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

**DELAWARE RIVERKEEPER NETWORK
and the DELAWARE RIVERKEEPER,**

Plaintiffs,

v.

SOIL SAFE, INC.,

Defendant.

Civ. No.: _____

COMPLAINT

Plaintiffs, the Delaware Riverkeeper Network and the Delaware Riverkeeper, by way of Complaint against Defendant, Soil Safe Inc. (“Soil Safe” or “Defendant”) state as follows:

NATURE OF ACTION

1. This is an action for: (a) injunctive relief under Section 7002(a)(1)(A) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6972(a)(1)(A), in response to Defendant’s permit violations; (b) injunctive relief under Section 7002(a)(1)(B) of RCRA due to Defendant’s creation of an imminent and substantial endangerment; and (c) equitable relief under the New Jersey

Environmental Rights Act (“ERA”), N.J.S.A. 2A:35A–6, in regards to Defendant’s violation of New Jersey’s statutory and regulatory provisions as well as its permit violations.

2. Plaintiffs have satisfied the notice requirements pursuant to Section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), and N.J.S.A. 2A:35A-11.

3. Over ninety days ago, by letter dated October 10, 2013, delivered via certified mail, Plaintiffs notified Mark Smith, President and Chief Executive Officer of Soil Safe, Bob Martin, the Commissioner of the New Jersey Department of Environmental Protection (“NJDEP”), the Attorney General of the State of New Jersey, the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region 2, and the Attorney General of the United States that (1) Soil Safe’s activities constitute violations of New Jersey statutory and regulatory provisions as well as the conditions of its Class B Recycling Permit and (2) the conditions at the following locations may present an imminent and substantial endangerment to health or the environment: the facility located at Route 130 and Birch Creek, Logan Township, Gloucester County, New Jersey, also known as Block 20,1 Lots 1-5, and assigned facility ID No. 203493, (the “Soil Safe Facility”), Logan Equine Park, located at U.S. Route 130 South, Logan Township, Gloucester County, New Jersey, also known as Block 201, Lots 38, 40, and 41 (the “Equine Park Site”), and the Gloucester County Improvement Authority Park, located at U.S. Route 130 South, Logan Township, Gloucester County, New Jersey, also known as Block 201, Lots 10 through 35, and Block 306, Lots 1 through 11 and Lots 11.01, 12 and 13 (the “County Park Site”).

4. Over thirty days ago, by letter dated October 10, 2013, Plaintiffs provided Soil Safe with the requisite Notice of Intention to Commence Action in accordance with N.J.S.A. 2A:35A-11 by mailing, via certified mail, a notice letter to, among others, Mark Smith, President and Chief Executive Officer of Soil Safe, and Bob Martin, the Commissioner of NJDEP. Over 30 days ago, by letter dated October 17, 2013, and mailed by certified mail, Plaintiffs gave the requisite Notice of Intention to Commence Action against Soil Safe to the Honorable Frank W. Minor, Mayor of Logan Township, and Robert M. Damminger, Freehold Director of the Gloucester County Board of Freeholders pursuant to N.J.S.A. 2A:35A-11. Soil Safe has not agreed to cease the unlawful operations identified, or to investigate the hazardous substances and hazardous and/or solid waste at the Soil Safe Facility, Equine Park Site, and County Park Site and conduct remediation as demanded by the notice letter.

PARTIES

5. Plaintiff Delaware Riverkeeper Network (“DRN”) was established in 1988 to protect and restore the Delaware River, its tributaries and habitats. To achieve these goals, DRN organizes and implements streambank restoration, volunteer monitoring, educational programs, environmental advocacy initiatives, recreational activities, and environmental litigation throughout the entire Delaware River watershed, including the Delaware Estuary and Delaware Bay. The watershed includes portions of New York, New Jersey, Pennsylvania and Delaware. DRN is a membership organization with over 14,000 members throughout the watershed and approximately 4,000 members in the State of New Jersey. DRN members live and recreate throughout in the State of New Jersey and the watershed, including those areas affected by Soil Safe’s activities. DRN

undertakes numerous activities and initiatives that take place in and/or directly affect State of New Jersey waters, habitats, ecosystems and communities.

