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<p>SOLVAY SPECIALTY POLYMERS USA, LLC,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>PAULSBORO REFINING COMPANY LLC,</p> <p style="text-align: right;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY</p> <p>LAW DIVISION: CIVIL PART</p> <p>GLOUCESTER COUNTY</p> <p>Docket No. _____</p> <p style="text-align: center;"><u>Civil Action</u></p> <p style="text-align: center;"><b>COMPLAINT</b></p>
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Plaintiff Solvay Specialty Polymers USA, LLC (“Solvay”), by and through its attorneys, hereby brings this Complaint against Defendant Paulsboro Refining Company LLC (“PRC”) and states as follows:

**NATURE OF THE ACTION**

1. After years of environmental investigation and spending millions of dollars, Solvay has determined that PRC is responsible for the per- and polyfluoroalkyl substance (“PFAS”) contamination, including perfluorononanoic acid (“PFNA”), perfluorooctanoic acid (“PFOA”), and perfluorooctanesulfonic acid (“PFOS”), that Solvay has investigated and remediated in Paulsboro Borough public water supply well number 7 (“Paulsboro Well No. 7”), as well as certain PFAS groundwater contamination Solvay is investigating in West Deptford Township. This action seeks to require PRC to take responsibility for its PFAS contamination

and to reimburse Solvay for the millions of dollars it spent in past environmental costs and the future environmental costs Solvay may incur to address PRC's PFAS discharges.

### PARTIES

2. Solvay is a Delaware limited liability company with its headquarters in Alpharetta, Georgia.

3. Solvay is a "person" as defined in Section 23.11b of the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11b, and as defined in Section 2A:16-50 of the Declaratory Judgments Act, N.J.S.A. 2A:16-50.

4. Solvay's sole member is Ausimont Industries Inc. ("Ausimont"), a Delaware corporation. Ausimont is a holding company with no operations. Its headquarters, president, and one of its board members are based in Houston, Texas. Accordingly, Ausimont's principal place of business is Houston, Texas. Thus, Ausimont is a citizen of Delaware and Texas. As a limited liability company, Solvay, in turn, is also a citizen of Delaware and Texas.

5. PRC is a Delaware limited liability company with its headquarters located at 800 Billingsport Road, Greenwich Township, New Jersey.

6. PRC is a "person" as defined in Section 23.11b of the Spill Act, N.J.S.A. 58:10-23.11b, and as defined in Section 2A:16-50 of the Declaratory Judgments Act, N.J.S.A. 2A:16-50.

7. Upon information and belief, PRC's sole member is PBF Holding Company, LLC ("PBF Holding"), a Delaware corporation with its headquarters located in Parsippany, New Jersey. Upon information and belief, PBF Holding's sole member is PBF Energy, Inc. ("PBF Energy"). PBF Energy is a Delaware corporation with its principal place of business in Parsippany, New Jersey. Thus, PBF Energy, and in turn, PBF Holding and PRC, are citizens of Delaware and New Jersey.

8. As both Solvay and PRC are citizens of Delaware, there is not complete diversity of citizenship between the parties.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction to hear this action pursuant to Section 58:10-23.11f(a)(2)(a) of the Spill Act and Section 2A:16-52 of the Declaratory Judgments Act.

10. Pursuant to Rule 4:3-2(a)(3) and Rule 4:3-2(b), venue is proper in this Court because Solvay's claims arise from its actions to clean up and remove PRC's contamination in Paulsboro Borough and West Deptford Township, both of which are located in Gloucester County, and because PRC resides in Gloucester County due to its operation of the PRC Facility.

### **STATEMENT OF FACTS**

#### **PFAS and AFFFs**

11. PFAS is an umbrella term used to encompass more than 5,000 different types of chemicals, each with its own molecular structure and properties. Generally, PFAS have unique physical and chemical properties, such as the ability to repel water, oil, and stains; chemical and thermal stability; and the ability to reduce friction.

12. PFAS were discovered in the late 1930s, and since that time, have been used in a wide variety of industrial and consumer products.

13. A significant source of PFAS contamination in the environment are aqueous film-forming foams ("AFFFs").

14. According to the New Jersey Department of Environmental Protection ("DEP"), "AFFF contamination has been identified at many locations where AFFF products were stored

and discharged, including, but not limited to airports, spill/crash sites, firefighter training facilities, refineries, and bulk petroleum storage facilities.”<sup>1</sup>

15. AFFFs are firefighting foams that are used to extinguish Class B fires. A Class B fire includes any fire involving flammable and combustible liquids and gases, petroleum hydrocarbons, oils, gasoline, solvents, or alcohols.

16. AFFFs contain PFAS. Indeed, according to the Interstate Technology Regulatory Council, which is a state-led coalition of stakeholders working on innovative environmental remediation technologies and processes, “[a]ll AFFF products contain PFAS. This applies to foams used in the past and those being sold today.”<sup>2</sup>

17. The PFAS in AFFFs creates a vapor barrier between the fire and oxygen, which quickly results in the fire being extinguished.

