

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

STATE OF NEW YORK, :

CV 01-3136 (SJ) (WDW)

Plaintiff, :

**AMENDED COMPLAINT**

-against- :

HICKEY’S CARTING, INC., :

DENNIS C. HICKEY, MARIA HICKEY, :

ENTENMANN’S, INC., ESTEE LAUDER, INC., :

WHITMAN PACKAGING CORP., :

MULLER MARTINI CORP, DETAIL CARTING :

CO. INC., :

Defendants. :

-----X

HICKEY’S CARTING, INC., DENNIS C. :

HICKEY, and MARIA HICKEY, :

Third-Party Plaintiffs, :

-against- :

TOWN OF ISLIP and THE ISLIP RESOURCE :

RECOVERY AGENCY, ENTENMANN’S, INC., :

ESTEE LAUDER, INC., WHITMAN :

PACKAGING CORP., MULLER MARTINI :

CORP, and NATIONAL SERVICE INDUSTRIES, :

INC., :

Third-Party Defendants. :

-----X

Plaintiff the State of New York, by its attorney, Eliot Spitzer, Attorney General of the State of New York, alleges as follows:

**NATURE OF THE ACTION**

1. The State of New York (the “State”) seeks: (a) recovery of its costs of responding to and abating the release and threatened release of hazardous substances at and from the Town

of Islip landfill on Blydenburgh Road in Islip, Suffolk County, New York (“the Landfill”), including but not limited to all payments made by the State to the Town of Islip (the “Town”) for the implementation of the remedial program at the Landfill; and (b) a declaratory judgment that Defendants are each strictly, jointly and severally liable to the State for all future costs it may so incur.

2. This action is brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., as amended, and the common law of the State of New York governing restitution, subrogation and implied indemnities.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the claim arising under CERCLA pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b), and has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the claims arising under the common law of New York.

4. Venue lies in this judicial district, pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b), because the release and threatened release of hazardous substances occurred and is occurring within this judicial district and the Defendants reside, may be found or have their principal place of business within this judicial district.

### **PARTIES**

5. Plaintiff State, as a sovereign entity, asserts its claims on behalf of itself and as parens patriae, trustee, guardian, and representative on behalf of all residents and citizens of New York, particularly those individuals who live in Suffolk County and the Town of Islip.

6. Defendant Hickey's Carting, Inc. ("Hickey's Carting") is a company organized under the laws of the State of New York. Hickey's Carting operates from, and has its principal place of business at, 169 Sycamore Avenue, Central Islip, New York. Hickey's Carting was and is engaged in the business of collecting, transporting and disposing of solid waste.

7. Upon information and belief, defendant Dennis C. Hickey was the dominant and/or sole owner, director, shareholder, officer and executive of Hickey's Carting and held the title of President of Hickey's Carting. Upon information and belief, Dennis C. Hickey resides at 141 North Path, Nissequogue, New York.

8. Upon information and belief, Defendant Maria Hickey is the dominant and/or sole owner, director, shareholder, officer and executive of Hickey's Carting and holds the titles of President and Chairman of the Board of Hickey's Carting. Upon information and belief, Maria Hickey resides at 141 North Path, Nissequogue, New York.

9. The Defendants named in paragraphs 6-8 above are collectively referred to herein as the "Hickey defendants."

10. Upon information and belief, Defendant Entenmann's, Inc., ("Entenmann's") was incorporated in Delaware on February 13, 1964. Entenmann's is a subsidiary of Bestfoods Baking Company, a division of Bestfoods.

11. Upon information and belief, Defendant Estee Lauder, Inc., ("Estee Lauder") was incorporated in the State of Delaware on March 7, 1986.

12. Defendant Whitman Packaging Corp., ("Whitman") was incorporated in the State of New York on April 23, 1970 as Clinique Laboratories, Inc. Upon information and belief, Whitman previously conducted business under the names: Clinique Laboratories, Inc., from April

23, 1970 to November 20, 1970; and NYLRAC, Inc., from November 20, 1970 to February 27, 1974.

13. Defendant Muller Martini Corp., (“Muller”) was incorporated in the State of New York on March 1, 1967 as Graphequip Corporation. Upon information and belief, Muller previously conducted business under the names: Graphequip Corp., from March 1, 1967 to July 11, 1967; Hans Muller Corp., from July 12, 1967 to May 31, 1973; and Muller-Martini Corp., from June 1, 1973 to May 14, 1987.

14. Defendant Detail Carting Co., Inc. (“Detail”) was incorporated in the State of New York on January 13, 1965.

#### **THE SITE**

15. The Landfill, also known as the Islip Municipal Sanitary Landfill, is located in the Town of Islip, in Suffolk County, New York, on Blydenburgh Road and encompasses an area of approximately 107 acres.

16. During the period from about 1927 to about 1990, industrial and municipal wastes were disposed of at the Landfill. As a result of the disposal at the Landfill of “hazardous substances,” as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), the New York State Department of Environmental Conservation (“DEC”) determined that the Landfill presented a significant threat to the public health or environment. DEC has listed the Landfill on the State’s Registry of Inactive Hazardous Waste Disposal Sites.

17. The United States Environmental Protection Agency has included the Landfill on the National Priorities List, a federal list of the most contaminated sites in the nation.

18. There has been a release and/or threatened release, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at or from the Landfill.

19. As a result of the release and/or threatened release of hazardous substances at or from the Landfill into the environment, in May and September of 1987, DEC issued Administrative Orders on Consent to the Town of Islip (“the Town”), which required the Town to perform investigative, removal and remedial measures at the Landfill with DEC oversight.

20. Under DEC’s supervision, the Town has taken response actions at the Landfill, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to remedy the release and/or threatened release of hazardous substances into the environment, including a Remedial Investigation and Feasibility Study in accordance with the National Contingency Plan for the Removal of Oil and Hazardous Substances, 40 C.F.R. Part 300 (the “National Contingency Plan”), preparation of a remedial design, the performance of remedial actions, and other investigative, planning and enforcement actions related thereto.

21. Under New York Environmental Conservation Law §§ 27-1313(5)(g) and 52-0303, the Commissioner of DEC enters into agreements, in the name of the State, with municipalities implementing remedial programs at municipally-owned inactive hazardous waste disposal sites and is required to agree to pay up to 75% of the eligible costs expended by the municipality in the course of the remedial program.

22. In February 1989, the State, by DEC, and the Town entered into a State Assistance Contract whereby the State agreed to reimburse the Town for 75% of the eligible costs to be incurred in the implementation of the remedial program by the Town at the Landfill.

23. The Town has incurred eligible costs in the course of implementing the remedial program.

24. The State, by DEC, has reimbursed the Town in excess of \$10.4 million pursuant to the State Assistance Contract, and is obligated to make additional future payments to the Town in excess of \$5.0 million for eligible costs until the completion of the remedial program.

25. DEC and the New York State Department of Health have incurred other response costs for the investigation and remediation of the Landfill in addition to those incurred by the State by the reimbursement of a portion of the costs of the Town's response to the release and threatened release of hazardous substances. These State agencies will continue to incur such costs in the future until the completion of the remedial program.

26. As a result of the release and/or threatened release of hazardous substances at and from the Landfill, Plaintiff has incurred costs for response actions that were not inconsistent with the National Contingency Plan, within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and the State will continue to incur such costs.

### **DEFENDANTS' ACTS AND OMISSIONS**

#### **The Hickey Defendants**

**A. The Hickey Defendants' Arranged, Accepted, Transported and Disposed of Hazardous Substances Generated by Serv-All Uniform Rental Corp.**

27. A company formerly known as Serv-All Uniform Rental Corp. ("Serv-All") generated liquid wastes containing significant amounts of the dry cleaning chemical perchloroethylene.

28. Perchloroethylene is a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. In or about June 1978, Ralph Colantuoni, the President of Serv-All spoke with Hickey’s Carting and Dennis C. Hickey and requested a bid for the removal and disposal of 50 or more 55-gallon drums filled with liquid waste containing perchloroethylene (the “Drums”).

30. In or about June 1978, Serv-All contracted with Hickey’s Carting for the collection and disposal the Drums.

31. On or about June 2 and June 8, 1978, Hickey’s Carting removed the Drums from Serv-All.

32. Hickey’s Carting and Dennis C. Hickey selected the Landfill as the site for disposal of the Drums, and on or about June 2 and June 8, 1978, they arranged to have the Drums disposed of at the Landfill.

33. On or about June 2 and June 8, 1978, a truck operated by Hickey’s Carting brought the Drums to the Landfill, where the Drums were deposited.

34. In or about June 1978, Hickey’s Carting sent a bill to Serv-All for the removal and disposal of the Drums.

35. In or about July 1978, Serv-All paid Hickey’s Carting for the removal and disposal of the Drums.

36. At the time the Drums were disposed of at the Landfill, Hickey’s Carting and Dennis C. Hickey were not on the list of entities approved by New York State to remove perchloroethylene or other industrial waste such as that in the Drums and did not have a certificate of registration for disposing of industrial waste products.

