

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
R. J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs

By: Jessica L. Palmer
Attorney ID: 3122-2009
Deputy Attorney General
(609) 376-2984
jessica.palmer@law.njoag.gov

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAMDEN COUNTY
DOCKET NO. CAM-L-01367-21

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and SHAWN LATOURETTE, ACTING COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	
	:	
	:	<u>Civil Action</u>
	:	
Plaintiffs,	:	
v.	:	AMENDED VERIFIED COMPLAINT TO ENFORCE A FINAL AGENCY ORDER, AND FOR PENALTIES AND INJUNCTIVE RELIEF
S. YAFFA & SONS, INC.; WILLIAM YOCCO, individually and o/b/o S. YAFFA & SONS, INC.; CHARLES YAFFA, individually; WEYHILL REALTY HOLDINGS, LLC, d/b/a WRH I, LLC; "XYZ CORPORATIONS" 1-10; and "JOHN AND/OR JANE DOES" 1-10,	:	
	:	
Defendants.	:	

Plaintiffs, New Jersey Department of Environmental Protection ("DEP") and Commissioner of DEP Shawn LaTourette ("Commissioner") (collectively, "Department" or "Plaintiffs"), by and through their

attorney, file this Complaint against the above-named defendants ("Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action brought to remedy Defendants' decades-long noncompliance with environmental laws and regulations, which continue to expose the Camden community to pollution and other environmental and public health hazards. The Department seeks to compel Defendants' compliance with the Solid Waste Management Act ("SWMA"), N.J.S.A. 13:1E-1 to -48, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -65, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35 ("UST Act"), and their implementing regulations, and for temporary and permanent restraints, damages, fees, and civil penalties.

2. For years, Defendants have unlawfully imported and stockpiled solid waste on their Camden property, including contaminated fill material, construction and demolition debris, and waste tires. Despite Plaintiffs' repeated administrative efforts – including numerous Notices of Violation and a Final Agency Order – to compel compliance, Defendants have continued their unlawful conduct.

3. Additionally, Defendants have failed to obtain a New Jersey Pollutant Discharge Elimination System ("NJPDDES") permit, in violation of the WPCA, N.J.S.A. 58:10A-6. Because they have

not satisfied the conditions necessary to obtain a NJPDES permit, Defendants have exposed source materials (including sand, dust, sediment, debris, and contaminated soil) to stormwater discharges to the waters of the State of New Jersey.

4. Defendants have also flouted the Department's enforcement efforts for nearly two decades by failing to properly close a 500-gallon Underground Storage Tank ("UST") containing gasoline in violation of the UST Act, which also poses a significant threat to public health and the environment.

5. Defendants' ongoing and unabated stockpiling and importation of contaminated solid waste, failure to obtain a NJPDES permit, and failure to remediate properly the UST continue to jeopardize the environment and public health in the local community.

6. Indeed, recent complaints from local residents have raised urgent concerns regarding the stability of the stockpiles located at the Site. Solid waste has breached the fence separating the site from a neighboring residential property, allowing solid waste and debris to flow into the neighbor's backyard. There is also a risk of a landslide off of the stockpile into the backyard or nearby roads or pedestrian rights of way.

7. Additionally, significant amounts of accumulated dirt, sediment and dust attributable to the site are located on the roadways and sidewalks of Chestnut, Sycamore and 7th Streets, which

border the Site. Every time a car drives over the dirt, sediment and dust, it becomes airborne.

8. The property is located in the City of Camden, New Jersey, which has a significant low-income and minority population. 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, and soil pollution, and accompanying potential for increased public health impacts.

9. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health without regards to a community's socioeconomic condition. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

10. Therefore, Plaintiffs file this Complaint to enforce a Final Agency Order and to compel Defendants to immediately cease importing, commingling, and processing solid waste on the Site, to remove and properly dispose of the stockpiled solid waste on-site, to obtain a NJPDES permit, to properly close the UST and conduct any required remediation, and to pay damages and civil penalties to deter future violations.

PARTIES

11. Plaintiff DEP is a principal department in the executive branch of the State and is charged with enforcement of the SWMA and UST Act. DEP maintains its principal offices at 401 East State Street in Trenton, New Jersey. Plaintiff Shawn LaTourette is the Commissioner of DEP.