18. Since the late 1960s, numerous companies have manufactured AFFFs that contain PFAS, including at least PFOS, PFOA, PFNA, and precursors of these compounds. These manufacturers include, but are not limited to, the following companies: The 3M Company; Chemguard, Inc.; Tyco Fire Products, LP; National Foam, Inc.; Angus Fire Armour Corporation; Kidde plc; Kidde-Fenwal, Inc.; Raytheon Technologies Corporation; UTC Fire & Security Americas Corporation; and Vulcan Fire Systems, Inc.

#### Ownership and Operational History of the PRC Facility

19. The PRC Facility is an approximately 950-acre oil refinery located in Greenwich Township, New Jersey on the banks of the Delaware River.

20. The PRC Facility has been in operation for at least 100 years.

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<sup>1</sup> <https://www.nj.gov/dep/srp/emerging-contaminants/> (last visited September 30, 2020).

<sup>2</sup> [https://pfas-1.itrcweb.org/fact\\_sheets\\_page/PFAS\\_Fact\\_Sheet\\_AFFF\\_April2020.pdf](https://pfas-1.itrcweb.org/fact_sheets_page/PFAS_Fact_Sheet_AFFF_April2020.pdf) (last visited September 30, 2020).

21. Prior to 1998, the PRC Facility was owned and operated by ExxonMobil Oil Corporation. In 1998, the PRC Facility was acquired by Valero Energy Corporation (“Valero”). In 2010, PBF Holding, the parent company of PRC, acquired the PRC Facility. Ownership of the PRC Facility was then transferred to PRC.

22. Since 2010, the PRC Facility has been owned and operated by PRC.

PRC Has Contaminated the Environment with PFAS from its Discharges of AFFFs

23. PRC manufactures predominantly gasoline, heating oil, and aviation jet fuel at the PRC Facility. It has an average throughput of approximately 180,000 barrels per day.

24. The PRC Facility consists of a complex refining process that involves, among other things, two crude distillation units, vacuum distillation units, a fluid catalytic cracking unit, a delayed coking unit, a lube pol processing unit, a distillate hydrotreater, a reformer, an alkylating unit, a propane deasphalting unit, and two sulfur recovery units.

25. Due to its use and generation of flammable and combustible liquids, gases, and other materials, PRC maintains its own on-site firefighting personnel and fire department.

26. PRC’s fire department is part of the Gloucester County Fire Chiefs & Fire Officers Association’s “Foam Task Force,” which is an group of fire departments located in Gloucester County, New Jersey. Upon information and belief, the focus of the “Foam Task Force” is AFFFs.

27. Upon information and belief, at least until 2018, PRC had a National Foam “foam tender,” which is a tanker used to store AFFFs, at the PRC Facility.

28. The PRC Facility includes a designated area, located in the northwest portion of the property, known as the Fire Training Area.

29. PRC has used the Fire Training Area to practice with and test different AFFFs, including AFFFs containing PFAS such as PFNA, PFOS, and PFOA. As a result of its operations in the Fire Training Area, PRC discharged PFAS into the environment, including soils and groundwater, at the PRC Facility.

30. The PRC Facility also includes stormwater retention ponds, which capture stormwater runoff from the property. The stormwater retention ponds are located in the southwest portion of the PRC Facility.

31. Stormwater from the Fire Training Area that is diverted to the stormwater retention ponds facilitates the transport and distribution of PFNA, PFOS, PFOA, and other PFAS in the environment by spreading this contamination to additional soils and groundwater at the PRC Facility.

32. In addition to its routine use of PFAS-containing AFFFs in its Fire Training Area, PRC also has had at least one significant oil spill that required prolonged use of AFFFs.

33. In February 2012, PRC spilled approximately 6.6 million gallons of oil at the PRC Facility. Due to the odors emanating from millions of gallons of spilled oil, PRC applied AFFFs to the oil to cover it and reduce the vapors that were causing the odors.

34. PRC's use of AFFFs to reduce vapors from the 6.6 million gallon oil spill was extensive, and resulted in PRC consistently discharging AFFFs for days. The news station WPVI-6ABC in Philadelphia took photographs of PRC's extensive use of AFFFs, as depicted below.



35. As a result of PRC's use of AFFFs to manage the February 2012 oil spill, PRC discharged large amounts of PFAS into the environment, including soils and groundwater, at the PRC Facility.

Solvay's Operations in West Deptford and Use of PFAS

36. Since 1990, Solvay has owned and operated a manufacturing plant located at 10 Leonard Lane in West Deptford, New Jersey (“West Deptford Facility”) to manufacture polyvinylidene fluoride (“PVDF”), a type of fluoropolymer. PVDF was previously manufactured at the West Deptford Facility from 1985 to 1990 by Arkema, Inc.

