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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

| | | |
|-----------------------------------------------------------------------|---|------------------|
| Edison Wetlands Association, Inc., and Robert Spiegel | : | Docket No. |
| | : | |
| Plaintiffs | : | |
| | : | COMPLAINT |
| v. | : | |
| | : | |
| Akzo Nobel Chemicals, Inc., Akzo Nobel Inc., and Basell USA, Inc., | : | |
| | : | |
| Defendants. | : | |

Plaintiffs, Edison Wetlands Association, Inc. (EWA), and Robert Spiegel bring this civil action and allege as follows:

1. This citizen suit seeks to stop the discharge of hazardous substances and solid waste into the environment and to eliminate imminent and substantial endangerment to health and the environment in violation of federal and state law resulting from and relating to the operation of chemical manufacturing facilities located at 340 Meadow Road, Edison, Middlesex County, New Jersey (the "Site"), and requests declaratory and injunctive relief to stop those violations, imposition of civil penalties, and the award of costs, including attorneys' and expert witness' fees.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this citizen suit under 28 U.S.C. § 1331, Section 7002(a) of the Resource Conservation and Recovery Act (“RCRA”).

3. By letter dated June 1, 2007, Plaintiffs provided notice of the RCRA, CWA, New Jersey Water Pollution Control Act (“NJWPCA”) and the New Jersey Industrial Site Recovery Act (“NJISRA”) violations and its intent to file suit pursuant to 42 U.S.C. § 6972, 33 U.S.C. § 1365 and N.J.S.A. 2A:35A-11 (“the Notice”) by United States certified mail, return receipt requested, to Defendants Akzo Nobel Chemicals, Inc. (“Akzo”), Akzo Nobel, Inc. (“Akzo Nobel”), Basell USA, Inc. (“Basell”) and their registered agents, with copies to the national and regional administration of the United States Environmental Protection Agency (“EPA”), the New Jersey Department of Environmental Protection (“NJDEP”), the New Jersey Attorney General, and the governing body of the municipality in which the alleged conduct has occurred and is occurring.

4. More than 90 days have passed since Plaintiff served notice of the RCRA violations and its intent to sue pursuant to Section 7002(b)(2) of RCRA, 42 U.S.C. § 6972(b)(2).

5. Neither EPA nor NJDEP has commenced or is diligently prosecuting any civil or criminal action in any court to redress the RCRA violations.

6. Defendants have not voluntarily ceased or corrected its RCRA violations.

7. Venue is proper in the United States District Court for the District of New Jersey at Newark because the violations are occurring in Edison, Middlesex County, New Jersey.

PARTIES

8. Plaintiff EWA is a not-for-profit public interest 501(c)(3) corporation, organized under the laws of the State of New Jersey, with its principal office located at 2035 Route 27,

Suite 1190 in Edison, New Jersey. EWA's mission is to protect human health and the environment through conservation and ensuring cleanup of hazardous waste sites, to improve and protect the Lower Raritan River Estuary and its constituent bays and tributaries, to improve and preserve the ecological integrity and natural resources of the Lower Raritan River Watershed for the benefit of its members and the general public.

9. EWA is a membership organization comprised of local organizations, businesses, environmental groups, civic groups and individual concerned citizens. These members live near, use and enjoy, and/or desire to use and enjoy, the Raritan River, surrounding wetlands and uplands for boating, fishing, bird watching and hiking.

10. EWA's members have been prevented from the full use and enjoyment of the Raritan River, surrounding wetlands and uplands because of imminent and substantial harm to human health, wildlife and the environment resulting from exposed solid and hazardous waste along the shoreline of the Raritan River and the direct discharge and erosion of hazardous substances and solid waste into the Raritan River and the surrounding environment. The quality of the waters and surrounding environment and the harm to human health, wildlife and the environment affected by Defendants' acts and omissions directly affect the health, economic, recreational, aesthetic, and environmental interests and well being of EWA and its members. Defendants' acts and omissions have adversely affected, are adversely affecting, and will continue to adversely affect, the interests of EWA, its officers, directors, advisers, trustees, employees, members and supporters.

