

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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WOMEN’S VOICES FOR THE EARTH, INC.;
AMERICAN LUNG ASSOCIATION IN NEW YORK, INC.;
RIVERKEEPER, INC.; ENVIRONMENTAL ADVOCATES
OF NEW YORK, INC.; NEW YORK PUBLIC INTEREST
RESEARCH GROUP, INC.; and SIERRA CLUB, INC.,

Petitioners,

-against-

THE PROCTER & GAMBLE COMPANY; PROCTER &
GAMBLE MANUFACTURING CO., INC.; PROCTER &
GAMBLE DISTRIBUTING CO., INC.; CHURCH &
DWIGHT CO., INC.; RECKITT BENCKISER, INC.; and
COLGATE-PALMOLIVE, INC.,

Respondents,

For a Judgment Pursuant to Article 78 of the New York
Civil Practice Law and Rules.

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PETITIONERS WOMEN’S VOICES FOR THE EARTH, INC., AMERICAN LUNG
ASSOCIATION IN NEW YORK, INC., RIVERKEEPER, INC., ENVIRONMENTAL
ADVOCATES OF NEW YORK, INC., NEW YORK PUBLIC INTEREST RESEARCH
GROUP, INC., and SIERRA CLUB, INC., for their petition for a judgment pursuant to Article
78 of the New York Civil Practice Law and Rules (“CPLR”), allege as follows:

NATURE OF THE PROCEEDING

1. Every day, New Yorkers and especially young children, are exposed to chemicals
in household cleaning products that may be hazardous to their health. The household cleaning
product manufacturers named here do not disclose information about the chemicals in their

VERIFIED PETITION

Index No. 102035-09

Oral Argument Requested

products, as they are required to do under New York regulations, leaving the public in the dark about potential threats to their health and the environment.

2. Petitioners would like to make use of the ingredient disclosure reports required by New York regulations to educate their members and the general public about toxic chemicals in cleaning products that may pose a threat to human health and to the environment. In addition, Petitioners hope to rely on the information in these reports to assist them in advocating for the commissioner of the New York State Department of Environmental Conservation (“DEC”) to utilize his statutory authority to require cleaning products manufacturers to (1) identify chemical ingredients on their product label, and (2) restrict the use of chemicals that are likely to have an adverse effect on human health or the environment.

3. In September 2008, Petitioners notified Respondents and other major cleaning product manufacturers of their disclosure obligations and asked for compliance within 30 days. Several manufacturers filed reports with the DEC after receiving Petitioners’ notice (*see, e.g.*, Report by Sunshine Makers, Inc., dated October 14, 2008 (annexed hereto as Exhibit A),¹ but Respondents failed to do so. *See* Affirmation of Keri N. Powell, dated Feb. 6, 2009 (annexed hereto as Exhibit B), ¶¶ 8, 10-16.

4. Petitioners bring this proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules (“Article 78 proceeding”) in the nature of mandamus seeking a court order compelling Respondents to comply with their non-discretionary duty to make the disclosures required by New York regulations.

¹ Sunshine Makers, Inc. has indicated to Petitioners that it also filed a compilation of test results with the DEC entitled “Arsenal of Test Results,” last updated 2008.

RELEVANT LAW

5. Article 35 of the Environmental Conservation Law of New York (“ECL”), Chapter 43-B of the Consolidated Laws, governs “Detergents and Household Cleansing Products.”

6. ECL section 35-0107 states:

The commissioner is hereby authorized to promulgate regulations requiring manufacturers of household cleansing products distributed, sold or offered for sale in this state, to furnish to the commissioner for the public record as herein provided information regarding such products in a form prescribed by the commissioner including the nature and extent of investigations and research performed by the manufacturer concerning the effects of such products on human health and the environment.

7. DEC’s regulations implementing Article 35 appear in Part 659 of Title 6 of New York Code, Rules and Regulations (“6 NYCRR”).

8. 6 NYCRR section 659.1(a) defines the term “[h]ousehold cleansing product” as:

any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household and commercial premises. Household cleansing product shall not mean: (1) foods, drugs and cosmetics, including personal care items such as toothpaste, shampoo and hand soap; (2) products labeled, advertised, marketed and distributed for use primarily as pesticides, as defined in article 33 of the Environmental Conservation Law.

9. 6 NYCRR section 659.6(a) establishes manufacturers’ disclosure obligations, stating:

Manufacturers of household cleansing products distributed, sold or offered for sale in this State shall furnish to the commissioner for public record such information regarding such products as the commissioner may require, in such form as may be prescribed by the commissioner. For each household cleansing product, such information shall include, but shall not be limited to:

- (1) the amount of elemental phosphorus by weight as measured to the nearest one-tenth of one percent;
- (2) a list naming each ingredient which equals or exceeds five percent of the contents of the product by weight and specifying the content by weight of each ingredient to the nearest percent;
- (3) a list naming each ingredient which does not equal or exceed five percent of the contents of the product by weight, provided that ingredients which are present in trace quantities need not be included on such list unless the commissioner specifically requests any such ingredient to be listed and provided further that the commissioner may require the listing of one or more of such ingredients by weight to the nearest percent;
- (4) the nature and extent of investigations and research performed by or for the manufacturer concerning the effects on human health and the environment of such product or such ingredients; and
- (5) a statement that the product does not contain nitrilotriacetic acid (NTA) in excess of a trace quantity.

10. 6 NYCRR section 659.6(b) states: “Such manufacturers shall furnish such information semiannually or at such other times as may be required by the commissioner.”

