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

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION; THE	:	
COMMISSIONER OF NEW JERSEY	:	
DEPARTMENT OF ENVIRONMENTAL	:	<u>CIVIL ACTION</u>
PROTECTION; and THE ADMINISTRATOR	:	
OF THE NEW JERSEY SPILL	:	COMPLAINT
COMPENSATION FUND,	:	
Plaintiffs,	:	
v.	:	
43-45 SOUTH CENTER STREET, LLC;	:	
DONATO REALI, Individually and as	:	
Owner of 43-45 SOUTH CENTER STREET,	:	
LLC; REOCK STREET DEVELOPMENT,	:	
LLC; "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 ("Department" or "DEP"), the Commissioner of the New Jersey Department of Environmental Protection (the "Commissioner"), 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 attorney, file this Complaint against the above-named Defendants, and allege as follows:

INTRODUCTION

1. This is a civil action brought 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 Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), to compel Defendants to remediate the property located at 43-45 South Center Street, Orange, New Jersey (the "Property"), and designated as Block 2803, Lot 4 on the tax map of the City of Orange, Essex County ("Site"), and wherever contamination has migrated from the Site ("Contaminated Site"). The Contaminated Site has been identified in the New Jersey Department of Environmental Protection database as Program Interest Number 024050.
2. The Site is located in Orange, New Jersey, a community that is 94.6 percent minority and low income, with a median household income of \$38,548.
3. 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 accompanying potential for increased adverse public health impacts. But residents of these Environmental Justice communities deserve 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).

4. As early as 1924, the Site was the location of a retail gas station.
5. In 1993, DEP was notified that waste oil was observed reentering a 275-gallon Underground Storage Tank (UST) while it was in the process of being decommissioned. In 2004, sampling confirmed the existence of Total Petroleum Hydrocarbons at the Site ("TPH") substantially in excess of the applicable Soil Cleanup Criteria ("SSC"). Petroleum Hydrocarbons consist of hazardous substances, exposure to which poses a danger to human health, including damage to the liver, kidneys, central nervous system, and eyes.
6. In 2005, additional sampling confirmed the existence of TPH in excess of the SSC, and also confirmed the existence of tetrachloroethylene ("PCE"), a known hazard to human health and well-being, including kidney dysfunction, respiratory tract infection, and cognitive and neurological effects.

7. Multiple residences and homes are located within close proximity to the Site.
8. Defendants have ignored numerous legal obligations to remediate the Site during their ownership of the Property, including failing to hire a Licensed Site Remediation Professional ("LSRP") by September 18, 2017 to supervise and direct remediation of the Property. Defendants have ignored numerous of their other legal obligations relating to the Property, including: (1) completion of a remedial investigation and submission of a full and complete Remedial Investigation Report ("RIR"); (2) preparation and submission of a Public Participation Plan and Schedule; (3) preparation and submission of an Initial Remediation Cost Review; and (4) establishment of a Remediation Trust Fund ("RTF").
9. Plaintiffs bring this suit (1) to compel Defendants to remediate hazardous substances in the soil and groundwater at the Site, and the soil and groundwater of surrounding properties that have been contaminated with hazardous substances discharged at the Site; (2) to impose civil administrative penalties on Defendants; and (3) for other related relief

THE PARTIES

10. DEP is a principal department in the State of New Jersey's executive branch of government. The Department maintains its

principal offices at 401 East State Street, Trenton, Mercer County. The Spill Act and SRRA vest in DEP the authority to protect human health and the environment. This authority empowers the Department to compel parties responsible for the discharge of hazardous substances to remediate the contamination, recover costs incurred to remediate hazardous-substance discharges using public funds, institute legal proceedings to enforce final agency orders, and recover penalties in summary proceedings in Superior Court.

11. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of the Spill Act. N.J.S.A. 58:10-23.11u.a.(1)(a).

12. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As the 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 to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

13. Defendant Reock Street Development, LLC ("Reock Street Development") is a New Jersey Limited Liability Company whose principal address is 79 South Valley Road, West Orange, New Jersey. Reock Street Development acquired title to the Property

on February 23, 2007, from Joanne L. Carbone, Executrix of the Estate of Lucia Lomelo, as set forth at Essex County Deed Book 12034, pp. 866 et seq.

