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Department of Environmental Protection

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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
COUNTY OF MONMOUTH  
DOCKET NUMBER:

STATE OF NEW JERSEY, )  
DEPARTMENT OF ENVIRONMENTAL )  
PROTECTION, )  
Plaintiff, )  
)  
)  
)  
BECKER'S TREE SERVICE, INC., )  
STEVEN BECKER, WAYNE )  
POMANOWSKI, and FIRST UNITED )  
INVESTMENT COMPANY )  
Defendants. )  
)

"SPECIAL ENVIRONMENTAL CASE"  
CIVIL ACTION

VERIFIED COMPLAINT

Plaintiff, State of New Jersey, Department of Environmental Protection by way of  
verified complaint against defendants, says:

NATURE OF THE ACTION

1. This is a civil action brought to enjoin the unauthorized disposal of tree waste  
pursuant to the Solid Waste Management Act (the "SWMA"), N.J.S.A. 13:1E-1 et seq., to enjoin

the unauthorized filling of freshwater wetlands pursuant to the Freshwater Wetlands Protection Act (the "FWPA"), N.J.S.A. 13:9B-1 et seq., to enjoin unauthorized stream encroachments pursuant to the Flood Hazard Area Control Act (the "FHACA"), N.J.S.A. 58:16A-50 et seq., to compel remediation of these violations, and for appropriate penalties and costs under each statute.

2. Pursuant to the SWMA, N.J.S.A. 13:1E-9(d), the FWPA, N.J.S.A. 13:9B-21(c), and the FHACA, N.J.S.A. 58:16A-63, the Department is authorized to institute a civil action in Superior Court for injunctive relief and penalties for violations of those Acts. Furthermore, each Act authorizes the Court to proceed in a summary manner. Id. R. 4:67.

#### PARTIES

3. The State of New Jersey, Department of Environmental Protection ("DEP" or "Department") is a Department of the State of New Jersey with principal offices at 401 East State Street, Trenton, New Jersey 08625.

4. Defendant Becker's Tree Service, Inc., whose corporate address is 3306 Shafto Road, Tinton Falls, New Jersey, operates an unlicensed tree and wood processing facility on an eight and-a-half acre site at 40 Squankum Road in Colts Neck, New Jersey ("the site"). The 8.5 acre site is located on Lots 3 and 6, Block 54, Colts Neck Township, Monmouth County.

5. Defendant Steven Becker is the President and sole shareholder of Becker's Tree Service, Inc. During the time period relating to this Complaint and Order to Show Cause, Steven Becker had and continues to have overall responsibility and day-to-day control of the operation at this site.

6. Defendant Wayne Pomanowski represents to the State that he is the owner of the site and leases it to Becker's Tree Service.

7. Defendant First United Investment Co., located at 152 Morristown Road, Matawan, New Jersey, of which Wayne Pomanowski is the registered agent, is the record owner of that part of the site which coincides with parts of Block 54, Lots 4, 5, 6 and 7.

#### FACTUAL BACKGROUND

8. Becker's Tree handles wood chips, tree branches, logs, and stumps, and, by his own admission and direct involvement in the site, defendant Pomanowski uses some of the processed material generated on site.

9. Neither Becker's Tree nor any other defendant has a Class B Recycling Center approval or a solid waste facility permit. Hence, the tree parts and other tree materials transported to, stored upon, and processed at the site are solid waste, and the site is an unlicensed solid waste facility.

10. By Becker's Tree's engineer's own estimate, on April 22, 2005, there were 52,200 cubic yards of material on site. On April 13, 2006, the Department's engineer estimated that there were 29,400 cubic yards of material on site.

11. The site is adjacent to small single-family homes to the north and west, and there is a trailer on site. This site also adjoins the Earle Naval Weapons Station, which houses significant amounts of combustible materials, military hardware, and military personnel.

12. The County Health Department, pursuant to the SWMA, N.J.S.A. 13:1:E-9, acts as the local enforcement authority for DEP. The Monmouth County Health Department's efforts to halt the illegal Becker/Pomanowski operation date back to March 11, 1992.

13. Robert Zander of the Colts Neck Fire Department submitted a detailed letter to defendant owner Wayne Pomanowski on October 5, 1999, demanding that Pomanowski take the needed steps to reduce the existing risks of fire at the site.