6. Plaintiff the Delaware Riverkeeper, Maya K. van Rossum, is a full-time privately-funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. The Delaware Riverkeeper advocates for the protection and restoration of the ecological, recreational, commercial and aesthetic qualities of the Delaware River, its bay, tributaries and habitats. The Delaware Riverkeeper regularly visits the Delaware River and Delaware Estuary, including the areas affected by Soil Safe's operations, for personal and professional reasons. The Delaware Riverkeeper serves also as the Executive Director of the Delaware Riverkeeper Network.

7. Upon information and belief, Defendant Soil Safe is incorporated under the laws of Maryland with its principle place of business in Columbia, Maryland, and is doing business in the State of New Jersey. Soil Safe operates a solid waste recycling facility in Logan Township, which abuts tidal wetlands adjacent to Birch Creek, a tributary of the Delaware River. The defendant is required to conduct its activities in compliance with both the Remedial Action Workplan approved by NJDEP on January 2, 2003 (the "RAW"), and the Class B permit issued to Soil Safe by NJDEP in December of 2003. Pursuant to the Class B Permit, Soil Safe places processed soil materials at the nearby Equine Park Site and County Park Site. The County Park Site is adjacent to Raccoon Creek, a tributary of the Delaware River. Soil Safe's placement of material at the Equine Park Site and the County Park Site are also governed by a Remedial Action Workplans for those sites.

8. Plaintiffs bring this Complaint on behalf of themselves and the Delaware Riverkeeper Network's members who use and enjoy the Delaware River and Estuary, its tributaries and habitats, including those areas in or adjacent to the Soil Safe Facility, Equine Park Site and County Parks Site that are affected by Soil Safe's operations, for recreational, scientific and aesthetic purposes, such as camping, canoeing, kayaking, fishing, sightseeing, bird watching and/or wildlife viewing.

9. Defendant's lack of compliance with the RAW and the Class B Permit have injured and continue to injure the recreational, scientific, environmental and aesthetic interests of Plaintiffs and the Delaware River Network's members. These injuries are fairly traceable to Defendant's conduct and are capable of redress by action of the Court.

JURISDICTION & VENUE

10. This Court has jurisdiction over this action pursuant to Section 7002(a)(1)(A) and (B) of RCRA, 42 U.S.C. § 6972(a)(1)(A) - (B).

11. This Court has supplemental jurisdiction over Plaintiffs' state law claim for relief under the ERA, N.J.S.A. 2A:35A-11, for the additional reason that this claim is joined with substantially related claims and arises out of the same common nucleus of operative facts as Plaintiffs' federal law claims.

12. Venue is proper in this Court pursuant to 7002(a)(1)(A) and (B) of RCRA, 42 U.S.C. § 6972(a)(1)(A)-(B), and the ERA, N.J.S.A. 2A:35A-11, because the defendant may be found in the District of New Jersey and the alleged endangerment may occur in the District of New Jersey.

FACTUAL BACKGROUND

13. Soil Safe operates a solid waste recycling facility located at the Soil Safe Facility in Logan Township, Gloucester County, New Jersey, which abuts tidal wetlands adjacent to Birch Creek, a tributary of the Delaware River.

14. On January 2, 2003, NJDEP approved the RAW for the Soil Safe Facility prepared by Soil Safe in accordance with the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-1 *et seq.* (“ISRA”), the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.* (the “Spill Act”), the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 *et seq.* (the Brownfield Act”), the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1 *et seq.* (the “Remediation Requirements”), Technical Requirements for Site Remediation, 7:26E-1 *et seq.* (the “Technical Regulations”).

15. Pursuant to the RAW, Soil Safe is required to place a low permeability, 5-foot thick cap over the entirety of the Soil Safe Facility consisting of processed petroleum-contaminated soils, which Soil Safe accepts from third parties and to which Soil Safe mixes additives that purportedly “encapsulate” or “stabilize” the contaminants therein. The RAW requires that the final twelve inches of the cap consist of processed material that meets NJDEP’s Residential Direct Contact Soil Cleanup Criteria (the “Residential Standards”).

