map ("the Exxon Property"), and all other areas where any hazardous substance or pollutant discharged there has become located (collectively, "the Exxon Site").

69. From 1901 through September 1973, the Exxon Property was owned by the Vernon United Methodist Church.

70. The Vernon United Methodist Church sold the Exxon Property to Vernon Quality Service, Inc. ("Vernon Quality Service") in September 1973.

71. In 1982, Vernon Quality Service filed for bankruptcy, at which time National Community Bank of New Jersey ("National") commenced foreclosure proceedings to secure the mortgage it gave Vernon Quality Service.

72. National then purchased the Exxon Property at a sheriff's sale in 1984.

73. The Exxon Property was sold in 1990 to defendant Forest Avenue Corporation, the owner of record of the Exxon Property as of the filing of this Complaint.

74. During the time that Vernon Quality Service and National owned the Exxon Property, hazardous substances and pollutants were discharged there, which substances included BTEX compounds, TCE, TBA and MTBE.

75. In or about 1973, Vernon Quality Service began operating a gasoline service station at the Exxon Property.

76. In 1978, Exxon installed four gasoline USTs and one waste oil UST at the Exxon Property.

77. In 1982, Vernon Quality Service defaulted on its mortgage with National, which secured its financial interest by foreclosing on the Exxon Property while allowing Vernon Quality Service to continue operating the service station.

78. In April 1984, Vernon Quality Service ceased operating the service station at the Exxon Property.

79. Exxon maintained an UST system at the former Exxon Property from June 1978 through April 1984.

80. Specifically, Exxon maintained an 8,000-gallon fiberglass gasoline tank, a 10,000-gallon fiberglass gasoline tank, a 6,000-gallon steel gasoline tank, and a 250-gallon waste oil tank.

81. Exxon, in turn, also supplied the gasoline products stored in these USTs; however, Exxon did not operate the gas station.

82. In 1990, defendant Forest Avenue Corporation began operating a car wash and auto repair shop on the Exxon Property, which it continues to operate today.

83. During the time that Vernon Quality Service operated a service station at the Exxon Property, and Exxon maintained the USTs located there, hazardous substances and pollutants were discharged there, which substances included BTEX compounds, TCE, TBA and MTBE.

84. On March 11, 1985, Exxon installed four monitoring wells on the Exxon Property, and sampled the ground water from them. The results of this sampling revealed the presence of benzene at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water from each of the monitoring wells.

85. While Exxon attributed the benzene in the ground water from two wells to a discharge at the Exxon Property, it believed the benzene in the ground water from the other wells was

attributable to another source, which conclusions plaintiff DEP has not confirmed.

86. In May 1985, Exxon tested the tightness of the gasoline USTs, which one of the tanks, the 6,000-gallon UST, failed, indicating the potential discharging of hazardous substances and pollutants had occurred.

87. On May 29, 1985, Exxon advised plaintiff DEP of a discharge that occurred at the Exxon Property, and, in December 1985, removed product from each UST.

88. Eventually, in June 1986, Exxon removed the five gasoline USTs and the waste oil UST from the Exxon Property, during which excavations, a gasoline sheen was observed on the water in the tank hole.

89. On or about February 4, 1993, Exxon and Mobil entered into an agreement, whereby Mobil assumed responsibility for remediating the Exxon Property.

90. On December 10, 1997, Mobil submitted a proposed RAWP for the Exxon Property to plaintiff DEP, which plaintiff DEP approved on July 8, 1998.

91. The remediation plaintiff DEP approved for the Exxon Property primarily provides for remediation of the soils and groundwater contamination through utilization of an SVE system, air sparging, and a groundwater recovery and treatment system. The RAWP also provides for the quarterly sampling of the potable wells

to which Mobil had connected the POET systems, and which remediation is ongoing.

92. DEP has determined that discharges at the Mobil and Exxon Properties have contaminated the soils and ground water, which contamination plaintiff DEP is addressing collectively, and has designated this effort as Site Remediation Program Interest No. 009291.

93. In 1998, Mobil proposed a 816,575 square foot, or 18.7-acre, Classification Exception Area ("CEA"), which would restrict groundwater usage within its boundaries.

94. Plaintiff DEP approved the proposed CEA in 1998, which has an indeterminate duration due to ongoing remedial activity at the Site. Further, wetlands are located within the CEA.

95. Although ExxonMobil and its predecessors-in-interest have undertaken the remediation of the Site, the soils and ground water remain contaminated.

FIRST COUNT

Spill Act

96. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 95 above as though fully set forth in its entirety herein.

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

98. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.

99. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge of hazardous substances is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

100. Plaintiff DEP has incurred, or may incur, costs as a result of the discharge of hazardous substances at the Mobil Property and the Exxon Property.

101. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Mobil Site and the Exxon Site.

