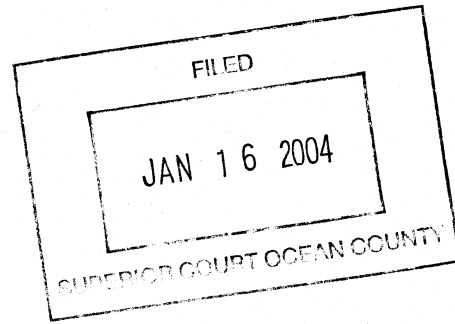


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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - OCEAN COUNTY
DOCKET NO.

Den C18-04

: STATE OF NEW JERSEY, :
: DEPARTMENT OF ENVIRON- :
: MENTAL PROTECTION, and :
: ADMINISTRATOR, :
: NEW JERSEY SPILL :
: COMPENSATION FUND, :
: Plaintiffs, :
: v. :
: RUSSO FUEL, INC.; :
: ROBERT M. RUSSO; :
: PATRICIA A. RUSSO; and :
: R.M.R. PROPERTIES, INC., :
: Defendants. :
_____ :

CIVIL ACTION

COMPLAINT

Plaintiffs State of New Jersey, Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against defendants Russo Fuel, Inc., Robert M. Russo, Patricia A. Russo, and R.M.R. Properties, Inc. say:

NATURE OF THE ACTION

1. This is a civil action brought by the State of New Jersey, Department of Environmental Protection ("Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator"), pursuant to the Department's enabling legislation, N.J.S.A. 13:1D-1 to 19, the Underground Storage of Hazardous Substances Act ("Underground Storage Tank Act"), N.J.S.A. 58:10A-21 to -37, and the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, concerning five properties, seeking an Order for injunctive relief: (1) compelling defendants to close their underground storage tanks that have not been upgraded according to law; (2) compelling defendants to clean up and remove discharges where necessary, including the assessment of natural resource injuries and performance of compensatory restoration; (3) assessing maximum statutory penalties for violation of these statutes and the regulations promulgated pursuant thereto; and (4) enjoining defendants from operating any business at these properties with underground storage tanks that are not in compliance with the Underground Storage Tank Act.

THE PARTIES

2. Plaintiff Department is a principal agency within the executive branch of the State government vested with the authority to conserve natural resources, protect the environment, prevent

pollution, and protect the public health and safety. N.J.S.A.
13:1D-9.

3. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c and d, and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

4. Defendant Russo Fuel, Inc. is a corporation, organized under the laws of the State of New Jersey, with a principal place of business located at 11 Letts Avenue, Manahawkin, New Jersey 08050.

5. Defendant Robert M. Russo is an individual whose dwelling or usual place of abode is located at 69 North Lakeshore Drive, Manahawkin, New Jersey 08050.

6. Defendant Patricia A. Russo is an individual whose dwelling or usual place of abode is located at 69 North Lakeshore Drive, Manahawkin, New Jersey 08050.

7. Defendant R.M.R. Properties, Inc. is a corporation, organized under the laws of the State of New Jersey, with a registered agent/office address of 326 W. Stevens Avenue, Wyckoff, New Jersey 07481.

THE PROPERTIES

8. The gasoline service station known as Mr. Big Texaco is located at 379 West Eighth Street, Borough of Ship Bottom, Ocean County, New Jersey ("Ship Bottom Site"). The Ship Bottom Site consists of real property being also known and designated as Block 110, Lot 18 on the Tax Map of the Borough of Ship Bottom.

9. The gasoline service station known as Mike's Automotive Center, a/k/a Russo Service Station - Hilliard, is located at the intersection of Route 9 and Hilliard Avenue with a street address of 429 North Main Street, Stafford Township, Ocean County, New Jersey ("Hilliard Site"). The Hilliard Site consists of real property being also known and designated as Block 296, Lot 107 on the Tax Map of Stafford Township.

10. The gasoline service station known as Tuckerton Exxon is located at 109 East Main Street, Borough of Tuckerton, Ocean County, New Jersey ("Tuckerton Site"). The Tuckerton Site consists of real property being also known and designated as Block 48, Lot 19 on the Tax Map of the Borough of Tuckerton.

11. The gasoline service station known as Russo Fuel, Inc. is located at 82 East Bay Avenue, Stafford Township, Ocean County, New Jersey ("82 Bay Site"). The 82 Bay Site consists of real property being also known and designated as Block 231, Lot 4 on the Tax Map of Stafford Township.

12. The gasoline service station known as Parkertown BP is located at the intersection of Route 9 and Bay Avenue with a street address of 802 Route 9 North, Little Egg Harbor Township, Ocean County, New Jersey ("Parkertown Site"). The Parkertown Site consists of real property being also known and designated as Block 175, Lots 1 and 29 on the Tax Map of Little Egg Harbor Township.

STATUTORY FRAMEWORK

a. The Underground Storage Tank Act

13. In 1986, the New Jersey Legislature enacted the Underground Storage Tank Act, N.J.S.A. 58:10A-21 to -37, to specifically address the substantial threat to the environment and the public health, safety and welfare posed by the discharge of petroleum products and other hazardous substances from underground storage tanks, as that term is defined at N.J.S.A. 58:10A-22p. A significant percentage of these underground storage tanks leak due to corrosion, improper installation, closure, or structural defect and such leakage of hazardous substances is among the most common causes of groundwater pollution in the State. N.J.S.A. 58:10A-21.

14. The Underground Storage Tank Act established a deadline of December 22, 1998 for owners and operators to upgrade their underground storage tanks to include spill and overfill protection and corrosion protection. N.J.S.A. 58:10A-29; N.J.A.C. 7:14B-4.5.

