

the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, the “Plaintiffs”), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, file this Complaint against the above-named defendant (the “Defendant” or “Sherwin-Williams”), and allege as follows:

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 through -23.24, the Water Pollution Control Act (the “WPCA”), N.J.S.A. 58:10A-1 through -20, the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq., and the common law, for reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances and pollutants at the Sherwin-Williams/Hilliards Creek Superfund Site (the “SW/HC Site”), United States Avenue Burn Superfund Site (the “Burn Site”), and Route 561 Dump Site (the “Dump Site”), which are located in the areas of Gibbsboro, Voorhees, and Lindenwold, Camden County, New Jersey (collectively, the “Sites”).

2. Beginning in 1851 and continuing until the late 1970s, Sherwin-Williams and its predecessors manufactured, stored, transported, used, disposed of, and discharged a substantial amount of hazardous substances and industrial chemicals – notably lead, arsenic, and other heavy metals – at the Sites. These hazardous substances are extremely toxic to humans, biota, and wildlife. Hazardous wastes continue to move through groundwater, sediment, soil, surface waters, wetlands, and other natural resources at the Sites. The Sites encompass and are adjacent to surface waters – Bridgewood Lake, the Cooper River, Honey Run, Hilliards Creek, Kirkwood Lake, Silver Lake, and White Sand Branch – as well as freshwater wetlands, residential neighborhoods, and

commercial areas. The natural resources at the Sites – groundwater, soils, sediments, surface waters, freshwater wetlands, biota, and others – are injured by hazardous substances and pollutants such as arsenic, lead, pentachlorophenol, certain polycyclic aromatic hydrocarbons (“PAHs”), benzene, Light Non Aqueous Phase Liquid (“LNAPL”), including volatile organic compounds (“VOCs”) and semi-volatile organic compounds (“SVOCs”), and naphthalene.

3. Sherwin-Williams discharged and disposed of substantial amounts of hazardous substances over decades at the Sites and was aware of the ongoing contamination as it was happening. But Sherwin-Williams failed to timely disclose or notify DEP of all of the contamination, and thus thwarted the prompt containment and removal of hazardous substances.

4. For many years, Sherwin-Williams ignored orders to address contamination at the Sites and repeatedly issued misleading or inaccurate statements in site document submittals to downplay its responsibility for the contamination. For example, Sherwin-Williams failed to respond to DEP orders of January 12, 1978, and April 24, 1978, to remove and dispose of all existing dried sludges from landfill and wastewater disposal practices that resulted in groundwater contamination. Sherwin-Williams failed to comply with DEP’s March 3, 1987 “Telegram Order” to immediately begin containment of petroleum seeps at the manufacturing plant portion of the Sites.

5. Sherwin-Williams’ recalcitrance continued into the 1990s. On November 22, 1994, DEP issued a Spill Act Directive to Sherwin-Williams to secure the Burn Site or conduct a removal action to prevent direct human contact. Sherwin-Williams did not timely and satisfactorily comply with the Directive.

6. Around 1996, DEP documented that its negotiations with Sherwin-Williams were becoming “complicated and difficult” because of the “extensive areas which have already been identified as contaminated and the reluctance of the Sherwin Williams Company to commit to the expanding investigation which is needed to properly delineate the entire site of contamination.” Between 1992 and 2001, Sherwin-Williams submitted at least four deficient remedial investigation reports for the SW/HC Site to DEP. On multiple occasions from 1998 to 2000, DEP found that Sherwin-Williams had submitted site documents containing “misleading” and “inaccurate” information. As a result of Sherwin-Williams’ defiance, DEP eventually transferred primary oversight responsibilities for the Sites to EPA in an effort to force Sherwin-Williams to adequately address the contamination at the Sites.

7. Sherwin-Williams stymied clean-up efforts even though it knew that it had heavily contaminated the Sites with hazardous substances over decades. There were numerous fires at the paint manufacturing complex, including on February 21, 1930, February 21, 1940, and July 30, 1949. During the July 30, 1949 fire, “highly flammable cellulose or gum cotton used in lacquer manufacturing ignited in the hot summer sun” and approximately “one thousand 50 and 100 gallon drums containing thinners and lacquer exploded in the fire, many being sent high into the air.” Because of these fires, hazardous pollutants were discharged to soils, groundwater and surface waters at and around the plant facility. A historical and architectural record of the site recalled the longstanding pollution caused by the site activities and the “severe impact of the chemical by-products of the [plant facility].” The historical review recounted the pollution at the Sites that “had been a problem for paint operations even in the 19th century”:

At Gibbsboro, the varnish operation produced air pollution and the lacquer and paint operations produced highly toxic liquid waste. At one time, arsenic waste

water was produced from the color works. This latter by-product was pumped to an open field outside the village as late as the 1930's. Some residents recall this field frequently catching fire in the summer sun. Some recall a time when the creek itself below the plant caught fire when solvents on its surface ignited.

The review recounted that during the early and mid-1970s, the company "considered the possibility of closing" the plant, and the "problems associated with environmental protection compliance were commonly thought to be the reason." For example, in 1976 a Sherwin-Williams engineer concluded that additional sampling at the Sites "may just end up proving that we do, in fact, have very contaminated soil," and that Sherwin-Williams "may be forced to give up the wastewater ponds along with the sludge dewatering ponds."

8. Plaintiffs seek costs, damages, and other relief for injuries to natural resources of the State, including groundwater, surface waters, sediments, wetlands, soils, air, and biota, resulting from Defendant's discharges of hazardous substances and pollutants at and from the Sites. Such costs and damages include, but are not limited to: the costs of restoring natural resources of the State to their pre-discharge condition; the costs of replacing natural resources; damages for the loss of use and value (including existence value) of natural resources; the costs of assessing natural resource injuries and damages; the unreimbursed costs of investigation, oversight, and remediation; punitive damages; litigation fees and costs; and pre-judgment interest.

THE PARTIES

9. The DEP is a principal department within the Executive Branch of the New Jersey State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9; N.J.S.A. 58:10-23.11b; N.J.S.A. 58:10A-3.

10. The State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction. 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.

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

12. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund (the "Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, the 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.

13. Defendant The Sherwin-Williams Company ("Sherwin-Williams") is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business located at 101 West Prospect Avenue, Cleveland, Ohio, 44115.

NATURAL RESOURCES

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

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

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

AFFECTED NATURAL RESOURCES

Groundwater

17. Groundwater is a vital 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.

18. Groundwater is a source of potable water, and also an integral part of the State's ecosystem.

19. New Jersey residents rely on private wells, which provide access to groundwater, in communities around the Sites. These wells are used for drinking water, irrigation, and other purposes.

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

21. Groundwater provides cycling and nutrient movement and ground stabilization, prevents salt water intrusion and sinkholes, and maintains critical water levels in freshwater wetlands.

22. Groundwater 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.

23. Hazardous substances and pollutants discharged at the Sites, including but not limited to, benzene, lead, and pentachlorophenol, have reached and injured the groundwater at the Sites.

Surface Waters

24. Surface waters are also a vital resource of the State. New Jersey's surface water – which includes all water in the State's lakes, streams, and wetlands – is a significant source of drinking water in the State. Nearly half of New Jersey's population obtains its drinking water from surface water sources, and approximately 850 million gallons of surface water per day is used for that purpose.

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

26. Surface waters also provide commercial, recreational, aesthetic, and ecological value, including by supporting aquatic ecosystems, nearby communities, and the citizens of the State.

27. The tourism and recreation industries are dependent on clean water and beaches, and are vital to the State's economy.

28. The surface waters located at or adjacent to the Sites include, but are not limited to: Bridgewood Lake, the Cooper River, Honey Run, Hilliards Creek, Kirkwood Lake, Silver Lake, and White Sand Branch.

29. Hazardous substances and pollutants discharged at the Sites, including but not limited to arsenic and lead, have reached and injured the surface waters at the Sites.

Wetlands

30. Wetlands are another vital resource in New Jersey, and along with land and aquatic resources comprise unique and complex ecosystems.

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

32. Healthy wetlands sustain a wide diversity of plants and animals that are essential in a healthy food chain, and perform many additional functions, including the improvement of water quality, sediment trapping, groundwater recharge, shoreline protections, and protection of land from flooding and erosion.

33. There are freshwater wetlands at or surrounding the Sites. Wetlands are located along almost the entire length of Hilliards Creek, among other locations.

34. Hazardous substances and pollutants discharged at the Sites, including but not limited to, arsenic and lead, have reached and injured the wetlands at the Sites.

Sediments and Soils

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

36. Sediments and soils are vital components of New Jersey's ecological resources.

37. Sediments and soils can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments are a vital part of the State's ecosystems that provide a living substrate for submerged and emergent flora, and support diverse invertebrate species, wading birds, and fish and shellfish populations.

38. Hazardous substances and pollutants discharged at the Sites, including but not limited to, arsenic, ethyl benzene, lead, naphthalene, and xylene, have reached and injured soils and sediments at the Sites.

Biota

39. Biota, including the flora and fauna of the State, are another category of vital ecological resources. 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% 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 wiped out.

40. 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.

41. At least 17% of New Jersey's native vertebrate species and 24% 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.

42. 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.

43. 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.

44. 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.

45. Swamp Pink, a State endangered and federally threatened plant, was at one time found adjacent to or within the Dump Site but was no longer present as of 2018.

46. Hazardous substances and pollutants discharged at the Sites, including but not limited to, arsenic and lead, pose unacceptable risks to, and have injured, various biota at the Sites.

Air

47. Air resources are vital to life. Pollution of air resources can injure human health and welfare, flora and fauna, and property, and can unreasonably interfere with the enjoyment of life and property in areas affected by such pollution. Air deposition (i.e., air contaminants deposited on the earth's surface) can also be a source of contamination to other types of natural resources, including groundwater, surface water, sediments and soils, wetlands, forests, and biota.

48. Upon information and belief, air pollution from historic activities at the Sites, including but not limited to, varnish operations, and numerous fires, has contaminated natural resources at or near the Sites.

49. When subsurface air is contaminated with VOCs, such as methane, the subsurface air (i.e., soil gas) can become a source of contaminated air to the structures above, causing vapor

intrusion. There is a groundwater plume at the Former Plant site and a small portion of the Burn Site that has released VOCs including methane.

GENERAL ALLEGATIONS

Site Descriptions

50. Three related sites now collectively make up what is commonly referred to as the Sherwin-Williams Sites: (1) the Sherwin-Williams/Hilliards Creek Superfund Site (the “SW/HC Site”); (2) the United States Avenue Burn Superfund Site (the “Burn Site”); and (3) the Route 561 Dump Site (the “Dump Site”). Both the Burn Site and the Dump Site are source areas related to historic dumping and burning activities associated with the former Sherwin-Williams Company manufacturing plant (“Former Plant”), which is located at the SW/HC Site. *See* Exhibit A.

51. In 2008, EPA listed the SW/HC Site on the National Priorities List (“NPL”). EPA placed the Burn Site on the NPL in 1999. EPA proposed the Dump Site to the NPL in 1998, although this listing was never finalized. The NPL is a nationwide list of hazardous waste sites posing the greatest threat to health, welfare, and the environment.

The SW/HC Site

52. The SW/HC Site includes three separate areas: the site of the former Sherwin-Williams Company manufacturing plant (the “Former Plant area”), Hilliards Creek, and Kirkwood Lake. *See* Exhibit B.

53. The Former Plant area of the SW/HC Site is approximately 20 acres, and includes commercial buildings constructed after the plant closed, undeveloped land, freshwater wetlands, and the southern portion of Silver Lake. *See* Exhibit C. Historically, Silver Lake was used for swimming.

54. The Former Plant area straddles the headwaters of Hilliards Creek, which is formed by the outflow from Silver Lake. Hilliards Creek, along with Honey Run and White Sand Branch, form the south branch of the Cooper River. The outflow of Hilliards Creek enters a culvert beneath a parking lot at the Former Plant and resurfaces on the south side of Foster Avenue, Gibbsboro, New Jersey. From this point, Hilliards Creek flows in a southerly direction through the Former Plant area and continues downstream through residential and undeveloped areas.

55. At approximately one mile from its origins, Hilliards Creek empties into Kirkwood Lake, which is located in Voorhees, New Jersey.

56. Kirkwood Lake is approximately 25 acres, and has residential properties lining its north shore. Kirkwood Lake in turn flows into the Cooper River, which in turn flows northwest until it joins the Delaware River near Philadelphia. During the 1920s, the area surrounding Kirkwood Lake was one of the leading recreational areas in eastern Camden County, and Kirkwood Lake was known for its excellent swimming and boating facilities.

The Burn Site

57. The Burn Site is located directly south of the Former Plant area, and is approximately 19 acres in size. EPA has divided the Burn Site into six areas based on current use and zoning: the Burn Site Fenced Area, the Burn Area, the Landfill Area, White Sands Branch, Honey Run,¹ and the Railroad Track Area. The Burn Site is composed of undeveloped land, woodlands, freshwater wetlands, and two small creeks. *See* Exhibit D.

58. The Burn Site Fenced Area is located on the east side of United States Avenue and is comprised of 12.7 acres surrounded by an eight-foot chain link fence to protect the public from

¹ Honey Run is sometimes referred to as “Haney Run” or “Green Briar Branch.”

the toxic contamination at the site. Sherwin-Williams installed the fence around the Site in September 1995 pursuant to an EPA Administrative Order on Consent.

59. The Burn Area is approximately 0.4 acres of fenced area located within the northwest corner of the Burn Site Fenced Area. Sherwin-Williams burned combustible waste, such as paint waste, spent solvents, empty pigment bags and broken pallets, in this area. Sherwin-Williams fenced the area in July 1995 pursuant to a DEP directive to protect the public from the toxic contamination at the site.

