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ATTORNEYS FOR PLAINTIFFS

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

Plaintiffs,

v.

HESS CORPORATION, f/k/a AMERADA HESS CORPORATION; and BUCKEYE PARTNERS, L.P.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY
DOCKET NO. _____

COMPLAINT AND
JURY TRIAL DEMAND

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

Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively the "Plaintiffs"), file this Complaint against defendants Hess Corporation f/k/a Amerada Hess Corporation and Buckeye Partners, L.P. (collectively the "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action against Defendants pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"); the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20 ("WCPA"); and the common law of New Jersey, for reimbursement of the cleanup and removal costs and 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 or pollutants at the Refinery, as further described below.

2. In 1958, the Amerada Hess Corporation opened a refinery in the Port Reading section of Woodbridge Township, New Jersey. The refinery is located on the banks of the Arthur Kill, just south of a Conrail yard, and about 1,200 feet from the closest residential area. In 2013, the Hess Corporation sold the site to Buckeye Partners, which now uses the facility to store and process crude oil and refined petroleum products. Over the years, there have been numerous spills and leaks at the

refinery that caused injuries to nearby natural resources. The resources are damaged by, among other hazardous substances and pollutants, trichloroethylene ("TCE"), polycyclic aromatic hydrocarbons ("PAH"), benzene, and metals. These contaminants have been linked to lasting effects on the human central nervous system and respiratory tract, blood disorders, and other serious health conditions. New Jersey is seeking natural resource damages for the injuries to the groundwater, surface water, sediments, wetlands, and biota.

3. The costs and damages Plaintiffs seek include the damages the State has 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 the Refinery. Further, Plaintiffs seek an order 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 Refinery, and to compensate the citizens of New Jersey for the lost use or value of any injured natural resource.

THE PARTIES

4. The Department is a principal department within the Executive Branch of the State government, and under the leadership of the Commissioner, it is vested with the authority

to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9; N.J.S.A. 58:10-23.11b; N.J.S.A. 58:10A-3.

5. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction. The Department 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.

6. 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 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.

7. Defendant Hess Corporation ("Hess") is a corporation organized under the laws of the State of Delaware, with its main place of business located at 1185 Avenue of the Americas, New York, New York 10036.

8. Defendant Hess was formerly known as Amerada Hess Corporation but changed its name to Hess Corporation in 2006.

9. Defendant Buckeye Partners, L.P. ("Buckeye") is a Master Limited Partnership organized under the laws of the State

of Delaware, with its principal place of business located at One Greenway Plaza, Suite 600, Houston, Texas 77046.

10. On October 9, 2013, Buckeye began acquisition of the Refinery from Hess. Closing on the transaction was completed in December 2013.

AFFECTED NATURAL RESOURCES

Groundwater

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

12. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams and influences surface water quality, wetland ecology, and the health of the aquatic ecosystem.

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

14. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

15. Groundwater flow at the Refinery is predominantly southeasterly in the northwest portion of the site and east-southeasterly in the central portion of the site and flows into the Arthur Kill to the east.

Surface Water

16. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

17. Surface water in New Jersey is also used for other commercial and industrial uses, such as cooling water and electrical generation, boating, fishing, and transportation of goods and services.

18. The tourist and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

19. The Arthur Kill, a navigable waterway, abuts the eastern boundary of the Refinery. Hazardous substances and pollutants discharged from the Refinery have reached and adversely impacted the Arthur Kill.

20. Smith Creek, which is a tributary of the Arthur Kill, previously flowed through the Refinery but was filled in over time. Smith Creek is located immediately south of the Refinery and a small portion of Smith Creek can still be seen in the southern section of the Refinery. Hazardous substances and

pollutants discharged from the Refinery have reached and adversely impacted Smith Creek.

Sediments

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

22. Sediments are a critical example of New Jersey ecological resources.

23. 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 that support diverse invertebrate species, wading birds, and fish and shellfish populations.

Wetlands

24. Wetlands are a critical example of New Jersey's ecological resources, which include land and aquatic resources comprised of unique and complex ecosystems.