15. The Underground Storage Tank Act requires the owner or operator to register each underground storage tank and also to test and monitor each tank and piping regularly to detect leaks into secondary containment and discharges into the environment, and thus minimize degradation of the natural resources of the State. N.J.S.A. 58:10A-21; N.J.A.C. 7:14B-6.

16. No person or business firm shall introduce hazardous substances into a regulated underground storage tank system which is known to be or suspected to be leaking or discharging hazardous substances and/or is not properly registered with the Department pursuant to N.J.A.C. 7:14B-2.1. N.J.A.C. 7:14B-8.1(a)2ii.

17. The Department has promulgated regulations pursuant to the Underground Storage Tank Act that require the owner and operator to fill out an Underground Storage Tank Facility Certification Questionnaire ("UST Questionnaire") that details the number and type of tank systems at the facility, including contents, size, age, type of construction and other characteristics of the tank system, and to provide the Department with notification of any changes to the status of the facility, specific information concerning transfer of ownership, abandonment or removal, substantial modifications, and all information relevant to the compliance of the tank systems with the law. N.J.A.C. 7:14B-2.2.

18. The Underground Storage Tank Facility Certification Questionnaire includes a certification under penalty of law that

the person filling it out has personally examined and is familiar with the information submitted and that it is true and complete. The Department cannot inspect each tank itself and must be able to rely on the information provided by the owner or operator.

19. Any person who owns or operates an underground storage tank system may only use such tank system upon receipt of a valid Registration Certification issued by the Department. N.J.S.A. 58:10A-23; N.J.A.C. 7:14B-2.1(c).

20. An owner and operator of a regulated underground storage tank must either come into compliance with N.J.A.C. 7:14B-4.5 by upgrading the underground storage tank system or cease operation of all underground storage tanks that have not been upgraded and properly close them pursuant to N.J.A.C. 7:14B-9.1 to -9.5.

21. An owner or operator of an underground storage tank proposing to replace, install, expand or substantially modify the tank may only do so in compliance with a valid permit issued by the Department. N.J.S.A. 58:10A-24; N.J.S.A. 58:10A-29; N.J.A.C. 7:14B-10.1.

22. Services performed on an underground storage tank including, but not limited to, tank testing, tank installation, tank removal, tank repair, installation of monitoring systems, and subsurface evaluations for corrective action, closure, and corrosivity, are prohibited except in conformance with the

provisions of the Underground Storage Tank Act. N.J.S.A. 58:10A-24.1.

23. The Underground Storage Tank Act authorizes the Department to assess penalties against a violator of this Act pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-32; N.J.S.A. 58:10A-10.

24. The Underground Storage Tank Act authorizes the Department to assess penalties against a violator of this Act for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the costs of preparing and litigating the case in Superior Court in addition to the cost incurred by the State in removing, correcting or terminating the adverse effects resulting from a discharge of pollutants from an underground storage tank system. N.J.S.A. 58:10A-10c(2).

25. The Underground Storage Tank Act authorizes the Department to assess penalties against a violator of this Act for any reasonable cost incurred by the State in removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the civil action was brought. N.J.S.A. 58:10A-10c(3).

26. The Underground Storage Tank Act authorizes the Department to assess against a violator of this Act compensatory damages for any loss or destruction of wildlife, fish or aquatic

life, or other natural resources, and for any other actual damages caused by an unauthorized discharge. N.J.S.A. 58:10A-10c(4).

27. The Underground Storage Tank Act authorizes the Department to assess against a violator of this Act the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation. N.J.S.A. 58:10A-10c(5).

28. If a person violates any of the provisions of the Underground Storage Tank Act, or any rule or regulation adopted thereunder, the Department may institute a civil action for injunctive or other appropriate relief to prohibit and prevent the violation. N.J.S.A. 58:10A-24.5a.

29. Pursuant to the Underground Storage Tank Act, N.J.S.A. 58:10A-28, and the regulations promulgated thereunder, N.J.A.C. 7:14B-8, the owner or operator of an underground storage tank system shall, upon confirming a discharge, take immediate action including, but not limited to, determining the source of the discharge, cease use of the underground storage tank system, comply with all reporting requirements set forth at N.J.A.C. 7:14B-7.3, and submit to the Department all documentation required by N.J.A.C.

7:14B-8.3 and the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E. An owner or operator closing or removing underground storage tanks must also sample the soil for contamination, using a properly certified contractor. N.J.A.C. 7:14B-9.

30. Any person who violates the provisions of the Underground Storage Tank Act, or a court order issued pursuant to it, or who fails to make a payment pursuant to a payment schedule entered into with the Department, is liable for a civil penalty of not more than \$50,000 per day of such violation, and each day's continuance of such violation shall constitute an additional, separate, and distinct violation. N.J.S.A. 58:10A-10.

31. The Underground Storage Tank Act sets forth financial responsibility assurance requirements for owners and operators of underground storage tank systems for the purpose of remediation and for compensating third parties for bodily injury and property damage as a result of a discharge from an underground storage tank system. N.J.A.C. 7:14B-15.

32. Pursuant to N.J.S.A. 58:10A-10, N.J.S.A. 58:10A-32 and R. 4:70, the Department is authorized to institute civil proceedings for injunctive or such other appropriate relief to prohibit and prevent violations of the Underground Storage Tank Act.

b. The Spill Act

33. In 1976, the New Jersey Legislature enacted the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.14, to specifically address the threat to the economy and environment of this State resulting from the discharge of petroleum products and other hazardous substances. N.J.S.A. 58:10-23.11a.