16. NJDEP, through its Solid and Hazardous Waste Program, also issued Class B Recycling Permit No. CBG080003 (the “Class B Permit”), to Soil Safe in December 2003 pursuant to the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 *et seq.* (the “Solid Waste Act”), the New Jersey Statewide Mandatory Source Separation and

Recycling Act, N.J.S.A. 13:1E-99.11 *et seq.*, (the “Recycling Act”) and the New Jersey Recycling Regulations, N.J.A.C. 7:26A-1 *et seq.* (the “Recycling Regulations”). The Class B Permit has been modified on several occasions, and was renewed on April 2, 2009, and modified on April 27, 2009. NJDEP most recently renewed the Class B Permit on January 6, 2014.

17. Pursuant to the original iteration of the Class B Permit, Soil Safe is permitted to accept petroleum-contaminated soils (subject to specified volume limits) that do not exceed the following parameters for the following contaminants, but as to all other contaminants must not exceed the New Jersey Residential Direct Contact Soil Clean-Up Criteria (the “Residential Standards”): arsenic: 41 parts per million (“ppm”); beryllium: 5 ppm; cadmium: 50 ppm; lead: 1,120 ppm; nickel: 734 ppm; zinc: 3,000 ppm; polycyclic aromatic hydrocarbons (“PAHs”) (determined as Benzo(a)pyrene equivalent): 104 ppm; and total PBCs: 2 ppm.

18. NJDEP subsequently modified the Class B Permit, lowering the limit for PAHs (determined to B(a)(P) equivalent) to 100 ppm.

19. The current Residential Standard for B(a)(P) is 0.2 mg/kg, or 0.2 ppm. Accordingly, Soil Safe has been permitted to accept contaminated soil that contains PAH(s) that are at least 500 times greater than the current Residential Standard for B(a)(P).

20. Upon information and belief, Soil Safe has accepted and continues to accept contaminated soils that exceed the Residential Standard for PAHs (determined as B(a)(P) equivalent).

21. Upon information and belief, Soil Safe has accepted and continues to accept contaminated soils that exceed the Residential Standard for the other hazardous substances referred to in Paragraph 17 *supra*, including, but not limited to, arsenic, barium, cadmium and lead.

22. Pursuant to the Class B Permit and the RAW, Soil Safe is permitted to Place a 5-foot cap layer of “processed [Soil Safe] soils” over the existing site surface at the Soil Safe Facility as a remedial action. However, the final twelve inches of the capping material must meet the Residential Standards. Under New Jersey law, any placement of fill above the required remedial cap layer is considered to be geotechnical in nature, and therefore must meet the most stringent applicable soil standards, *i.e.*, the Residential Standards.

23. Since approval of a permit modification dated April 18, 2006, Soil Safe is permitted to export “processed [Soil Safe] soils” for an approved end use at the Equine Park Site and, since April 2, 2009, for an approved end use at the County Park Site.

24. Since receiving an Acceptable Use Determination dated June 24, 2009, and subsequently modified on April 30, 2010 and January 4, 2011, Soil Safe is permitted to blend dredge material with processed Soil Safe soils for use at the County Park Site, and, since January 4, 2011, for use at the Soil Safe Facility in the final cap layer.

25. Pursuant to the Class B Permit, Soil Safe has placed and continues to place processed soil materials at the nearby the Equine Park Site and the County Park Site. The County Park Site is adjacent to Raccoon Creek, a tributary of the Delaware River. Soil Safe’s placement of material at the Equine Park Site and the County Park Site are also governed by a Remedial Action Workplans for those sites.

26. Despite the fact that the RAW and the Class B Permit call for a five-foot remedial cap of processed soil material, the final twelve inches of which must meet Residential Standards, Soil Safe has represented in its Biannual Reports that it is placing a “minimum” five-foot cap.

27. Upon information and belief, there is no basis for Soil Safe’s “minimum” interpretation of the RAW and the Class B Permit, and therefore the construction of a cap that exceeds five feet violates the Class B Permit and the RAW.

28. Upon information and belief, Soil Safe continues to violate the RAW and the Class B Permit by depositing processed soil that does not meet Residential Standards at sites in excess of its four-foot allowance (as the final 12 inches of the five-foot cap must meet Residential Standards).

