



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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CATHERINE R. McCABE
Acting Commissioner

SHEILA Y. OLIVER
Lt. Governor

**IN THE MATTER OF THE
GOLDDDEL OF MIDLAND PARK SITE
102 GODWIN AVENUE
MIDLAND PARK, BERGEN COUNTY
PROGRAM INTEREST NO. 020211**

AND

EBURY RE 2, LLC

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey ("Department" or "DEP") by N.J.S.A. 13:1D-1 through 19, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.11z ("Spill Act"), the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35, ("UST Act"), the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31 ("Brownfield Act"), and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), and duly delegated to the Assistant Director of the Enforcement and Information Support Element within the Site Remediation and Waste Management Program pursuant to N.J.S.A. 13:1B-4, and pursuant to the authority vested in the Administrator of the New Jersey Spill Compensation Fund ("Administrator") pursuant to the Spill Act.

FINDINGS

The Site

1. The Golddel of Midland Park site is located at 102 Godwin Avenue and is also known as Block 18, Lot 17 on the tax maps of the Borough of Midland Park, Bergen County, which the Department refers to as Site Remediation Program Interest Number 020211 ("Site"). The Site and all other areas to which any hazardous substance discharged on the Site has migrated shall hereinafter be referred to as the "Contaminated Site."

2. The Site has operated as a retail gasoline service center since at least 1953.

The Settling Party

3. Ebury RE 2, LLC ("Ebury") is a corporation with a business address of 41 Purdy Avenue #281, Rye, New York 10580.

4. On or about July 22, 2015, Ebury acquired title to the Site through a tax sale certificate foreclosure and therefore is a person in any way responsible for any hazardous substance discharged at the Site pursuant to the Spill Act, and a person responsible for conducting the remediation pursuant to SRRA, N.J.S.A. 58:10C-2.

Contamination

5. Discharges of hazardous substances, namely petroleum, from underground storage tanks (USTs) have been documented at the Site since at least 1990 (incident numbers 90-01-24-1638 and 12-06-27-1452-49), with significant discharges of gasoline to the storm sewer occurring in March 2011 (incident number 11-03-12-1319-02) and June 2013 (incident number 13-06-26-1122-03).

6. These discharges of hazardous substances have not been remediated as required by the Spill Act, UST Act and N.J.S.A. 58:10B-1.3.

The Department's Remediation Costs

7. On July 23, 2014, the Administrator filed a First Priority Lien (Docketed Judgment No. DJ-130981-14), in the amount of \$869,083.86, against the Site pursuant to the Spill Act, N.J.S.A. 58:10-23.11 f and/or g, for the Department's unreimbursed cleanup and removal costs incurred in connection with the Contaminated Site.

8. As of August 17, 2016, the Department has incurred \$1,313,898.38 in unreimbursed cleanup and removal costs in connection with the Contaminated Site.

Direct Oversight

9. Due to the missed mandatory remediation timeframes for submission of the site investigation report, completion of the light non-aqueous phase liquid ("LNAPL") remedial investigation and submission of the LNAPL interim remedial measure report, SRRA requires the Department to undertake direct oversight of the remediation of the Site pursuant to the requirements in N.J.S.A. 58:10C-27c and N.J.A.C. 7:26C-14.2(b).

10. On _____, Ebury retained a licensed site remediation professional for the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-14.2(b)1.

11. On _____, Ebury submitted to the Department a proposed public participation plan pursuant to N.J.A.C. 7:26C-14.2(b)9.

12. On _____, Ebury submitted to the Department an initial detailed cost review pursuant to N.J.A.C. 7:26C-14.2(b)4.

13. Based on Ebury's demonstrated compliance referenced in paragraphs 10 through 12 above, the Department finds that pursuant to N.J.A.C. 7:26C-14.4, it is in the public interest and protective of public health and safety and the environment to adjust certain direct oversight provisions as specifically outlined in paragraphs 14 and 29 below, provided Ebury remains in full compliance with this Administrative Consent Order.

14. The Department has agreed to adjust the requirement to establish a direct oversight remediation trust fund pursuant to N.J.A.C. 7:26C-14.2(b)5, and will instead allow any type of remediation funding source, except a self-guarantee, specified in N.J.A.C. 7:26C-5.

15. On _____, Ebury established a remediation funding source in the form of a _____ (select either letter of credit, line of credit, environmental insurance policy or a remediation trust fund) in the amount of \$_____ pursuant to N.J.A.C. 7:26C-5 and paragraph 14 above.

16. On _____, Ebury submitted the 1 percent annual remediation funding source surcharge in the amount of \$_____ pursuant to N.J.A.C. 7:26C-14.2(b)6.