37. The Landfill was not and is not a facility approved by the DEC for disposal of such industrial waste.

**B. The Hickey Defendants' Arranged, Accepted, Transported and Disposed of Hazardous Substances Generated by Other Companies**

38. From at least the 1970s to the late 1980s, Defendant Hickey's Carting disposed of waste generated by several dry cleaners at the Landfill.

39. Upon information and belief, the wastes from those dry cleaners disposed of by Hickey's Carting contained perchloroethylene, a hazardous substance.

40. From at least the 1970s to the late 1980s, Defendant Hickey's Carting disposed of the waste generated by several automobile repair and painting facilities at the Landfill.

41. Upon information and belief, the wastes from those automobile repair facilities disposed of by Hickey's Carting contained solvents, paints and dyes, which are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and other hazardous substances.

42. From at least the 1970s to the late 1980s, Defendant Hickey's Carting disposed of the waste generated by several manufacturing facilities at the Landfill.

43. Upon information and belief, the wastes from those manufacturing facilities disposed of by Hickey's Carting contained solvents and chemicals used for making plastics, which are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and other hazardous substances.

**C. Dennis C. Hickey**

44. Upon information and belief, at all times when he was President of Hickey's Carting, the Town communicated directly with Defendant Dennis C. Hickey regarding all matters related to the use of the Landfill by Hickey's Carting, Inc.

45. Upon information and belief, at the time the Drums and other wastes were disposed of at the Landfill, Defendant Dennis C. Hickey managed, directed, authorized and conducted Hickey's Carting's waste hauling and disposal operations on a day-to-day basis, including Hickey's Carting's decisions and actions concerning arrangements with customers seeking to dispose of waste, contracts and billing for the disposal of waste, the acceptance of waste, the transport of waste, arrangements with the Landfill for the disposal of waste, the selection of the Landfill for the disposal of waste, the use of the Landfill for the disposal of waste, and compliance with all applicable environmental laws and regulations.

46. Upon information and belief, at the time the Drums and other wastes were disposed of at the Landfill, Defendant Dennis C. Hickey directed, authorized and controlled Hickey's Carting's employees regarding specific arrangements for the acceptance of waste, the transport of waste, disposal of waste at the Landfill and billing for the disposal of waste.

47. Upon information and belief, at the time the Drums and other wastes were disposed of at the Landfill, Defendant Dennis C. Hickey was informed of and knowledgeable about Hickey's Carting's waste hauling and disposal operations, including Hickey's Carting's decisions and actions concerning arrangements with customers seeking to dispose of waste, the acceptance of waste, the transport of waste, arrangements with the Landfill for the disposal of

waste, the selection of the Landfill for the disposal of waste, the use of the Landfill for the disposal of waste and compliance with all applicable environmental laws and regulations.

48. Upon information and belief, Defendant Dennis C. Hickey arranged for the contract with Serv-All and made the decision to deliver the Drums to the Landfill for disposal at that facility.

49. Upon information and belief, Defendant Dennis C. Hickey arranged for contracts with other commercial customers and made the decision to deliver their waste to the Landfill for disposal at that facility.

**D. Maria Hickey**

50. Upon information and belief, at the time when Hickey's Carting dumped other hazardous substances at the Landfill, Defendant Maria Hickey managed, directed, authorized and conducted Hickey's Carting's waste hauling and disposal operations on a day-to-day basis, including Hickey's Carting's decisions and actions concerning arrangements with customers seeking to dispose of waste, contracts and billing for the disposal of waste, the acceptance of waste, the transport of waste, arrangements with the Landfill for the disposal of waste, the selection of the Landfill for the disposal of waste, the use of the Landfill for the disposal of waste, and compliance with all applicable environmental laws and regulations.

51. Upon information and belief, at the time when Hickey's Carting dumped other hazardous substances at the Landfill, Defendant Maria Hickey directed, authorized and controlled Hickey's Carting's employees regarding specific arrangements for the acceptance of waste, the transport of waste, disposal of waste at the Landfill and billing for the disposal of waste.

52. Upon information and belief, at the time when Hickey's Carting dumped other hazardous substances at the Landfill, Defendant Maria Hickey was informed of and knowledgeable about Hickey's Carting's waste hauling and disposal operations, including Hickey's Carting's decisions and actions concerning arrangements with customers seeking to dispose of waste, the acceptance of waste, the transport of waste, arrangements with the Landfill for the disposal of waste, the selection of the Landfill for the disposal of waste, the use of the Landfill for the disposal of waste and compliance with all applicable environmental laws and regulations.

53. Upon information and belief, at the time when Hickey's Carting dumped other hazardous substances at the Landfill, Defendant Maria Hickey arranged for contracts with commercial customers and made the decision to deliver their waste to the Landfill for disposal at that facility.

**Entenmann's**

54. Upon information and belief, Entenmann's operates four facilities which deposited solid waste at the Landfill.

55. The four facilities operated by Entenmann's are located at the following locations, and have operated for the periods indicated: 1724 Fifth Avenue, Bay Shore (1962 to present); 30 Inez Dive, Bay Shore, New York, (1975 to present); 55 Paradise Lane, Bay Shore, New York (1987/1988 to present); and 58 Spence Street, Bay Shore, New York (approximately early 1970's to present) (collectively, "the Entenmann's facilities").

56. Upon information and belief, one or more or all of the Entenmann's facilities generated one or more the following hazardous wastes: (a) photowaste comprising of a developer

which is classified as a corrosive characteristic hazardous waste with the waste code D002 as a result of its high pH and a fixer which is a toxic characteristic hazardous waste with the waste code D011 as a result of its high concentration of silver; (b) Cyrel washout solution used in the manufacture of print mats for the production of labels containing 75% tetrachloroethene and 35% butanol, when spent is classified as a listed hazardous waste with the waste codes F002 and F003; (c) fly ash containing cadmium classified as a toxic characteristic hazardous waste with waste code D006; and (d) Parts Washer Solvent containing tetrachloroethylene which is ignitable and toxic with waste codes D001 and D039.

57. Upon information and belief, the contents of dumpsters used to collect waste at Entenmann's facilities were disposed of at the Landfill.

58. Upon information and belief, one or more or all of the Entenmann's facilities at various times possessed and disposed of hazardous waste in dumpsters that were taken to the Landfill.

59. Upon information and belief, one or more or all of the Entenmann's facilities used solvents to clean machinery, and disposed of rags or paper towels used to apply the solvents in dumpsters which were taken to the Landfill.

60. Upon information and belief, procedures adopted by Entenmann's to prevent hazardous substances and waste from going to the Landfill were not in place during all times when dumpsters from the Entenmann's facilities were disposed of at the Landfill.

61. Upon information and belief, Entenmann's arranged for disposal of hazardous substances at the Landfill.

62. Upon information and belief, the total weight of solid materials containing hazardous substances which the Entenmann's facilities arranged to dispose of at the Landfill was 200 or more pounds.

### **Estee Lauder and Whitman Packaging**

63. Whitman is a wholly owned subsidiary of Estee Lauder.

64. Whitman operated a plant at 90 Nicon Court, Hauppauge, New York, from 1975 to 1978, may have closed for part of 1978, and then reopened and has continued to date ("Whitman I").

65. Whitman has operated a plant at 40 Center Lane, Hauppauge, New York since 1982 or 1983 ("Whitman II").

66. Whitman has operated a plant at 1516 Motor Parkway, Hauppauge, New York since approximately 1981 ("Whitman III").

67. Estee Lauder leased a building located at 3016 Express Drive, South Central Islip, New York for operation of its Aramis and Clinique affiliates from 1968 to 1971. Estee Lauder leased this same site again, from 1975 to 1978, and again in the early 1980's ("Central Islip").

68. During the 1970's, Estee Lauder operated a research and development ("R&D") facility in Hauppauge, New York.

69. The content of dumpsters used to collect waste at Whitman I, II, and III, Central Islip, and the R&D facility (collectively, "the Estee Lauder facilities"), were disposed of at the Landfill.

70. Upon information and belief, one or more or all of the Estee Lauder facilities at various times possessed and disposed of hazardous substances, such as acetone, benzene, dichloroethylene, chromium and lead at the Landfill.

71. Upon information and belief, one or more or all of the Estee Lauder facilities used solvents to clean machinery, and disposed of rags or paper towels used to apply the solvents in dumpsters which were taken to the Landfill.

72. Upon information and belief, procedures adopted by Estee Lauder to prevent hazardous substances and waste from going to the Landfill were not in place prior to December 1983, and, in all events, were not in place during all times when dumpsters from the Estee Lauder facilities were disposed of at the Landfill.

73. Upon information and belief, the Estee Lauder facilities arranged for the disposal of hazardous substances at the Landfill.

74. Upon information and belief, the total weight of solid materials containing hazardous substances which the Estee Lauder facilities arranged to dispose of at the Landfill was 200 or more pounds.

### **Muller Martini**

75. Upon information and belief, Muller Martini operated a facility at 40 Rabro Drive, Hauppauge, New York from 1973 to the present.

