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	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION -
STATE OF NEW JERSEY,	:	MERCER COUNTY
DEPARTMENT OF ENVIRONMENTAL	:	DOCKET NO.
PROTECTION	:	
	:	<u>CIVIL ACTION</u>
Plaintiff,	:	
	:	VERIFIED COMPLAINT TO ENFORCE
v.	:	FINAL AGENCY ORDER AND TO
	:	COLLECT ADDITIONAL CIVIL
SCHOFIELD CLEANERS, INC.;	:	PENALTIES IN A SUMMARY
	:	PROCEEDING PURSUANT TO
Defendant.	:	<u>R. 4:67-6</u> AND <u>R. 4:70</u>
	:	
	:	

Plaintiff State of New Jersey, Department of Environmental Protection ("DEP" or "Department"), having its principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Verified Complaint against defendant Schofield Cleaners, Inc., alleges as follows:

STATEMENT OF THE CASE

1. Beginning in 1992, Schofield Cleaners, Inc. ("Defendant"), has owned property located at 1474 West State Street in Trenton, where it formerly operated a dry cleaning business.

As part of its operations, Defendant maintained underground storage tanks at its property to store dry cleaning solvents containing PCE and PCE byproducts.

2. An inspection in 1997 and subsequent samples of soil surrounding the tanks revealed tetrachloroethene ("PCE") contamination. Exposure to PCE has been linked to kidney dysfunction, respiratory tract irritation, and cognitive and neurological effects.
3. For the next decade, Defendant failed to comply with its obligations to remediate the contamination. So on July 21, 2017, DEP ordered Defendant to remediate the property and to pay a \$105,240 administrative penalty.
4. The Department brings this civil action for enforcement of a final order pursuant to the authority vested in the Department by N.J.S.A. 13:1D-1 to -19; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (the "Spill Act"); the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 to -31 (the "Brownfield Act"); the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"); and the rules and regulations promulgated pursuant thereto. The Department also seeks the imposition of additional civil penalties for the Defendant's failure to pay a civil administrative penalty, pursuant to N.J.S.A. 58:10-23.11u(d). Pursuant to the Spill Act, the Brownfield Act, SRRA, the Penalty

Enforcement Law, N.J.S.A. 2A:58-10 to -12, and R. 4:67-6 and R. 4:70, the Department is authorized to seek enforcement of the final order and to proceed for statutory civil penalties in a summary manner.

THE PARTIES

5. DEP is a principal agency in the executive branch of State Government. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the Department of Environmental Protection by the aforementioned statutes, the Department is empowered to institute legal proceedings to enforce final agency orders and to recover penalties in summary proceedings in Superior Court.
6. Defendant is a New Jersey corporation whose corporate status was revoked in 2014 for failing to submit annual reports and pay its annual reporting fees. Defendant's principal address is 1474 West State St., Trenton, NJ 08618.
7. Defendant is the former owner of real property, described below, having owned the property from July 1, 1992 until July 20, 2017.

PROPERTY AND PROCEDURAL HISTORY

8. The property that is the subject of this complaint is located at 1474 West State St. (a/k/a 1472-1476 West State St.), also known as Block 36602, Lot 5, in Trenton, Mercer County, New

Jersey ("Property"), which DEP has designated as Site Remediation Program Interest Number 025827.

9. On February 21, 1997, soil sampling from areas adjacent and below the underground storage tanks revealed PCE contamination in the soil at a concentration of 10 parts per million, which exceeded the DEP's soil cleanup criteria in effect in 1997; exceeded the New Jersey Residential Direct Contact Soil Remediation Standard and the New Jersey Non-Residential Direct Contact Soil Remediation Standard in effect until September 2017; and continues to exceed the New Jersey Default Impact to Groundwater Soil Screening Level.
10. The Department placed a compliance assistance call to Joan Schofield in February 2016 and sent Defendant a follow-up letter on May 18, 2016 informing Defendant of its obligations to remediate the discharges of hazardous substances at the Property. However, Defendant failed to remediate the discharges of hazardous substances at the Property.
11. On July 21, 2017, DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Defendant.
12. In the AONOCAPA, DEP found that Defendant is responsible for the hazardous substances that were discharged at the Property and for the remediation of the hazardous substances that were discharged to the lands and waters of the State, pursuant to

the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g.c and N.J.A.C. 7:1E-5.7(a)2ii. DEP further found that Defendant is a person responsible for conducting the remediation at the Property, pursuant to N.J.A.C. 7:26C-2.