THE PARTIES

11. Petitioner Women’s Voices for the Earth, Inc. (“WVE”), a national not-for-profit corporation organized and existing under the laws of the State of Montana, engages women to advocate for the right to a healthy environment. Through its National Safe Cleaning Products Initiative, WVE is working to substantially reduce or eliminate exposure, particularly among women, to harmful chemicals in household cleaning products. WVE seeks to ensure that cleaning product manufacturers disclose all cleaning product ingredients on their package labels and remove any potentially harmful ingredients from their cleaning products. WVE uses science-based research to produce informational reports and fact sheets about chemicals in

cleaning products, public media to disseminate their information, market-based and regulatory tactics to move manufacturers, and outreach that engages women on the ground who are most impacted in these efforts. In New York, Clean New York, a project of WVE, conducts programs to educate people about harmful ingredients in cleaning products and actions they can take to keep toxic chemicals out of their homes, schools, and workplaces. Clean New York is currently creating “house party” educational materials to facilitate dissemination of information about cleaning products and other consumer goods that contain toxic chemicals. WVE, and its project Clean New York, would like to make use of the reports required by 6 NYCRR section 659.6 to educate its members and the general public about toxic chemicals in cleaning products that may pose a threat to human health and to the environment. WVE, and its project Clean New York, also would like to make use of the information in these reports to advocate for the DEC commissioner to utilize his statutory authority to require cleaning product labels to identify potentially harmful chemicals and to restrict the use of chemicals that are likely to have adverse effects on human health or the environment. WVE, and its project Clean New York, have members who use or are exposed to household cleaning products manufactured by Respondents and are harmed by Respondents’ failure to make the disclosures required by 6 NYCRR section 659.6. *See* Affidavit of Roberta Chase (annexed hereto within Exhibit C, collecting affidavits of all Petitioners).

12. American Lung Association in New York, Inc. (“ALA-NY”), a not-for-profit corporation organized and existing under the laws of the State of New York, is a state-wide organization dedicated to saving lives by improving lung health and preventing lung disease. ALA-NY informs and educates the public about the impact and prevention of lung disease in a variety of ways, including disseminating information on its web site, issuing public service

announcements and news releases, and advocating for clean air. ALA-NY would like to have access to the reports required by 6 NYCRR section 659.6 for purposes of educating the public about toxic chemicals in cleaning products that may pose a threat to lung health, and for advocating for better regulation of those chemicals. ALA-NY has board members who use or are exposed to cleaning products manufactured by Respondents and are harmed by Respondents' failure to make the disclosures required by 6 NYCRR section 659.6. *See* Affidavit of Irwin Berlin (annexed hereto within Exhibit C).

13. Petitioner Riverkeeper, Inc. is a not-for-profit corporation organized and existing under the laws of the State of New York. Riverkeeper's mission is to protect the ecological, recreational and commercial integrity of the Hudson River and its tributaries, and to safeguard the drinking water supply for New York City and Westchester County. Riverkeeper and its members are concerned about the impacts that chemicals in household cleaning products may have on human health and the environment and are especially concerned that such chemicals may degrade water quality and harm aquatic wildlife. Riverkeeper would like to make use of the reports required by 6 NYCRR section 659.6 to educate its members and the general public about toxic chemicals in cleaning products that may pose a threat to water quality or harm aquatic wildlife. Riverkeeper also would like to make use of the information in these reports to advocate for the DEC commissioner to utilize his statutory authority to require cleaning product labels to identify potentially harmful chemicals and to restrict the use of chemicals that are likely to have adverse effects on the state's water quality or aquatic wildlife. Riverkeeper members who swim, kayak, or fish in the Hudson River estuary and its tributaries are harmed by Respondents' failure to make the disclosures required by 6 NYCRR section 659.6. *See* Affidavit of John Lipscomb (annexed hereto within Exhibit C).

14. Petitioner Environmental Advocates of New York, Inc. (“Environmental Advocates”), a not-for-profit corporation organized and existing under the laws of the State of New York, is the state’s government watchdog, holding lawmakers and agencies accountable for enacting and enforcing laws that protect our natural resources and safeguard public health. The group originally was incorporated as the Environmental Planning Lobby in 1969. Environmental Advocates has more than 7,000 individual members across New York State and 130 organizational members. Environmental Advocates and its members are concerned about the negative impact that toxic chemicals in cleaning products may have on human health and the environment. Environmental Advocates played a leading role in advocating for New York’s ban on the use of nitrilotriacetic acid (“NTA”) in household cleaning products, which was adopted by the DEC in 1985. Environmental Advocates would like to make use of the reports required by 6 NYCRR section 659.6 to educate its members and the general public about toxic chemicals in cleaning products that may pose a threat to human health and to the environment. Environmental Advocates also would like to make use of the information in these reports to advocate for the DEC commissioner to utilize his statutory authority to require cleaning product labels to identify potentially harmful chemicals and to restrict the use of chemicals that are likely to have adverse effects on human health or the environment. Environmental Advocates has members who use or are exposed to cleaning products manufactured by Respondents and are harmed by Respondents’ failure to make the disclosures required by 6 NYCRR section 659.6. *See* Affidavit of Patti Kelly (annexed hereto within Exhibit C).