17. On _____, Ebury paid all outstanding fees and oversight costs in the amount of \$3,775.

Settlement

18. Without any admission of fact, fault, or liability, Ebury agrees to remediate, all hazardous substances, hazardous wastes, and pollutants discharged at the Site.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

Payment of Past Penalty and Cleanup and Removal Costs

19. Ebury shall pay the Department a total of \$200,000 in satisfaction of the Department's past penalty and unreimbursed cleanup and removal costs as follows:

a. Ebury shall pay \$50,000 within 30 days after the Effective Date of this Administrative Consent Order; and

b. Ebury shall pay the remaining \$150,000 upon the earliest of: issuance of an entire site remedial action outcome; entry into a contract of sale for the Site and conveyance of title to the Site to a third party; or three years after the Effective Date of this Administrative Consent Order.

c. Nothing set forth herein shall restrict the sale of the Site nor restrict the operation of the Site consistent with applicable law.

20. Ebury shall pay the amounts specified in Paragraph 19 above by check made payable to "Treasurer, State of New Jersey" and shall mail the payment and invoice remittance stub to the address on the invoice. In addition, Ebury shall mail or otherwise deliver a copy of the check and invoice remittance stub to Kevin F. Kratina, Assistant Director, Enforcement & Information Support Element, Site Remediation and Waste Management Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey 08625-0420 and the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard Hughes Justice Complex, P.O. Box 093, 25 Market Street, 7th Floor, West Wing, Trenton, NJ 08625-0093.

Remediation

21. Ebury shall remediate the Contaminated Site, including all discharges at the Site discovered during the remediation as the Department directs, pursuant to N.J.A.C. 7:26C-14.2(b)1, and according to this Administrative Consent Order, the Brownfield Act, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

22. Ebury shall maintain a licensed site remediation professional for the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-14.2(b)1.

23. Ebury shall ensure that each licensed site remediation professional involved in the remediation of the Contaminated Site makes all submissions concerning the remediation simultaneously to the Department and to Ebury, pursuant to N.J.A.C. 7:26C-14.2(b)8.

24. Upon receipt of the Department's written approval of the public participation plan, Ebury shall implement the public participation plan according to the Department's approved schedule, pursuant to N.J.A.C. 7:26C-14.2(b)10.

25. Within 30 Days after the Effective Date of this Administrative Consent Order, Ebury shall submit to the Department the Confirmed Discharge Notification forms for both incident number 12-06-27-1452-49 and incident number 13-01-31-1630-06.

26. By May 30, 2018, with no extension, Ebury shall submit to the Department a LNAPL interim remedial measure report, pursuant to N.J.A.C. 7:26E-1.10, based upon a remedial investigation for the delineation of LNAPL for the Contaminated Site conducted pursuant to N.J.A.C. 7:26E-1.10.

27. By June 22, 2018, with no extension, Ebury shall submit to the Department a site investigation report, pursuant to N.J.A.C. 7:26E-3.13, based upon a site investigation of the former UST locations conducted pursuant to N.J.A.C. 7:26E-3.3.

28. By March 10, 2019, Ebury shall submit to the Department a remedial investigation report, pursuant to N.J.A.C. 7:26E-4.9, based upon a remedial investigation of the Contaminated Site conducted pursuant to N.J.A.C. 7:26E-4.

29. If Ebury has submitted the remedial investigation report in compliance with Paragraph 28, Ebury may comply with the following adjustments to the direct oversight requirements in N.J.A.C. 7:26C-14.2(b):

- a. Proceed with the remediation without prior Department approval;
- b. Pay annual remediation fees pursuant to N.J.A.C. 7:26C-4.3(a), in lieu of the direct oversight fees;
- c. Ebury does not have to submit a feasibility study to the Department; and
- d. Ebury may select the protective remedial actions for the Contaminated Site pursuant to N.J.A.C. 7:26C and N.J.A.C. 7:26E.

30. However, if the Department determines, in its sole discretion, that Ebury has: 1) failed to submit the remedial investigation report in compliance with the requirements of paragraph 28, 2) failed to comply with any provision of this Administrative Consent Order, or 3) the Department has determined that the remedial investigation is not complete, then the Department will provide written notice of its determination to Ebury.