14. Defendant 43-45 South Center Street, LLC ("43-45 South Center Street") is a New Jersey Limited Liability Company whose principal address is 79 South Valley Road, West Orange, New Jersey. On October 1, 2014, 43-45 South Center Street acquired title to the Property from Reock Street Development, as set forth at Essex County Deed Book 12523, pp. 750 et seq.

15. Defendant Donato Reali ("Reali") is an individual person who served as an officer of Reock Street Development and 43-45 South Center Street.

16. Defendants "XYZ Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the date of the filing of this Complaint, certain of which are corporate successors to, predecessors of, insurers of, or are otherwise related to Defendants Reock Street Development, 43-45 South Center Street, and/or Defendant Reali, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site.

17. Defendants "John and/or Jane Does" 1-10, these names being fictitious, are natural individuals whose identities cannot be

ascertained as of the date 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 Reock Street Development, 43-45 South Center Street, and/or Defendant Reali, one or more of the XYZ Corporation defendants, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Property.

SITE BACKGROUND

18. The Property is located at 43-45 South Center Street in Orange, Essex County, and is also known as Block 2803, Lot 4 on the tax map of the City of Orange. The Site, and all other areas to which any hazardous substances discharged on the Site have migrated, are collectively referred to as "the Contaminated Site."

19. The Site has a long history of contaminated soil, going back to at least 1993. In 2016, for example, it was discovered that 11 different types of contaminants were determined to be in exceedance of the most stringent soil remediation standards at the Site: (1) benzo(a)anthracene; (2) benzo(a)pyrene; (3) benzo(b)fluoranthene; (4) dibenzo(a,h)anthracene; (5) indeno(1,2,3-cd)pyrene; (6) 2-methylnaphthalene; (7) manganese;

(8) benzene; (9) toluene; (10) ethylbenzene; and (11) xylene. Each of these substances is dangerous to human health.

20. Benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluorathene, dibenzo(a,h)anthracene, and indino(1,2,3-cd) pyrene are Polycyclic Aromatic Hydrocarbons (PAC). PACs are a particularly dangerous class of chemical that are hazardous to human health in numerous ways, including acting as carcinogens, causing permanent skin damage (including skin cancers), irreversible lung damage, bladder injury, and impeded functioning of the gastrointestinal system. Additional injuries to human health caused by exposure to any chemical classified as a PAC include severe eye irritation, persistent nausea, uncontrollable vomiting, chronic diarrhea, and prolonged confusion. Moreover, exposure to PAC can cause cataracts, kidney damage, liver damage, and jaundice.

21. Exposure to 2-methylnaphthalene can damage the red blood cells, impeding the blood's ability to carry oxygen throughout the body. Exposure can also cause kidney damage, which in some cases may be irreversible.

22. Exposure to manganese can adversely affect the respiratory tract and damage the brain. Even slight exposure can result in hallucinations, chronic forgetfulness, and nerve damage. Manganese exposure also has been clinically linked to the onset

or worsening of Parkinson's Disease, lung embolisms, bronchitis and, in men, impotency.

23. Exposure to benzene can damage bone marrow, thus interfering with or decreasing the body's ability to create new blood cells to replace those that die naturally over time. Exposure to benzene can also induce excessive bleeding and a compromised immune system, thus increasing the risk of infection.
24. Exposure to toluene is linked to liver and kidney damage.
25. Exposure to ethylbenzene can result in decreased lung functioning and associated respiratory ailments of a permanent nature, as well as chronic dizziness due to lack of oxygen.
26. Exposure to xylene is clinically linked to thoracic pain, irregular electrocardiograms and heart damage, impaired lung functioning, faltering memory, and impaired liver and kidney functions.
27. The Property consists of a rectangular lot, with an area of approximately 0.14 acres. The Property is located on the northwest corner of Reock Street and South Center Street.
28. The Property is currently developed with a single one-story building fronting South Center Street on its eastern border, and is accessed by a partial asphalt/gravel driveway located along the eastern Property boundary. Approximately 95 percent of the Property is covered with impervious surfaces, and the

remaining 5 percent is vegetated, with no storm inlets or drainage structures located on the Property.