12. Defendant S. Yaffa & Sons, Inc. ("Yaffa & Sons") is the former owner of the property located at 619-635 Chestnut Street, Camden, New Jersey, identified as Block 331, Lots 41, 46, 48, 49, 50, 52, 54, 55-65, 67, 75, 80, and 114; and Block 324, Lots 27, 28, 29, 30, 31, 32, and 33 on the Tax Map of the City of Camden ("Site").

13. During Yaffa & Sons' ownership of the Site, the company imported and stockpiled construction and demolition debris, as well as waste tires, without a permit. Yaffa & Sons sold the Site to Defendant Weyhill Realty Holdings, LLC on or about July 19, 2019. Yaffa & Sons owned the Site at all relevant times until the company conveyed the Site.

14. Defendant William Yocco was the owner of Yaffa & Sons during all relevant times, and was named individually in DEP's administrative enforcement actions against Yaffa & Sons.

15. Defendant Charles Yaffa was the registered owner of a 500-gallon unleaded gasoline UST on the Site that was never

properly closed pursuant to the UST Act and regulations promulgated pursuant thereto ("UST Rules"). N.J.A.C. 7:14B-7.2.

16. Defendant Weyhill Realty Holdings, LLC d/b/a WRH I, LLC ("WRH") has been the owner of the Site since July 19, 2019. During WRH's ownership of the Site, WRH failed to remove from the Site stockpiles of construction and demolition debris, and waste tires, and imported and commingled additional construction and demolition debris with soil on the Site. WRH has also failed to obtain a NJPDES permit for the Site.

17. Defendants "XYZ Corporations" 1 through 10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, tenants of, or are otherwise related to the named Defendants, or are persons who otherwise participated in, or were responsible for, the operation of a solid waste facility on the Site without a permit.

18. Defendants "John and/or Jane Does" 1 through 10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are persons who participated in, or were responsible for, the operation of a solid waste facility on the Site without a permit.

GENERAL ALLEGATIONS

19. The Site has been used for decades to stockpile unlawfully imported solid waste, including contaminated fill material, construction and demolition debris, and waste tires.

20. Between 2002 and 2021, DEP inspected the Site many times, revealing numerous, repeated violations of the SWMA, WPCA, UST Act, and their implementing regulations.

21. On October 4, 2002, DEP inspectors determined that a 500-gallon unleaded gasoline UST on the Site registered to Charles Yaffa was out of service, but still contained gasoline product, and had not been properly closed pursuant to the UST Rules.

22. DEP inspectors issued a Notice of Violation and required Charles Yaffa to properly close the UST within 45 days of notice and submit a remedial investigation report within 120 days of UST closure pursuant to the UST Rules. N.J.A.C. 7:14B-7.2.

23. USTs that are not properly closed have the potential to leak their contents into the surrounding soil.

24. Gasoline and its components pose threats to the environment and public health when they enter the soil and groundwater. Gasoline persists in soil for long periods of time, impeding plant growth and threatening wildlife. Gasoline poses a threat to human health, because ingesting gasoline or inhaling gasoline vapors can cause dizziness, headaches, lung irritation, and nervous system disruptions.

25. To date, Charles Yaffa has not complied with the requirements to properly close the UST, retained a licensed site remediation professional ("LSRP"), or submitted a site investigation report pursuant to the UST Rules.

26. On October 12, 2016, during Yaffa & Sons' ownership, DEP inspected the Site again and observed stockpiles of construction and demolition debris, which included a combination of concrete, brick, block, soil, and other materials. DEP also observed piles of waste tires on the Site.

27. DEP determined that the materials the DEP observed during the October 12, 2016 inspection were solid waste as defined by the Solid Waste Management Act Rules, N.J.A.C. 7:26-1.6 ("SW Rules"). DEP further determined that Defendant Yaffa & Sons was operating a solid waste facility without a permit in violation of the SW Rules, N.J.A.C. 7:26-2.8(f).

28. At the conclusion of the October 12, 2016 inspection, the Department issued a Field Notice of Violation ("NOV") against Yaffa & Sons for the violations of the SWMA and SW Rules the DEP observed during the inspection.

29. On May 10, 2017 and May 23, 2018, DEP again inspected the Site and determined that the violations identified in the October 12, 2016 NOV had not been resolved.