31. Upon Ebury's receipt of the written notice from the Department described in paragraph 30, Ebury shall proceed with the remediation as the Department directs, pursuant to N.J.A.C. 7:26C-14.2(b)1, and the following:

a. Within 30 days after receipt of the Department's written notice described in paragraph 30, Ebury shall replace any existing remediation funding source with, or otherwise establish and maintain, a remediation trust fund pursuant to N.J.A.C. 7:26C-14.2(b)5, in the full amount of the most recent LSRP-certified cost of remediation or as the Department otherwise directs;

b. Ebury shall not make any disbursements from the remediation trust fund without the Department's prior written approval, pursuant to N.J.A.C. 7:26C-14.2(b)7;

c. Within 60 days after receipt of the Department's written notice described in paragraph 30, Ebury shall submit to the Department a feasibility study of potential alternatives for each area of concern at the Site, as the Department directs and pursuant to N.J.A.C. 7:26C-14.2(b)2 and U.S. Environmental Protection Agency, "The Feasibility Study: Detailed Analysis of Remedial Action Alternatives," (March 1990) OSWER 9355.3-01FS4, NTIS: PB90-272675INX; and

d. Ebury shall, as the Department directs, implement each remedial action at the Contaminated Site, pursuant to N.J.A.C. 7:26C-14.2(b)3.

32. By March 9, 2022, Ebury shall complete the implementation of all remedial actions for the Contaminated Site selected pursuant to either paragraph 29(d) or paragraph 31(d), as applicable.

33. By March 9, 2022, Ebury shall submit to the Department a remedial action report, pursuant to N.J.A.C. 7:26E-5.7, based upon the implementation of remedial actions at the Contaminated Site in accordance with N.J.A.C. 7:26C and N.J.A.C. 7:26E, selected pursuant to either paragraph 29(d) or paragraph 31(d), as applicable.

Annual Remediation Fees and Oversight Costs

34. Ebury shall pay, by the due date printed on the invoice, annual remediation fees and/or oversight costs, pursuant to N.J.A.C. 7:26C-4.9 and paragraph 29(b), as applicable. Payment shall be made by mail to the address listed on the invoice.

Remediation Funding Source and Annual Surcharge

35. Ebury shall submit annually to the Department, by (date in ¶12) of each year, a LSRP-certified detailed remediation cost review along with the Remediation Cost Review and RFS/FA form, pursuant to N.J.A.C. 7:26C-14.2(b)4 and N.J.A.C. 7:26C-5.10.

36. Ebury shall maintain a remediation funding source in the form allowed by paragraph 14 or paragraph 31(a), as applicable, in an amount equal to the LSRP-certified detailed remediation cost review referenced in paragraph 35.

37. Ebury shall pay, by the due date printed on the invoice, the annual one percent remediation funding source surcharge, pursuant to N.J.A.C. 7:26C-14.2(b)6. Payment shall be mailed to the address listed on the invoice.

The Department's Covenants

38. Upon receipt of the full payment Ebury is making pursuant to paragraph 19 above, the Department will promptly file a Warrant of Satisfaction with the Clerk of the Superior Court for the First Priority Lien (Docketed Judgment No. DJ-130981-14) filed against the Site.

39. In consideration of the payment Ebury is making pursuant to paragraph 19 above, and contingent on the satisfaction of all obligations imposed upon Ebury by this Administrative Consent Order, the Department covenants not to sue and agrees not to otherwise take administrative action of any kind against Ebury for cleanup and removal costs incurred by the Department in connection with the Site prior to the Effective Date of this Administrative Consent Order.

Contribution Protection

40. This Administrative Consent Order, when fully executed, will constitute an administrative settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C. § 9613(f)(2) for the purpose of providing protection to Ebury from contribution actions for the matters addressed in this Administrative Consent Order, which are past cleanup and removal costs. Ebury is entitled, upon fully satisfying its obligations under this Administrative Consent Order, to protection from contribution actions or claims for the matters addressed in this Administrative Consent Order.

41. In accordance with N.J.S.A. 58:10-23.11e2, on _____ the Department published notice of this Administrative Consent Order in the New Jersey Register and on the Department's website, and arranged for notice, as described in the following paragraph, to other potentially responsible parties. Such notice included the following information:

- a. the caption of this matter;
- b. the name and location of the Site;
- c. the name of the settling party;
- d. a summary of the terms of this Administrative Consent Order; and
- e. that there are 60 days to comment on the proposed Administrative Consent Order.

42. The Department, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Administrative Consent Order to all other potentially responsible parties of whom the Department had notice as of the date the Department published notice of the proposed

Administrative Consent Order in this matter in the New Jersey Register in accordance with paragraph 41 above.

43. At the end of the 60-day comment period required under N.J.S.A. 58:10-23.11e2, the Department will sign this Administrative Consent Order unless, as a result of the notice of this Administrative Consent Order pursuant to paragraphs 41 and 42, the Department receives information that discloses facts or considerations that indicate to them, in their sole discretion, that the Administrative Consent Order is inappropriate, improper or inadequate.

Stipulated Penalties and Other Enforcement

44. Ebury shall pay stipulated penalties in the amount of \$1,000 per day to the Department for failure to comply with any provision of this Administrative Consent Order.