29. The Property is located in a predominantly residential neighborhood, interspersed with occasional light industrial structures. The area is bordered on the north by the railroad overpass of New Jersey Transit's Morris and Essex train line. The Property is bordered to the south by Reock Street, followed by a wooded area that abuts Interstate Route 280; to the east by South Center Street followed by residential properties; and to the west by residential properties.

30. The median ground surface of the Property is approximately 191 feet above mean sea level. The Property exhibits low topographic relief and can be described as generally flat, with a ground surface sloping modestly to the east.

31. The closest major surface water body to the Site is the East Branch of the Rahway River, located approximately 3600 feet west of the Site.

32. The Property has been developed since approximately 1885. Initially, the buildings occupying the land were used as a furniture storage facility and later, as a landscape company yard. Beginning in 1924, the Site was used as an automobile repair/filling station (gas station), and contained a succession of garages.

33. In June 1951, the Property was acquired by Joseph and Lucia Lomelo ("Lomelos").
34. In August 2001, title passed to Joanne L. Carbone, the Executrix of the Estate of Lucia Lomelo.
35. On February 23, 2007, Reock Street Development acquired the Property.
36. On October 1, 2014, title passed to 43-45 South Center Street.
37. Defendant Donato Reali was/is an officer of Defendants Reock Street Development and 43-45 South Center Street.

STATEMENT OF THE CASE

38. In May 1993, P&D Environmental Services ("P&D") submitted an Underground Storage Tank ("UST") Closure Summary Report (P&D Report) to the Department on behalf of the Lomelos, who owned the Property at that time.
39. The Lomelos hired P&D in 1993 to decommission two 2,000-gallon unleaded gasoline USTs, two 2,000-gallon leaded gasoline USTs, and one 275-gallon waste oil UST that had been used when the Site contained a filling station (gas station).
40. The P&D Report erroneously referred to the 275-gallon waste oil UST as a 500-gallon underground storage tank.
41. The four gasoline USTs were removed in 1993 as planned. But the 275-gallon waste oil UST was only partially decommissioned

from a separate excavation within the garage building located on the Property.

42. During the waste oil UST decommissioning activities in 1993, waste oil was observed reentering the tank immediately after being pumped out onto the ground and entering the soil. The discharge was reported to the Department hotline, and incident #93-03-12-1005-00 was assigned to the case.

43. On June 30, 2004, S&M Management Incorporated ("S&M") performed on-site work to complete the removal of the 275-gallon waste oil UST on behalf of then-current property owner Joanne L. Carbone, Executrix of the Estate of Lucia Lomelo, deceased. After the UST was completely removed from the 4-foot by 16-foot by 4-foot pit ("pit") where the 275-gallon waste oil UST had been located, S&M observed corrosion holes in the tank shell. In addition, S&M observed petroleum-impacted fill material surrounding the removed UST.

44. On August 29, 2004, two months after its June 30, 2004 on-site work, S&M returned to the Site to complete remedial action activities related to the 275-gallon waste oil UST. S&M removed approximately 14 tons of impacted soil from the "pit" during remedial activities. Upon completion of the impacted soil excavation activities, three (3) soil samples were collected

from the base of the pit and denominated as "Center Street Auto 1," "Center Street Auto 2," and "Center Street Auto 3."

45. The analytical results from the soil samples revealed total petroleum hydrocarbons ("TPH") in excess of the applicable Soil Cleanup Criteria ("SCC") of 10,000 parts per million ("ppm") in both soil sample Center Street Auto 2 (14,210 ppm) and soil sample Center St. Auto 3 (30,042 ppm).

46. In December 2004, S&M returned to the Site to initiate groundwater delineation activities. Soil boring B-1A was advanced in the location of the former 275-gallon waste oil UST to a depth of approximately 16 feet below ground surface ("bgs"). S&M reported encountering groundwater at approximately 14 to 15 feet bgs and exhibited 1/4-inch of free product. Further investigation, however, could not be completed due to subsurface structures. No soil samples were collected and analyzed from boring B-1A.