25. New Jersey has approximately 730,000 acres of freshwater wetlands, and 250,000 acres of coastal wetlands.

26. Wetlands can sustain a wide diversity of plants and animals that are essential in a healthy food chain.

27. Wetlands perform many additional functions, which include the improvement of water quality, sediment trapping,

groundwater recharge, shoreline protections, and protecting land from flooding and erosion.

28. Prior to operations and discharges at the Refinery, Smith Creek and associated tributaries flowed through the Refinery and salt marsh was present.

29. Currently, freshwater emergent wetlands are located around the detention basin located on the southeastern portion of the Refinery.

30. Estuarine and marine wetlands are also located along the Arthur Kill and at the mouth of the North Drainage Ditch on the Refinery.

31. Freshwater emergent and riverine wetlands are located immediately south of the Refinery.

Biota

32. New Jersey's ecosystems – forests, lakes, rivers, wetlands, agricultural lands, coastal estuaries, pinelands, and grasslands – are among the most complex and diverse in the nation.

33. New Jersey is home to more than 2,000 plant species, which include entire communities of rare flora that cannot be found anywhere else in the world. Approximately 15 percent of the native plant species in New Jersey, however, are now at risk of extinction, with a total of 331 vascular plant species listed

as endangered and an additional 32 that have already been extirpated.

34. New Jersey wildlife includes approximately 900 species, including 90 mammal species, 79 reptile and amphibian species, more than 400 fish species, and approximately 325 species of birds. Approximately 1.5 million shorebirds and as many as 80,000 raptors make migratory stopovers here each year.

35. At least 17 percent of New Jersey's native vertebrate species and 24 percent of its native invertebrate species are at risk of extinction. Several threatened and endangered raptor species have difficulty breeding because of the bioaccumulation of toxic compounds.

36. New Jersey's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for all cultural and economic activity in the State.

37. New Jersey's ecosystems, however, are vulnerable to pollution, degradation, and destruction from the discharge of hazardous substances and pollutants. Contamination from the discharge of hazardous substances and pollutants is one of the major causes of biodiversity loss.

38. Natural resource injuries to biota in New Jersey negatively impact not only the individual species directly

involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future.

GENERAL ALLEGATIONS

39. The Refinery property consists of approximately 210 acres of real property located at 750 Cliff Road, Port Reading, Woodbridge, New Jersey, Middlesex County; this property is also known and designated as Lot 3, Block 756; Lot 1, Block 757; Lot 1B, Block 757; Lot 6, Block 760; Lot 1, Block 760B; Lot 2, Block 760B; Lot 3, Block 760B; and Lot 6, Block 1095, on the Tax Map of the City of Woodbridge. The Refinery and all other areas where any hazardous substance discharged there has become located are known collectively as "the Hess Site," which the Department has designated as Site Remediation Program Interest No. 006148.

40. The Refinery is located in a waterfront area. The Refinery is intersected by Cliff Road, and bordered to the north by the Conrail Port Reading Yard. Immediately to the east of the Refinery is the Arthur Kill ship channel. A PSE&G substation and additional property are located to the southwest of the Refinery. Residential properties are located approximately 1,200 feet northwest of the Refinery. The headwaters of Smith Creek, a Category Two waterway, are located to the south of the Refinery.

41. Hess Trading and Transport, a predecessor to Hess Corporation, began construction at the Refinery in 1955. Prior to 1955, the property was undeveloped. Refinery operations were initiated in 1958 with a Crude Topping Unit. In 1974, the refinery was deactivated and placed into stand-by mode and used for bulk storage of petroleum and petroleum products. The refinery was retrofitted in 1983 and reactivated in April 1985.

42. In 1962, Hess Trading and Transport merged with Hess Oil and Chemical Corporation. In 1969, Hess Oil and Chemical Corporation merged with Amerada Petroleum Corporation to become Amerada Hess Corporation. In 2006, Amerada Hess Corporation changed its name to Hess Corporation.