34. When the Spill Act was enacted, it was the intent of the New Jersey Legislature to exercise the powers of this State to control the transfer and storage of hazardous substances, and to provide liability for damages sustained within this State as a result of any discharge of hazardous substances. N.J.S.A. 58:10-23.11a.

35. The Spill Act, and the regulations that the Department promulgated pursuant thereto, N.J.A.C. 7:1E, prohibit the discharge of petroleum and other hazardous substances, N.J.S.A. 58:10-23.11c, and require any person who may be liable for a discharge to immediately report the discharge to the Department, N.J.S.A. 58:10-23.11e and N.J.A.C. 7:1E-5.

36. Any person in any way responsible for a hazardous substance that is discharged is strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs. N.J.S.A. 58:10-23.11g.c(1).

37. Any person who is responsible for a discharge shall take immediate action to stop the discharge and take all necessary and

appropriate measures to contain, mitigate, clean up and remove the discharge. N.J.A.C. 7:1E-5.7(a).

38. Upon learning that a discharge of a hazardous substance has occurred, the Department may act to contain, mitigate, clean up and remove the discharge or take any other action to require any person responsible for the discharge to clean up and remove the discharge pursuant to the Department's regulations known as the Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. N.J.A.C. 7:1E-5.7.

39. Pursuant to N.J.S.A. 58:10-23.11u.a(1)(a) and N.J.S.A. 58:10-23.11u.b, the Department may bring an action in the Superior Court for the cost of any investigation, cleanup and removal, and for reasonable costs or preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b(2); for the costs of restoring, repairing, or replacing real or personal property damaged or destroyed by a discharge from the time the property is damaged to the time it is restored, N.J.S.A. 58:10-23.11u.b(3); for the cost of restoration and replacement of any natural resource damaged or destroyed by a discharge, N.J.S.A. 58:10-23.11u.b(4); and for any other unreimbursed costs the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b(5).

40. Pursuant to N.J.S.A. 58:10-23.11q, the Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

41. Any person who violates a provision of the Spill Act is subject to civil penalty not to exceed \$50,000.00 per day for each violation, and each day that a violation continues is an additional, separate, and distinct violation. N.J.S.A. 58:10-23.11u.d.

c. The Brownfield and Contaminated Site Remediation Act

42. In 1998, the New Jersey Legislature enacted the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31, to specifically ensure that the public health and safety and the environment are protected from the risks posed by contaminated sites and that strict standards, coupled with a risk based and flexible regulatory system, will result in more cleanups and thus the elimination of the public's exposure to these hazardous substances and the environmental degradation that contamination causes. N.J.S.A. 58:10B-1.2.

43. Any person who is responsible for a discharge is subject to establishing and maintaining a remediation funding source in the amount necessary to pay the estimated cost of the required remediation. N.J.S.A. 58:10B-3a. Every person who is required to establish a remediation funding source, other than those persons

who are self-guaranteed, is required to pay, on an annual basis, a surcharge in an amount equal to 1 percent of the amount of the remediation funding source required to be maintained. N.J.S.A. 58:10B-11a.

FIRST COUNT

44. Plaintiffs Department and Administrator repeat each and every allegation of paragraphs 1 through 43 as though fully set forth in its entirety herein.

45. Defendant Russo Fuel, Inc., has owned the real property comprising the Ship Bottom Site from July 27, 1984 to the present.

46. Defendant Robert M. Russo has owned an underground storage tank system at the Ship Bottom Site, NJDEP Registration Number 022627, from 1988 to the present.

47. Defendant Robert M. Russo has operated an underground storage tank system at the Ship Bottom Site, NJDEP Registration Number 022627, from 1988 to the present.

48. On May 8, 2000, the Department conducted an inspection of the Ship Bottom Site and discovered the violations outlined in paragraphs 49 through 53 below.

49. The Department discovered that the information submitted by defendant Robert M. Russo to the Department in the March 2, 1988 UST Questionnaire did not correspond with what the Department found upon inspecting the Ship Bottom Site. This discrepancy is a

violation of N.J.A.C. 7:14B-2.4. Defendant Robert M. Russo submitted false information to the Department concerning his compliance with the law and certified that information to be true under penalty of law.

50. Defendants Russo Fuel, Inc. and Robert M. Russo failed to perform release detection monitoring as required by N.J.A.C. 7:14B-6.1(a), failed to keep release detection monitoring records in violation of N.J.A.C. 7:14B-6.7(e), and failed to keep a release response plan in violation of N.J.A.C. 7:14B-5.5.

51. Defendants Russo Fuel, Inc. and Robert M. Russo failed to mark fill ports for one diesel tank in accordance with the American Petroleum Institute Code in violation of N.J.A.C. 7:14B-5.8.

52. Defendants Russo Fuel, Inc. and Robert M. Russo failed to provide corrosion protection for some tanks in violation of N.J.S.A. 58:10A-24 and N.J.A.C. 7:14B-4.1(a)ii or 4.2(b).

53. Defendants Russo Fuel, Inc. and Robert M. Russo failed to provide overfill protection for the diesel tank in violation of N.J.A.C. 7:14B-4.1(a)3ii or 4.2(d). Defendants Russo Fuel, Inc. and Robert M. Russo also failed to provide a spill bucket for this diesel tank, in violation of N.J.A.C. 7:14B-4.1(a)3i or 4.2(d).