47. S&M conducted an additional on-site investigation on February 1, 2005, which included the removal of a section of the floor of the garage building and the installation of soil borings. The 2005 S&M Report states that, on or about February 1, 2005, S&M collected three additional soil samples adjacent to the location of the former waste oil UST. Soil sample analytical results revealed that sample "B-1," which had been extracted

from 9 to 9.5 feet bgs, contained a TPH concentration of 10,652 ppm, in exceedance of the SSC of 10,000 ppm.

48. Additionally, soil sample B-1, at 2.83 ppm, revealed an exceedance of the impact to groundwater standard ("IGWS") for tetrachloroethylene ("PCE") of 1.0 ppm.

49. PCE is a known hazard to human health and well-being, including kidney dysfunction, respiratory tract irritation, and cognitive and neurological effects.

50. On February 18, 2005, S&M returned to the Site to collect a groundwater sample from soil boring location B-1. The sample was found to contain 5.3 parts per billion ("ppb") of PCE, exceeding the Department's Class II-A Ground Water Quality Standard ("GWQS") of 1.0 ppb.

51. The Entech Group, Inc. ("Entech") was on-Site on August 12, 2013, to further investigate impacts from the 275-gallon former waste oil UST. Entech oversaw the installation of three (3) temporary well points.

52. The three temporary well points, designated TW-1, TW-3, and TW-7, were installed to a depth of 20 feet bgs surrounding the former waste oil UST location. Soil samples SB-1, SB-3, and SB-7 were collected from the temporary well point borings.

53. Entech returned to the Property on August 13, 2013, to gauge the static water level in the three temporary well points (TW-

1 at 17.40 feet; TW-3 at 15.98 feet; and TW-7 at 17.84 feet), and to collect groundwater samples.

54. The three groundwater samples collected on August 13, 2013, were sent to a laboratory for target compound list ("TCL") plus a forward library search for an additional 15 tentatively identified compounds (TCL VO+15) with selective ion monitoring (TCL BN+15 SIM), and target analyte list ("TAL") Metals.
55. On August 12, 2013, Entech installed an additional four (4) soil borings around the area of the former 275-gallon waste oil UST. The soil samples extracted from the borings were analyzed for Category 2 Extractable Petroleum Hydrocarbons (Cat 2 EPH) and TCL VOC+15. Additionally, the soil samples were held for possible contingent analysis of TCL base neutral compounds plus a forward library search for an additional 20 compounds (TCL BN+20), pesticides, polychlorinated biphenyls ("PCBs"), and TAL Metals with Cyanide.
56. Soil sample analytical results indicated a Cat 2 EPH of 2,300 ppm for soil sample SB-7, which required fractionation and contingent analysis. The fractionated EPH results indicated conformance with the composite-specific Soil Remediation Criterion ("SRC"). However, analytical results revealed exceedance of the DEP's Non-Residential Direct Contact Soil Remediation Standards ("NRDCSRS") for four hazardous chemicals:

arsenic, benzo(a)pyrene, benzo(b)fluoranthene, and dibenzo(a,h)anthracene. Additionally, there were several exceedances of the DEP's Impact to Groundwater Soil Screening Levels. Preliminary groundwater sample analytical results revealed several TAL metals exceeding the GWQS, including manganese, aluminum, iron, sodium, beryllium, chromium, and lead.

57. On September 30, 2013, Entech submitted a Letter of Findings to the Department on behalf of Reock Street Development, which was the owner of the Property at that time. As set forth above, Defendant Reali served as an officer of Reock Street Development.

58. On March 4, 2014, Reock Street Development submitted a request to extend the timeframe for submittal of the Remedial Investigation Report ("RIR") mandated by N.J.S.A. 58:10C-27 from May 7, 2014, to May 7, 2016. The Department granted the request.