37. To manufacture PVDF, a process aid used to create an emulsion in the process is needed. This process aid is commonly referred to as a surfactant.

38. From 1985 until 1990 by Arkema, Inc., and from 1990 until 2010 by Solvay, the primary process aid used was Surfion<sup>®</sup>, which was manufactured by Asahi Glass Company. Surfion<sup>®</sup> predominantly contains ammonium perfluorononanoate, which presents as PFNA in the environment.

39. From 1995 to 2003, Solvay also used a small amount of a second process aid, sodium perfluorooctanoate (“NaPFO”), which was manufactured by The 3M Company. NaPFO presents as PFOA in the environment.

40. Solvay never manufactured any PFAS at its West Deptford Facility. Instead, Solvay only used process aids that contained some PFAS in its operations. Further, Solvay never used or manufactured PFOS in its operations.

The Discovery of PFAS Contamination in Paulsboro Well No. 7 and  
Solvay's Efforts to Investigate that Contamination

41. In 2009, DEP conducted PFAS sampling of multiple public water supplies across New Jersey, including the Paulsboro Borough public water supply wells. DEP detected PFNA, PFOA, and PFOS in Paulsboro Well No. 7.

42. Also in 2009, the Delaware River Basin Commission (“DRBC”) conducted PFAS sampling and detected PFNA, PFOA, and PFOS in Delaware River surface water.

43. For the next four years, DEP did not communicate the sampling results of its or DRBC's sampling efforts to the public, including Solvay.

44. In August 2013, however, Solvay learned of the existence of the DEP and DRBC sampling results through media reports.

45. Immediately upon learning of potential PFNA impacts in Gloucester County, Solvay self-initiated contact with DEP and decided to investigate PFAS at its West Deptford Facility. Solvay also decided to investigate possible PFAS drinking water impacts in and around the West Deptford area, regardless of the potential source or sources of that PFAS contamination. Solvay did so because, at the time, it was unsure whether its operations contributed PFAS to the environment and how that PFAS may have migrated. Due to Solvay's lack of relevant environmental data and information at the time, Solvay chose to voluntarily investigate a broad geographic area at the outset, and to simultaneously gain knowledge of its potential PFAS discharges and the potential PFAS discharges of other parties.

46. At DEP's request, in September 2013, Solvay retained a Licensed Site Remediation Professional ("LSRP") to oversee its investigatory efforts. Under the Site Remediation Reform Act, a LSRP is responsible for ensuring that an environmental investigation and remediation complies with all applicable statutes and regulations. N.J.S.A. 58:10C-14.

47. That same month, the Paulsboro Water Company sampled for PFAS in Paulsboro Well No. 7. The sampling event detected PFNA at 150 parts per trillion ("ppt"), PFOA at 35 ppt, and PFOS at 7.4 ppt. The presence of PFOS, which Solvay did not use at the West Deptford Facility, indicated that some party other than Solvay was responsible for the contamination in Paulsboro Well No. 7.

48. On November 15, 2013, Solvay submitted a proposed work plan to DEP for its PFAS investigation. Solvay's proposed investigation included sampling seven different municipal water supply systems, including Paulsboro Borough, groundwater sampling from existing monitoring wells at the West Deptford Facility, surface water and sediment sampling in the Delaware River, and air dispersion modeling of potential and estimated historic PFNA and PFOA emissions from the West Deptford Facility. Solvay's LSRP and DEP both approved this work plan.

49. Importantly, at the time of Solvay's PFAS investigation, DEP had not yet promulgated any enforceable remediation standards for any PFAS in any environmental media. Solvay proposed and initiated this extensive work on a voluntary basis in 2013.

50. On November 26, 2013, Solvay collected samples from Paulsboro Well No. 7. These samples detected PFNA, PFOS, PFOA, and other PFAS, with the highest PFNA concentration at 110 ppt. Again, the presence of PFOS, which Solvay did not use at the West Deptford Facility, indicated that some party other than Solvay was responsible for the contamination in Paulsboro Well No. 7.

51. On December 23, 2013, Paulsboro Borough sent a notice of its intent to commence litigation against Solvay relating to the PFAS contamination detected in the Borough's public water supply wells, in spite of the presence of PFOS which Solvay never used.

52. On January 17, 2014, DEP informed Paulsboro Borough that in DEP's view the September 2013 detection of 150 ppt of PFNA in Well No. 7 warranted action, because Paulsboro Well No. 7 was the Borough's primary drinking water supply well at the time. DEP provided Paulsboro Borough with a "fact sheet" about PFAS for the Borough to communicate with its residents and, "to ensure an abundance of caution," DEP recommended that infants and

children under the age of one not consume public water, but instead use bottled water, until the PFAS contamination in Paulsboro Well No. 7 could be remedied.

