

**IN THE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
Northeastern Division**

BIOLOGICAL PROCESSORS OF)	
ALABAMA, INC.,)	
)	
Plaintiff,)	
)	
v.)	CV: _____
)	
NORTH GEORGIA ENVIRONMENTAL)	
SERVICES, INC. and DOW REICHHOLD)	
SPECIALTY LATEX, LLC)	
)	
Defendants.)	

COMPLAINT

COMES NOW the Plaintiff, Biological Processors of Alabama, Inc, (hereinafter "BPA), and for its Complaint against the defendants alleges and avers as follows:

1. Plaintiff, BPA, is an Alabama corporation that owns and operates a private centralized wastewater treatment plant ("WWTP") in Decatur, Alabama.
2. Defendant, North Georgia Environmental Services, Inc. ("North Georgia") is a Georgia corporation located at 301 Robinwood Drive, Dalton, Georgia 30721-4029. North Georgia is in the business of providing environmental services to industrial wastewater producers. It transports wastewater of its customers for primary treatment by private WWTPs and subsequent release into

public WWTPs, including WWTP's located in the State of Alabama. At all times material hereto, North Georgia had a services contract with BPA to have wastewater it was transporting treated prior to release into the WWTP of the Decatur Utility District ("DU"). At all times material hereto, North Georgia served as a wastewater broker for Defendant Dow Reichhold Specialty Latex, LLC ("Dow Riechhold"), acting both in its individual capacity and as the authorized agent of Dow Reichhold.

3. Defendant, Dow Reichhold Specialty Latex, LLC (hereinafter "Dow Reichhold"), is a corporation organized under the laws of the State of Delaware with its principal place of business in North Carolina. Dow Reichhold is a fifty-fifty (50/50) joint venture by and between The Dow Chemical Company and Reichhold, Inc. Dow Reichhold's Georgia facility is located at 300 Hadgraft Industrial Boulevard, Chickamauga, Georgia 30707. Dow Reichhold does business in the State of Alabama and has transported its wastewater, by and through North Georgia and others, to WWTP's in Alabama.

4. Upon information and belief, Dow Reichhold discharges its process wastewater pursuant to a NPDES permit issued by the Georgia Department of Natural Resources, Environmental Protection Division. When Dow Reichhold exceeds the limits of its NPDES permit, it contacts service providers such as North Georgia to pick up its process wastewater for further treatment, e.g., by such

providers as BPA, prior to release of the same into a public WWTP, e.g., Decatur Utilities' WWTP.

5. On or around February 4, 2002, BPA and Decatur Utilities entered into a Special Contract Relating To Effluents Generated By Commercial Effluent Processors whereby Decatur Utilities authorized BPA to discharge into its system in accordance with certain procedures and requirements (hereinafter, "Special Contract").

6. On July 5, 2006, North Georgia and BPA entered into an Environmental Service Agreement whereby BPA agreed to receive, treat and dispose of wastewater delivered by North Georgia in accordance with the terms and conditions of the agreement.

7. A true and complete copy of the Environmental Services Agreement between North Georgia and BPA is attached to this Complaint as Exhibit A.

8. Appended to the Environmental Services Agreement was a Generator's Waste Profile Sheet wherein North Georgia identified Dow Reichhold as the waste generator. In the Waste Profile Sheet, North Georgia certified that the chemical composition of the Dow Reichhold wastewater consisted of 99% water, .2% ammonia, and .8% solids. North Georgia further certified that the pH of the waste water was either 4.1 – 6.9 or 7.1 – 10.

9. A true and complete copy of the Generator's Waste Profile Sheet is appended to the Environmental Services Agreement that is attached to this Complaint as Exhibit A.

10. On February 4, 2007, the initial term of the Special Contract between BPA and Decatur Utilities expired. Thereinafter, as stipulated by the terms of the Special Contract, Decatur Utilities and BPA reviewed the contract to determine its practical effectiveness and whether adjustments were needed as a precursor to extension, modification or termination. During this time, Decatur Utilities permitted BPA to continue to discharge effluent under the terms of the contract pending the contract review.

11. During the period between February 24, 2007 and March 27, 2007, North Georgia delivered or caused to be delivered through other commercial carriers, thirty-nine loads, constituting 212,694 gallons, of Dow Reichhold's process wastewater to BPA's WWTP for further treatment prior to release into Decatur Utilities' WWTP.

