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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

MURATHAN HAZER, SUNA HAZER,
MAX'S NEPTUNE ENTERPRISES,
INC., MAX'S MARS ENTERPRISES,
INC., "JOHN DOES" 1-10 (Names
Fictitious), and "ABC
CORPORATIONS" 1 through 10
(Names Fictitious),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SUSSEX COUNTY
DOCKET NO.

Civil Action

COMPLAINT

Plaintiffs the New Jersey Department of Environmental Protection ("DEP" or "Department") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "Plaintiffs"), having their principal offices at

401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorneys, bring this Complaint against the above-named defendants saying:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the common law to recover the cleanup and removal costs and damages they have incurred and will incur as a result of the discharges and/or unsatisfactory storage or containment of hazardous substances at real property located in the Borough of Hopatcong, Sussex County, New Jersey, and formally designated as and consisting of Block 30707, Lot 5 on the Tax Map of Hopatcong Borough ("Property"), as well all other areas where any hazardous substances discharged on the Property have come to be located ("Contaminated Site").

2. From approximately 1975 through 1994, Hopatcong Automotive Service, Inc., owned and operated an automotive repair and gasoline service station at the Property. On or around September 30, 1994, Defendants Murathan Hazer and Suna Hazer (collectively "the Hazers") purchased the Property.

3. From approximately 1995 through 2005, Defendants conducted soil and groundwater sampling, which revealed the presence of benzene, ethylbenzene, toluene, and xylenes

(collectively, "BTEX"), and lead in the soil and groundwater at the Property.

4. Exposure to BTEX can lead to neurological impairment and hematological effects, including such disorders as aplastic anemia and acute myeloid leukemia. Exposure to lead can cause miscarriage, still birth, or premature birth in pregnant women, birth defects in newborns, developmental delays in children, and various neurological disorders.

5. Defendants knew the Contaminated Site was contaminated with these dangerous chemicals but failed to remediate it. Their inaction required the Department to expend public funds to address the hazardous substances impacting, among other things, the drinking water system at the Property.

THE PARTIES

6. 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.

7. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Fund"), N.J.S.A. 58:10-23.11j, and, as the chief executive officer of the Fund, he is authorized to approve and pay any cleanup and removal costs DEP

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 Fund. N.J.S.A. 58:10-23.11j(d).

8. Defendant Murathan Hazer, the husband of Defendant Suna Hazer, is an individual whose dwelling or usual place of abode is 12 Sand Shore Road, Budd Lake, NJ 07828.

9. Defendant Suna Hazer, the wife of Defendant Murathan Hazer, is an individual whose dwelling or usual place of abode is 12 Sand Shore Road, Budd Lake, NJ 07828.

10. The Hazers are the present owners of the Property.

11. Defendant Max's Neptune Enterprises, Inc. ("Max's Neptune") is a corporation organized under the laws of the State of New Jersey, with a principal place of business at 450 River Styx Road, Hopatcong, NJ 07843. Max's Neptune's principal place of business is located at the Property.

12. Max's Neptune has associated names of Hopatcong Auto, Hopatcong Auto Sales, and Hopatcong Auto Body.

13. Defendant Murathan Hazer is the president and registered agent of Max's Neptune.

14. Defendant Suna Hazer is the secretary of Max's Neptune.

15. Upon information and belief, Max' Neptune's is a legal entity through which the Hazers conducted business activities with regard to the Property.

16. Defendant Max's Mars Enterprises, Inc. ("Max's Mars") is

a corporation organized under the laws of the State of New Jersey, with a principal place of business at 115 East Plane Street, Hackettstown, NJ 07840.

17. Upon information and belief, Max's Mars is a legal entity through which the Hazers conducted business activities with regard to the Property.

18. Defendant Murathan Hazer is the president of Max's Mars.

19. Defendant Suna Hazer is the secretary of Max's Mars.

20. Defendant "John Does" 1 through 10, these names being fictitious, are individuals, including but not limited to, responsible corporate officials, who discharged, are in any way responsible for, and/or contributed to the discharge of hazardous substances and pollutants at the Property with identities that cannot be ascertained or confirmed as of the filing of this Complaint.

21. Defendants "ABC Corporations" 1 through 5, these names being fictitious, are entities that discharged, are in any way responsible for, and/or contributed to the discharges of hazardous substances at the Property, with identities that cannot be ascertained or confirmed as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, tenants of, or are otherwise related to the named defendants.

GENERAL ALLEGATIONS

22. From approximately 1975 through 1994, Hopatcong Automotive Service, Inc., owned and operated an automotive repair and gasoline service station at the Property.

23. In approximately December 1988, Hopatcong Automotive Service, Inc., removed four underground storage tanks ("USTs") from the Property.