60. The Landfill Area is located in the southern portion of the Burn Site Fenced Area. Sherwin-Williams deposited material dredged from plant wastewater lagoons and facility trash in disposal pits within this area. The majority of the sludge material was removed from the Landfill Area in 1979 pursuant to a DEP Administrative Order.

61. White Sand Branch is a small stream with headwaters originating at Clement Lake. It flows through the Dump Site and along the south side of the Vacant Lot of the Dump Site before it enters the northeast corner of the Burn Site. From there, it flows across the northern portion of the Burn Site and joins Honey Run just east of U.S. Avenue, and discharges through a culvert beneath U.S. Avenue into Bridgewood Lake. Historically, Bridgewood Lake was used for swimming.

62. Honey Run is a stream that runs from the southeastern corner of the Burn Site to the point where it joins White Sand Branch and discharges into Bridgewood Lake.

63. The Railroad Track Area consists of the railroad track and the area between United States Avenue and Bridgewood Lake, located west of U.S. Avenue. This area commences at the northern end of Bridgewood Lake and extends 600 feet to the south.

The Dump Site

64. The Dump Site is located approximately 700 feet to the east of the Former Plant area, at the base of an earthen dam that forms Clement Lake. It is approximately 8 acres and is composed of commercial, residential and undeveloped land, freshwater wetlands, and a small creek. EPA has subdivided the Dump Site into four areas based on current use and zoning: the Dump Site Fenced Area, the Northeast Commercial Lot (formerly known as the Northern Commercial Area), the Vacant Lot and Vacant Lot Developed Area (now known as the Northwest Commercial Lot or Southwest Commercial Lot), and White Sand Branch. *See* Exhibit E.

65. The Dump Site Fenced Area is a 2.9-acre fenced area located along the east side of Route 561 (South Lakeview Drive) near the intersection with Kresson Gibbsboro Road. The northern portion is characterized by a steep slope and the southern portion contains freshwater wetlands. EPA installed the fencing in 1995 to protect the public from toxic contamination at the Site.

66. The Northeast Commercial Lot abuts the north side of the Dump Site Fenced Area. There is one building in the Northeast Commercial Lot that houses a number of retail businesses. A paved parking lot surrounds much of the building, and grassy areas form a buffer between Route 561 and the Northeast Commercial Lot.

67. The Vacant Lot and Vacant Lot Developed Area are on the west side of Route 561 across from the Northeast Commercial Lot and the Dump Site Fenced Area. There is an office complex and commercial buildings in the northeast portion of the Vacant Lot Developed Area, near the corner of Route 561 and Marlton Avenue. The Vacant Lot Developed Area is zoned

commercial. In contrast, the Vacant Lot is undeveloped and is characterized by grassy and wooded areas and is zoned residential.

68. White Sand Branch flows through the Dump Site. White Sand Branch and its flood plain, from Clement Lake to the fence line of the Burn Site, are part of the Dump Site.

Historical Operations on the Sites

69. The Former Plant property was originally developed in the early 1800s as a saw mill, and later as a grain mill.

70. In 1851, John Lucas & Company, Inc. (“JLC”) purchased the property and converted the grain mill into a paint and varnish manufacturing facility that produced oil-based paints, varnishes and lacquers.

71. From approximately 1852 to 1930, JLC stored, utilized, and generated hazardous substances. JLC primarily manufactured white lead paint, varnish, and lacquer, as well as: dry colors produced from chemical reactions, blending, filtering, and drying; oil-based paints produced from grinding pigments in oil and adding thinners, oils, and hardeners; and ready-mixed linseed oil paints produced from blending linseed oil with pigments and thinners. JLC used as basic pigments lead and zinc oxides, white lead, non-lead chrome green, and chrome yellow. White lead was ground at the plant.

72. Many of the buildings on the JLC plant site were used to store paint and drums containing hazardous substances. JLC stored materials including varnish, colors, oil, lacquer, paint, dry colors, coal, and sludge. JLC used raw materials including calcined acetate of lead, lead oxide, zinc oxide, lead chromate, ferrous sulfate, sulfuric acid, linseed oil, and various paint solvents. The operations south and southwest of Silver Lake involved manufacturing, refining,

storing, handling, and transporting hazardous substances above ground and below ground. These areas contained drums of oils and varnishes and tank farms and railroad tankers of lacquers, solvents, caustic solutions, and petroleum-based products.

73. JLC steadily expanded through the late nineteenth and early twentieth centuries. For example, during the 1880s, storage tanks for oils and oil-based paints were installed in the area of the plant site known as “Tank Farm A.” By the 1880s, the plant had the capacity to grind and crush 60,000 pounds of paint ingredients per day. A number of new buildings, as well as a major manufacturing facility, were added between 1900 and 1930. In the early 1930s, the plant encompassed thirty-five separate buildings.

74. During this time, JLC was among the largest producers of paint and varnish in the United States, based upon production at its Gibbsboro plant and at three other JLC operations around the country (of which the Gibbsboro plant was the largest). In 1913, an advertisement boasted that the plant was the “largest and best equipped paint factory in the world.”

75. Sherwin-Williams merged with JLC in 1930. Sherwin-Williams thereafter expanded operations at the facility, but retained the name “John Lucas and Company” due to its wide market recognition and operated the company as a subsidiary. Specifically, pursuant to an agreement dated December 24, 1929 between Sherwin-Williams and JLC, Sherwin-Williams created a new corporation incorporated under the laws of Delaware known as “John Lucas & Co., Inc.” From 1930 to 1935, John Lucas & Co., Inc. operated as a subsidiary of Sherwin-Williams. On or about August 14, 1935, a Maryland corporation known as “John Lucas & Co., Inc.” was formed, and this latter corporation was merged into Sherwin-Williams on August 28, 1967.

76. From approximately 1930 onwards, Sherwin-Williams manufactured various products at the plant, including dry colorants, varnishes, lacquers, resins, and oil-based and water-based (emulsion) paints.

77. The Sherwin-Williams plant included an area for unloading raw materials from railroad cars; tank farms for raw materials including storage tanks constructed prior to 1908; storage areas for drummed raw materials; an industrial and domestic wastewater treatment and disposal system consisting of unlined percolation/settling lagoons; a solid waste disposal area for paint sludges; an extensive system of pipes to transport raw materials; and a drum cleaning area.

78. Sherwin-Williams mixed and processed raw materials in several specialized buildings in the plant. Among the raw materials stored at the plant were a number of solvents, including V.M.&P. naphtha,² xylene, mineral spirits, toluene and solvent blends, and aromatic naphtha. In addition, Sherwin-Williams used and stored thousands of gallons of hazardous materials including lead oxide, zinc oxide, lead chromate, ferrous sulfate, sulfuric acid, titanium dioxide, polymers, pigments, linseed oil, soya oil, ray linseed oil, mineral spirits, refined linseed oil, glycerin, isobutyl alcohol, c.p. acetone, methyl amyl acetate, isopropyl acetate, lacquer solvent, toluene, toluene-based solvent blend, methyl ethyl ketone, ethyl acetate, methyl butyl ketone, aromatic naphtha, and pulp pigments to produce finished products at the site.³

² V.M.&P naphtha refers to “Varnish Makers & Painters” and is a quick drying solvent.

³ For example, a 1974 “Spill Prevention Control and Countermeasure Plan” prepared by Sherwin-Williams records the following quantities of materials stored in tanks at the plant: isobutyl alcohol (10172 gallons), acetone cp (6465 gallons), primary amyl acetate (6465 gallons), methyl ethyl ketone (6465 gallons), xylene (14991 gallons), lacquer dilutent (14991 gallons), toluene industrial pure (14991 gallons), isopropyl acetate (3200 gallons), 2-ethox ethyl acetate (1500 gallons), isopropanol anhydrous (9905 gallons), ester type lacquer solvent (9905 gallons), methyl normal butyl ketone (9905 gallons), aromatic naphtha (1500 gallons), vacuum bodied oil (28500 gallons), soya oil alk refined (28500 gallons), linseed oil raw (113000 gallons), mineral spirits reg. (40000 gallons), linseed oil alk. ref. (20600 gallons), elkol (4100 gallons), glycerin h. gravity (20600 gallons), odorless mineral spirits (30000 gallons), solvent 140 (19300 gallons), 50 flash naphtha (8030 gallons), xylene (15000 gallons), tall oil fatty acids (13000 gallons), toluene industrial pure (8000 gallons).

79. Sherwin-Williams stored raw materials in aboveground storage tanks (“ASTs”) and underground storage tanks (“USTs”) in two areas at the plant: Tank Farm Areas A and B. Raw materials including paint pigments also were stored in 55-gallon drums.

80. Wastewater generated from the manufacturing process was treated and disposed of in four unlined lagoons on the southern portion of the plant property.

81. Sherwin-Williams routinely discharged wastes to lagoons and holding ponds, where they were dried before being dredged and disposed of at one of the dumping areas. Prior to the installation of wastewater treatment lagoons, Sherwin-Williams’ common practice was to discharge waste directly into Hilliards Creek.

82. Sherwin-Williams discarded industrial waste from the Former Plant at the Dump Site, which was used as a paint waste dump.

83. The Burn Site also was used as a disposal site for paint wastes generated at the manufacturing facility, as well as a burn site for those same wastes. Paint wastes and solvents were dumped and/or poured onto the ground surface at the Burn Site and then burned.

84. Solvents were used to supplement the fuel in the boiler in Building 37 at the Former Plant and solvent waste from the Paint Plant which could not be re-worked into the paint was burned in the boiler. Materials in settled tanks also were burned in the boiler system.

85. Plant trash of all types was routinely burned in the Burn Site area.

86. The Burn Site’s Landfill Area was used for the disposal of paint wastes, and the storage of sludges generated from the former paint manufacturing facility’s wastewater treatment plant. The Burn Site’s Railroad Track portion, which is currently abandoned, was previously used by Sherwin-Williams to transport materials to and from the manufacturing facility.

87. Sherwin-Williams disposed of empty pigment bags, paint cans, broken pallets, and other routine plant trash at the landfill area of the Burn Site until approximately 1972. Sherwin-Williams also constructed bermed storage areas within the landfill area, which it used to store sludge between 1950 and 1977.

88. The scale of the hazardous substances processed, used, and stored at the Sites was enormous. For example, Sherwin-Williams began operating a new varnish plant at the site in May, 1956. The new varnish plant operated until 1975, and produced over 25 million gallons of varnish base.

89. Sherwin-Williams ceased operations at the Former Plant in or around 1977. In early 1981, Sherwin-Williams sold the heavily contaminated property to a private developer.

Discharges and Contamination at the Sites

1851-1981

90. Sherwin-Williams discharged numerous hazardous substances and pollutants at the Sites over decades, as described above and in further detail below.

91. According to a January 8, 1898 entry in the JLC plant diary, the “cleaning of the bottom of [Silver] lake” took place from November 1897 to January 1898, and the “whole lake except [the] stream channel was cleaned of mud until the white sand bottom was left clear,” during which 75,000 tons of soil were removed and spread on nearby fields. The same record states that “[t]his type of cleaning was apparently done at intervals as needed and was required not only to maintain volume for water power but the crucial purity of the water needed to make pigments.”

92. The removal of sediment from Silver Lake likely contaminated nearby fields. Surface runoff from the northern section of the plant, which included areas of potential soil

contamination, flowed to Silver Lake. Therefore, any contaminated sediments in Silver Lake would have been deposited in nearby fields through this series of dredging processes.

93. Historic illustrations showing areas where white lead grinding operations were conducted do not show any air emissions controls on the grinding equipment. Consequently, during these grinding operations, lead would have been released to the air and may have been deposited in Hilliards Creek and surrounding areas.

94. Many operations shown in historic illustrations of the JLC plant—e.g., boiling and cooling varnish, mixing varnish, drum storage, latex storage, solvent transport—show equipment on wooden floors or directly on the ground surface, and historic descriptions of the building indicate that these operations did not have containment structures and were not constructed to prevent spills from percolating into the underlying soil. Historic reports also indicate that the varnish operation produced air emissions and the lacquer and paint operations produced highly toxic liquid waste.

95. There were frequent fires at the plant complex because of the flammable materials used to make paint.

96. In 1905, a fire occurred in Building 32, the Varnish Filter House, of the JLC factory, where varnish was thinned and filtered. A second fire occurred on September 18, 1915, inside Building 39, which was used as a dry color paint mill at the time. The *New York Times* described this fire as “spectacular,” and reported that explosions sent embers and sparks flying, threatening nearby homes, and that the fire was fought by thousands.

97. On February 21, 1930, a fire broke out that destroyed two buildings, including Building 36, a warehouse used to store raw materials. Following the 1930 fire, materials at the JLC plant were “simply stored in the open air on the concrete slab of No. 36 which remained.”

98. As late as the 1930s, arsenic waste water produced at the plant was pumped to an open field outside the village. Some residents recall the field catching fire in the summer sun, as well as a time when the creek itself below the plant caught fire when solvents on its surface ignited.

99. Sherwin-Williams’ response in part to these contamination problems was to contain the waste water in pits behind the old Number 36 platform.

100. On February 21, 1940 and again on July 30, 1949, fires occurred at the Former Plant that “ignited thousands of gallons of drummed thinners, lacquer and other flammable materials,” including V.M.&P naphtha, xylene, mineral spirits, #6 fuel oil, toluene and solvent blends, and aromatic naphtha. As part of the July 30, 1949 fire, “highly flammable cellulose or gum cotton used in lacquer manufacturing ignited in the hot summer sun” and approximately “one thousand 50 and 100 gallon drums containing thinners and lacquer exploded in the fire, many being sent high into the air.” As a result of these fires and efforts undertaken to extinguish them, hazardous pollutants—including benzene⁴ and related compounds—were discharged to soils, groundwater and surface waters at and around the Former Plant.