54. On May 8, 2000, the Department issued a Notice of Violation to defendants Russo Fuel, Inc. and Robert M. Russo for violations of N.J.S.A. 58:10A-21 through -37 and N.J.A.C. 7:14B as described in paragraphs 49 through 53 above.

55. On June 24, 2002, the Department issued a Notice of Violation to defendant Robert M. Russo directing defendant Robert M. Russo to correct all the violations that were noted during the May 8, 2000 inspection, and to notify the Department, in writing, about all actions that were taken to correct the violations.

56. In addition, the Department found that the diesel underground storage tank present at the Ship Bottom Site had been out of service since the start of 2002 without proper closure, in violation of N.J.A.C. 7:14B-9.1(d). The Department advised defendant Robert M. Russo to continue release detection monitoring and cathodic testing for six months, as required by N.J.A.C. 7:14B-6.1(a), or close the out of service underground storage tank, as required by N.J.A.C. 7:14B-9.1(d).

57. Defendants Russo Fuel, Inc. and Robert M. Russo had gasoline present in an underground storage system spill bucket, in violation of N.J.A.C. 7:14B-4.1(a)3i or 4.2(d).

58. The Department further advised defendant Robert M. Russo to immediately install a line leak detector for the premium gasoline underground storage tank, as required by N.J.A.C. 7:14B-6.2(a)2i(1).

59. Defendants Russo Fuel, Inc. and Robert M. Russo did not correct the violations as described in paragraphs 49 through 53 and 56 through 58 above.

60. On February 25, 2003, the Department confirmed that defendants Russo Fuel, Inc. and Robert M. Russo voluntarily ceased operation of the gasoline service station at the Ship Bottom Site.

61. On March 24, 2003, the Department instituted a delivery ban that prohibits anyone from introducing hazardous substances into the 6,000 gallon diesel underground storage tank system at the Ship Bottom Site, pursuant to N.J.A.C. 7:14B-1.8.

62. On February 25, 2003, hazardous substances, as defined in N.J.S.A. 58:10-23.11b, were discharged at the Ship Bottom Site within the meaning of N.J.S.A. 58:10-23.11b.

63. As persons responsible for hazardous substances that were discharged at the Ship Bottom Site, defendants Robert M. Russo and Russo Fuel, Inc. are strictly liable, jointly and severally, without regard to fault, for all costs plaintiffs Department and Administrator have incurred, and will incur, to clean up and remove the discharge at the Ship Bottom Site. N.J.S.A. 58:10-23.11.g.c(1).

64. The costs and damages plaintiffs Department and Administrator have incurred, and will incur, for the Ship Bottom Site are cleanup and removal costs within the meaning of N.J.S.A. 58:10-23.11b.

WHEREFORE, plaintiffs State of New Jersey, Department of Environmental Protection ("Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") pray that

this Court grant judgment against defendants Russo Fuel, Inc. and Robert M. Russo as follows:

a. Ordering defendants to continue the closed status of the gasoline service station until the Department informs the Court that defendants are in full compliance with all regulatory requirements of the Underground Storage of Hazardous Substances Act, including, without limitation, with the underground storage tanks financial responsibility requirements of N.J.A.C. 7:14B-15;

b. Ordering defendants, jointly and severally, without regard to fault, to reimburse plaintiffs Department and Administrator for all cleanup and removal costs the plaintiffs have incurred for the Ship Bottom Site, with applicable interest;

c. Entering declaratory judgment against defendants, jointly and severally, without regard to fault, for any cleanup and removal costs plaintiffs Department and Administrator may incur for the Ship Bottom Site;

d. Compelling defendants to clean up and remove all discharges at the Ship Bottom Site, including, without limitation, assessing all natural resource injuries and implementing compensatory restoration remedial actions for all natural resources injured by those discharges;

e. Compelling defendants to establish and maintain a remediation funding source and pay a 1 percent annual surcharge for the estimated cost of the remediation;

f. Awarding plaintiff Department maximum statutory penalties under both the Underground Storage of Hazardous Substances Act and the Spill Compensation and Control Act;

g. Entering declaratory judgment against defendants, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs and compensatory restoration remedial actions, plaintiffs Department and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Ship Bottom Site;

h. Awarding plaintiffs Department and Administrator their costs and fees in this action; and

i. Awarding plaintiffs Department and Administrator such other relief as this Court deems appropriate.

SECOND COUNT

65. Plaintiffs Department and Administrator repeat each and every allegation of paragraphs 1 through 43 above as though fully set forth in its entirety herein.

66. Defendant R.M.R. Properties, Inc. has owned the real property comprising the Hilliard Site from August 13, 1998 to the present.

67. Defendant R.M.R. Properties, Inc. has owned an underground storage tank system at the Hilliard Site, NJDEP Registration Number 0236577, from 2000 to the present.

68. Defendant Russo Fuel, Inc. has owned an underground storage tank system at the Hilliard Site, NJDEP Registration Number 0236577, from 1992 to the present.

69. Defendant Robert M. Russo has operated an underground storage tank system at the Hilliard Site, NJDEP Registration Number 0236577, from 1992 to the present.

70. On April 6, 1998, the Department conducted an inspection of the Hilliard Site and discovered the violations outlined in paragraphs 71 through 75 below.

71. The Department discovered that the information submitted by defendants Russo Fuel, Inc. and Robert M. Russo in the UST Questionnaire dated May 28, 1992 did not correspond with what the Department found upon inspecting the site, which is a violation of N.J.A.C. 7:14B-2.4. Defendants Russo Fuel, Inc. and Robert M. Russo submitted false information to the Department concerning the site's compliance with the law and certified that information to be true under penalty of law.