14. The DEP's enforcement efforts began on March 17, 1998 in response to a complaint from a neighbor. The DEP representative inspected the site and observed processed and unprocessed tree materials, including large tree parts, stumps and branches on site.

15. On July 14, 1998, a DEP representative re-inspected the site and observed processed and unprocessed tree materials including large tree parts, stumps, and branches on site.

16. On March 8, 1999, DEP representative Frank Spino, accompanied by a Monmouth County Health Department official, inspected the site and observed large piles of wood chips. Buried in the piles were tree parts in violation of N.J.A.C. 7:26-2.8(f). A Notice of Violation was issued to Wayne Pomanowski, then revised on March 10, 1999 to clarify that the violation was for allowing the operation of an illegal solid waste facility on his property.

17. On April 27, 1999, Department representatives Frank Spino and Thomas Verga conducted a re-inspection of the site and observed processed/unprocessed tree parts, stumps and branches. The inspection verified an ongoing operation of an illegal solid waste facility. A Notice of Violation for violating N.J.A.C. 7:26A-3.1 and: 26-2.8(f) was issued to Steven Becker as the operator, and to Wayne Pomanowski, as the property owner. Wayne Pomanowski was directed by NJDEP inspectors to cease solid waste activities at this site.

18. On August 10, 1999, Department representatives, Frank Spino and Thomas Verga, conducted a re-inspection of the site and observed processed/unprocessed tree materials including large tree parts, stumps and branches. The inspection verified an ongoing operation of an illegal solid waste facility. A Notice of Violation for violating N.J.A.C. 7:26A-3.1 and 7:26-2.8(f) was issued to Steven Becker, as the operator, and to Wayne Pomanowski, as the property owner.

19. On March 13, 2002, DEP inspector Brian Gallagher conducted another inspection of the site, in conjunction with Stuart Newman from the Monmouth County Health Department. The inspectors observed large piles of unprocessed tree parts, including tree trunks and a large volume of wood chips, being stockpiled and stored at the site.

20. No fire lanes or volume limits existed at this 8.5 acre site so that emergency vehicles could safely enter and exit the site, in violation of N.J.A.C. 7:26A-3.8.

21. On April 11, 2002, the Department issued Steven Becker and Wayne Pomanowski an Administrative Order and Notice of Civil Administrative Penalty Assessment for the long series of violations dating back to March 1998, assessing penalties of \$25,000 to each individual. Steven Becker was assessed a base penalty, under N.J.A.C. 7:26-5.4(g) of \$5,000.00 for each of the following dates: March 17, 1998, July 14, 1998, April 27, 1999, August 10, 1999 and March 13, 2002. Wayne Pomanowski was assessed a base penalty under N.J.A.C. 7:26-5.4(g) of \$5,000.00 for each of the following dates: July 14, 1998, March 8, 1999, April 27, 1999, August 10, 1999 and March 13, 2002.

22. On September 17, 2002, DEP inspector Brian Gallagher conducted an inspection of the site. He was accompanied by DEP supervisor, Brian Petitt. He was joined by Tom Olsen and Stuart Newman from the Monmouth County Health Department. In addition to the large stockpiles of wood chips and large tree parts already on site, new material continued to be brought in. Notices of violation for violating N.J.A.C. 7:26-2.8(f) were issued to Steven Becker, as the operator, and Wayne Pomanowski, as the property owner.

23. On February 20, 2003, Supervisor Brian Petitt and inspector Brian Gallagher met with Steven Becker and Wayne Pomanowski at the Department's office. Defendants were again advised to cease bringing material into the site and asked to submit a broad plan for cleanup.

24. On April 25, 2003, DEP inspector Brian Gallagher conducted an inspection of the site, and observed large stockpiles of processed and unprocessed tree materials, including large tree parts, stumps and branches. New material was still being brought into the site. Mr. Gallagher observed recent piles of wood chips containing fresh green leafy material. A small Stephens Landscaping bucket loader and screener were near the center pile and appeared to be screening material from that pile. Notices of Violation for violating N.J.A.C. 7:26-2.8(f) were issued to Steven Becker, as the operator and Wayne Pomanowski, as the property owner.

25. On July 3, 2003, defendant Pomanowski submitted a letter to DEP stating that he had partnered with Stephens Landscaping to screen material at the site and was interviewing others to clean up the site. Defendant Pomanowski estimated that it would take one year to clean up the site. Despite his representation and a follow-up letter from inspector Gallagher concerning the cleanup plan, Pomanowski failed to perform the promised cleanup of the site.

