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ATTORNEY GENERAL OF NEW JERSEY  
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Attorney for Plaintiffs

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	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY DEPARTMENT OF	:	LAW DIVISION - PASSAIC COUNTY
ENVIRONMENTAL PROTECTION, and	:	
THE COMMISSIONER OF THE NEW	:	DOCKET NO.
JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION;	:	
	:	
Plaintiffs,	:	<u>Civil Action</u>
	:	
v.	:	COMPLAINT
	:	
AMERICAN FABRIC PROCESSORS	:	
LLC, DAVID BINSON	:	
individually, JACOB BINSON,	:	
individually, "XYZ	:	
CORPORATIONS" 1-10 (Names	:	
Fictitious); and "JOHN AND/OR	:	
JANE DOES" 1-10 (Names	:	
Fictitious);	:	
	:	
Defendants.	:	

Plaintiffs, the New Jersey Department of Environmental Protection (the "Department" or "DEP"), and the Commissioner of the New Jersey Department of Environmental Protection (the "Commissioner"), by and through its attorney, files this Complaint against the above-named Defendants, and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the New Jersey Air Pollution Control Act ("APCA"), N.J.S.A. 26:2C-1 to -25.2. This action seeks statutory penalties and compliance with the APCA, the regulations promulgated thereunder, and APCA permit PCP 010001 ("the Boiler Permit") issued to defendant American Fabric Processors, LLC ("American Fabric").
2. American Fabric operates an industrial facility located at 555 East 31st Street, in the City of Paterson, Passaic County, New Jersey ("Property"). The Property is located in a mixed residential, commercial, and industrial community with an elementary school located northwest of the Property and residential homes within a block in every direction.
3. Paterson, New Jersey's third-most-populous city, and one of the most densely populated cities in America, is home to many low-income and minority residents. The average household income of a Paterson resident is \$39,282, and 91% of Paterson residents are minorities.
4. Historically, low-income communities and communities of color across the country have been exposed to disproportionately high and unacceptably dangerous levels of air, water, and soil pollution, with the accompanying potential for increased

public health impacts. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018).

5. Since 2014, American Fabric has operated a fabric dyeing and finishing facility at the Property in violation of the APCA. As part of its operations, American Fabric uses a high temperature boiler ("the Boiler") and multiple textile processing machines, all subject to the APCA. This equipment emits harmful air pollutants, including nitrogen oxides ("NOx") and volatile organic compounds ("VOC").
6. NOx and VOCs contribute to smog and can lead to respiratory tract irritation, headaches, chronically reduced lung function, especially in asthma patients, and eye irritation.
7. This complaint seeks injunctive relief and statutory penalties against American Fabric under for violation the APCA. Specifically, the complaint seeks an order requiring American Fabric to cease operations of its textile processing machines, and compelling American Fabric to apply for an appropriate APCA permit to operate the textile processing machines. The complaint also seeks to enjoin American

Fabric's operations related to the Boiler until subsequent required tests and adjustments are completed. Finally, the complaint seeks an order revoking the Boiler Permit and requiring Defendants to pay statutory civil penalties under the APCA.

THE PARTIES

8. The Department maintains its principal office at 401 East State Street, Trenton, Mercer County. The Department is a principal department within the Executive Branch of the New Jersey State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9. The Department may commence a civil action in Superior Court for appropriate relief for any violation of the APCA. N.J.S.A. 26:2C-8.52.
9. The Commissioner is the Commissioner of the DEP, N.J.S.A. 58:10A-3, and is vested by law with various powers and authority, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19.
10. American Fabric is a corporation organized under the laws of the State of New Jersey with a principal place of business at

555 East 31st Street, in the City of Paterson, Passaic County, New Jersey.

11. David Binson, upon information and belief, is the Administrator and a responsible corporate officer of American Fabric.
12. Jacob Binson, upon information and belief, is the President and a responsible corporate officer of American Fabric.
13. "XYZ Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, insurers of, or are otherwise related to, defendants American Fabric, David Binson, and/or Jacob Binson, and/or are other persons responsible for the operations at the Property.
14. "John and/or Jane Does" 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, defendants American Fabric David Binson, and/or Jacob Binson, and/or are other persons responsible for the operations at the Property.

