JONATHAN MARKS (JM-3240)
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-4454

MICHAEL **A.** CHAGARES (MC 5483)
Assistant United States Attorney
Chief, Civil Division
District **of** New Jersey
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA Plaintiff, v. HARDING TOWNSHIP, NEW JERSEY Defendant.	)))))))))	CIVIL ACTION NO. **COMPLAINT**

1. The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of and at the request of the Secretary of the United States Department of the Interior ("DOI"), files this complaint and alleges as follows:

NATURE OF THE ACTION

2. This is a civil action under Sections 107 and 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), **42** U.S.C. §§

9607 and 9613(f), as amended, for recovery of response costs incurred in connection with the former Harding Landfill ("Site"), located within the Great Swamp National Wildlife Refuge in Harding Township, Morris County, New Jersey.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§9607 and 9613(b), and also has personal jurisdiction over the defendant.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c), and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), because the releases or threatened releases of hazardous substances that gave rise to this claim occurred in this district and the because the Site is located in this district.

DEFENDANT

5. The defendant in this action is the Township of Harding, Morris County, New Jersey, a political subdivision of the state of New Jersey.

6. Defendant Township was the "owner" and "operator" of a "facility," within the meaning of Sections 101(9), 101(20), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(a), 9601(20), and 9607(a), at which a release or threatened release of hazardous substances that is the subject matter of this action has occurred.

FACTS GIVING RISE TO LIABILITY

7. The Site is located approximately 500 feet west of Long Hill Road, Township of Harding, Morris County, New Jersey on the Great Swamp National Wildlife Refuge. The Site consists of a half-acre landfill, together with a surrounding area of

approximately one and a half acres of vegetated lands adjacent to open marsh.

8. During the 1950s and 1960s, the Township owned and operated the Site as a municipal dump, receiving municipal trash and other materials. In the 1960s, the State of New Jersey closed the landfill.

9. In 1969, the Fish and Wildlife Service, an agency withing the DOI, acquired the parcel containing the former Harding Landfill.

10. In 1986, the United States Environmental Protection Agency ("EPA") conducted a site investigation. EPA detected elevated levels of polycyclic aromatic hydrocarbons ("PAHs").

11. From 1991 onward, the Fish & 'Wildlife Service has conducted various investigations and response actions at the Site. In 1999, the Fish & Wildlife Service conducted a baseline ecological **risk** assessment and concluded that the primary concern at the Site was releases of heavy metals, especially cadmium, lead, and zinc. PAHs, cadmium, lead, and zinc are all "hazardous substances" with the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601**(14).**

12. Thereafter, the Fish and Wildlife Service conducted a response action at the Site.

13. The United States incurred approximately $2,000,000 in response costs, exclusive of interest and the cost of operation and management. The cost of the response action was paid out of the Central Hazardous Materials Fund, an account within the DOI used to conduct or finance response actions.

CLAIM FOR RELIEF

14. The allegations set forth in paragraphs 1 through 13 are realleged and incorporated herein by reference.

15. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provides in pertinent part:

> (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --
>
> (1) the owner or operator of a vessel or facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, and arranged with a transporter for transport or disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
>
> (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, fi-om whcih there is **a** hazardous release, or a threatened release which causes the incurrence of response costs.,of a hazardous substance, shall be liable for –
>
> > **(A)** all costs of removal or remedial action incurred by the United Stats Government . . . not inconsistent with the national contingency plan.

16. Section 113(f) **of** CERCLA, **42 U.S.C.**§9613(f), provides in pertinent part:

> (1) Any person may seek contribution from any other person who is liable or potentially liable under section 9607(a) of this title, during or following any civil action under section 9606 of this title or under section 9607(a) of this title.

17. . This Site is a "facility" as defined in Section 101(9), 42 U.S.C. §9601(9).

18. The defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19. The defendant falls within one or more of the classes of liable parties in Section 107(a), 42 U.S.C. § 9607(a).

20. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. There have been and "releases" and threatened releases of hazardous substances at the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

22. The release or threatened release of hazardous substances at the Site has caused the United States to incur costs for response, as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

23. All of these costs were incurred in a manner not inconsistent with the National Oil and Hazardous Substances Contingency Plan, promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300.

24. The defendant is also liable to the United States for interest on these costs, pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), and for the expenses the United States incurs in seeking to recover these costs, pursuant to CERCLA Section 101(25), 42 U.S.C. § 9601(25).

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

1. Order defendant to pay the United States all response costs incurred by the United States in connection with the Site;

2. Enter a declaratory judgment that the defendant is liable for the United States' response costs to be incurred in connection with the Site; and

3. Grant such other and further relief as may be just and proper.

Dated: _____

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

JONATHAN A. MARKS
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4454

CHRISTOPHER J. CHRISTIE
United States Attorney for the
District of New Jersey

MICHAEL A. CHAGARES
Assistant United States Attorney
Chief, Civil Division
District of New Jersey
970 Broad Street, Room 400
Newark, 'New Jersey 07102
(973) 645-2700

OF COUNSEL:

JOHN F. SEYMOUR
Attorney Advisor
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
(202) 219-3383