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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and SHAWN LATOURETTE, THE COMMISSIONER OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION;	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - ESSEX COUNTY
	:	
	:	DOCKET NO.
	:	
	:	<u>CIVIL ACTION</u>
Plaintiffs,	:	
v.	:	VERIFIED COMPLAINT TO ENFORCE FINAL AGENCY ORDER AND TO COLLECT ADDITIONAL CIVIL PENALTIES IN A SUMMARY PROCEEDING PURSUANT TO <u>R. 4:67-6 AND R. 4:70</u>
AAR FUEL, LLC; RAEES SHEIKH; and KHADIJA SHEIKH;	:	
Defendants.	:	

Plaintiffs the New Jersey Department of Environmental Protection ("DEP"), and Shawn LaTourette, Commissioner of DEP ("Commissioner") (collectively, "Department" or "Plaintiffs"), by and through their attorneys, bring this Complaint against the above-named defendants, AAR Fuel, LLC and its owner, Raees Sheikh,

and Khadija Sheikh (collectively, "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. This case is about Defendants' repeated failure to comply with their legal obligations, which have put the community of Irvington and the environment at risk. Defendants have operated a gas station at 1359 Springfield Avenue in Irvington since at least 2006 ("Site"). During repeated inspections at the Site in 2008, 2011 and 2016, the Department observed Defendants storing hazardous substances that are known carcinogens, including gasoline and related chemicals, in a manner that threatened public health and the environment and violated the law.

2. The Defendants subsequently entered into an Administrative Consent Order ("ACO") with the Department to redress the violations. The Parties executed the ACO on January 19, 2017, and it became a Final Administrative Order ("FAO") on that date. But despite agreeing expressly in the ACO to remove the underground storage tanks ("USTs") at the Site, Defendants have failed to do so for over four years.

3. The community surrounding the Site has a significant low-income and minority population such that it is considered an "overburdened community" within the meaning of N.J.S.A. 13:1D-

158.¹ Historically, across New Jersey, such communities have been disproportionately exposed to high-polluting facilities and to the resultant threats of high levels of air, water, soil, and noise pollution, with accompanying increased negative public health impacts.

4. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health, without regard to race, language, or income. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 31, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

5. The Department now brings this civil action to enforce the FAO, under the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to-35 ("UST Act"), and the applicable rules and regulations promulgated thereunder, as well as R. 4:67 and R. 4:70.

¹ "'Overburdened community' means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency." N.J.S.A. 13:1D-158. The Site is located within an area of Irvington, Essex County, New Jersey that is listed as an overburdened community on the Department's website pursuant to N.J.S.A. 13:1D-159.

THE PARTIES

6. DEP is a principal department within the Executive Branch of the 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-1 to -19. Pursuant to the authority vested in the Department by N.J.S.A. 13:1D-1 to -19 and N.J.S.A. 58:10A-10, the Department is empowered to institute legal proceedings to enforce Final Agency Orders and to recover penalties in summary proceedings in Superior Court.

7. The Commissioner is vested with various powers and authority, including those conferred by DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of the UST Act. N.J.S.A. 58:10A-10(c).

8. DEP and the Commissioner maintain their principal offices at 401 East State Street, Trenton, Mercer County, New Jersey.

9. At all times pertinent to the allegations set forth herein, defendant AAR Fuel, LLC ("AAR Fuel"), a New Jersey limited liability company formed on May 18, 2007, operated a retail gas station located at the Site, 1359 Springfield Avenue, Irvington,

Essex County, New Jersey, also known as Block 366, Lots 10 and 11, on the Tax Map of Irvington.

10. At all times pertinent to the allegations set forth herein, defendant Raees Sheikh was the owner and operator of AAR Fuel. Defendant Raees Sheikh is also the co-owner of 1359 Springfield Avenue.

11. Defendant Khadija Sheikh is the co-owner of 1359 Springfield Avenue and the registered agent for AAR Fuel.

GENERAL ALLEGATIONS

SITE OPERATIONAL HISTORY AND UST ACT VIOLATIONS

12. The Site consists of a corner lot, comprising approximately 0.7 acres of improved land in the City of Irvington. The Site is bounded by Springfield Avenue on the north, 40th Street on the east, and 41st Street on the west.