12. During the period between April 5, 2007 and May 2, 2007, North Georgia delivered or caused delivery through other commercial carriers, 120 loads of Dow Reichhold's process wastewater, constituting 784,177 gallons, to BPA's WWTP for further treatment prior to release into Decatur Utilities' WWTP.

13. Defendants did not disclose to BPA that the aforementioned loads of Dow Reichhold wastewater contained acrylonitrile and styrene, both of which are organics. Furthermore, the pH of the wastewater exceeded the amounts disclosed in the Waste Profile Sheet.

14. Relying upon the Waste Profile Sheet provided by defendants, BPA introduced the wastewater into its WWTP and then subsequently discharged Dow Reichhold wastewater into Decatur Utilities' system without knowing it contained acrylonitrile and styrene.

15. On May 7, 2007, the Decatur Utilities denied BPA permission to discharge into its system, claiming that acrylonitrile in Dow Reichhold's water damaged its WWTP and further claiming that BPA violated its State Indirect Discharge Permit by the release of organics at levels in excess of what was allowed under the SID Permit.

16. No later than May 11, 2007, BPA notified North Georgia and Dow Reichhold that the wastewater was nonconforming and that BPA was revoking acceptance of the same.

17. Having been denied permission to discharge into the Decatur Utilities' system, BPA was unable to service its customers, was unable to operate its business, and – accordingly – lost profits, suffered damage to its reputation and was caused other further harm.

18. Additionally, the actions of defendants adversely impacted Decatur Utilities' review of the Special Contract, and BPA was forced to accept severe restrictions and limitations from Decatur Utilities in modification of the Special Contract before obtaining permission to discharge into its system again.

COUNT I: Breach of Contract

19. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

20. North Georgia and BPA had a binding contractual agreement in place at all time material hereto, being the Agreement attached as Exhibit A.

21. North Georgia, acting both individually and in the line and scope of its duties as the agent of Dow Reichhold, breached that Agreement by (a) failing to provide BPA a detailed, true, and accurate profile of waste composition of the Dow Reichhold wastewater delivered to BPA's WWTP; (b) delivering non-confirming wastewater containing acrylonitrile and styrene to BPA's WWTP; (c) refusing to handle and dispose of the non-conforming waste in a manner consistent with the Agreement; (d) failing to pay BPA's reasonable expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; and (e) breaching the express warranty contained in said Agreement that the waste tendered or delivered to BPA would meet the waste description provided by North Georgia.

22. As a proximate result of North Georgia's breaching the Agreement, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT II: Third-Party Beneficiary Breach of Contract

23. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

24. On information and belief, a binding contractual agreement existed between Defendants whereby Dow Reichhold was contractually obligated to provide North Georgia with a detailed, true, and accurate profile of the waste composition of the Dow Reichhold wastewater to be handled by North Georgia.

25. The Defendants knew and intended that third party WWTP's including BPA would be provided said waste profile information and would rely on said information in accepting or rejecting Dow Reichhold waste, and that it was for the benefit of these third party WWTP's that Dow Reichhold was required to provide North Georgia with a detailed, true, and accurate profile of the waste composition of the Dow Reichhold wastewater to be transported by and through North Georgia.

26. Dow Reichhold breached said contract by (a) failing to provide North Georgia a detailed, true, and accurate profile of waste composition of the Dow Reichhold wastewater that was delivered to BPA's WWTP; (b) providing non-confirming wastewater containing acrylonitrile and styrene to North Georgia to be transported to BPA's WWTP; and (c) failing to pay BPA's reasonable expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste

27. As a proximate result of Dow Reichhold's breaching said contract, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several

months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT III: Fraudulent Misrepresentation By Dow Reichhold

28. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

29. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold knew or should have known that the waste profiles it provided to North Georgia would be communicated to third party WWTP operators including BPA, and that BPA would rely on the representations made concerning waste profiles when deciding whether or not to receive and process Dow Reichhold's wastewater and that BPA would rely on the representations made concerning waste profiles when determining how to process said wastewater after receiving it into BPA's WWTP.

30. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold had a duty to provide a detailed, true, and accurate profile of the waste

composition of the Dow Reichhold wastewater that was to be delivered to BPA's WWTP, to-wit:

- a. Dow-Reichhold was contractually obligated to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- b. Dow Reichhold was required by statutory law to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- c. Dow Reichhold knew or should have known that the waste profile substantially affected the health and safety of numerous entities and individuals who would be exposed to the undisclosed chemical agents upon the release of the waste to BPA;
- d. Dow Reichhold had superior knowledge that the by-products of its manufacturing process included acrylonitrile and styrene, and had the ability to test for those specific by-products before releasing wastewater to North Georgia; and
- e. Dow Reichhold had superior knowledge that the contents of the wastewater to be provided to BPA specifically included acrylonitrile and styrene.

31. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold intentionally, recklessly, and/or negligently misrepresented the following material facts:

- a. That the chemical composition of the Dow Reichhold wastewater consisted of 99% water, .2% ammonia, and .8% solids;
- b. That the pH of the waste water was either 4.1 – 6.9 or 7.1 – 10; and
- c. That the wastewater conformed to the waste profile being provided to North Georgia.

32. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold knew or should have known that the foregoing material facts were false and that North Georgia was going to transmit said false information to third party WWTP's including BPA, and that BPA would likely rely on said false information to its detriment by allowing the non-conforming wastewater to enter its facility for processing and release.

33. BPA did receive said false information and did rely on it to its detriment by allowing multiple shipments of non-conforming Dow Reichhold wastewater into its WWTP, processing said wastewater pursuant to the false waste profile, and releasing portions of said wastewater into the DU facility.

34. As a proximate result of Dow Reichhold's fraudulent conduct, BPA has suffered and will continue to suffer economic loss including damage to its

WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory and punitive damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT IV: Fraudulent Suppression By Dow Reichhold

35. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

36. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold knew or should have known that the waste profiles it provided to North Georgia would be communicated to third party WWTP operators including BPA, and that BPA would rely on the representations made concerning waste profiles when deciding whether or not to receive and process Dow Reichhold's wastewater and that BPA would rely on the representations made concerning waste profiles

when determining how to process said wastewater after receiving it into BPA's WWTP.

37. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold had a duty to provide a detailed, true, and accurate profile of the waste composition of the Dow Reichhold wastewater that was to be delivered to BPA's WWTP, to-wit:

- a. Dow-Reichhold was contractually obligated to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- b. Dow Reichhold was required by statutory law to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- c. Dow Reichhold knew or should have known that the waste profile substantially affected the health and safety of numerous entities and individuals who would be exposed to the undisclosed chemical agents upon the release of the waste to BPA;
- d. Dow Reichhold had superior knowledge that the by-products of its manufacturing process included acrylonitrile and styrene, and had the ability to test for those specific by-products before releasing wastewater to North Georgia; and

- e. Dow Reichhold had superior knowledge that the contents of the wastewater to be provided to BPA specifically included acrylonitrile and styrene.

38. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold intentionally and/or recklessly suppressed the following material facts:

- a. That the chemical composition of the Dow Reichhold wastewater included acrylonitrile and styrene in addition to ammonia and solids;
- b. That the pH of the waste water was not in conformance with the 4.1 – 6.9 or 7.1 – 10 stated in the waste profile; and
- c. That the wastewater did not conform to the waste profile being provided to North Georgia, and that North Georgia provided to BPA.

39. On each occasion it tendered its wastewater to North Georgia, Dow Reichhold knew or should have known that the foregoing material facts were being suppressed, that it had a duty to disclose these material facts, and that because of said suppression North Georgia was going to transmit said false information to third party WWTP's including BPA, and that BPA would likely rely on said false information to its detriment by allowing the non-conforming wastewater to enter its facility for processing and release.

40. BPA did receive said false information and did rely on it to its detriment by allowing multiple shipments of non-conforming Dow Reichhold

wastewater into its WWTP, processing said wastewater pursuant to the false waste profile, and releasing portions of said wastewater into the DU facility.

41. As a proximate result of Dow Reichhold's fraudulent conduct, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory and punitive damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT V: Fraudulent Misrepresentation By North Georgia

42. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

43. On each occasion it tendered Dow Reichhold's wastewater to BPA, North Georgia knew or should have known that BPA would rely on the representations made concerning waste profiles when deciding whether or not to

receive and process Dow Reichhold's wastewater and that BPA would rely on the representations made concerning waste profiles when determining how to process said wastewater after receiving it into BPA's WWTP.