43. In 2013, Defendant Buckeye acquired the Refinery.

44. Presently, the Refinery is used for storage and processing of crude oil and refined petroleum products. The facility is comprised of refining and terminal operations. There are two terminal operations: the Refinery Terminal and the Second Reserve Terminal.

45. Throughout Hess's ownership and operation of the Refinery, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Refinery within the meaning of N.J.S.A. 58:10-23.11b.

46. In October 1969, a tank failure at the Refinery resulted in the release of 8,000,000 gallons of crude oil that

impacted Smith Creek and the Arthur Kill, as well as wetlands, soils, and groundwater.

47. On April 25, 1990, a leak from tank 7934 at the Refinery resulted in approximately 840 to 1,680 gallons of oil being released.

48. Hess reported to the Department that a release had occurred at the Refinery of petroleum hydrocarbon on May 21, 1991, when the presence of hydrocarbons in soil was discovered while Colonial Pipeline maintenance personnel were working on a section of pipeline.

49. On September 25, 1991, the API separator (an oil water separator designed to the standards established by the American Petroleum Institute) overflowed from the Refinery to Smith Creek and released approximately 500 to 700 gallons of light oil into the waterway.

50. On January 17, 1992, Tank 1120 at the Refinery was overfilled, resulting in the release of 1,260 gallons of catfeed, comprised primarily of petroleum distillates, which are hazardous substances.

51. The Department and Amerada Hess Corporation entered into a Memorandum of Agreement in December 1992 to enable Hess to evaluate whether or not remedial activities were necessary at the Hess Site and to allow the Department oversight of remedial activities.

52. Site investigations have confirmed that contaminants are present in the surface water, soil, and groundwater throughout the Hess Site. These investigations have identified over 117 Areas of Concern ("AOCs") at the Hess Site based upon information regarding the known and suspected location of discharges.

53. As part of its site remediation obligations, Hess submitted a Baseline Ecological Evaluation ("BEE") in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, et seq., to the Department on December 30, 2007. The purpose of the BEE is to evaluate current conditions at the Hess Site, to examine the ongoing risks of the contaminants detected at the Hess Site to human health and the environment, and to identify contaminants of potential ecological concern ("COPEC"). Based on soil and groundwater samples, a number of COPECs were identified at the Hess Site. Additionally, environmentally sensitive areas were identified. Two environmentally sensitive areas were identified at the Refinery: the detention basin located on the southern portion of the Refinery, and the freshwater emergent wetland vegetation located around the detention basin. Off of the Refinery, environmentally sensitive areas were identified: the Arthur Kill, immediately adjacent east of the Refinery; Smith Creek, located to the south of the Refinery; and the estuarine and marine wetlands located along

the Arthur Kill. This BEE was preliminary and subject to additional study.

54. A Site Investigation Report that was submitted to the Department by Hess in June 2007 documented that benzene, beryllium, and total petroleum hydrocarbons ("TPH") are present in the soil at AOC 14A and 14B, the area known as TM monitoring wells. Soil sampling submitted to the Department on December 30, 2007, also indicated that TPH, benzo(a)pyrene, and benzo(b)fluoranthene are present in the soils in AOC 16A and B, known as the Railcar Loading Area and Terminal Loading Area, respectively.

55. Groundwater sampling conducted May 30, 2007, at the TM monitoring wells indicated that methyl tertiary-butyl ether ("MTBE"), tertiary butyl ether ("TBA"), tetrachloroethene ("PCE"), metals, semi-volatile organic compounds ("SVOCs"), arsenic, lead, and thallium were present in the groundwater collected.

56. Groundwater sampling conducted from temporary wells near AOC 16A and 16B confirm that benzene, bromodichloromethane, TBA, 1,1,2-trichloroethane ("1,1,2-TCA), PCE, TCE, 1,1-dichloroethylene ("1,1-DCE"), and various metals have contaminated the groundwater and are present at levels above New Jersey's established groundwater standards and federal Maximum Contaminant Levels.