11. The contaminant releases on the Site and into the waters of the Raritan River adversely affect the health, economic, recreational, aesthetic and environmental interests of Plaintiff Robert Spiegel.

12. Mr. Spiegel, whose Declaration is attached hereto, is the Executive Director of EWA and has been its leader since 1989.

13. Mr. Spiegel in his personal capacity has been a recreational user of the Raritan River frequently engaging in boating, nature walks along the River, and bird watching.

14. Mr. Spiegel has frequently witnessed and documented riverbank discharges and foul odors coming from the Site. The exposed solid and hazardous waste along the shoreline of the Raritan River, foul odors and the direct and continued discharge and erosion of hazardous substances and solid waste from the Site into the Raritan River and surrounding environment contribute to Mr. Spiegel's concern about health risks associated with the River and surrounding environment, and negatively impact his enjoyment and use of the River and uplands. If the water and shoreline were not polluted, and foul odors were not present, Mr. Spiegel would dive, swim, and consume fish and crab from the River. The pollution on the Site and surrounding environment diminishes Mr. Spiegel's bird watching activities and nature walks.

15. Defendant Akzo is a corporation incorporated in the State of Delaware and maintains its main business address at 525 West Van Buren Street, 16th Floor, Chicago, Illinois, 60607 and its principal business address at 500 Jersey Avenue, New Brunswick, New Jersey, 08903.

16. Defendant Akzo Nobel is a corporation incorporated in the State of Delaware with its main business address at 525 West Van Buren Street, Chicago, Illinois, 60607.

17. Defendant Basell is a corporation incorporated in the State of Delaware with its main business address at 912 Appleton Road, Elkton, Maryland, 21921.

FACTS COMMON TO ALL CLAIMS

Site Description, Ownership, and Operations

18. The Site is located on Meadow Lane, Block 366B, Lots 14A, 15, 16, 14D-1 and 4B-1 in the Township of Edison and is approximately 97 acres.

19. Waste handling began at the Site in 1900.

20. Benzene and benzene derivative products have been manufactured at the site since the 1920's and chemical wastes have been buried at the Site since the start of operation.

21. Stauffer Chemical Company ("Stauffer") operated an organic chemical manufacturing plant at the Site. Stauffer produced pesticides, pharmaceuticals, ABS resins, and chemical intermediaries.

22. In 1985, Stauffer merged with and into CPI Acquisition Corporation, a wholly owned subsidiary of Cheesebrough-Pond's Inc., which triggered the New Jersey Environmental Cleanup Responsibility Act ("ECRA") now known as the New Jersey Industrial Site Recovery Act ("NJISRA").

23. On or about March 18, 1985, NJDEP entered into an Administrative Consent Order ("ACO") with Stauffer requiring Site investigation and remediation.

24. Pursuant to mergers, stock purchases, name changes, and other corporate transactions commencing in 1987, the Site was eventually owned and operated by Akzo.

25. All responsibility for completing the pending ECRA site evaluation and necessary remedial action was transferred to Akzo.

26. On or about March 27, 2006, an Amendment to the ACO was executed allowing Akzo to sell the facility to Basell.

Site Contamination and Release of Hazardous Substances Into the Wider Environment

27. A wide range of hazardous chemicals were produced or used during the manufacturing process at the Site and have been documented as being present at the Site.

28. Releases of site-related hazardous substances to the wider environment have occurred and are ongoing as a result of facility and waste disposal operations.

29. In 1985, Stauffer listed fifty-seven areas of environmental concern (“AEC”), forty-five historic spills, ninety-five chemical storage tanks, numerous drum storage areas, and eleven old burial sites where various wastes, including distillation residues, tars, septic wastes and chlorinated semi-liquids were disposed.

30. NJDEP reports from inspections conducted in 1985 noted numerous deficiencies at the Site including soils “visibly stained from drips, spills, and/or leaks of raw materials, intermediaries, products, fuels and waste.”