72. The Department discovered liquid/free product present in a spill bucket, in violation of N.J.A.C. 7:14B-4.1(a)3i or 4.2(d).

73. Defendants R.M.R. Properties, Inc., Russo Fuel, Inc. and Robert M. Russo failed to perform release detection monitoring on underground storage tanks in violation of N.J.A.C. 7:14B-6.1(a) and failed to investigate a suspected release in violation of N.J.A.C. 7:14B-7.2.

74. Defendants R.M.R. Properties, Inc., Russo Fuel, Inc. and Robert M. Russo failed to display a release response plan in violation of N.J.A.C. 7:14B-5.5.

75. Defendants R.M.R. Properties, Inc., Russo Fuel, Inc. and Robert M. Russo failed to provide corrosion protection testing in lines as required by N.J.A.C. 7:14B-4.1(a)ii or 4.2(b), and N.J.A.C. 7:14B-5.2(a).

76. On April 6, 1998, the Department issued a Notice of Violation to defendant Robert M. Russo for violations of N.J.S.A. 58:10A-21 to -37 and N.J.A.C. 7:14B as described in paragraphs 71 through 75 above.

77. On June 24, 2002, the Department issued another Notice of Violation to defendant Robert M. Russo for failure to correct violations and failure to implement actions specified in the April 6, 1998 Notice of Violation.

78. Defendants R.M.R. Properties, Inc., Russo Fuel, Inc. and Robert M. Russo did not correct the violations as described in paragraphs 71 through 75 above.

79. On July 22, 2002, the Department instituted a delivery ban that prohibits anyone from introducing hazardous substances into every underground storage tank system at the Hilliard Site, pursuant to N.J.A.C. 7:14B-1.8.

80. On July 7, 1995, hazardous substances, as defined in N.J.S.A. 58:10-23.11b, were discharged at the Hilliard Site within the meaning of N.J.S.A. 58:10-23.11b.

81. As persons responsible for the hazardous substances that were discharged at the Hilliard Site, defendants R.M.R. Properties, Inc., Russo Fuel, Inc. and Robert M. Russo are liable, jointly and severally, without regard to fault, for all costs plaintiffs Department and Administrator have incurred, and will incur, to clean up and remove the discharges at the Hilliard Site. N.J.S.A. 58:10-23.11.g.c(1).

82. The costs and damages plaintiffs Department and Administrator have incurred, and will incur, for the Hilliard Site are cleanup and removal costs within the meaning of N.J.S.A. 58:10-23.11b.

WHEREFORE, plaintiffs State of New Jersey, Department of Environmental Protection ("Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") pray that this Court grant judgment against defendants R.M.R. Properties, Inc., Russo Fuel, Inc. and Robert M. Russo as follows:

a. Ordering defendants to continue the closed status of the gasoline service station until the Department informs the Court that defendants are in full compliance with all regulatory requirements of the Underground Storage of Hazardous Substances

Act, including, without limitation, with the underground storage tanks financial responsibility requirements of N.J.A.C. 7:14B-15;

b. Ordering defendants, jointly and severally, without regard to fault, to reimburse plaintiffs Department and Administrator for all cleanup and removal costs the plaintiffs have incurred for the Hilliard Site, with applicable interest;

c. Entering declaratory judgment against defendants, jointly and severally, without regard to fault, for any cleanup and removal costs plaintiffs Department and Administrator may incur for the Hilliard Site;

d. Compelling defendants to clean up and remove all discharges at the Hilliard Site, including, without limitation, assessing all natural resource injuries and implementing compensatory restoration remedial actions for all natural resources injured by those discharges;

e. Compelling defendants to establish and maintain a remediation funding source and pay a 1 percent annual surcharge for the estimated cost of the remediation;

f. Awarding plaintiff Department maximum statutory penalties under both the Underground Storage of Hazardous Substances Act and the Spill Compensation and Control Act;

g. Entering declaratory judgment against defendants, jointly and severally, without regard to fault, for all damages, including reasonable assessment costs and compensatory restoration

remedial actions, plaintiffs Department and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Hilliard Site;

h. Awarding plaintiffs Department and Administrator their costs and fees in this action; and

i. Awarding plaintiffs Department and Administrator such other relief as this Court deems appropriate.

THIRD COUNT

83. Plaintiffs Department and Administrator repeat each and every allegation of paragraphs 1 through 43 above as though fully set forth in its entirety herein.

84. Defendants Robert M. Russo and Patricia A. Russo have owned the real property comprising the Tuckerton Site from July 14, 1989 to the present.

85. Defendant Robert M. Russo owned an underground storage tank system at the Tuckerton Site, NJDEP Registration Number 079383, from 1991 until at least 1998.

86. Defendant Russo Fuel, Inc. has owned an underground storage tank system at the Tuckerton Site, NJDEP Registration Number 079383, from 1998 to the present.

87. Defendant Robert M. Russo has operated an underground storage tank system at the Tuckerton Site, NJDEP Registration Number 0079383, from 1991 to the present.

88. On May 8, 2000, the Department conducted an inspection of the Tuckerton Site and discovered the violations outlined in paragraphs 89 through 92 below.

89. The Department discovered that the information submitted by defendant Robert M. Russo in the UST Questionnaire dated June 21, 1993 did not correspond with what the Department found upon inspecting the site, which is a violation of N.J.A.C. 7:14B-2.6(a), N.J.A.C. 7:14B.2.1, N.J.A.C. 7:14B-9.1(d), and N.J.A.C. 7:14B-5.5. Defendant Robert M. Russo submitted false information to the Department concerning the Site's compliance with the law, certifying it to be true under penalty of law.

90. Defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. failed to perform release detection monitoring in violation of N.J.A.C. 7:14B-6.1(a) on some tanks and piping; failed to calibrate the release detection monitoring system in violation of N.J.A.C. 7:14B-6.1(a)2; and failed to keep release detection monitoring records in violation of N.J.A.C. 7:14B-6.7(d)(e), N.J.A.C. 7:14B-5.2(a)4, 4.1(a)liv and 4.1(a)2ii.

91. Defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. failed to investigate a suspected release in violation of N.J.A.C. 7:14B-7.2.

92. The Department also discovered a unregistered tank on the site in violation of N.J.S.A. 58:10A-23 and N.J.A.C. 7:14B-2.1 and N.J.A.C. 7:14B-2.6(a).

93. On May 8, 2000, the Department issued a Notice of Violation to defendant Robert M. Russo for violations of N.J.S.A. 58:10A-21 to -37 and N.J.A.C. 7:14B as described in paragraphs 89 through 92 above.

94. On June 11, 2002, the Department conducted an inspection of the Tuckerton Site and discovered the violations outlined in paragraphs 95 and 96 below.

95. Defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. failed to investigate a possible release due to detection of a headspace reading of 60 meter units in the monitoring well located in the eastern corner of the Tuckerton Site.

96. Defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. failed to have a release detection response plan in violation of N.J.A.C. 7:14B-4.

97. On June 24, 2002, the Department issued another Notice of Violation to defendant Robert M. Russo for violations as described in paragraphs 95 and 96 above.

98. Defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. did not correct the violations as described in paragraphs 89 through 92, 95 and 96 above.

99. On July 22, 2002, the Department instituted a delivery ban that prohibits anyone from introducing hazardous substances

into every underground storage tank system at the Tuckerton Site, pursuant to N.J.A.C. 7:14B-1.8.

100. On May 8, 2000, hazardous substances, as defined in N.J.S.A. 58:10-23.11b, were discharged at the Tuckerton Site within the meaning of N.J.S.A. 58:10-23.11b.

101. As persons responsible for hazardous substances that were discharged at the Tuckerton Site, defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. are liable, jointly and severally, without regard to fault, for all costs plaintiffs Department and Administrator have incurred, and will incur, to clean up and remove the discharges at the Tuckerton Site. N.J.S.A. 58:10-23.11.g.c.(1).

102. The costs and damages plaintiffs Department and Administrator have incurred, and will incur, for the Tuckerton Site are cleanup and removal costs within the meaning of N.J.S.A. 58:10-23.11b.

WHEREFORE, plaintiffs State of New Jersey, Department of Environmental Protection ("Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") pray that this Court grant judgment against defendants Robert M. Russo, Patricia A. Russo and Russo Fuel, Inc. as follows:

a. Ordering defendants to close the gasoline service station until the Department informs the Court that defendants are in full compliance with all regulatory requirements of the

Underground Storage of Hazardous Substances Act, including, without limitation, with the underground storage tanks financial responsibility requirements of N.J.A.C. 7:14B-15;

b. Ordering defendants, jointly and severally, without regard to fault, to reimburse plaintiffs Department and Administrator for all cleanup and removal costs the plaintiffs have incurred for the Tuckerton Site, with applicable interest;

c. Entering declaratory judgment against defendants, jointly and severally, without regard to fault, for any cleanup and removal costs plaintiffs Department and Administrator may incur for the Tuckerton Site;

d. Compelling defendants to clean up and remove all discharges at the Tuckerton Site, including, without limitation, assessing all natural resource injuries and implementing compensatory restoration remedial actions for all natural resources injured by those discharges;

e. Compelling defendants to establish and maintain a remediation funding source and pay a 1 percent annual surcharge for the estimated cost of the remediation;

f. Awarding plaintiff Department maximum statutory penalties under both the Underground Storage of Hazardous Substances Act and the Spill Compensation and Control Act;

g. Entering declaratory judgment against defendants, jointly and severally, without regard to fault, for all damages,

including reasonable assessment costs and compensatory restoration remedial actions, plaintiffs Department and Administrator may incur for any natural resource of this State damaged or destroyed by the contamination at the Tuckerton Site;

h. Awarding plaintiffs Department and Administrator their costs and fees in this action; and

i. Awarding plaintiffs Department and Administrator such other relief as this Court deems appropriate.

FOURTH COUNT

103. Plaintiffs Department and Administrator repeat each and every allegation of paragraphs 1 through 43 above as though fully set forth in its entirety.

104. Defendant Russo Fuel, Inc. has owned the real property comprising the 82 Bay Site from September 30, 1986 to the present.

105. Defendant Russo Fuel, Inc., has owned an underground storage tank system at the 82 Bay Site, NJDEP Registration Number 0227946, from 1988 to the present.

106. Defendant Robert M. Russo has operated an underground storage tank system at the 82 Bay Site, NJDEP Registration Number 0227946, from 1988 to the present.

107. On April 2, 1998, the Department conducted an inspection of the 82 Bay Site and discovered the violations outlined in paragraphs 108 through 111 below.

108. The Department discovered that defendants Russo Fuel, Inc. and Robert M. Russo failed to mark fill ports in accordance with the American Petroleum Institute Code in violation of N.J.A.C. 7:14B-5.8.

109. Defendants Russo Fuel, Inc. and Robert M. Russo failed to register one 300 gallon underground storage tank on the site in violation of N.J.S.A. 58:10A-23 and N.J.A.C. 7:14B-2.1.

