

occurrences; and as to any question of law or fact common to all plaintiffs arising in this action.

JURISDICTIONAL ALLEGATIONS

4. Plaintiff, Jason Stewart (hereinafter referred to as “Officer Stewart”), was at all times relevant to this Complaint a citizen and resident of Wake County, North Carolina, and employed by the Apex Police Department as a law enforcement officer.
5. Patricia Creta (hereinafter referred to as “Ms. Creta”) was at all times relevant to this Complaint a citizen and resident of Wake County, North Carolina.
6. Officer Stewart and Ms. Creta are referred to herein collectively as “Plaintiffs.”
7. Defendant EQ Industrial Services Inc. (hereinafter referred to as "EQ" or “Defendant EQ”) is a foreign corporation domiciled at 36255 Michigan Avenue, Wayne, Michigan 48184. EQ is authorized to do business in the State of North Carolina, and was at all times relevant to this Complaint doing business in North Carolina.
8. Defendant EQ Holding Company, Inc. (hereinafter referred to as “EQ Holding”) is a foreign corporation domiciled at 36255 Michigan Avenue, Wayne, Michigan 28181. EQ Holding is not licensed in the State of North Carolina; however, it is alleged upon information and belief that EQ Holding is the parent company, holding company and/or the alter ego of Defendants and that EQ Holding is the owner of the real property and business improvements located at 1005 Investment Boulevard in Apex, North Carolina.
9. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1332 and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs for each Plaintiff. There is complete diversity between the parties inasmuch as Plaintiffs are

citizens of the State of North Carolina and Defendants are citizens of the State of Michigan.

10. The Court has jurisdiction over Defendant EQ in that at all relevant times it actively operated a business in Apex, North Carolina, where this incident occurred, does business in North Carolina and/or did business in North Carolina at all times relevant to this complaint, and stored hazardous materials which caused or contributed to the Fire and Officer Stewart and Ms. Creta's resulting injuries.
11. Defendant EQ Holding Company (hereinafter referred to as "EQ Holding") is a foreign corporation domiciled at 36255 Michigan Avenue, Wayne, Michigan, 28181. EQ Holding is not licensed in the State of North Carolina; however, it is alleged upon information and belief that EQ Holding is the parent company, holding company, and/or the alter ego of Defendants, and that EQ Holding is the owner of the real property and business improvements located at 1005 Investment Blvd. in Apex.
12. Hereinafter in this Complaint, EQ and EQ Holding, and all named or unnamed companies under which EQ and/or EQ Holding operate in their normal course of business may be collectively referred to as "EQ", "EQIS", and/or "Defendants" and all allegations hereafter made are against all such companies and corporations operating such businesses.
13. Venue is proper in this District because Plaintiffs reside here and suffered injury and damages from the Fire, which occurred in this District and Division. Further, the Defendants operated their business in the District.

FACTUAL BACKGROUND

14. Plaintiffs reallege and incorporate each and every allegation set forth above.
15. Upon information and belief and at all relevant times, Defendants stored, handled, processed and disposed of hazardous waste at the EQ Facility, such as petroleum products, fertilizers, pesticides, reactive chemicals, heavy metals, as well as other hazardous materials. Upon information and belief, numerous hazardous and ultra-hazardous chemicals were stored and held at the EQ Facility on October 5, 2006.
16. On Thursday evening, October 5, 2006, a fire ignited within the EQ Facility, causing explosions of hazardous and ultra-hazardous materials, destroying much of the EQ Facility, and threatening the safety of the surrounding area including several residential neighborhoods. The fire burned for at least three days, releasing toxic, hazardous and ultra-hazardous materials into the surrounding neighborhoods.
17. During the evening of October 5, 2006, and into the next morning, a visible and odorous chemical plume arose from the fire and drifted over the Town of Apex and other areas of Wake County, potentially exposing thousands of people to hazardous, toxic materials. Residents as far away as two miles from the EQ Facility reported being able to see the plume and/or smell the chemicals.
18. As a direct result of the Fire and invasive chemical plume, public safety officials ordered thousands of people to evacuate their homes and businesses, and other people voluntarily evacuated. The total number of evacuees is estimated to exceed 13,000.
19. At approximately 9:30 p.m. on October 5, 2006, Officer Stewart's superiors in the Apex Police Department dispatched him to investigate and respond to the Fire at the EQ Facility.

