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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY
DOCKET NO.

NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION;	:	
SHAWN LATOURETTE, COMMISSIONER	:	
OF NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION; and	:	<u>Civil Action</u>
THE ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION FUND,	:	
	:	
Plaintiffs,	:	VERIFIED COMPLAINT
v.	:	
	:	
75 ERIE ST. LLC; AGATHON	:	
REALTY LLC; SASS MUNI-IV, LLC;	:	
CAMDEN SHIP REPAIR COMPANY,	:	
INC.; "XYZ CORPORATIONS" 1-10;	:	
and "JOHN AND/OR JANE DOES" 1-	:	
10,	:	
	:	
Defendants.	:	

Plaintiffs, New Jersey Department of Environmental Protection ("DEP"), the Commissioner of DEP Shawn LaTourette ("Commissioner"), and the Administrator ("Administrator") of the New Jersey Spill Compensation Fund ("Spill Fund") (collectively,

"Department" of "Plaintiffs"), by and through their attorney, file this Complaint against the above-named Defendants ("Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. The Department seeks to compel Defendants to remediate the discharge of hazardous substances at a Delaware River waterfront property located at 75 Erie Street, Camden, New Jersey ("Site") and to recover damages for costs the Department has incurred, and will incur, as a result of the discharge, pursuant to damages pursuant to the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to 23.24, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -35, and the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14.

2. In addition, the Department seeks to compel Defendants' compliance with the Flood Hazard Area Control Act ("FHACA"), N.J.A.C. 7:13-2.1(a), and Waterfront Development Act ("WDA"), N.J.A.C. 7:7-2.4, and their implementing regulations, as set forth in an Administrative Consent Order ("ACO") between the parties, and seeks damages, fees, and civil penalties.

3. From 1966 through February 2012, Camden Ship Repair Company, Inc. ("Camden Ship") owned this environmentally sensitive site along the banks of the Delaware River. During its ownership, Camden Ship operated a commercial ship repair business on the Site and it did so with complete disregard for the valuable waterfront

resources located on and around the Site, and its impact on the surrounding Camden community.

4. Camden Ship's commercial operations contaminated the soil and groundwater on the waterfront property through the company's use, production and careless disposal of hazardous substances at the Site, including polychlorinated biphenyls, ("PCBs"), petroleum hydrocarbons ("PHCs"), toluene, fuel oil, base neutrals, and heavy metals.

5. By doing so, Camden Ship discharged hazardous substances with the potential to negatively impact the health and safety of the surrounding Camden community and which have harmed and will continue to harm the environmentally fragile ecosystem along the banks of the Delaware River.

6. More recently, the Department determined that large volumes of fill material were being stockpiled at the Site without the authorization required under the Technical Requirements for Site Remediation, specifically, N.J.A.C. 7:26E-5.2(b) and 5.2(c), and other land use permit programs.

7. Following extensive administrative action and the issuance of two separate Notices of Violations ("NOVs") for the unpermitted stockpiling of the fill material, DEP and 75 Erie St. LLC, the current owner of the Site, entered into an ACO, which became a Final Agency Order ("FAO") once executed by the parties.

8. The ACO required 75 Erie St. LLC to characterize and sample the stockpiled fill material, file a fill removal plan with the Department, remove any excess stockpiled material from the Site, and pay penalties for its violation of the FHACA and WDA. 75 Erie St. LLC has failed to fully comply with these provisions of the ACO.

9. The community surrounding the Site has a significant low-income, minority, or limited English proficiency 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, and accompanying increased negative public health impacts.

10. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health without regard race, language or income. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R.

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 Camden that is listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-159.

1241(b) (May 21, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

11. The Department brings this civil action against Defendants to remedy their noncompliance with environmental laws and regulations that exposes the Camden community to environmental and public health hazards. The Department seeks to enforce the ACO's provisions, to compel Defendants to conduct any required remediation, and to pay damages and civil penalties to deter future violations.

PARTIES

12. DEP, 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.

13. The Commissioner is vested by law 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 also authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of ISRA. N.J.S.A. 13:1K-13.1.