26. On May 5, 2004, DEP inspector Brian Gallagher conducted an inspection of the site accompanied by John Hanf of DEP. As the storage and processing of tree parts and wood chips continued, Notices of Violation for violating N.J.A.C. 7:26-2.8(f) were issued to defendants Becker and Pomanowski.

27. On September 19, 2004, a neighbor reported a fire on this site to the Colts Neck Fire Department. The fire smoldered for several days before it could be put out. According to nearby residents, the smell of the fire lasted for several weeks after the incident.

28. On December 17, 2004, Becker's tree service submitted an application to conduct a limited Class B application to recycle Class B material at this site for a period of six months. On March 10, 2005, DEP sent a Notice of Technical Incompleteness to defendant Becker's Tree service, noting some fifteen areas of deficiency, including Becker Tree's failure to submit a

required Fire Safety Plan to the Township. Accordingly, DEP denied its request to obtain a Limited Approval on December 7, 2005.

29. On April 4, 2005, the Department issued defendants another Administrative Order and Notice of Civil Administrative Penalty Assessment for the aforementioned violations, assessing penalties in the amount of \$140,000.00. The penalties were assessed pursuant to N.J.A.C. 7:26-5.5. A penalty of \$35,000.00 each was assessed for each of the four inspections that occurred after the issuance of the AONOCAPA issued on April 11, 2002, in which defendants were ordered to cease all un-permitted activities and remove all material to licensed facilities.

30. DEP conducted follow-up inspections on March 24, 2005 and May 26, 2005. During the May 26, 2005 inspection, defendant Becker provided DEP with copies of a survey prepared by his own professional engineering firm, Burns & Wood, indicating that stockpiles of wood and tree parts totaled 52,500 cubic yards. Mr. Gallagher stated in his certification that "(t)he side of the site facing Squankum Road is 12-15 feet above Squankum Road. The side slopes are composed of wood chips, first grind wood material and large tree parts."

31. As of DEP's site inspection on January 25, 2006, defendants continued to process new material on site and there was little change in the total amount of cubic yards of tree and wood parts. DEP inspector Gallagher noted the building of a perimeter road; however, Mr. Gallagher was uncertain whether the road could sustain the weight of emergency vehicles in the event a second fire broke out at the site.

32. On January 31, 2006, the Department moved, pursuant to N.J.A.C. 1:1-9.7, to place the Office of Administrative Law matters on the inactive list to permit the State to

commence this action for injunctive relief in Superior Court. The Department's motion was not opposed by defendants. The Department's motion was granted on February 14, 2006.

33. On March 28, 2006, DEP inspected the site and determined that additional tree materials had recently been brought to and processed on the site, and that no remediation had taken place on site. On April 13, 2006, DEP surveyed the amount of tree material on site and found that there were 29,400 cubic yards of wood chips, tree branches, logs and tree trunks on site. Thus, the above-described violations continue on site.

#### COUNT ONE

##### (Solid Waste Management Act)

34. Plaintiff repeats and re-alleges the allegations as set forth in the previous paragraphs as if they were set forth here in their entirety.

35. Pursuant to N.J.S.A. 13:1E-9(d) of the SWMA, the Commissioner of the DEP is authorized to commence an action in Superior Court for injunctive and other relief for any violation of the statute, or any rule or regulation adopted pursuant thereto, and the Court may proceed in the action in a summary manner. In any such proceeding, the Court may grant temporary or interlocutory relief.

36. Pursuant to N.J.S.A. 13:1E-9(d) of the SWMA, the Commissioner of the DEP may commence a civil action for penalties of not more than \$50,000 per day against any person who violates the provisions of the Act or any code, rule or regulation adopted pursuant thereto.

37. Under the Act, N.J.S.A. 13:1E-9(a), the DEP's rules "related to solid waste collection and disposal shall have the force and effect of law."

38. Pursuant to N.J.A.C. 7:26-2.8(e), no person shall engage or continue to engage in the disposal of solid waste in this State without first having filed a completed application for and receiving a solid waste facility (SWF) Permit from DEP.