29. In each of the Biannual Reports submitted by Soil Safe to NJDEP in 2008, 2010 and 2012, Soil Safe has included representations regarding the purported progress of its capping operations, but which actually do not demonstrate any such progress. In its 2008 Biannual report, Soil Safe stated that, “[t]he construction plan for capping the site calls for the work to be performed nine phases. As of December 31, 2007, Phases 1 through 4 are Complete. Phases 5, 6 and 7 are nearing completion.” However, in its 2010 Biannual Report, Soil Safe again represented that Phases 1-4 were complete, and that “Phases 5, 6 and 7 are substantially complete.” Soil Safe once again represented to NJDEP that “Phases 5, 6 and 7 are substantially complete” in its 2012 Biannual Report. Therefore, despite four years of capping operations between the issuance of its 2008 and 2012 Biannual Reports, Soil Safe has not made any progress towards the completion of its capping operations at the Soil Safe Facility.

30. Upon information and belief, Soil Safe is inaccurately reporting the progress that it has made towards the completion of the cap.

31. Soil Safe's noncompliance with the RAW and the Class B Permit creates an imminent and substantial endangerment to the public and to the environment by placing excessive amounts of cap material at the Soil Safe Facility that does not meet Residential Standards.

32. From 2006 to 2008, Soil Safe delivered processed soil material to the Equine Park Site to be used as non-remedial fill pursuant to the Class B Permit, and in accordance with a Remedial Action Workplan for the Equine Park Site (the "LEP RAW"), which is governed by and approved in accordance with ISRA, the Spill Act, the Brownfield Act, the Remediation Requirements and the Technical Regulations.

33. Upon information and belief, Soil Safe only tested the processed soil material delivered to the Equine Park site for lead (Pb), and did not test the material to ensure that it met the Residential Standard for PAH(s), including B(a)(P).

34. From on or about April 1, 2009, and continuing up to and through the present, Soil Safe has placed processed soil material at the County Park as permitted by the Class B Permit to be used as remedial capping material, and construction or redevelopment grading material above the remedial cap.

35. Pursuant to Class B Permit and the Remedial Action Workplan for the County Park Site (the "GCIA RAW"), Soil Safe is permitted to use processed soil material in the construction of a two-foot remedial cap. Pursuant to NJDEP's November 19, 2009 approval letter, "[a]ny Soil Safe product that exceeds the Department's Residential Soil Cleanup Criteria shall not be distributed at the site." Similarly, "[a]ny

additional material distributed at the site in excess of the 2-foot cap will be viewed as construction or redevelopment based, rather than a remediation requirement,” and thus must also meet Residential Standards.

36. The GCIA RAW is governed by and approved in accordance with ISRA, the Spill Act, the Brownfield Act, the Remediation Requirements and the Technical Regulations.

37. From on or about April 1, 2009, and continuing up to and through the present, Soil Safe has placed processed soil material at the County Park Site as permitted by the Class B Permit and the GCIA RAW to be used as remedial capping material, and construction or redevelopment grading material above the remedial cap.

38. Pursuant to the Class B Permit and GCIA RAW, Soil Safe is required to submit quarterly reports to NJDEP in which it reports, amongst other items, the quantity of processed soil material delivered to the County Park Site, and sampling results for each stockpile of processed soil delivered to the County Park Site.

39. In its quarterly reports for the County Park Site, Soil Safe has consistently represented that the processed soil materials it has placed at the site meet Residential Standards. However, with respect to at least one contaminant, benzo(a)pyrene or B(a)(P), Soil Safe is using an outdated standard.

40. Prior to 2008, the Residential Standard for B(a)(P) was 0.66 mg/kg; subsequent to NJDEP’s revision to the standards, the current Residential Standard for B(a)(P) is 0.2 mg/kg.

41. Soil Safe’s own documents reveal numerous detections of B(a)(P) above the current 0.2 mg/kg Residential Standard.

42. Upon information and belief, Soil Safe is operating under the assumption that the pre-2008 Residential Standard applies to the remedial cap located at the County Park Site.