24. On approximately September 30, 1994, the Hazers purchased the Property from Hopatcong Automotive Service, Inc.

25. When the Hazers took ownership of the Property, two USTs and fill pipes remained at the Property.

26. Upon information and belief, the Hazers rented a portion of the Property to a tenant, L&S Auto Specialties, which operated an automotive repair shop at the Property.

27. From approximately 1995 through 2005, the Hazers conducted soil and groundwater investigations at the Property.

28. Groundwater samples taken by the Hazers in or around 1995 revealed BTEX - benzene at 18,000 parts per billion (ppb), ethylbenzene at 12,000 ppb, toluene at 57,000 ppb, and xylenes at 44,000 ppb - at levels far exceeding the applicable Groundwater Quality Standards ("GWQS"). The Department's Class II-A GWQS is 1.0 ppb for benzene, 600 ppb for toluene, 700 ppb for ethylbenzene, and 1,000 ppb for xylenes.

29. Lead was found in both soil and groundwater samples during this period in excess of applicable standards.

30. These hazardous substances and pollutants are associated with petroleum products and solvents, which, upon information and belief, were discharged from spills and overflows from fill pipes that served the USTs at the Property.

31. Seventeen groundwater samples taken by the Hazers on or about March 16, 1998, revealed BTEX contamination in concentrations exceeding GWQS.

32. Samples taken by the Hazers on or about December 26 and 28, 2001, also revealed BTEX in the soil above acceptable standards and lead in the groundwater samples above GWQS.

33. On or about September 6, 2005, soil and groundwater sampling revealed the presence of BTEX at levels that required indoor air sampling to evaluate potential hazardous vapor intrusion in adjacent structures. The groundwater sampling also revealed the presence of lead at 42 ppb, more than eight times the Department's Class II-A GWQS of 5.0 ppb.

34. BTEX in the soil or groundwater can vaporize. This vapor rises through subsurface soils and/or preferential pathways (such as underground utilities) and can permeate concrete foundations, and other porous materials ("vapor intrusion"). Thus, when BTEX contaminates the soil and

groundwater, some of it vaporizes and intrudes into structures and homes in its path. This vapor results in the continuous respiration of hazardous vapors by occupants of these buildings.

35. A litany of harmful effects is associated with exposure to BTEX and ingestion of lead.

36. Exposure to BTEX is associated, among other things, with neurological impairment and such hematological disorders as aplastic anemia and acute myeloid leukemia.

37. Ingestion of lead can cause miscarriage, still birth, or premature birth in pregnant women, birth defects in newborns, developmental delays in children, and various neurological disorders.

38. Despite the hazardous levels of contamination, the Hazers did not remediate the Contaminated Site.

39. Due to the Hazers' failure to remediate the Contaminated Site, the Department was required to undertake remedial actions using public funds.

40. On approximately June 20, 2007, the Department excavated and removed two underground storage tanks from the Property as an emergency response to the hazardous substances impacting the Property.

41. The Department's actions were an emergency response to a complaint by the Property's tenant that gasoline odors were emanating from the building faucets and toilets.

42. The Department further installed a Point of Entry Treatment system (POET) on a well at the Property to provide the Property's tenant with clean potable water.

43. The Department incurred cleanup and removal costs to address the impacts of the contamination.

44. On July 3, 2007, the Department issued a Notice of Deficiency to the Hazers for their failure to submit a remedial investigation work plan to address the soil, groundwater, and potable well contamination and their failure to investigate potential vapor intrusion to any impacted receptors.

45. In approximately August 2007, DEP issued a Directive and Notice to Insurers to the Hazers and Hopatcong Automotive Service, Inc., requiring these responsible parties to take remedial action.

46. On October 15, 2010, the Department filed a lien against the Hazers in the amount of \$91,114.86 under Superior Court Docket Number DJ-274973-10.

47. On January 10, 2012, the Department filed an amended lien against the Hazers in the amount of \$147,011.24 under Superior Court Docket Number DJ-274973-10.

48. Due to the Defendants' non-compliance, the Department has incurred significant costs to remediate the Property, and will continue to incur such costs to complete future remediation.

49. The Defendants have not reimbursed the Plaintiffs for the cleanup and removal costs expended at the Property, nor have they agreed to fund or perform any future remedial activities.

COUNT I

Spill Act

50. Plaintiffs repeat and incorporate each of the foregoing paragraphs above as though fully set forth herein.

51. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

52. The Department has incurred, and will incur, cleanup and removal costs for the remediation at the Contaminated Site.

53. The Administrator either has approved, or may approve, appropriations from the Fund for remediating the hazardous substances discharged at the Property.

54. The costs that the Department and the Administrator have incurred, and will incur, to remediate the contamination at the Contaminated Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

55. Any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be

liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department and the Administrator have incurred and will incur as a result of a hazardous substance discharge. N.J.S.A. 58:10-23.11g(c).

