

RETURN DATE: JUNE 30, 2020	:	SUPERIOR COURT
	:	
TOWN OF FAIRFIELD, CONNECTICUT,	:	J.D. OF FAIRFIELD
	:	
	:	AT BRIDGEPORT
Plaintiff,	:	
	:	
V.	:	
	:	
OSPREY ENVIRONMENTAL	:	
ENGINEERING, LLC and ROBERT J.	:	
GRABAREK,	:	
	:	
Defendants.	:	MAY 28, 2020

**COMPLAINT**

The plaintiff, Town of Fairfield, Connecticut (the “Town” or “Plaintiff”), files this Complaint against defendants, Osprey Environmental Engineering, LLC (“Osprey”) and Robert J. Grabarek (“Grabarek” and, together with Osprey, the “Defendants”), and states as follows:

**COUNT ONE: NEGLIGENCE**

1. The Town is a municipal corporation duly formed, organized and existing pursuant to the laws of the State of Connecticut. It is empowered to act by its charter and through its governing body, officials and employees and may bring this action against Defendants.
  
2. Upon information and belief, and at all times relevant hereto, Osprey is and was an active limited liability company within the State of Connecticut with a principal business address of 146 East Main Street, Clinton, Connecticut.
  
3. Upon information and belief, Osprey is and, during all times relevant hereto, was in the business of, among other things, providing professional engineering, environmental consulting and Licensed Environmental Professional (“LEP”) services, and held itself out to possess the requisite level of knowledge and experience in performing those services.

4. Grabarek is and, during all times relevant hereto, was a Connecticut-licensed Professional Engineer (Credential PEL.0013441) and Connecticut LEP (License Number 300).

Upon information and belief, Grabarek is a resident of Connecticut.

5. Upon information and belief, Grabarek is and, during all times relevant hereto, was the owner, President and sole Member of Osprey.

6. Venue is proper in this Judicial District pursuant to Conn. Gen. Stat. §§ 51-345(a)(3) and 51-346(a)(3).

**Site History and Contamination by Julian Development, LLC**

7. The Town owns a Reclamation Yard located at Richard White Way, Fairfield, Connecticut (the “Site”). The Site was previously used, in part, as a municipal landfill in the 1960s and as a location to stockpile and burn organic materials in the 1980s. From the 1990s and through 2016, the Site was used to stockpile fill materials, including soil, concrete and asphalt. These fill materials were intended to be processed and removed for reuse off-Site.

8. Over time, the size of the stockpile continually increased and, on or about April 2, 2013, the Town published a request for proposal, *RFP#2013-73: Construction Material Processing Facility* (the “RFP”), soliciting bids for the processing and management of the fill materials, both then present and to be received in the future, at the Site. One of the RFP’s stated goals was to reduce the size of the stockpile.

9. In May 2013, the Town accepted the bid submitted in response to the RFP by Julian Development, LLC (“Julian”), a Connecticut corporation in the for-profit business of recycling and processing discarded materials to generate useful materials that could be removed from the Site and reused off-Site.

10. The agreement between the Town and Julian prohibited Julian from receiving and/or processing hazardous or contaminated materials at the Site.

11. From July 2013 until mid-December 2016, Julian exclusively operated the Site, including without limitation managing and processing fill materials then present at the Site as well as controlling the receipt of new materials, including concrete, asphalt and soil, brought to the Site for processing.

12. In early 2016, the Town received complaints that Julian was mismanaging the Site and that the size of the stockpile appeared to be continuing to grow, despite the Town's agreement with Julian to reduce the size of the stockpile.

13. In April 2016, the Town engaged Defendants to perform a Phase I Environmental Site Assessment of the Site, which included, among other things, researching the history of the Site. In relevant part, Defendants confirmed the Site's former use as a municipal solid waste landfill and acknowledged the presence of municipal solid waste in an area of the Site that had since been backfilled and covered.

14. Separately, the Town had also engaged Logical Environmental Solutions, LLC ("Logical"), an LEP firm, to perform work on behalf of the Town. On November 29, 2016, Logical conducted an unannounced Site inspection and witnessed the dumping of discolored soil materials by Julian trucks in an area on the eastern portion of the Site.