44. On each occasion it tendered its wastewater to BPA, North Georgia had a duty to provide a detailed, true, and accurate profile of the waste composition of the Dow Reichhold wastewater that was to be tendered to BPA's WWTP, to-wit:

- a. North Georgia was contractually obligated to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- b. North Georgia was required by statutory law to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- c. North Georgia knew or should have known that the waste profile substantially affected the health and safety of numerous entities and individuals who would be exposed to the undisclosed chemical agents upon the release of the waste to BPA;
- d. North Georgia had superior knowledge that the by-products of the Dow Reichhold manufacturing process included acrylonitrile and

styrene, and had a superior opportunity to inspect and test for those specific by-products before releasing wastewater to BPA;

- e. North Georgia had superior knowledge that the contents of the wastewater to be provided to BPA specifically included acrylonitrile and styrene.

45. On each occasion it tendered its wastewater to BPA, North Georgia, acting both individually and as the authorized agent of Dow Reichhold, intentionally, recklessly, and/or negligently misrepresented the following material facts:

- a. That the chemical composition of the Dow Reichhold wastewater consisted of 99% water, .2% ammonia, and .8% solids;
- b. That the pH of the waste water was either 4.1 – 6.9 or 7.1 – 10; and
- c. That the wastewater conformed to the waste profile being provided to BPA.

46. On each occasion it tendered Dow Reichhold wastewater to BPA, North Georgia knew or should have known that the foregoing material facts were false and that BPA would likely rely on said false information to its detriment by allowing the non-conforming wastewater to enter its facility for processing and release.

47. BPA did receive said false information and did rely on it to its detriment by allowing multiple shipments of non-conforming Dow Reichhold wastewater into its WWTP, processing said wastewater pursuant to the false waste profile, and releasing portions of said wastewater into the DU facility.

48. As a proximate result of North Georgia's fraudulent conduct, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with *Decatur Utilities* and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into *Decatur Utilities'* system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory and punitive damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT VI: Fraudulent Suppression By North Georgia

49. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

50. On each occasion it tendered its wastewater to BPA, North Georgia knew or should have known that the waste profiles it provided to BPA would be relied upon by BPA when deciding whether or not to receive and process Dow Reichhold's wastewater, and that BPA would rely on the representations made concerning waste profiles when determining how to process said wastewater after receiving it into BPA's WWTP.

51. On each occasion it tendered its wastewater to BPA, North Georgia had a duty to provide a detailed, true, and accurate profile of the waste composition of the Dow Reichhold wastewater that was to be tendered to BPA's WWTP, to-wit:

- a. North Georgia was contractually obligated to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- b. North Georgia was required by statutory law to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- c. North Georgia knew or should have known that the waste profile substantially affected the health and safety of numerous entities and individuals who would be exposed to the undisclosed chemical agents upon the release of the waste to BPA;

- d. North Georgia had superior knowledge that the by-products of the Dow Reichhold manufacturing process included acrylonitrile and styrene, and had a superior opportunity to inspect and test for those specific by-products before releasing wastewater to BPA; and
- e. North Georgia had superior knowledge that the contents of the wastewater to be provided to BPA specifically included acrylonitrile and styrene.

52. On each occasion it tendered its wastewater to BPA, North Georgia, acting both individually and as the authorized agent of Dow Reichhold, intentionally and/or recklessly suppressed the following material facts:

- a. That the chemical composition of the Dow Reichhold wastewater included acrylonitrile and styrene in addition to ammonia and solids;
- b. That the pH of the waste water was not in conformance with the 4.1 – 6.9 or 7.1 – 10 stated in the waste profile; and
- c. That the wastewater did not conform to the waste profile being provided to BPA.

53. On each occasion it tendered its wastewater to BPA. North Georgia knew or should have known that the foregoing material facts were being suppressed, that it had a duty to disclose these material facts, and that because of said suppression BPA would likely rely on said false information to its detriment

by allowing the non-conforming wastewater to enter its facility for processing and release.

54. BPA did receive said false information and did rely on it to its detriment by allowing multiple shipments of non-conforming Dow Reichhold wastewater into its WWTP, processing said wastewater pursuant to the false waste profile, and releasing portions of said wastewater into the DU facility.