GENERAL ALLEGATIONS

15. The Property is located at 555 East 31st Street, in the City of Paterson, Passaic County, New Jersey, also known as Block L1532, Lot 4 on the Tax Map of the City of Paterson.
16. In September 2010, the Department ordered all owners and operators of industrial, commercial, or institutional boilers with a maximum gross heat input rate of at least 25 million BTU per hour, but less than 50 million BTU per hour, to conduct stack testing. Stack testing<sup>1</sup> is required on high heat boilers to demonstrate compliance of with the NOx emission rates. N.J.A.C. 7:27-19.17(a).
17. No stack test has taken place at the Property.
18. In May 2012, the Department sent a letter by certified mail to Coral Dyeing & Finishing Corporation (Coral Dyeing), the former operator at the Property, informing it of its obligation to conduct a stack test on the Boiler. The Boiler is a Cleaver Brooks 25.1 million BTU/hour<sup>2</sup> heat input boiler used throughout the fabric dyeing and finishing process.
19. In 2014, American Fabric took over operations from Coral

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<sup>1</sup> Process used to determine compliance with APCA regulations using a DEP approved method of measurement.

<sup>2</sup> British Thermal Unit per hour. This is a common way to measure the heat produced by boilers and other heaters.

- Dyeing, using the existing equipment, including the Boiler and textile processing machines.
20. American Fabric operates as a fabric dyeing and finishing company. The company dyes, finishes, and produces finished clothing and other fabrics.
  21. Upon information and belief, Jacob Binson and David Binson are in in charge of the day-to-day operations of American Fabric.
  22. The Boiler Permit allows for the operation of the Boiler but also limits the emission rates of certain harmful air pollutants, specifically VOCs and NOx. The Boiler Permit expires in April 2025.
  23. The Boiler Permit requires American Fabric to conduct annual monitoring to ascertain its compliance with the APCA and the Boiler Permit limitations, perform annual combustion adjustments<sup>3</sup> to the Boiler, maintain records of the monthly fuel consumption of the Boiler, and produce records upon request from the Department. N.J.A.C. 7:27-8.13(h); N.J.A.C. 7:27-19.7(g) (3); N.J.A.C. 7:27-8.13(d).

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<sup>3</sup> Combustion adjustment is the process used to measure harmful emissions to ensure rates below the APCA permit levels. The measurements are used to adjust the combustion rates of equipment to ensure compliance with the APCA.

24. On March 12, 2014, permit number PCP 010002 ("Textile Permit") expired. The Textile Permit allowed for the operation of multiple textile processing machines as drying equipment, subject to the APCA. N.J.A.C. 7:27-8.2(1); N.J.A.C. 7:27-8.3(b).
25. On January 15, 2015, Department investigators conducted a compliance evaluation at the Property and found the following violations:
  - a. Failure to conduct a DEP-mandated stack test on the Boiler to determine that the NOx emissions do not exceed the maximum allowable emission rate in Table 9 of N.J.A.C. 7:27-19.7(i), N.J.A.C. 7:27-19.17(a);
  - b. Operating a textile processing machine with an expired Textile Permit, N.J.A.C. 7:27-8.3(b);
  - c. Failure to maintain natural gas consumption records and fulfill multiple record keeping and operating obligations in the Boiler Permit for the Boiler and two Cleaver Brooks 8.375 million BTU/hr heat input boilers, N.J.A.C. 7:27-8.13(d) and N.J.A.C. 7:27-8.3(e);
  - d. Failure to maintain records by manually logging the VOC content of the surface coating formulation for



Textile Processing Machines #s 1, 3, 5, 6, 8, and 9,  
N.J.A.C. 7:27-16.7(m); and

- e. Failure to sample the VOC coating and manually log the VOC content of the surface coating formulation for Textile Processing Machine #7, N.J.A.C. 7:27-16.7(o).

26. The Department issued a Notice of Violation ("NOV") on April 8, 2015. The NOV described the violations, identified Jacob Binson as the Owner and President of American Fabrics, and required American Fabrics to:

- a. Submit an application for the required permit for the textile processing machines with sixty (60) days, and obtain the permit within 180 days;
- b. Submit a stack test protocol for NOx to DEP within sixty (60) days of receipt of the NOV, and conduct a stack test within 120 days of receipt of the NOV; and
- c. Cease operations of the boilers and textile processing machines or operate the equipment in accordance with the Boiler Permit and the Textile Permit.