102. The Plaintiffs 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 Mobil Property and the Exxon Property.

103. The costs and damages the Plaintiffs have incurred, and will incur, for the Mobil Site and Exxon Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

104. Defendants Shotmeyer Brothers, ExxonMobil, and ConocoPhillips are, or are the successors-in-interest to, the dischargers of hazardous substances at the Mobil 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 the Plaintiffs 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 Mobil Oil Property. N.J.S.A. 58:10-23.11g.c.(1).

105. Defendants Shotmeyer Brothers, Routes 94 & 515, Vernon L.P., the Estate of Henry Shotmeyer, Henry Shotmeyer, Jr., and Charles Shotmeyer, as the owners, or as the responsible corporate parents of, successors-in-interest to, or persons otherwise related to, the owners, of the Mobil Property 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 Plaintiffs 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 Mobil Property. N.J.S.A. 58:10-23.11g.c.(1).

106. Defendant ExxonMobil and one or more of the ABC Corporation defendants are, or are the successors-in-interest to, the dischargers of hazardous substances at the Exxon 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 the Plaintiffs 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 Exxon Property. N.J.S.A. 58:10-23.11g.c.(1).

107. Defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, as the owners of the Exxon Property 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 Plaintiffs 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 Exxon Property. N.J.S.A. 58:10-23.11g.c.(1).

108. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP 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 DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

109. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff 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, plaintiffs DEP and Administrator pray that this Court:

- a. Order defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured

as a result of the discharge of hazardous substances at the Mobil Property with applicable interest;

- b. Order defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Exxon Property with applicable interest;
- c. Enter declaratory judgment against defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Mobil Property;
- d. Enter declaratory judgment against defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, jointly and severally,

- without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Exxon Property;
- e. Enter judgment against defendant ExxonMobil, compelling defendant ExxonMobil to perform any further cleanup of hazardous substances discharged at the Mobil Property and Exxon Property under plaintiff DEP's oversight;
- f. Enter judgment against defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., jointly and severally, without regard to fault, compelling these Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Mobil Property, including restoring any injured resource to its pre-discharge condition, and compelling these Defendants to compensate the citizens of New Jersey for the lost value of any natural resource;

- g. Enter judgment against defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporations, jointly and severally, without regard to fault, compelling these Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Exxon Property, including restoring any injured resource to its pre-discharge condition, and compelling these Defendants to compensate the citizens of New Jersey for the lost value of any natural resource;
- h. Award the Plaintiffs their costs and fees in this action; and
- i. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

109. The Plaintiffs repeat each allegation of paragraph nos. 1 through 108 above as though fully set forth in its entirety herein.

110. Defendants Shotmeyer Brothers, ExxonMobil, ConocoPhillips and one or more of the ABC Corporation defendants are, or are the

successors-in-interest to, "persons" within the meaning of N.J.S.A. 58:10A-31.

111. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., 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 plaintiff Commissioner pursuant to the Water Pollution Control Act, 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 to - 1387. N.J.S.A. 58:10A-6a.

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

113. Plaintiff DEP 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 Mobil Property and Exxon Property.

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

115. Defendants Shotmeyer Brothers, ExxonMobil and ConocoPhillips are, or are the successors-in-interest to, the

dischargers of pollutants at the Mobil Property, 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 at the Mobil Property. N.J.S.A. 58:10A-6a.

116. Defendants ExxonMobil and one or more of the ABC Corporation defendants, are, or are the successor-in-interest to, the discharger of pollutants at the Exxon Property, 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 is 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 at the Exxon Property. N.J.S.A. 58:10A-6a.

117. Pursuant to N.J.S.A. 58:10A-10c., plaintiff 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 at the Mobil Property and Exxon Property, 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).

PRAYER FOR RELIEF

WHEREFORE, plaintiff Commissioner prays that this Court:

- a. Permanently enjoin defendants Shotmeyer Brothers, ExxonMobil, and ConocoPhillips, by requiring these Defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Mobil Property;

- b. Permanently enjoin defendant ExxonMobil, and one or more of the ABC Corporation defendants, by requiring these Defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Exxon Property;
- c. Enter an order assessing defendant Shotmeyer Brothers, defendant ExxonMobil, defendant ConocoPhillips, and one or more of the ABC Corporation defendants, without regard to fault, for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- d. Enter declaratory judgment against defendant Shotmeyer Brothers, defendant ExxonMobil, defendant ConocoPhillips, and one or more of the ABC Corporation defendants, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- e. Enter an order assessing defendants Shotmeyer Brothers, ExxonMobil, and ConocoPhillips, without regard to fault, for all reasonable costs incurred for removing,

correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Mobil Property;

f. Enter an order assessing defendant ExxonMobil, and one or more of the ABC Corporation defendants, without regard to fault, for all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Exxon Property;

g. Enter declaratory judgment against defendants Shotmeyer Brothers, ExxonMobil, and ConocoPhillips, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Mobil Property;

h. Enter declaratory judgment against defendant ExxonMobil, and one or more of the ABC Corporation defendants, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Exxon Property;