31. NJDEP inspectors noted fluids orange in color with an “organic sheen on the surface” emanating from the bank of the Raritan River hydraulically down gradient from the Site’s groundwater interceptor trench. Hardened black tar was also observed on the riverbank.

32. The USEPA Preliminary Assessment reported, among other things, on-site disposal of sludge and tars, including impoundment of sludge in settling basins and buried drummed waste containing benzyl cyanide tar residue, chloromethylated thiophene, thiophene acetyl chloride residue, solvents and other chlorinated aliphatic and aromatic hydrocarbons.

33. The USEPA Preliminary Assessment noted numerous releases of hazardous waste, buried drums of questionable integrity, leaking above-ground drums and partially buried containers, an inadequate wastewater collection piping system and wastes present along the bank of the Raritan River.

34. The USEPA identified buried drums at the Site containing liquid waste and suspected benzyl cyanide tar residue among a list of other wastes and process materials.

35. Two burial sites were located within 250 feet of the Raritan River, and broken drum fragments and a black solvent-like liquid were revealed in that area.

36. Drums containing liquid waste were stored on bare soil approximately 250 feet from the Raritan River with no runoff containment measures and inspections revealed the soil in the area was stained and a “bitter odor” emanated from the pile.

37. Contaminated liquids containing benzene, toluene, chloroform, ethylbenzene, xylene, phenols, cyanide, iron, chromium, zinc, nickel, cadmium, oil and grease reportedly discharged off-site and directly into the Raritan River.

38. Waste Area 7, identified as AEC 29, is located in the southwest section of the Site and encompasses two former settling ponds that received residue from plant operations.

39. Investigation of AEC 29 revealed high concentrations of volatile organic compounds (“VOCs”), base neutrals and acid-extractable semi-volatile organic compounds (“SVOCs”), metals (antimony, arsenic, beryllium, lead, mercury, selenium and zinc), phenolics, cyanide and petroleum hydrocarbons above NJDEP screening values with concentrations increasing with depth.

40. Waste Area 11 identified as AEC 33 is located in the southeast section of the Site and is a historic disposal area for sludge, tar wastes and debris.

41. Investigation of AEC 33 revealed metals (antimony, arsenic, beryllium, lead, mercury, selenium and zinc), VOCs, SVOCs, phenolics and cyanide present in concentrations exceeding screening criteria.

Recent and Continuing Discharge and Release of Site Related Contaminants and Solid Waste
Into the Wider Environment

42. The same toxic chemicals and metals that were deposited and dumped on the Site historically continue to discharge into the Raritan River.

43. On or about March 27, 2007, twenty-two years after execution of the ACO and twenty years after Akzo and Akzo Nobel assumed responsibility for remediation of the Site; a visible steady seep with a distinct sheen flowing from the bank of the Raritan River that borders the south side of the Site was identified.

44. The seep occurs approximately twenty feet from AEC 33 and discharges directly into the Raritan River.

45. The seep flows out of a deposit of wastes, including black tar and corrugated asbestos.

46. The seep discharges into the Raritan River approximately 100 yards upstream from the Edison Municipal Boat Basin.

47. Members of the public and members of EWA use the Edison Municipal Boat Basin for fishing, crabbing and recreational boating among other activities.

Seep Sampling Results

48. Sampling of the seep conducted on March 27, 2007 and April 10, 2007, identified high concentrations of VOCs, including benzene, 2-chlorotoluene, 4-chlorotoluene and toluene, and SVOCs, including aniline and 4-chloroaniline.

49. Concentrations of benzene in the seep samples exceeded both NJDEP groundwater and surface water criteria.

50. Benzene is toxic to humans, animals and aquatic organisms and is a known carcinogen.

51. Concentrations of 2-chlorotoluene in the seep samples ranged from 0.27 mg/l to 0.49 mg/l.

52. 2-chlorotoluene is toxic to aquatic organisms at concentrations above 0.14 mg/l.

53. 4-chlorotoluene is also toxic to aquatic organisms and identified at concentrations ranging from 0.16 to 0.24 mg/l in the seep samples.