57. A Remedial Investigation Workplan ("RIW") submitted to the Department by Hess on September 9, 2007, confirmed that naphthalene, methylnaphthalene, and oil and grease have contaminated the soil at AOC 6, also known as the Former Underground Storage Tank-Oily Waste.

58. A RIW for AOC 10, also known as the Truck Loading Rack Area, submitted to the Department by Hess on September 30, 2007, confirms, based on initial groundwater sampling, that gasoline product containing TBA, TCE, MTBE, and 1,1,-DCE has impacted groundwater.

59. A RIW submitted to the Department by Hess on October 21, 2008, indicated that groundwater sampling taken from monitoring wells at AOC 11, known as the Former Administration Building Underground Storage Tanks ("USTs"), indicate chlorinated contamination and the presence of benzene. The RIW proposed additional soil and groundwater sampling to fully delineate and characterize the contamination.

60. A RIW submitted to the Department by Hess on October 21, 2008, indicated that historically light non-aqueous phase liquids ("LNAPL") has been detected in several monitoring wells at AOC 7 known as Colonial Pipeline. Full delineation of the LNAPL contamination was not complete at that time.

61. A RIW submitted to the Department by Hess on October 21, 2008, identified Smith Creek as AOC 12, which was impacted,

in part, by a tank failure on October 30, 1969, when approximately 8,000,000 gallons of crude oil was released. Investigations indicate that the soils are heavily contaminated with crude oil product and the discharge impacted wetlands, the Arthur Kill, and Smith Creek, among other natural resources. Hess proposed in this 2008 RIW to fully delineate the contamination of Smith Creek with surface water and sediment sampling.

62. According to a September 15, 2003, South Landfarm Baseline Soil Quality Investigation Report submitted to the Department, benzene, xylene, chlorobenzene, TPH, and chromium are present in the soil at the South Landfarm location also known as AOC 2. The South Landfarm waste area historically received oily solids and sludges from the API separator, recoverable oil tank bottoms, and petroleum product storage tank bottoms.

63. The No. 1 Landfarm, North Landfarm, and South Landfarm waste areas located at the Refinery generally received oily sludges and soils from the API separator as well as other hazardous substances such as tetraethyl lead bottoms and leaded tank bottoms. A Semi-Annual Groundwater Monitoring Report for the three landfarms that was submitted to the Department by Hess in June 2008 indicated the presence of benzene, TBA, arsenic, iron, manganese, sodium, and chloride from the South Landfarm

wells. The presence of metals, chromium, and chloride was documented from the wells at the North Landfarm.

64. A Remedial Investigation Report ("RIR") submitted to the Department by Hess on January 31, 2007, indicates the presence of benzene, TPHC, chromium, and oil and grease in the soils at the North Landfarm. Additionally, the RIR indicates the presence of benzene, xylene, chlorobenzene, TPH, chromium, lead, copper, nickel, and oil and grease in the soil at the South Landfarm.

FIRST COUNT

Spill Act

65. Plaintiffs repeat each allegation of Paragraphs 1 through 64 above as though fully set forth in its entirety herein.

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

67. The Department and the Administrator have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Refinery.

68. The costs and damages the Department and the Administrator have incurred, and will incur, for the Hess Site,

are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

69. Hess, as an operator of the Refinery, is a discharger of hazardous substances at the Refinery, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, the Department and 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 by the discharges of hazardous substances at the Refinery. N.J.S.A. 58:10-23.11g.c(1).

70. Hess, as the owner of the Refinery at the time hazardous substances were discharged there, and Buckeye, as the knowing purchaser of the contaminated Refinery, also are persons responsible for the discharged hazardous substances, and liable, without regard to fault, for all cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, 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 by the discharges of hazardous substances at the Refinery. N.J.S.A. 58:10-23.11g.c(1).