27. On August 10, 2016, Department investigators conducted a compliance evaluation at the Property. The investigators found American Fabric failed to conduct a Department-mandated

stack test on the Boiler to determine that the NOx emissions do not exceed the maximum allowable emission rate in Table 9 of N.J.A.C. 7:27-19.7(i), N.J.A.C. 7:27-19.17(a).

28. On November 30, 2016, Department inspectors conducted another compliance evaluation at the Property and found the following violations:

- a. Operating a textile processing machine with the expired permit, N.J.A.C. 7:27-8.3(b);
- b. Failure to adjust the combustion process for calendar years 2014 and 2015 for the Boiler, N.J.A.C. 7:27-19.7(g)(3); N.J.A.C. 7:27-19.16, and;
- c. Failure to maintain natural gas consumption records and fulfill multiple record keeping and operating obligations of the Boiler Permit for the Boiler, N.J.A.C. 7:27-8.13(d) and N.J.A.C. 7:27-8.3(e).

29. As a result of the August 10, 2016 compliance evaluation, the Department issued a NOV on January 24, 2017. The NOV identified David Binson as the Administrator of American Fabric, and required American Fabric to conduct the Department mandated stack test within sixty (60) days.

30. On February 21, 2017, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") requiring American Fabric to:
- a. Submit an air permit application for operation of the textile processing machines, formerly permitted under the expired permit for the textile machines within thirty (30) days of receipt of the AONOCAPA, or cease operation of its textile processing machines;
  - b. Adjust the combustion process for the Boiler within thirty (30) days of receipt of the AONOCAPA and submit the results to DEP within forty-five (45) days of testing, N.J.A.C. 7:27-19.7(g) (3);
  - c. Submit the total amount of cubic feet of natural gas burned for calendar years 2015 and 2016 within thirty days of receipt of the AONOCAPA; and
  - d. Pay an assessed penalty of \$6,000.
31. On November 15, 2017, Department inspectors conducted another compliance evaluation at the Property and found the following violations:
- a. Operating a textile processing machine formerly permitted under the expired Textile permit, N.J.A.C. 7:27-8.3(b);

- b. Failure to conduct a DEP-mandated stack test on the Boiler to determine that the NOx emissions do not exceed the maximum allowable emission rate, N.J.A.C. 7:27-19.17(a);
  - c. Failure to adjust the combustion process for calendar years 2014 and 2015 for the Boiler, N.J.A.C. 7:27-19.7(g) (3); and
  - d. Failure to maintain natural gas consumption records and fulfill multiple record keeping and operating obligations of the Boiler Permit for the Boiler, N.J.A.C. 7:27-8.13(d) and N.J.A.C. 7:27-8.3(e).
32. Despite multiple NOV's, compliance evaluations, and an AONOCPA between 2015 and 2017 American Fabric failed to conduct the Department-mandated stack test, failed to maintain adequate records required under the Boiler Permit and the APCA, and operated textile processing machines without a permit.
33. To date, Defendants have failed to conduct the Department-mandated stack-test, apply for a textile processing machine permit, and address outstanding APCA violations.

COUNT 1

OPERATING TEXTILE PROCESSING MACHINES WITHOUT A PERMIT

34. Plaintiffs incorporate paragraphs 1-33 of this Complaint herein as if fully set forth below.
35. No person shall operate nor cause to be operated a "significant source" without a valid permit, N.J.A.C. 7:27-8.3(b).
36. "Significant source" includes any commercial fuel burning equipment, with a heat input of at least 1 million BTU/hour, such as American Fabric's textile processing machines. N.J.A.C. 7:27-8.2(c)(1).
37. Defendants operated seven textile processing machines as surface coating equipment with heat outputs of more than 1 million BTU/hour since 2015 without a valid permit or certificate, in violation of N.J.A.C. 7:27-8.3(b).
38. Plaintiffs are entitled to injunctive and non-injunctive relief for violations of the APCA. See N.J.S.A. 26:2C-19(a); N.J.S.A. 26:2C-19(d).