13. In the AONOCAPA, the Department also found that the Defendant, failed to remediate the discharges of hazardous substances at the Property. Specifically, the Defendant failed to:
 - a. Retain a Licensed Site Remediation Professional ("LSRP") and notify the Department of the LSRP's name and license information;
 - b. Conduct the remediation;
 - c. Pay all applicable fees and oversight costs;
 - d. Comply with each applicable mandatory timeframe; and
 - e. Comply with the requirements of direct oversight, including submitting an initial remediation cost review, submitting a proposed public participation plan, and establishing and maintaining a direct oversight remediation trust fund.
14. Based upon the Findings of the AONOCAPA, DEP ordered the Defendant to:
 - a. Conduct the remediation of the Property, with DEP oversight and approval, in accordance with N.J.A.C. 7:26C-2.3(a)3.i.(2) and the direct oversight requirements of N.J.A.C. 7:26C-14.2(b);

b. Proceed as the DEP directs to remediate all discharges at the Property in accordance with N.J.A.C. 7:26C and N.J.A.C. 7:26E, including, without limitation, in accordance with the following initial timeframes:

- i. Within 30 days after receipt of the AONOCAPA, provide to the DEP the name and license information of a LSRP retained to remediate the discharges at the Property and the scope of the remediation, including the number of contaminated areas of concern and impacted media known at the time the form is submitted pursuant to N.J.A.C. 7:26C-4.2;
- ii. Within 90 days after receipt of the AONOCAPA, submit to the Department a proposed public participation plan, with a schedule, pursuant to N.J.S.A. 58:10C-27c(7), that contains a strategy for soliciting public comment concerning the remediation of the discharges at the Property from the members of the surrounding community;
- iii. Within 90 days after receipt of the AONOCAPA, submit an initial remediation cost review prepared and certified by an LSRP, pursuant to N.J.A.C. 7:26C-5.10(a);
- iv. Within 90 days after receipt of the AONOCAPA, establish and maintain a direct oversight remediation

- trust fund, pursuant to N.J.A.C. 7:26C-5.2(k), in the amount of the LSRP-certified cost of the remediation;
- v. Within 90 days after receipt of the AONOCAPA, pay an annual remediation funding source surcharge, pursuant to N.J.A.C. 7:26C-5.9, in the amount of 1.0 percent of the LSRP-certified estimated cost of the remediation;
 - vi. Within 90 days after receipt of the AONOCAPA, submit a Case Inventory Document, a direct oversight summary report, a scope of work for the remaining remediation and a detailed schedule for completion of the remediation;
 - vii. Within 90 days after the receipt of the AONOCAPA as an expedited site specific timeframe established pursuant to N.J.A.C. 7:26C-3.4, submit the initial receptor evaluation report to the Department in accordance with N.J.A.C. 7:26E-1.12; and
 - viii. Pay required annual remediation fees of \$5,240.00, and submit the Annual Remediation Fee Reporting Form.
15. Based upon the Findings in the AONOCAPA and the violations listed in Paragraph 13 above, DEP assessed a civil penalty against the Defendant in the amount of \$105,240.00 as reflected in the Penalty Assessment Worksheet.

16. On or about July 27, 2017, the Department mailed the AONOCAPA to the Defendant via certified mail.
17. On or about August 1, 2017, Defendant refused the certified mail delivery of the AONOCAPA.
18. On or about August 30, 2017, DEP sent the AONOCAPA to Defendant by regular mail, which was not returned to DEP.
19. The Defendant did not request an administrative hearing to contest the AONOCAPA.
20. On the twenty-first calendar day following the Defendant's receipt of the AONOCAPA, the AONOCAPA became a final order ("Final Order").
21. On December 20, 2017, DEP issued a letter to the Defendant, which was sent by certified mail, informing Defendant that the AONOCAPA was now a Final Order.
22. On or about December 26, 2017, Defendant refused the certified mail delivery of the December 20, 2017 letter.
23. The Defendant did not appeal the Final Order.
24. The Defendant is obligated to comply with the Final Order and pay a civil administrative penalty in the amount of \$105,240.00.

FIRST COUNT

Compliance with Final Order and Payment of the Civil

Administrative Penalty

25. DEP repeats each allegation of paragraphs 1 through 24, above, as if fully set forth in their entirety herein.
26. To date, the Defendant has not complied with the requirements of the Final Order.
27. Additionally, to date, the Defendant has not complied with the requirement of the Final Order to pay the \$105,240.00 civil administrative penalty.
28. Pursuant to N.J.S.A. 58:10-23.11u.c(3), if a civil administrative penalty is not paid within thirty (30) days after the date that the penalty is due and owing, and the penalty is not contested, an interest charge shall accrue on the amount of the penalty from the 30th day that amount was due and owing.
29. Pursuant to N.J.S.A. 58:10-23.11u.c(3), the rate of interest shall be that established by the New Jersey Supreme Court for the interest rates on judgments, as forth in the Rules Governing the Courts of the State of New Jersey.
30. Pursuant to R. 4:42-11(a), judgments for the payment of money shall bear simple interest.
31. Pursuant to R. 4:67-6, the Department is entitled to summary enforcement of the Final Order requiring the Defendant to:

- a. Retain an LSRP pursuant to N.J.A.C. 7:26C-2.3(a)1 and 7:26C-2.3(a)2, and notify the Department of the LSRP's name and license information and the scope of remediation;
- b. Conduct the remediation, without the prior approval of the Department, unless required, in accordance with N.J.A.C. 7:26C-1.2(a);
- c. Pay all applicable fees and oversight costs pursuant to N.J.A.C. 7:26C-4;
- d. Comply with each applicable mandatory timeframe, in accordance with N.J.A.C. 7:26C-3.3(b); and
- e. Comply with the requirements of direct oversight, N.J.A.C. 7:26C-14.2(b), including the requirement, pursuant to N.J.A.C. 7:26C-5.9, to establish and maintain a direct oversight remediation trust fund in the amount of the LSRP-certified cost of the remediation.
- f. Pay the civil administrative penalty assessed by the Department in the amount of \$105,240.00, plus interest

WHEREFORE, the Plaintiff demands entry of an order against the Defendant:

- a. Finding the Defendant in violation of the Final Order;
- b. Enforcing the Department's Final Order requiring the Defendant to remediate the Property in accordance with N.J.A.C. 7:26C-2.3;
- c. Enforcing the Department's Final Order requiring the

- Defendant to hire an LSRP;
- d. Enforcing the Department's Final Order requiring the Defendant to pay the required fees and the Department's oversight costs;
 - e. Enforcing the Department's Final Order requiring the Defendant to comply with each applicable mandatory timeframe;
 - f. Enforcing the Department's Final Order requiring the Defendant to comply with the requirements for direct oversight, including the requirement to establish and maintain a direct oversight remediation trust fund in the amount of the LSRP-certified cost of the remediation;
 - g. Ordering the Defendant, within thirty (30) days after the Court's Order to pay the civil administrative penalty in the amount of \$105,240.00, plus interest on the unpaid penalty at the judgment rate commencing on December 20, 2017;
 - h. Granting such other relief as the Court deems just and proper; and
 - i. Plaintiff is not seeking, and this Verified Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiff reserves the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at

the Property.

SECOND COUNT

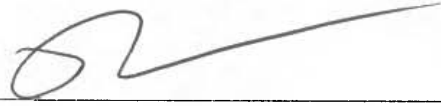
Additional Civil Penalties Pursuant to the Spill Act

32. DEP repeats each allegation of paragraphs 1 through 31, above, as if fully set forth in their entirety herein.
33. To date, the Defendant has not complied with the requirements of the Final Order.
34. Pursuant to N.J.S.A. 58:10-23.11u.a and N.J.S.A. 58:10-23.11u.d, the Defendant is subject to a civil penalty of up to \$50,000.00 per day of the Defendant's violation of the Final Order, and each day's continuance of the violation constitutes a separate violation.

WHEREFORE, plaintiff demands judgment against the Defendant:

- a. Finding the Defendant in violation of the Final Order;
- b. Imposing upon the Defendant, pursuant to R. 4:70, a civil penalty for the Defendant's violation of the Final Order;
- c. For such other relief as the Court may deem just and proper;
and
- d. Reserving the right of Plaintiffs to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: 

Robert G. Lamilla
Deputy Attorney General

DATED: October 23, 2019

VERIFICATION

I, Lindsey Schulman, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection within the Site Remediation Program.
2. I am the enforcement manager for the Schofield Cleaners Site.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in the Verified Complaint are true and correct.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.



Lindsey Schulman

DATED: October 22, 2019

DESIGNATION OF TRIAL COUNSEL

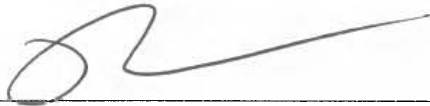
Pursuant to R. 4:25-4, the Court is advised that Robert G. Lamilla, Deputy Attorney General, is hereby designated as trial counsel for plaintiff DEP in this action.

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 DEP at this time, nor is any non-party known to plaintiff DEP 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 DEP, 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).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By: _____


Robert G. Lamilla
Deputy Attorney General

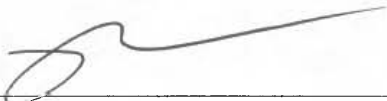
DATED: *October 23, 2019*

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(C)

Undersigned counsel further certifies that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By:



Robert G. Lamilla
Deputy Attorney General

DATED: *October 23, 2019*