30. On March 6, 2019, the Department issued, and confirmed receipt of an Administrative Order and Notice of Civil

Administrative Penalty Assessment ("AONOCAPA") against Yaffa & Sons and William Yocco, individually. The AONOCAPA found that "Respondents are stockpiling Construction and Demolition waste and tires at the above properties" and assessed a civil administrative penalty of \$4,500 and ordered Yaffa & Sons to remediate the Site, including properly disposing of the construction and demolition debris and tires.

31. Defendants Yaffa & Sons and William Yocco failed to request a hearing to challenge the AONOCAPA or its terms within the required 20-day time period, and, accordingly, the AONOCAPA became a Final Agency Order of the DEP 21 days after DEP served Defendants Yaffa & Sons and William Yocco, on April 1, 2019 as set forth in the Administrative Procedures Act, N.J.S.A. 52:14B-10. See also N.J.S.A. 13:1E-9(e).

32. Defendants Yaffa & Sons and William Yocco failed to comply with the Final Agency Order.

33. On or about July 19, 2019, Yaffa & Sons conveyed the Site, along with other parcels, to Defendant WRH.

34. On October 17, 2019, DEP inspected the Site and determined not only that the previously observed stockpiles of construction and demolition debris - including broken pieces of brick, block, and rock mixed with soil - and waste tires remained on the Site, but that WRH was actively importing, commingling the construction and demolition debris with what appeared to be uniform

soil, and separating larger chunks of brick, block, and rock out of the commingled material (i.e., processing) on the Site.

35. DEP determined that the stockpiles of construction and demolition debris, the newly imported construction and demolition debris, the processed (i.e., commingled and soil separated) soil and construction and demolition debris, and waste tires are all solid waste as defined in the SW Rules, N.J.A.C. 7:26-1.6(a).

36. DEP also determined that WRH did not have a solid waste permit, and therefore was in violation of the SW Rules, N.J.A.C. 7:26-2.8(f), for operating a solid waste facility without a permit.

37. On May 29, 2020, DEP again inspected the Property and observed that WRH had not abated the previously observed violations, but rather continued to accept, commingle and process solid waste on the property. DEP issued a Field NOV to WRH on the date of the inspection.

38. On September 3, 2020, during a pre-arranged site inspection to determine compliance with the prior NOVs, DEP inspectors spoke with individuals at the Site who refused to identify themselves but appeared to be working out of vehicles labeled with the name "A. Franchi Contractors."

39. On November 2, 2020, DEP inspected the Site and collected ten (10) discrete soil samples from various areas throughout the Site.

40. The sampling results demonstrated that each of the 10 soil samples contained at least one hazardous substance at a concentration that exceeds New Jersey's Non-Residential and Residential Direct Contact Soil Remediation Standards, including standards for polycyclic aromatic hydrocarbons ("PAHs") and metals. PAHs and metals are both carcinogens and have been shown to cause liver, kidney, and other organ damage.

41. The sampling results confirmed that the soils in the stockpiles of material are solid waste pursuant to the SW Rules, N.J.A.C. 7:26-1.6(a)6.

42. The material on the Site is solid waste under two distinct regulatory categories: (1) the construction and demolition debris, and waste tires for their physical properties, and (2) the materials that are contaminated above applicable standards under the SW Rules. N.J.A.C. 7:26-1.6.

43. On December 9, 2020, the Department informed counsel for WRH of the results of the laboratory analyses of the soil samples taken from the stockpiles on the Property and advised WRH to "immediately cease the importation of additional fill materials that may trigger the definition of solid waste."

44. Despite this warning, when the Department inspected the Site again on February 4, 2021, the Department observed the continued commingling of construction and demolition debris with soils. The Department issued a Field NOV to WRH following the

inspection citing violations of the SW Rules, N.J.A.C. 7:26(e) and N.J.A.C. 7:26(f).

45. A follow-up inspection took place on March 12, 2021. During that inspection, the Department again observed the continued commingling of construction and demolition debris with soils. Inspectors noted that the unprocessed stockpile (containing brick, block, and concrete in commingled soils) and the screened soil stockpile had both increased in size since the previous inspection. Additionally, the inspector noted that portions of the commingled stockpile had breached the fence separating the Property from a residential property located at 620 Chestnut Street. Large quantities of contaminated soil, bricks, blocks, and other materials have spilled into the backyard of 620 Chestnut Street. The Department issued an additional Field NOV to WRH following the inspection citing violations of the SW Rules, N.J.A.C. 7:26(f).