76. Upon information and belief, solid waste generated from the facility at 40 Rabro Drive was deposited at the Landfill while the Landfill was still open.

77. Upon information and belief, Muller Martini generated one or more of the following wastes: trichloroethylene, solvents, parts cleaner, TCA, kerosene, oil and spray paint

booth waste and rags and/or paper towels, containing the above, used paint both filters, paint containers, paint and paint sludge.

78. Upon information and belief, the contents of dumpsters used to collect waste at Muller Martini were disposed of at the Landfill.

79. Upon information and belief, Muller Martini possessed and disposed of hazardous waste in dumpsters that were taken to the Landfill.

80. Upon information and belief, Muller Martini arranged for disposal of hazardous substances at the Landfill.

#### **Detail**

81. Detail disposed of the waste generated by Entenmann's at the Landfill.

82. Upon information and belief, the wastes from Entenmann's contained one or more the following hazardous wastes: (a) photowaste comprising of a developer which is classified as a corrosive characteristic hazardous waste with the waste code D002 as a result of its high pH and a fixer which is a toxic characteristic hazardous waste with the waste code D011 as a result of its high concentration of silver; (b) Cyrel washout solution used in the manufacture of print mats for the production of labels containing 75% tetrachloroethene and 35% butanol, when spent is classified as a listed hazardous waste with the waste codes F002 and F003; (c) fly ash containing cadmium classified as a toxic characteristic hazardous waste with waste code D006; and (d) Parts Washer Solvent containing tetrachloroethylene which is ignitable and toxic with waste codes D001 and D039.

## **FIRST CAUSE OF ACTION (CERCLA)**

83. The Landfill is a “facility” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

84. There has been a “release” and/or there is a threat of “release,” as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances from the Landfill into the environment.

### **The Hickey and Detail Defendants**

85. Defendants Hickey’s Carting, Dennis C. Hickey, Maria Hickey, and Detail each is a “person” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

86. Upon information and belief, during the period of the operation of the Landfill, Defendants Hickey’s Carting, Dennis C. Hickey, Maria Hickey and Detail accepted wastes containing hazardous substances, transported the hazardous substances and disposed of the hazardous substances at the Landfill.

87. Upon information and belief, Defendants Hickey’s Carting, Dennis C. Hickey, Maria Hickey and Detail arranged with the Landfill for the disposal of hazardous substances.

88. Upon information and belief, Defendants Hickey’s Carting, Dennis C. Hickey, Maria Hickey and Detail selected the Landfill for the disposal of hazardous substances.

89. Defendants Hickey’s Carting, Dennis C. Hickey, Maria Hickey and Detail are each strictly, jointly and severally liable, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all past and future costs of the State at the Landfill for response actions not inconsistent with the National Contingency Plan, including but not limited to the cost of investigation, assistance provided to the Town, oversight, enforcement, and interest.

**Entenmann’s, Estee Lauder, Whitman, and Muller Martini**

90. Defendants Entenmann’s, Estee Lauder, Whitman, Muller Martini, each is a “person” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

91. Defendants Entenmann’s, Estee Lauder, Whitman, and Muller Martini are liable pursuant to 42 U.S.C. § 9607 (a)(3), because they arranged for disposal, or arranged with a transporter for transport for disposal, at the Site, of hazardous substances that they owned or possessed.

92. Defendants Entenmann’s, Estee Lauder, Whitman, and Muller Martini are each strictly, jointly and severally liable, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all past and future costs of the State at the Landfill for response actions not inconsistent with the National Contingency Plan, including but not limited to the cost of investigation, assistance provided to the Town, oversight, enforcement, and interest.

**SECOND CAUSE OF ACTION (Unjust Enrichment/Restitution)**

93. Defendants Hickey’s Carting, Dennis C. Hickey, Maria Hickey, Entenmann’s, Estee Lauder, Whitman, Muller Martini and Detail have an obligation to the State, the Town and the public at large to abate and remediate completely and permanently the Landfill’s contamination with hazardous substances and other wastes and to investigate and remediate the release and/or the threatened release of hazardous substances at and from the Landfill into the environment. Such duties and obligations include the duty to conduct necessary environmental studies, to eliminate the release and/or the threatened release of hazardous substances and to monitor the Landfill to ensure that corrective measures are adequate to protect the public health and the environment.

94. Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail have failed to perform the aforesaid duties and obligations.

95. The State and the Town have performed, and will in the future perform, duties and obligations owed by Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail to investigate, clean up and monitor the Landfill.

96. The actions taken and costs incurred by the State and the Town were necessary to ensure the health, safety and welfare of the public and to protect the environment of the State.

97. Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail have been and will be unjustly enriched by the performance by the State and the Town of duties and obligations of Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail.

98. Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail are each liable to the State under the common law of restitution for all expenses and costs, including enforcement costs, incurred by the State in performing Defendants's duties and obligations at the Landfill.

### **THIRD CAUSE OF ACTION (Subrogation)**

99. By reason of the State's payments to the Town pursuant to the State Assistance Contract for the Landfill, the State became and is subrogated by operation of law to all rights of recovery of the Town against Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey

Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail in the amount of such payments.

100. Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail are each liable to the Town for the costs of the remedial program, pursuant to CERCLA and the common law of restitution.

**FOURTH CAUSE OF ACTION (Implied Indemnity)**

101. Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail are each liable to the Town for the costs of the remedial program, pursuant to CERCLA and the common law of restitution.

102. By reason of the State's payments to the Town pursuant to the State Assistance Contract for the Landfill, the State obtained by operation of law an implied right to indemnification against Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail in the amount of such payments.

103. As a result, Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail are each liable to the State for all costs of the Town which the State has reimbursed or will reimburse.

**PRAYER FOR RELIEF**

Plaintiff prays for judgment against Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail:

(a) On the First Cause of Action, for all costs (including attorneys' fees and other enforcement costs) incurred by the State for response actions that are not inconsistent with the

National Contingency Plan and that were caused by the release and/or threatened release of hazardous substances at and/or from the Landfill, and pre-judgment interest thereon;

(b) On the First Cause of Action, for a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), requiring Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail to reimburse the State for all future costs (including attorneys' fees and other enforcement costs) incurred by the State for response actions that are not inconsistent with the National Contingency Plan and that are caused by the release and/or threatened release of hazardous substances at and/or from the Landfill, and pre-judgment interest thereon;

(c) On the Second Cause of Action, for restitution of all costs of the State of investigation, enforcement, remediation and monitoring at the Landfill;

(d) On the Second Cause of Action, for a declaratory judgment requiring Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail to provide restitution of all future costs incurred by the State at the Landfill;

(e) On the Third and Fourth Causes of Action, for all payments by the State pursuant to the State Assistance Contract for the remedial program at the Landfill;

(f) On the Third and Fourth Causes of Action, for a declaratory judgment requiring Defendants Hickey's Carting, Dennis C. Hickey, Maria Hickey, Entenmann's, Estee Lauder, Whitman, Muller Martini and Detail to reimburse the State for all future payments by the State pursuant to the State Assistance Contract for the remedial program at the Landfill; and

(g) Other and further relief that the Court deems just and proper.

Dated: New York, New York  
June 1, 2004

ELIOT SPITZER  
Attorney General of the State of New York  
Attorney for Plaintiff State of New York

/s/

By:

\_\_\_\_\_  
PEDRO MEDINA.(PM 6153)  
Assistant Attorney General  
Environmental Protection Bureau  
120 Broadway  
New York, New York 10271  
(212) 416-8464 (telephone)  
(212) 416-6007 (facsimile)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

STATE OF NEW YORK,

Plaintiff,

-against-

HICKEY'S CARTING, INC., DENNIS C.  
HICKEY, and MARIA HICKEY,

and

ENTENMANN'S INC., ESTEE LAUDER  
INC., WHITMAN PACKAGING CORP.,  
MULLER MARTINI CORP., and  
NATIONAL SERVICE INDUSTRIES,  
INC.,

Defendants.

HICKEY'S CARTING, INC., DENNIS C.  
HICKEY, and MARIA HICKEY,

Third Party Plaintiffs,

-against-

TOWN OF ISLIP and ISLIP RESOURCE  
RECOVERY AGENCY, ENTENMANN'S  
INC., ESTEE LAUDER INC., WHITMAN  
PACKAGING CORP., MULLER  
MARTINI CORP., and NATIONAL  
SERVICE INDUSTRIES, INC.,

Third Party Defendants.

CV 01-3136

**FIRST AMENDED THIRD PARTY  
COMPLAINT OF DEFENDANTS/THIRD  
PARTY PLAINTIFFS ENTENMANN'S, INC.  
AND MULLER MARTINI CORP.**

---

ENTENMANN'S INC. and MULLER  
MARTINI CORP.