43. There is no legal authority for Soil Safe's use of the outdated Residential Standard, and its placement of soil contaminated above the 0.2 mg/kg Residential Standard for B(a)(P) as cap material creates an imminent and substantial endangerment to human health and the environment.

44. Upon information and belief, Soil Safe has placed and continues to place soil contaminated above the 0.2 mg/kg Residential Standard for B(a)(P) above the remedial cap despite NJDEP's requirement materials placed above the 2-foot cap, are not remedial, but geotechnical in nature, and must meet Residential Standard.

45. Soil Safe's use of soil contaminated above the 0.2 mg/kg Residential Standard for B(a)(P) at the County Park Site as capping material and material above the remedial cap is in violation of the Class B Permit and the GCIA RAW.

46. Upon information and belief, Soil Safe has placed and/or is placing contaminated soil at the Soil Safe Facility and the County Park Site in violation of the Class B Permit and the remedial action workplans for the respective sites.

47. Upon information and belief, in connection with its application for the Class B Permit and the submission of the RAW for the Soil Safe Facility, Soil Safe represented to NJDEP that utilized a confidential and proprietary soil mixing process to treat and recycle contaminated soil.

48. Soil Safe represented to NJDEP that its soil treatment and recycling process consisted of mixing contaminated soil with Portland cement, cement kiln dust and lime kiln dust, and that this process was effective in treating metals and organic contaminants.

49. Soil Safe also represented to NJDEP that its soil treatment and recycling process would “encapsulate” or “stabilize” all contaminants present in the contaminated soil that it received at the Soil Safe Facility prior to its placement as remedial cap material or as construction and redevelopment material.

50. Upon information and belief, Soil Safe’s soil treatment and recycling, or “encapsulating,” process, in which in mixes contaminated soil with Portland cement, cement kiln dust and/or lime kiln dust, is not as effective as Soil Safe represented to NJDEP.

51. Upon information and belief, Soil Safe uses between 1 and 2% additive, which is insufficient to encapsulate or stabilize soil contaminants and prevent leaching of contaminants.

52. Upon information and belief, for economic reasons, Soil Safe is predominantly using cement kiln dust to treat the contaminated soil, which has lesser pozzolanic qualities and is thus less effective, and is using very small amounts of Portland cement, if any at all.

53. Because Soil Safe’s soil treatment process is not effective in encapsulating and stabilizing contaminants, including PAHs, Soil Safe’s placement of soils that it has purportedly treated at the Soil Safe Facility, the Equine Park Site and the County Park Site has resulted in the placement of contaminants, including PAHs, at these sites, which will leach into groundwater and/or surface waters

54. Soil Safe's placement of contaminated soil in violation of various workplans and the Class B Permit has created, and continues to create, an imminent and substantial endangerment to human health and the environment because the Soil Safe Facility, Equine Park Site, and County Park Site are all located in close proximity to wetlands, Raccoon Creek, and the Delaware River. These three sites are also located near land designated for residential uses, and both the Equine Park Site and County Park Site are themselves intended for public use.

55. Exposure to PAHs including B(a)(P), can cause serious health problems due to the fact that most PAHs contain benzene, a highly carcinogenic substance. PAHs are also absorbed by and bioaccumulate in fish, crustaceans, and mollusks.

56. The area encompassing the Soil Safe Facility, Equine Park Site, and County Park Site is home to diverse plant and wild life, including the Atlantic Sturgeon and the American Bald Eagles, both threatened species, and has important environmental value as wetlands as well as aesthetic value for members of the public.

COUNT ONE

INJUNCTIVE RELIEF UNDER RCRA 7002(a)(1)(A)

57. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.

58. Soil Safe is a "person" as defined by 42 U.S.C. § 6903(15).

59. The Class B Permit is a permit issued pursuant to the Solid Waste Management Act, and NJDEP's Solid and Hazardous Waste Program, which was approved by EPA pursuant to RCRA, and is therefore a permit which has become effective pursuant to RCRA.

60. Soil Safe has violated, and continues to violate, the Class B Permit by constructing a remedial cap consisting of processed soil materials at the Soil Safe Facility that exceeds the maximum five-foot height set forth in the Class B Permit.