53. DEP also indicated that it wished to work cooperatively with Paulsboro Borough and Solvay to remediate the PFNA in Paulsboro Well No. 7 and to ensure the provision of bottled water to residents in the interim.

54. Even though Solvay's environmental investigation was in its earliest stages and had not established any nexus between Solvay and Paulsboro Well No. 7, Solvay voluntarily agreed to provide bottled water to Borough residents. Solvay continued to provide bottled water to Borough residents until November 1, 2014, at which time DEP's health advisory was lifted and the Borough switched to using Paulsboro Well No. 8 as its primary drinking water supply (after an unrelated radium issue was resolved).

55. On April 10, 2014, Solvay again sampled Paulsboro Well No. 7. These samples detected PFNA, PFOS, PFOA, and other PFAS, with the highest PFNA concentration at 95 ppt.

56. On July 8, 2014, Solvay again sampled Paulsboro Well No. 7. These samples detected PFNA, PFOS, PFOA, and other PFAS, with the highest PFNA concentration at 140 ppt.

57. On September 25, 2014, Solvay again sampled Paulsboro Well No. 7. These samples detected PFNA, PFOS, PFOA, and other PFAS, with the highest PFNA concentration at 150 ppt.

58. The presence of PFOS, which Solvay did not use at the West Deptford Facility, in the April 2014, July 2014, and September 2014 sampling results re-confirmed that some party other than Solvay was responsible for the contamination in Paulsboro Well No. 7.

Solvay Agrees to Construct a PFAS Treatment System for Paulsboro Well No. 7

59. Despite Solvay's belief that it likely was not responsible for the PFAS contamination detected in Paulsboro Well No. 7, in December 2014, Solvay agreed to construct a treatment system to remediate that contamination. Solvay did so because, at the time, its environmental investigation had not yet progressed to the stage where Solvay was confident that its operations did not affect Paulsboro Well No. 7.

60. The treatment system would use granular activated carbon ("GAC") technology to remediate the PFAS in Paulsboro Well No. 7. GAC is a well-known and accepted method for remediating PFAS contamination. Generally, GAC functions as a filter that captures the PFAS contamination as PFAS-contaminated water is run through the treatment system.

61. On September 21, 2015, Solvay began construction of the treatment system for Paulsboro Well No. 7. In connection with constructing the treatment system, Solvay obtained the necessary permits and approvals from DEP.

62. On June 27, 2016, Solvay completed constructing the treatment system, at which point it became operational and title to the treatment system was transferred to Paulsboro Borough.

63. In connection with investigating and remediating PFAS contamination in Paulsboro Well No. 7, including construction of the treatment system, Solvay has incurred costs in excess of \$3.5 million.

Solvay is Not Responsible for PFAS Contamination in Paulsboro Well No. 7

64. Although it has expended significant effort and resources to address PFAS in Paulsboro Well No. 7, Solvay now knows that PRC is responsible and Solvay is not responsible for that PFAS.

65. Paulsboro Well No. 7 is located approximately 2 miles southwest of the West Deptford Facility.

66. Groundwater underneath the West Deptford Facility flows in a south-southeast direction. Thus, any PFAS groundwater contamination allegedly attributable to the West Deptford Facility flows away from, not towards, Paulsboro Well No. 7.

67. Further, Solvay has developed and run an air dispersion model, with extensive technical input and approval from both DEP and USEPA. The approved air dispersion model concluded that no significant amount of PFNA or PFOA emitted from Solvay's operations would have been deposited beyond the West Deptford Facility property boundary, with depositions decreasing significantly with distance from the facility. There is no data showing that any PFNA or PFOA emitted from Solvay's operations reached Paulsboro Well No. 7.

68. Finally, Solvay sampled the Delaware River surface water in August 2014 at multiple locations and PFNA, which was the dominant PFAS in the dominant process aid Solvay used at the West Deptford Facility, was not detected. There is no data showing that any PFNA or PFOA allegedly attributable to the West Deptford Facility traveled, via surface water and then groundwater, to reach Paulsboro Well No. 7.

Solvay's Continued Investigation of PFAS Has Revealed  
Multiple Sources of PFAS Contamination in Gloucester County Including PRC

69. Solvay has been investigating PFAS at and potentially attributable to the West Deptford Facility since 2013. As part of that effort, Solvay has conducted PFAS sampling at numerous locations in Gloucester County, which has identified many sources of PFAS for which Solvay is not responsible, including Paulsboro Well No. 7.

70. After completing the work contemplated under the DEP-approved November 2013 work plan, in September 2015, Solvay submitted a further work plan to DEP. The

September 2015 work plan proposed the collection of (i) groundwater samples from both monitoring wells located both on and off the West Deptford Facility, (ii) soil samples from the West Deptford Facility, and (iii) surface water and sediment samples from creeks adjacent to the West Deptford Facility. Solvay's LSRP and DEP both approved this work plan.