15. Logical obtained samples of the soil materials and submitted them for laboratory analysis. On December 13, 2016, Logical received the sample results, which indicated the presence of elevated concentrations of contaminants in the soil materials, including polychlorinated biphenyls ("PCBs") and lead.

16. Upon receipt of the sample results, the Town promptly prohibited Julian's access to the Site and notified the Connecticut Department of Energy and Environmental Protection ("DEEP") of the sample results.

17. Thereafter, Logical completed additional soil sampling at the Site to determine the extent of the contamination resulting from the unauthorized dumping by Julian as observed on November 29, 2016, and to assess the possibility of additional contamination.

18. In the Spring of 2017, Logical developed a cleanup plan for the eastern area of the Site where Logical's initial sampling results showed the presence of contamination, and submitted the plan to DEEP for review, which DEEP approved.

19. Beginning in June 2017, after receiving DEEP approval, and continuing until October 2017, Logical oversaw the removal of more than 3,600 tons of soil from the Site in accordance with the DEEP-approved plan.

**The Town Engages Defendants to Design  
and Implement Solid Waste "Closure" Plans for the Site**

20. Coincident with the Logical cleanup work at the Site, in December 2016, the Town engaged Defendants to perform additional work relating to environmental conditions at the Site.

21. Specifically, Defendants were engaged to design, manage, plan, supervise, and/or observe construction of a Landfill Capping, Grading and Monitoring Plan (the "Closure Plan") to "close" the solid waste disposal area existing beneath the Site, in accordance with Connecticut's solid waste statutes, Conn. Gen. Stat. §§ 22a-207 *et seq.*, and regulations, Regs. Conn. State Agencies §§ 22a-209-1 to 22a-209-17, inclusive (collectively, the "Solid Waste Requirements"). Among other things, Defendants were supposed to design, manage, plan, or supervise the Closure Plan.

22. Defendants were also engaged to design, manage, plan, supervise, and/or observe construction of a landscape berm surrounding the Site (the “Landscape Berm”). With input from Town citizens, the purpose of the Landscape Berm was to control Site noise and improve Site aesthetics.

23. The Closure Plan and Landscape Berm were improvements to the real property of the Site.

24. As set forth further below, Defendants did in fact design, manage, plan, supervise, and/or observe construction of the Closure Plan and the Landscape Berm for the Town.

**Defendants Fail to Secure DEEP Approval for their Plans Before Implementing the Closure Plan and Directing the Town to Commence Work**

25. Beginning mid-2017 and continuing thereafter, Defendants met with DEEP staff on behalf of the Town to discuss the specifics of the Closure Plan, including the submittal of an application to DEEP to approve the Closure Plan, as required under the Solid Waste Requirements.

26. On or about April 12, 2018, Defendants prepared and signed a Permit Application for Construction and Operation of a Solid Waste Facility on behalf of the Town (the “Closure Application”).

27. Defendants repeatedly represented to the Town that, among other things, the solid waste disposal area at the Site could be properly closed in compliance with applicable Solid Waste Requirements by disturbing the solid waste disposal area, relocating soils known by Defendants to contain hazardous substances, including PCBs, and burying those soils in the Landscape Berm without the requisite DEEP approvals.

28. By way of example only, Defendants made these representations in 2017 and 2018 when Grabarek participated in and led discussions at various public meetings concerning the Closure Plan, Closure Application, Landscape Berm and other environmental issues relating to the

Site; in advice they rendered to the Town at the beginning of the cleanup, as memorialized in a memorandum dated June 7, 2018 to the former Director of the Town's Department of Public Works; and in the Closure Application submitted to DEEP on or about April 12, 2018.

29. On or about April 12, 2018, reasonably relying on the representations and professional advice of Defendants, the Town submitted the Closure Application to the DEEP's Waste Engineering and Enforcement Division for review and approval.