39. Pursuant to N.J.A.C. 7:26-1.4, "disposal" means the storage, treatment, utilization, processing, or final disposition of solid waste, specifically including the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

40. Pursuant to N.J.A.C. 7:26-1.6(a), "solid waste" means "any garbage, refuse, sludge, or any other waste material" not including recyclable material exempted from regulation pursuant to N.J.A.C. 7:26A. "Any other waste material" is defined to include by-products from industrial, commercial, mining or agricultural operations which are recycled. N.J.A.C. 7:26-1.6(b). In section (c) of that rule, solid waste is further defined as anything that is "disposed of" including any material "being discharged, deposited, injected, dumped, spilled, leaked, or placed into or on any land or water."

41. Pursuant to N.J.A.C. 7:26-2.8(f), no person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit.

42. Pursuant to N.J.A.C. 7:26-1.4, a solid waste facility "means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste..."

43. N.J.S.A. 13:1E-103 provides that each and every owner or operator of a sanitary landfill facility shall be jointly and severally liable for the proper operation and closure of the

facility, as required by law, and for any damages, no matter by whom sustained, proximately resulting from the operations or closure.

44. N.J.S.A. 13:1E-102 provides that an "owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a sanitary landfill facility is or has been located.

45. Pursuant to N.J.A.C. 7:26A-1.3, a Class B recycling facility handles, inter alia, source separated whole trees, tree trunks, tree parts, tree stumps, brush, and leaves provided that they are not composted.

46. Pursuant to N.J.A.C. 7:26A-3.1(b), a recycling center handling Class B recyclable material without prior written approval of DEP shall be considered an unlicensed solid waste facility.

47. Becker's Tree processes Class B materials without prior written approval by DEP, in violation of the SWMA.

48. Becker's Tree is an unlicensed solid waste facility, operating in violation of the SWMA.

**WHEREFORE**, the Department seeks judgment against the defendants as follows:

- A. Finding defendants in violation of the Solid Waste Management Act for operating an unlicensed solid waste facility and enjoining defendants from continuing to conduct activities in violation of the Solid Waste Management Act, including accepting waste of any kind, including trees and tree parts, at the site until defendants apply for and receive the appropriate permits;
- B. Ordering defendants to submit a remediation plan within 14 days to DEP, and after approval of that plan by DEP, to fully remediate the site in accordance

with the approved plan by removing all solid waste from the site, remediating all disturbed wetlands and transition areas on the site, and removing all fill from and adjoining the stream on the site;

- C. Ordering defendants, within thirty (30) days of completion of the work required by the Court's Order, to submit a certification to DEP by a professional engineer certifying that the site is in compliance with the Solid Waste Management Act, Freshwater Wetlands Protection Act, and Flood Hazard Area Control Act, that all waste has been removed, and that the site has been fully remediated in accordance with the DEP approved remediation plan;
- D. Assessing a civil penalty against Defendants, pursuant to N.J.S.A. 13:1E-9(f), for the maximum statutory penalty of \$50,000.00 per day for violations of the Solid Waste Management Act;
- E. Granting the State costs of this enforcement action, including all costs of investigation pursuant to N.J.S.A. 13:1E-9(d)2; and
- F. Granting such other relief as the Court deems just and proper.

COUNT TWO

(Nuisance)

49. Plaintiff repeats and re-alleges the allegations as set forth in the previous paragraphs as if they were set forth here in their entirety.

50. Defendants' operation of Becker's Tree Services, Inc., including the stockpiling of wood chips, tree branches, logs, and tree trunks, constitutes a public nuisance.

51. Defendants' operation of the Becker's Tree Services, Inc. site, including the stockpiling of a minimum of 29,400 cubic yards of wood and tree parts without proper access roads, creates and aggravates the risk of fire as evidenced by the previous fire of September 19, 2004. Defendants' operation of the site is in contravention of N.J.A.C. 7:26A-1 et seq., the New Jersey Uniform Fire Code at N.J.A.C. 5:70-1 et seq., and standards set by the National Fire Protection Association.

52. The intermingling of soil, wood chips, and logs in the piles creates a vein of combustible material concealed by layers of dirt.

53. The persistent and ongoing violations described herein, including the stockpiling of wood chips, tree branches, logs, and tree trunks, are being committed near residential homes and a naval ammunition depot and thus pose a serious fire hazard.

54. Defendants' unsanitary operation of the site provides a breeding ground for rodents, vermin, and insects, which, coupled with the imminent risk of fire, constitutes a public nuisance.