101. Records from the Borough Council of Gibbsboro dated February 26, 1957, indicate that Sherwin-Williams maintained a dump in the Borough of Gibbsboro. In the same timeframe, Sherwin-Williams burned all paint thinner dumped there.

⁴ Benzene is a carcinogen sometimes found in other solvents, including naphtha.

102. A written complaint in this same time period noted the “deplorable condition” of the dump and stated that “it is on fire at all hours of the day emanating objectionable odors.” Aerial photographs beginning in or about 1940 indicate that portions of the Dump Site were devoid of vegetation and disturbed. The same photos show a road leading from Sherwin-Williams’ production facilities to the Dump Site.

103. According to one firsthand account by a Gibbsboro resident, a plant superintendent for Sherwin-Williams, stated in or around 1946 that the waste at the Dump Site was a byproduct of pigment production and that it would be covered by soils prior to a sale of a portion of the site; Sherwin-Williams did not cover the waste until almost one year later. The same resident recalled that waste was present at the Dump Site during his childhood, and referred to the waste as residue from “Prussian Blue” production.

104. Another Gibbsboro resident recalled that an area north of White Sand Branch “would burn all day and night on occasion;” that there was “blue lead arsenic waste” at the Dump Site;” and that, during the 1950s, a rainbow sheen was visible across Hilliards Creek. He also witnessed Lucas trucks “go into the [Burn Site] area and dump 1 gallon cans and dump liquids from 50 gallon drums,” where solvent would be poured on the ground and set ablaze, and described making torches by soaking cattails in material that seeped into Hilliards Creek.

105. Prior to the installation of lagoons at the former manufacturing plant, waste was discharged directly to Hilliards Creek. The creek was nicknamed “Rainbow Creek” because the water would take on different colors depending on the color of paint that Sherwin-Williams was manufacturing and/or disposing of on a given day.

106. In 1958, the New Jersey State Department of Health inspected the Former Plant to determine the “efficacy of the treatment process of the combined sanitary and industrial waste treatment plant.” According to the inspection report, wastes produced during the day were diverted to a receiving tank, while wastes produced at night were first “pumped to an earthen holding basin” before being redirected to the receiving tank. From the receiving tank, wastes were transferred to an “accelator,”⁵ from which sludge was “removed . . . from the unit continuously at an approximate rate of 8,000 [gallons per day]” and “pumped directly to . . . [t]hree irregularly shaped sludge lagoons . . . totaling around 7,000 sq. feet.” These lagoons “ha[d] no underdrainage system, nor any connection with the watercourse,” thus allowing “[l]iquor [to be] absorbed by the sandy subsoil.” Each lagoon was dried and cleaned approximately once yearly. Treated effluent was discharged to a small brook that flowed to Kirkwood Lake, and eventually the Cooper River.

107. The 1958 report found that the plant was “failing to produce an effluent satisfactory for discharge into the receiving waters by reason of high values for total and soluble volatiles, their soluble matter, phenols, and B.O.D. [biochemical oxygen demand]; and a pH value not within the prescribed limits.” The Department recommended that the “[c]austic soda feed be resumed immediately to bring the pH of the effluent” into compliance. A table included in the report states that a “final effluent” sample taken on July 17, 1958 included 1,835 parts per million (“ppm”) of total solids, 840 ppm of total ash, and 995 ppm of total volatiles, among other contaminants.

108. On July 6, 1973, DEP issued a Notice of Prosecution to Sherwin-Williams based on the spillage of 75,000 gallons of latex paint sludge and 280,000 gallons of water, which ultimately flowed into Hilliards Creek. The spill was caused by a lagoon dike wall failure

⁵ An accelerator separates sludge from water.

sometime between February 2 and 3, 1973. The sludge contained high levels of lead (2,300 parts per million or ppm), requiring a series of cleanups. According to inspection notes describing the spill, the sludge “settled out in the Hilliards Creek Flood Plains” and “extended for about ½ to ¾ of a mile downstream from the source . . . in a layer approx. 1/8 inch thick with pockets of 5 or 6 inches in depth.”

109. Aerial photographs from 1973 show the presence of a pipeline extending from the north bank of one of the lagoons to Hilliards Creek. An outfall from the western bank of the lagoon area towards Hilliards Creek is also visible. Aerial photographs from 1975 show leachate scars on the downslope of one of the lagoons.

110. In 1975, one of the settling lagoons overflowed into Hilliards Creek.

111. On May 5, 1976, inspectors observed that a raw material feed pipe used to transport raw materials in the facility had ruptured and discharged oil to a settling lagoon and to the creek.

112. A May 10, 1976 Sherwin-Williams memo outlining the plant’s wastewater treatment process notes that it was “not unusual for untreated wastewater to overflow from the Holding Pond to [the] #1 pond,” and recommended that the plant’s wastewater treatment system be run at a higher rate. It also documented the disposal of sludge in “ponds east of U.S. Avenue,” and includes the following notes on an April 1976 visit from state engineers:

The State “Land Fill” Engineers turned up on the scene as soon as pumping had started. They objected “strongly” to the dumping of sludge without a Land Fill Permit. Technically, S.W. Company can legally deposit sludge without a permit . . . if it is moved within six months. John Rogers explained to the State Engineers that we were only pumping clear waste water from [the] #4 pond.

113. A Sherwin-Williams Senior Environmental Engineer stated in the same May 10, 1976 internal Sherwin-Williams correspondence that a holding pond on the site contained a sludge

deposit 10-15 feet thick that had accumulated over the prior 10-20 years, and that water was percolating from four on-site ponds. The Sherwin-Williams engineer concluded that additional sampling at the Sites “may just end up proving that we do, in fact, have very contaminated soil,” and that Sherwin-Williams “may be forced to give up the wastewater ponds along with the sludge dewatering ponds.”

114. On June 25, 1976, DEP concluded that the Former Plant “was causing serious groundwater pollution as a direct result of Sherwin-Williams’ waste disposal activities.” DEP determined that Sherwin-Williams’ treatment and disposal practices had impacted groundwater quality, and identified lead as a primary contaminant of concern.

115. On July 31, 1975 and September 16, 1975, DEP inspected the lagoons and sludge area, and sampled monitoring wells. Inspectors documented “foul solvent odors emanating from the monitor wells” and observed that “one lagoon was leaking its contents into Hilliards Creek.”

116. In 1976, DEP directed Sherwin-Williams to conduct a subsurface investigation in the Former Landfill Area of the United States Avenue Burn site. As part of the investigation, thirty soil borings were drilled within the Former Landfill Area. Sludge from former wastewater was encountered at thicknesses of up to 5 feet in the soil borings completed within three pits.

117. On January 12, 1978, DEP advised Sherwin-Williams that it would hold the company responsible for landfill and wastewater disposal practices that had resulted in groundwater contamination, and directed Sherwin-Williams to remove all existing dried sludges and dispose of them in a manner approved by the Solid Waste Administration of the Department. Sherwin-Williams did not respond. In a second letter dated April 24, 1978, DEP again advised

Sherwin-Williams that it would be held responsible for disposal of all sludges. Once again, Sherwin-Williams did not respond.

118. On June 24, 1978, DEP representatives visited the Former Plant site. There, they were told by a Sherwin-Williams representative that a storage lagoon was being emptied via ground percolation and that no plans were being made for disposal of the remaining sludge. DEP employees observed that old sludge pits were unchanged from previous visits, and that nothing had been done to remove the sludge or prevent it from contaminating the environment.

119. On August 17, 1978, DEP issued Sherwin-Williams an Administrative Order in which it found that Sherwin-Williams operated unlined wastewater treatment lagoons and stored sludge without DEP approval or authorization at its Gibbsboro facility, and that it also “operated a sludge disposal site at Gibbsboro which is located east of United States Avenue [the Burn Site], without Department approval[.]” DEP concluded that the latter “sludge disposal site” allowed for percolation of wastewater and leachate into the groundwater.⁶ It also determined that the wastewater treatment lagoons operated at the Former Plant “allow[ed] for percolation of inadequately treated wastewaters into the groundwater.” DEP required Sherwin-Williams to remove all sludges and contaminated soil from the lagoon and sludge pit area by January 1, 1979, and to conduct monthly groundwater sampling.

120. Sherwin-Williams permanently discontinued operations at the facility on September 1, 1978, and completed closure activities between October and December of 1979.

121. In early 1979, Sherwin-Williams commissioned a “confidential soils report” at the sites of two disposal facilities related to the Former Plant: an area approximately 300 by 500 feet

⁶ The order notes that groundwater samples taken “in the vicinity” of the site contained lead and other contaminants.

within the Burn Site, referred to as “Site 1”; and an area approximately 400 by 700 feet adjacent to the Former Plant site, referred to as “Site 2.” According to the report, several ponds at Site 2 were used “for processing industrial waste and raw sewage produced at the Gibbsboro plant,” and “sludge was periodically excavated and dumped in the Sludge Disposal Pond located within Site 2.” Site 1 was used “for disposing of small quantities of dried paint sludge (Industrial Waste) that was first processed in Site 2.” Investigators encountered “dried sludge” in pits located at Site 1.

122. A December 21, 1979 DEP report documents the historical disposal of “paint sludges, solvents, turpentine, [and] kerosene” at the SW/HC site, as well as contamination in the wells of nearby residences. It also states that “a large amount of various solvents” was historically placed in lagoons at the site, and records a “pungent odor” and “dead vegetation near [the] stream.”

123. Tank washouts from the latex system were disposed of in the sanitary waste system on the Former Plant site.

124. Sherwin-Williams’ waste disposal and handling, and other practices at the Sites, resulting in substantial hazardous substances pollution, is consistent with Sherwin-Williams’ practices at other sites around the United States that also resulted in substantial pollution. For example:

- a. According to court documents filed as part of a 2002 declaratory judgment action by Sherwin-Williams in the Court of Common Pleas, Cuyahoga County, Ohio, Sherwin-Williams was then facing “over one hundred contamination claims made by various federal, state, and private parties against Sherwin-Williams for its ongoing hazardous waste disposal activities arising from Sherwin-Williams’ routine disposal of hazardous wastes generated during the course of its manufacturing operations.” *See Sherwin-*

Williams Co. v. Travelers Cas. & Sur. Co., 2003-Ohio-6039, ¶ 6 (Ohio Ct. App. Nov. 13, 2003).

- b. In 1997, Sherwin-Williams agreed to pay \$5.7 million in fines and restoration costs to settle a 39-count EPA lawsuit alleging that Sherwin-Williams at its 123-acre paint manufacturing plant in Chicago: unsafely stored solvents in open containers in tanks; failed to properly handle hazardous wastes, including potentially dangerous, carcinogenic paint by-products; emitted volatile chemicals into the air; and discharged excessive amounts of toxic wastewater to the sewer system, thereby creating a risk of fire or explosion. Sherwin-Williams at its Chicago plant manufactured solvent-based and latex paints, as well as manufactured or used varnishes, resins, and lacquers, among other chemicals, similar to Sherwin-Williams' operations at its Gibbsboro plant. In related litigation involving the same Chicago plant, Sherwin-Williams admitted that, from the mid-1940s until the late 1970s, (1) it permitted its Safety Department to dispose of waste chemicals by burying them and pouring them on the ground; and (2) there were occasional spills, and leaks and wastes were placed on the ground for later removal—which permitted the chemicals to soak into the ground. As recounted by the court overseeing that case, in 1982, a Sherwin-Williams environmental form for the Chicago chemical division stated, as “Superfund concerns”:

From the beginning in 1888, disposal of waste was accomplished by burning and landfilling. Waste materials were hauled from the operating facilities and discarded on the vacant land south of the plant. Burnable material was consumed with controlled burning. Remaining residues and non-burnable wastes were dumped into the low wet lands bordering Lake Calumet. Cinders resulting from the Steam plant were used to cover the discarded residues.

Much of this filled land area was utilized for construction of buildings, tank

storage farms and yard storage of drums of raw materials and finished goods.

Burning of waste on plant premises was terminated in the late 1950s. Land filling of waste material (press cake, still residue, off-standard products, etc.) was ended in the middle 1960s with a few exceptions occurring in the later years. In the early 1970s, approximately a thousand drums of off-standard resins were dumped in the area east of Cottage Grove Avenue at about 118th Street.

- c. In 2001, Sherwin-Williams settled a lawsuit brought by the City of Emeryville, CA, based upon significant soil and groundwater contamination found at the site of a former Sherwin-Williams factory used for the formulation, storage, and distribution of pesticides between the 1920s and the 1960s. The court overseeing the case stated that “[b]oth sides agree that Sherwin-Williams caused a significant amount of contamination at the site.” Pursuant to that settlement, Sherwin-Williams agreed to pay Emeryville a lump sum of \$6.5 million and to share future costs of ongoing response actions arising from groundwater at, on, under, or emanating from a portion of the site.
- d. According to a 2013 lawsuit seeking contribution from Sherwin-Williams as a potentially responsible party at the South Dayton Dump and Landfill Site in Moraine, Ohio, Sherwin-Williams arranged for the disposal of hazardous wastes at the site. Two witnesses in that case testified that they “personally observed trucks and vans with the Sherwin-Williams logo delivering waste paint to the dump in the 1960s and early 1970s.”