WHEREFORE, Plaintiffs request judgment in their favor

- a. Ordering Defendants to cease operation of its textile processing machines;
- b. Ordering Defendants to apply for an operating permit

- for the operation of its textile processing machines;
- c. Imposing civil penalties for each day of violation, as determined by the court, in accordance with N.J.S.A. 26:2C-19(d), and;
  - d. Awarding Plaintiffs any other relief this Court deems just and appropriate.

COUNT 2

FAILURE TO CONDUCT A BOILER STACK TEST

- 39. Plaintiffs incorporate paragraphs 1-38 of this Complaint herein as if fully set forth below.
- 40. Upon request from the Department, the owner or operator of any equipment or source operation subject to N.J.A.C. 7:27-19.17 shall:
  - a. Conduct tests to determine the emissions from such equipment or source operation to determine the nature and quantity of VOC, NO<sub>x</sub>, or Carbon Monoxide (CO) being emitted into the outdoor atmosphere;
  - b. Provide information concerning the location, rate, duration, concentration, and properties of the emissions of NO<sub>x</sub>, CO or VOC from such equipment or source operations, and such other information as may be reasonably necessary to assess air emissions;

- c. Provide information concerning the rate at which the equipment or source operation is combusting fuel during tests conducted, and the maximum gross heat input value of the equipment or source operation; and
- d. Provide a test log.

- 41. To date, the Defendants have not conducted the Department mandated stack test on the Boiler, in violation of N.J.A.C. 7:27-19.17(a).
- 42. Plaintiffs are entitled to injunctive and non-injunctive relief for violations of the APCA. See N.J.S.A. 26:2C-19(a); N.J.S.A. 26:2C-19(d).

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Ordering Defendants to cease operation of the Boiler;
- b. Ordering Defendants to conduct a stack test on the Boiler to ascertain compliance with the APCA and its regulations for NOx production;
- c. Imposing civil penalties for each day of violation, as determined by the court, in accordance with N.J.S.A. 26:2C-19(d), and;
- d. Awarding Plaintiffs any other relief this Court deems just and appropriate.

COUNT 3

FAILURE TO CONDUCT COMBUSTION ADJUSTMENTS ON THE BOILER

43. Plaintiffs incorporate paragraphs 1-42 of this Complaint herein as if fully set forth below.
44. The owner or operator of an industrial, commercial, and/or institutional boiler with a maximum gross heat input rate of at least twenty (20) million BTU per hour, shall adjust the combustion process annually and in the same quarter of each calendar year beginning in 2007. N.J.A.C. 7:27-19.7(g) (3).
45. Defendants failed to conduct combustion adjustments on the Boiler, in violation of N.J.A.C. 7:27-19.7(g) (3).
46. Plaintiffs are entitled to injunctive and non-injunctive relief for violations of the APCA. See N.J.S.A. 26:2C-19(a) and N.J.S.A. 26:2C-19(d).

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Ordering Defendants to cease operation of the Boiler;
- b. Ordering Defendants to conduct a combustion adjustment on the Boiler in accordance with N.J.A.C. 7:27-19.7(g) (3);
- c. Imposing civil penalties for each day of violation, as determined by the court, in accordance with N.J.S.A. 26:2C-19(d), and;



d. Awarding Plaintiffs any other relief this Court deems just and appropriate.

COUNT 4

FAILURE TO COMPLY WITH CONDITIONS OF THE BOILER PERMIT

47. Plaintiffs incorporate paragraphs 1-46 of this Complaint herein as if fully set forth below.
48. No person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning properly and are in use in accordance with the preconstruction permit and certificate and all conditions and provisions thereto. N.J.A.C. 7:27-8.3(e)
49. The Department may include, as a condition of approval, a compliance plan. The compliance plan shall include monitoring, recordkeeping, and reporting requirements. N.J.A.C. 7:27-8.13(d).
50. The Department may revoke a permit or certificate if the permittee uses, or allows to be used, equipment or control apparatus not in compliance with the permit or certificate, or with any applicable Federal, or State law, regulation, or rule. N.J.A.C. 7:27-8.16(a)(1).
51. The Boiler Permit requires American Fabric to record the total

emissions of VOC, NOx, CO, and Sulfur Dioxide (SO2) from the Boiler, and the total natural gas consumed each year, N.J.A.C. 7:27-8.13(d).