20. Officer Stewart remained at, or near, the EQ facility until about 3:00 a.m. October 6, 2006. During this time, Officer Stewart assisted the evacuation described above.
21. While assisting in the evacuation and otherwise responding to the Fire on the evening of October 5, 2006 and into the early morning hours of October 6, 2006, Officer Stewart experienced an immediate onset of a sore, scratchy throat, headache, light headedness, and shortness of breath.
22. Ms. Creta and her husband at all relevant times have lived near downtown Apex and less than a mile from the EQ Facility. Earlier in the evening of October 5, 2006, before the Fire ignited at the EQ Facility, she and her husband had walked from their home to a restaurant in downtown Apex, and had eaten dinner and walked home. They left several windows in their home open to allow fresh air to flow through it.
23. At approximately 11:30 p.m. on October 5, 2006, Ms. Creta was awakened by her husband because of reports of the Fire and resulting public safety hazard.
24. Ms. Creta noticed a chlorine odor and along with her husband immediately closed all of the open windows in their house. The Cretas did not know whether it would be safer to remain inside their home or to evacuate. Mr. Creta dialed 911 and was initially told to check back later. The second time Mr. Creta dialed 911, he was advised to evacuate.
25. The Cretas left their house at approximately 1:30 a.m. on October 6, 2006. They had to walk outside to get into their car, and Ms. Creta had to chase the couple's cat in an effort to evacuate her, as well. After trying to capture the cat without success for a few minutes, Ms. Creta gave up, got into the car, and drove to Raleigh with the windows closed.

26. While en route to Ms. Creta's sister's home in Raleigh, Ms. Creta noticed pain and pressure in her chest and a burning sensation in her throat. After a few hours of sleep, she awoke with a headache in addition to the initial symptoms in her chest and throat, which persisted.
27. On June 27, 2007, the United States Chemical Safety and Hazard Investigation Board (hereinafter referred to as "CSB") issued a news release and urgent recommendation regarding some preliminary findings in their investigation of the Apex fire.¹
28. The CSB noted that EQ failed to properly employ procedures to reduce or limit the impact of the Fire.

...[W]e are continuing to look at the operations at EQ, as well as the national regulations that govern the hazardous waste facilities. We are looking at fire protection practices; we note that there was no automatic fire detection or suppression system to extinguish the blaze after it started; we also note the lack of firewalls to separate hazardous materials from one another. And, there are issues concerning the lack of information available to emergency responders during this incident. We believe that even with the oxygen generators fueling the blaze, had the facility been equipped with automated fire detection and extinguishing systems, this accident may have been avoided.²

29. Plaintiffs are informed and believe, and therefore allege, that the fire and its aftermath occurred because of the improper storage and monitoring of hazardous chemicals and substances, including deficiencies in the same operation of the handling, storage, monitoring, and disposal of such materials all of which deficiencies were caused or contributed to by the acts and/or omissions of the defendants and their agents, servants and employees in failing to exercise due care in such operations.

¹ As accessed at http://www.csb.gov/completed_investigations/docs/EQUrgentRecommendationFinal.pdf on June 27, 2007.

² As accessed at http://www.csb.gov/index.cfm?folder=news_releases&page=news&NEWS_ID=380 on June 27, 2007.

30. The above described actions or inactions of Defendants caused Officer Stewart and Ms. Creta to be exposed to toxic gases and/or other gaseous irritants. As a result, Officer Stewart and Ms. Creta had to obtain medical treatment. Officer Stewart has been diagnosed with chronic persistent asthma and Ms. Creta has been diagnosed with chronic variant asthma.

FIRST CLAIM FOR RELIEF
(Negligence)

31. Plaintiffs reallege and incorporate each and every allegation set forth above.
32. At all relevant times, Defendants had a duty to comply with the federal and state regulatory standards, including the state regulations set forth in paragraphs 42 through 58 below, as well as industry standards, governing the storage, handling, monitoring, processing and disposal of hazardous materials.
33. At all relevant times, Defendants had a duty to refrain from operating the EQ Facility in a manner that would foreseeably cause harm to Plaintiffs.
34. At all relevant times, Defendants had a duty to operate the EQ Facility in a safe and reasonable manner and in such a way as to prevent an explosion and fire.
35. At all relevant times, Defendants had a duty to adequately train their employees to properly store, handle, process or dispose of hazardous materials in a safe and reasonable manner and in such a way as to prevent an explosion and fire.
36. At all relevant times, Defendants had a duty to inform Plaintiffs of conditions at the EQ Facility that posed a threat to the safety and well being of Plaintiffs.
37. Defendants knew, or in the exercise of reasonable care should have known, of the serious consequences that chemical fires and resulting chemical exposure could have on people, property, and businesses in the surrounding community.

38. Defendants knew, or in the exercise of reasonable care, should have known, of the dangers associated with the storage, handling, processing and disposal of hazardous and ultra hazardous chemicals and compounds and the possible adverse consequences of failing to properly keep, maintain, use and handle said chemicals in a reasonable and safe manner.
39. Defendants breached the above duties and were negligent in one or more of the following ways:
 - a. By failing to exercise reasonable care in protecting and preserving the rights and safety of persons and property at, or in the vicinity of the EQ Facility;
 - b. By failing to exercise reasonable care in the management, supervision and operation of the EQ Facility, and/or the component parts thereof, including the ultra-hazardous chemicals and compounds;
 - c. By failing to adequately train their employees to properly store, handle, process or dispose of hazardous materials;
 - d. By failing to keep, maintain and operate the EQ Facility in a safe manner in that hazardous materials were improperly stored, handled, processed and disposed of, at the EQ Facility;
 - e. By releasing toxic and/or hazardous waste in violation of federal and state regulatory standards, including the state regulations set forth in paragraphs 42 through 58 below, as well as industry standards, governing hazardous waste disposal;
 - f. By operating the EQ Facility in such a manner as to cause toxic, hazardous and ultra hazardous chemicals to be released from the EQ Facility;

- g. By operating the EQ Facility in such a manner as to cause a fire and subsequent chemical releases at the EQ Facility;
 - h. By failing to warn Plaintiffs, the Town of Apex, and adjoining residents of the hidden dangers and unsafe conditions present at the EQ Facility of which they knew, or could have discovered, by reasonable inspection in the exercise of due care.
 - i. By failing to timely inform Plaintiffs and the Town of Apex of the nature of the chemicals present at the EQ Facility and the risks associated with exposure to said chemicals; and
 - j. By acting or failing to act in other ways not fully set forth herein but as may be developed during further discovery in this action.
40. As a direct and proximate result of Defendants' actions and inactions described above, Plaintiffs were each damaged in excess of \$75,000.00, and are entitled to recover an amount to be proven at trial from Defendants.
41. Specifically, Officer Stewart and Ms. Creta have each sustained injuries, including conscious pain and suffering, physical injury, permanent injury, medical costs, future medical costs, and other damages to be proven at trial.

SECOND CLAIM FOR RELIEF
(Negligence Per Se)

42. Plaintiffs reallege and incorporate each and every allegation set forth above.
43. Pursuant to statutory authority granted by the North Carolina Legislature, the North Carolina Department of Environment and Natural Resources, (DENR), promulgated Rule .0109: "Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities - Part 264", (hereinafter referred to as the "Rule"), on September 30,

1999, as amended on February 13, 2002 and on August 1, 2004, which Rule was in full force and effect at all times pertinent hereto.

44. Defendants at all times relevant to this complaint owned and operated a facility as defined in the Rule, and at all times relevant hereto, have been subject to all provisions of the Rule, and more particularly those sections set forth below:

45. Under Rule .0109, Section 264.17, listing the “General requirements for ignitable, reactive, or incompatible wastes”:

(a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of this part, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

- (1) Generate extreme heat or pressure, fire or explosions, or violent reactions;
- (2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;
- (3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
- (4) Damage the structural integrity of the device or facility;
- (5) Through other like means threaten human health or the environment.

(c) When required to comply with paragraphs (a) or (b) of this Section, the owner or operator must document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests (e.g., bench scale or pilot scale tests), waste analyses (as specified in Section 264.13), or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

46. Additionally, under Rule .0109, Section 264.31, pertaining to the “Design and operation of facility”:

Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned

sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

47. Rule .0109, Section 264.177, pertaining to the “Special requirements for incompatible wastes” further requires that:

(a) Incompatible wastes, or incompatible wastes and materials (See Appendix V for examples), must not be placed in the same container, unless §264.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material.

[Comment: As required by §264.13, the waste analysis plan must include analyses needed to comply with §264.177. Also, §264.17(c) requires wastes analyses, trial tests or other documentation to assure compliance with Section 264.17(b). As required by §264.73, the owner or operator must place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.]

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

[Comment: The purpose of this section is to prevent fires, explosions, gaseous emission, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.]

48. Defendants violated the foregoing sections of the Rule by failing to properly and adequately design and operate the EQ Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment; by failing to properly and adequately separate and protect ignitable and reactive waste from sources of ignition and reaction; and by failing to properly document compliance with Section 264.17(c).
49. Furthermore, Rule .0109, Section 264.13, pertaining to the “General waste analysis”, states:
 - (a) ...
 - (1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under Section 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with this part and part 268 of this chapter.

(2) The analysis may include data developed under Part 261 of this chapter, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes.

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes, or non-hazardous wastes if applicable under Section 264.113(d), has changed; and

(ii) For off-site facilities, when the results of the inspection required in paragraph (a)(4) of this section indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(4) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with paragraph (a) of this section. He must keep this plan at the facility. At a minimum, the plan must specify:

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Section 264.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

(2) The test methods which will be used to test for these parameters;

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

- (i) One of the sampling methods described in Appendix I of Part 261 of this chapter, or
- (ii) An equivalent sampling method.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date;

50. The Rule also contains specific emergency procedure protocol. See Sections 264.56 (a), (b) & (c) of the Rule, which state that:

(a) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

- (1) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
- (2) Notify appropriate State or local agencies with designated response roles if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-off from water or chemical agents used to control fire and heat induced explosions).

51. Defendants violated the foregoing sections of the Rule by failing to immediately and adequately identify the character, exact source, amount, and real extent of the hazardous materials released in this fire and in the ensuing cleanup; and they did not properly and

adequately assess the possible hazards to human health or the environment that may have resulted from the release, fire and ensuing cleanup.

52. Additionally, Sections 264.56 (e), (f), (g) & (h) of the Rule state that:

(e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing release waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(g) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

[Comment: Unless the owner or operator can demonstrate, in accordance with Section 261.3(c) or (d) of this Chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Parts 262, 263 and 264 of this chapter.]

(h) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(1) No waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(2) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

53. Defendants violated Sections 264.56(e), (f), (g) & (h) by failing to properly and adequately treat, store, and dispose of hazardous waste recovered from the fire, such that it resulted in further contamination of the air, ground and water; and such that it resulted in the subsequent explosions and chemical release on October 18, 2006. Pursuant to this section, defendants are therefore considered “generators” of hazardous waste, who must manage it in accordance with all applicable requirements of Parts 262, 263 and 264 of this chapter, which they did not do.

54. Section 264.37 of the Rule requires owners and operators of hazardous waste treatment, storage and disposal facilities to make appropriate arrangements with local authorities “for the type of waste handled at his facility and the potential need for the services of these organizations”. The Rule specifically requires that the owners or operators ensure that:

(a) ...

(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility,

properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes;

(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

55. Under Section 264.52 of the Rule, the owners and/or operators of hazardous waste treatment, storage and disposal facilities are required to have a contingency plan [or a Spill Prevention Control, and Countermeasures Plan as described in Sections 112 and 264.52(b)] with provisions that:

(a) ...describe the actions facility personnel must take to comply with Sections 264.51 and 264.56 in response to fires, explosions, or any unplanned sudden or

non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(c) ...describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Section 264.37.

(d) ...list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see Section 264.55), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be supplied to the Regional Administrator at the time of certification, rather than at the time of permit application.

(e) ...include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up-to-date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) ...include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

56. Section 264.53 of the Rule, requires that a “copy of the contingency plan and all revisions to the plan must be: (a) maintained at the facility; and (b) submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.”
57. Defendants violated the foregoing section of the Rule by failing to make proper or adequate arrangements with officials of the Town of Apex, the County of Wake, or the State of North Carolina as to the properties of hazardous waste handled at the EQ Facility. Furthermore, Defendants failed to make proper or adequate arrangements with local hospitals to familiarize them with the properties of said hazardous wastes, and the types of injuries or illnesses which could result from fires, explosions or releases at the EQ Facility.
58. Finally, Section 264.16 of the Rule requires personnel training in accordance with the following guidelines:
- (a) ...
- (1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.
- [Comment: Part 270 of this chapter requires that owners and operators submit with Part B of the RCRA permit application, an outline of the training program used (or to

be used) at the facility and a brief description of how the training program is designed to meet actual job tasks.]

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, where applicable:

- (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
- (ii) Key parameters for automatic waste feed cut-off systems;
- (iii) Communications or alarm systems;
- (iv) Response to fires or explosions;
- (v) Response to ground-water contamination incidents; and
- (vi) Shutdown of operations.

(b) Facility personnel must successfully complete the program required in paragraph (a) of this Section within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each

person filling a position listed under paragraph (d)(1) of this section;

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this Section has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

59. Defendants violated this section of the Rule by failing to properly and adequately train their personnel to ensure the EQ Facility's compliance with the Rule, and more particularly, to prevent the occurrence of a release and fire such as occurred at the EQ Facility on October 5, 2006.
60. As a result of the foregoing violations of law, Defendants are liable per se, without further proof of fault, for all compensatory and punitive damages suffered by Plaintiffs as alleged herein.
61. As a direct and proximate result of Defendants' actions and inactions described above, Plaintiffs were each damaged in excess of \$75,000.00, and is entitled to recover an amount to be proven at trial from Defendants.
62. Specifically, Officer Stewart and Ms. Creta have each sustained injuries, including conscious pain and suffering, physical injury, permanent injury, medical costs, future medical costs, and other damages to be proven at trial.

63. The foregoing violations of law by Defendants evidence their gross, willful and wanton disregard for the safety of others, rendering them liable to Plaintiffs for punitive damages as well.

THIRD CLAIM FOR RELIEF
(Res Ipsa Loquitur)

64. Plaintiffs reallege and incorporate each and every allegation set forth above.

65. At all times relevant, the chemicals and the operations of the EQ Facility were in the exclusive control of the Defendants such that the Defendants had the superior means for determining the foreseeability of injury to Plaintiffs.

66. Plaintiffs did in fact sustain serious personal injuries as set forth in this complaint under such circumstances that, in the ordinary course of events, would not have occurred if the Defendants had used reasonable care under the circumstances in the use, control and operation of the EQ Facility.

67. The fires caused extensive damage to the EQ Facility, such that critical evidence may have been destroyed that would make it impossible to otherwise prove Defendants' liability.

68. As a direct and proximate result of the negligence of the Defendants as hereinabove alleged, Plaintiffs were damaged as alleged herein and are entitled to recover the same of the defendants, without further proof of fault on the part of the Defendants.

FOURTH CLAIM FOR RELIEF
(Punitive Damages)

69. Plaintiffs reallege and incorporate each and every allegation set forth above.
70. The above described acts and/or omissions of Defendants were willful, wanton, and outrageous and as such justify the imposition of punitive damages in order to punish defendants and to deter such conduct in the future.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that they each have and recover the following relief from the Defendants:

1. That Plaintiff Jason Stewart, individually, have and recover from Defendants, jointly and severally, a sum in excess of Seventy-Five Thousand and No/100 Dollars (\$75,000.00) for his compensatory and punitive damages caused by Defendants pursuant to his claims for relief set out in this complaint;
2. That Plaintiff Patricia Creta, individually, have and recover from Defendants, jointly and severally, a sum in excess of Seventy-Five Thousand and No/100 Dollars (\$75,000.00) for her compensatory and punitive damages caused by Defendants pursuant to her claims for relief set out in this complaint;
3. That Plaintiffs each have and recover prejudgment and post-judgment interest at the maximum legal rate, as allowed by law;
4. That the Plaintiffs have and recover attorney fees;
5. That the Plaintiffs have and recover the costs of this action;
6. For a trial by jury; and

7. For such other and further relief as the Court deems just and proper.

This the ____ day of April, 2010.

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