**WHEREFORE**, the Department seeks judgment against the defendants as follows:

- A. Ordering defendants to submit a remediation plan within 14 days to DEP, and after approval of that plan by DEP, to fully remediate the site in accordance with the approved plan by removing all solid waste from the site, remediating all disturbed wetlands and transition areas on the site, and removing all fill from and adjoining the stream on the site;
- B. Ordering defendants to abate the public nuisances and imminent fire hazards that exist at the site;

- C. Ordering defendants, within thirty (30) days of completion of the work required by the Court's Order, to submit a certification to DEP by a professional engineer certifying that the site is in compliance with the Solid Waste Management Act, Freshwater Wetlands Protection Act, and Flood Hazard Area Control Act, that all waste has been removed, and that the site has been fully remediated in accordance with the DEP approved remediation plan; and
- D. Granting the State costs of this enforcement action, including all costs of investigation; and
- E. Granting such other relief as the Court deems just and proper.

COUNT THREE

(Flood Hazard Area Control Act)

55. Plaintiff repeats and re-alleges the allegations as set forth in the previous paragraphs as if they were set forth here in their entirety.

56. The FHACA, N.J.S.A. 58:16A-63, authorizes the Department to institute a civil action in Superior Court for injunctive relief and penalties for violations of that Act. Furthermore, the FHACA authorizes the Court to proceed in a summary manner. Id. R. 4:67.

57. Under the FHACA, the Legislature has found that "[I]t is in the interest of the safety, health, and general welfare of the people of the State that legislative action be taken to empower the Department of Environmental Protection to delineate and mark flood hazard areas, to authorize the Department of Environmental Protection to adopt land use regulations for the flood hazard area, to control stream encroachments . . ." N.J.S.A. 58:16A-50.

58. To implement these goals, the Legislature has authorized the Department to adopt regulations delineating flood hazard areas, and controlling development therein, N.J.S.A. 58:16A-52 and 55. The Department has adopted such regulations at N.J.A.C. 7:13-2.1 et seq.

59. FHACA regulations prohibit “[t]he addition of any fill, new structures or fences which would raise the existing grade of the receiving area and/or create an obstruction to flow . . .” at N.J.A.C. 7:13-2.2(a)(1). The regulations also prohibit the addition of any solid waste to floodways. N.J.A.C. 7:13-2.2(a)(2).

60. On March 22, 2006 a Principal Environmental Specialist from the Department, Bureau of Coastal and Land Use Compliance and Enforcement conducted a site visit and determined that substantial amounts of solid waste materials had been placed in a stream on the site. More specifically, there were two large deposits of construction debris present in an undelineated and unnamed tributary of Pine Brook. Outside the channel of the stream, but within 25 feet of the top of the channel bank, there was solid waste consisting of construction debris and various types of tree material. No stream encroachment permit has been issued for the site. Placement of the construction debris in the stream, and of solid waste within 25 feet of the top of the channel bank of the stream, constitute violations of N.J.A.C. 7:13-2.2 and of N.J.A.C. 7:13-1.3(a)(2).

61. On March 22, 2006, the Department issued defendants a Field Notice of Violation citing violations of the FHACA and the FWPA (see Count Four). To date, these violations have not been remediated.

**WHEREFORE,** the Department seeks judgment against the defendants as follows:

- A. Finding defendants in violation of the Flood Hazard Area Control Act for placing unauthorized fill material in a stream and in an area within 25 feet of the top of the channel bank of the stream, and enjoining defendants from continuing any and all activities in violation of the Flood Hazard Area Control Act, including the placement of any unauthorized fill material in any stream, floodway, or protected buffer areas;
- B. Ordering defendants to submit a remediation plan within 14 days to DEP, and after approval of that plan by DEP, to fully remediate the site in accordance with the approved plan by removing all solid waste from the site, remediating all disturbed wetlands and transition areas on the site, and removing all fill from and adjoining the stream on the site;
- C. Ordering defendants, within thirty (30) days of completion of the work required by the Court's Order, to submit a certification to DEP by a professional engineer certifying that the site is in compliance with the Solid Waste Management Act, Freshwater Wetlands Protection Act, and Flood Hazard Area Control Act, that all waste has been removed, and that the site has been fully remediated in accordance with the DEP approved remediation plan; and
- D. Assessing a civil penalty against Defendants, pursuant to N.J.S.A. 58:16A-63(a), for the maximum statutory penalty of \$2,500.00 per day for violations of the Flood Hazard Area Control Act;
- E. Granting the State costs of this enforcement action, including all costs of investigation pursuant to N.J.S.A. 58:16A-63(a); and
- F. Granting such other relief as the Court deems just and proper.