30. On or about April 17, 2018, without obtaining DEEP's approval or any response to the Closure Application, Defendants directed the Town to commence construction of the Landscape Berm.

31. Defendants' representations and professional advice were material to the Town's decisions to submit the Closure Application and to commence construction of the Landscape Berm.

32. Between April and June 2018, Defendants implemented a soil-screening protocol (designed and/or planned by Defendants) and managed, supervised, and/or observed the design and construction of the Landscape Berm using Site materials that, based on sample analyses performed at Defendants' direction, contained contaminants, including petroleum hydrocarbons, PCBs, lead, arsenic, and mercury.

33. Defendants' soil-screening protocol, among other things, directed the use and/or burying of contaminated soils in the Landscape Berm.

34. Specifically, Defendants' soil-screening protocol directed the use and/or burying in the Landscape Berm of soils containing petroleum hydrocarbons, lead, arsenic, and/or mercury at concentrations above the applicable cleanup standards, as set forth in Connecticut's Remediation

Standard Regulations, Regs. Conn. State Agencies §§ 22a-133k-1 *et seq.* (the “RSRs”), and as required under the Solid Waste Requirements.

35. With respect to PCBs, Defendants’ protocol directed the use and/or burying in the Landscape Berm of soils with concentrations of PCBs above 1 parts per million (“ppm”) in violation of Connecticut’s PCB statute, Conn. Gen. Stat. § 22a-467, which prohibits the unauthorized disposal of PCBs.

36. During the construction of the Landscape Berm, Defendants held weekly meetings with Town workers to review Site conditions and to discuss how soils that were sampled could be relocated to the Landscape Berm or removed from the Site.

37. In reasonable reliance upon Defendants’ representations and professional advice, the Town proceeded with the work necessary to complete the Landscape Berm construction in accordance with Defendants’ design and soil-screening protocol.

38. On or about June 30, 2018, Town workers substantially completed construction of the Landscape Berm under the management, supervision, direction, instruction, and observation of Defendants.

**DEEP Notifies the Town that Implementation of Defendants’ Plans Violated the Law**

39. DEEP never issued the required approvals to disrupt and relocate the Site soils, including contaminated soils, to construct the Landscape Berm.

40. By letter dated September 26, 2018, DEEP’s Waste Engineering and Enforcement Division staff identified deficiencies in the Closure Application prepared and signed by Grabarek on behalf of the Town, including the failure to provide specifications relating to the Landscape Berm design and the closure in accordance with the Solid Waste Requirements.

41. On October 31, 2019, the DEEP issued Notice of Violation NOVWSPCB019-001 to the Town (the “PCB NOV”), asserting that “[t]he Storage Tank and PCB Enforcement Unit of the CT DEEP Bureau of Materials Management and Compliance Assurance obtained information generated by Osprey Environmental on the Town of Fairfield’s behalf documenting PCB contamination in soil up to 9.6 ppm and in sediment up to 8.6 ppm at the site. Based on the findings, these conditions have created a source of pollution to the waters of the State without a permit in violation of Connecticut General Statute (CGS) 22a-430 and further constitutes a disposal in other than a manner authorized by CGS 22a-467.”

42. On January 6, 2020, the DEEP issued Notice of Violation No. NOVWSWDS20001 to the Town (the “Solid Waste NOV”), asserting that, based on observations by DEEP staff during a Site inspection on November 20, 2019, the Town “[d]isrupted and/or altered a solid waste disposal area without first obtaining the Commissioner’s written approval to excavate, disrupt, or remove deposited material at an active, inactive or closed solid waste disposal area as required by §22a-209-7(u) of the RCSA.”

43. Following Site disruption, relocation of soils, regrading and construction of the Landscape Berm, the conditions at the Site are now materially different from those described by Defendants in the April 2018 Closure Application.

44. The Town withdrew the April 2018 Closure Application at the suggestion of DEEP staff on January 16, 2020.

45. In furtherance of resolving the PCB NOV and Solid Waste NOV, and as a direct result of Defendants’ negligent conduct, the Town was required to engage an LEP and professional engineering firm to, among other things, design and develop a revised closure plan in compliance

with the Solid Waste Requirements and other applicable laws, which will be submitted to DEEP for review and approval.