13. The Site is located in a residential/commercial neighborhood consisting of three- and four- story apartment houses, some with retail establishments on the ground floor, and two- and three- story detached residences to the south and north.

14. The Site is the location of "underground storage tank (UST) systems" as defined by N.J.A.C. 7:14B-1.6, consisting of three 10,000-gallon unleaded gasoline USTs and associated appurtenances and piping.

15. DEP conducted an inspection at the Site on October 21, 2008. DEP discovered numerous failures by AAR Fuel and Raees

Sheikh to comply with relevant rules and regulations relating to the storage of "hazardous substances" at the Site as defined in N.J.S.A. 58:10-23.11b and N.J.A.C. 7:14B-1.6:

- a. Defendants AAR Fuel and Raees Sheikh failed to maintain a Financial Responsibility Assurance in the amount of \$1 million for regulated UST systems as required by N.J.A.C. 7:14B-15.2(a). The Financial Responsibility Assurance is designed to fund remediation and/or compensation for injured parties in the event of a discharge from a UST.
- b. AAR Fuel and Raees Sheikh failed to submit an amended UST Questionnaire to DEP to reflect changes in status related to the UST systems as required by N.J.A.C. 7:14B-2.4(a). An amended UST Questionnaire needed to be submitted because manual tank gauging and inventory control were not being used on the UST systems at the Site.
- c. AAR Fuel and Raees Sheikh failed to protect all of the in-service metallic product piping from corrosion. Specifically, the steel transition product piping located at each submersible turbine pump and the steel swing joints located under each dispenser were in direct contact with soil without being protected by a corrosion protection system. Cathodic protection (protection from

metallic corrosion) is necessary to prevent corrosion of metal fuel product pipes. In violation of N.J.A.C. 7:14B-4.1(a)(2), the flex piping for each fuel product piping line and the connectors under each product dispenser ("gas pump") lacked cathodic protection.

- d. AAR Fuel and Raees Sheikh failed to register the USTs containing hazardous substances as required by N.J.A.C. 7:14B-2.1 and 7:14B-5.9(b).
- e. AAR Fuel and Raees Sheikh failed to have a leak detection system or method for the UST piping as required by N.J.A.C. 7:14B-6.1(a), -6.5, and -6.6.
- f. AAR Fuel and Raees Sheikh failed to have a leak detection system for the USTs or to perform routine daily maintenance as required by N.J.A.C. 7:14B-6.1(a), -6.5, and 6.6.
- g. AAR Fuel and Raees Sheikh failed to test the Automatic Link Leak Detectors as least once a year as required by N.J.A.C. 7:14B-6.6(a)(1).

16. DEP conducted an additional inspection at the Site on December 1, 2011. Three years after the first inspection, DEP again discovered numerous failures by Defendants to comply with relevant rules and regulations relating to the storage of "hazardous substances" at the Site as defined in N.J.S.A. 58:10-23.11b and N.J.A.C. 7:14B-1.6:

- a. AAR Fuel and Raees Sheikh failed to detect and remove a liquid blockage in Dispenser/Nozzle #6, , causing the State 2 vapor recovery system to not function as designed and increasing the amount of gasoline vapors released into the environment in violation of N.J.A.C. 7:27-16.3(e).
- b. AAR Fuel and Raees Sheikh again failed to maintain Financial Responsibility Assurance in the amount of \$1 million for regulated UST systems as required by N.J.A.C. 7:14B-15.2(a).
- c. AAR Fuel and Raees Sheikh failed to submit evidence and documentation of Financial Responsibility Assurance as required by N.J.A.C. 7:14B-15.1(h).
- d. AAR Fuel and Raees Sheikh introduced hazardous substances into a regulated UST that was not properly registered with the Department as required by N.J.A.C. 7:14B-2.1 and N.J.A.C. 7:14B-5.9(b).
- e. AAR Fuel and Raees Sheikh failed to perform an acceptable method of release detection monitoring for the USTs and/or underground piping as required by N.J.A.C. 7:14B-6.1(a), -6.5, and -6.6. Defendants had not performed release detection monitoring on any of the three USTs at the Site (Regular #1, Regular #2, and Premium) since May 2011.

- f. AAR Fuel and Raees Sheikh failed to maintain records of the results of any testing, sampling, or monitoring conducted at the Site, and monthly inventory reconciliation records as required by N.J.A.C. 7:14B-6.7(f).

17. DEP conducted an additional inspection at the Site on March 1, 2016. DEP again uncovered numerous failures by AAR Fuel and Raees Sheikh to comply with relevant rules and regulations relating to the storage of "hazardous substances" at the Site as defined in N.J.S.A. 58:10-23.11b and N.J.A.C. 7:14B-1.6:

- a. AAR Fuel and Raees Sheikh maintained torn faceplates at Dispensers 3 and 4, in violation of N.J.A.C. 7:27-16.3.
- b. AAR Fuel and Raees Sheikh failed to have a current vapor control system test and failed to maintain a passing test within the previous twelve months as required by N.J.A.C. 7:27-16.3(i)1.
- c. AAR Fuel and Raees Sheikh failed to have a current dynamic backpressure test for the vapor control system, as required by N.J.A.C. 7:27-16.3(i). C3 Technologies LLC, a certified UST contractor, tested the system on December 2, 2016, and the system failed. Since then, no retest or repairs have been conducted.
- d. AAR Fuel and Raees Sheikh failed to properly register all USTs with the Department as required by N.J.A.C.

7:14B-2.1(a) and dispensed fuel from unregistered USTs after the registration for all three tanks expired on December 31, 2014.

- e. In-service metallic piping lacked corrosion protection while in contact with the soil as required by N.J.A.C. 7:14B-4.1(a)(2).
- f. AAR Fuel and Raees Sheikh introduced a hazardous substance into a regulated UST that was not properly registered with the Department in violation of N.J.A.C. 7:14B-5.9(b).
- g. AAR Fuel and Raees Sheikh failed to maintain Financial Responsibility Assurance in the amount of \$1 million as required by N.J.A.C. 7:14B-15.2(a).

18. As a result of the on-site inspections in 2008, 2011, and 2016 referenced above, the Department determined that AAR Fuel and Raees Sheikh violated the UST Act and the regulations promulgated pursuant thereto as set forth herein. The Department issued a Notice of Violation ("NOV") to Defendants following the 2016 inspection identifying various violations of the UST Act and regulations.

19. Following issuance of the NOV, the Department negotiated an ACO with AAR Fuel and Raees Sheikh to remedy the violations identified in the NOV.

20. AAR Fuel and Raees Sheikh, in his individual capacity, executed the ACO on January 10, 2017, and the Department executed the ACO on January 19, 2017.

21. The ACO required AAR Fuel and Raees Sheikh to pay \$9,625.00 in penalties, and to:

- a. Cease dispensing fuel by March 30, 2017;
- b. Remove all fuel from the USTs by April 1, 2017;
- c. Remove all three 10,000-gallon unleaded USTs and associated appurtenances no later than April 30, 2017;
- d. Submit all closure paperwork and terminate the UST Registration for the USTs at the Site no later than May 15, 2017; and
- e. Submit monthly progress reports to DEP beginning December 30, 2016.

22. Paragraph 42 of the ACO provided that the ACO is enforceable as a FAO in the New Jersey Superior Court.

23. On January 6, 2017, prior to executing the ACO, AAR Fuel and Raees Sheikh waived the right to a hearing related to the ACO and underlying violations.

24. The ACO came into force and effect as a FAO when it was signed by DEP on January 19, 2017.

FAILURE TO COMPLY WITH THE ACO

25. In January 2017, AAR Fuel and Raees Sheikh paid the negotiated settlement amount of \$9,625.00.

26. Defendants also ceased dispensing fuel and removed all fuel from the USTs as required by the ACO.

27. However, AAR Fuel and Raees Sheikh did not timely remove the USTs. Instead, they requested a four-month extension of time to remove the USTs.

28. DEP granted Defendants AAR Fuel and Raees Sheikh a thirty-day extension until May 31, 2017, to remove the USTs and associated appurtenances, including piping.

29. Despite agreeing to remove the USTs, and reiterating this commitment in the extension request, AAR Fuel and Raees Sheikh have not removed the three USTs and associated appurtenances, including piping, for over four years.

30. The Department imposed a delivery ban on the USTs on April 3, 2017, which prohibits a gas station from accepting fuel deliveries.

FAILURE TO COMPLY WITH REMEDIATION OBLIGATIONS

31. There are also several outstanding remedial obligations associated with the Site that Defendants have not addressed.

32. On or about March 29, 1999, soil sampling at the Site revealed that at least one of the three 10,000 USTs at the Site was leaking, and had contaminated soil. Soil sampling detected benzene, ethylbenzene, total xylenes and MTBE, with the majority of soil samples collected from near the USTs and pump islands.

The discovery was reported to DEP and assigned incident number 99-03-29-1203-51.

33. On or about October 3, 2001, a 1,000-gallon waste oil tank was removed from the Site. The event was reported to DEP and assigned case number 01-10-03-1522-24.

34. On or about September 10, 2002, an additional incident was called into DEP: a contractor performed pressure testing and determined the line that feeds the tank had failed the test. Subsequent testing, however, suggested the line was intact. The extent of soil contamination, if any, was unknown at the time. The discovery was reported to DEP and assigned incident number 02-09-10-1612-58, and the LSRP was instructed to incorporate a discussion of the incident in any reports related to the Site.

35. Defendants submitted a Remedial Investigation Report addressing the 1999 discharge on December 4, 2015. However, DEP determined that the report was deficient and must be revised to, inter alia: reflect the size, contents and status of the USTs; establish a groundwater Classification Exception Area; and address the 2001 and 2002 incidents. These deficiencies were communicated to Defendants via email dated May 23, 2016.

36. Because Defendants submitted an incomplete RIR, they have missed the December 7, 2014 statutory timeframe to submit a complete RIR. The failure to timely submit a complete RIR triggered Direct Oversight under N.J.A.C. 7:26C-14.2.

37. Direct Oversight requires the Department to take on a higher level of involvement and oversight to ensure proper remediation of the Site. Notably, Defendants must meet additional obligations, including: submitting a Remedial Cost Estimate/Review; preparing and submitting a Public Participation Plan; and establishing a Remediation Funding Source ("RFS").

38. Defendants Raees Sheikh and Khadija Sheikh have not satisfied these obligations.

39. Additionally, Defendants also owe outstanding annual remediation fees in the amount of \$23,020.

40. Further, Defendants have not submitted an UST registration pursuant to N.J.A.C. 7:14B-2.1 for the years 2017 through 2021.

COUNT ONE

ENFORCEMENT OF FINAL AGENCY ORDER AGAINST DEFENDANTS AAR FUEL AND RAEES SHEIKH ON A SUMMARY BASIS

41. The Department repeats each allegation set forth in the preceding paragraphs as though fully set forth herein.

42. The ACO is a FAO, enforceable in Superior Court. Defendants did not appeal the FAO or seek further review thereof.

43. Defendants AAR Fuel and Raees Sheikh have failed to comply with the provisions of the ACO requiring them to remove the USTs and perform any necessary remediation or clean-up, as set forth in Paragraphs 8 and 13 of the ACO and Paragraphs 2 and 5(f)

of the Appendix thereto. Specifically, as of October 1, 2021, Defendants AAR Fuel and Raees Sheikh have not removed the USTs and associated appurtenances, including piping.

44. Defendants AAR Fuel and Raees Sheikh's failure to comply with the pertinent provisions of the ACO as outlined above constitutes a violation of a FAO. The violation continues each day the USTs are not removed.

45. Pursuant to R. 4:67-6 and the FAO, the Department is entitled to summary enforcement of the FAO, requiring Defendants AAR Fuel and Raees Sheikh to remove the USTs and perform any necessary remediation or clean-up.

46. Defendants are "persons" within the meaning of the UST Act, N.J.S.A. 58:10A-3.

47. Any person who violates an administrative order pursuant to the UST Act shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day for such violation, and each day's continuance of the violation shall constitute a separate violation of the Act. N.J.S.A. 58:10A-10(e) and -32; see also N.J.S.A. 58:10A-24.6(c).

WHEREFORE, the Department demands entry of an order against Defendants:

- a. Finding Defendants AAR Fuel and Raees Sheikh in violation of the FAO;

- b. Ordering Defendants AAR Fuel and Raees Sheikh to comply with the terms of the FAO by removing the USTs and performing any necessary remediation or clean-up in accordance with applicable laws and regulations;
- c. Ordering Defendants AAR Fuel and Raees Sheikh to pay a civil penalty pursuant to N.J.S.A. 58:10A-10(e), -32, and -24.6(c) in an amount the Court deems just and proper; and,
- d. Awarding the Department any other relief this Court deems appropriate.

COUNT TWO

**VIOLATION OF THE UST ACT AGAINST DEFENDANTS AAR FUEL
AND RAEES SHEIKH BROUGHT ON A NON-SUMMARY BASIS**

48. The Department repeats each allegation of the foregoing paragraphs above, as if fully set forth in their entirety herein.

49. Defendants AAR Fuel and Raees Sheikh are "persons" within the meaning of the UST Act, N.J.S.A. 58:10A-3.

50. An "[o]wner" means any person who owns a facility, or any person who has a legal or equitable title to a site containing a facility and has exercised control of the facility." N.J.A.C. 7:14B-1.6.

51. An "[o]perator" means each person who leases, operates, controls, supervises, or has responsibility for, the daily operation of a facility, and each person who has the authority to operate, control, or supervise the daily operation of a facility.

There may be more than one operator of an UST facility." N.J.A.C. 7:14B-1.6.

52. A "[f]acility' means one or more [UST] systems owned by one person on a contiguous piece of property." N.J.A.C. 7:14B-1.6.

53. An "[o]ut of service storage tank' means any [UST] system in which hazardous substances are contained or have been contained, but from which hazardous substances are not or have not been introduced or dispensed . . ." N.J.A.C. 7:14B-1.6.

54. Any UST system that is out of service for more than twelve months must be closed under N.J.A.C. 7:14B-9.1(d) and removed under N.J.A.C. 7:14B-9.2(d).

55. The USTs at the Site have contained and may still contain gasoline.

56. Gasoline contains hazardous substances as that term is defined by N.J.S.A. 58:10-23.11b and N.J.A.C. 7:1E-1.6

57. The USTs at the Site have been out of service for more than twelve months and are therefore out-of-service storage tanks pursuant to N.J.A.C. 7:14B-1.6.

58. Defendants are, and have been, the owners and/or operators of the Site at all relevant times.

59. Defendants have repeatedly failed to comply with the UST Act.

60. Any person who violates the UST Act shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per

day for such violation, and each day's continuance of the violation shall constitute a separate violation the Act. N.J.S.A. 58:10A-10(e); -32; see also N.J.S.A. 58:10A-24.6(c).

61. The UST Act permits the Commissioner to bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10(c)(1), for the reasonable costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10(c)(2); for reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10(c)(3); for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge, N.J.S.A. 58:10A-10(c)(4); and for the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10(c)(5).

WHEREFORE, the Department demands judgment against the Defendant:

- a. Finding Defendants to be in violation of the UST Act and its implementing regulations;
- b. Ordering Defendants, jointly and severally, without regard to fault, to properly remove the out-of-service USTs located at the Site in accordance with all applicable laws and regulations, including N.J.A.C. 7:14B-9.1 to -9.5;
- c. Compelling Defendants to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- d. Ordering Defendants to pay a civil penalty pursuant to N.J.S.A. 58:10A-10(e) in an amount the Court deems just and proper;
- e. Ordering Defendants to reimburse the reasonable costs for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violations, including the costs of preparing and litigating the case;
- f. Awarding the Department its costs and fees incurred in this action;
- g. Awarding the Department such other relief as this Court deems appropriate;

- h. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site; and
- i. Reserving the right to bring a claim against Defendants in the future for any economic benefits that have or will accrue to Defendants, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage Defendants enjoyed, or any other benefit that will accrue as a result of having violated the UST Act pursuant to N.J.S.A. 58:10A-10(c)(5).

COUNT THREE

**VIOLATION OF THE SPILL ACT, THE BROWNFIELD ACT AND THE SRRA
REFORM ACT AGAINST DEFENDANTS RAEES SHEIKH AND KHADIJA SHEIKH ON
A NON-SUMMARY BASIS**

62. The Department incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

63. The above-referenced contamination at the Site has not been remediated in violation of the Spill Act. N.J.S.A. 58:10-23.11.c.

64. Defendants Raees Sheikh and Khadija Sheikh are "persons" within the meaning of the Spill Act. N.J.S.A. 58:10-23.11b.

65. The strict liability provision of the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), provides in pertinent part:

[A]ny person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c. 141 (C:58:10-23.11f).

66. Furthermore, N.J.S.A. 58:10-23.11g.c.(3) of the Spill Act provides, in part:

In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.

67. Defendants Raees Sheikh and Khadija Sheikh acquired the Site after September 14, 1993, and knew or should have known that hazardous substances had been discharged on the Site prior to their acquisition of the property, based on publicly available reports submitted to the Department. Therefore, Defendants Raees Sheikh and Khadija Sheikh are strictly liable, jointly and severally, without regard to fault under N.J.S.A. 58:10-23.11g.c.(3) for all cleanup and removal costs incurred by the Department and the Spill

Fund to remediate the hazardous substances discharged on the property as a result of the historic fill.

68. Under N.J.S.A. 58:10-23.11u of the Spill Act, the Department may bring a civil action in the Superior Court against any person who has violated the Spill Act, or any rule, regulation, plan, information request, access request, order, or directive promulgated or issued pursuant thereto:

- a. For injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);
- b. For the costs incurred for any investigation, cleanup or removal, and for the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2);
- c. For any other related costs incurred by the Department under the Spill Act; and
- d. For the court's assessment of civil penalties for violations of the Spill Act, N.J.S.A. 58:10-23.11u.d.

69. Effective January 6, 1998, the Legislature enacted the Brownfield Act, N.J.S.A. 58:10B-1 to -20.

70. As amended by SRRA (P.L. 2009, c. 60, §30, effective May 7, 2009), the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances. N.J.S.A. 58:10B-1.3.a.

71. Defendants Raees Sheikh and Khadija Sheikh are "persons" as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

72. As persons liable under the Spill Act, Defendants Raees Sheikh and Khadija Sheikh, pursuant to N.J.S.A. 58:10B-1.3.a of the Brownfield Act, have affirmative obligations, jointly and severally, to remediate the hazardous substances discharged on the Site.

73. As persons responsible for conducting the remediation, Defendants Raees Sheikh and Khadija Sheikh were required to comply with the remediation requirements enumerated in N.J.S.A. 58:10B-1.3.b.

74. Defendants Raees Sheikh and Khadija Sheikh did not comply with N.J.S.A. 58:10B-1.3.b.(4), (5), (6) and (8): they did not remediate the contamination without the prior approval of the Department, establish a remediation funding source, pay all applicable fees, or meet the mandatory remediation timeframes established by the Department.

75. As provided in N.J.S.A. 58:10B-1.3.b.(8), a person responsible for conducting the remediation must meet the mandatory remediation timeframes and expedited site-specific timeframes established by the Department pursuant to N.J.S.A. 58:10C-28.

76. Pursuant to N.J.S.A. 58:10C-28, the Department promulgated Administrative Requirements for the Remediation of

Contaminated Sites ("ARRCS") regulations, N.J.A.C. 7:26C. The ARRCS regulations establish: (a) the mandatory remediation time frame for submitting an initial receptor evaluation at N.J.A.C. 7:26C-3.3(b)2; and (b) the mandatory remediation time frame for completing a remedial investigation of the subject property and submitting a remedial investigation report at N.J.A.C. 7:26C-3.3(b)5.

77. As persons responsible for conducting the remediation, Defendants Raees Sheikh and Khadija Sheikh are in violation of N.J.S.A. 58:10B-1.3.c(3). Specifically, Defendants Raees Sheikh and Khadija Sheikh: (1) failed to retain an LSRP within 45 days of dismissal of the prior LSRP as required by N.J.A.C. 7:26C-2.3(a)(2); (2) failed to submit a remedial investigation report by the regulatory deadline of June 1, 2021 as required by N.J.A.C. 7:26C-3.3(b)(5); and (3) failed to pay annual remediation fees as required by N.J.A.C. 7:26C-4.3.

78. Any person who fails to comply with the provisions of N.J.S.A. 58:10B-1.3 of the Brownfield Act shall be liable and subject to the enforcement provisions established in N.J.S.A. 58:10-23.11.u of the Spill Act. N.J.S.A. 58:10B-1.3.e.

WHEREFORE, the Department demands judgment in its favor:

- a. Finding Defendants Raees Sheikh and Khadija Sheikh liable and obligated to remediate the Site pursuant to N.J.S.A.

- 58:10B-1.3.a, and in violation of N.J.S.A. 58:10B-1.3.a for their failure to do so;
- b. Finding Defendants Raees Sheikh and Khadija Sheikh liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred, pursuant to N.J.S.A. 58:10-23.11g.c.(1);
- c. Finding Defendants Raees Sheikh and Khadija Sheikh liable and obligated pursuant to N.J.S.A. 58:10B-1.3.c.(3) to comply with each of the above-cited remediation requirements of N.J.S.A. 58:10B-1.3.b, and in violation of N.J.S.A. 58:10B-1.3.c.(3) and N.J.S.A. 58:10B-1.3.b for their failure to do so;
- d. Directing Defendants Raees Sheikh and Khadija Sheikh to remediate the Site in accordance with the Brownfield Act at N.J.S.A. 58:10B-1.3, SRRA, and all remediation statutes, regulations and/or DEP directions;
- e. Assessing civil penalties against Defendants Raees Sheikh and Khadija Sheikh pursuant to N.J.S.A. 58:10-23.11u.d, for their violations of the above-cited remediation requirements of N.J.S.A. 58:10B-1.3, and applicable Department regulations;
- f. Awarding the Department any costs it may incur to investigate the discharge of hazardous substances at the Site and emanating from the property, and its costs of

- preparing and litigating this action, together with interest, to the full extent allowed by law;
- g. Granting the Department such other relief as this Court deems just, equitable and appropriate; and
- h. Reserving the State of New Jersey's right to bring a claim in the future for natural resource damages arising out of the discharges of hazardous substances on the Bishop Street Site.

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Dom Stockton-Rossini
Dom Stockton-Rossini
Samuel R. Simon
Deputy Attorneys General

Dated: October 8, 2021

VERIFICATION

I, Michael Hollis, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection within the Division of Waste and UST Compliance and Enforcement.
2. I am the Supervisor assigned to this case.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in the Verified Complaint are true and correct to the best of my knowledge.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

DATED: 10/08/2021

/s/ Michael Hollis

Michael Hollis, Bureau Chief
UST Compliance and Enforcement
Division of Waste & UST
Compliance and Enforcement
New Jersey Division of
Environmental Protection

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Dom Stockton-Rossini, Deputy Attorney General, is hereby designated as trial counsel for plaintiffs DEP and Commissioner LaTourette 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).

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Dom Stockton-Rossini
Dom Stockton-Rossini
Samuel R. Simon
Deputy Attorneys General

Dated: October 8, 2021

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 Plaintiffs at this time, nor is any non-party known to 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 matter or non-party later becomes known to Plaintiffs, an amended certification will be filed and served upon all other parties and filed with this Court in accordance with R. 4:5-1(b)(2).

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Dom Stockton-Rossini
Dom Stockton-Rossini
Samuel R. Simon
Deputy Attorneys General

Dated: October 8, 2021