59. On May 7, 2016, Impact Environmental Closures, Inc. ("Impact") submitted the RIR ("2016 RIR") to the Department.

60. The 2016 RIR states that between March 22 and April 21, 2016, Impact oversaw the installation of additional soil borings on Site and collected additional soil samples. Eleven (11) separate contaminants were found to be in exceedance of the most stringent soil remediation standards, including:

benzo(a)anthracene
benzo(a)pyrene
benzo(b)fluoranthene
dibenzo(a,h)anthracene
indeno(1,2,3-cd)pyrene
2-methylnapthalene
manganese
benzene
toluene
ethylbenzene
xylene (total).

These chemicals, either alone or in combination, have multiple serious and adverse effects on human health, as detailed in paragraphs 14-20 above.

61. The 2016 RIR states that on March 21 and April 11, 2016, Impact oversaw the installation of three (3) permanent monitoring wells on the Property. On March 23 and April 22, 2016, Impact collected groundwater samples from the temporary monitoring wells.

62. Impact collected further groundwater samples from the monitoring wells on April 6 and April 25, 2016. A total of 18 different compounds were found to be in exceedance of the GSWS in both the temporary and permanent monitoring well samples. High exceedances were found in aluminum (286 times the maximum permissible level), arsenic (176 times), iron (156 times), lead (91 times), sodium (43 times), tetrachloroethene (PCE) (17 times), and benzene (1600 times). Arsenic, lead, PCE, and benzene are chemicals which are particularly dangerous to human

health and well-being. Exposure to arsenic can cause skin cancer, bladder cancer, and lung cancer, while lead exposure is linked to anemia, kidney disease, and brain damage.

DIRECT OVERSIGHT

63. Based on the March 12, 1993 discovery of the discharge at the Site, SRRA required the Property Owner to complete the remedial investigation for the entire Contaminated Site and submit a remedial investigation report to the Department by May 7, 2016, pursuant to N.J.S.A. 58:10C-27. As outlined above, an RIR was submitted on May 7, 2016.

64. On June 21, 2017, the Department's Bureau of Inspection and Review informed Defendant Reali that the RIR submitted on May 7, 2016, was not complete, citing the incomplete delineation of groundwater as referenced in the submitted Case Inventory Document. Because of this failure, the RIR was deemed not timely submitted.

65. Because the RIR was not timely submitted, the Site became subject to the Department's Direct Oversight effective May 7, 2016, pursuant to N.J.S.A. 58:10C-27 and N.J.A.C. 7:26C-3.3 and -3.4.

66. Direct Oversight subjected the Property to additional requirements, including requiring the Responsible Person to:
(a) submit a public participation plan; (b) submit a remediation

cost review consisting of a good-faith, scientifically-based estimate of costs expected to be incurred for the remainder of the remediation; (c) establish a remediation trust fund ("RTF") and pay a 1-percent surcharge; (d) obtain Department approval in order to disburse monies from the RTF; and (e) conduct a feasibility study. N.J.A.C. 7:26C-14.2(b). In addition, in all cases of Direct Oversight, a DEP case manager is assigned to review and approve all documents, and all DEP staff oversight fees are paid for by the Responsible Person. N.J.A.C. 7:26C-14.2(b).

67. By means of a negotiated Direct Oversight administrative consent order ("DO ACO") with the Department, the individual responsible for conducting the remediation may, in a particular case, earn adjustments to the Direct Oversight requirements set forth above - an "Adjusted DO ACO." But without an Adjusted DO ACO, the individual responsible for conducting the remediation must strictly comply with all of the Direct Oversight requirements in N.J.A.C. 7:26C-14.2(b).

68. To date, Defendant Reali has not complied with any of the Direct Oversight requirements set forth above.

FAILURE TO HIRE LSRP

69. Defendant Reali (the Responsible Person) retained and dismissed three (3) licensed site remediation professionals

(LSRP). First, John C. Hernandez was retained on November 14, 2012, and dismissed on April 12, 2013. Next, Michael D. Weaver was retained on July 22, 2013, and dismissed on April 30, 2015. Finally, David L. Pry was hired on April 28, 2015, and dismissed on August 4, 2017.