71. This work was performed in 2015 and 2016, and the results of this second investigation were reported to DEP in June 2017.

72. In May 2018, Solvay prepared a third investigation work plan, which was subsequently approved by the LSRP and then DEP. Under this work plan, Solvay installed additional groundwater monitoring wells and collected more groundwater samples from locations off of the West Deptford Facility.

73. In January 2019, Solvay self-initiated and implemented, with LSRP approval and notice to DEP, an engineered cap/surface barrier at the West Deptford Facility as an interim remedial measure.

74. In 2020, Solvay has continued to investigate groundwater PFAS contamination that may be attributable to the West Deptford Facility.

75. To date, Solvay has collected more than 1,000 environmental samples and has spent more than \$30 million to investigate and remediate PFAS contamination in Gloucester County.

76. Solvay's extensive efforts have revealed that other parties in Gloucester County are known or suspected sources of PFAS contamination to the environment.

77. On October 22, 2015, Solvay submitted information on other PFAS sources to DEP. The 2015 report identified landfills, wastewater treatment plants, industrial outfalls, and

users of AFFFs including airports, municipal firefighting facilities, and oil refineries, as sources of PFAS contamination to the environment.

78. On May 24, 2018, Solvay submitted further information to DEP on other PFAS sources in Gloucester County. In that report, Solvay identified to DEP numerous potential sources, including PRC and the Gloucester County Fire Training Academy located at 200 Shady Lane in East Greenwich, New Jersey (“GCFTA”).

79. With respect to the PRC Facility, Solvay informed DEP that PRC used AFFFs to cover a 6 million gallon oil spill in February 2012, that PRC discharged PFAS to the environment by the direct application of AFFFs during fire training and fire response activities, and that PRC’s AFFF discharges would result in PFAS contamination of soils, groundwater, and potentially the Delaware River. Solvay also informed DEP that PRC was the likely source of contamination in Paulsboro Well No. 7.

80. Unfortunately, to Solvay’s knowledge, DEP has failed to take any action to investigate, or require PRC to investigate, the PRC Facility for PFAS contamination.

81. With respect to the GCFTA, Solvay informed DEP that this property has been used for firefighting training activities for at least 20 years. The GCFTA consists of a main training area where propane and other fuels are used in training exercises, including an airplane simulation, and adjacent training areas including a firefighting training ring. Solvay informed DEP that the GCFTA is used to practice and train for fire suppression events and likely used and discharged AFFFs containing PFAS into the environment.

82. Prior to December 2019, to Solvay’s knowledge, DEP failed to take any action to investigate, or require the GCFTA to investigate, the GCFTA property for PFAS contamination.

83. Due to DEP's inaction, in December 2019 and January 2020, Solvay conducted a PFAS investigation of the GCFTA. Solvay's investigation of GCFTA provided further evidence that PRC is responsible for the PFAS contamination in Paulsboro Well No. 7, as explained below.

84. In investigating GCFTA, Solvay collected groundwater and soil samples. These samples were located in areas where AFFFs were anticipated to have been discharged as part of firefighting training exercises.

85. Solvay's groundwater samples at the GCFTA detected numerous PFAS. PFNA was detected in groundwater at a concentration of 980 ppt, which is 75 times greater than DEP's Ground Water Quality Standard ("GWQS") for PFNA of 13 ppt. PFOS was detected in groundwater at a concentration of 4,360, which is 335 times greater than DEP's GWQS for PFOS of 13 ppt. Finally, PFOA was detected in groundwater at a concentration of 29.2, which is nearly double DEP's GWQS for PFOA of 14 ppt.

86. The presence of these PFAS in groundwater underneath firefighting training areas of the GCFTA confirms that PFNA, PFOS, and PFOA are key components of AFFFs.

87. Solvay's soil samples at the GCFTA also detected numerous PFAS, including PFNA at concentrations up to 1,150 ppt, PFOS at concentrations up to 834 ppt, and PFOA at concentrations up to 1,020 ppt. DEP has not yet promulgated any soil remediation standards for any PFAS.

88. The presence of these PFAS in soils confirmed that PFNA, PFOS, and PFOA are key components in AFFFs. As a result of Solvay's investigation, the GCFTA has hired an LSRP and is actively investigating its property for PFAS contamination.

89. During Solvay's investigation of the GCFTA, Solvay identified empty drums and totes of AFFFs, some of which were manufactured by National Foam. Upon inquiring further with GCFTA personnel, Solvay learned that some of these AFFF drums and totes were donated to GCFTA by PRC.

90. National Foam has an AFFF manufacturing plant located in West Chester, Pennsylvania across the Delaware River from Gloucester County.