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

72. Pursuant to N.J.S.A. 58:10-23.11g, 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 request 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 that the Department and Administrator have incurred, including lost use or value and reasonable assessment costs for any natural resource of this State injured by the discharges of hazardous substances at the Refinery, 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 the Department and Administrator will incur, including lost use or value and reasonable assessment costs for any natural resource of this State injured by the discharges of hazardous substances at the Refinery;

- c. Enter declaratory judgment against each Defendant, jointly and severally, without regard to fault, compelling them to perform any further cleanup of the Hess 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, compelling them to perform, under the Department's oversight, or to fund the Department's performance of any further cleanup of the Hess Site, and the assessment of any natural resource that has been or may be, injured by the discharge of hazardous substances at the Refinery, and compelling each defendant to compensate the citizens of New Jersey for the lost use or value of any injured natural resource;
- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

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

74. Each defendant is a "person" within the meaning of N.J.S.A. 58:10A-3.

75. 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 to 1387. N.J.S.A. 58:10A-6a.

76. 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.

77. The Department has incurred, or may incur, costs as a result of the discharge of pollutants at the Refinery.

78. The Department has also 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 Refinery.

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

80. Defendants discharged pollutants at the Refinery, 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, injured, lost or destroyed as a result of the discharge of pollutants at the Refinery. N.J.S.A. 58:10A-6af.

81. The Commissioner, pursuant to N.J.S.A 58:10A-10c., has authority to bring this action for: 1) injunctive relief; 2) the reasonable costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including the costs of preparing and litigating the case; 3) any reasonable cost incurred by the Department, Commissioner and Administrator in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this section may be brought; 4) 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; and 5) 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 they have 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.

PRAYER FOR RELIEF

WHEREFORE, the Commissioner of the Department prays that this Court:

- a. Permanently enjoin each Defendant, by requiring them to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Refinery;
- b. Enter an order assessing against each Defendant, without regard to fault, the reasonable costs for any investigation, inspection, or monitoring survey leading to the establishment of the violation, including the costs of preparing and litigating the case;

- c. Enter declaratory judgment against each Defendant, 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 against each Defendant, without regard to fault, all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Refinery;
- e. Enter declaratory judgment against each Defendant, 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 Refinery;
- f. Enter an order assessing against each Defendant, without regard to fault, all compensatory damages and other actual damages incurred for any natural resource of the State that has been, or may be, injured, lost, or destroyed as a result of the unauthorized discharge of pollutants at the Refinery;

- g. Enter declaratory judgment against each Defendant, 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 at the Refinery;
- h. Enter an order assessing against each Defendant, without regard to fault, 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 of the amount of avoided costs, and benefits each Defendant has enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the WPCA;
- i. Enter declaratory judgment against each Defendant, without regard to fault, assessing the actual amount of any economic benefits they will accrue, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, and benefits that will accrue as a result of a competitive market advantage they have enjoyed, or any other benefit that will accrue to them as a result of having violated the WPCA;

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

THIRD COUNT

Public Nuisance

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

83. Groundwater, surface water, sediment, wetlands, and biota are natural resources of the State held in trust by the State.

84. The use, enjoyment, and existence of uncontaminated natural resources is a right common to the general public.

85. The contamination of the groundwater, surface water, sediment, wetlands, and biota at the Hess Site constitutes a physical invasion of the property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

86. As long as the groundwater, surface water, sediment, wetlands, and biota at the Hess Site remain contaminated due to the Defendants' conduct, the public nuisance continues.

87. Until the groundwater, surface water, sediments, wetlands and biota are restored to their pre-discharge conditions, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to uncontaminated natural resources.

PRAYER FOR RELIEF

WHEREFORE, the Department and the Administrator request 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, lost use or value and reasonable assessment costs that the Department and Administrator have incurred for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Refinery, with applicable interest;
- b. Enter declaratory judgment against each Defendant, for all cleanup and removal costs and damages, including lost use or value and reasonable assessment costs, the Department and Administrator will incur for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Refinery;

- c. Enter declaratory judgment against each Defendant, compelling them to perform any further cleanup of the Hess 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 compelling each Defendant to perform, under the Department's oversight, or by funding the Department's performing of any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances and pollutants at the Refinery;
- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

88. Plaintiffs repeat each allegation of Paragraphs 1 through 87 as if fully set forth in their entirety herein.

89. Groundwater, surface water, sediment, wetlands, and biota are natural resources of the State held in trust by the State for the benefit of the public.