14. The Administrator is the chief executive officer of the 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 d., and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

15. DEP, the Commissioner, and the Administrator maintain their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey.

16. Defendant 75 Erie St., LLC ("75 Erie St.") is a limited liability company organized under the laws of the State of New Jersey, with a principal place of business at 1339 North Front Street, Philadelphia, Pennsylvania 19122. 75 Erie St. is the current owner of the Site located at 75 Erie Street, identified as Block 1, Lot 1 on the Tax Map of the City of Camden, Camden County, New Jersey, and has owned the Site since it purchased the Site from Agathon Realty LLC on June 12, 2018.

17. Defendant Agathon Realty LLC ("Agathon Realty") is a limited liability company organized under the laws of the State of New Jersey, with a principal place of business at 1185 Avenue of the Americas, 18th Floor, New York, New York, 10036. Agathon Realty owned the Site from February 6, 2012 to June 12, 2018.

18. Defendant SASS MUNI-IV, LLC is a limited liability company organized under the laws of the State of New Jersey, with a principal place of business at 55 West 46th Street, New York, New York, 10036. SASS MUNI-IV, LLC purchased the Site at a Sheriff's

sale on February 6, 2012 and transferred it to Agathon Realty on the same day.

19. Defendant Camden Ship Repair Company, Inc. is a corporation organized under the laws of the State of New Jersey, with a principal place of business at Point and Erie Streets, P.O. Box 9160, Camden, New Jersey 08102. Camden Ship owned the Site from March 31, 1966 to February 6, 2012.

20. "XYZ Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, which are corporate successors to, predecessors of, insurers of, or are otherwise related to, Defendants 75 Erie St., Agathon Realty, SASS MUNI-IV LLC and Camden Ship and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Site.

21. "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, whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, Defendants 75 Erie St., Agathon Realty, SASS MUNI-IV LLC and Camden Ship and/or 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 Site.

GENERAL ALLEGATIONS

22. Defendants' commercial operations and development at the Site over the last five decades have led to chronic violations of environmental law, giving rise to environmental and public health hazards.

23. These operations caused the discharge of PHCs, metals and base neutrals along an on-site marine railway, discharge of metals and base neutrals in the vicinity of a machine plate-angle shop, discharge of PHCs in a fuel storage area, discharge of PCBs, toluene and volatile organic compounds ("VOCs") near a transformer and winch house and the discharge of PHCs and metals at a machine shop and cesspool.

24. Camden Ship operated the Site as an Industrial Establishment pursuant to ISRA. In 2012, Camden Ship Repair Co. ceased operations at the Site and did not file a General Information Notice, as required by ISRA. N.J.S.A. 13:1K-9 and N.J.A.C. 7:26B-3.2. As a result, the Department opened ISRA Case # E86052, which is currently pending. This case will remain open until a Response Action Outcome ("RAO") is issued for the Industrial Establishment pending compliance with any remedial action permits, if applicable.

25. When SASS MUNI-IV LLC and Agathon Realty purchased the previously contaminated Site in February 2012, they knew or should have known about the contamination at the time of its acquisition.

26. Likewise, when 75 Erie St. purchased the previously contaminated Site in June 2018, it knew or should have known about the contamination at the time of its acquisition of the Site.

27. After purchasing the Site in June 2018, 75 Erie St. became liable for the existing violations and was required to hire a Licensed Site Remediation Professional ("LSRP") and submit a Remedial Investigation Report ("RIR") immediately.

28. While 75 Erie St. hired a LSRP in 2019 and applied for a general permit to investigate and remediate the Site in October 2019, it has failed to provide the Department with the RIR and a Remedial Action Workplan ("RAW") in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29.

29. On May 9, 2019, the Department received an incident report stating that large volumes of fill material were being stockpiled at the Site.

30. On June 6, 2019, the Department conducted a site inspection. The inspection confirmed that that fill material was being imported to the Site on a continuing basis. An estimated 60,000 to 80,000 cubic yards of fill had been placed on the Site.

31. Subsequent investigation, Department records, revealed that authorization had not been given for this activity under the Technical Requirements for Site Remediation, specifically N.J.A.C. 7:26E-5.2(b) and 5.2 (c) or any of the department's land use permit programs. The importation and stockpiling of fill material at this

site without Department authorization is a violation of the FHACA and WDA, and the regulations promulgated under those acts, specifically, N.J.A.C. 7:13-2.1(a) and N.J.A.C. 7:7-2.4.

32. On June 10, 2019, the Department issued an NOV to 75 Erie St. for the importation and stockpiling of the fill material without authorization.

33. The NOV stated that 75 Erie St. had imported and placed approximately 17,000 cubic yards of fill material within a Flood Hazard Area, which is an area with a design flood elevation equal to the elevation of a 100-year flood, without a permit.

34. The NOV also stated that 75 Erie St. had imported and placed 21,000 cubic yards of fill material within an Upland Waterfront Development Area, an area lying between 100- and 500-feet upland from the high-water line of a tidal water body, without a permit.

35. The NOV required 75 Erie St. to submit an appropriate Waterfront Development permit application or restore the Site to its pre-disturbance condition, and assessed 75 Erie St. penalties in the amount of \$119,000.

36. On July 22, 2019, DEP representatives met with 75 Erie St. to discuss the violations and 75 Erie St. agreed that it would apply for all necessary permits required to bring the Site into compliance.

37. On October 29, 2019, DEP received a permit application for a Coastal Zone Management General Permit 11 - Investigation, Cleanup, Removal or Remediation of Hazardous Substances ("CZM GP-11") from S.T. Hudson Engineers, Inc., on behalf of 75 Erie St.

38. On October 29, 2019, S.T. Hudson Engineers, Inc., also submitted site plans on behalf of 75 Erie St. that indicated the total volume of fill material within the stockpiles at the Site was approximately 88,000 cubic yards. The fill material was located within the regulated Upland Waterfront Development Area encompassing approximately 2.3 acres. Of the 88,000 cubic yards of fill on the Site, DEP estimated that up to 65,700 cubic yards was located within the Flood Hazard Area.

39. On November 22, 2019, DEP issued a deficiency letter to 75 Erie St. requesting additional information that would complete the CZM GP-11 permit application for technical review, including a RAW, documentation of any vegetation removal in the riparian zone, and a restoration plan. DEP requested a response from 75 Erie St. within 60 days in order for the application to be considered complete for review.

40. On January 16, 2020, in the continued absence of a DEP permit authorization or the submittal of a restoration plan providing for the removal of the unauthorized fill material, DEP issued another NOV to 75 Erie St.

41. On April 20, 2020, DEP issued a cancellation letter for the CZM GP-11 permit application for failure to address the deficiencies noted in the November 22, 2019 deficiency letter.

42. In May 2020, DEP completed an assessment of historical remediation documents to determine what steps 75 Erie St. was required to take to complete remedial investigation efforts and develop a RAW compliant with DEP's Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

43. DEP confirmed that various hazardous substances had been discharged into the soil and groundwater at the Site by Camden Ship during its ownership and operation of the Site through February 2012, including PCBs, PHCs, toluene, base neutrals, and metals. DEP also concluded that the concentration of these hazardous substances exceeds DEP's residential and non-residential remediation standards, which are designed to protect public health and safety.

44. PCBs, one of the most widely studied environmental contaminants, have been classified as probable human carcinogens, and have numerous, non-carcinogenic, health effects including adversely affecting the human immune, reproductive, neurologic and endocrine systems.

45. PHCs have been found to cause adverse effects on the central nervous and immune systems and with exposure causing skin, nose and lung irritation.

46. Toluene causes nerve, liver and kidney damage with exposure causing dizziness, eye, nose and skin irritation and muscle fatigue.

47. The discharge of pollutants and hazardous materials often have a direct impact on surface and subsurface water quality.

48. The unauthorized discharge of pollutants and hazardous substances on the Site is particularly harmful due to the Site's location and proximity to the Delaware River, which provides vital resources for the region's residential and commercial potable water supply, healthy fish and wildlife populations and outdoor recreation.

49. On May 12, 2020, Department representatives discussed with 75 Erie St. and its Licensed Site Remediation Professional ("LSRP") the unpermitted stockpiling of fill materials, the need for an RIR and RAW, and the ongoing remediation of the Site. The LSRP stated that up to 65,000 cubic yards of the stockpiled fill material is necessary for capping contaminated areas of concern and raising the elevation of certain locations for future building development. The LSRP estimated that 22,733 cubic yards of the stockpiled fill material was in excess and should be removed from the Site and transported to Department-designated locations outside of any regulated areas.

50. On July 13, 2020, a Department representative conducted a follow-up inspection at the Site. As a result, the Department

further determined that 75 Erie St. dumped 200 cubic yards of fill material in State open waters at the Site in violation of N.J.A.C 7:7A-2.2(b).

51. Thereafter, the Department and 75 Erie St. held a series of meetings in an effort to bring the Site into compliance.

52. On February 11, 2021, the Department and 75 Erie St. entered into an ACO to resolve the outstanding violations and penalties.

53. The ACO required 75 Erie St. to provide DEP with documentation demonstrating that the 88,000 cubic yards of fill material had been fully characterized within 30 calendar days of the effective date of the ACO. If DEP determined that additional characterization was necessary, 75 Erie St. was to conduct additional sampling of the 88,000 cubic yards of fill material as required by the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and related guidance.

54. The ACO also required 75 Erie St. to submit a Fill Removal Plan that provided for the removal of 22,733 cubic yards of material stockpiled at the site within 90 calendar days of the effective date of the ACO.

55. Finally, the ACO required 75 Erie St. to pay a total penalty of \$119,000, in three \$30,000 installments at 30 days, 90 days and 150 days following the effective date of the ACO and a fourth installment of \$29,000, 210 days following the effective

date of the ACO.

56. 75 Erie St. executed the ACO on February 11, 2021. Upon execution, the ACO became a FAO of the Department.

57. On May 13, 2021, after determining that 75 Erie St. had failed to comply with numerous provisions of the ACO, DEP issued a Demand for Compliance requiring that 75 Erie St.: provide documentation demonstrating that the 88,000 cubic yards of fill material had been fully characterized; submit a Fill Removal Plan providing for the removal of 22,733 cubic yards of fill material stockpiled at the site; and pay the first three installments of the agreed upon penalty.

58. 75 Erie St. did not respond to the Demand for Compliance or follow-up communications, has not filed a RIR or RAW, and remains in breach of the ACO.

COUNT I

Violation of the Spill Act (All Defendants)

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

60. From 1966 through February 2012, Camden Ship owned the Site. During this period of time Camden Ship operated a commercial ship repair business on the Site.

61. Over decades of commercial operations, Camden Ship discharged hazardous materials into the soil and groundwater of

the Site including PCBs, PHCs, toluene, base neutrals, and metals at various locations throughout the Site.

62. Subsequent to February 6, 2012, SASS MUNI-IV LLC, Agathon Realty, and 75 Erie St. each owned the Site. Agathon Realty and 75 Erie St. both engaged in the development of the Site for future commercial and/or residential use.

63. Except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here, 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).

64. Any costs the Department may incur should Defendants fail to remediate the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable pursuant to N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).

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

66. As the operator of the Site at which hazardous substances were discharged, Defendant Camden Ship is a "discharger", and as the owner of the Site at the time hazardous substances were discharged there, is a person "in any way responsible." N.J.S.A. 58:10-23.11g.c.(1). Camden Ship is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal

costs the Department may incur as a result of the discharge of hazardous substances at the Site. Id.

67. Defendants SASS MUNI-IV LLC, Agathon Realty and 75 Erie St., as purchasers of the previously contaminated Site that knew or should have known about the contamination at the time of their acquisition of the site, are persons "in any way responsible" for hazardous substances, and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department may incur as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

68. XYZ Corporations 1-10, are persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department may incur as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

69. John and/or Jane Does 1-10 are persons in any way responsible for discharged hazardous substances and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department may incur as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

70. Under the Spill Act, DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);

for any unreimbursed investigation, 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 the Department incurs, N.J.S.A. 58:10-23.11u.b.(5).

71. The Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund pursuant to N.J.S.A. 58:10-23.11q.

WHEREFORE, the Department requests judgment in its favor:

- a. Finding that Defendants discharged hazardous substances at the Site, or are otherwise in any way responsible for the discharge of hazardous substances at the Site;
- b. Directing Defendants to submit a Remedial Investigation Report and Remedial Action Workplan and 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;
- c. Ordering the Defendants, jointly and severally, without regard to fault, to reimburse the Department for all cleanup and removal costs it may incur in the future as a result of the discharge of hazardous substances at the Site, with applicable interest;
- d. Awarding the Department its costs and fees associated with this action;

e. Awarding the Department any other relief this Court deems appropriate; and

f. Reserving Plaintiffs' rights to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

COUNT II

Violation of the WPCA (Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10 Only)

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

73. Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10 are "persons" within the meaning of N.J.S.A. 58:10A-3.

74. The unauthorized discharge of pollutants is a violation of the WPCA for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.

75. Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10's commercial operations and development of the Site over the last five decades caused hazardous pollutants to be discharged into the surface and groundwater on the Site in violation of the WPCA.

76. The Department may incur costs because of the discharge of pollutants at the Site and these costs are recoverable within the meaning of N.J.S.A. 58:10A-10c.(2) to (4).

77. Pursuant to N.J.S.A. 58:10A-10c., the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10c.(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-10c.(3); 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-10c.(5).

WHEREFORE, the Department requests judgment in its favor:

- a. Ordering Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10 to remove, correct, or terminate the adverse effect upon water quality resulting from all unauthorized discharges of pollutants;
- b. Ordering Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10, without regard to fault, to

reimburse the Department for all reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;

c. Ordering Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10, without regard to fault, to reimburse the Department for any reasonable costs incurred for removing, correcting or terminating the adverse effects upon water quality resulting from all unauthorized discharges of pollutants at the Site;

d. Awarding the Department its costs and fees associated with this action;

e. Awarding the Department such other relief as this Court deems appropriate;

f. Reserving Plaintiffs' right to bring a claim in the future for the actual amount of any economic benefits Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10 have, will or may accrue, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits Defendants Camden Ship, XYZ Corporations 1-10 and John and/or Jane Does 1-10 have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the WPCA;

- g. Reserving Plaintiffs' 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
- h. Granting such other relief as the Court deems just and proper.

COUNT III

Enforcement of Final Agency Order (75 Erie St. Only)

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

79. Pursuant to R. 4:67-6 and the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12, because the ACO became an FAO upon execution, the Department is entitled to summary enforcement of the ACO against 75 Erie St. for its failure to comply with the requirements to address the stockpiled fill on the Site and pay the agreed upon penalty assessment.

80. The ACO also contained provisions for the payment of Stipulated Penalties to DEP if 75 Erie St. failed to comply with any of its provisions.

81. Pursuant to paragraph 33 of the ACO, Stipulated Penalties would be due and payable thirty calendar days following written demand by the Department.

82. On May 13, 2021, after determining that 75 Erie St. had failed to comply with numerous provisions of the ACO, DEP issued

a Demand for Compliance. DEP demanded that 75 Erie St.: provide documentation demonstrating that the 88,000 cubic yards of fill material had been fully characterized; submit a Fill Removal Plan providing for the removal of 22,733 cubic yards of fill material stockpiled at the site; and pay the first three installments of the agreed upon penalty.

83. On September 10, 2021, following 75 Erie St.'s continued failure to comply with the provisions of the ACO, DEP issued a Demand for Stipulated Penalties and Invoice pursuant to Paragraph 33 of the ACO, which demanded Stipulated Penalties in the amount of \$199,800 for 75 Erie St.'s continued noncompliance with the ACO. Under the terms of the ACO, these penalties are due and payable on October 10, 2021.

84. 75 Erie St. has not responded to the Department's Demand for Compliance or Demand for Stipulated Penalties and Invoice, remains out of compliance with the ACO, and has failed to comply with the ACO.

WHEREFORE, the Department demands judgment in its favor:

a. Finding Defendant 75 Erie St. LLC in violation of the ACO;

b. Ordering Defendant 75 Erie St. to: 1) comply with the requirements of the ACO by characterizing the 88,000 cubic yards of fill material on the Site and providing DEP with documentation demonstrating that the fill material has been

fully characterized within 30 days; 2) submit to DEP's Coastal Land Use Enforcement program a Fill Removal Plan that provides for the removal of 22,733 cubic yards of excess fill material that is currently being stockpiled at the site within 30 days; and 3) make all penalty installment payments required by the ACO; and

c. Granting such other relief as the Court deems just and proper.

COUNT IV

**Violation of the Industrial Site Recovery Act
(Camden Ship Only)**

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

86. Pursuant to N.J.S.A. 13:1K-13.1(a)(2) and -(c), the Commissioner is empowered to initiate an action in Superior Court to hold Camden Ship liable for its ISRA non-compliance and to collect penalties assessed by the court.

87. ISRA provides that "failure of the transferor [of an industrial establishment] to perform a remediation and obtain department approval thereof as required pursuant to the provisions of this [ISRA] . . . renders the owner or operator of the industrial establishment strictly liable, without regard to fault, for all remediation costs and for all direct and indirect damages resulting

from the failure to implement the remedial action workplan.”
N.J.S.A. 13:1K-13.

88. Camden Ship violated ISRA when it did not file a General Information Notice in accordance with ISRA and subsequently ceased operations. N.J.S.A. 13:1K-9 and N.J.A.C. 7:26B-3.2.

89. Under N.J.S.A. 13:1K-13, Camden Ship is strictly liable, without regard to fault, for all remediation costs and for all resulting direct and indirect damages.

WHEREFORE, the Department requests judgment in its favor:

- a. Compelling Camden Ship to comply with ISRA and remediate the Site in accordance with 13:1K-6 to -14, N.J.A.C. 7:26E, N.J.S.A. 58:10B-1.3(b) and all remediation statutes and regulations;
- b. Awarding all costs recoverable under 13:1K-13(c)(2), including but not limited to reasonable costs of preparing and litigating this matter;
- c. Awarding Plaintiffs statutory penalties pursuant to 13:1K13(e) arising from Camden Ship’s violations of ISRA, which may be up to \$25,000 per day for each day in violation;
- d. Awarding Plaintiffs any other relief this Court deems appropriate; and
- e. Reserving Plaintiffs’ rights to bring a claim against Defendants in the future for natural resource damages

arising out of the discharge of hazardous substances at the Site.

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

 /s/ Kevin A. Terhune
Kevin A. Terhune
Deputy Attorney General

DATED: October 8, 2021

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to 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 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).

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

___/s/ Kevin A. Terhune_____
Kevin A. Terhune
Deputy Attorney General

DATED: October 8, 2021

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

Undersigned counsel further certifies that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1.38-7(b).

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

/s/ Kevin A. Terhune
Kevin A. Terhune
Deputy Attorney General

DATED: October 8, 2021

VERIFICATION

Peter Keledy, by way of certification, states that:

1. I am a Regional Supervisor for the Bureau of Land Use & Coastal Enforcement for the New Jersey Department of Environmental Protection.
2. I have read the Verified Complaint.
3. I certify that the factual allegations in paragraphs 8-9 and 30-42 are true and correct to the best of my knowledge.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

By: /s/ Peter Keledy
Peter Keledy

DATED: October 8, 2021

VERIFICATION

Elizabeth Opitz, by way of certification, states that:

1. I am an Enforcement Manager for the Enforcement & Information Support group for the New Jersey Department of Environmental Protection.
2. I have read the Verified Complaint.
3. I certify that the factual allegations in paragraphs 4-7, 25-29 and 43-49 are true and correct to the best of my knowledge.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

By: /s/ Elizabeth Opitz
Elizabeth Opitz

DATED: October 8, 2021