91. From at least the 1940s until 2016, National Foam manufactured AFFFs, including AFFFs for petroleum and oil refineries, at its West Chester plant. Through the Pennsylvania Department of Environmental Protection, Solvay has obtained PFAS data for National Foam's manufacturing plant in West Chester. That data reveals that the National Foam's manufacturing plant has a dominant PFNA signature.

92. Specifically, in on-site groundwater samples at the National Foam manufacturing plant, PFNA was detected at 85,800 ppt. In the same sample, the highest PFOA concentration was 24,400 ppt and the highest PFOS concentration was 31,500 ppt. In stream sampling adjacent to the National Foam manufacturing plant, PFNA was detected at 1,704 ppt. In the same sample, the highest PFOA concentration was 111 ppt, and the highest PFOS concentration was 94 ppt.

93. The PFAS data from the National Foam manufacturing plant indicates that National Foam has manufactured AFFFs that have a dominant PFNA signature relative to PFOS, PFOA, and other PFAS.

PRC is Responsible for the PFAS Contamination in Paulsboro Well No. 7

94. PRC used AFFFs, including AFFFs containing PFAS, at the PRC Facility. Among the types of AFFFs used, PRC used National Foam-manufactured AFFFs that have a

dominant PFNA signature. As a result of PRC's use of AFFFs, PRC contaminated soils and groundwater at the PRC Facility with PFAS, including PFNA, PFOS, and PFOA.

95. The PRC Facility is located on the outcrop of the Potomac-Raritan-Magothy ("PRM") groundwater aquifer.

96. As a result of the outcropping underneath the PRC Facility, any PFAS discharged by PRC that contaminates groundwater will also contaminate and migrate through the PRM aquifer.

97. According to Solvay's investigations and PRC's own reports, groundwater underneath the PRC Facility – and therefore contaminated groundwater from the PRC Facility – flows in a south-southeast direction.

98. Specifically, in the Closed Sanitary Landfill – Annual Post-Closure Reports that PRC submitted to DEP in 2016, 2017, and 2018, PRC affirmatively states that groundwater from the PRC Facility flows in a south-southeast direction.

99. Paulsboro Well No. 7 is located approximately 0.75 miles south-southeast of the PRC Facility.

100. Paulsboro Well No. 7 is screened in the PRM aquifer and therefore would receive any contaminated groundwater flowing from the PRC Facility.

101. As a result of its discharges of AFFFs containing PFAS at the PRC Facility, PRC has caused the PFAS contamination in Paulsboro Well No. 7, including the PFNA, PFOA, and PFOS contamination in that well.

PRC is Responsible for Certain PFAS Contamination  
in West Deptford that Solvay is Investigating

102. In December 2018, Solvay sampled groundwater monitoring wells off of the West Deptford Facility to delineate PFAS groundwater contamination. Solvay incurred costs to implement the December 2018 sampling event.

103. Two monitoring wells that were sampled in December 2018 are located to the south of the West Deptford Facility and to the southeast of the PRC Facility, MW-106S and MW-106D. These two monitoring wells did not detect PFNA or PFOA above DEP's GWQS, but did detect PFOS above DEP's GWQS of 13 ppt. Specifically, MW-106S detected 17.1 ppt of PFOS and MW-106D detected 210 ppt of PFOS. Solvay's LSRP reported these results to DEP on October 11, 2019.

104. Due to the presence of PFOS, which Solvay never used at the West Deptford Facility, the December 2018 sampling results confirm that a party other than Solvay is contributing to this groundwater contamination.

105. PFOS is a known component of many AFFFs.

106. The PRC Facility is located upgradient of MW-106S and MW-106D, meaning that any PFOS-contaminated groundwater at the PRC Facility would flow in the direction of and into MW-106S and MW-106D.

107. Given PRC's known use of AFFFs and the upgradient location of the PRC Facility relative to MW-106S and MW-106D, the PRC Facility is the source of the PFOS contamination detected in these wells.

108. As the property owner and operator, PRC is responsible for the PFOS (and all other PFAS) contamination migrating off of the PRC Facility.

109. Solvay will continue to incur costs to investigate and address PFOS contamination detected in MW-106S and MW-106D. PRC bears responsibility for these costs as the owner and operator of the PRC Facility and discharger of AFFFs containing PFAS, including PFOS.

110. Apart from MW-106S and MW-106D, Solvay will continue to incur costs to investigate and address PFAS contamination in West Deptford. To the extent these costs are attributable to PFAS migrating from the PRC Facility, PRC bears responsibility for these costs as the owner and operator of the PRC Facility and discharger of AFFFs containing PFAS, including PFNA, PFOA, and PFOS.

PRC Refuses to Allow Solvay to Access the PRC Facility to Test for PFAS

111. In light of the December 2018 sampling results, on September 17, 2019, Solvay requested that PRC grant Solvay access to the PRC Facility to conduct environmental testing for PFAS pursuant to N.J.S.A. 58:10B-16 (the "Access Statute").