- i. Enter an order assessing defendants Shotmeyer Brothers, ExxonMobil, and ConocoPhillips, 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 at the Mobil Property;
- j. Enter an order assessing defendant ExxonMobil, and one or more of the ABC Corporation defendants, 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 at the Exxon Property;
- k. Enter declaratory judgment against defendants Shotmeyer Brothers, ExxonMobil, and ConocoPhillips, without regard to fault, assessing all compensatory damages and 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 at the Mobil Property;
- l. Enter declaratory judgment against defendant ExxonMobil, and one or more of the ABC Corporation defendants, without regard to fault, assessing all compensatory

damages and 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 at the Exxon Property;

m. Enter an order assessing defendant Shotmeyer Brothers, defendant ExxonMobil, defendant ConocoPhillips, and one or more of the ABC Corporation defendants, 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 these Defendants have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the Water Pollution Control Act;

n. Enter declaratory judgment against defendants Shotmeyer Brothers, ExxonMobil, ConocoPhillips and one or more of the ABC Corporation defendants, without regard to fault, assessing these 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 these Defendants have

enjoyed, or any other benefit that will accrue to them as a result of having violated the Water Pollution Control Act;

- o. Award plaintiff Commissioner her costs and fees in this action; and
- p. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

118. Plaintiffs repeat each allegation of paragraph nos. 1 through 117 above as though fully set forth in its entirety herein.

119. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

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

121. The groundwater contamination at the Mobil Site and Exxon 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.

122. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

123. Until the ground water is restored to its pre-injury 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 ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Mobil Property, with applicable interest;
- b. Order defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Exxon Property, with applicable interest;

- c. Enter declaratory judgment against defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Mobil Property;
- d. Enter declaratory judgment against defendants ExxonMobil, Forest Avenue Corporation, and one or more of the ABC Corporation defendants, for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Exxon Property;
- e. Enter judgment against defendant ExxonMobil, compelling defendant ExxonMobil to abate the nuisance by performing any further cleanup of hazardous substances discharged at the Mobil Property and Exxon Property under plaintiff DEP's oversight;
- f. Enter judgment against defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94

& 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., compelling these Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Mobil Property, including restoring any injured resource to its pre-discharge condition, and compelling these Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- g. Enter judgment against defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, compelling these Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Exxon Property, including restoring any injured resource to its pre-discharge condition, and compelling these Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- h. Award the Plaintiffs their costs and fees in this action;
and
- i. Award the Plaintiffs such other relief as this Court
deems appropriate.

FOURTH COUNT

Trespass

124. Plaintiffs repeat each allegation of paragraph nos. 1 through 123 above as though fully set forth in its entirety herein.

125. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

126. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Mobil Property and Exxon Property.

127. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., to reimburse the Plaintiffs for all cleanup and removal costs and damages, including

restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Mobil Property, with applicable interest;

- b. Order defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Exxon Property, with applicable interest;
- c. Enter declaratory judgment against defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Mobil Property;

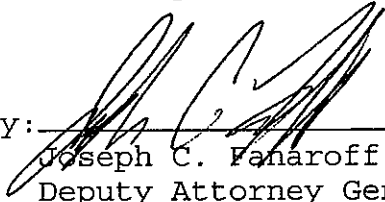
- d. Enter declaratory judgment against defendants ExxonMobil, Forest Avenue Corporation, and one or more of the ABC Corporation defendants, for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Exxon Property;
- e. Enter judgment against defendant ExxonMobil, compelling defendant ExxonMobil to cease the trespass by performing any further cleanup of hazardous substances discharged at the Mobil Property and Exxon Property under plaintiff DEP's oversight;
- f. Enter judgment against defendants ExxonMobil, ConocoPhillips, Shotmeyer Brothers Corporation, Routes 94 & 515 Vernon, L.P., Estate of Henry Shotmeyer, Charles Shotmeyer, and Henry Shotmeyer, Jr., compelling these Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Mobil Property, including restoring any injured resource to its pre-discharge condition, and compelling these Defendants to compensate

the citizens of New Jersey for the lost value of any injured natural resource;

- g. Enter judgment against defendant ExxonMobil, defendant Forest Avenue Corporation, and one or more of the ABC Corporation defendants, compelling these Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Exxon Property, including restoring any injured resource to its pre-discharge condition, and compelling these Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- h. Award the Plaintiffs their costs and fees in this action; and
- i. Award the Plaintiffs such other relief as this Court deems appropriate.

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Joseph C. Fanaroff
Deputy Attorney General

Dated:

5/18/07

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Joseph C. Fanaroff, 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).

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____


Joseph C. Fanaroff
Deputy Attorney General

Dated:

5/18/07