Third Party Plaintiffs,

-against-

**SMITHS AEROSPACE L.L.C.**  
(formerly known as Aerospace Avionics,  
Inc.); **KNF CLEAN ROOM  
PRODUCTS CORPORATION.**  
(formerly known as Clean Room  
Products, Inc.); **DAYTON T. BROWN,  
INC.; DISC GRAPHICS, INC.;**  
**FRANZA'S UNIVERSAL SCRAP  
METAL, INC.; LONG ISLAND  
LIGHTING COMPANY (d/b/a Long  
Island Power Authority); MURDOCH  
COMPANY, L.L.C. (formerly known as  
McKenzie Chemical Works, Inc.);**  
**MACY'S EAST, INC.; VERIZON NEW  
YORK; CENTRAL ISLIP STATE  
HOSPITAL; NEW YORK STATE  
DEPARTMENT OF  
TRANSPORTATION; SUFFOLK  
COUNTY; CROSS ISLAND  
SANITATION, INC.; DETAIL  
CARTING CO., INC.; JAMAICA ASH  
& RUBBISH REMOVAL CO., INC.;**  
**JET SANITATION SERVICE CORP.;**  
**GILFORD HOLDINGS LTD. (formerly  
known as Southside Carting Co. Inc.);**  
**WASTE MANAGEMENT OF NEW  
YORK, LLC; STANDARD  
COMMERCIAL CARTING, INC.;**  
**SUNSET CARTING, INC.; TONY'S  
BARGE SERVICE, INC. (formerly  
known as Tony's Sanitation Service,  
Inc.); LONG ISLAND RUBBISH  
REMOVAL EASTERN CORP.**  
(formerly known as Long Island  
Rubbish Removal Corp.); **V.I.P. &  
SONS CARTING, INC.; TMJ  
CARTING, INC. (formerly known as**

---

**3M Carting, Inc.); METS ROLL-OFF SERVICE, INC.; PRUDENTIAL INSURANCE COMPANY OF AMERICA; PILGRIM PSYCHIATRIC CENTER; and PDK LABS INC.**

Third Party Defendants

---

Pursuant to Rule 14 of the Federal Rules of Civil Procedure, Defendants/Third Party Plaintiffs Entenmann's, Inc. and Muller Martini Corp. (collectively the "Third Party Plaintiffs") by way of First Amended Third Party Complaint against each of the following third-party defendants: Smiths Aerospace L.L.C. (formerly known as Aerospace Avionics, Inc.) Incorporated; KNF Clean Room Products Corporation. (formerly known as Clean Room Products, Inc.); Dayton T. Brown, Inc.; Disc Graphics, Inc.; Franza's Universal Scrap Metal, Inc.; Long Island Lighting Company (d/b/a Long Island Power Authority); Murdoch Company, L.L.C. (formerly known as Mckenzie Chemical Works, Inc.); Macy's East, Inc.; Verizon New York; Central Islip State Hospital; New York State Department of Transportation; Suffolk County; Cross Island Sanitation, Inc.; Detail Carting Co., Inc.; Jamaica Ash & Rubbish Removal Co., Inc.; Jet Sanitation Service Corp.; Gilford Holdings Ltd. (formerly known as Southside Carting Co. Inc.); Waste Management Of New York, LLC; Standard Commercial Carting, Inc.; Sunset Carting, Inc.; Tony's Barge Service, Inc. (formerly known as Tony's Sanitation Service, Inc.); Long Island Rubbish Removal Eastern Corp. (formerly known as Long Island Rubbish Removal Corp.); V.I.P. & Sons Carting, Inc.; TMJ Carting, Inc. (formerly known as 3M Carting, Inc.); Mets Roll-Off Service, Inc.; Prudential Insurance Company of America; Pilgrim

Psychiatric Center; and PDK Labs Inc. (collectively, the “ Third Party Defendants”), allege as follows:

### **JURISDICTION AND VENUE**

1. This is a civil action for declaratory and equitable relief, monetary damages and response costs incurred and to be incurred by the Third Party Plaintiffs in response to alleged environmental conditions at the Blydenburgh Landfill, Town of Islip (“Islip”), Suffolk County, New York (the “Blydenburgh Landfill”).

2. This Court has jurisdiction over the subject matter of this third party action pursuant to Fed. R. Civ. P. 14(a) and 28 U.S.C. § 1331 because this action arises under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.* (“CERCLA”) and CERCLA Section 113, 42 U.S.C. § 9613. This Court has supplemental jurisdiction over pendant state and common law claims pursuant to 28 U.S.C. § 1367(a).

3. The Third Party Plaintiffs also seek declaratory relief pursuant to the Federal and New York Declaratory Judgment Acts, 28 U.S.C. § 2201 *et seq.* and New York CPLR § 3001.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the real property that is the subject of this action is located in this District, the acts complained of occurred in this District and certain of the parties reside in this District.

### **THE PARTIES**

#### **Plaintiffs And The Hickey Third Party Plaintiffs**

5. On or about May 17, 2001, Plaintiff, the State of New York (“New York”), filed a

Complaint in this matter against Hickey's Carting Company, Inc., Dennis C. Hickey and Maria Hickey (collectively the "Hickey Third Party Plaintiffs").

6. On or about September 5, 2002, the Hickey Third Party Plaintiffs filed an Amended Third Party Complaint against the Third Party Plaintiffs. The Hickey Third Party Plaintiffs' Amended Third Party Complaint is attached hereto as Exhibit A.

7. On or about June 1, 2004, New York amended its Complaint to name Third Party Plaintiffs Entenmann's, Inc. and Muller Martini Corp. among others as defendants. New York's Amended Complaint against these defendants, is attached hereto as Exhibit B.

8. Third Party Plaintiff Entenmann's Inc. ("Entenmann's") is a corporation duly organized under the laws of the State of Delaware. At all pertinent times, Entenmann's principal place of operation has been 1724 Fifth Avenue, Bay Shore, New York.

9. Third Party Plaintiff Muller Martini Corp. ("MMC") is a corporation duly organized under the laws of the State of New York. At all pertinent times, MMC's principal place of business is 40 Rabro Drive, Hauppauge, New York.

### **Third Party Defendants**

#### **(A) Private Generators**

10. Third Party Defendant Smiths Aerospace L.L.C. (formerly known as Aerospace Avionics, Inc.) is a corporation duly organized under the laws of the State of Delaware. On information and belief, Smiths Aerospace L.L.C. has its place of business at 1000 MacArthur Memorial Highway, Bohemia, New York 11716. Upon information and belief, Aerospace

Avionics, Incorporated manufactured electronic assemblies and sheet metal enclosures and generated wastes that were, or contained, hazardous substances.

11. Third Party Defendant KNF Clean Room Products Corporation (formerly known as Clean Room Products, Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 1800 Ocean Avenue, Ronkonkoma, New York 11779. Upon information and belief, KNF Clean Room Products Corporation manufactured electrical and pharmaceutical equipment and supplied construction services which generated wastes that were, or contained, hazardous substances.

12. Third Party Defendant Dayton T. Brown, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 555 Church Street, Bohemia, New York 11716. Upon information and belief, Dayton T. Brown, Inc. conducted manufacturing, testing and engineering services which generated wastes that were, or contained, hazardous substances.

13. Third Party Defendant Disc Graphics, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 10 Gilpin Avenue, Hauppauge, New York 11788. Upon information and belief, Disc Graphics, Inc. manufactured phonograph records and related products which generated wastes that were, or contained, hazardous substances.

14. Third Party Defendant Franza's Universal Scrap Metal, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at Garity Place, Farmingdale, New York 11735. Upon information and belief, Franza's Universal Scrap

Metal, Inc. operated a scrap metal business which generated wastes that were, or contained, hazardous substances and accepted for transportation wastes that were, or contained, hazardous substances.

15. Third Party Defendant Long Island Lighting Company (“LILCO”), d/b/a Long Island Power Authority, is a corporation duly organized under the laws of the State of New York with its principal place of business at 333 Earle Ovington Boulevard, Uniondale, New York. LILCO generated and transmitted electric power, and, upon information and belief, generated wastes that were, or contained, hazardous substances.

16. Third Party Defendant Murdoch Company, L.L.C. (formerly known as MacKenzie Chemical Works Inc.) is a corporation duly organized under the laws of the State of Louisiana. Upon information and belief, Murdoch Company, L.L.C. operated a chemical production facility which generated wastes that were, or contained, hazardous substances.

17. Third Party Defendant Macy’s East, Inc. (“Macy’s”) is a corporation duly organized under the laws of the State of Delaware with its principal place of business at 151 West 34th Street, New York, New York. Upon information and belief, Macy’s operated a retail department store at the Smith Haven Mall, including a jewelry repair center, which generated wastes that were, or contained, hazardous substances.

18. Third Party Defendant PDK Labs, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 145 Ricefield Lane, Hauppauge, New York. Upon information and belief, PDK Labs Inc. manufactured over-the-counter pharmaceuticals, which manufacturing generated wastes that were, or contained,

hazardous substances.

19. Third Party Defendant Prudential Insurance Company of America (“Prudential”) is a corporation duly organized under the laws of the State of New Jersey with its principal place of business at 751 Broad Street, Newark, New Jersey. Upon information and belief, Prudential owned and operated the Smith Haven Mall in Lake Grove, New York, which generated wastes that were, or contained, hazardous substances.