112. On October 4, 2019, PRC informed Solvay that it would not provide Solvay with access to the PRC Facility.

113. On November 18, 2019, Solvay reiterated its request to PRC to access the PRC Facility, as required by the Access Statute.

114. On December 9, 2019, PRC again declined to provide Solvay with access to the PRC Facility.

115. As a result, pursuant to the Access Statute, on February 11, 2020, Solvay commenced a summary proceeding for access. In support of its cause of action, Solvay asserted that PRC used and discharged AFFFs containing PFAS at the PRC Facility, that groundwater flows from the PRC Facility into the area in West Deptford where Solvay actively is

investigating PFAS groundwater contamination, and that, consistent with the Access Statute, access is “reasonable and necessary” to investigate PRC as a PFAS contamination source.

N.J.S.A. 58:10B-16(b) (“The court shall promptly issue any access order sought pursuant to this section upon a showing that upon a showing that . . . access to the property is reasonable and necessary to remediate contamination.”); N.J.S.A. 58:10B-1 (“[R]emediate’ means all actions to investigate, clean up, or respond to any known, suspected, or threatened discharge of contaminants.”).

116. Although PRC disputed Solvay’s position, PRC chose not to provide any evidence that (i) the AFFFs it discharged at the PRC Facility did not contain PFAS, or (ii) that PFAS-contaminated groundwater from the PRC Facility would not flow south-southeast into Solvay’s investigation area in West Deptford.

117. On June 3, 2020, Judge Becker, presiding judge of the Chancery Division, held a hearing and determined that Solvay had proven its right to access the PRC Facility under the Access Statute. Judge Becker then entered an order granting Solvay access to the PRC Facility.

118. On June 30, 2020, PRC appealed Judge Becker’s order to the Appellate Division. PRC contemporaneously filed a motion before Judge Becker to stay the June 3, 2020 access order pending resolution of PRC’s appeal on the merits. On July 7, 2020, Judge Becker granted PRC’s motion to stay access. On July 31, 2020, Judge Becker denied Solvay’s motion for reconsideration of the Court’s order staying access.

119. Despite the temporary stay of Solvay’s effectuation of its access rights under the Access Statute, in this action, Solvay now seeks compensation from PRC for the costs Solvay has incurred and will incur in connection with the investigation and remediation of (i) PFAS contamination in Paulsboro Well No. 7, for which PRC is solely responsible, and (ii) PFAS

contamination in West Deptford to the extent attributable to the PRC Facility, which responsibility includes at least the PFOS contamination detected in MW-106S and MW-106D.

**FIRST CAUSE OF ACTION**  
**FOR CONTRIBUTION UNDER THE SPILL ACT**

120. The allegations set forth in paragraphs 1 through 119 are incorporated by reference as if set forth here in full.

121. DEP has designated PFNA, PFOA, and PFOS as “hazardous substances” under the Spill Act, N.J.S.A. 58:10-23.11b.

122. Both Solvay and PRC are a “person” under the Spill Act, N.J.S.A. 58:10-23.11b.

123. PRC, both as a discharger of PFNA, PFOA, and PFOS and as the owner and operator of the PRC Facility, is liable for discharges of hazardous substances attributable to the PRC Facility under the Spill Act. N.J.S.A. 58:10-23.11f; N.J.S.A. 58:10-23.11g.

124. Solvay has incurred more than \$3.5 million and will incur additional environmental costs to investigate and remediate PFNA, PFOA, and PFOS contamination for which PRC is responsible, both in Paulsboro Well No. 7 and in West Deptford.

125. Solvay’s past and future investigatory and remedial costs constitute “cleanup and removal costs” under the Spill Act, N.J.S.A. 58:10-23.11b.

126. As a person who has cleaned up and removed a discharge of hazardous substances, Solvay has a right of contribution against PRC for the cost incurred and to be incurred cleaning up and removing PFNA, PFOA, and PFOS contamination for which PRC is responsible. N.J.S.A. 58:10-23.11f(a)(2)(a).

127. Pursuant to N.J.S.A. 58:10-23.11f(a)(2)(a), PRC is liable to Solvay for all cleanup and removal costs incurred by Solvay in connection with Paulsboro Well No. 7.

128. Pursuant to N.J.S.A. 58:10-23.11f(a)(2)(a), PRC is liable to Solvay for all cleanup and removal costs incurred by Solvay in connection with investigating and remediating PFNA, PFOA, and PFOS in West Deptford that is attributable to the PRC Facility.

**SECOND CAUSE OF ACTION  
FOR DECLARATORY JUDGMENT**

129. The allegations set forth in paragraphs 1 through 128 are incorporated by reference as if set forth here in full.

130. Each of Solvay and PRC is a “person” under N.J.S.A. 2A:16-50.

131. An actual, live controversy exists between the parties concerning responsibility for the PFAS contamination in Paulsboro Well No. 7 and in West Deptford.