Enforcement Activity: 1981-2001

125. Since the conclusion of plant closure activity in 1981, both DEP and EPA have devoted significant additional resources and attention to the Sites. Furthermore, during this time, there were several additional contaminant releases, and significant additional contamination was discovered.

126. Between 1981 and the late 1990s, primary oversight over the Burn, Dump, and SW/HC sites gradually migrated from DEP to EPA. This was due, in large part, to Sherwin-Williams' repeated refusal to accept responsibility for historical contamination at the sites and/or attempts to minimize its cleanup obligations.

127. DEP transferred primary oversight responsibility to EPA for the Dump Site in 1995, the Burn Site in 1995, and the SW/HC site between 1998 and 2001. For that reason, in the following section, the enforcement history of each site is described separately for the period between 1981 and approximately 2001, when DEP transferred oversight of the Former Plant site (the last of the Sherwin-Williams sites it was then overseeing) to EPA.

The SW/HC Site: 1981-2001

128. On June 30, 1983, after Sherwin-Williams sold the Former Plant property to a private developer, DEP received a report that a seep containing an "oily substance" had been detected at the Former Plant.

129. The general area of the seep was south of Foster Avenue, adjacent to a branch of Hilliards Creek. The seep was caused by preexisting contamination in groundwater that flowed overland to a storm water catch basin, through the storm sewer, and ultimately discharged into the creek.

130. On February 7, 1985, and March 6, 1987, DEP sampled the creek and seep, and identified the seep as motor oil, and found numerous VOCs, including benzene, 1, 2, 4-trimethylbenzene, 1, 3, 5-trimethylbenzene, naphthalene, xylenes, ethylbenzene, and cumene. DEP determined that the seep came from on-site, and contained chemicals similar to solvents used during the Former Plant's operations, and that the seep did not come from fuel oil tanks located at adjacent residential dwellings.

131. Separate from its sampling of this seep, on February 18, 1987, DEP sampled groundwater monitoring wells at the Former Plant site, and determined that residual hazardous pollutants at the former lagoon and sludge area were continuing to discharge into the groundwaters of the State.

132. On March 3, 1987, DEP issued Sherwin-Williams a "Telegram Order" to immediately begin containment of petroleum seeps at the Former Plant, and to submit a plan within fifteen days proposing means of containing the contamination. Sherwin-Williams did not comply with the Order.

133. On March 10, 1987, DEP met with Sherwin-Williams and the then-owners of portions of the Former Plant, Robert K. Scarborough ("Scarborough") and an entity identified as "Paint Works Corporate Associates I" (the "Paint Works"). DEP directed all three parties to cease the discharge of pollutants to the creek and to delineate the contamination at the site. At that time, the Paint Works and Scarborough proposed to submit a plan to cease discharge to the creek and delineate the extent of contamination.

134. Sherwin-Williams refused to comply with DEP's directive until it could determine if it was responsible for contamination at the site.

135. On February 19, 1988 and February 25, 1988, DEP observed the same seep discharging into Hilliards Creek.

136. On January 31, 1990, DEP issued a Spill Act Directive to Sherwin-Williams, as well as to Scarborough and the Paint Works, to investigate the extent of contamination. The Directive stated that hazardous materials in the seep were identical to those previously found in groundwater at the site.

137. On September 20, 1990, Sherwin-Williams and DEP signed an Administrative Consent Order (“ACO”) requiring the implementation of a Remedial Investigation/Feasibility Study (“RI/FS”) at the Former Plant area. The ACO was amended on October 30, 1990, and again on June 8, 1995, to include additional sites where contamination was discovered or suspected.

138. Between 1992 and 2001, Sherwin-Williams submitted five remedial investigation reports to DEP related to investigation at the Paint Works Site (later known as the SW/HC Site). DEP did not approve at least four of these reports because they were not consistent with site remediation requirements. Throughout this process, Sherwin-Williams refused to honor its clean-up obligations. For example, on April 4, 1994, Sherwin-Williams submitted a draft “Phase II Remedial Investigation Report” to DEP in which it sought to disclaim responsibility for contamination at the site, but DEP responded that the data did not support Sherwin-Williams’ conclusions, and reaffirmed its finding that Sherwin-Williams was responsible for contamination at the site. Sherwin-Williams again refused to conduct necessary remedial action. On October 24, 1994, DEP and the Camden County Health Department inspected a storm drain and manhole in an identified Area of Environmental Concern and discovered a “potential explosive hazard” requiring “immediate remedial action to abate the threat to human health and the environment.”

Consequently, on November 16, 1994, DEP issued a Directive and Notice to Insurers ordering Sherwin-Williams to (1) clean up this additional, recently-discovered contamination at the “Area of Environmental Concern,” and (2) conduct the disputed remedial action discussed above. Sherwin-Williams did not immediately agree to all of the requests in the Directive to DEP’s satisfaction but only later agreed after protracted negotiations with DEP to perform additional remedial actions pursuant to the June 8, 1995 amendment to the ACO discussed above. Based on Sherwin-Williams’ behavior, DEP unilaterally terminated the ACO on July 18, 2001, and transferred oversight of the Paint Works Site to EPA.

139. During this same period, investigators also discovered contamination in Hilliards Creek—i.e., the Hilliards Creek Site.

140. Specifically, in June 1998, consultants working in conjunction with DEP to find background levels of substances in the environment for comparison to contamination at a nearby landfill collected sediment samples from a section of Hilliards Creek located in the Hilliards Creek Wildlife Refuge.⁷ They found elevated levels of lead and arsenic in the sediments, as well as other organic contaminants. Lead levels ranged from 68,000 ppm to 220,000 ppm. The Wildlife Refuge was fenced to prevent exposure to the elevated levels of lead and arsenic pursuant to an EPA 1999 Administrative Order on Consent.

141. On August 20, 1998, DEP referred the Hilliards Creek Site to EPA to further address contamination at the site.

⁷ Hilliards Creek Wildlife Refuge (also known as Gibbsboro Nature Preserve) lies to the west of Clemonton Road, and includes walking trails for area residents.

The Burn Site: 1981-1997

142. On February 8, 1993, DEP conducted an initial inspection of a portion of the Burn Site, which had been incorporated into the October 30, 1990 ACO governing the Paint Works Site. DEP observed, among other things: (1) “green sludge on the surface of the ground towards the rear of block 25, lot 1;” (2) a “two-foot deep profile of paint sludge;” (3) and a “wastepile of burnt paint wastes” approximately 60 feet by 60 feet in size “which completely covered the north bank of White Sand Branch where it has its confluence with Green Briar Branch[.]” It also reported that wastes in the form of paint cans were retrieved from within White Sand Branch, and that petroleum-like odors were detected in the soil in an area along White Sand Branch.

143. On February 24, 1993, DEP requested additional information from Sherwin-Williams concerning this contamination. In response, Sherwin-Williams denied responsibility for contamination at the site, contending that “[t]here is no basis for concluding that there are hazardous substances at either area or that there is any potential for direct public exposure to the hazardous substances” and that the conditions observed “could have been created by anyone[.]”

144. On February 18, 1994, DEP interviewed residents at 15 United States Avenue and 19 United States Avenue regarding contaminants in the area of the Burn Site. One resident of 19 United States Avenue accompanied DEP personnel to a location along White Sand Branch where they observed a petroleum substance in the wet mass of roots and leaves in the marshland. The resident of 15 United States Avenue provided a signed document stating that Sherwin-Williams had dumped and burned paints with solvent at the area that DEP had observed on February 8, 1993.

145. On March 4, 1994, DEP interviewed a former resident of 25 United States Avenue and conducted a soil investigation near the burnt waste pile described above. The former resident

stated that paint wastes were trucked into and burned by Sherwin-Williams Company at another area (i.e., an area other than the burnt waste pile noted during the February 8, 1994 investigation) which was adjacent to Honey Run. She also recalled that at the time a well was drilled at 25 United States Avenue in approximately 1949, a “chemical” odor emanated from the boring.

146. On May 20, 1994, DEP sampling of the Burn Site revealed high levels of lead and other heavy metals in the burnt waste pile. Heavy metal and petroleum contamination was discovered in the waste pile adjacent to Honey Run, in stream sediments and waters of White Sand Branch and Honey Run, and at the area where petroleum was discovered during the February 18, 1994 investigation. Xylene, ethyl benzene, and naphthalene were detected in soil and sediment samples. Lead exceeded DEP’s chronic aquatic impact surface water standard in all surface water samples.

147. Based on the results of these investigations, DEP concluded that Sherwin-Williams was associated with contamination at the Burn Site.

148. On November 22, 1994, DEP issued a Directive and Notice to Insurers to Sherwin-Williams to “clean up and remove the discharges at the Burn Site by delineating the extent of heavy metal contamination at, and emanating from, the site and preventing direct human contact with the contamination through a removal or other methods.” As of July 10, 1995, Sherwin-Williams had not complied with the directive.

149. By letter dated July 12, 1995, as revised on July 18, 1995, DEP referred the Burn Site to EPA for action under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). DEP advised that the presence of hazardous materials at the Site was a significant threat to the nearby population and to the environment; that residential properties

were located within 200 feet of the Site; that as a result, nearby residences, the surface water, and groundwater in the area, may be impacted; and that, as of July 10, 1995, Sherwin-Williams “ha[d] not complied with the [November 22, 1994] Directive.” DEP also requested EPA’s assistance based upon Sherwin-Williams’ “unresponsiveness to previous NJDEP directives to address the contamination at the Site.” On March 21, 1996, DEP also requested the addition of the Landfill Area of the Burn Site to its EPA referral.

150. On July 25, 1995, the United States Agency for Toxic Substances and Disease Registry (“ATSDR”) within the U.S. Centers for Disease Control and Prevention concluded that soil and sediment at the site’s Burn Area were “contaminated with metals (e.g. lead, arsenic, cadmium) at concentrations that pose a public health hazard,” and that “contaminants have migrated off site and are present in sediment samples at levels of public health concern.” ATSDR also found that sediment and soil in Honey Run and White Sand Branch were heavily contaminated with arsenic, lead, and zinc.

151. On September 29, 1995, EPA entered into an Administrative Order of Consent with Sherwin-Williams to perform a Removal Action Investigation of the Burn Site. Paint waste, soil, surface water and sediment samples from numerous locations across the site showed inorganic hazardous substances contamination at concentrations significantly above background levels in waste, soil and sediment at the site. Freshwater wetlands within the Burn Area site also were found to be contaminated. As directed by DEP, in 1995 a smaller interior fence was installed surrounding the Burn Area, and a larger exterior fence was installed surrounding the entire Burn Site as directed by EPA in 1996.

152. On February 13, 1996, an EPA investigator observed at least five patches of various colored surface soil staining at the Railroad Track Area of the Burn Site. EPA directed Sherwin-Williams to conduct soil sampling of the Railroad Track Area, and subsequently issued a Unilateral Administrative Order to Sherwin-Williams on May 1, 1997 to conduct a removal action at the Railroad Track Area of the Site.

153. Throughout this period, EPA's negotiations with Sherwin-Williams were made "complicated and difficult" by Sherwin-Williams' "reluctance . . . to commit to the expanding investigation which [was] needed to properly delineate the entire area of contamination [at the Burn Site]."

The Dump Site: 1981-1997

154. Notwithstanding the lengthy enforcement record at the Former Plant prior to—and after—1981, Sherwin-Williams did not disclose the Dump Site's existence to DEP, EPA, or any other authorities.

155. Instead, DEP investigators first discovered the area now known as the "Dump Site" on February 8, 1993 as part of the same site inspection of the Burn Site described above. During investigators' inquiries regarding the Burn Site, "a long time resident of Gibbsboro advised [DEP representatives] of the existence of a vacant lot" located on the northbound side of Route 561 "which had been allegedly used by Sherwin-Williams to dispose of paint sludge."

156. In response to this tip, DEP personnel first visited the Dump Site on February 8, 1993. There, they found an area "devoid of vegetation which measured approximately 50 x 30 feet" in which "[c]areful examination . . . revealed the presence of what appear[ed] to be paint

sludge extending from a few inches below the surface to several feet below grade.” According to a pre-sampling assessment documenting the inspection:

A blue and green sludge-like particulate was observed at two locations at Block 18.07, Lot 9. One location was approximately 25 feet from Rt. 561 amongst trees. The sludge was just beneath the leaf litter on the ground. The other location was approximately 60 feet from Rt. 561 in a wetlands type environment.

157. On February 24, 1993, DEP requested additional information concerning the two locations identified during DEP’s February 8, 1993 site inspection.

158. By letter dated April 20, 1993, Sherwin-Williams denied any responsibility for either offsite area. In relevant part, Sherwin-Williams wrote:

[T]he Department has no basis to require investigation of these areas[.] There is no basis for concluding that there are hazardous substances at either area or that there is any potential for direct public exposure to the hazardous substances. Thus, there is no basis for concluding that additional investigation is needed to protect human health and the environment.

The “additional information” requested regarding these two areas is not warranted given the fact that both areas are clearly outside the scope of work delineated in the ACO[.] Moreover, the “findings” are based on unsubstantiated hearsay and observations of conditions which could have been created by anyone, given the open access to the areas.

Sherwin-Williams has reviewed its records and to date has not found any documentation referencing these sites.

159. On August 31, 1993, DEP’s Bureau of Field Operations (“BFO”) conducted a review of aerial photographs dated April 10, 1940; November 11, 1946; February 25, 1951; May 3, 1957; November 29, 1961; April 4, 1965 and 1974. The review indicated that an area of land devoid of vegetation appeared in the vicinity of the Dump Site sometime between April 10, 1940 and November 11, 1946. DEP also observed a road which led from the Sherwin-Williams production facilities to the site and which was shown in a 1915 tax map.