46. On April 9, 2021, the City of Camden, Department of Code Enforcement issued a Cease Operations Order, alleging that the Site was in operation without a license and constituted an immediate threat to public safety or health under Camden's municipal code.

47. DEP was unable to obtain access to the Site during a follow-up inspection on May 4, 2021.

48. On June 1, 2021, DEP observed an unoccupied excavator staged on top of the stockpile: that excavator had not been present during prior inspections. No additional activity or changes were observed.

49. On July 1, 2021, DEP conducted an additional inspection of the Site. While the DEP inspector was unable to access the Site, he did meet the owner of the neighboring residential property at 620 Chestnut Street. At the neighbor's request, the inspector inspected the backyard of 620 Chestnut Street, and observed that solid waste, including construction and demolition debris commingled with soils, had fallen, damaged the neighbor's fence, and was now spilling into the backyard of 620 Chestnut Street.

50. The DEP inspector also observed that fine soil particles are flowing into the backyard of 620 Chestnut Street during periods of heavy rain. The runoff flows through the backyard and alleyway onto 7th Street. The runoff has accumulated at the rear of 620 Chestnut Street, on public sidewalks, along the curb, and in sewer grates on 7th Street.

51. Erosion of the solid waste stockpile caused by heavy rain events could cause a landslide of larger pieces of solid waste (including pieces of brick and mortar, or concrete) from the top of the stockpile.

52. DEP's Bureau of Solid Waste Permitting ("SWP") conducted a follow-up inspection at the Site on July 7, 2021. Inspectors

from SWP observed that: (1) the fence along the perimeter of the Site is not retaining soil sufficiently; (2) there is a significant amount of soil along the fence and sidewalk, as well as along the roadway and curb intersections in the vicinity of the Site; (3) the fence along the southern portion of the backyard at 620 Chestnut Street appears to be on the verge of collapse; (4) there are deep rills in the stockpile, indicating that the pile is not stable; (5) the slope of the pile significantly exceeds industry standards for the slope of a permitted solid waste facility; and (6) the backyard is covered in ants.

53. Upon information and belief, WRH, John and/or Jane Does 1-10, and XYZ Corporations are advertising the processed material from the Site to residential customers misleadingly labelled as "fill." In fact, the processed material is solid waste under the SW Rules.

54. At no point in time has S. Yaffa & Sons, Inc. or WRH obtained a NJPDES permit, in violation of the WPCA.

COUNT I

Enforcement of the Final Agency Order Against Yaffa & Sons and William Yocco

55. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

56. The SWMA, specifically N.J.S.A. 13:1E-9c, provides that the Department may issue an administrative order compelling

compliance, which becomes a Final Agency Order after 20 days when a respondent does not request a hearing.

57. The SWMA, specifically N.J.S.A. 13:1E-9e, provides that the Department may levy a civil administrative penalty not to exceed \$50,000 per day for any violation of the SWMA or SW Rules.

58. On March 6, 2019, the Department issued an administrative order - the AONOCAPA - against Yaffa & Sons and William Yocco for operating a solid waste facility without a license in violation of the SW Rules, N.J.A.C. 7:26-2.8(f). The AONOCAPA ordered removal and proper disposal of the solid waste on the Property and assessed a \$4,500 civil administrative penalty.

59. Neither Yaffa & Sons nor William Yocco filed a request for a hearing within 20 days, so the AONOCAPA became a Final Agency Order on April 1, 2019.

60. Yaffa & Sons and William Yocco failed to comply with the requirements of the Final Agency Order; they did not pay the assessed civil administrative penalty or remediate the Property, prior to transferring the Property to WRH on July 19, 2019.

61. Pursuant to R. 4:67-6, the SWMA, specifically N.J.S.A. 13:1E-9 to -10e, and the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12, the Department is entitled to summary enforcement of the Final Agency Order against Yaffa & Sons and William Yocco, compelling Yaffa & Sons and William Yocco to remove the Solid Waste

they placed on the Property and pay the assessed civil administrative penalty.