110. Defendants Russo Fuel, Inc. and Robert M. Russo failed to properly close an underground storage tank in violation of N.J.A.C. 7:14B-9.1(d).

111. Defendants Russo Fuel, Inc. and Robert M. Russo failed to perform release detection monitoring on underground storage tanks in violation of N.J.A.C. 7:14B-6.1(a).

112. On April 2, 1998, the Department issued a Notice of Violation to defendant Robert M. Russo for violations of N.J.S.A. 58:10A-21 through -37 and N.J.A.C. 7:14B as described in paragraphs 108 through 111 above.

113. The Department subsequently sent a letter, dated September 29, 1998, advising defendant Robert M. Russo that a public water supply well that was located near the 82 Bay Site had been contaminated by gasoline. The Department advised defendant Robert M. Russo to submit information and perform activities as specified in the April 2, 1998 Notice of Violation within 15 days after the receipt of the September 29, 1998 letter.

114. The Department sent defendant Robert M. Russo another letter, dated July 29, 1999, advising defendant Robert M. Russo that the underground storage tanks on the 82 Bay Site were to be either closed or upgraded in accordance with N.J.S.A. 58:10A-21 and N.J.A.C. 7:14B-1.6 within seven days after the July 29, 1999 letter to avoid penalties under the law.

115. Defendant Robert M. Russo has neither responded to the Department's letters of September 29, 1998 and July 29, 1999, nor has he taken the required actions.

116. On June 11, 2002, the Department conducted an inspection of the 82 Bay Site and discovered the violations outlined in paragraphs 117 through 125 below.

117. During the inspection, defendant Robert M. Russo stated that "the waste oil underground storage tank was pumped out in 1998;" however, the Department discovered 6.5 inches of sludge in the waste oil underground storage tank. The Department demanded that defendant Robert M. Russo immediately remove the sludge from the waste oil underground storage tank.

118. The Department found that there was no corrosion protection for the underground storage tanks at the 82 Bay Site as required by N.J.S.A. 58:10A-24, N.J.A.C. 7:14B-4.1, and N.J.A.C. 7:14B-5.2(a).

119. Defendants Russo Fuel, Inc. and Robert M. Russo failed to keep records for corrosion protection as required by N.J.A.C.

7:14B-5.2(a)4, N.J.A.C. 7:14B- 4.1(a)1iv, and N.J.A.C. 7:14B-4.1(a)2iii.

120. Defendants Russo Fuel, Inc. and Robert M. Russo failed to perform release detection monitoring as required by N.J.A.C. 7:14B-6.1(a).

121. Defendants Russo Fuel, Inc. and Robert M. Russo had no release response plan available as required by N.J.A.C. 7:14B-5.5.

122. Defendants Russo Fuel, Inc. and Robert M. Russo had no registration available for two underground storage tanks, in violation of N.J.A.C. 7:14B-2.1, and defendants Russo Fuel, Inc. and Robert M. Russo had inaccurate information for other tanks, in violation of N.J.A.C. 7:14B-2.4 and N.J.A.C. 7:14B-2.6(a).

123. Defendants Russo Fuel, Inc. and Robert M. Russo failed to mark fill ports as required by the American Petroleum Institute Code, in violation of N.J.A.C. 7:14B-5.8.

124. Defendants Russo Fuel, Inc. and Robert M. Russo had no overfill protection present as required by N.J.A.C. 7:14B-4.1(a)3ii or 4.2(d), and there was no spill bucket present in violation of N.J.A.C. 7:14B-4.1(a)3i or 4.2(d).

125. Defendants Russo Fuel, Inc. and Robert M. Russo had no records available concerning repair of the underground storage system in violation of N.J.A.C. 7:14B-5.6(a)2, or for a release detection monitoring system in violation of N.J.A.C. 7:14B-6.7(d) and N.J.A.C. 7:14B-6.7(e).

126. On June 24, 2002, the Department issued another Notice of Violation to defendant Robert M. Russo for violations of N.J.S.A.

58:10A-21 through -37 and N.J.A.C. 7:14B as described in paragraphs 117 through 125 above.

127. Defendants Russo Fuel, Inc. and Robert M. Russo did not correct the violations as described in paragraphs 108 through 111 and 117 through 125 above.

128. The Department instituted a delivery ban that prohibits anyone from introducing hazardous substances into every underground storage tank system at the 82 Bay Site on March 24, 2003, pursuant to N.J.A.C. 7:14B-1.8.

WHEREFORE, plaintiffs State of New Jersey, Department of Environmental Protection ("Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") pray that this Court grant judgment against defendants Russo Fuel, Inc. and Robert M. Russo as follows:

a. Ordering defendants to close the gasoline service station until the Department informs the Court that the defendants are in full compliance with all regulatory requirements of the Underground Storage of Hazardous Substances Act, including, without limitation, with the underground storage tanks financial responsibility requirements of N.J.A.C. 7:14B-15;

b. Awarding plaintiff Department maximum statutory penalties under the Underground Storage of Hazardous Substances Act;

c. Awarding plaintiffs Department and Administrator their costs and fees in this action; and

d. Awarding plaintiffs Department and Administrator such other relief as this Court deems appropriate.

FIFTH COUNT

129. Plaintiffs Department and Administrator repeat each and every allegation of paragraphs 1 through 43 as though fully set forth in its entirety herein.

130. Defendant Russo Fuel, Inc. has owned an underground storage tank system at the Parkertown Site, NJDEP Registration Number 0187608, from 1991 to the present.

131. Defendant Robert M. Russo has operated an underground storage tank system at the Parkertown Site, NJDEP Registration Number 0187608, from 1991 to the present.