70. Defendant Reali has not retained an LSRP since Pry's dismissal on August 4, 2017.

71. Pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-2.3(a)(1) and (2), Defendant Reali was required to hire an LSRP for the Site's remediation and notify DEP of the LSRP's name and license number by September 18, 2017 - 45 days from Pry's dismissal.

72. To date, Defendant has not notified the Department of the name and license number of the LSRP.

DEP'S ISSUANCE OF AONOCAPA

73. Defendant Reali has ignored numerous legal obligations during of his ownership of the Property, including failing to hire an LSRP by September 18, 2017 to supervise and direct remediation of the Property.

74. While Defendants initiated some remediation efforts on the Property in the past, they have ignored their legal obligation to complete remediation of the on-Site contamination, thus

compelling the Department to place the Property into Direct Oversight status.

75. Pursuant to the authority vested in the Commissioner by the SSCA, 58 N.J.S.A. 58:10-23.11u.a.(1)(b), on July 10, 2019, the Department, via Certified Mail, issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA"), assessing a Civil Administrative Penalty against Reock Street Development, 43-45 South Center Street, and Reali as current and/or former owners of the contaminated Site.

76. The AONOCAPA was issued because Defendants: (1) failed to hire an LSRP within 45 days of the August 4, 2017 dismissal of the previously employed LSRP, in violation of N.J.A.C. 7:26C-2.3(a)(1) and 7:26C-2.3(a)(2); (2) did not timely submit an RIR for the Contaminated Site pursuant to N.J.S.A. 58:10C-27; and (3) did not timely comply with the Direct Oversight requirements mandated by N.J.A.C. 7:26C-14.2(b), including: (a) submission of a public participation plan and accompanying schedule within 90 days after triggering direct oversight, pursuant to N.J.A.C. 7:26C-14.2(b)(9); (b) submission of an initial remediation cost review within 90 days after triggering direct oversight, pursuant to N.J.A.C. 7:26C-5.10(a); and (c) establishment of a remediation trust fund within 90 days after triggering direct oversight, pursuant to N.J.A.C. 7:26C-5.4.

77. The AONOCAPA assessed a civil penalty in the amount of \$40,000, consisting of a civil penalty of \$15,000 for failure to hire an LSRP by the deadline imposed by N.J.A.C. 7:26C-2.3(a)1 and 2, and a civil penalty of \$25,000 because DEP placed the Property into Direct Oversight status pursuant to N.J.A.C. 7:26C-14.2(b). To date, no portion of these civil penalties has been paid.

78. The AONOCAPA informed Defendants that they had the right to request a hearing within 20 calendar days after receipt of the AONOCAPA, and that failure to do so would result in Defendants' loss of a right to a hearing. Defendants did not exercise their right to request a hearing. As a result, the AONOCAPA is now a final agency order of the DEP.

79. The Contaminated Site has been designated by the Department as Site Remediation Program Interest Number 024050.

FIRST COUNT

Spill Act Liability and Enforcement of the Final Order

80. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 79 above as though fully set forth in their entirety herein.

81. Pursuant to the Spill Act, N.J.S.A. 58:10-23.11u.a.(1) and N.J.S.A. 58:10-23.11u.b., the Department may bring a civil action to compel compliance with an agency order.

82. The Department may also assess as civil administrative penalty (not to exceed \$50,000 per day, for each day the violation continues) against a person in violation of a provision of the Spill Act or "any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant to the Spill Act." N.J.S.A. 58:10-23.11u.a.(1)(b) and N.J.S.A. 58:10-23.11u.c.
83. The AONOCAPA issued to Defendant 43-45 South Center Street and Defendant Reali is a final agency order.
84. The AONOCAPA became a final agency order because Defendants did not request a hearing or otherwise respond to the AONOCAPA within the 20-day timeframe, as required by N.J.S.A. 58:10-23.11u.c(1), N.J.A.C. 7:26c-9.10, and the AONOCAPA.
85. 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 no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1), except as provided in N.J.S.A. 58:10-23.11g12, which is not applicable here.
86. The chemicals discharged into soil and water as set forth above are "hazardous substances" as defined by N.J.S.A. 58:10-23.11b.