55. As a proximate result of North Georgia's fraudulent conduct, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory and punitive damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT VII: Negligence

56. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

57. Defendants had a duty to know the waste profile of the Dow-Reichhold wastewater delivered and tendered to BPA between June of 2006 and May of 2007, and to disclose that waste profile in a detailed, accurate, and truthful manner to BPA, and to remove any out-of-profile chemicals from said wastewater prior to delivering and tendering it to BPA, to-wit:

- a. Defendants were contractually obligated to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- b. Defendants were required by statutory law to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- c. Defendants were handlers of waste products that could affect the health and safety of numerous entities and individuals who would be exposed to the undisclosed chemical agents upon the release of the waste to BPA;
- d. Defendants assumed a duty to provide said material facts concerning the wastewater in a detailed, true and accurate manner; and

- e. North Georgia held itself out to BPA as having superior knowledge of the contents of the wastewater to be provided to BPA.

58. Defendants breached said duty by failing to remove acrylonitrile and styrene from the wastewater, failing to test for acrylonitrile and styrene, failing to detect acrylonitrile and styrene in the wastewater, and by Dow-Reichhold tendering non-conforming, out-of-profile wastewater to North Georgia to be delivered to BPA, and by North Georgia delivering non-conforming, out-of-profile wastewater to BPA. North Georgia committed said breach while acting in the line and scope of its duties as an authorized agent of Dow Reichhold, and acting in its individual capacity.

59. As a proximate result of Defendants' negligent conduct, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT VIII: Wantonness

60. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.

61. Defendants had a duty to know the waste profile of the Dow-Reichhold wastewater delivered and tendered to BPA between June of 2006 and May of 2007, and to disclose that waste profile in a detailed, accurate, and truthful manner to BPA, and to remove any out-of-profile chemicals from said wastewater prior to delivering and tendering it to BPA, to-wit:

- a. Defendants were contractually obligated to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- b. Defendants were required by statutory law to provide said material facts concerning the wastewater in a detailed, true and accurate manner;
- c. Defendants were handlers of waste products that could affect the health and safety of numerous entities and individuals who would be exposed to the undisclosed chemical agents upon the release of the waste to BPA;

- d. Defendants assumed a duty to provide said material facts concerning the wastewater in a detailed, true and accurate manner; and
- e. North Georgia held itself out to BPA as having superior knowledge of the contents of the wastewater to be provided to BPA.

62. Defendants intentionally and/or recklessly, with complete disregard for the safety and welfare of BPA and others who would be exposed to the wastewater, breached said duty by failing to remove acrylonitrile and styrene from the wastewater, failing to test for acrylonitrile and styrene, failing to detect acrylonitrile and styrene in the wastewater, and by Dow-Reichhold tendering non-conforming, out-of-profile wastewater to North Georgia to be delivered to BPA, and by North Georgia delivering non-conforming, out-of-profile wastewater to BPA. North Georgia committed said breach while acting in the line and scope of its duties as an authorized agent of Dow Reichhold, and acting in its individual capacity.

63. As a proximate result of Defendants' wanton conduct, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several

months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory and punitive damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

COUNT IX: Trespass

64. Plaintiff adopts and incorporates by reference herein paragraphs one through eighteen.


65. Between June of 2006 and May of 2007, Defendants, without license to do so, physically entered and continuously trespassed upon BPA's WWTP by discharging wastewater into BPA's WWTP. Said discharge was contrary to BPA's acceptance policies for wastewater.

66. Despite the acceptance policies of BPA, Defendant did knowingly and/or recklessly discharge non-conforming, out-of-profile wastewater into BPA's WWTP.

67. As a proximate result of Defendants' trespass, BPA has suffered and will continue to suffer economic loss including damage to its WWTP; damage to its relationship with Decatur Utilities and BPA's customers; expenses and charges for handling, loading, preparing, transporting, storing, caring for and disposition

of the non-conforming waste; prohibition from discharging wastewater into Decatur Utilities' system for a period of several months followed by severe restrictions and limitations on its wastewater discharge activities; lost business revenues and business opportunities; lost earning capacity; and other forms of economic damage and loss.

WHEREFORE, ABOVE PREMISES CONSIDERED, Plaintiff asks for compensatory and punitive damages in an amount to be determined by a jury, and any further relief deemed appropriate by the Court.

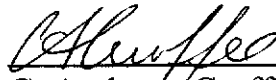


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PLAINTIFF REQUESTS A TRIAL BY STRUCK JURY OF ALL ISSUES



C. Anthony Graffeo

Please Serve Defendants By Certified Mail As Follows:

North Georgia Environmental Services, Inc.

% Registered Agent: Anna C. Nix
48 Bloodroot Drive
Cleveland, GA 30528

Dow Reichhold Specialty Latex, LLC

% Registered Agent: CT Corporation System
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