46. Defendants owed a duty to the Town to design, manage, plan, supervise, and/or observe the implementation and completion of the Closure Plan, the Closure Application and the Landscape Berm (collectively, the “Osprey Work”) in accordance with applicable statutory and regulatory requirements, including without limitation the Solid Waste Requirements and the Remediation Standard Regulations, and to obtain the necessary DEEP approvals for the Osprey Work.

47. Defendants negligently and carelessly performed the Osprey Work, including but not limited to (a) failing to perform the Osprey Work in accordance with applicable and prevailing industry standards and DEEP guidelines; (b) failing to apply the knowledge and skill of a licensee in good standing practicing in the applicable field at the time such services were performed; (c) failing to perform the Osprey Work with reasonable care and diligence and in a competent and workmanlike manner; (d) failing to obtain necessary DEEP approvals before directing the Town to commence disturbance and relocation of Site materials to construct the Landscape Berm, and (e) advising the Town, contrary to applicable Solid Waste Requirements and other applicable laws, that Site materials containing PCBs in excess of 1 ppm could be buried in the Landscape Berm without any approval from DEEP.

48. As a direct and proximate result of the negligence and carelessness of Defendants, the Town has sustained and will sustain substantial damages, including having incurred and being exposed to the cost to investigate and, as necessary, remediate the Site to resolve the PCB NOV and Solid Waste NOV in accordance with the Solid Waste Requirements and other applicable

laws, including but not limited to Conn. Gen. Stat. §§ 22a-430 and 22a-467 and Regs. Conn. State Agencies § 22a-209-7(u).

**COUNT TWO: PROFESSIONAL NEGLIGENCE**  
**(PROFESSIONAL ENGINEER)**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Defendants did not apply the degree of skill and learning commonly applied by a reasonably prudent Connecticut-licensed professional engineer, as required.

47. Defendants did not perform their obligations pursuant to applicable Solid Waste Requirements and other applicable laws and regulations.

48. As a result, Defendants breached the standard of care applicable to Connecticut-licensed professional engineers in matters such as this. In particular, Defendants breached the applicable standard of care by failing to provide professional services in accordance with applicable Solid Waste Requirements as the Town’s Connecticut-licensed professional engineer, as evidenced by the DEEP’s September 26, 2018 letter identifying deficiencies in the Closure Application as well as the allegations contained in the PCB NOV and Solid Waste NOV.

49. As a direct and proximate result of the breach of Defendants’ professional obligations and duties, negligence and carelessness in the performance of the Osprey Work, the Town has sustained and will sustain substantial damages, including having incurred and being exposed to the cost of investigation and remediation of the Site and other significant losses and damages.

**COUNT THREE: PROFESSIONAL NEGLIGENCE**  
**(LICENSED ENVIRONMENTAL PROFESSIONAL)**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Defendants did not apply the degree of skill and learning commonly applied by a reasonably prudent Connecticut LEP to the Osprey Work.

47. Defendants did not perform their obligations pursuant to applicable laws, including without limitation the Solid Waste Requirements, the RSRs, as applicable, and Connecticut’s PCB statute, Conn. Gen. Stat. § 22a-467.

48. Defendants did not perform their obligations pursuant to the statutes and regulations governing the professional conduct of LEPs, including but not limited to Conn. Gen. Stat. § 22a-133v(c) and Regs. Conn. State Agencies § 22a-133c-6.

49. As a result, Defendants breached the standard of care applicable to Connecticut LEPs in matters such as this. In particular, Defendants breached the applicable standard of care specifically by failing to provide professional services in accordance with applicable Solid Waste Requirements and, as required, the RSRs, as evidenced by the DEEP’s September 26, 2018 letter regarding the deficiencies in the Closure Application and the allegations contained in the PCB NOV and Solid Waste NOV.