160. On February 4, 1994, February 10, 1994 and again on February 15, 1994, DEP's Office of Site Assessment ("OSA") conducted various investigations related to the Dump Site. The owner of land adjacent to the Dump Site, Lew Wacker, told investigators that the site was sold to his father by Charles Hollinger, a former plant superintendent for Sherwin-Williams. Mr. Hollinger told Mr. Wacker's father that waste on the site was a harmless byproduct of pigment production and would be covered by soils prior to the sale.

161. On June 15, 1994, DEP collected soil, sediment, and surface water samples from the Dump Site. Arsenic and lead were detected in surface soil samples at maximum levels of 13,000 ppm, and 49,500 ppm, respectively. For comparison purposes, DEP's current non-residential direct contact soil remediation standard for arsenic is 19 ppm and for lead is 800 ppm, and its current residential direct contact soil remediation standard for arsenic and lead is 400 ppm. A stream sediment sample taken from 0-6 inches contained lead at 364 ppm. Surface water samples revealed lead at 34 parts per billion ("ppb") and 43 ppb. A groundwater sample was collected that showed lead at 37 ppm, and arsenic at 3.8 ppm.

162. On December 1, 1994, DEP issued a Directive and Notice to Insurers to Sherwin-Williams requesting the cleanup and removal of discharges at the Dump Site.

163. In response, Sherwin-Williams again denied any connection between operations at the Former Plant and contamination at the Dump Site. On February 8, 1995, Sherwin-Williams wrote to DEP:

There is no evidence that [JLC] or Sherwin-Williams manufactured paint or associated products at that Site. John Lucas has not owned the Site since 1946. The reference to the disposal of sludge from the wastewater lagoons in 1979 is clearly misleading[.] . . . Apparently, the only reason the Department has for addressing the Directive to Sherwin-Williams are the interviews of a Mr. Lew

Wacker[.] . . . At this juncture, Sherwin-Williams does not believe there is enough information to conclude that it has any responsibility for the Site.

164. On February 27, 1995, DEP requested that EPA consider the Dump Site for a CERCLA removal action.

165. In August and September 1995, EPA collected samples from the Dump Site and White Sand Branch. Arsenic and lead were detected in the Dump Site soil samples at concentrations of 43,762, and 131,504 ppm respectively. Arsenic and lead were estimated in the White Sand Branch samples at 6,100, and 87,100 ppm, respectively.

166. Sherwin-Williams was not forthcoming with EPA in response to information requests concerning the Dump Site. EPA wrote to John G. Breem, then Chairman of the Board of Sherwin-Williams in September, 1996, stating that “Sherwin-Williams’ prior response to the first Information Request Letter is deficient.” For example, EPA stated that it considered Sherwin-Williams’ prior responses to questions about the Dump Site “with regard to John Lucas and Company and/or Sherwin-Williams’ past manufacturing and formulating operations, raw materials, products, and pigment formulations to be insufficient and believes that Sherwin-Williams has not been forthright in its response.” EPA further stated that Sherwin-Williams “failed to provide” requested information about how hazardous substances were stored at the Former Plant. Sherwin-Williams also had “failed to provide any of the requested photos and diagrams in its response to the previous Route 561 Dump Site Request for Information.”

167. On February 21, 1997, EPA sent Sherwin-Williams a Notice of Potential Responsibility and draft Administrative Consent Order on Consent in which it notified Sherwin-Williams that there was “reason to believe that the Company is a past-owner or operator of a facility at which there has been a release or threatened release of hazardous substances[.]”

168. Sherwin-Williams once again denied responsibility for contamination at the site. On April 25, 1997, counsel for Sherwin-Williams wrote a letter to EPA stating that “there is a lack of evidence connecting Sherwin-Williams to the site,” that “there is insufficient evidence to claim that [JLC] disposed of hazardous substances at the site,” and that “Sherwin-Williams should not be considered a PRP [potentially responsible party] here.”

169. In November 1997, Sherwin-Williams entered into an AOC with EPA to conduct a Removal Action at the Dump Site. Under the Removal Action, areas of highly contaminated soil within the Dump Site Fenced Area were consolidated into three areas which were covered with impermeable material and revegetated. In addition, a silt fence and a new perimeter fence were installed. Sherwin-Williams also posted warning signs and monitored the property.

170. In addition to instances where Sherwin-Williams outright refused to address contamination at the Sites described above, Sherwin-Williams submitted misleading or inaccurate information relating to the Sites. For example:

- DEP review of Sherwin-Williams Remedial Investigation Report dated February 4, 1998 found that it contained a statement that was “inaccurate and misleading” and stated that “[i]n order to avoid this misleading presentation of data, Sherwin-Williams must revise this section.”
- DEP’s comments to Sherwin-Williams Draft Work Plan and Field Sampling Analysis Plan for the RI/FS Activities submitted November 1999 included the following:
 - “It should be noted that the Draft Phase II RI Report, and all subsequent RI reports, have still not been found acceptable by the NJDEP.”
 - With respect to the site background section for the United States Avenue Burn Site: “This section makes misleading statements in regard to the past ownership and activities at the property. In the second paragraph on page 2-1, it is stated that ‘Sherwin-Williams acquired Block 23, Lot 1 from John Lucas & Company, Inc. in August, 1967.’ However, it is not stated that

John Lucas & Company was a subsidiary of Sherwin-Williams since the 1930s.”

- With respect to the site background section for the Route 561 Dump Site: “The information provided does not incorporate the fact that this property was formerly owned by Sherwin-Williams and that aerial photographs of the property indicated dumping occurred from the Sherwin-Williams property in the past.”
- With respect to the site background section for Hilliards Creek: “This section states that no information is available concerning disposal practices at the Hilliard’s Creek site. It should be noted that during the manufacturing of paints at the Sherwin-Williams Gibbsboro facility, prior to the installation of the waste water treatment lagoons, it was common practice to discharge waste into Hilliards Creek.” DEP further commented: “The statement that ‘Sherwin-Williams purchased land upstream from the site from John Lucas & Company, Inc. in August 1967’ is misleading. Sherwin-Williams owned the John Lucas & Company since the 1930’s.”
- DEP review of Sherwin-Williams Remedial Investigation Report, April 2000: “The document appears to contain some misleading and somewhat inaccurate information.”

171. Sherwin-Williams failed to timely notify DEP of all discharges at the Sites as described above. Neither did Sherwin-Williams notify DEP of all past discharges at the Sites as required by the Spill Act.

Actions performed during EPA oversight at all sites: 1998-present

172. As explained above, EPA gradually took over primary oversight responsibility for the Sites from DEP between 1995 and 2001, when DEP unilaterally terminated its ACO with Sherwin-Williams concerning work at the Paint Works Site because of Sherwin-Williams’ refusal to address the contamination to DEP’s satisfaction.

173. On February 27, 1995, DEP referred the Dump Site to EPA for potential action under CERCLA.

174. On July 12, 1995, DEP referred the Burn Site to EPA for potential action under CERCLA.

175. On August 20, 1998, DEP referred the Hilliards Creek Site to EPA shortly after discovery of contamination at the site.

176. On July 18, 2001, DEP unilaterally terminated the ACO with Sherwin-Williams and transferred oversight of the Paint Works Site to EPA.

177. Thus, since late 1998, EPA has had primary oversight over the Burn Site and the Dump Site, and EPA has had primary oversight over the Paint Works Site, i.e., the Former Plant, since 2001.

178. In September 1998, EPA found elevated levels of arsenic and lead at the Hilliards Creek Site. In November, 1998, and June and July, 1999, an EPA contractor sampled soil and sediment at Hilliards Creek, Silver Lake, Bridgewood Lake, and an unnamed tributary draining Bridgewood Lake, and found elevated levels of numerous contaminants—including lead up to 221,900 ppm in sediment. An August 1998 EPA inspection of the Hilliards Creek Wildlife Refuge found a blue-gray material in stream sediment “that appeared to be a sludge-like pigment similar to the pigments found in the dump areas used by Sherwin-Williams,” as well as a “1-foot layer of this blue-gray material . . . [in] part of the stream bank[.]”

179. In 1999, ATSDR concluded in a health consultation for Hilliards Creek that an urgent health hazard existed to children and adults using the Hilliards Creek Wildlife Refuge. A trail in the refuge led visitors to the location where lead had been found at 221,900 ppm.

180. On September 30, 1999, EPA issued two AOCs to address contamination at the Hilliards Creek Site.

181. The first AOC required Sherwin-Williams to delineate the extent of contamination at the Hilliards Creek Site; contain the contamination by use of engineering controls in accessible areas; obtain access; post signs where appropriate; conduct site inspections on a quarterly basis; and install fence around the Hilliards Creek Wildlife Refuge to prevent exposure to elevated levels of arsenic and lead. The second AOC directed Sherwin-Williams to conduct a remedial investigation/feasibility study (RI/FS) for all three sites then under EPA's jurisdiction (i.e., the Burn Site, Dump Site, and Hilliards Creek site—that is, all sites except for the Former Plant).

182. On or around April 9, 2002, a new contaminant release was observed and reported at the Foster Avenue parking lot area of the Former Plant. A Sherwin-Williams contractor observed free product in the storm water system, rip-rap and in the stream. On May 2, 2003, another release of product occurred when heavy rains caused a storm drain system to overflow.

183. On April 29, 2002, EPA issued Sherwin-Williams a Notice to Responsible Party under CERCLA that it may be liable for the release and/or threatened release of pollutants, contaminants, and/or hazardous substances at the seep area leading into Hilliards Creek.

184. On December 20, 2002, EPA issued a draft AOC for Removal Action directing Sherwin-Williams to address the March 2002 contaminant release at the Former Plant. Sherwin-Williams implemented a work plan to address the contaminant release by March 2004.

185. In June 2005, Sherwin-Williams began performing the RI/FS.

186. On March 29, 2007, EPA incorporated the Paint Works site into the RI/FS being conducted for the Sherwin-Williams Hilliards Creek Site.

187. In January 2015, Sherwin-Williams completed a Remedial Investigation Report for all three sites.

188. Due to the complexity of multiple sites, varying land uses, and the nature of the contamination, EPA has divided remediation of the Sites into phases, or operable units (“OUs”), that address distinct areas or aspects of contamination at the three sites.

189. Currently, work related to four OUs is underway: OU1, which consists of implementation of a clean-up remedy at residential properties at all three Sites; OU2, which consists of design and implementation of a clean-up remedy for soil and sediment at the Dump Site, and design of a clean-up remedy at the Burn Site, and a proposed plan and Record of Decision (“ROD”) for the Former Plant and Upper Hilliards Creek areas; OU3, consisting of work on a remedial investigation to address groundwater at the Former Plant; and OU4, consisting of a feasibility study for Waterbodies at the Sites. The clean-ups are to risk-based standards but not to pre-discharge conditions.

190. In September 2015, following Sherwin-Williams’ completion of the RI/FS for residential properties, EPA issued a ROD for OU1, selecting the remedy to address soil contamination at certain residential properties at the Sites to risk-based but not pre-discharge conditions.

191. On May 17, 2016, EPA issued a Unilateral Administrative Order (“UAO”) for the Remedial Design and Remedial Action for Operable Unit 1 related to the residential properties impacted by contamination from all three sites. The order directed Sherwin-Williams to conduct the Remedial Design for all residential properties identified in the OU1 ROD and the Remedial Action for eight residential properties located on West Clementon Road in Gibbsboro, New Jersey.

192. Sherwin-Williams completed the Remedial Action for the West Clementon Road residential properties in 2016, and remedial design/remedy implementation is ongoing for all

remaining residential properties referenced in the ROD. In April 2018, the OU1 UAO was amended to direct Sherwin-Williams to conduct the Remedial Action for a number of additional residential properties identified in the OU1 ROD.

193. As part of the investigation for Operable Unit 1, lead was detected on residential properties at elevated concentrations that pose a risk to human health. Arsenic and other chemicals were identified in Records of Decision as risk-driving chemicals at the residential properties. The remedial investigation for soil, sediment, surface water and pore water at the Former Plant has also identified arsenic, benzene, lead, LNAPLs, naphthalene, PAHs, and pentachlorophenol.

194. In September 2016, following completion of the Dump Site RI/FS, EPA issued a Decision Document that selected response actions to address soil, sediment and surface water contamination at the Dump Site (the “Dump Site OU2 remedy”), to risk-based but not pre-discharge conditions. A response for the Dump Site groundwater may be selected after, and based on the results of, the implementation of the soil, sediment, and surface water remedies.

195. A Baseline Ecological Risk Assessment for the Dump Site identified a number of exposure areas. The assessment concluded that arsenic poses an unacceptable risk to certain ecological receptors. Wildlife risks at the Site are driven by elevated concentrations detected in localized portions of the three exposure areas, primarily in soil and sediment in the central portion of the Dump Site Fenced Area and in White Sand Branch and its immediate vicinity. Insectivorous wildlife (the American Robin and Short-Tailed Shrew) were identified as the wildlife receptors with the highest predicted exposures and hazard quotients in the terrestrial area of the Site. Similarly, the Spotted Sandpiper, an aquatic insectivore, was identified as the receptor with the

highest exposure and hazard quotient associated with the aquatic community in White Sand Branch.

196. In September 2017, following completion of the Burn Site RI/FS, EPA issued a ROD for the United States Avenue Burn Site, selecting the remedy to address soil, sediment, and surface water contamination at the Burn Site (the “Burn Site OU2 remedy”), to risk-based but not pre-discharge conditions. According to EPA, a response for groundwater at the Burn Site may be selected after, and based on the results of, the implementation of the soil, sediment, and surface water remedies.