45. Stipulated penalties shall begin to accrue on the first calendar day after the applicable due date or noncompliance, and not at the time the Department gives notice of the violation or non-compliance to Ebury or issues a demand for stipulated penalties. Stipulated penalties shall continue to accrue through the final day of correction of the violation or non-compliance. The Department does not have to provide notice of the violation or non-compliance for the stipulated penalties to begin to accrue.

46. Within 30 days after Ebury's receipt of a written demand from the Department for stipulated penalties, Ebury shall submit a check made payable to "Treasurer, State of New Jersey," along with the invoice remittance stub, to the Division of Revenue at the address stated on the invoice. Ebury shall simultaneously mail a photocopy of the check and the invoice remittance stub to: Kevin F. Kratina, Assistant Director, Enforcement & Information Support Element, Site Remediation and Waste Management Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey 08625-0420.

47. The payment of stipulated penalties does not alter Ebury's responsibility to complete all requirements of this Administrative Consent Order.

48. If Ebury does not comply with any part of this Administrative Consent Order, including without limitation, any failure to pay stipulated penalties, the Department may take any action it is authorized to take, including without limitation, issuing an administrative order, assessing a civil administrative penalty, filing an action in the Superior Court of New Jersey, enforcing this Administrative Consent Order as an order issued by the Department pursuant to the Spill Act, issuing a Spill Act directive, and/or conducting the remediation itself and recovering three times the Department's costs, and taking any other action.

49. This Administrative Consent Order shall be fully enforceable in the Superior Court of New Jersey as a Final Order upon the filing of a summary action for compliance pursuant to R. 4:67-1, et seq. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act.

50. The Department's removal of any direct oversight adjustments in this Administrative Consent Order shall not limit the Department from taking any other action for Ebury's violation or non-compliance with any provision of this Administrative Consent Order.

51. Notwithstanding any other provision of this Administrative Consent Order, the Department reserves all rights to take any action against Ebury should the Department determine that Ebury has failed to comply with this, or any other, Administrative Consent Order.

General Provisions

52. Ebury shall make all submissions required by this Administrative Consent Order to the Department at the address listed in N.J.A.C. 7:26C-1.6(a), except as otherwise indicated in this Administrative Consent Order.

53. In addition to the Department's statutory and regulatory rights to enter and inspect the Site, Ebury agrees to allow the Department and its authorized representatives access to the Site at all times for the purpose of monitoring Ebury's compliance with this Administrative Consent Order and for the Department to perform any remediation necessary to protect the public health and safety and the environment.

54. Ebury agrees to stop conducting all or part of the remediation of the Site under this Administrative Consent Order upon receipt of written notice from the Department that the Department has decided to complete all or part of the remediation itself in order to protect the public health and safety and the environment.

55. The Department reserves and this Administrative Consent Order is without prejudice to, all rights against Ebury concerning all other matters.

56. Nothing in this Administrative Consent Order shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the laws of the State of New Jersey.

57. Nothing in this Administrative Consent Order shall restrict the ability of the Department to raise or make the above findings in any other proceeding.

58. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.

59. Ebury assigns to the Department all rights, including any right to contribution, cost recovery, claims, demands, and causes of action under statutory or common law that Ebury may have concerning any matter, transaction, or occurrence concerning the Site against any person not a party to this Administrative Consent Order.

60. Ebury consents to entry of this Administrative Consent Order and waives its right to request an administrative hearing concerning the terms of this Administrative Consent Order pursuant to N.J.A.C. 7:26C-9.10. Ebury also waives its right to request an administrative hearing concerning the triggering of Stipulated Penalties or the Department's removal of any direct oversight adjustments.

61. Ebury agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, (b) the terms or conditions hereof, except that Ebury does not waive its right to contest the interpretation or application of such terms and

conditions in an action or proceeding brought by the Department to enforce this Administrative Consent Order.

62. This Administrative Consent Order shall be binding on Ebury and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity, of Ebury.

63. Each undersigned representative of Ebury and the Department certifies that he or she is authorized to enter into this Administrative Consent Order, and to execute and legally bind each party to this Administrative Consent Order.

64. This Administrative Consent Order may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Administrative Consent Order.

65. The Effective Date of this Administrative Consent Order shall be the date that both Ebury and the Department have executed this Administrative Consent Order.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: _____ By: _____
David E. Haymes, Administrator
New Jersey Spill Compensation Fund

Date: _____ By: _____
Kevin F. Kratina, Assistant Director
Enforcement and Information Support Element

Ebury RE 2, LLC

Date: _____ By: _____
Printed Name: John Hanratty
Printed Title: _____