54. NJDEP regulations provide a general standard that states “[t]oxic substances shall not be present in concentrations that cause acute or chronic toxicity to aquatic biota, or bioaccumulate within an organism to concentrations that exert a toxic effect on that organism or render it unfit for consumption.” N.J.A.C. 7:9B-1.14(c)(12).

55. Concentrations of both 2-chlorotoluene and 4-chlorotoluene in the seep violate the NJDEP general standard.

56. NJDEP further specifies 0.1 mg/l as the groundwater quality criteria concentration not to be exceeded for non-carcinogens. N.J.A.C. 7:9C, Appendix Table 2.

57. Concentrations of both 2-chlorotoluene and 4-chlorotoluene in the seep violate the NJDEP groundwater quality criteria.

58. Aniline was present in both seep samples at concentrations of 0.31 to 0.38 mg/l exceeding the NJDEP’s groundwater criteria of .006 mg/l.

59. The SVOC aniline is very toxic to aquatic organisms.

60. The March 27, 2007 sampling of the seep identified 4-chloroaniline at concentrations above the NJDEP groundwater quality criteria.

61. 4-chloroaniline was identified on site in monitoring wells OW-16 and RW-17.

62. 4-chloroaniline is a compound that may be acutely toxic to humans and animals and is a known carcinogen.

63. Pesticides heptachlor and DDT were present in the initial seep sampling at concentrations above their respective NJDEP surface water and groundwater standards.

64. The metals antimony and lead were present in the initial seep sampling at concentrations well above their respective NJDEP surface water and groundwater standards.

Soil and Sediment Sampling Results

65. Sampling of the soil in the vicinity of the seep revealed high levels of metals, VOCs, and SVOCs exceeding the New Jersey Residential Direct Contact Soil Cleanup Criteria (“Residential Soil Standards”).

66. The concentration of metals arsenic, antimony, and lead in the soil samples each exceeded respective NJDEP’s Residential Soil Standards.

67. Xylene and toluene were present in the soil samples at concentrations exceeding NJDEP’s Residential Soil Standards.

68. 4-chloroaniline and seven polycyclic aromatic hydrocarbon (“PAH”) compounds were present in the soil samples at concentrations above NJDEP’s Residential Soil Standards.

69. 2-chlorotoluene and 4-chlorotoluene were consistently present in the soil samples.

70. Sediment sampling was conducted on a gently sloping mudflat of the Raritan River exposed at low tide.

71. Sediment sampling and laboratory results identified VOCs, SVOCs and metal concentrations exceeding regulatory standards at a level indicating potential adverse impacts to aquatic organisms.

72. Xylene was present in sediment samples at concentrations above NJDEP’s Sediment Screening Criteria.

73. Concentrations in the sediment samples of arsenic, antimony, cadmium, chromium, copper, lead, mercury, nickel and zinc each exceeded respective NJDEP’s Sediment Screening Criteria.

Solid Waste Sampling Results

74. Solid waste, tar waste and corrugated asbestos material are visible along the shoreline of the Site and continually erode from the bank of the Raritan River at high tide.

75. Sampling of the tar waste revealed high levels of PAHs above NJDEP Residential Soil Standards.

76. VOCs 2-chlorotoluene, 4-chlorotoluene, toluene, xylene and naphthalene and SVOCs benzoic acid, benzyl alcohol, and tribenzylamine were also present in the tar sampling.

77. Corrugated materials on the shoreline were sampled and identified as 10% chrysotile asbestos.

Tribenzylamine

78. Tribenzylamine was historically manufactured at the Site and was present at significant concentrations across the entire Raritan River bank adjacent to the southern border of the Site.

79. Tribenzylamine was identified in the tar waste sample at high concentrations.

80. Thirteen out of the fourteen downstream sediment sampling locations identified tribenzylamine, demonstrating downstream chemical transport.

Responsible Parties and Government Failure to Abate the Contamination

81. More than twenty-two years have passed since execution of the ACO dated March 18, 1985.

82. On or about April 10, 2007, pursuant to EWA notifying NJDEP of the seep discharging off site into the Raritan River, NJDEP conducted an inspection of the Site.