197. A Baseline Ecological Risk Assessment for the Burn Site identified the primary contaminants of concern as arsenic, lead, and zinc, which are present in both aquatic and terrestrial environments within several portions of the site and pose unacceptable ecological risk to wildlife receptors.

198. The greatest potential for exposure and unacceptable risks to the aquatic community are indicated for localized elevated areas of arsenic, lead, and zinc in White Sand Branch near the Burn Area. There also are exposures and risks to the aquatic community in Honey Run. Insectivorous wildlife (specifically, the American robin and short-tailed shrew) were identified as the wildlife receptors with the highest predicted exposures and hazard quotients in the terrestrial area of the Burn Site. Similarly, the spotted sandpiper was identified as the receptor with the highest exposure and hazard quotient associated with the aquatic community in White Sand Branch.

199. In January 2018, Sherwin-Williams completed a Remedial Investigation Report for the “Waterbodies Unit,” which consists of Silver Lake, Bridgewood Lake, Hilliards Creek, and

Kirkwood Lake. Among other things, the report concluded that metals (primarily arsenic and lead) and PAHs are present in soil and sediment at concentrations greater than the applicable soil and sediment screening levels, and also are found in surface water and pore water at elevated levels. Cooper River sediment downstream of the Kirkwood Lake outfall was found to contain arsenic and lead at concentrations slightly, or moderately greater, than their respective ecological screening criteria. A local resident who has lived in Voorhees along the main stem of the Cooper Creek (i.e., Cooper River) downstream from Kirkwood Lake for over 60 years reported that when she was young she remembered the creek “running different colors, with paint odor and residue along the creek bed.”

200. On April 16, 2019, the United States District Court for the District of New Jersey approved a Remedial Design/Remedial Action Consent Decree entered into between Sherwin-Williams and EPA in the matter of *United States of America v. The Sherwin-Williams Company*, Civil Action No. 19-cv-01907 (“2019 Consent Decree”).

201. The 2019 Consent Decree provides that Sherwin-Williams will design and implement the Burn Site OU2 remedy, and includes a mechanism for potential incorporation into the consent decree of Sherwin-Williams’ performance of additional operable unit remedies that EPA will select following completion of further RI/FS work at the Sites.

202. Under the 2019 Consent Decree, Plaintiffs did not receive reimbursement of all of DEP’s past or future cleanup and removal costs, nor did Plaintiffs recover any 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 at the Sites.

203. Sherwin-Williams has not cleaned up hazardous substances and pollutants at the Sites to pre-discharge conditions (known as primary restoration), or compensated Plaintiffs to do so. There has not been primary restoration of the contaminated natural resources at the Sites.

204. There has not been compensatory restoration of the contaminated natural resources at the Sites, i.e., compensation for the injured natural resources. Sherwin-Williams has not compensated Plaintiffs for the loss-of-use value to 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 Sites.

205. This Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

FIRST COUNT

(Spill Act)

206. DEP and the Administrator repeat each allegation of paragraph nos. 1 through 207 above as though fully set forth in its entirety herein.

207. Defendant Sherwin-Williams is a “person” within the meaning of N.J.S.A. 58:10-23.11b.

208. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, shall be liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.

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

210. Many of the contaminants of concern at the Sites are hazardous substances as defined in N.J.S.A. 58:10-23.11b.

211. DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Sites.

212. The Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund concerning the Sites and, further, has approved, and may continue to approve, other appropriations for the Sites.

213. DEP and the Administrator also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for natural resources of this State that have been, or may be, injured as a result of the discharge of hazardous substances at the Sites.

214. The costs and damages DEP and the Administrator have incurred, and will incur, for the Site are “cleanup and removal costs” within the meaning of N.J.S.A. 58:10-23.11b.

215. DEP and the Administrator have incurred, and will incur, damages to and loss of value of real or personal property and the lost income associated therewith as a result of the discharge of hazardous substances at the Sites.

216. Sherwin-Williams is a discharger, and/or the successor to a discharger, of hazardous substances at the Sites, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that DEP and the

Administrator have incurred, and will incur, to assess, mitigate, restore, or replace, natural resources of this State that have been, or may be, injured as a result of the discharge of hazardous substances at the Sites. N.J.S.A. 58:10-23.11g.c(1).

217. Sherwin-Williams, as the owner of the Sites at the time hazardous substances were discharged there, and/or as successor to the owner of the Sites at the time hazardous substances were discharged there, also is a person in any way responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that DEP and the Administrator have incurred, and will incur, to assess, mitigate, restore, and/or replace, natural resources of this State that have been, or may be, injured as a result of the discharge of hazardous substances at the Sites. N.J.S.A. 58:10-23.11g.c(1).

218. Any discharger who fails to comply with a directive under the Spill Act shall be liable to DEP in an amount equal to three times the cost of such cleanup and removal, N.J.S.A. 58:10-23.11f.a(1).

219. Any discharger who fails to comply with a directive under the Spill Act is strictly liable, jointly and severally, in an amount up to three times the cleanup and removal costs and damages, including lost value and reasonable assessment costs, that DEP and Administrator have incurred, and will incur, to assess, mitigate, restore, and/or replace, natural resources of this State that have been, or may be, injured as a result of the discharge of hazardous substances at the Sites, N.J.S.A. 58:10-23.11f.a(1).

220. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., DEP may bring an action in the Superior Court 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); the cost of restoring, repairing, or replacing real or personal property damaged or destroyed by a discharge, any income lost from the time the property is damaged to the time it is restored, repaired or replaced, and any reduction in value of the property caused by the discharge by comparison with its value prior thereto, N.J.S.A. 58:10-23.11u.b.(3); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and any other unreimbursed costs or damages DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

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

222. Pursuant to N.J.S.A. 58:10-23.11e, “[a]ny person who may be subject to liability for a discharge which occurred prior to or after the effective date of the act of which this act is amendatory shall immediately notify the department. Failure to so notify shall make persons liable to the penalty provisions of section 22 of this act.” In turn, pursuant to N.J.S.A. 58:10-23.11u.d, “[a]ny person who violates a provision of P.L.1976, c. 141 (C. 58:10-23.11 et seq.), or a court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day’s continuance of the violation shall constitute a separate violation.”

PRAYER FOR RELIEF

WHEREFORE, DEP and the Administrator pray that this Court:

- a. Order Sherwin-Williams to reimburse DEP and the Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs and direct and

- indirect damages they have incurred, including lost use and value, costs of restoration and replacement for natural resources of this State injured as a result of the discharge of hazardous substances at the Sites, with applicable interest, and assessment costs;
- b. Find Sherwin-Williams liable, jointly and severally, without regard to fault, for all future cleanup and removal costs and direct and indirect damages, including lost use and value, costs of restoration and replacement for natural resources of this State injured as a result of the discharge of hazardous substances at the Sites, with applicable interest, and assessment costs;
 - c. Find Sherwin-Williams liable, jointly and severally, without regard to fault, for the cost of restoring, repairing, or replacing real or personal property damaged or destroyed by a discharge, any income lost from the time the property is damaged to the time it is restored, repaired or replaced, and any reduction in value of the property caused by the discharge by comparison with its value prior thereto;
 - d. Compel Sherwin-Williams, jointly and severally, without regard to fault, to fund DEP's performance of any further assessment of natural resources that have been, or may be, injured as a result of the discharge of hazardous substances at the Sites, and compel Sherwin-Williams to compensate the citizens of New Jersey for the costs of restoration and replacement and lost use and value of any injured natural resource;
 - e. Order Sherwin-Williams to pay for all compensatory damages for the lost interim value of the natural resources at and around the Sites as a result of the contamination of such natural resources by hazardous substances;

- f. Order Sherwin-Williams to reimburse Plaintiffs, jointly and severally, without regard to fault, in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Sites, to the extent Sherwin-Williams has failed to comply with a directive under the Spill Act;
- g. Order Sherwin-Williams to pay all costs of restoring, repairing, or replacing real or personal property damaged or destroyed by a discharge, any income lost from the time the property is damaged to the time it is restored, repaired or replaced, and any reduction in value of the property caused by the discharge by comparison with its value prior thereto;
- h. Award DEP and the Administrator their costs and fees in this action;
- i. Award DEP and the Administrator interest and such other relief as this Court deems appropriate;
- j. Assess civil penalties of up to \$50,000 per violation per day for Sherwin-Williams' failure to timely notify DEP of all discharges at the SW/HC Site, the Burn Site, and the Dump Site; and
- k. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

SECOND COUNT

(Water Pollution Control Act)

223. The Commissioner repeats each allegation of paragraph nos. 1 through 224 above as though fully set forth in its entirety herein.

224. Defendant Sherwin-Williams is a “person” within the meaning of N.J.S.A. 58:10A-3.

225. Except as otherwise exempted, as inapplicable here, 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 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. §§1251 to 1387. N.J.S.A. 58:10A-6a.

226. 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.

227. DEP has incurred, and will continue to incur, costs as a result of the discharge of pollutants at the Sites.

228. DEP also has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for natural resources of this State that have been, or may be, lost or destroyed as a result of the discharge of pollutants at the Sites.

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

230. Sherwin-Williams, and/or its predecessor at the Sites, discharged pollutants at the Sites, 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 Sherwin-Williams is liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for natural resources of this State that have been, or may be, lost or destroyed as a result of the discharge of pollutants at the Sites. N.J.S.A. 58:10A-6a.

231. Pursuant to N.J.S.A. 58:10A-10c., the Commissioner may bring an action in the Superior Court 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 natural resources of this State that have been, or may be, lost or destroyed as a result of the unauthorized discharge of pollutants at the Sites, 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, the Commissioner prays that this Court:

- a. Order Sherwin-Williams, without regard to fault, to pay for the costs for any investigation, inspection, or monitoring survey, leading to establishment of the violation, including the costs of preparing and litigating the case;
- b. Find Sherwin-Williams liable, without regard to fault, for all costs for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Sites;
- c. Find Sherwin-Williams liable, without regard to fault, for all compensatory damages and other actual damages for natural resources of the State that have been, or may be, injured, lost, or destroyed as a result of the unauthorized discharge of pollutants at the Sites;
- d. Find Sherwin-Williams liable, without regard to fault, for the amount of any economic benefits it has accrued, including any savings realized from avoided capital or noncapital costs, the return it has earned on the amount of avoided costs, and benefits it has enjoyed as a result of a competitive market advantage, or any other benefit it has received as a result of having violated the WPCA;
- e. Award plaintiff Commissioner her costs and fees in this action;
- f. Award plaintiff Commissioner interest and such other relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

THIRD COUNT

(Solid Waste Management Act)

232. The Commissioner repeats each allegation of paragraph nos. 1 through 233 above as though fully set forth in its entirety herein.

233. Defendant Sherwin-Williams is a “person” within the meaning of the Solid Waste Management Act (“SWMA”) and its implementing regulations, N.J.A.C. 7:26-1.4.

234. Sherwin-Williams disposed of and/or stored solid wastes, and operated sludge disposal sites, among other actions, in violation of the SWMA.

235. Sherwin-Williams disposed of and/or stored solid wastes without, *inter alia*, filing an application for a registration statement or engineering design approval and obtaining approval from DEP, N.J.S.A. 13:1E-3, 13:1E-5.

236. Except as exempted, as inapplicable here, pursuant to N.J.A.C. 7:26-1.1, -1.7, and -1.8, it is unlawful for any person to construct or operate a solid waste facility without first obtaining a solid waste facility permit within the meaning of N.J.A.C. 7:26-1.4. N.J.S.A. 13:1E-9(d).

237. The SWMA also makes unlawful the intra-plant transport, temporary storage, or other handling of plant-generated waste materials where those materials (1) are deposited on or in the lands of the State for periods exceeding six months, or (2) will cause pollution—whether through transport, storage, or other handling—of the surface or ground waters of the State or may pose a substantial or material threat to the public health, safety, or welfare. N.J.A.C. 7:26-1.1(a)(6).

238. DEP has incurred, and will continue to incur, costs as a result of, *inter alia*, Sherwin-Williams' unlawful disposal and/or storage of solid waste at the Sites, and operation of solid waste facilities at the Sites, and other actions.

239. DEP also has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for natural resources of this State that have been, or may be, lost or destroyed as a result of, *inter alia*, Sherwin-Williams' unlawful disposal and/or storage of solid waste at the Sites, and operation of solid waste facilities at the Sites, and other actions.

240. Sherwin-Williams unlawfully operated solid waste facilities at the Sites, which operation was neither permitted pursuant to a valid solid waste facility permit issued pursuant to N.J.A.C. 7:26-1.1 *et seq.*, nor exempted pursuant to N.J.A.C. 7:26-1.1, -1.7, and/or -1.8, and is liable for all costs and damages, including compensatory damages and any other actual damages for natural resources of this State that have been, or may be, lost or destroyed as a result.

241. Pursuant to N.J.S.A. 13:1E-9(d), the Commissioner may bring an action in the Superior Court for the 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. 13:1E-9(d)(2); for any cost incurred by the State in removing, correcting, or terminating the adverse effects upon water and air quality resulting from any violation of any provision of the SWMA or any rule, regulation, or condition of approval for which an action under this subsection is brought, N.J.S.A. 13:1E-9(d)(3); for compensatory damages for any loss or destruction of wildlife, fish, or aquatic life, and any other actual damages caused by any violation of any provision of the SWMA or any rule, regulation, or condition of approval for which an action under

this subsection is brought, N.J.S.A. 13:1E-9(d)(4); and for civil penalties of up to \$50,000.00 per day, N.J.S.A. 13:1E-9(f).