WHEREFORE, Plaintiffs demand judgment in their favor:

a. Finding Defendants S. Yaffa & Sons, Inc. and William Yocco in violation of the Final Agency Order;

b. Ordering Defendants S. Yaffa & Sons, Inc. and William Yocco to comply with the requirements of the Final Agency Order by removing the Solid Waste illegally disposed of on the Property and properly disposing of the Solid Waste at a facility licensed to accept solid waste or, in the alternative, ordering Yaffa & Sons and William Yocco to pay money into an escrow account in an amount sufficient for Defendant Weyhill Realty Holdings, LLC d/b/a WRH I, LLC to facilitate the removal and proper disposal of the material that existed on the Property when S. Yaffa & Sons, Inc. conveyed the Property to Weyhill;

c. Ordering Defendant S. Yaffa & Sons, Inc. and William Yocco to pay the \$4,500 civil administrative penalty required by the Final Agency Order; and

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

COUNT II

**Imposition of Civil Penalties For Failure To Comply
With Final Agency Order Against Yaffa & Sons and
William Yocco**

62. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

63. The SWMA, specifically N.J.S.A. 13:1E-9f, provides that the Department may seek a civil penalty not to exceed \$100,000 per day against any person who violates an administrative order or who fails to pay an administrative assessment. The Department may recover this civil penalty against a defendant in an action pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12.

64. On March 6, 2019, the Department issued an AONOCAPA against Yaffa & Sons and William Yocco. Neither Yaffa & Sons nor William Yocco requested a hearing and the AONOCAPA became a Final Agency Order after 20 days, on April 1, 2019, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10; see also N.J.S.A. 13:1E-9(e).

65. As set forth above, Yaffa & Sons and William Yocco have failed to comply with the Final Agency Order, including failing to pay the assessed civil administrative penalty.

WHEREFORE, Plaintiffs demand judgment in their favor:

a. Imposing civil penalties against Defendant S. Yaffa & Sons, Inc. and William Yocco for the period of time during which they failed to comply with the Final Agency Order, in accordance with SWMA, N.J.S.A. 13:1E-9; and

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

COUNT III

Violation of the Solid Waste Management Act by WRH

66. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

67. The SWMA prohibits any person from operating a solid waste facility without a permit or authorization from DEP. N.J.S.A. 13:1E-5; N.J.A.C. 7:26-2.8(e)-(f).

68. A solid waste facility is "any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, recycling, recovering or disposing of solid waste[.]" N.J.A.C. 7:26-1.6.

69. Defendant WRH has imported, commingled, and processed, and is importing, commingling, and processing soil, with material that consists of construction and demolition debris. This material meets the definition of solid waste under the SW Rules. N.J.A.C. 7:26-1.6.

70. The waste tires that remain on the Property meet the definition of solid waste under the SW Rules. N.J.A.C. 7:26-1.6.

71. Soil samples taken from the Property show that the materials have contaminants that exceed the applicable standard, and are thus solid waste as defined in the SW Rules. N.J.A.C. 7:26-1.6.

72. The SW Rules provide that “[n]o person shall begin construction or operation of a solid waste facility without obtaining a SWF [solid waste facility] Permit” subject to certain exceptions not present here. N.J.A.C. 7:26-2.8(f).

73. Defendant WRH does not have, nor has WRH sought to attain, a solid waste facility permit.

74. Consequently, Defendant WRH has operated and is operating a solid waste facility without a SWF permit, in violation of the SWMA and SW Rules. N.J.A.C. 7:26-2.8(f); N.J.S.A. 13:1E-9.

75. The SWMA provides DEP with the authority to institute an action in the Superior Court for temporary and permanent relief enjoining conduct in violation of the SWMA or SW Rules. N.J.S.A. 13:1E-9(d).

76. The SWMA provides DEP with the authority to seek civil penalties not to exceed \$50,000 per day in Superior Court for any violation of the SWMA or SW Rules. N.J.S.A. 13:1E-9(f).