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

88. To date, Defendants have not complied with the requirement to pay the \$40,000 civil administrative penalty assessed in the final agency order.

89. Defendants are liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred and which will be incurred at the Contaminated Site as a result of the discharge of hazardous substances as set forth above.

WHEREFORE, Plaintiffs demand judgment in their favor:

- a. Finding that Defendants discharged hazardous substances at the Property, or are otherwise in any way responsible for the discharge of the hazardous substances;
- b. Declaring Defendants liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1);
- c. Directing Defendants to remediate the Property fully and completely in accordance with the Site Remediation Act, N.J.S.A. 58:10C-1 to -29, and all other laws and regulations;
- d. Ordering Defendants to reimburse Plaintiffs for all cleanup and removal costs Plaintiffs may incur in the

future as the result of the discharge of hazardous substances at the Property, with interest as applicable, if Defendants fail to complete remediation;

- e. Compelling Defendants to comply with the AONOCAPA, which is now a final agency order, and to otherwise remediate the Contaminated Site in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- f. Compelling Defendant 43-45 South Center Street and Defendant Reali to pay the Civil Administrative Penalty Assessment in the amount of \$40,000 imposed by the AONOCAPA, consisting of:
 - (1) A Civil Administrative Penalty of \$15,000 for failure to hire an LSRP as described above, pursuant to N.J.A.C. 7:26C-2.3(a)1 and 2; and
 - (2) A Civil Administrative Penalty of \$25,000 for failure to comply with the requirements of Direct Oversight, pursuant to N.J.A.C. 7:26C-14.2(b).
- g. Awarding Plaintiffs any other relief this Court deems appropriate.
- h. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve 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

Assessment of Civil Penalty for Violating the Spill Act and Failing to Pay the Civil Administrative Penalty

90. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 89 above as though fully set forth in their entirety herein.

91. Pursuant to N.J.S.A. 58:10-23.11u.d., "[a]ny person who violates a provision of [the Spill Act] or a court order issued pursuant thereto, or who fails to pay a Civil Administrative Penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day's continuance of the violation shall constitute a separate violation."

92. The Department may bring an action in Superior Court seeking the imposition of these penalties, N.J.S.A. 58:10-23.11u.a.(1)(c), which, along with costs, may be recovered by the Department in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12[INSERT], and N.J.S.A. 58:10-23.11u.d.

93. Defendants violated the Spill Act provision that prohibits the discharge of hazardous substances, N.J.S.A. 58:10-23.11c, and are therefore subject to the civil penalties imposed pursuant to N.J.S.A. 58:10-23.11u.d.

94. In addition, Defendants have not paid the \$40,000 civil administrative penalties assessed in the final agency order, and are therefore subject to the civil penalties imposed under N.J.S.A. 58:10-23.11u.d.

95. Pursuant to N.J.S.A. 58:10-23.11u.d. and R. 4:70-1, Plaintiffs may proceed summarily, in accordance with the procedure of R. 4:67-1, to enforce the statutory penalty provision and collect the penalties imposed.

WHEREFORE, Plaintiffs demand judgment against Defendants:

- a. Finding that Defendants violated the Spill Act;
- b. Finding that Defendants failed to pay the \$40,000 civil administrative penalty assessed in the final agency order;
- c. Imposing civil penalties, in accordance with N.J.S.A. 58:10-23.11.u.d, as a result of the violation of the Spill Act and failure to pay the \$40,000 civil administrative penalty;
- d. Awarding Plaintiffs any other relief this Court deems appropriate;

e. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right 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 Plaintiffs

By: S/ Samuel R. Simon
Samuel R. Simon
Attorney Bar ID 288191973
Deputy Attorney General

DATED: August 27, 2020

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

The undersigned counsel further certifies that the matters in controversy in this action are not currently 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, 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).

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

Undersigned counsel 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

By: S/ Samuel R. Simon
Samuel R. Simon
Attorney Bar ID 288191973
Deputy Attorney General

Dated: August 27, 2020