PRAYER FOR RELIEF

WHEREFORE, the Commissioner prays that this Court:

- a. Order Sherwin-Williams to pay the costs of any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- b. Find Sherwin-Williams liable, jointly and severally, for all 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;
- c. Order Sherwin-Williams to pay all costs incurred, or to be incurred, by the State in removing, correcting, or terminating the adverse effects upon water and air quality resulting from any violation of any provision of the SWMA or any rule, regulation, or condition of approval for which the action has been brought;
- d. Order Sherwin-Williams to pay all compensatory damages and other actual damages incurred, or to be incurred, for natural resources of this State that have been, or may be, lost or destroyed as a result of Sherwin-Williams' violation of the SWMA;
- e. Find Sherwin-Williams liable, jointly and severally, for any loss or destruction of wildlife, fish, or aquatic life, and any other actual damages resulting from Sherwin-Williams' violation of the SWMA;
- f. Enter an order awarding civil penalties of up to \$50,000.00 per day;

- g. Award Plaintiff Commissioner her costs and fees in this action, including attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- h. Award the Commissioner such other monetary or other relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

FOURTH COUNT

(Public Nuisance)

242. The Plaintiffs repeat each allegation of paragraph nos. 1 through 243 above as though fully set forth in its entirety herein.

243. Groundwater, sediments, land, fish, wildlife, biota, air, and water are natural resources of the State owned, managed, held in trust or otherwise controlled by the State for the benefit of the public.

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

245. The contamination of groundwater, sediments, land, fish, wildlife, biota, air, and water at the Sites 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 these natural resources.

246. As long as the groundwater, sediments, land, fish, wildlife, biota, air, and water remain contaminated due to Sherwin-Williams' conduct, the public nuisance continues.

247. Until the groundwater, sediments, land, fish, wildlife, biota, air, and water are restored to their pre-injury quality, Sherwin-Williams is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean and uncontaminated groundwater, sediments, land, fish, wildlife, biota, air, and water.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Order Sherwin-Williams to reimburse the Plaintiffs for their costs of abatement, without regard to fault, including but not limited to all costs to investigate, clean up, restore, treat, monitor, and otherwise respond to contamination of the State's natural resources so that such natural resources are restored to their original pre-discharge condition;
- b. Order Sherwin-Williams to abate the nuisance by funding the investigation, clean-up, restoration, treatment, monitoring, and other responses to contamination of the State's natural resources so that such natural resources are restored to their original pre-discharge condition;
- c. Order Sherwin-Williams to pay for all compensatory damages for the lost interim value of the natural resources at and around the Sites as a result of the contamination of such natural resources by pollutants and hazardous substances;
- d. Find Sherwin-Williams liable for all cleanup and removal costs and damages, and the lost value and assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances and pollutants at the Sites;

- e. Find Sherwin-Williams liable, and order it to fund plaintiff DEP's performance of any further assessment of natural resources that have been, or may be, injured as a result of the discharge of hazardous substances and pollutants at the Sites, including compelling Sherwin-Williams to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- f. Award the Plaintiffs their costs and fees in this action, including attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- g. Award Plaintiffs such other monetary and other relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

FIFTH COUNT

(Trespass)

248. The Plaintiffs repeat each allegation of paragraph nos. 1 through 249 above as though fully set forth in its entirety herein.

249. Groundwater, sediments, land, fish, wildlife, biota, air, and water are natural resources of the State owned, managed, held in trust or otherwise controlled by the State for the benefit of the public.

250. The hazardous substances in the groundwater, sediments, land, fish, wildlife, biota, air, and water constitute a physical invasion of public property without permission or license.

251. Sherwin-Williams is liable for trespass, and continued trespass, because the hazardous substances and pollutants in the groundwater, sediments, land, fish, wildlife, biota, air, and water at the Sites resulted from discharges of hazardous substances and pollutants at the Sites.

252. As long as the groundwater, sediments, land, fish, wildlife, biota, air, and water remain contaminated due to Sherwin-Williams' conduct, Sherwin-Williams' trespass continues.

253. Until the groundwater, sediments, land, fish, wildlife, biota, air, and water are restored to their pre-discharge condition, Sherwin-Williams is liable for trespass, and continued trespass, upon public property.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Find Sherwin-Williams liable, jointly and severally, for all costs to investigate, clean up, restore, treat, monitor, and otherwise respond to contamination of the State's natural resources so that such natural resources are restored to their original pre-discharge condition, and for all damages to compensate the citizens of New Jersey for the lost use and value of their natural resources during all times of injury caused by hazardous substances and pollutants, and for such orders as may be necessary to provide full relief to address risks to the State;
- b. Order Sherwin-Williams to pay for all costs related to the investigation, cleanup, restoration, treatment, and monitoring of contamination of the State's natural resources;
- c. Order Sherwin-Williams to pay for all damages in an amount at least equal to the full cost of restoring the State's natural resources to their original pre-discharge condition prior to the contamination;

- d. Order Sherwin-Williams to pay for all compensatory damages for the lost value (including lost use) of the State's natural resources as a result of the contamination of such natural resources;
- e. Order Sherwin-Williams to pay for all other damages sustained by Plaintiffs in their public trustee, *parens patriae*, and regulatory capacities as a direct and proximate result of the Defendant's acts and omissions alleged herein;
- f. Award the Plaintiffs their costs and fees in this action, including attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- g. Award Plaintiffs such other monetary and other relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

SIXTH COUNT

(Negligence)

254. The Plaintiffs repeat each allegation of Paragraphs 1 through 255 as though fully set forth in its entirety herein.

255. Sherwin-Williams had a duty to ensure that hazardous substances and pollutants were not released as a result of its activities at the Sites, including storing, transporting, using, handling, releasing, spilling, disposing of, and discharging hazardous substances and pollutants, and to ensure that hazardous substances and pollutants did not injure groundwater, surface water, sediment, soils, biota, wildlife, and air in New Jersey.

256. Sherwin-Williams breached these duties.

257. As a direct and proximate result of Sherwin-Williams' negligence in storing, transporting, using, handling, releasing, spilling, disposing of and/or discharging hazardous substances and pollutants at the Sites, groundwater, surface water, sediments, soils, biota, air, and other natural resources at and around the Sites have become contaminated and injured. Sherwin-Williams is jointly and severally liable for such injuries and the consequential damages.

258. As a further direct and proximate result of the contamination of the environment from Sherwin-Williams' activities, DEP has incurred, is incurring, and will continue to incur investigation, clean up, removal, treatment, monitoring, restoration costs and expenses, and other expenses for which Sherwin-Williams is liable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Find Sherwin-Williams liable, jointly and severally, for all costs to investigate, clean up, restore, treat, monitor, and otherwise respond to contamination at and around the Sites affected by Sherwin-Williams' conduct so the contaminated natural resources are restored to their original pre-discharge condition, and for all damages to compensate the citizens of New Jersey for the lost use and value of these natural resources during all times of injury caused by hazardous substances and pollutants, and for such orders as may be necessary to provide full relief to address risks to the State, including the costs of:
 - i. Past and future testing of natural resources likely to have been contaminated by hazardous substances or pollutants;
 - ii. Past and future treatment of all natural resources containing detectable levels of hazardous substances or pollutants restored to non-detectable levels; and

- iii. Past and future monitoring of the State's natural resources to detect the presence of hazardous substances or pollutants, and restoration of such natural resources to their pre-discharge condition;
- b. Order Sherwin-Williams to pay for all costs related to the investigation, cleanup, restoration, treatment, and monitoring of contamination of the State's natural resources;
- c. Order Sherwin-Williams to pay for all damages in an amount at least equal to the full cost of restoring the State's natural resources to their original pre-discharge condition prior to the contamination of such natural resources;
- d. Order Sherwin-Williams to pay for all compensatory damages for the lost value (including lost use) of the State's natural resources as a result of the contamination of such natural resources;
- e. Order Sherwin-Williams to pay for all other damages sustained by Plaintiffs in their public trustee, *parens patriae*, and regulatory capacities, as a direct and proximate result of Sherwin-Williams' acts and omissions alleged herein, including economic damages, and remedial, administrative, oversight, and legal fees and expenses;
- f. Award the Plaintiffs their costs and fees in this action, including attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- g. Award Plaintiffs such other monetary and other relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

SEVENTH COUNT

(Punitive Damages)

259. The Plaintiffs repeat each allegation of Paragraphs 1 through 260 as though fully set forth in its entirety herein.

260. Sherwin-Williams' acts as set forth above were willful and wanton.

261. For many years, Sherwin-Williams ignored orders to address contamination at the Sites and repeatedly issued misleading or inaccurate statements in site document submittals to downplay its responsibility for the contamination. For example, Sherwin-Williams failed to respond to DEP orders of January 12, 1978, and April 24, 1978, to remove and dispose of all existing dried sludges from landfill and wastewater disposal practices that resulted in groundwater contamination. Sherwin-Williams failed to comply with DEP's March 3, 1987 "Telegram Order" to immediately begin containment of petroleum seeps at the manufacturing plant portion of the Sites. Sherwin-Williams did not timely comply with a November 22, 1994 Spill Act Directive to secure the Burn Site or take steps to prevent direct human contact to DEP's satisfaction. In the 1996 timeframe, DEP documented Sherwin-Williams failure to commit to the investigation required to properly delineate the entire site of contamination. Between 1992 and 2001, Sherwin-Williams submitted at least four deficient remedial investigation reports for the SW/HC Site to DEP. On multiple occasions in the 1998-2000 timeframe, DEP found that Sherwin-Williams had submitted site documents containing "misleading" and "inaccurate" information.

262. Sherwin-Williams stymied clean-up efforts even though it knew that it had heavily contaminated the Sites with hazardous substances over decades. There were numerous fires at the paint manufacturing complex, including on February 21, 1930, February 21, 1940, and July 30, 1949. During the July 30, 1949 fire, "highly flammable cellulose or gum cotton used in lacquer

manufacturing ignited in the hot summer sun” and approximately “one thousand 50 and 100 gallon drums containing thinners and lacquer exploded in the fire, many being sent high into the air.” Because of these fires, hazardous pollutants were discharged to soils, groundwater and surface waters at and around the plant facility.

263. During the early and mid-1970’s, the company “considered the possibility of closing” the plant, and the “problems associated with environmental protection compliance were commonly thought to be the reason.” For example, in 1976 a Sherwin-Williams engineer concluded that additional sampling at the Sites “may just end up proving that we do, in fact, have very contaminated soil,” and that Sherwin-Williams “may be forced to give up the wastewater ponds along with the sludge dewatering ponds.”

264. Sherwin-Williams was aware of numerous discharges resulting in contamination at the Sites but failed to timely disclose such discharges or contamination to Plaintiffs.

265. Sherwin-Williams failed to timely notify DEP of all discharges at the Sites.

266. As a direct and proximate result of Sherwin-Williams’ willful and wanton conduct, groundwater, surface water, sediments, soils, biota, air, and other natural resources at and around the Sites have become contaminated and injured.

267. Sherwin-Williams’ acts as set forth above were willful and wanton.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

- a. Find that Sherwin-Williams engaged in willful and wanton conduct;
- b. Award Plaintiffs punitive damages in an amount to be determined by the trier of fact;

- c. Award the Plaintiffs their costs and fees in this action, including attorneys' fees, incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and
- d. Award Plaintiffs such other monetary and other relief as this Court deems appropriate, except that this Complaint does not seek, and should not be interpreted to seek, that Defendant undertake any cleanup, removal or remedial action at the SW/HC Site, the Burn Site, or the Dump Site in response to this Complaint.

JURY DEMAND

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

RULE 4:5-1 CERTIFICATION

I hereby certify in accordance with New Jersey Civil Practice R. 4:5-1 that to the best of my knowledge, information and belief, the matter in controversy is not the subject of any action pending in any other court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. The undersigned also certifies that he is not aware of any other additional parties who should be joined to this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts. I further hereby recognize the continuing obligation of each party to file with the Court and serve on all parties an amended Certification if there is a change in the facts stated in the original Certification.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Plaintiffs designate David L. Isabel as trial counsel in this matter.

Dated: December 18, 2019

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW
JERSEY
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EXHIBIT A

EXHIBIT B



Legend

- █ Silver Lake
- █ Bridgewood Lake
- █ Hilliards Creek
- █ Kirkwood Lake
- █ Former Manufacturing Plant
- █ United States Avenue Burn Site
- Parcel Boundary
- Intersected Stream Channel

Weston Solutions, Inc.
 205 W. 172nd St., Suite 200
 Tel: (720) 417-8800 Fax: (720) 417-8811
<http://www.westonsolutions.com>



REPORT DATE	January 2018
DRAWING	2124, Waterbodies Key Map
REVISION NO.	0
WORK ORDER NO.	20076.022.092.0006

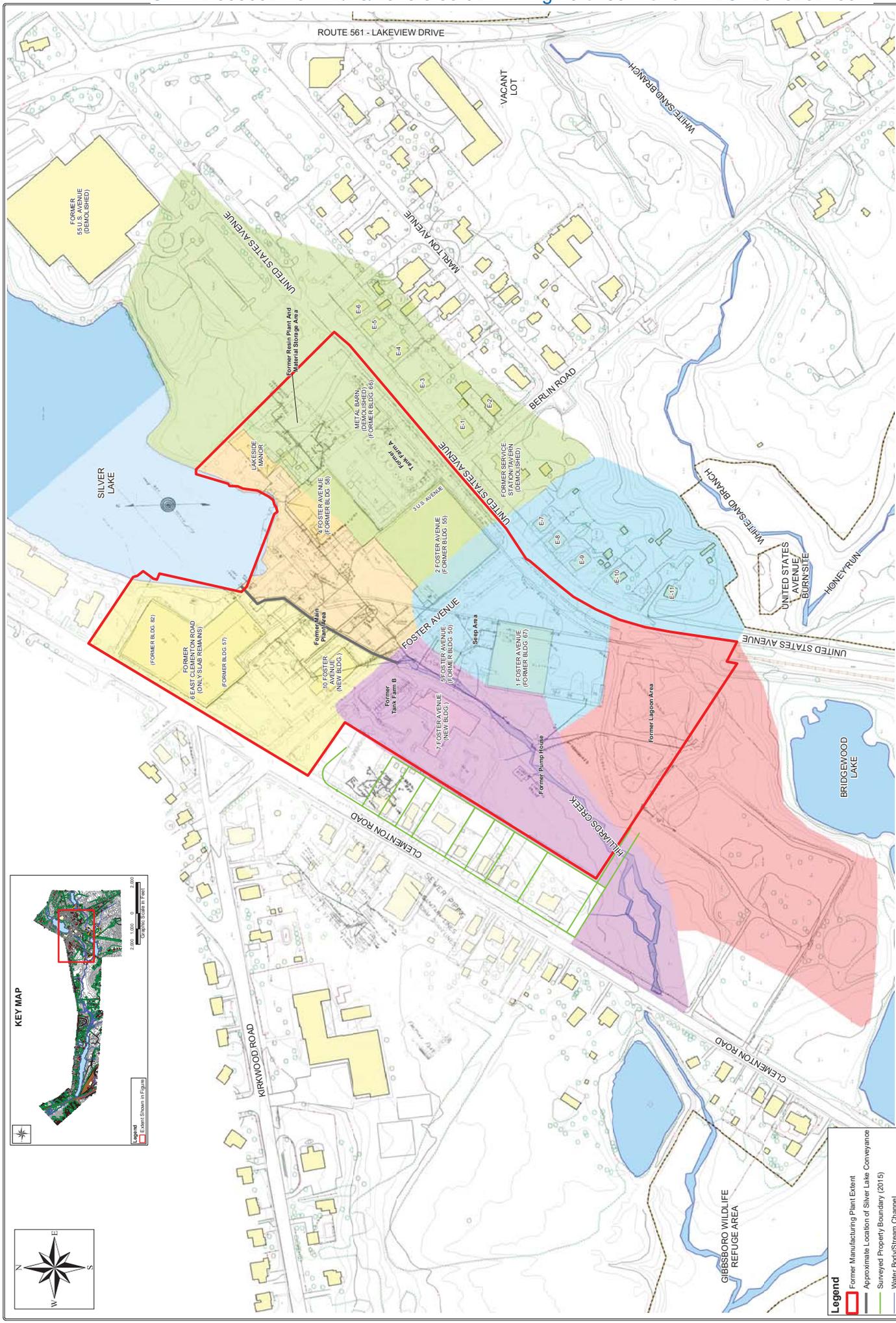
PROJECT MANAGER	R. Brown
CHECKED BY	A. Fischer
CONTRACTING	
DELIVERY ORDER NO.	
DRAWN/DESIGNED BY	K. Heullt
DATE CREATED	12/8/2017

CLIENT NAME	The Sherwin-Williams Company
PROJECT NAME	Waterbodies Remedial Investigation Report

FIGURE	2	SCALE	1" = 300'	DATE	1/18/2018
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WATERBODIES KEY MAP

EXHIBIT C



DRAWING TITLE	FORMER MANUFACTURING PLANT SUBAREA KEY MAP	
FIGURE	2	SCALE 1" = 80'
DATE	9/16/2016	

CLIENT NAME	Sherwin-Williams Company
PROJECT NAME	Former Manufacturing Plant Remedial Investigation Report

REPORT DATE	September 2016
PROJECT MANAGER	J. Edwards
DRAWN BY	A. Fischer
DATE CREATED	8/1/2016
WORK ORDER NO.	20076.022.090.006



WESTON SOLUTIONS
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 Hillside, NJ 07035
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 Fax: 908.337.3898
 http://www.westonsolutions.com

FORMER MANUFACTURING PLANT EXTENT	[Red outline]
APPROXIMATE LOCATION OF SILVER LAKE CONVEYANCE	[Blue line]
SURVEYED PROPERTY BOUNDARY (2015)	[Black outline]
WATER BODY/STREAM CHANNEL	[Blue area]
FENCE BOUNDARY	[Dashed line]
FORMER MANUFACTURING PLANT AND TANK FARM A	[Purple area]
FORMER MANUFACTURING PLANT AND TANK FARM B	[Orange area]
SLEEP AREA	[Blue area]

EXHIBIT D

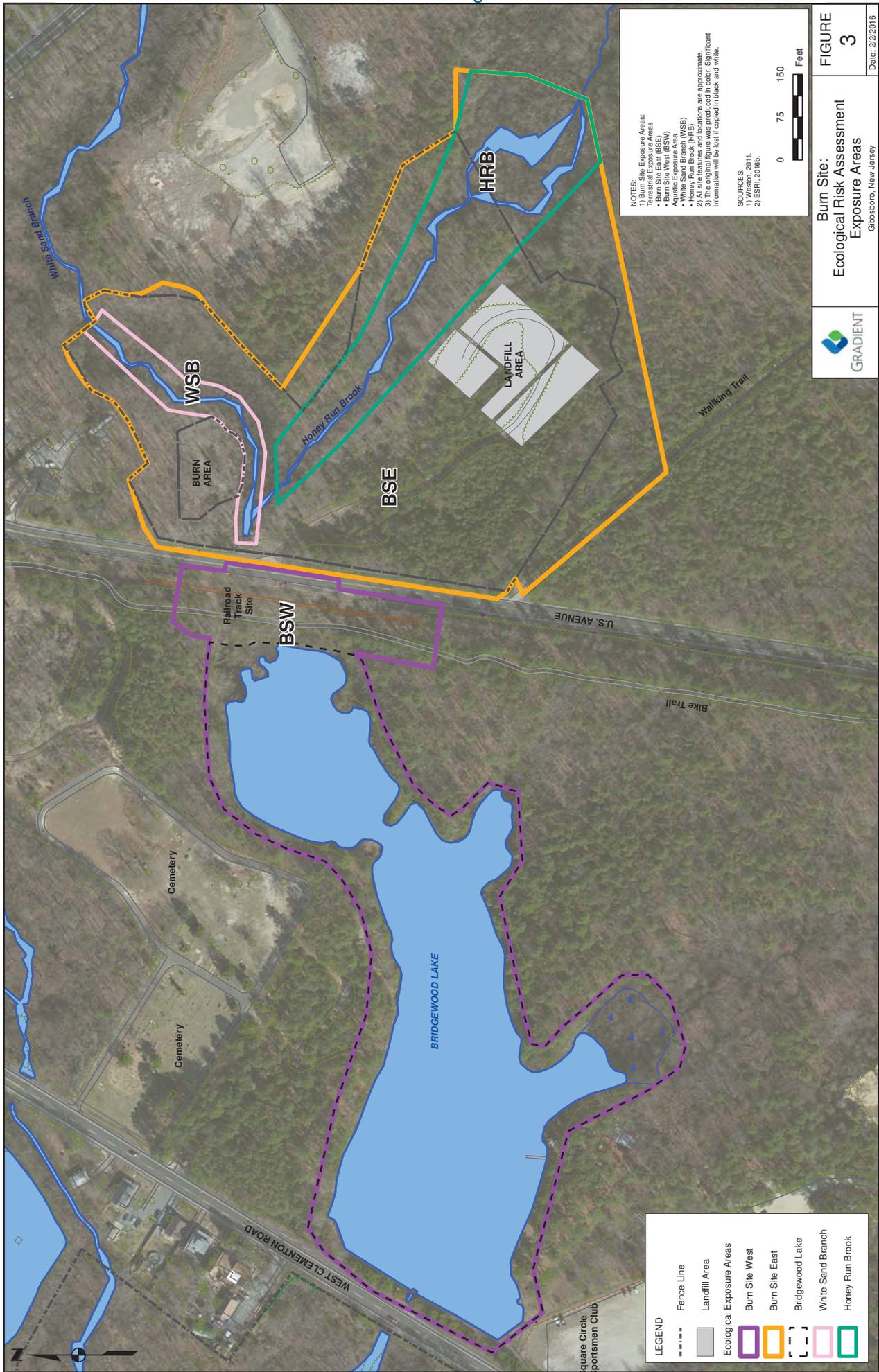
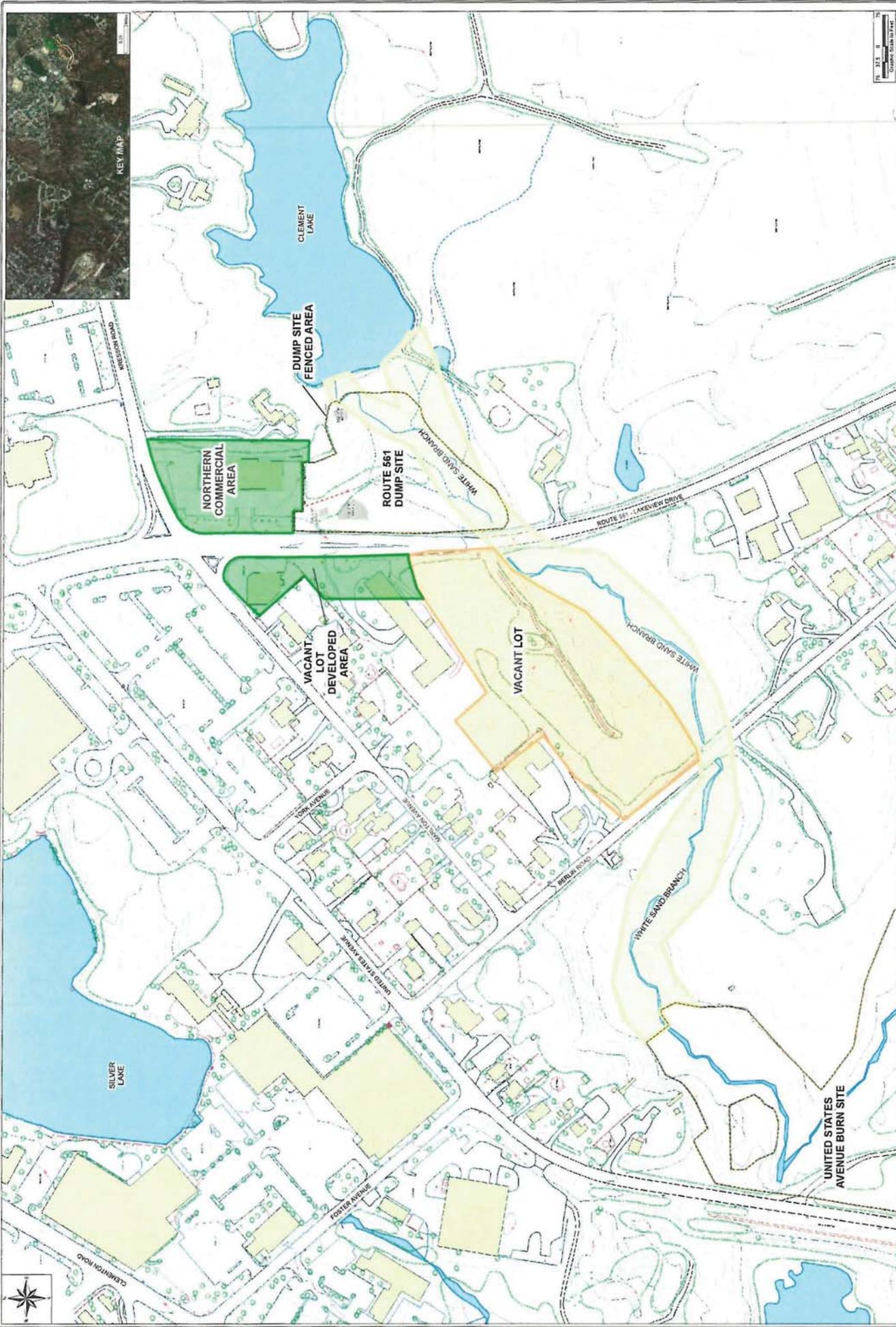


EXHIBIT E



KEY MAP



 <p>Weston Solutions, Inc. 2011, 2012, 2013, 2014, 2015, 2016 1025 Booneville Road, Booneville, MO 64608 TEL: (573) 317-2000 FAX: (573) 317-2001 WWW.WESTONSOLUTIONS.COM</p>				<p>REPORT DATE: May 2016</p> <p>PROJECT NAME: Route 561 Dump Site Feasibility Study</p>	
<p>CLIENT NAME: The Sherwin-Williams Company</p>		<p>PROJECT NAME: Route 561 Dump Site Feasibility Study</p>		<p>SCALE: 1" = 75'</p>	
<p>PROJECT MANAGER: S. Johns</p>		<p>DESIGNED BY: A. Frutiger</p>		<p>SCALE: 2</p>	
<p>DATE: May 2016</p>		<p>PROJECT NO.: 20076.022.083.0008</p>		<p>DATE: 5/13/2016</p>	
<p>PROJECT NO.: 0</p>		<p>DATE: 5/2/2016</p>		<p>DATE: 5/13/2016</p>	

- Legend**
-  Northern Commercial Area
 -  Vacant Lot Developed Area
 -  Vacant Lot
 -  White Sand Branch
 -  Fence Boundary
 -  15-inch Diameter Culvert From Parking Lot
 -  Soil Cap Area
 -  Perennial Stream Channel
 -  Intermittent Stream Channel

Note: The Dump Site Area Boundary on this map was updated on June 10, 2011.