50. As a direct and proximate result of the breach of Defendants’ professional obligations and duties, negligence and carelessness in the performance of the Osprey Work, the Town has sustained and will sustain substantial damages, including having incurred and being exposed to the cost of investigation and remediation of the Site and other significant losses and damages.

**COUNT FOUR: NEGLIGENCE *PER SE***

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. At all relevant times, Defendants had a duty to the Town to comply with applicable Solid Waste Requirements and all other applicable statutes, regulations, and requirements imposed by DEEP relating to the protection of human health and the environment.

47. Defendants breached their duty of care to the Town by violating one or more of the following statutes, regulations, and/or requirements imposed by DEEP and, in doing so caused, created an/or exacerbated the Site conditions referenced in the PCB NOV and Solid Waste NOV, which the Town is required to address:

- a. Conn. Gen. Stat. § 22a-6b;
- b. Conn. Gen. Stat. § 22a-15;
- c. Conn. Gen. Stat. § 22a-16;
- d. Conn. Gen. Stat. § 22a-207, *et seq.*, including specifically Conn. Gen. Stat. § 22a-208a(c) (requiring DEEP approval of solid-waste closure plans and to close and maintain solid waste disposal areas only in accordance with approved plans);
- e. Conn. Gen. Stat § 22a-430;
- f. Conn. Gen. Stat. § 22a-451;
- g. Conn. Gen. Stat. § 22a-467;
- h. Regs. Conn. State Agencies § 22a-209-7, including specifically Regs. Conn. State Agencies § 22a-209-7(u) (requiring the written approval of DEEP “prior to any excavation, disruption, or removal of deposited material at an active, inactive or closed solid waste disposal area”);
- i. Regs. Conn. State Agencies § 22a-133k-1 *et seq.*, including specifically Regs. Conn. State Agencies § 22a-133k-1(b) (expressly requiring compliance with RSRs to actions taken pursuant to Conn. Gen. Stat. § 22a-208a(c)(2)); and/or

j. DEEP requirements applicable to the Closure Plan and Closure Application, as evidenced in the DEEP's September 26, 2018 letter.

48. The foregoing statutes, regulations and/or requirements imposed by DEEP are intended to protect the residents and natural resources of the State of Connecticut from environmental damage and physical (including human health) and economic harm.

49. The Town is within the class of persons protected by said statutes, regulations and/or requirements imposed by DEEP and has suffered injury of the type which these statutes, regulations and/or requirements imposed by DEEP are intended to prevent.

50. Defendants are liable to the Town for their negligence *per se* in causing the Site to be and remain contaminated with hazardous substances, including without limitation PCBs, in violation of the above-stated statutes, regulations and/or requirements imposed by DEEP.

51. As a direct and proximate result of the negligence *per se* of Defendants, the Town has suffered and continues to suffer damages, including without limitation costs associated with investigating and, as necessary remediating, the Site to resolve the PCB NOV and the Solid Waste NOV, for which Defendants are liable.

#### **COUNT FIVE: BREACH OF CONTRACT**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. The Town and Osprey formed an agreement under which, in exchange for payment from the Town, Osprey was obligated to, among other things, develop and execute the Closure Plan and secure approval of the Closure Application, in accordance with the applicable professional standards of conduct.

47. The Town fully performed its contractual obligations.

48. Osprey breached one or more of its contractual obligations.

49. As a direct and proximate result of Osprey's breach, the Town has suffered damages, including but not limited to costs of investigation and, as necessary, remediation of the Site to resolve the PCB NOV and Solid Waste NOV, and other significant losses and damages.

**COUNT SIX: QUANTUM MERUIT**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Osprey knowingly accepted payment in exchange for, among other things, assuming obligations to develop and execute the Closure Plan and secure approval of the Closure Application, in accordance with the applicable professional standards of conduct.

47. Osprey represented and made implied promises to the Town that it would perform these obligations.

48. As a direct and proximate result of Osprey's breach, the Town has suffered damages, including but not limited to costs of investigation and, as necessary, remediation of the Site to resolve the PCB NOV and Solid Waste NOV, and other significant losses and damages.