WHEREFORE, Plaintiffs demand judgment in their favor:

a. Finding Defendants Weyhill Realty Holdings, LLC d/b/a WRH I, LLC, John and/or Jane Does 1-10, and XYZ Corporations 1-

10, in violation of the SWMA for operating a solid waste facility without a SWF permit;

b. Granting immediate preliminary injunctive relief against Defendant Weyhill Realty Holdings, LLC d/b/a WRH I, LLC, on the return date of the concurrently entered Order to Show Cause;

c. Ordering Defendants Weyhill Realty Holdings, LLC d/b/a WRH I, LLC, John and/or Jane Does 1-10, and XYZ Corporations 1-10, to immediately cease importing, commingling, and processing solid waste without a SWF permit;

d. Ordering Defendants Weyhill Realty Holdings, LLC d/b/a WRH I, LLC John and/or Jane Does 1-10, and XYZ Corporations 1-10, to submit to the Department, within 5 days, a plan to properly remove all solid waste on the Property and dispose of the solid waste at a DEP-approved solid waste facility;

e. Directing Defendants Weyhill Realty Holdings, LLC d/b/a WRH I, LLC, John and/or Jane Does 1-10, and XYZ Corporations 1-10, to comply with the plan within 10 days of the Department's approval of the plan;

f. Requiring Defendants Weyhill Realty Holdings, LLC d/b/a WRH I, LLC, John and/or Jane Does 1-10, and XYZ Corporations 1-10, to pay penalties pursuant to N.J.S.A. 13:1E-9(f) for each day of their continuing failure to comply with the requirements of the SWMA, in an amount to be determined by the Court; and

g. Awarding such other relief as the Court deems just and proper.

COUNT IV

Violation of the WPCA by WRH

77. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

78. It is unlawful for any person to discharge any pollutant except in conformity with a valid NJPDES permit issued by DEP, as stated in the New Jersey Pollutant Discharge Elimination System rules. N.J.S.A. 58:10A-6(a); N.J.A.C. 7:14A-2.1(d).

79. A "pollutant" is "any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State." N.J.S.A. 58:10A-3(n). Pollutant includes both hazardous and nonhazardous pollutants.

80. Discharge "means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant into the waters of the State... Discharge includes

release of any pollutant into a municipal treatment works.”

N.J.S.A. 58:10A-3(e).

81. WRH has never applied for or obtained a NJPDES permit for its operations at the Property.

82. WRH has failed to eliminate the exposure of source materials, including the stockpiles, to stormwater discharges and otherwise failed to comply with the WPCA, as detailed herein. Following stormwater events, pollutants are swept off of the contaminated stockpiles and into local stormwater inlets.

83. Plaintiffs have incurred, and will incur, costs and damages because of the discharge of pollutants at the Site.

84. The costs and damages Plaintiffs have incurred, and will incur, for the Site are recoverable under the Act, N.J.S.A. 58:10A-10(c)(2)-(4).

85. Any person who violates the Act shall be subject upon order of a court to a civil penalty not to exceed \$50,000.00 per day of 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).

86. Pursuant to the Act, Plaintiffs may seek injunctive relief, N.J.S.A. 58:10A-10c(1); 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); 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); 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 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, Plaintiffs demand judgment in their favor:

a. Ordering WRH to remove, correct, and/or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants, by taking actions including but not limited to, storing all source materials in a manner that prevents any exposure to stormwater;

b. Ordering WRH to reimburse the 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 WRH to reimburse all reasonable costs that will be incurred 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;

d. Ordering WRH to reimburse all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Site;

e. Awarding Plaintiffs their costs and fees in this action;

f. Ordering Defendant to pay a civil penalty pursuant to the Act, N.J.S.A. 58:10A-10(e); and

g. Awarding Plaintiffs such other relief as this Court deems appropriate.

COUNT V

Violation of the UST ACT by Charles Yaffa and WRH

87. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

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

89. The UST uncovered as a result of the October 2002 Inspection constitutes a "facility" under to N.J.A.C. 7:14B-1.6.

90. "'Close' or 'closure' means the permanent elimination from service of any [UST] system by removal or abandonment in place." N.J.A.C. 7:14B-1.6.

91. 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.

92. 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."

93. The owner and operator closing the out of service UST system as required by N.J.A.C. 7:14B-9.1(d) must comply with the requirements set forth at N.J.A.C. 7:14B-9.2(a):

a. Ensure that the facility is registered as required by N.J.A.C. 7:14B-2.2 prior to closing any tank(s);

b. Notify DEP of the intent to close the UST system at least fourteen calendar days prior to the closure date;

c. Provide a copy of DEP's approval of the notice of intent to close the tanks to the applicable municipal and county health departments and the applicable local authority with the application for a local demolition permit;

d. Comply with the applicable requirements for the New Jersey Uniform Construction Code, N.J.A.C. 5:23; and

e. If any contamination is detected above any applicable remediation standard, conduct the remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C.