52. Defendants failed to record the total emissions of VOC, NOx, CO, and SO2 from the Boiler, and the total natural gas consumed each year since 2015, in violation of the Boiler Permit. N.J.A.C. 7:27-8.13(d); N.J.A.C. 7:27-8.3(e).
53. Plaintiffs are entitled to injunctive and non-injunctive relief for violations of the APCA. See N.J.S.A. 26:2C-19(a); N.J.S.A. 26:2C-19(d).

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Ordering Defendants to cease operation of the Boiler;
- b. Ordering Defendants to comply with the conditions of the Boiler Permit including, but not limited to, providing records for the emissions of VOC and NOx and the consumption of natural gas fuel since 2015;
- c. Revoking the Boiler Permit;
- d. Imposing civil penalties for each day of violation, as determined by the court, in accordance with N.J.S.A. 26:2C-19(d), and;
- e. Awarding Plaintiffs any other relief this Court deems just and appropriate.

COUNT FIVE

STATUTORY PENALTIES FOR APCA VIOLATIONS

54. Plaintiffs incorporate paragraphs 1-53 of this Complaint herein as if fully set forth below.
55. The Department is authorized to seek civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense, and up to \$50,000 for the third and subsequent offense for violations of the APCA. Each day the violation continues shall constitute an additional, separate, and distinct offense. N.J.S.A. 26:2C-19.
56. Defendants violated the APCA by causing, suffering, allowing, or permitting to be emitted into the outdoor atmosphere substances, namely NOx and VOCs, in quantities resulting in air pollution under the Act, in violation of N.J.S.A. 26:2C-19(g) and N.J.A.C. 7:27-5.2(a).
57. Defendants violated the APCA by failing to operate the Boiler pursuant to the operating parameters set forth in the Boiler Permit, in violation of N.J.S.A. 26:2C-9.2(a) and N.J.A.C. 7:27-8.3(e).
58. Defendants violated the APCA by failing to operate the textile machines pursuant to the operating parameters set forth in the Textile Permit and operated the textile machines after

the Textile Permit expired in 2014, in violation of N.J.S.A. 26:2C-9.2(a), N.J.A.C. 7:27-8.3(b), and N.J.A.C. 7:27-8.3(e).

**WHEREFORE**, Plaintiffs request judgment in their favor:

- a. Imposing civil penalties for each day of violation, as determined by the court in accordance with N.J.S.A. 26:2C-19(d); and
- b. Awarding Plaintiffs any other relief this Court deems just and appropriate.

RESPECTFULLY SUBMITTED,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Dom Stockton-Rossini  
Dom Stockton-Rossini  
Deputy Attorney General

Dated: August 27, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Kevin A. Terhune, is hereby designated as trial counsel for the Plaintiffs in this action.

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

I certify 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).

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 the Plaintiffs at this time, nor is any non-party known to the Plaintiffs 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 the Plaintiffs, 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

By: /s/ Dom Stockton-Rossini  
Dom Stockton-Rossini  
Deputy Attorney General

Dated: August 27, 2020

# Civil Case Information Statement

## Case Details: PASSAIC | Civil Part Docket# L-002544-20

**Case Caption:** DEPT. OF ENVIRONMENTAL PROT. VS AMERICAN FABRIC

**Case Initiation Date:** 08/27/2020

**Attorney Name:** DOM STOCKTON-ROSSINI

**Firm Name:** ATTORNEY GENERAL LAW

**Address:** 25 MARKET STREET PO BOX 93

TRENTON NJ 08625

**Phone:**

**Name of Party:** PLAINTIFF : DEPT. OF ENVIRONMENTAL PROT.

**Name of Defendant's Primary Insurance Company**  
(if known): None

**Case Type:** ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by:** DEPT. OF ENVIRONMENTAL PROT.? NO

### THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify 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 *Rule* 1:38-7(b)

08/27/2020

Dated

/s/ DOM STOCKTON-ROSSINI

Signed