**COUNT SEVEN: PROMISSORY ESTOPPEL**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Defendants made clear and definite promises to, among other things, develop and execute the Closure Plan and secure approval of the Closure Application, in accordance with the applicable professional standards of conduct.

47. The Town reasonably and justifiably relied upon the promises of Defendants to its detriment.

48. Defendants promises induced the Town into submitting the Closure Application and commencing construction activities set forth in the Closure Plan.

49. Injustice can only be avoided by enforcement of Defendants' promises.

50. As a direct and proximate result of Defendants' failures to satisfy these promises, the Town has suffered damages, including but not limited to costs of investigation and, as necessary, remediation of the Site to resolve the PCB NOV and Solid Waste NOV, and other significant losses and damages.

### **COUNT EIGHT: ULTRAHAZARDOUS ACTIVITIES**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Defendants engaged in ultrahazardous and abnormally dangerous activities when they established the protocol to screen Site materials and supervised the handling, relocation, burying and disposal of hazardous substances, including PCBs, petroleum hydrocarbons, lead, arsenic, and mercury at the Site and in the Landscape Berm, as further described in the PCB NOV and Solid Waste NOV.

47. At all relevant times, Defendants knew, or should have known, that the handling, relocating, burying and disposal of hazardous substances at the Site and in the Landscape Berm in the manner designed and directed by Defendants would cause harm to the Town.

48. Defendants knew, or should have known, that there was a high degree of risk to the Town associated with the handling, relocation, burying and disposal of hazardous substances at the Site and in the Landscape Berm.

49. As a proximate result of Defendants' ultrahazardous and abnormally hazardous activities, the Town has suffered significant damages.

50. Defendants are strictly liable to the Town for harm resulting from its ultrahazardous and abnormally hazardous activities, including all direct and consequential damages and all other costs recoverable by law.

**COUNT NINE: NEGLIGENT MISREPRESENTATION**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. The representations made by Defendants regarding the Osprey Work were made to the Town as statements of fact.

47. Defendants knew, or had reason to know, that its representations regarding the Osprey Work were false.

48. Defendants were negligent and careless and failed to exercise reasonable care in performing the Osprey Work and reporting to the Town false and misleading information, specifically that the Osprey Work complied with applicable Solid Waste Requirements and other applicable laws.

49. Upon information and belief, Defendants intended that their representations regarding the Osprey Work would induce the Town into commencing construction under Defendants' supervision.

50. The Town reasonably and justifiably relied upon the representations of Defendants to its detriment.

51. Defendants' false representations were material to the Town's decision to construct the Landscape Berm in the manner designed and directed by Defendants.

52. As a result of Defendants' false representations, the Town is exposed to the costs of investigation and, as necessary, remediation of the Site to resolve the PCB NOV and Solid Waste NOV, and other significant losses and damages.

**COUNT TEN: INNOCENT MISREPRESENTATION**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. The representations made by Defendants regarding the Osprey Work were made to the Town as statements of fact.

47. Upon information and belief, Defendants intended that their representations regarding the Osprey Work would induce the Town into commencing construction under Defendants' supervision.

48. Defendants' representations were false when made.

49. The Town reasonably and justifiably relied upon the false representations of Defendants to its detriment.

50. Defendants' false representations were material to the Town's decision to construct the Landscape Berm as designed and directed by Defendants.

51. As a result of Defendants' misrepresentations, the Town is exposed to the costs of investigation and, as necessary, remediation of the Site to resolve the PCB NOV and Solid Waste NOV, and other significant losses and damages.

**COUNT ELEVEN: CONNECTICUT ENVIRONMENTAL PROTECTION ACT**

1-45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. The conduct of Defendants, including without limitation their design and implementation of the soil-screening protocol and the Landscape Berm and failure to discharge their professional obligations regarding hazardous substances at the Site in compliance with applicable Solid Waste Requirements and other applicable laws, caused, exacerbated or maintained unreasonable pollution, impairment or destruction of the public trust in the water and other natural resources of the State, in violation of the Connecticut Environmental Protection Act, Conn. Gen. Stat. §§ 22a-14 *et seq.* ("CEPA"), specifically Conn. Gen. Stat. § 22a-16.