132. On May 8, 2000, the Department conducted an inspection of the Parkertown Site and discovered the violations outlined in paragraphs 133 through 138 below.

133. The Department discovered that the information submitted by defendant Robert M. Russo in the August 30, 1999 UST Questionnaire did not correspond with what the Department found upon inspecting the Parkertown Site, a violation of N.J.A.C. 7:14B-4. Defendant Robert M. Russo submitted false information to the Department concerning the Parkertown Site's compliance with the law, certifying the information to be true under penalty of law.

134. Defendants Russo Fuel, Inc. and Robert M. Russo failed to perform release detection monitoring and cathodic protection in

violation of N.J.A.C. 7:14B-6.1(a) and N.J.A.C. 7:14B-5.2(a)4, N.J.A.C. 7:14B-4.1(a)liv, and N.J.A.C. 7:14B-4.1(a)2iii.

135. Defendants Russo Fuel, Inc. and Robert M. Russo failed to keep release detection monitoring records in violation of N.J.A.C. 7:14B-6.7(d) (e).

136. Defendants Russo Fuel, Inc. and Robert M. Russo failed to provide corrosion protection on the underground storage tank system piping as required by N.J.A.C. 7:14B-41(a)iii or 4.2(b).

137. Defendants Russo Fuel, Inc. and Robert M. Russo failed to keep corrosion protection records in violation of N.J.A.C. 7:14B-5.2(a)4, N.J.A.C. 7:14B-4.1(a)liv, and N.J.A.C. 7:14B-4.1(a)2iii.

138. Defendants Russo Fuel, Inc. and Robert M. Russo failed to mark fill ports as required by the American Petroleum Institute Code in violation of N.J.A.C. 7:14B-5.8.

139. On May 8, 2000, the Department issued a Notice of Violation to defendants Russo Fuel, Inc. and Robert M. Russo for violations as described in paragraphs 133 through 138 above.

140. On June 10, 2002, the Department conducted an inspection of the Parkertown Site and discovered the violations outlined in paragraphs 141 through 145 below.

141. The Department discovered a mid-grade underground storage tank on the facility that had been out of service more than twelve months without being properly closed, in violation of N.J.A.C. 7:14B-9.1(d).

142. Defendants Russo Fuel, Inc. and Robert M. Russo had no registration available for the underground storage tank in violation of N.J.A.C. 7:14B-2.6(a).

143. Defendants Russo Fuel, Inc. and Robert M. Russo had no records available regarding the repair of an underground storage tank system in violation of N.J.A.C. 7:14B-5.6(a)2.

144. Defendants Russo Fuel, Inc. and Robert M. Russo had no records available for the repair of the release detection monitoring system in violation of N.J.A.C. 7:14B-6.7(d).

145. Defendants Russo Fuel, Inc. and Robert M. Russo failed to keep records at the Parkertown Site for the corrosion protection system in violation of N.J.A.C. 7:14B-5.2(a)4, N.J.A.C. 7:14B-4.1(a)liv, and N.J.A.C. 7:14B-4.1(a)2iii.

146. On June 24, 2002, the Department issued another Notice of Violation to defendant Robert M. Russo for violations of N.J.A.C. 7:14B as described in paragraphs 141 through 145 above. The Department also directed defendant Robert M. Russo to correct all violations as outlined in the previous Notice of Violation dated May 8, 2000.

147. Defendants Russo Fuel, Inc. and Robert M. Russo did not correct the violations as described in paragraphs 133 through 138 and 141 through 145 above.

WHEREFORE, plaintiffs State of New Jersey, Department of Environmental Protection ("Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") pray that

this Court grant judgment against defendants Russo Fuel, Inc. and Robert M. Russo as follows:

a. Ordering defendants to close the gasoline service station until the Department informs the Court that defendants are in full compliance with all regulatory requirements of the Underground Storage of Hazardous Substances Act, including, without limitation, with the underground storage tanks financial responsibility requirements of N.J.A.C. 7:14B-15;

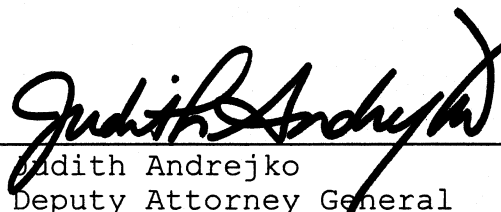
b. Awarding plaintiff Department maximum statutory penalties under the Underground Storage of Hazardous Substances Act;

c. Awarding plaintiffs Department and Administrator their costs and fees in this action; and

d. Awarding plaintiffs Department and Administrator such other relief as this Court deems appropriate.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: _____


Judith Andrejko
Deputy Attorney General

Dated: January 13, 2004

DESIGNATION OF TRIAL COUNSEL

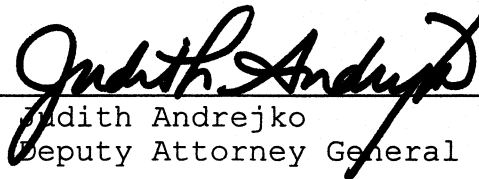
Pursuant to R. 4:25-4, the Court is advised that Judith Andrejko, Deputy Attorney General, is hereby designated as trial counsel for plaintiff in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b) (2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to plaintiff at this time, nor is any non-party known to plaintiff at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to plaintiff, an amended certification shall be filed and served on all other parties and with this Court in accordance with R.4:5-1(b) (2).

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: _____


Judith Andrejko
Deputy Attorney General

Dated: January 13, 2004