94. The owner and operator closing an UST system must implement a closure plan, which consists of a site investigation set forth at N.J.A.C. 7:26E-3.3, and a tank decommissioning plan. N.J.A.C. 7:14B-9.2(b). The owner and operator must also retain an LSRP. N.J.S.A. 58:10b-1.3.

95. Defendant Charles Yaffa is the registered owner of the UST located at the Property. Defendant Charles Yaffa never properly closed the UST located at the Property pursuant to N.J.A.C. 7:14B. Charles Yaffa failed to implement a site closure plan consisting of a site investigation or a tank decommissioning plan.

96. As owner of the Property, Defendant WRH has failed to properly close the UST system and implement a closure plan consisting of a site investigation set forth at N.J.A.C. 7:26E-

3.3 and a tank decommissioning plan pursuant to N.J.A.C. 7:14B-9.2(b).

97. Defendants Charles Yaffa's and WRH's failure to implement a site closure plan consisting of a site investigation and a tank decommissioning plan conferred economic benefits on Defendants. Upon information and belief, the benefits include but are not limited to, savings realized from avoided capital or noncapital costs necessary to conduct a site investigation and make a tank decommissioning plan and investigating any discharge from the tank, failure to pay fees, the return earned on the amount of avoided costs, and benefits accruing as a result of a competitive market advantage enjoyed by reason of Defendants' failure to properly close the tank and investigate any discharge onto the site.

98. The UST Act permits the Department to seek penalties pursuant to the Water Pollution Control Act's ("WPCA") penalty provision, N.J.S.A. 58:10A-10(c). N.J.S.A. 58:10A-32. Pursuant to the WPCA, the Commissioner 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 that 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); 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-10c(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-10c(5).

WHEREFORE, Plaintiffs demand judgment in their favor:

a. Finding Defendants Charles Yaffa and Weyhill Realty Holdings, LLC d/b/a WRH I, LLC to be in violation of the UST Act and its implementing regulations;

b. Ordering Defendants to immediately hire and maintain an LSRP;

c. Ordering Defendants to properly close the UST as required by and in accordance with all applicable laws and regulations;

d. Ordering Defendants to implement a site closure plan consisting of a site investigation and a tank decommissioning plan

as required by and in accordance with all applicable laws and regulations, including, but not limited to N.J.A.C. 7:26E-3.3 to 14, as applicable;

e. Ordering Defendants to fully investigate and remediate all hazardous discharges at and migrating from the site in accordance with all applicable laws and regulations;

f. Ordering Defendants to pay a civil penalty pursuant to N.J.S.A. 58:10A-10e in an amount the Court deems just and proper;

g. Ordering Defendants to compensate the Plaintiffs for all reasonable costs and fees that have been and will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;

h. Awarding the Plaintiffs their costs and fees in this action;

i. 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;

j. Reserving Plaintiffs' rights to bring a claim 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 Act pursuant to N.J.S.A. 58:10A-10c(5); and

k. Awarding the Department any other relief that this Court deems just and proper.

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW
JERSEY

By: /s/ Jessica L. Palmer
Jessica L. Palmer
Deputy Attorney General

Dated: July 19, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Matthew D. Knoblauch, 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

 /s/ Jessica L. Palmer
Jessica L. Palmer

DATED: July 19, 2021

Deputy Attorney General

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

/s/ Jessica L. Palmer
Jessica L. Palmer
Deputy Attorney General

DATED: July 19, 2021

VERIFICATION

Connor Petrauskas, by way of certification, states that:

1. I have read the Verified Complaint.
2. I certify that the factual allegations in paragraphs 12-16, and 19-51 are true and correct.
3. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

By: /s/ Connor Petrauskas

Connor Petrauskas

VERIFICATION

Ram Shah, by way of certification, states that:

4. I have read the Verified Complaint.
5. I certify that the factual allegations in paragraph 52 are true and correct.
6. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

By: /s/ Ram Shah

Ram Shah