## COUNT FOUR

### (Freshwater Wetlands Protection Act)

62. Plaintiff repeats and re-alleges the allegations as set forth in the previous paragraphs as if they were set forth here in their entirety.

63. The Legislature in enacting the Freshwater Wetlands Protection Act (the "FWPA"), N.J.S.A. 13:9B-1 et seq., stated:

. . . that freshwater wetlands protect and preserve drinking water supplies by serving to purify surface water and groundwater resources; that freshwater wetlands provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property through the absorption and storage of water during high runoff periods and the reduction of flood crests; . . . that freshwater wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the State's fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife; and that freshwater wetlands maintain a critical baseflow to surface waters through the gradual release of stored flood waters and groundwater, particularly during drought periods.

. . . it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance; N.J.S.A. 13:9B-2.

64. To further these goals, the FWPA prohibits specified regulated activities, unless a person proposing to engage in them obtains from the Department a freshwater wetlands permit prior to undertaking the regulated activity. N.J.S.A. 13:9B-9a; N.J.A.C. 7:7A-2.1(a). "Regulated activities" include excavation or disturbance of soil, drainage or disturbance of water level, dumping or discharging or filling, placing of obstructions and destruction of plant life which would alter the wetland character. N.J.S.A. 13:9B-3.

65. Wetlands activity regulated by the DEP includes the removal, excavation, and disturbance of soil; the dumping, discharging or filling with any materials; and the destruction of

plant life which would alter the character of a freshwater wetland, including the cutting of trees.  
N.J.S.A. 13:9B-3; N.J.A.C. 7:7A-2.2(a).

66. "Fill" means the deposition or placement of material such as soil, sand, earth or solid material of any kind so as to change the ground elevation in relation to surface water or groundwater level. "Fill" also means the material deposited. N.J.A.C. 7:7A-1.4. "Discharge of fill material" means the addition of fill into freshwater wetlands, including road fills. N.J.A.C. 7:7A-1.4.

67. During that site visit referenced in Count Three, the DEP Principal Environmental Specialist also ascertained the presence of wetlands on the site. She further found that the wetlands were disturbed, in violation of N.J.S.A. 13:9B-9a and N.J.A.C. 7:7A-2.1(a). She observed "fill", as defined in N.J.A.C. 7:7A-1.4, consisting of construction debris including pieces of concrete, metals, asphalt, brick, rebar, and various types of tree material including stumps, wood chips, branches, logs, and fire wood, on and in the wetlands. No freshwater wetlands permit has been issued for the site.

68. On March 22, 2006, the Department issued to defendants a Field Notice of Violation citing violations of the FWPA and the FHACA. To date, these violations have not been remediated.

**WHEREFORE**, the Department seeks judgment against the defendants as follows:

- A. Finding defendants in violation of the Freshwater Wetlands Protection Act for placing unauthorized fill material in freshwater wetlands and enjoining defendants from continuing any and all activities in violation of the Freshwater Wetlands Protection Act, including the placement of any unauthorized fill material in freshwater wetlands or freshwater wetlands transition areas;

- B. Ordering defendants to submit a remediation plan within 14 days to DEP, and after approval of that plan by DEP, to fully remediate the site in accordance with the approved plan by removing all solid waste from the site, remediating all disturbed wetlands and transition areas on the site, and removing all fill from and adjoining the stream on the site;
- C. Ordering defendants, within thirty (30) days of completion of the work required by the Court's Order, to submit a certification to DEP by a professional engineer certifying that the site is in compliance with the Solid Waste Management Act, Freshwater Wetlands Protection Act, and Flood Hazard Area Control Act, that all waste has been removed, and that the site has been fully remediated in accordance with the DEP approved remediation plan; and
- D. Assessing a civil penalty against Defendants, pursuant to N.J.A.C. 7:7A-16.5(a), for the maximum statutory penalty of \$10,000.00 per day for violations of the Freshwater Wetlands Protection Act;
- E. Granting the State costs of this enforcement action, including all costs of investigation pursuant to N.J.S.A. 13:9B-21(c)2; and
- F. Granting such other relief as the Court deems just and proper.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY

By:

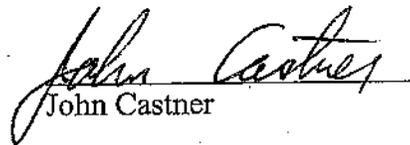


Tirza S. Wahrman  
R.J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08625  
(ph) 609-633-1309  
(fx) 609-341-5031

VERIFICATION

John Castner, by way of certification, states that:

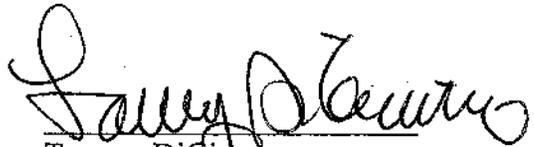
1. I am the Director of the Division of County Environmental and Waste Enforcement for the plaintiff, New Jersey Department of Environmental Protection.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 1-6, 8-10, 12, 14-26, 28-31, and paragraphs 33-55 are true and correct. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

  
John Castner

VERIFICATION

Tammy DiGiacomo, by way of certification, states that:

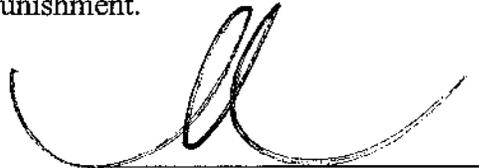
1. I am a Principal Environmental Specialist with the New Jersey Department of Environmental Protection's Bureau of Coastal and Land Use Compliance and Enforcement.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 56-68 are true and correct. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

  
\_\_\_\_\_  
Tammy DiGiacomo

VERIFICATION

McKenna Kingdon, by way of certification, states that:

1. I am an attorney at law in the State of New Jersey and an associate with the firm of Dilworth Paxson, LLP, which represents Colts Neck Township.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in Paragraphs 11, 13, and 27 are true and correct. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

A handwritten signature in black ink, appearing to read 'McKenna Kingdon', written over a horizontal line.

McKenna Kingdon

VERIFICATION

Eldo Magnini, by way of certification, states that:

4. I am the Tax Assessor for Colts Neck Township.
5. I have read the Verified Complaint.
6. I certify that the factual allegations contained in Paragraph 7 are true and correct.

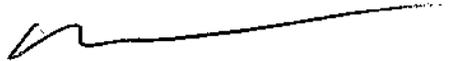
I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

  
Eldo Magnini

CERTIFICATION PURSUANT TO R. 1:4-4 (c)

I certify that Eldo Magnani was not available in person to sign the within Verification and that he acknowledged the genuineness of this facsimile copy of his original signature. Further, the original signature of the facsimile signature affixed will be filed if requested by the court or a party.

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.



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Daniel A. Greenhouse  
Deputy Attorney General

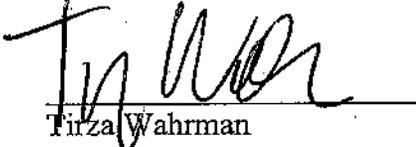
DATED: May 18, 2006

VERIFICATION

Tirza Wahrman, by way of certification, states that:

1. I am a Deputy Attorney General in the Environmental Enforcement Section of the Division of Law, and I am assigned to represent the Department of Environmental Protection in this matter.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in paragraph 32 are true and correct.

I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

  
Tirza Wahrman

CERTIFICATION PURSUANT TO R.4:5-1

I hereby certify that I am a Deputy Attorney General assigned to prosecute this matter and am counsel of record for the within matter. I am designated trial counsel pursuant to R. 4:5-1(c). I am aware of a pending action in the office of Administrative Law, which has been placed on the inactive list, against defendants Becker's Tree Service, Steven Becker and Wayne Pomanowski, involving AONOCAPAs issued by the Department on April 4, 2002 and April 14, 2005, for violations of the SWMA at 40 Squankum Road, Colts Neck, New Jersey, identical to those that are the subject of the within action. That matter is NJDEP v. Becker and Pomanowski, OAL Docket No. ESW 4434 and 4435-02 (Consolidated).

DATED: 5/16/06

  
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Tirza S. Wahrman  
Deputy Attorney General