132. Pursuant to N.J.S.A. 2A:16-52, the Court is authorized to declare rights, status and other legal relations, whether or not further or other relief could be claimed.

133. As PRC is responsible for all cleanup and removal costs incurred by Solvay in connection with Paulsboro Well No. 7, Solvay seeks a declaration of PRC’s liability pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-50 *et seq.*

134. As PRC is responsible for all cleanup and removal costs incurred or to be incurred by Solvay in connection with investigating and remediating PFNA, PFOA, and PFOS in West Deptford that is attributable to the PRC Facility, Solvay seeks a declaration of PRC’s liability pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-50 *et seq.*

**PRAYER FOR RELIEF**

**WHEREFORE**, Solvay respectfully requests:

- (1) Judgment in favor of Solvay on all causes of action in this Complaint;
- (2) A declaratory judgment adjudging, decreeing, and declaring that PRC is liable to Solvay pursuant to N.J.S.A. 58:10-23.11f for cleanup and removal costs incurred and to be

incurred in connection with Paulsboro Well No. 7 and Solvay's investigation and remediation of PFAS contamination in West Deptford;

- (3) Judgment ordering PRC to reimburse Solvay for all cleanup and removal costs for which PRC is liable, together with interest thereon;
- (4) Interest and costs of suit, including reasonable attorneys' fees and expenses; and
- (5) Any other, further, and different relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 5, 2020

By: s/ Kegan A. Brown

Kegan A. Brown

Thomas C. Pearce (*pro hac vice*  
forthcoming)

Taylor R. West (*pro hac vice* forthcoming)

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*Attorneys for Plaintiff*

*Solvay Specialty Polymers USA, LLC*

**DESIGNATION OF TRIAL COUNSEL**

In accordance with Rule 4:25-4, Plaintiff hereby designates Kegan A. Brown of Latham & Watkins LLP as trial counsel in this action.

LATHAM & WATKINS LLP  
*Attorneys for Plaintiff Solvay Specialty  
Polymers USA, LLC*

s/ Kegan A. Brown  
By: Kegan A. Brown

Dated: October 5, 2020

**RULE 4:5-1 CERTIFICATION**

I hereby certify that to the best of my knowledge, information, and belief, the within matter in controversy is not the subject of any other pending or contemplated court actions or arbitration proceedings other than:

- *Solvay Specialty Polymers USA, LLC v. Paulsboro Refining Company LLC*,  
Docket No. GLO-C-10-20 in the Superior Court of New Jersey, Chancery  
Division.
- *Solvay Specialty Polymers USA, LLC v. Paulsboro Refining Company LLC*,  
Docket No. A-003981-19, in the Superior Court of New Jersey, Appellate  
Division.

I further certify that to the best of my knowledge, information, and belief, I am not aware of any nonparties who should be joined in the action..

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

LATHAM & WATKINS LLP  
*Attorneys for Plaintiffs Solvay Specialty  
Polymers USA, LLC*

s/ Kegan A. Brown  
By: Kegan A. Brown

Dated: October 5, 2020

**RULE 1:38-7(b) CERTIFICATION**

I certify that confidential personal identifiers have been redacted from the documents now submitted to the Court and will be redacted from all documents submitted to the Court in the future in accordance with Rule 1:38-7(b).

LATHAM & WATKINS LLP  
*Attorneys for Plaintiffs Solvay Specialty  
Polymers USA, LLC*

s/ Kegan A. Brown  
By: Kegan A. Brown

Dated: October 5, 2020

# Civil Case Information Statement

## Case Details: GLOUCESTER | Civil Part Docket# L-001082-20

**Case Caption:** SOLVAY SPECIALTY POL YMERS USA VS PAULSBORO REFI

**Case Initiation Date:** 10/05/2020

**Attorney Name:** KEGAN A BROWN

**Firm Name:** LATHAM & WATKINS, LLP

**Address:** 885 THIRD AVE STE 1200

NEW YORK NY 10022

**Phone:** 2129061200

**Name of Party:** PLAINTIFF : Solvay Specialty Polymers USA

**Name of Defendant's Primary Insurance Company**

(if known): Unknown

**Case Type:** ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** YES

**If yes, list docket numbers:** GLO-C-10-20, A-00398

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: Solvay Specialty Polymers USA?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

Solvay Specialty Polymers USA, LLC is seeking environmental contribution for past costs (approximately \$3.5 million) and future costs for which Paulsboro Refining Company LLC is responsible. Solvay Specialty Polymers USA, LLC is also seeking a declaratory judgment as to Paulsboro Refining Company LLC's liability.

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

10/05/2020

Dated

/s/ KEGAN A BROWN

Signed