56. As persons who purchased contaminated property or who owned, operated at, and otherwise controlled the Property at the time of the discharge of hazardous substances, and/or as a person who failed to complete the remediation, Defendants are dischargers and/or persons in any way responsible for any hazardous substance and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department and the Administrator pursuant to the Spill Act, N.J.S.A. 58:10-23.11g(c) (1).

57. By failing to comply with the 2007 Directive issued pursuant to the Spill Act, Defendants, Murathan Hazer, and Suna Hazer are subject to liability, jointly and severally, without regard to fault, in an amount up to three times the cleanup and removal costs and damages that Plaintiffs have incurred, and will incur, to remediate the Contaminated Site. N.J.S.A. 58:10-23.11f(a)1.

58. 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 injunctive relief, N.J.S.A. 58:10-23.11u(b) (1); for its

unreimbursed cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u(b) (2); and for any other unreimbursed costs or damages the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u(b) (5).

59. 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 Fund.

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Ordering Defendants to reimburse the Department and the Administrator, without regard to fault, jointly and severally, in an amount equal to three times their cleanup and removal costs and damages that have been incurred for the remediation at the Contaminated Site, with applicable interest;
- b. Ordering Defendants to reimburse the Department and the Administrator, without regard to fault, jointly and severally, for all cleanup and removal costs the Department and the Administrator have incurred for the remediation at the Contaminated Site, with applicable interest;
- c. Finding Defendants liable, without regard to fault, jointly and severally, in an amount equal to three times

the Department's and the Administrator's cleanup and removal costs and damages that will be incurred for the remediation at the Contaminated Site;

- d. Finding Defendants liable, without regard to fault, for any cleanup and removal costs and damages the Department and the Administrator will incur for the remediation at the Contaminated Site;
- e. Ordering Defendants to complete the remediation in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3(a), the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable statutes and regulations including, but not limited to the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
- f. Awarding the Department and the Administrator their costs and fees in this action;
- g. Awarding the Department and the Administrator any other relief this court deems appropriate; and
- h. 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 Contaminated Site.

COUNT II

Unjust Enrichment

60. Plaintiffs repeat and incorporate each of the foregoing paragraphs above as though fully set forth herein.

61. Defendants have failed to fully perform or fund the remediation at the Contaminated Site.

62. Plaintiffs have used and will continue to use public funds to remediate the contamination existing at and emanating from the Properties.

63. Plaintiffs' expenditure of public funds at the Contaminated Site, which would otherwise be Defendants' obligation to fully fund and/or perform, has unjustly enriched Defendants.

64. Defendants have not reimbursed Plaintiffs for the costs that Plaintiffs have incurred to conduct the remediation of the contamination existing at and emanating from the Properties.

WHEREFORE, Plaintiffs request judgment in their favor:

- a. Finding that Defendants have been unjustly enriched by Plaintiffs' expenditure of public funds to perform the remediation of the contamination existing at and emanating from the Properties;

- b. Ordering Defendants to reimburse Plaintiffs for the costs Plaintiffs have incurred, and will incur, to perform the remediation of the contamination existing at and emanating from the Properties, with applicable interest;
- c. Finding Defendants liable for all other compensatory and consequential damages;
- d. Awarding the Plaintiffs such other relief as this court deems appropriate; and
- e. 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 Contaminated Site.

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

By: /s/ Carley A. Doyle
Carley A. Doyle
Deputy Attorney General

Dated: December 18, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the court is advised that Carley A. Doyle, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

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

By: /s/ Carley A. Doyle
Carley A. Doyle
Deputy Attorney General

Dated: December 18, 2020

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel certifies that the matters in controversy in this action are currently not the subject of any other pending action in any court or arbitration proceeding known to the State at this time, nor is any non-party known to the State 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 matter or non-party later becomes known to 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
Attorney for Plaintiffs

By: /s/ Carley A. Doyle
Carley A. Doyle
Deputy Attorney General

Dated: December 18, 2020

Civil Case Information Statement

Case Details: SUSSEX | Civil Part Docket# L-000561-20

Case Caption: DEPT. ENVIRONMENTAL PROTECTIO VS HAZER MURATHAN

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION

Case Initiation Date: 12/18/2020

Document Type: Complaint

Attorney Name: CARLEY A DOYLE

Jury Demand: NONE

Firm Name: ATTORNEY GENERAL LAW

Is this a professional malpractice case? NO

Address: 25 MARKET STREET PO BOX 93

Related cases pending: NO

TRENTON NJ 08625

If yes, list docket numbers:

Phone:

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

Name of Party: PLAINTIFF : Dept. Environmental Protection

Are sexual abuse claims alleged by: Dept. Environmental Protection? NO

Name of Defendant's Primary Insurance Company

(if known): Unknown

Are sexual abuse claims alleged by: Administrator Spill Fund? 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)

12/18/2020
Dated

/s/ CARLEY A DOYLE
Signed