90. The hazardous substances and pollutants in the groundwater, surface water, sediment, wetlands, and biota at the

Hess Site constitute a physical invasion of public property without permission or license.

91. Each Defendant is liable for trespass, and continued trespass, because the hazardous substances and pollutants in the groundwater, surface water, sediment, wetlands, and biota at the Hess Site resulted from discharges of hazardous substances and pollutants at the Refinery.

92. As long as the resources at the Hess Site remain contaminated due to Defendants' conduct, the trespass continues.

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

PRAYER FOR RELIEF

WHEREFORE, the Department and the Administrator request 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 that the Department and Administrator have incurred, including the lost use or value, and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Refinery, 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 Administrator will incur, including the lost use or value, and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Refinery;
- c. Enter declaratory judgment against each Defendant, jointly and severally without regard to fault, compelling them to perform any further cleanup of the Hess 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, 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 Refinery, and compelling each Defendant to compensate the citizens of New Jersey for the lost use or value of any injured natural resource;

- e. Award the Department and Administrator their costs and fees in this action; and
- f. Award the Department and Administrator such other relief as this Court deems appropriate.

FIFTH COUNT

Strict Liability

94. Plaintiffs repeat each allegation of Paragraphs 1 through 93 above as though fully set forth in its entirety herein.

95. During the period of time that the Defendants and their predecessors were engaged in oil refining at the Refinery, hazardous substances were stored at and discharged from the Refinery into numerous natural resources of the State, including, but not limited to surface waters, groundwater and wetlands, thereby causing damage to and destruction of natural resources.

96. By storing and discharging hazardous substances at the Refinery and into the State's natural resources in such manner as to cause said damage and destruction, Defendants engaged in an abnormally dangerous activity for which they are strictly liable.

PRAYER FOR RELIEF

WHEREFORE, the Department and the Administrator request 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, including loss of use or value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Refinery, 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, including loss of use or value and reasonable assessment costs, the Department and the Administrator will incur for any natural resource of this State injured by the discharges of hazardous substances and pollutants at the Refinery;
- c. Enter judgment against each Defendant, jointly and severally, without regard to fault, compelling them to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances and pollutants at the Refinery, by performing under the Department's oversight, or by funding Department's performance of, any further assessment and compensatory restoration of

- any natural resource injured by the discharge of hazardous substances and pollutants at the Refinery;
- d. Award the Department and the Administrator their costs and fees in this action; and
 - e. Award the Department and the Administrator such other relief as this Court deems appropriate.

Gurbir Grewal
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By: /s/ Richard F. Engel
Richard F. Engel,
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701 Camp Street
New Orleans, LA 70130
Special Counsel to the Attorney General

By: /s/ Allan Kanner
Allan Kanner, Esq.

ATTORNEYS FOR PLAINTIFFS

Dated: August 1, 2018

DEMAND FOR TRIAL BY JURY

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

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

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

Gurbir Grewal
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By: /s/ Richard F. Engel
Richard F. Engel,
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New Orleans, LA 70130
Special Counsel to the Attorney General

By: /s/ Allan Kanner
Allan Kanner, Esq.

ATTORNEYS FOR PLAINTIFFS

Dated: August 1, 2018.

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-004579-18

Case Caption: NEW JERSEY DEPT OF E NVT PROT VS
HESS CORPORATIO

Case Initiation Date: 08/01/2018

Attorney Name: ALLAN KANNER

Firm Name: KANNER & WHITELEY, LLC

Address: 701 CAMP ST

NEW ORLEANS LA 70130

Phone:

Name of Party: PLAINTIFF : New Jersey Dept Of Env't Prot

Name of Defendant's Primary Insurance Company

(if known): None

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? YES

**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/ ALLAN KANNER

Signed