61. Soil Safe has violated, and continues to violate, the Class B Permit by constructing a remedial cap at the County Park Site with processed soil materials that do not meet the Residential Standards for benzo(a)pyrene.

62. Soil Safe has violated, and continues to violate, the Class B Permit by placing processed soil materials above the remedial cap at the County Park Site that do not meet the Residential Standards for benzo(a)pyrene.

63. Soil Safe has violated, and continues to violate, the Class B Permit by representing to NJDEP in connection with its application for the Class B Permit that its soil recycling process, by which it mixes contaminated soil with certain additives, is effective in “encapsulating” or “stabilizing” contaminants in the processed soil materials and in preventing the leaching of contaminants to the environment, and by subsequently placing such processed soil materials at the Soil Safe Facility, the Equine Park and the County Park Site pursuant to the Class B Permit.

64. Over sixty days ago, by letter dated October 10, 2013, Plaintiffs gave Soil Safe the requisite Notice of Endangerment in accordance with Section 7002(b)(2)(1) of RCRA, 42 U.S.C. § 6972(b)(2)(1) and 40 C.F.R. Part 240, § 254.1 by mailing, via certified mail, a notice letter to Mark Smith, President and Chief Executive Officer of Soil Safe, Bob Martin, the Commissioner of NJDEP, the Attorney General of the State of New Jersey, the Administrator of the EPA, the Administrator of the EPA Region 2, and the Attorney General of the United States. Since its receipt of Plaintiff’s Notice of Intent

to Sue, Soil Safe has not agreed to comply with the Class B Permit related to its operations at the Soil Safe Facility, the Equine Park Site, and the County Park Site and conduct remediation as demanded by the notice letter.

65. Plaintiffs seek injunctive relief under RCRA ordering Soil Safe to cease and desist all operations at the Soil Safe Facility, the Equine Park Site, and the County Park Site until Soil Safe conforms with the conditions of the Class B Permit and state and federal law, remedies any contamination it has placed at or which has migrated from the three sites, and its processing and placements are determine to be effective, safe and within all permissible limits on new contamination.

66. Pursuant to 42 U.S.C. § 6972(e), Plaintiffs seek an award of the costs of this litigation including but not limited to reasonable attorney and expert witness fees, and including but not limited to similar fees to monitor Soil Safe's compliance with any orders or judgments issued by any regulatory agency or this Court.

COUNT TWO

INJUNCTIVE RELIEF UNDER RCRA 7002(a)(1)(B)

67. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 66 as if fully set forth herein.

68. Soil Safe is a "person" as defined by 42 U.S.C. § 6903(15).

69. Contaminated soils accepted by Soil Safe at the Soil Safe Facility, which contain contaminants including, but not limited to arsenic, barium, cadmium, lead and PAHS, are hazardous wastes, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C § 6903(5), and 40 C.F.R. § 261.3, and/or solid wastes, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.2

70. Processed soil materials generated by Soil Safe and placed at the Soil Safe Facility, the Equine Park Site and the County Park Site as either remedial cap material or construction and redevelopment material that do not meet the Residential Standards for benzo(a)pyrene constitute hazardous wastes, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.3, and/or solid wastes, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

71. Soil Safe is and has been the “owner” and/or an “operator” of the Soil Safe Facility, the Equine Park Site and the County Park Site; the “generator” hazardous and solid wastes disposed of at the Soil Safe Facility, the Equine Park Site and the County Park Site; and the “transporter” of hazardous and solid wastes disposed of at the Equine Park Site and the County Park Site within the meaning of Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

72. Soil Safe has contributed and continues to contribute to the handling, storage, treatment, transportation and/or disposal of processed soil materials at the Soil Safe Facility, the Equine Park Site, and the County Park Site that do not meet the Residential Standards for benzo(a)pyrene, and which pose imminent and substantial endangerment to health or the environment.

73. The past or present handling, storage, treatment, transportation, or disposal of solid waste, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and/or hazardous waste, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), by Soil Safe at the Soil Safe Facility, the Equine Park Site, and the County Park Site has resulted in actual or threatened releases of hazardous substances at

each site, which may present an imminent and substantial endangerment to the environment.