20. Third Party Defendant Verizon New York is a corporation duly organized under the laws of the State of New York with its principal place of business at 1095 Avenue of the Americas, New York, New York 10036. Upon information and belief, Verizon New York operated a maintenance yard which generated wastes that were, or contained, hazardous substances.

**(B) Public Entity Generators**

21. Third Party Defendant Central Islip State Hospital, upon information and belief, is a State facility operated by the State of New York, Department of Mental Hygiene located in Central Islip, New York which generated wastes that were, or contained, hazardous substances.

22. Third Party Defendant Pilgrim Psychiatric Center, upon information and belief, is a State facility operated by the State of New York, Department of Mental Hygiene located in West Brentwood, New York which generated wastes that were, or contained, hazardous substances.

23. Third Party Defendant New York State Department of Transportation, upon information and belief, is a governmental agency of the State of New York that operated a maintenance yard located on Carlton Avenue, Central Islip, New York which generated wastes that were, or contained, hazardous substances.

24. Third Party Defendant Suffolk County, upon information and belief, is a governmental entity organized under the laws of the State of New York with a principal place of business at the H.L. Denison Building, Veterans Highway, Hauppauge, New York 11788 which operated the following agencies or units each of which conducted operations that generated wastes that were, or contained, hazardous substances:

(i) Suffolk County Police Department, Special Patrol Bureau, Smithtown Avenue, Ronkonkoma, New York 11779,

(ii) Suffolk County Medical Examiner's Office, Veterans Highway, Hauppauge, New York 11788, and

(iii) Suffolk County Water Authority, Sunrise Highway & Pond Road, Oakdale, New York 11769.

(C) **Transporter Defendants**

25. Third Party Defendant Cross Island Sanitation, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 685 N. Queens Avenue, Lindenhurst, New York, 11757. Upon information and belief, Cross Island Sanitation, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

26. Third Party Defendant Dayton T. Brown, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 555 Church Street, Bohemia, New York 11716. Upon information and belief, Dayton T. Brown, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

27. Third Party Defendant Detail Carting Co., Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 1770 Fevereisen Avenue, Ronkonkoma, New York, 11779. Upon information and belief, Detail Carting Co., Inc. accepted for transportation wastes that were, or contained, hazardous substances.

28. Third Party Defendant Jamaica Ash & Rubbish Removal Co., Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 633 Dickens Street, Westbury, New York, 11950. Upon information and belief, Jamaica Ash & Rubbish Removal Co., Inc. accepted for transportation wastes that were, or contained, hazardous substances.

29. Third Party Defendant Jet Sanitation Service Corp. is a corporation duly organized under the laws of the State of New York with its principal place of business at 228 Blydenburgh Road, Central Islip, New York, 11722. Upon information and belief, Jet Sanitation Service Corp. accepted for transportation wastes that were, or contained, hazardous substances.

30. Third Party Defendant Gilford Holdings Ltd. (formerly known as Southside Carting Co. Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 1839 Gilford Ave, New Hyde Park, NY 11040-4088. Upon information and belief, Gilford Holdings Ltd. accepted for transportation wastes that were, or contained, hazardous substances.

31. Third Party Defendant Waste Management of New York, LLC (as successor to South Side Carting Company, Inc.) is a corporation duly organized under the laws of the State of Delaware with its principal place of business at 420 Lincoln Highway, Fairless Hills, Pennsylvania 19030. Upon information and belief, South Side Carting Company, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

32. Third Party Defendant Standard Commercial Carting, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 263 Washington Avenue, St. James, New York, 11780. Upon information and belief, Standard Commercial Cartage, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

33. Third Party Defendant, Sunset Carting Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 6055 Strickland Avenue, Brooklyn, New York, 11234. Upon information and belief, Sunset Carting, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

34. Third Party Defendant, Tony's Barge Service, Inc. (formerly known as Tony's Sanitation Service, Inc.) is a corporation duly organized under the laws of the State of New York

with its principal place of business at St. James Street, Holbrook, New York, 11741. Upon information and belief, Tony's Barge Service, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

35. Third Party Defendant Long Island Rubbish Removal Eastern Corp. (formerly known as Long Island Rubbish Removal Corp.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 441 Saint James Street, Holbrook, New York. Upon information and belief, Long Island Rubbish Removal Eastern Corp. accepted for transportation wastes that were, or contained, hazardous substances.

36. Third Party Defendant, V.I.P. & Sons Carting, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at Lincoln Avenue, Bay Shore, New York, 11706. Upon information and belief, V.I.P. & Sons Carting, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

37. Third Party Defendant TMJ Carting, Inc. (formerly known as 3M Carting, Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 822 N. Queens Avenue, Lindenhurst, New York, 11757. Upon information and belief, 3M Carting accepted for transportation wastes that were, or contained, hazardous substances.

38. Third Party Defendant Mets Roll-Off Service, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 311 Winding Road, Old Bethpage, New York, 11804. Upon information and belief, Mets Roll-Off Service, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

## **FACTUAL BACKGROUND**

### **The Blydenburgh Landfill**

39. Islip owns and operated the Blydenburgh Landfill which is located on Blydenburgh Road and which encompasses an area of approximately 107 acres.

40. Landfilling operations began in, or about, 1963. By 1978 or 1979, the Blydenburgh Landfill was the only operating public landfill in Islip.

### **Blydenburgh Landfill: Regulatory Action**

41. On or about January 1, 1987, United States Environmental Protection Agency (“EPA”) proposed including the Blydenburgh Landfill on the National Priorities List (“NPL”) of inactive hazardous waste sites established pursuant to CERCLA, Section 105, 42 U.S.C. § 9605(c).

42. The New York Environmental Quality Bond Act of 1986 (“EQBA”), made available loans and grants to municipalities to assist in the closure of municipal landfills.

43. On information and belief, in February, 1989 New York and Islip entered into a EQBA State Assistance Contract.

44. On March 30, 1989, EPA added the Blydenburgh Landfill to the NPL.

45. On September 30, 1992, the Record of Decision (“ROD”) was issued for the Blydenburgh Landfill. The remedy selected required landfill capping, and pumping and treating all groundwater. In 1992, the present worth cost of the alternative selected was estimated to be \$17,942,025.

46. New York alleges that EQBA funds were used to reimburse Islip for all or part of the response costs incurred in connection with implementing the remedy selected in the ROD for the Blydenburgh Landfill.

### **GENERAL ALLEGATIONS**

47. The Blydenburgh Landfill is a “facility” within the meaning of CERCLA, Section 101(9), 42 U.S.C. § 9601(9).

48. There have been releases and/or threatened releases of hazardous substances at and from the Blydenburgh Landfill within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

49. Third Party Defendants are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

50. Third Party Defendants Smiths Aerospace L.L.C., KNF Clean Room Products Corporation; Dayton T. Brown, Inc.; Disc Graphics, Inc.; Franza’s Universal Scrap Metal, Inc.; Long Island Power Authority; Murdoch Company, L.L.C.; Macy’s; PDK Labs; Pilgrim Psychiatric Center; Verizon New York; Central Islip State Hospital; New York State Department of Transportation; and Suffolk County generated, and arranged for the disposal of, wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14) at the Blydenburgh Landfill. Third Party Defendant Prudential Insurance Company of America owned and operated the Smith Haven Mall which generated, and arranged for the disposal of, wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14) at the Blydenburgh Landfill.

51. Third Party Defendants Cross Island Sanitation, Inc.; Dayton T. Brown, Inc.; Detail Carting Co., Inc.; Jamaica Ash & Rubbish Removal Co., Inc.; Jet Sanitation Service Corp.; Waste Management Of New York, LLC; Gilford Holdings Ltd; Standard Commercial Carting, Inc.; Sunset Carting, Inc.; Tony's Barge Service, Inc.; Long Island Rubbish Removal Eastern Corp.; V.I.P. & Sons Carting, Inc.; TMJ Carting, Inc.; Mets Roll-Off Service, Inc. and Franza's Universal Scrap Metal, Inc. accepted for transportation wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14), and selected the Blydenburgh Landfill as the disposal facility.

52. In addition to response costs, if any, incurred by New York, each of the Third Party Plaintiffs have each incurred response costs, including without limitation costs reasonably incurred to identify potentially responsible parties.

**FIRST COUNT**  
**CONTRIBUTION PURSUANT TO CERCLA SECTION 107**

**(Comprehensive Environmental Response, Compensation and Liability Act-Section 107)**

53. Third Party Plaintiffs repeat and incorporate herein by reference the allegations of all of the foregoing paragraphs.

54. Third-Party Plaintiffs deny that they have any liability to Plaintiff, New York or the Hickey Third-Party Plaintiffs. Nevertheless, to the extent that this Court finds that Third Party Plaintiffs are liable to Plaintiff, New York or the Hickey Third-Party Plaintiffs, then Third Party Defendants are liable to Third Party Plaintiffs under CERCLA Section 9607(a), 42 U.S.C.A. § 9607(a).