83. On or about April 20, 2007, NJDEP issued a Notice of Deficiency to Akzo Nobel (“NOD”).

84. In addition to the seep, the NOD listed the following deficiencies:

- a. failure to conduct additional remediation as required;
- b. failure to evaluate the evidence of discharges to surface water or sediment
- c. failure to delineate the horizontal and vertical limits of contamination to applicable remediation standard; including the extent to which contamination has migrated off the property.
- d. failure to properly conduct site investigation of surface water and sediment;
- e. failure to properly conduct the remedial investigation of surface water, wetlands and sediment in accordance with general technical requirements; and,
- f. failure to conduct a Baseline Ecological Evaluation according to general technical requirements.

85. On or about June 26, 2007, Akzo Nobel's consultant, Sovereign Consulting, Inc. ("Sovereign") submitted to NJDEP a letter in response to the NOD, conducted seep and sediment sampling, and attached a Baseline Ecological Evaluation Addendum ("BEE Addendum") and Remedial Investigation Report/Remedial Action Workplan Addendum ("RIR/RAWA").

86. Sovereign's seep sampling identified the VOC benzene at a concentration of 129 µg/l, well above the NJDEP surface water quality standard of 0.15 µg/l.

87. Sovereign's seep sampling identified arsenic at a concentration of 9.5 µg/l, well above the NJDEP surface water criteria of 0.017 µg/l.

88. Sovereign's sediment samples show high levels of toluene and xylene above NJDEP sediment criteria and indicate potential adverse impact to aquatic organisms.

89. Sovereign's sediment samples across the entire sampling area show elevated levels of metals and SVOCs that exceed the NJDEP sediment criteria and indicate potential adverse impact to aquatic organisms.

90. On or about July 25, 2007, NJDEP issued a comment review letter in response to the RIR/RAWA submitted by Sovereign.

91. In its comment review letter dated July 25, 2007, NJDEP found Sovereign's proposed remedial action of debris removal and stream bank restoration failed to address containment and stabilization of contaminants, contaminant exposure to the Raritan River and the prevention of further movement of contaminants through the pathway (groundwater) in accordance with N.J.A.C. 7:26E-6.3(a), and required Akzo Nobel to implement active remediation of ground water.

92. On or about August 7, 2007, Sovereign submitted to NJDEP a revised remedial action proposal in response to NJDEP's review letter dated July 25, 2007.

93. On or about August 23, 2007, EWA received Sovereign's revised remedial action proposal.

94. On or about August 24, 2007, EWA's consultant Chapin Engineering submitted on behalf of EWA a comment report on Sovereign's revised remedial action proposal to NJDEP.

95. The Chapin Report dated August 23, 2007, noted several deficiencies and inconsistencies in the revised remedial action proposal in addressing the seep.

96. By letter dated September 13, 2007, NJDEP approved Sovereign's revised remedial action proposal with a few modifications.

97. Prior to formal NJDEP approval, Sovereign began implementation of the revised remedial action proposal to address the seep. Implementation of the revised remedial action proposal was completed by September 13, 2007.

98. On or about October 21, 2007, the seep from the Akzo property was still active and discharging into the Raritan River.

99. On or about October 23, 2007, a second visibly active seep with a distinct sheen flowing from the bank of the Raritan River that borders the south side of the Site was identified. The second seep is located east of the original seep and discharges as sheet flow toward and into the Raritan River.

100. On or about October 23, 2007, a tar deposit in the reeds above the second active seep was identified.

101. On or about October 23, 2007, sampling of the first active seep originally identified and previously sampled on March 27, 2007 and April 10, 2007 was conducted.

102. Laboratory analysis of the sampling conducted on October 23, 2007 indicate site related contaminants are still present in the seep and continue to discharge into the Raritan River.

103. The first active seep continues to discharge from an area of waste deposits, and continues to flow through a piece of corrugated asbestos material embedded in the riverbank as previously observed in March and April 2007.