74. Over ninety days ago, by letter dated October 10, 2013, Plaintiffs gave Soil Safe, the Commissioner of NJDEP and the Administrator of EPA the requisite Notice of Endangerment in accordance with Section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A) and 40 C.F.R. Part 240, § 254.1 by mailing, via certified mail, a notice letter to Mark Smith, President and Chief Executive Officer of Soil Safe, Bob Martin, the Commissioner of NJDEP, the Attorney General of the State of New Jersey, the Administrator of the EPA, the Administrator of the EPA Region 2, and the Attorney General of the United States. Soil Safe has not agreed to investigate the hazardous substances and hazardous and/or solid waste at the Soil Safe Facility, Equine Park Site, and County Park Site and conduct remediation as demanded by the notice letter.

75. Plaintiffs seek injunctive relief under RCRA ordering Soil Safe to take such actions as may be necessary to investigate, abate and remediate any imminent and substantial endangerment posed to health and the environment at the Soil Safe Facility, the Equine Park Site, and the County Park Site, as well as the off-site migration of pollutants from the three sites.

76. Pursuant to 42 U.S.C. § 6972(e), Plaintiffs seek an award of the costs of this litigation including but not limited to reasonable attorney and expert witness fees, and including but not limited to similar fees to monitor Soil Safe's compliance with any orders or judgments issued by any regulatory agency or this Court.

COUNT THREE

EQUITABLE RELIEF UNDER N.J.S.A. 2A:35A-6

77. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1 through 76 as if fully set forth herein.

78. Pursuant to the citizen suit provision of N.J.S.A. 2A:35A-4, “any person may commence a civil action in a court of competent jurisdiction against any other person alleged to be in violation of any statute, regulation or ordinance which is designed to prevent or minimize pollution, impairment or destruction of the environment,” and the plaintiff alleges “that a person is in violation, either continuously or intermittently, of a statute, regulation or ordinance, and that there is a likelihood that the violation will recur in the future.”

79. Soil Safe is a “person” as defined by N.J.S.A. 2A:35A-3.

80. Soil Safe has violated, and continues to violate, the Class B Permit by constructing a remedial cap consisting of processed soil materials at the Soil Safe Facility that exceeds the maximum five-foot height set forth in the Class B Permit.

81. Soil Safe has violated, and continues to violate, the Class B Permit by constructing a remedial cap at the County Park Site with processed soil materials that do not meet the Residential Standards for benzo(a)pyrene.

82. Soil Safe has violated, and continues to violate, the Class B Permit by placing processed soil materials above the remedial cap at the County Park Site that do not meet the Residential Standards for benzo(a)pyrene.

83. Soil Safe has violated, and continues to violate, the Class B Permit by representing to NJDEP in connection with its application for the Class B Permit that its

soil recycling process, by which it mixes contaminated soil with certain additives, is effective in “encapsulating” or “stabilizing” contaminants in the processed soil materials and in preventing the leaching of contaminants to the environment, and by subsequently placing such processed soil materials at the Soil Safe Facility, the Equine Park and the County Park Site pursuant to the Class B Permit.

84. Soil Safe’s continuous violations of the Class B Permit set forth in Paragraphs 80, 81, 82 and 83 *supra* are violations of the New Jersey Solid Waste Management Act, the New Jersey Statewide Mandatory Source Separation and Recycling Act, and the New Jersey Recycling Regulations, all of which are statutes or regulations “designed to prevent or minimize pollution, impairment or destruction of the environment.”

85. Based on Soil Safe’s continuing operations at the Soil Safe Facility and the County Park Site, and the continuing presence of contaminated soil at the Soil Safe Facility, the Equine Park Site and the County Park Site, Soil Safe’s violations of the New Jersey Solid Waste Management Act, the New Jersey Statewide Mandatory Source Separation and Recycling Act, and the New Jersey Recycling Regulations are likely to recur in the future.

86. Soil Safe’s construction of a remedial cap at the Soil Safe Facility that is in excess of the five-foot maximum height permitted by NJDEP constitutes a violation of the RAW.