47. As a direct result of Defendants' conduct, the water and other natural resources have been unreasonably polluted, impaired or destroyed and the Town is entitled to declaratory and equitable relief requiring Defendants to take action to protect the public trust in the water and other natural resources of the State of Connecticut.

48. The Town is therefore entitled to declaratory and equitable relief imposing such conditions on Defendants as are required to protect the public trust in the water and other natural resources of the State of Connecticut from unreasonable pollution, impairment or destruction, including but not limited to an order requiring Defendants to provide funding sufficient to remediate the environmental damage they have caused.

**COUNT TWELVE: CONN. GEN. STAT. § 22A-452**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Defendants' negligence caused the disruption, relocation and release of hazardous substances, including PCBs, petroleum hydrocarbons, mercury, arsenic, and lead on, in and at the Site, including the Landscape Berm, constructed pursuant to Defendants' design and direction.

47. As a result of Defendants' negligence, the Town has incurred and will continue to incur substantial costs to contain, remove and otherwise mitigate the effects of the disruption, relocation and release of hazardous substances, including without limitation to resolve the PCB NOV and Solid Waste NOV.

48. Pursuant to Conn. Gen. Stat. § 22a-452, the Town is entitled to reimbursement of these costs (and future costs) and to declaratory and equitable relief as to the same.

**COUNT THIRTEEN: COMMON LAW INDEMNITY**

1–45. The Town incorporates by reference and realleges paragraphs 1 through 45 of Count One above, as if fully set forth herein.

46. Defendants' conduct, acts and/or omissions constituted negligence.

47. Defendants' active negligence, as alleged herein, was the direct and immediate cause of the harm to the Town.

48. Defendants were in sole control of the Osprey Work at the time their negligence caused harm to the Town.

49. The Town did not know of such negligence, had no reason to anticipate it, and reasonably relied on Defendants not to be negligent in the performance of the Osprey Work.

50. The Town is entitled to be indemnified by Defendants for the damages it has suffered and continues to suffer as a result of Defendants' negligence, including attorneys' fees, expenses and interest.

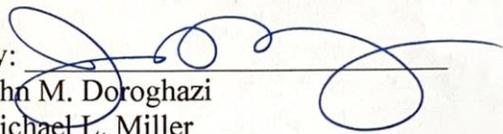
**WHEREFORE**, the Plaintiff Town of Fairfield requests and claims:

1. Actual, compensatory, and any other available form of monetary damages;
2. Declaratory and equitable relief (including injunctive relief) in accordance with Conn. Gen. Stat. § 22a-18;
3. Attorneys' fees under Conn. Gen. Stat. § 22a-18;
4. Punitive damages under common law;
5. Costs;
6. Interest under Conn. Gen. Stat. § 37-3a; and

7. Such other legal and equitable relief as the Court deems appropriate.

**THE PLAINTIFF TOWN OF FAIRFIELD DEMANDS A TRIAL BY JURY.**

**THE PLAINTIFF,  
TOWN OF FAIRFIELD, CONNECTICUT**

By: 

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Michael L. Miller

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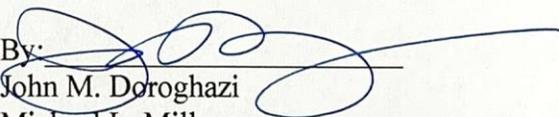
Juris No.: 067700

RETURN DATE: JUNE 30, 2020	:	SUPERIOR COURT
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Plaintiff,	:	
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V.	:	
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OSPREY ENVIRONMENTAL	:	
ENGINEERING, LLC and ROBERT J.	:	
GRABAREK,	:	
	:	
Defendants.	:	MAY 28, 2020

**AMOUNT IN DEMAND**

The amount in demand, exclusive of interest and costs, exceeds fifteen thousand dollars and 00/100 (\$15,000.00).

**THE PLAINTIFF TOWN OF FAIRFIELD**

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