55. Section 107 (a)(3) of CERCLA, 42 U.S.C.A. § 9607 (a)(3), provides, in pertinent

part, that any “person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity . . .” shall be liable “for . . . any . . . necessary costs of response by any other person consistent with the national contingency plan” and “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.”

56. Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607 (a)(4), provides, in pertinent part, that “any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or Sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs . . .” shall be liable as a “covered person” for “any other necessary costs of response incurred by any other person consistent with the national contingency plan” and “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.”

57. Third Party Defendants are “persons” within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601(21).

58. Blydenburgh Landfill is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

59. Releases or threatened releases of hazardous substances into the environment have occurred at Blydenburgh Landfill, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

60. Third Party Defendants generated and arranged for the disposal of, or otherwise accepted for transportation and selected the disposal facility for, wastes that were, or contained, hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These wastes were disposed of at the Blydenburgh Landfill.

61. Third Party Plaintiffs are entitled to recover response costs and/or contribution from Third Party Defendants for any costs they have incurred or will incur, or for which Third Party Plaintiffs are deemed liable.

### **RELIEF REQUESTED**

**WHEREFORE**, Third Party Plaintiffs respectfully request that this Court enter judgment against Third Party Defendants:

(a) Declaring Third Party Defendants liable pursuant to Section 107(a) of CERCLA for any response costs or damages incurred by Third Party Plaintiffs, at this time or in the future, in connection with the Blydenburgh Landfill.

(b) Awarding contribution pursuant to Section 107(a) of CERCLA from Third Party Defendants to Third Party Plaintiffs for any judgment against them in this action or in connection with the Blydenburgh Landfill; and

(c) Awarding to Third Party Plaintiffs costs, attorneys' fees, and such other and further relief that the Court deems appropriate.

**SECOND COUNT**

**CONTRIBUTION PURSUANT TO CERCLA SECTION 113**

**(Comprehensive Environmental Response, Compensation and Liability Act-Section 113)**

62. Third Party Plaintiffs repeat and incorporate herein by reference the allegations of all of the foregoing paragraphs.

63. Third-Party Plaintiffs deny that they have any liability to Plaintiff, New York or the Hickey Third-Party Plaintiffs. Nevertheless, to the extent that this Court finds that Third-Party Plaintiffs are liable to Plaintiff, New York or the Hickey Third-Party Plaintiffs, then Third-Party Defendants are liable to Third-Party Plaintiffs under CERCLA section 9613(f), 42 U.S.C.A. § 9613(f).

64. Section 113(f)(1) of CERCLA, 42 U.S.C.A. § 9613(f)(1), provides, in pertinent part, that “[a]ny person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 . . . or under section 9607 (a) . . . .”

65. Third Party Defendants are “persons” within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601(21).

66. Blydenburgh Landfill is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

67. Releases or threatened releases of hazardous substances into the environment have occurred at Blydenburgh Landfill, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

68. Third Party Defendants generated and arranged for the disposal of, or otherwise accepted for transportation and selected the disposal facility for wastes that were, or contained, hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) which wastes were disposed of at the Blydenburgh Landfill.

69. Third Party Plaintiffs are entitled to recover costs and/or contribution from Third Party Defendants for any costs they have incurred or will incur, or for which Third Party Plaintiffs is deemed liable.

### **RELIEF REQUESTED**

**WHEREFORE**, Third Party Plaintiffs respectfully request that this Court enter judgment against Third Party Defendants:

(a) Declaring Third Party Defendants liable pursuant to section 113(f) of CERCLA for any response costs or damages incurred by Third Party Plaintiffs, at this time or in the future, in connection with the Blydenburgh Landfill.

(b) Awarding contribution pursuant to section 113(f) of CERCLA from Third Party Defendants to Third Party Plaintiffs for any judgment against them in this action or in connection with the Blydenburgh Landfill; and

(c) Awarding to Third Party Plaintiffs costs, attorneys' fees, and such other and further relief that the Court deems appropriate.

### **THIRD COUNT**

#### **(Common-Law and Statutory Contribution )**

70. Third Party Plaintiffs repeat and incorporate herein by reference the allegations of

all of the foregoing paragraphs.

71. The conduct of each Third Party Defendant, in whole or in part, may be determined to have caused the damages alleged by Plaintiffs in the Complaint.

72. As a result of the aforementioned conduct by each Third Party Defendant, Third Party Plaintiffs may be adjudged liable for damages arising from the claims in the Amended Complaint of Plaintiff, New York State or the Hickey Third Party Plaintiffs' Third Party Complaint.

73. In the event that the Third Party Plaintiffs are found liable to Plaintiff or any other person, which liability the Third Party Plaintiffs deny, Third Party Defendants are joint tortfeasors, and the Third Party Plaintiffs are therefore entitled to contribution from Third Party Defendants under the common law and pursuant to New York CPLR 1401, et seq.

74. While denying any liability, if Third Party Plaintiffs are adjudged liable to any party as the result of conditions at the Blydenburgh Landfill, then each Third Party Defendant is obligated under the common law of the United States and the State of New York to provide contribution to Third Party Plaintiffs for any damages.

### **RELIEF REQUESTED**

**WHEREFORE**, Third Party Plaintiffs respectfully request that this Court enter judgment against Third Party Defendants:

(a) Declaring Third Party Defendants liable for any costs, expenses, or damages incurred by Third Party Plaintiffs, at this time or in the future, in connection with the Blydenburgh Landfill.

(b) Awarding contribution to Third Party Plaintiffs for any judgment against them in this action or in connection with the Blydenburgh Landfill; and

(c) Awarding to Third Party Plaintiffs costs, attorneys' fees, and such other and further relief that the Court deems appropriate.

**JURY DEMAND**

A jury trial is demanded as to all issues in the cross-claims so triable by jury.

DATED: June 16, 2006

New York, New York

As to all Third Party Defendants  
Except Verizon New York  
GIBBONS, DEL DEO, DOLAN,  
GRIFFINGER & VECCHIONE, P.C.  
Attorneys for Entenmann's Inc.

By: s/ Edward F. McTiernan  
Edward F. McTiernan, Esq.

As to all Third Party Defendants  
PETERS, HOGGAN & CARPENTER LLP  
Attorneys for Muller Martini Corp.

By: s/Michael Peters  
Michael Peters, Esq.



ESTEE LAUDER INC. and WHITMAN :  
PACKAGING CORP., :

Third-Party Plaintiffs, :

- against - :

KNF CLEAN ROOM PRODUCTS :  
CORPORATION (formerly known as Clean Room :  
Products, Inc.); DAYTON T. BROWN, INC.; DISC :  
GRAPHICS, INC.; SMITHS AEROSPACE LLC :  
(formerly known as Aerospace Avionics, Inc.); :  
FRANZA’S UNIVERSAL SCRAP METAL, INC.; :  
LONG ISLAND LIGHTING COMPANY (d/b/a :  
Long Island Power Authority); MURDOCH :  
COMPANY, LLC (formerly known as MacKenzie :  
Chemical Works, Inc.); NEW YORK STATE :  
OFFICE OF MENTAL HEALTH; NEW YORK :  
STATE DEPARTMENT OF :  
TRANSPORTATION; SUFFOLK COUNTY; :  
JAMAICA ASH & RUBBISH REMOVAL CO., :  
INC.; JET SANITATION SERVICE CORP.; :  
GILFORD HOLDINGS LTD. (formerly known as :  
Southside Carting Co. Inc.); TONY’S BARGE :  
SERVICE, INC. (formerly known as Tony’s :  
Sanitation Service, Inc.); LONG ISLAND :  
RUBBISH REMOVAL EASTERN CORP. :  
(formerly known as Long Island Rubbish Removal :  
Corp.); TMJ CARTING, INC. (formerly 3M :  
Carting, Inc.); METS ROLL-OFF SERVICE, INC.; :  
and PDK LABS INC.

Third-Party Defendants.

----- x

Pursuant to Rule 14 of the Federal Rules of Civil Procedure, Defendants/Third-Party Plaintiffs Estee Lauder Inc. (“Estee Lauder”) and Whitman Packaging Corp. (“Whitman”) (collectively the “Third-Party Plaintiffs”), by their attorneys and by way of third-party complaint, allege as follows against each of the following third-party defendants: Smiths Aerospace LLC (formerly known as Aerospace Avionics, Inc.); KNF Clean Room Products Corporation

(formerly known as Clean Room Products, Inc.); Dayton T. Brown, Inc.; Disc Graphics, Inc.; Franza's Universal Scrap Metal, Inc.; Long Island Lighting Company (d/b/a Long Island Power Authority); Murdoch Company, LLC (formerly known as MacKenzie Chemical Works, Inc.); New York State Office of Mental Health; New York State Department Of Transportation; Suffolk County; Jamaica Ash & Rubbish Removal Co., Inc.; Jet Sanitation Service Corp.; Gilford Holdings Ltd. (formerly known as Southside Carting Co. Inc.); Tony's Barge Service, Inc. (formerly known as Tony's Sanitation Service, Inc.); Long Island Rubbish Removal Eastern Corp. (formerly known as Long Island Rubbish Removal Corp.); TMJ Carting, Inc. (formerly 3M Carting, Inc.) Mets Roll-Off Service, Inc; and PDK Labs Inc. (collectively, the "Third-Party Defendants"):

### **JURISDICTION AND VENUE**

1. This is a civil action for declaratory and equitable relief, monetary damages and response costs incurred and to be incurred by the Third-Party Plaintiffs in response to alleged environmental conditions at the Blydenburgh Landfill, Town of Islip ("Islip"), Suffolk County, New York (the "Blydenburgh Landfill").