87. Soil Safe’s use of processed soil material at the County Park Site that does not meet the Residential Standards for benzo(a)pyrene constitutes a violation of the GCIA RAW.

88. Soil Safe's use of processed soil material at the Soil Safe Facility, the Equine Park Site and the County Park Site that was mixed with amounts of additives that insufficient to "encapsulate" or "stabilize" contaminants found in the contaminated soil used by Soil Safe constitutes a violation of the RAW, the LEP RAW and the GCIA RAW.

89. Soil Safe's continuous violations of the RAW, the LEP RAW and the GCIA RAW set forth in Paragraphs 86, 87 and 88 *supra* constitute violations of ISRA, the Spill Act, the Brownfield Act, the Remediation Requirements and the Technical Regulations, all of which are statutes or regulations "designed to prevent or minimize pollution, impairment or destruction of the environment."

90. Based on Soil Safe's continuing operations at the Soil Safe Facility and the County Park Site, and the continuing presence of contaminated soil at the Soil Safe Facility, the Equine Park Site and the County Park Site, Soil Safe's violations of ISRA, the Spill Act, the Brownfield Act, the Remediation Requirements and the Technical Regulations are likely to recur in the future.

91. Over thirty days ago, by letter dated October 10, 2013, Plaintiffs gave Soil Safe the requisite Notice of Intention to Commence Action in accordance with N.J.S.A. 2A:35A-11 by mailing, via certified mail, a notice letter to, among others, Mark Smith, President and Chief Executive Officer of Soil Safe, and Bob Martin, the Commissioner of NJDEP. Over 30 days ago, by letter dated October 17, 2013, and mailed by certified mail, Plaintiffs gave the requisite Notice of Intention to Commence Action against Soil Safe to the Honorable Frank W. Minor, Mayor of Logan Township, and Robert M. Damminger, Freehold Director of the Gloucester County Board of Freeholders pursuant

to N.J.S.A. 2A:35A-11. Soil Safe has not agreed to cease the unlawful operations identified, or to investigate the hazardous substances and hazardous and/or solid waste at the Soil Safe Facility, Equine Park Site, and County Park Site and conduct remediation as demanded by the notice letter.

92. Plaintiffs seek equitable relief under N.J.S.A. 2A:35A-6 ordering Soil Safe to cease and desist all operations at the Soil Safe Facility, Equine Park Site, and County Park Site until Soil Safe conforms with its permit conditions and state law, remedies any contamination it has placed at or which has migrated from the Soil Safe Facility, Equine Park Site, and County Park Site, and its processing and placements are determined to be effective, safe and within all permissible limits on new contamination.

93. Pursuant to N.J.S.A. 2A:35A-10, Plaintiffs seek an award of the costs of this litigation including but not limited to reasonable attorney and expert witness fees.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court issue judgments in their favor and against the Defendant as follows:

1. Injunctive relief under RCRA ordering Soil Safe to cease and desist all operations at the Soil Safe Facility, Equine Park Site, and County Park Site until Soil Safe conforms with its permit conditions and state and federal law, remedies any contamination it has placed at or which has migrated from the three sites, and its processing and placements are determined to be effective, safe and within all permissible limits on new contamination;

2. Injunctive relief under RCRA ordering Soil Safe to take such actions as may be necessary to investigate, abate and remediate any imminent and substantial

endangerment posed to health and the environment at the Soil Safe Facility, Equine Park Site, and County Park Site, as well as the off-site migration of pollutants from the three sites;

3. Equitable relief under N.J.S.A. 2A:35A-6 ordering Soil Safe to cease and desist all operations at the Soil Safe Facility, Equine Park Site, and County Park Site until Soil Safe conforms with its permit conditions and state law, remedies any contamination it has placed at or which has migrated from the Soil Safe Facility, Equine Park Site, and County Park Site, and its processing and placements are determined to be effective, safe and within all permissible limits on new contamination;

4. Order Defendants to pay all reasonable costs and expenses incurred by Plaintiffs in connection with this Complaint; and

5. Provide such additional relief as the Court deems just and proper.

Dated: March 3, 2014

Respectfully Submitted,

s/ Daniel F. Mulvihill
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