15. Petitioner New York Public Interest Research Group, Inc. (“NYPIRG”), a not-for-profit corporation organized and existing under the laws of the State of New York, is dedicated to protecting the environment and public health, supporting consumer rights, and improving

government administration. NYPIRG's student members are those students who voluntarily identify themselves as members at the 20 college campuses across the state where NYPIRG maintains chapters, including campuses in Albany, Binghamton, New York City, Buffalo, Cortland, New Paltz, Purchase, Stony Brook, Syracuse, and Long Island. NYPIRG and its members are concerned about the impacts that chemicals in household cleaning products can have on human health and the environment. NYPIRG would like to make use of reports required by 6 NYCRR section 659.6 to assist its members and other consumers in making informed choices about which products to purchase and use in their homes, workplaces, and schools. NYPIRG also would like to use the information in these reports to advocate for the DEC commissioner to utilize his statutory authority to require cleaning product labels to identify potentially harmful chemicals and to restrict the use of chemicals that are likely to have adverse effects on human health or the environment. NYPIRG has members who use or are exposed to cleaning products manufactured by Respondents and are harmed by Respondents' failure to make the disclosures required by 6 NYCRR section 659.6. *See* Affidavit of Patrick Krug (annexed hereto within Exhibit C).

16. Petitioner Sierra Club, Inc. ("Sierra Club"), a not-for-profit corporation organized and existing under the laws of California, is one of the nation's oldest and largest environmental organizations. For over 113 years, the Sierra Club has been dedicated to protecting our nation's natural resources and public health. Sierra Club, on behalf of its members, works to protect and enhance the health of the environment throughout the country. The Sierra Club has approximately 750,000 members nationwide. The Sierra Club's Atlantic Chapter represents the 45,000 Sierra Club members who live in New York State. The Atlantic Chapter has eleven local groups centered in Buffalo, Rochester, Ithaca, Syracuse, Binghamton, Albany, Poughkeepsie,

Newburgh, Westchester County, New York City, and Long Island. Sierra Club and its members are concerned about the impacts that chemicals in household cleaning products may have on human health and the environment. Sierra Club would like to make use of the reports required by 6 NYCRR section 659.6 to educate its members and the general public about toxic chemicals in cleaning products that may pose a threat to human health and to the environment. Sierra Club also would like to make use of the information in these reports to advocate for the DEC commissioner to utilize his statutory authority to require cleaning product labels to identify potentially harmful chemicals and to restrict the use of chemicals that are likely to have adverse effects on human health or the environment. Sierra Club has members who use or are exposed to cleaning products manufactured by Respondents and are harmed by Respondents' failure to make the disclosures required by 6 NYCRR section 659.6. *See* Affidavit of Joseph A. Gardella, Jr. (annexed hereto within Exhibit C).

17. Respondent The Procter & Gamble Company, is incorporated under the laws of the State of Ohio and is not registered to do business in the State of New York. The Procter & Gamble Company's subsidiaries, Procter & Gamble Manufacturing Co., Inc. and Procter & Gamble Distributing Co., Inc., are registered to do business in the State of New York as foreign business corporations. All three companies are headquartered at 1 Procter & Gamble Plaza in Cincinnati, Ohio. Hereinafter, the three companies are collectively referred to as "Procter & Gamble." Procter & Gamble manufactures and markets household cleaning products that are distributed, offered for sale, and sold in New York County and throughout the State of New York, including products under well-known brands such as Joy, Cascade, Ivory, Dawn, Mr. Clean, Swiffer, Bounce, Cheer, Downy, Dreft, Era, Gain, Ivory, and Tide.

18. Respondent Church & Dwight Co., Inc. is incorporated under the laws of the State of Delaware and is registered to do business in the State of New York as a foreign business corporation. Church & Dwight manufactures and markets household cleaning products that are distributed, offered for sale, and sold in New York County and throughout the State of New York, including well-known products such as Brillo steel wool soap pads, Brillo Scrub 'n' Toss, Scrub Free Soap Scum Remover, Scrub Free Mildew Stain Remover, Scrub Free Disinfectant Bathroom Cleaner, Arm & Hammer Clean Shower, Parsons' Ammonia, Kaboom, Orange Glo Hardwood Floor Care, Orange Glo Wood Furniture Cleaner & Polish, and OxiClean stain remover.

19. Respondent Reckitt Benckiser, Inc. is incorporated under the laws of the State of Delaware and registered to do business in the State of New York as a foreign business corporation. Reckitt Benckiser, Inc. is headquartered in Parsippany, New Jersey and is a subsidiary of United Kingdom-based Reckitt Benckiser, PLC. Reckitt Benckiser, Inc manufactures and markets household cleaning products that are distributed, offered for sale, and sold in New York County and throughout the State of New York, including products under well-known brands such as Calgon, Vanish, Resolve, Spray 'n Wash, Woolite, Lysol, Finish, and Electrasol.

20. Respondent Colgate-Palmolive, Inc. is incorporated under the laws of the State of Delaware and is registered to do business in the State of New York as a foreign business corporation. Colgate-Palmolive manufactures and markets household cleaning products that are distributed, offered for sale, and sold in New York County and throughout the State of New York, including products under well-known brands such as Ajax, Fabuloso, Dynamo, Tom's of Maine, Palmolive, and Murphy Oil Soap.

VENUE

21. Venue lies in the Supreme Court, New York County, pursuant to sections 7804(b) and 506(b) of the New York Civil Practice Law and Rules because New York County is where material events giving rise to the Respondents' obligation to comply with the disclosure requirements of 6 NYCRR section 659.6 took place. Specifically, household cleaning products manufactured by each Respondent have been and are currently distributed, sold, or offered for sale in New York County. In addition, Colgate-Palmolive maintains its New York office in New York County at 300 Park Avenue, New York, NY 10022.

FACTS

Legislative History of Environmental Conservation Law Article 35

22. Enacted in 1971, Article 35 of the New York Environmental Conservation Law ("Article 35") "provides a comprehensive regulatory program to insure protection of human health and the environment against chemical agents in household cleansing products." Bill Approval Memorandum of Governor Nelson A. Rockefeller dated June 25, 1971 ("Rockefeller Approval Mem.," annexed hereto as Exhibit D), at 1.

23. As Governor Rockefeller explained at the time of Article 35's enactment: "New York State has recognized that the increasing use of chemicals, particularly those contained in household detergents, by our State's growing population, can dangerously accelerate natural processes in our waters and adversely affect human health." *Id.*

24. In the 1970s, most concern about household cleaning products was focused on phosphates, which were commonly included in detergents and were degrading the state's waterways. *Id.* at 2. Thus, Article 35 banned phosphates from most household cleaning products except in trace or incidental concentrations. ECL § 35-0105.

25. Governor Rockefeller noted, however, that phosphate substitutes potentially could “be more harmful to our health and the environment than phosphates themselves.” Rockefeller Approval Mem. at 2. Likewise, the Governor acknowledged: “As our understanding of the ecology of our waters increases, other ingredients of washing compounds may be found to adversely affect human health and the environment.” *Id.* at 3. Thus, the Governor explained, “the bill will permit the Commissioner of Environmental Conservation to set further restrictions on ingredients in household detergent products based on the effect those products may have on human health and the environment.” *Id.*

26. In comments to the Governor made while Article 35 was under consideration, the Soap and Detergent Association (“SDA”), an industry trade group, affirmed: “Much is unknown, particularly of the long-term biological effects of components of detergents.” SDA Memorandum in Opposition, dated June 10, 1971 (“SDA Memorandum of Opposition,” annexed hereto as Exhibit E), at 2 (quoting the U.S. Surgeon General). SDA explained, as of 1971:

Approximately six billion pounds of detergents are annually consumed in this country. Regardless of what restrictions are placed on detergents, the inescapable fact is that six billion pounds of some cleaning product will be discharged into the nation’s sewage disposal facilities. The responsibility for the ultimate impact of the disposal of any product in this quantity cannot be undertaken lightly or hastily.

SDA Memorandum in Opposition at 1.

27. To assist the DEC in evaluating the human health and environmental risks posed by chemicals in household cleaning products, Article 35 gives the DEC commissioner broad authority to require cleaning product manufacturers to disclose information about their products to the DEC. *See* ECL § 35-0107.

28. Article 35 confirms the Legislature's intent that information submitted by household cleaning product manufacturers generally be available to the public, stating: "These reports shall be available to the public at the department of environmental conservation, except those portions the manufacturer determines, subject to the approval of the commissioner, would be, if disclosed, seriously prejudicial to the manufacturer's legitimate interest in trade secrets and economics of operation." ECL § 35-0107.

29. In approving Article 35, Governor Rockefeller emphasized the importance of requiring household cleaning product manufacturers to disclose information about the chemicals in their products, explaining: "While reducing the discharge of phosphates is an important step in conserving New York's precious supply of water, we must begin to consider the possible short and long-term effects of detergents and other washing products on both human health and the interrelated environment to provide for optimum safety in those areas." Rockefeller Approval Mem. at 2.

30. In addition to authorizing the DEC commissioner to require disclosure of information about ingredients in household cleaning products, Article 35 authorizes the commissioner to require "[t]he wrapper or container of every household cleansing product" to "list the weight of each ingredient which the commissioner determines may affect adversely human health or the environment." ECL § 35-0105. As Governor Rockefeller explained: "No consumer wishing to purchase a detergent for washing clothes or dishes . . . can realistically gauge the detrimental effects of such products unless informed as to the ingredients of the product." Rockefeller Approval Mem. at 1.

31. Finally, Article 35 authorizes the DEC commissioner to restrict the use of an ingredient in a cleaning product "[w]henver the commissioner finds, after investigation, that any

ingredient of household cleansing products distributed, sold, offered or exposed for sale in this state . . . will or is likely to materially affect adversely human health or the environment.” ECL § 35-0107.

32. Household cleaning product industry leaders were aware of Article 35 at the time of its enactment. In addition to the Soap and Detergent Association, The Procter & Gamble Company submitted comments to the Governor opposing the legislation while it was under consideration. *See* Procter & Gamble telegram, dated May 27, 1971 (annexed hereto as Exhibit F).

Regulatory History of 6 NYCRR Part 659

33. DEC’s household cleaning product regulations at 6 NYCRR Part 659 became effective on October 1, 1976 and were last amended on October 7, 1985. *See* 6 NYCRR Part 659.

34. Subsection 659.6(a)(5), which requires manufacturers to submit a statement that their product does not contain NTA in excess of a trace quantity, was added to the disclosure list when DEC amended Part 659 in 1985. *See* 43 N.Y.S. Reg. 6 (Oct. 23, 1985) (annexed hereto as Exhibit G). At the same time, DEC amended section 659.3(c) to prohibit the inclusion of NTA in excess of a trace quantity in any household cleaning product distributed, sold, offered or exposed for sale in New York State. *Id.* The purpose of the NTA ban was to avoid potential adverse impacts of NTA, a known animal carcinogen, on the environment and on public health by preventing its discharge with domestic wastewater to the surface waters and groundwater of New York State. *See* N.Y. Environmental Notice Bulletin (Aug. 8, 1984) (annexed hereto as Exhibit H), at 16.

35. Initially, when DEC proposed to ban NTA from household cleaning products in 1984, DEC proposed to require manufacturers to include a statement on each product's label declaring that the product did not contain NTA in excess of a trace quantity. *See* 34 N.Y.S. Reg. (Aug. 22, 1984) (annexed hereto as Exhibit I). Household cleaning product manufacturers, including Procter & Gamble, Colgate-Palmolive Co., and the Soap and Detergent Association, opposed DEC's proposed requirement that NTA content be included on product labels. *See* Excerpts from Final Environmental Impact Statement, Aug. 1985 (annexed hereto as Exhibit J), at R-1. Instead of labeling, all three requested that DEC instead "allow manufacturers to certify to the Department that their products contain no NTA." *Id.*

36. In response to the concerns raised by household cleaning product manufacturers, the DEC concluded that instead of requiring NTA information on product labels, "[m]anufacturers of household cleansing products sold in New York State would be required to submit a semi-annual statement that a given product does not contain NTA." *See* 43 N.Y.S. Reg. 6 (Oct. 23, 1985). DEC further explained that submittal of the NTA statement "would be accomplished in conjunction with the disclosure of product ingredient information, as currently required under 6 NYCRR Part 659.6 and, therefore, would require minimal additional effort and cost." *Id.* According to DEC: "The requirement that manufacturers of household cleaning products provide, along with a list of each product's ingredients, a statement that no NTA (in excess of a trace quantity) is contained in their products is considerably less costly than the original proposed labeling requirement." *Id.*

Industry Failure to Comply with Regulatory Reporting Requirements

37. The DEC's website identifies Mr. Scott Stoner, Chief of the Standards and Analytical Support Section in the Bureau of Water Assessment and Management for DEC's

Division of Water, as the person to contact for additional information about DEC's household cleaning product regulations at 6 NYCRR Part 659. *See*

<http://www.dec.ny.gov/chemical/23853.html> (last viewed Feb. 6, 2009); Powell Aff. ¶ 1.

38. On January 22, 2008, Petitioners' counsel contacted Mr. Scott Stoner of the DEC and requested access to the section 659.6 reports. *See* Electronic Message from Keri Powell to Scott Stoner, dated January 22, 2008 (annexed hereto within Exhibit K, collecting electronic correspondence); Powell Aff ¶ 2.

39. In response, Mr. Stoner sent an electronic message to Petitioners' counsel confirming that he is the DEC contact with respect to the Part 659 regulations, but stated that he is "not receiving such reports." *See* Electronic Message from Scott Stoner to Keri Powell, dated Feb. 15, 2008 ("Stoner Message," annexed hereto within Exhibit K); Powell Aff. ¶ 3. Mr. Stoner referred Petitioners' counsel to Scott Crisafulli, Chief of DEC's Bureau of Enforcement and Compliance, for additional information. *See* Stoner Message; Powell Aff. ¶ 3.

40. Mr. Crisafulli subsequently confirmed: "I am not aware of any such reports coming to the DEC, nor is the Division of Water. I am also not aware of any other office that would be receiving these reports." *See* Electronic Message from Scott Crisafulli to Keri Powell, dated Feb. 15, 2008 (annexed hereto within Exhibit K); Powell Aff. ¶ 4.

41. On June 24, 2008, Petitioners' counsel sent an electronic message to Mr. Stoner asking whether the DEC commissioner had ever authorized household cleaning product manufacturers to make their disclosures on any time frame other than semiannually. Electronic Message from Keri Powell to Scott Stoner, dated June 24, 2008 (annexed hereto within Exhibit K); Powell Aff. ¶ 5. Mr. Stoner responded, "to the best of my knowledge, the answer is 'no.'"

See Electronic Message from Scott Stoner to Keri Powell, dated June 25, 2008 (annexed hereto within Exhibit K); Powell Aff ¶ 5.

Demand for Procter & Gamble to Comply with Part 659 Disclosure Requirements

42. On September 24, 2008, Petitioners mailed a certified letter, return receipt requested, to A.G. Laffley, Chairman and CEO of Procter & Gamble, notifying him of the company's obligation to comply with 6 NYCRR Part 659's disclosure requirement and requested that the company file the required reports within 30 days. *See* Letter to A.G. Laffley, Procter & Gamble, dated Sept. 24, 2008 ("Laffley Letter," annexed hereto within Exhibit L, Procter & Gamble correspondence). A copy of the letter was sent to Procter & Gamble's Chief Legal Officer, Steven Jemison. *See* Laffley Letter. Petitioners' counsel received an acknowledgment of receipt from Mr. Laffley's office. *See* Acknowledgement of Receipt by Procter & Gamble, dated Sept. 29, 2008 (annexed hereto within Exhibit L); Powell Aff. ¶ 7.

43. On January 21, 2009, after receiving no response from Procter & Gamble, Petitioners' attorney left a telephone message for Mr. Rick Hackman of Procter & Gamble seeking confirmation that Procter & Gamble did not intend to file a report with the DEC as requested by Petitioners. Powell Aff. ¶ 11.

44. On January 22, 2009, Mr. Hackman responded to Petitioners' attorney with an electronic message stating: "Thank you for your call yesterday inquiring about [Procter & Gamble's] compliance with New York State ingredient reporting requirements. We reviewed these regulations in detail last fall and concluded that we are in full compliance with these rules." *See* Electronic Message from Rick Hackman to Keri Powell, dated Jan. 22, 2009 ("Hackman message," annexed hereto within Exhibit L); Powell Aff. ¶ 12. Attached to Mr. Hackman's

message was a letter from the SDA, which Mr. Hackman declared “fully represents [Procter & Gamble’s] position on this topic.” *See* Hackman Message; Powell Aff. ¶ 12.

45. The SDA letter attached to Procter & Gamble’s electronic message explained that the SDA had been made aware of Petitioners request that “a number” of their members file reports in compliance with 6 NYCRR section 659.6, and that SDA did not believe “that there has been any violation of the law or its regulations in this instance.” *See* Letter from Dennis Griesing, Vice President, Government Affairs, SDA, dated Oct. 20, 2008 (annexed hereto as Exhibit M).

Demand for Church & Dwight to Comply with Part 659 Disclosure Requirements

46. On September 24, 2008, Petitioners mailed a certified letter, return receipt requested, to James R. Craigie, Chairman and CEO of Church & Dwight Co., Inc., notifying him of the company’s obligation to comply with 6 NYCRR Part 659’s disclosure requirement and requested that the company file the required reports within 30 days. *See* Letter to James R. Craigie, dated Sept. 24, 2008 (“Craigie Letter,” annexed hereto within Exhibit N, Church & Dwight correspondence); Powell Aff. ¶ 6. A copy of the letter was sent to Ms. Susan Goldy, General Counsel of Church & Dwight Co., Inc. *See* Craigie Letter. Petitioners’ counsel received an acknowledgment of receipt from Mr. Craigie’s office. *See* Acknowledgment of Receipt by Church & Dwight, dated Oct. 3, 2008 (annexed hereto within Exhibit N); Powell Aff. ¶ 7.

47. On January 29, 2009, after receiving no response from Church & Dwight Co., Inc., Petitioners’ attorney left a telephone message for Ms. Goldy seeking confirmation that Church & Dwight did not intend to file a report with the DEC as requested by Petitioners. Ms. Goldy did not respond to the message. Powell Aff. ¶ 13.

48. On February 6, 2009, Petitioners' counsel received an electronic message from Mr. David W. Worrell, Associate General Counsel for Church & Dwight Co., Inc. *See* Electronic Message from David W. Worrell to Keri Powell, dated Feb. 6, 2009 ("Worrell Message," annexed hereto within Exhibit N), Powell Aff. ¶ 14. Mr. Worrell attached the SDA letter of October 20, 2008 to his message and stated that he considered the SDA letter to be Church & Dwight's response to Petitioners' request that Church & Dwight comply with the disclosure requirements of 6 NYCRR section 659.6. *See* Worrell Message; Powell Aff. ¶ 14.

Demand for Reckitt Benckiser to Comply with Part 659 Disclosure Requirements

49. On September 24, 2008, Petitioners mailed a letter to Reckitt Benckiser CEO Bart Becht notifying him of Reckitt Benckiser, Inc.'s obligation to comply with 6 NYCRR Part 659's disclosure requirement and requesting that the company file the required reports within 30 days. *See* Letter to Bart Becht, Reckitt Benckiser, dated Sept. 24, 2008 ("Becht Letter," annexed hereto within Exhibit O, Reckitt Benckiser correspondence); Powell Aff. ¶ 7. A copy was sent by certified mail, return receipt requested to William Mordan, Vice President, Reckitt Benckiser, Inc. *See* Becht Letter. A copy was also sent to Robert de Groot, Reckitt Benckiser Inc. Executive Vice President—North America, Australia/NZ. *See* Becht Letter. Petitioners' counsel received an acknowledgement of receipt from Mr. Mordan's office. *See* Acknowledgment of Receipt by Reckitt Benckiser (not dated) (annexed hereto within Exhibit O); Powell Aff. ¶ 7.

50. On January 21, 2009, after receiving no response from Reckitt Benckiser, Inc., Petitioners' attorney left a telephone message for Mr. Mordan seeking confirmation that Reckitt Benckiser, Inc. did not intend to file a report with the DEC as requested by Petitioners. Powell Aff. ¶ 15. Mr. Mordan did not respond to the message. *Id.*

Demand for Colgate-Palmolive to Comply with Part 659 Disclosure Requirements

51. On September 24, 2008, Petitioners mailed a certified letter, return receipt requested, to Ian M. Cook, CEO of Colgate-Palmolive, Inc. notifying him of the company's obligation to comply with 6 NYCRR Part 659's disclosure requirement and requesting that the company file the required reports within 30 days. *See* Letter to Ian M. Cook, Colgate-Palmolive, Inc., dated Sept. 24, 2008 ("Cook Letter," annexed hereto within Exhibit P, Colgate-Palmolive correspondence); Powell Aff. ¶ 7. A copy of the letter was sent to Colgate-Palmolive General Counsel Andrew D. Hendry. *See* Cook Letter. Petitioners' counsel received an acknowledgment of receipt from Mr. Cook's office. *See* Acknowledgment of Receipt by Colgate-Palmolive, dated Sept. 26, 2008 (annexed hereto within Exhibit P); Powell Aff. ¶ 7.

52. In a letter dated October 24, 2008, Colgate-Palmolive Associate General Counsel Clifford E. Wilkins informed Petitioners' attorneys that Colgate-Palmolive would not be filing a report with the DEC as requested by Petitioners. *See* Letter from Clifford E. Wilkins, dated Oct. 24, 2008 (annexed hereto within Exhibit P); Powell Aff. ¶ 16.

CAUSES OF ACTION

First Cause of Action: Procter & Gamble Violation of 6 NYCRR Section 659.6

53. Petitioners repeat and re-allege the allegations contained in paragraphs 1-17 and 21-45 above.

54. CPLR section 7803(1) authorizes a special proceeding in the nature of mandamus to be brought where a "body or officer failed to perform a duty enjoined upon it by law."

55. CPLR section 7802(a) defines "body or officer" as "every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article."

56. Procter & Gamble is a “corporation” and thus, is a “body or officer” under CPLR section 7802(a).

57. Under 6 NYCRR section 659.6, any “[m]anufacturer[] of household cleansing products distributed, sold or offered for sale in [New York State]” shall file a report with the DEC commissioner “semiannually or at such other times as may be required by the commissioner.” Such report must include all of the information specified in 6 NYCRR section 659.6(a), including, but not limited to, product ingredients, the nature and extent of investigations performed by or for the manufacturer concerning the effects on human health and the environment of such product or ingredients, and a statement that the product does not contain NTA in excess of a trace quantity. *See* 6 NYCRR § 659.6,

58. Procter & Gamble is a manufacturer of household cleansing products distributed, sold, or offered for sale in the State of New York and thus is subject to the disclosure requirements of 6 NYCRR section 659.6.

59. Procter & Gamble’s obligation to make the disclosures specified in 6 NYCRR section 659.6 can be enforced in an Article 78 proceeding because it is a “duty enjoined upon [Procter & Gamble] by law.” *See* CPLR § 7803(1).

60. Procter & Gamble has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 within the past year.

61. Upon information and belief, Procter & Gamble has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 in at least the past ten years.

62: Upon information and belief, more than ten years ago, Procter & Gamble filed one or more reports pursuant to 6 NYCRR section 659.6.

63. No report from Procter & Gamble containing the information specified in 6 NYCRR section 659.6 is on file with the DEC.

64. Upon information and belief, the DEC commissioner has not authorized Procter & Gamble to file its report pursuant to 6 NYCRR section 659.6 on a time frame different from semiannually.

65. Even after Petitioners notified Procter & Gamble that it is obligated to file a report with the DEC commissioner pursuant to 6 NYCRR section 659.6, Procter & Gamble failed to file such a report with the DEC commissioner.

66. Procter & Gamble is in violation of its non-discretionary duty to file a semiannual report with the DEC commissioner as required by 6 NYCRR section 659.6.

**Second Cause of Action: Church & Dwight Co., Inc.
Violation of 6 NYCRR Section 659.6**

67. Petitioners repeat and re-allege the allegations contained in paragraphs 1-16, 18, 21-41, and 46-48, above.

68. CPLR section 7803(1) authorizes a special proceeding in the nature of mandamus to be brought where a “body or officer failed to perform a duty enjoined upon it by law.”

69. CPLR section 7802(a) defines “body or officer” as “every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.”

70. Church & Dwight Co., Inc. is a “corporation” and thus, is a “body or officer” under CPLR section 7802(a).

71. Under 6 NYCRR section 659.6, any “[m]anufacturer[] of household cleansing products distributed, sold or offered for sale in [New York State]” shall file a report with the DEC commissioner “semiannually or at such other times as may be required by the

commissioner.” Such report must include all of the information specified in 6 NYCRR section 659.6(a), including, but not limited to, product ingredients, the nature and extent of investigations performed by or for the manufacturer concerning the effects on human health and the environment of such product or ingredients, and a statement that the product does not contain NTA in excess of a trace quantity. *See* 6 NYCRR § 659.6,

72. Church & Dwight Co., Inc. is a manufacturer of household cleansing products distributed, sold, or offered for sale in the State of New York and thus is subject to the disclosure requirements of 6 NYCRR section 659.6.

73. Church & Dwight Co., Inc.’s obligation to make the disclosures specified in 6 NYCRR section 659.6 can be enforced in an Article 78 proceeding because it is a “duty enjoined upon [Church & Dwight Co., Inc.] by law.” *See* CPLR § 7803(1).

74. Church & Dwight Co., Inc. has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 within the past year.

75. Upon information and belief, Church & Dwight Co., Inc. has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 in at least the past ten years.

76. Upon information and belief, Church & Dwight Co., Inc. never has filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6.

77. No report from Church & Dwight Co., Inc. containing the information specified in 6 NYCRR section 659.6 is on file with the DEC.

78. Upon information and belief, the DEC commissioner has not authorized Church & Dwight Co., Inc. to file its report pursuant to 6 NYCRR section 659.6 on a time frame different from semiannually.

79. Even after Petitioners notified Church & Dwight, Inc. that it is obligated to file a report with the DEC commissioner pursuant to 6 NYCRR section 659.6, Church & Dwight Co., Inc. failed to file such a report with the DEC commissioner.

80. Church & Dwight Co., Inc. is in violation of its non-discretionary duty to file a semiannual report with the DEC commissioner as required by 6 NYCRR section 659.6.

**Third Cause of Action: Reckitt Benckiser, Inc.
Violation of 6 NYCRR Section 659.6**

81. Petitioners repeat and re-allege the allegations contained in paragraphs 1-16, 19, 21-41, and 49-50, above.

82. CPLR section 7803(1) authorizes a special proceeding in the nature of mandamus to be brought where a “body or officer failed to perform a duty enjoined upon it by law.”

83. CPLR section 7802(a) defines “body or officer” as “every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.”

84. Reckitt Benckiser, Inc. is a “corporation” and thus, is a “body or officer” under CPLR section 7802(a).

85. Under 6 NYCRR section 659.6, any “[m]anufacturer[] of household cleansing products distributed, sold or offered for sale in [New York State]” shall file a report with the DEC commissioner “semiannually or at such other times as may be required by the commissioner.” Such report must include all of the information specified in 6 NYCRR section 659.6(a), including, but not limited to, product ingredients, the nature and extent of investigations performed by or for the manufacturer concerning the effects on human health and

the environment of such product or ingredients, and a statement that the product does not contain NTA in excess of a trace quantity. *See* 6 NYCRR § 659.6,

86. Reckitt Benckiser, Inc. is a manufacturer of household cleansing products distributed, sold, or offered for sale in the State of New York and thus is subject to the disclosure requirements of 6 NYCRR section 659.6.

87. Reckitt Benckiser, Inc.’s obligation to make the disclosures specified in 6 NYCRR section 659.6 can be enforced in an Article 78 proceeding because it is a “duty enjoined upon [Reckitt Benckiser, Inc.] by law.” *See* CPLR § 7803(1).

88. Reckitt Benckiser, Inc. has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 within the past year.

89. Upon information and belief, Reckitt Benckiser, Inc. has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 in at least the past ten years.

90. Upon information and belief, Reckitt Benckiser, Inc. never has filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6.

91. No report from Reckitt Benckiser, Inc. containing the information specified in 6 NYCRR section 659.6 is on file with the DEC.

92. Upon information and belief, the DEC commissioner has not authorized Reckitt Benckiser, Inc. to file its report pursuant to 6 NYCRR section 659.6 on a time frame different from semiannually.

93. Even after Petitioners notified Reckitt Benckiser, Inc. that it is obligated to file a report with the DEC commissioner pursuant to 6 NYCRR section 659.6, Reckitt Benckiser, Inc. failed to file such a report with the DEC commissioner.

94. Reckitt Benckiser, Inc. is in violation of its non-discretionary duty to file a semiannual report with the DEC commissioner as required by 6 NYCRR section 659.6.

**Fourth Cause of Action: Colgate-Palmolive, Inc.
Violation of 6 NYCRR Section 659.6**

95. Petitioners repeat and re-allege the allegations contained in paragraphs 1-16, 20-41, and 51-52, above.

96. CPLR section 7803(1) authorizes a special proceeding in the nature of mandamus to be brought where a “body or officer failed to perform a duty enjoined upon it by law.”

97. CPLR section 7802(a) defines “body or officer” as “every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.”

98. Colgate-Palmolive, Inc. is a “corporation” and thus, is a “body or officer” under CPLR section 7802(a).

99. Under 6 NYCRR section 659.6, any “[m]anufacturer[] of household cleansing products distributed, sold or offered for sale in [New York State]” shall file a report with the DEC commissioner “semiannually or at such other times as may be required by the commissioner.” Such report must include all of the information specified in 6 NYCRR section 659.6(a), including, but not limited to, product ingredients, the nature and extent of investigations performed by or for the manufacturer concerning the effects on human health and

the environment of such product or ingredients, and a statement that the product does not contain NTA in excess of a trace quantity. *See* 6 NYCRR § 659.6,

100. Colgate-Palmolive, Inc. is a manufacturer of household cleansing products distributed, sold, or offered for sale in the State of New York and thus is subject to the disclosure requirements of 6 NYCRR section 659.6.

101. Colgate-Palmolive, Inc.’s obligation to make the disclosures specified in 6 NYCRR section 659.6 can be enforced in an Article 78 proceeding because it is a “duty enjoined upon [Colgate-Palmolive, Inc.] by law.” *See* CPLR § 7803(1).

102. Colgate-Palmolive, Inc. has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 within the past year.

103. Upon information and belief, Colgate-Palmolive, Inc. has not filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6 in at least the past ten years.

104. Upon information and belief, Colgate-Palmolive, Inc. never has filed a report with the DEC commissioner pursuant to 6 NYCRR section 659.6.

105. No report from Colgate-Palmolive, Inc. containing the information specified in 6 NYCRR section 659.6 is on file with the DEC.

106. Upon information and belief, the DEC commissioner has not authorized Colgate-Palmolive to file its report pursuant to 6 NYCRR section 659.6 on a time frame different from semiannually.

107. Even after Petitioners notified Colgate-Palmolive, Inc. that it is obligated to file a report with the DEC commissioner pursuant to 6 NYCRR section 659.6, Colgate-Palmolive failed to file such a report with the DEC commissioner.

108. Colgate-Palmolive, Inc. is in violation of its non-discretionary duty to file a semiannual report with the DEC commissioner as required by 6 NYCRR section 659.6.

WHEREFORE, Petitioners respectfully request that this Court enter judgment against Respondents as follows:

- (i) declaring that Respondents have a non-discretionary duty to file semiannual reports with the DEC as specified in 6 NYCRR section 659.6;
 - (ii) ordering each Respondent to file a report with the DEC that fulfills the requirements of 6 NYCRR section 659.6 within 30 days;
 - (iii) awarding Petitioners attorneys' fees and the costs and disbursements of this proceeding;
- and
- (viii) granting such other and further relief as the Court deems just and proper.

Dated: February 9, 2009

EARTHJUSTICE, INC.

By: _____

Keri N. Powell
8 Whitehill Place
Cold Spring, NY 10516
(845) 265-2445

Deborah Goldberg
116 John St., Suite 3100
New York, NY 10038
(212) 791-1881

Attorneys for Petitioners