2. This Court has jurisdiction over the subject matter of this third-party action pursuant to Fed. R. Civ. P. 14(a) and 28 U.S.C. § 1331 because this action arises under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA") and CERCLA Section 113, 42 U.S.C. § 9613. This Court has supplemental jurisdiction over pendant state and common law claims pursuant to 28 U.S.C. § 1367(a).

3. The Third-Party Plaintiffs also seek declaratory relief pursuant to the Federal and New York Declaratory Judgment Acts, 28 U.S.C. § 2201 et seq. and New York CPLR § 3001.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the real property that is the subject of this action is located in this District, the acts complained of occurred in this District and certain of the parties reside in this District.

### **THE PARTIES**

#### **Plaintiff And The Hickey Third-Party Plaintiffs**

5. On or about May 17, 2001, Plaintiff, the State of New York (“New York”), filed a Complaint in this matter against Hickey’s Carting Company, Inc., Dennis C. Hickey and Maria Hickey (collectively the “Hickey Third-Party Plaintiffs”).

6. On or about September 5, 2002, the Hickey Third-Party Plaintiffs filed an Amended Third-Party Complaint against the Third-Party Plaintiffs and others. The Hickey Third-Party Plaintiffs’ Amended Third-Party Complaint is attached hereto as Exhibit A.

7. On or about June 1, 2004, New York amended its Complaint to name the Third-Party Plaintiffs and others as defendants. New York’s Amended Complaint against the Third-Party Plaintiffs is attached hereto as Exhibit B.

8. Third-Party Plaintiff Estee Lauder is a corporation duly organized under the laws of the State of Delaware.

9. Third-Party Plaintiff Whitman is a corporation duly organized under the laws of the State of New York.

**Third-Party Defendants**

**A) Private Generators**

10. Third-Party Defendant Smiths Aerospace LLC (formerly known as Aerospace Avionics, Inc.) is a corporation duly organized under the laws of the State of Delaware. Upon information and belief, Smiths Aerospace LLC (formerly known as Aerospace Avionics, Inc.), at its place of business at 1000 MacArthur Memorial Highway, Bohemia, New York 11716, manufactured electronic assemblies and sheet metal enclosures and generated wastes that were, or contained, hazardous substances.

11. Third-Party Defendant KNF Clean Room Products Corporation (formerly known as Clean Room Products, Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 1800 Ocean Avenue, Ronkonkoma, New York 11779. Upon information and belief, KNF Clean Room Products Corporation (formerly known as Clean Room Products, Inc.) manufactured electrical and pharmaceutical equipment and supplied construction services which generated wastes that were, or contained, hazardous substances.

12. Third-Party Defendant Dayton T. Brown, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 555 Church Street, Bohemia, New York 11716. Upon information and belief, Dayton T. Brown, Inc. conducted manufacturing, testing and engineering services which generated wastes that were, or contained, hazardous substances.

13. Third-Party Defendant Disc Graphics, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 10 Gilpin Avenue,

Hauppauge, New York 11788. Upon information and belief, Disc Graphics, Inc. manufactured phonograph records and related products which generated wastes that were, or contained, hazardous substances.

14. Third-Party Defendant Franza's Universal Scrap Metal, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at Garity Place, Farmingdale, New York 11735. Upon information and belief, Franza's Universal Scrap Metal, Inc. operated a scrap metal business which generated wastes that were, or contained, hazardous substances.

15. Third-Party Defendant Long Island Lighting Company (d/b/a Long Island Power Authority) is a corporation duly organized under the laws of the State of New York with its principal place of business at 333 Earle Ovington Boulevard, Uniondale, New York. Long Island Lighting Company (d/b/a Long Island Power Authority) generated and transmitted electric power, and, upon information and belief, generated wastes that were, or contained, hazardous substances.

16. Third-Party Defendant Murdoch Company, LLC (formerly known as MacKenzie Chemical Works, Inc.) is a corporation duly organized under the laws of the State of Louisiana. Upon information and belief, Murdoch Company, LLC (formerly known as MacKenzie Chemical Works, Inc.) operated a chemical production facility which generated wastes that were, or contained, hazardous substances.

17. Third-Party Defendant PDK Labs Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 145 Ricefield Lane, Hauppauge, New York. Upon information and belief, PDK Labs Inc. manufactured over-the-

counter pharmaceuticals, which manufacturing generated wastes that were, or contained, hazardous substances.

**B) Public Entity Generators**

18. Third-Party Defendant New York State Office of Mental Health, upon information and belief, is a governmental agency of the State of New York that operated Central Islip State Hospital, a facility formerly located in Central Islip, New York which generated wastes that were, or contained, hazardous substances. Third-Party Defendant New York State Office of Mental Health, upon information and belief, also operates Pilgrim Psychiatric Center (formerly Pilgrim State Hospital), a State facility located in West Brentwood, New York which generated wastes that were, or contained, hazardous substances.

19. Third-Party Defendant New York State Department of Transportation, upon information and belief, is a governmental agency of the State of New York that operated a maintenance yard located on Carlton Avenue, Central Islip, New York which generated wastes that were, or contained, hazardous substances.

20. Third-Party Defendant Suffolk County, upon information and belief, is a governmental entity organized under the laws of the State of New York with a principal place of business at the H.L. Denison Building, Veterans Highway, Hauppauge, New York 11788 which operated the following agencies or units each of which conducted operations that generated wastes that were, or contained, hazardous substances:

(i) Suffolk County Police Department, Special Patrol Bureau, Smithtown Avenue, Ronkonkoma, New York 11779;

(ii) Suffolk County Medical Examiner's Office, Veterans Highway, Hauppauge, New York 11788; and

(iii) Suffolk County Water Authority, Sunrise Highway & Pond Road, Oakdale, New York 11769.

**C) Transporters**

21. Upon information and belief, Third-Party Defendant Dayton T. Brown, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

22. Upon information and belief, Third-Party Defendant Franza's Universal Scrap Metal, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

23. Third-Party Defendant Jamaica Ash & Rubbish Removal Co., Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 633 Dickens Street, Westbury, New York, 11950. Upon information and belief, Jamaica Ash & Rubbish Removal Co., Inc. accepted for transportation wastes that were, or contained, hazardous substances.

24. Third-Party Defendant Jet Sanitation Service Corp. is a corporation duly organized under the laws of the State of New York with its principal place of business at 228 Blydenburgh Road, Central Islip, New York, 11722. Upon information and belief, Jet Sanitation Service Corp. accepted for transportation wastes that were, or contained, hazardous substances.

25. Third-Party Defendant Gilford Holdings Ltd. (formerly known as Southside Carting Co. Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 1839 Gilford Ave, New Hyde Park, NY 11040-4088. Upon

information and belief, Gilford Holdings Ltd. (formerly known as Southside Carting Co. Inc.) accepted for transportation wastes that were, or contained, hazardous substances.

26. Third-Party Defendant, Tony's Barge Service, Inc. (formerly known as Tony's Sanitation Service, Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at, 61 River Road, Sayville, New York, 11782. Upon information and belief, Tony's Barge Service, Inc. (formerly known as Tony's Sanitation Service, Inc.) accepted for transportation wastes that were, or contained, hazardous substances.

27. Third-Party Defendant Long Island Rubbish Removal Eastern Corp. (formerly known as Long Island Rubbish Removal Corp.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 410 Livingston Avenue, West Babylon, New York, 11704. Upon information and belief, Long Island Rubbish Removal Eastern Corp. (formerly known as Long Island Rubbish Removal Corp.) accepted for transportation wastes that were, or contained, hazardous substances.

28. Third-Party Defendant TMJ Carting, Inc. (formerly 3M Carting, Inc.) is a corporation duly organized under the laws of the State of New York with its principal place of business at 822 N. Queens Avenue, Lindenhurst, New York, 11757. Upon information and belief, TMJ Carting, Inc. (formerly 3M Carting, Inc.) accepted for transportation wastes that were, or contained, hazardous substances.

29. Third-Party Defendant Mets Roll-Off Service, Inc. is a corporation duly organized under the laws of the State of New York with its principal place of business at 311 Winding Road, Old Bethpage, New York, 11804. Upon information and belief, Mets Roll-Off Service, Inc. accepted for transportation wastes that were, or contained, hazardous substances.

## **FACTUAL BACKGROUND**

### **The Blydenburgh Landfill**

30. Islip owns and operated the Blydenburgh Landfill which is located on Blydenburgh Road and which encompasses an area of approximately 107 acres.

31. Landfilling operations began in, or about, 1963. By 1978 or 1979, the Blydenburgh Landfill was the only operating public landfill in Islip.