104. The soil around and below the seep has a multi-colored sheen, the same as previously observed on March 27, 2007 and April 10, 2007.

105. On or about October 23, 2007 and November 2, 2007, exposed waste deposits were still visibly present along the shoreline of the Site, including tar, corrugated asbestos and demolition rubble and debris, and continue to discharge into the Raritan River at high tide.

106. On or about November 2, 2007, the flow of the initial seep was greater than observed and measured on October 23, 2007.

107. Notwithstanding complete implementation and operation of Sovereign's revised remedial action proposal, the seep remains active and continues to discharge site related contaminants into the Raritan River.

108. Defendants have failed to implement an effective permanent measure to abate the seep discharging into the Raritan River.

109. Defendants have failed to implement an effective permanent measure to stop waste deposits, including tar, corrugated asbestos and demolition rubble and debris, from eroding and discharging into the Raritan River.

110. Defendants have failed to implement interim economically feasible measures to control and/or abate the seep discharging into the Raritan River.

111. Defendants have failed to implement interim economically feasible measures to mitigate and/or stop waste deposits, including tar, corrugated asbestos and demolition rubble and debris, from eroding and discharging into the Raritan River.

112. No comprehensive remedial measures have been implemented at the Site that eliminate the discharges of solid and hazardous wastes from the Site or to effectively clean up the Site.

113. No remedial measures have been implemented that eliminate contaminated sediments on the Site or sediments in the Raritan River that have been contaminated by discharges from the Site.

CLAIM FOR RELIEF

114. Plaintiff incorporates paragraphs 1 through 113 as though fully set forth herein.

115. RCRA authorizes citizen suits against

against any person . . . including any past or present generator, . . . or past or present owner or operator of a treatment, storage or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

42 U.S.C. § 6972(a)(1)(B).

116. Defendants have contributed to, and/or are contributing to, the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste, which may present an imminent and substantial endangerment to public health and/or the environment within the meaning of 42 U.S.C. § 6972(a)(1)(B).

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully request this Court to grant the following relief:

- A. A declaration that Defendants are and/or have contributed to the past or present handling storage, treatment, transportation or disposal of solid and hazardous waste which may present an imminent and substantial endangerment in violation of section 7002(a)(1)(B) of RCRA, 42 U.S.C. §6972(a)(1)(B);
- B. A temporary and permanent injunction compelling Defendants to stop the ongoing discharge of pollutants, including contaminated groundwater and hazardous and solid waste into the Raritan River and the wider environment;
- C. A temporary and permanent injunction compelling Defendants to remove all waste along the Raritan River floodplain, including waste imbedded in the river bank;

- D. An Order compelling Defendants to implement an effective groundwater recovery and treatment system to control and abate discharge of contaminants off site into the wider environment;
- E. An Order compelling Defendants to complete a comprehensive investigation and study to properly evaluate and delineate on Site contaminants and contaminant migration into the wider environment, including delineation and evaluation of contaminated sediments in the Raritan River;
- F. An Order compelling Defendants to conduct an ecological impact study that includes the Raritan River and other affected areas;
- G. An Order compelling Defendants to implement effective remediation on Site and to remediate and restore the off Site affected areas that have been and are being impacted by Defendants' violations, including contaminated sediments in the Raritan River;
- H. An Order compelling the accurate assessment of all economic benefit accruing to Defendants as a result of noncompliance or delayed compliance with RCRA;
- I. An Order compelling Defendants to pay maximum civil penalties per day for each day of each violation of the RCRA;
- J. An award for Plaintiff's costs for investigation, inspection, sampling, monitoring and other costs to establish violations and for preparing and litigating this action, and for reasonable attorney fees and expert witness fees, as provided for under RCRA, 42 U.S.C. §6972(e), and the Equal Access to Justice Act, 28 U.S.C. §2412(d)(1)(A), and other applicable laws; and
- K. Such other and further relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Richard Webster

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January 22, 2008

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

The matter in controversy is not the subject of any other action pending in any other court, or of any pending arbitration or administrative proceeding.

/s/ Richard Webster _____
RICHARD WEBSTER