### **Blydenburgh Landfill: Regulatory Action**

32. On or about January 1, 1987, United States Environmental Protection Agency (“EPA”) proposed including the Blydenburgh Landfill on the National Priorities List (“NPL”) of inactive hazardous waste sites established pursuant to CERCLA, Section 105, 42 U.S.C. § 9605(c).

33. The New York Environmental Quality Bond Act of 1986 (“EQBA”), made available loans and grants to municipalities to assist in the closure of municipal landfills.

34. On information and belief, in February, 1989 New York and Islip entered into a EQBA State Assistance Contract.

35. On March 30, 1989, EPA added the Blydenburgh Landfill to the NPL.

36. On September 30, 1992, the Record of Decision (“ROD”) was issued for the Blydenburgh Landfill . The remedy selected required landfill capping, and pumping and treating all groundwater. In 1992, the present worth cost of the alternative selected was estimated to \$17,942,025.

37. New York alleges that EQBA funds were used to reimburse Islip for all or part of the response costs incurred in connection with implementing the remedy selected in the ROD for the Blydenburgh Landfill.

### **GENERAL ALLEGATIONS**

38. The Blydenburgh Landfill is a “facility” within the meaning of CERCLA, Section 101(9), 42 U.S.C. § 9601(9).

39. There have been releases and/or threatened releases of hazardous substances at and from the Blydenburgh Landfill within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

40. Third-Party Defendants are “persons” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

41. Third-Party Defendants Smiths Aerospace LLC (formerly known as Aerospace Avionics, Inc.); KNF Clean Room Products Corporation (formerly known as Clean Room Products, Inc.); Dayton T. Brown, Inc.; Disc Graphics, Inc.; Franza’s Universal Scrap Metal, Inc.; Long Island Lighting Company (d/b/a Long Island Power Authority); Murdoch Company, LLC (formerly known as MacKenzie Chemical Works, Inc.); New York State Office of Mental Health; New York State Department Of Transportation; Suffolk County; and PDK Labs Inc. generated, and arranged for the disposal of, wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14) at the Blydenburgh Landfill.

42. Third-Party Defendants Dayton T. Brown, Inc.; Franza's Universal Scrap Metal, Inc.; Jamaica Ash & Rubbish Removal Co., Inc.; Jet Sanitation Service Corp.; Gilford Holdings Ltd. (formerly known as Southside Carting Co. Inc.); Tony's Barge Service, Inc. (formerly known as Tony's Sanitation Service, Inc.); Long Island Rubbish Removal Eastern Corp. (formerly known as Long Island Rubbish Removal Corp.); TMJ Carting, Inc. (formerly 3M Carting, Inc.) and Mets Roll-Off Service, Inc. accepted for transportation wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14), selected the Blydenburgh Landfill as the disposal facility, and disposed of such hazardous substances at the Blydenburgh Landfill.

43. In addition to response costs, if any, incurred by New York, each of the Third-Party Plaintiffs has incurred response costs, including without limitation costs reasonably incurred to identify potentially responsible parties.

### **FIRST COUNT**

#### **CONTRIBUTION PURSUANT TO CERCLA SECTION 107**

44. Third-Party Plaintiffs repeat and incorporate herein by reference the allegations of all of the foregoing paragraphs.

45. Third-Party Plaintiffs deny that they have any liability to Plaintiff or the Hickey Third-Party Plaintiffs. Nevertheless, to the extent that this Court finds that Third-Party Plaintiffs are liable to Plaintiff, New York or the Hickey Third-Party Plaintiffs then Third-Party Defendants are liable to Third-Party Plaintiffs under CERCLA Section 9607(a), 42 U.S.C.A. § 9607(a).

46. Section 107 (a)(3) of CERCLA, 42 U.S.C.A. § 9607 (a)(3), provides, in pertinent part, that any “person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity . . .” shall be liable “for . . . any . . . necessary costs of response by any other person consistent with the national contingency plan” and “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.”

47. Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607 (a)(4), provides, in pertinent part, that “any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or Sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs . . .” shall be liable as a “covered person” for “any other necessary costs of response incurred by any other person consistent with the national contingency plan” and “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.”

48. Third-Party Defendants are “persons” within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601(21).

49. Blydenburgh Landfill is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

50. Releases or threatened releases of hazardous substances into the environment have occurred at Blydenburgh Landfill, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

51. Third-Party Defendants, generated, and arranged for the disposal of, or otherwise accepted for transportation and selected the disposal facility for, wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14). These hazardous substances were disposed of at the Blydenburgh Landfill.

52. Third-Party Plaintiffs are entitled to recover response costs and/or contribution from Third-Party Defendants for any costs they have incurred or will incur, or for which Third-Party Plaintiffs are deemed liable.

### **RELIEF REQUESTED**

WHEREFORE, Third-Party Plaintiffs respectfully request that this Court enter judgment against Third-Party Defendants:

(a) Declaring Third-Party Defendants liable pursuant to Section 107(a) of CERCLA for any response costs or damages incurred by Third-Party Plaintiffs, at this time or in the future, in connection with the Blydenburgh Landfill.

(b) Awarding contribution pursuant to Section 107(a) of CERCLA from Third-Party Defendants to Third-Party Plaintiffs for any judgment against them in this action or in connection with the Blydenburgh Landfill; and

(c) Awarding to Third-Party Plaintiffs costs, attorneys' fees, and such other and further relief that the Court deems appropriate.

**SECOND COUNT**

**CONTRIBUTION PURSUANT TO CERCLA SECTION 113**

53. Third-Party Plaintiffs repeat and incorporate herein by reference the allegations of all of the foregoing paragraphs.

54. Third-Party Plaintiffs deny that they have any liability to Plaintiff or the Hickey Third-Party Plaintiffs. Nevertheless, to the extent that this Court finds that Third-Party Plaintiffs are liable to Plaintiff, New York or the Hickey Third-Party Plaintiffs then Third-Party Defendants are liable to Third-Party Plaintiffs under CERCLA section 9613(f), 42 U.S.C.A. § 9613(f).

55. Section 113(f)(1) of CERCLA, 42 U.S.C.A. § 9613(f)(1), provides, in pertinent part, that “[a]ny person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 . . . or under section 9607 (a) . . . .”

56. Plaintiff State of New York has initiated an action against Third-Party Plaintiffs under Section 107(a) of CERCLA.

57. Third-Party Defendants are “persons” within the meaning of Section 101 (21) of CERCLA, 42 U.S.C. § 9601(21).

58. Blydenburgh Landfill is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

59. Releases or threatened releases of hazardous substances into the environment have occurred at Blydenburgh Landfill, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

60. Third-Party Defendants generated, and arranged for the disposal of, or otherwise accepted for transportation and selected the disposal facility for wastes that were, or contained, hazardous substances within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(14) which wastes were disposed of at the Blydenburgh Landfill.

61. Third-Party Plaintiffs are entitled to recover costs and/or contribution from Third-Party Defendants for any costs they have incurred or will incur, or for which Third-Party Plaintiffs is deemed liable.

### **RELIEF REQUESTED**

WHEREFORE, Third-Party Plaintiffs respectfully request that this Court enter judgment against Third-Party Defendants:

(a) Declaring Third-Party Defendants liable pursuant to section 113(f) of CERCLA for any response costs or damages incurred by Third-Party Plaintiffs, at this time or in the future, in connection with the Blydenburgh Landfill.

(b) Awarding contribution pursuant to section 113(f) of CERCLA from Third-Party Defendants to Third-Party Plaintiffs for any judgment against them in this action or in connection with the Blydenburgh Landfill; and

(c) Awarding to Third-Party Plaintiffs costs, attorneys' fees, and such other and further relief that the Court deems appropriate.

**THIRD COUNT**

**COMMON-LAW AND STATUTORY CONTRIBUTION**

62. Third-Party Plaintiffs repeat and incorporate herein by reference the allegations of all of the foregoing paragraphs.

63. The conduct of each Third-Party Defendant, in whole or in part, may be determined to have caused the damages alleged by Plaintiffs in the Complaint.

64. As a result of the aforementioned conduct by each Third-Party Defendant, Third-Party Plaintiffs may be adjudged liable for damages arising from the claims in the Plaintiff's Amended Complaint or the Hickey Third-Party Plaintiffs' Third-Party Complaint.

65. In the event that the Third-Party Plaintiffs are found liable to Plaintiff or any other person, which liability the Third-Party Plaintiffs deny, Third-Party Defendants are joint tortfeasors, and the Third-Party Plaintiffs are therefore entitled to contribution from Third-Party Defendants under the common law and pursuant to New York CPLR 1401, et seq.

66. While denying any liability, if Third-Party Plaintiffs are adjudged liable to any party as the result of conditions at the Blydenburgh Landfill, then each Third-Party Defendant is obligated under the common law of the United States and the State of New York to provide contribution to Third-Party Plaintiffs for any damages.

**RELIEF REQUESTED**

WHEREFORE, Third-Party Plaintiffs respectfully request that this Court enter judgment against Third-Party Defendants:

