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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, <div style="text-align: right;">Plaintiffs,</div>	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - HUDSON COUNTY DOCKET NO. <div style="text-align: center;"><u>CIVIL ACTION</u></div> <div style="text-align: center;">COMPLAINT</div>
v.	:	
ISAAC MORADI; "XYZ CORPORATIONS" 1-10; and "JOHN AND/OR JANE DOES" 1-10, <div style="text-align: right;">Defendants.</div>	:	

Plaintiffs, New Jersey Department of Environmental Protection ("DEP") and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, the "Department"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorney, file this Complaint against Defendants Isaac Moradi; "XYZ Corporations" 1-10 (Names Fictitious); and "John

and/or Jane Does" 1-10 (Names Fictitious) (collectively, "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the New Jersey Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -31, and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), to compel Defendants to remediate environmental hazards on their vacant property, which have contaminated soil and groundwater in the Town of Kearny, pose an ongoing threat to public health, and constitute a public nuisance.

2. From 1939 until 1981, Liberty Fuel Oil Company ("Liberty Fuel") owned the property at 941 Passaic Avenue in the Town of Kearny, Hudson County, New Jersey ("Site"). At various times during that period Liberty Fuel operated a bulk fuel distribution facility and gasoline station at the Site. Liberty Fuel stored large quantities of refined petroleum products in a multitude of above-ground storage tanks ("ASTs") and underground storage tanks ("USTs"). Liberty Fuel's operations resulted in the Site's contamination with hazardous substances.

3. Defendant Isaac Moradi acquired the Site in 2016 in connection with the purchase of a tax sale certificate and subsequent tax lien foreclosure. The Site is contaminated with

hazardous substances including oil, gasoline, and other petroleum waste from past operations on the Site.

4. Fuel oil, gasoline and other petroleum waste and their constituent parts pose threats to the environment and public health when they enter the soil and groundwater. Petroleum persists in soil for decades, impeding plant growth and threatening birds and mammals. Gasoline also poses a threat to human health. Ingesting gasoline or inhaling gasoline vapors can cause dizziness, headaches, lung irritation and nervous system disruptions.

5. The community surrounding the Site has a significant 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.

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

7. Through this action, The Department seeks to protect human health and the environment by requiring the cleanup of the

hazardous substances discharged on the Site and wherever they have migrated ("Contaminated Site").

PARTIES

8. DEP is a principal department in the State of New Jersey's executive branch of government. DEP maintains its principal offices at 401 East State Street, Trenton, New Jersey. Pursuant to the authority vested in DEP by N.J.S.A. 13:1D-9 and the statutes that the Legislature enacted to protect human health and the environment, DEP is empowered to bring actions in Superior Court to compel parties liable for hazardous substances to remediate the contamination, and recover costs incurred to remediate hazardous waste discharges using public funds. DEP is also vested with the authority to pursue common law claims in defense of New Jersey's environment, with a mandate to protect the people in the State from environmental harms to the best of its ability.

9. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"), with a principal place of business at 401 East State Street, Trenton, New Jersey. 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 and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.c and -d.

10. Defendant Moradi is an individual with a principal residence located at 28 Cunningham Drive, West Orange, NJ 07052.

11. Defendants "XYZ Corporations" 1-10, 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, insurers of, or are otherwise related to Defendants, and/or are other dischargers of, and/or persons "in any way responsible" for, the hazardous substances discharged at the Site.

12. Defendants "John and/or Jane Does" 1-10, these names being fictitious, are natural individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to Defendants, and/or one or more of the XYZ Corporation defendants, or any other dischargers of, and/or persons "in any way responsible" for, the hazardous substances discharged at the Property.

GENERAL ALLEGATIONS

13. The Site is located at 941 Passaic Avenue, Town of Kearny, on the corner of Passaic Avenue and Belleville Turnpike. The Site is designated as Block 89, Lot 6 on the tax map of the Town of Kearny, Hudson County. The Site, as defined, does not include a prior portion of Block 89, Lot 6 that was taken by the

New Jersey Department of Transportation ("NJDOT") in 1999 (discussed below), severing it from Block 89 Lot 6.

14. The Site abuts the Passaic River and currently sits vacant and contaminated.

Relevant Ownership History

15. The Site was owned by Liberty Fuel from 1939 until it was sold to Arlington Diner, Inc. in 1981. Arlington Diner, Inc. sold the property to 941 Passaic Avenue, LLC in 2000.

16. On December 19, 2016, while the Site was owned by 941 Passaic Avenue, LLC, the Kearny tax collector sold a tax sale certificate to Moradi for unpaid 2015 taxes on the Site.

17. 941 Passaic Avenue, LLC did not redeem the tax sale certificate from Moradi within the required two years. Consequently, the tax sale certificate owner (i.e., Moradi) was entitled by statute to initiate foreclosure proceedings on the Site. See NJ Tax Sale Law, N.J.S.A. 54:5-1, et. seq.

18. On July 19, 2019, Moradi moved to foreclose on the Site.

19. On July 29, 2020, a Final Default Judgment was ordered, granting ownership of the Site to Moradi.

Discovery of Contamination at the Site and NJDOT Tank Removals

20. Contamination at the Site was discovered some time after October 1999, when NJDOT - for the benefit of the public - took part of Lot 6 from 941 Passaic Avenue, LLC to widen the Belleville

Turnpike and erect a new bridge crossing the Passaic River to connect Kearny with Newark, New Jersey.

21. NJDOT performed an environmental assessment of the Site and learned it had operated as a fuel oil distribution facility and, for some period, a gasoline station.

22. Liberty Fuel was the owner and operator of the Site at the time of the distribution facility and gasoline station operations.

23. In March 2002, on the former portion of Block 89, Lot 6 taken for the road widening project, NJDOT uncovered and properly removed and disposed of three underground storage tanks ("USTs").

24. During the March 2002 removal of the USTs, NJDOT reported a discharge to the DEP hotline after seeing soil staining in one of the excavations.

25. Among the three USTs found were one 1,500-gallon UST and two 1,000-gallon USTs.

26. Two USTs were in close proximity and found to have corrosion holes. They were removed from the excavation where petroleum-stained soil was discovered.

27. A third UST was located approximately 70 feet from those two, empty of product and free of holes.

28. NJDOT reported that the contents in the two compromised USTs appeared to be petroleum products.

29. NJDOT completed UST closure and remedial activities on the land adjacent to the Site where the road and bridge construction project occurred.

30. NJDOT removed and disposed the USTs in accordance with law. The impacted soil around the excavated area was removed and the excavation was backfilled with clean material in accordance with the applicable environmental laws and regulations. The Department does not allege that NJDOT is responsible for any discharges that occurred on the Site.

Subsequent Investigation by Town of Kearny

31. Around 2007, Kearny considered purchasing the Site from the then-current owner, 941 Passaic Avenue, LLC.

32. As part of its pre-purchase due diligence, Kearny investigated the Site, performing a Preliminary Assessment and Site Investigation in search of any environmental concerns existing on the Site due to past operations (collectively, "Kearny Investigation").

33. The Kearny Investigation found a previously unknown 12,000-gallon UST. Gasoline or oil, termed "free product," was discovered on the water table near the 12,000-gallon UST in the central portion of the Site, near the location of the former Liberty Fuel gasoline station.

34. "Free product" refers to a separate phase liquid (e.g., gasoline or oil) floating on the groundwater table or that has

accumulated in the subsurface and has remained in that separate phase liquid form.

35. Near the former Liberty Fuel gasoline station, the Kearny Investigation also identified two suspected 550-gallon gasoline USTs and one 550-gallon waste-oil UST associated with the former gasoline station. Kearny also identified two additional fuel USTs associated with the former gasoline station in the middle of the Site.

36. Near the central portion of the Site by the Liberty Fuel gasoline station, the Kearny Investigation also identified the former location of 10 bulk petroleum storage tanks.

37. At the time of the Kearny Investigation, DEP used Total Petroleum Hydrocarbon ("TPH") levels to generally characterize the level of gasoline and oil contamination at a site. If the TPH level was 10,000 parts per million ("ppm") or above, additional characterization of the soil for specific contaminants (the petroleum constituents that are first measured in the aggregate as TPH) was required.

38. TPH levels above 10,000 ppm evidence excessive levels of hazardous petroleum constituents that harm the environment and threaten the public health when they enter the soil and groundwater.

39. The Kearny Investigation collected soil samples near the 10 suspected bulk petroleum storage tanks. Samples collected revealed TPH levels as high as 33,300 ppm.

40. The Kearny Investigation also identified TPH in excess of DEP's threshold in a sample collected near the former Liberty Fuel distribution facility on the Site.

41. Contaminated soil between the former Liberty Fuel distribution facility and the former gas station had TPH levels as high as 22,400 ppm.

42. Many of the soil borings completed across the Site exhibited petroleum or gasoline odors.

43. During the Kearny Investigation, various groundwater wells were installed on the Site to obtain samples.

44. An early groundwater sample contained benzene at 1.7 parts per billion ("ppb"), exceeding DEP's groundwater remediation standard, which is 1.0 ppb.

45. The Kearny Investigation also detected free petroleum product in multiple monitoring wells and soil borings.

46. One soil boring detected the presence of free petroleum product in the soil from a depth of three feet to the bottom of the boring at 16 feet.

47. The Kearny Investigation found free product more than four feet in thickness sitting on the groundwater table.

48. Groundwater flows from the Site towards the Passaic River.

49. A soil boring completed near the 12,000-gallon UST measured TPH of 252,000 ppm. This is consistent with other excessive TPH sampling results near the 12,000-gallon UST.

50. Upon information and belief, the 12,000-gallon UST on the Site has not been removed.

51. The close proximity of the multiple contaminated soil borings to the 12,000-gallon UST indicates the 12,000-gallon UST is a significant source of the petroleum products discharged at the Site, but not necessarily the only source.

52. Further investigation is required to delineate the full expanse of the Contaminated Site and magnitude of the environmental impacts caused by the past discharges of petroleum products on the Site.

53. The Department has already incurred cleanup and removal costs associated with the discharge at this Site - to date, primarily Licensed Site Remediation Professional ("LSRP") annual remediation fees - and expects to incur additional cleanup and removal costs.

COUNT I

Spill Act Liability

54. The Department incorporates the preceding paragraphs as if fully set forth herein.

55. Any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred, except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here. N.J.S.A. 58:10-23.11g.c.(1).

56. Pursuant to the Brownfield Act, Defendants liable under the Spill Act are also required to remediate the hazardous substances at the Site in accordance with the SRRA.

57. N.J.S.A. 58:10B-1.3 provides that "[a]n owner or operator of an industrial establishment subject to the provisions [of SRRA], the discharger of a hazardous substance or a person in any way responsible for a hazardous substance pursuant to the provisions of [the Spill Act], . . . shall remediate the discharge of a hazardous substance."

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

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

60. The costs that DEP has incurred, or will incur, for the remediation of the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable under N.J.S.A. 58:10-23.11u.b.(2), -(4) and -(5).

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

62. As an owner of the Site, Moradi is a "person in any way responsible" for the discharges.

63. XYZ Corporations 1-10, are dischargers and/or 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 incurred, and will incur, from the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.

64. John and/or Jane Does 1-10 are dischargers, persons in any way responsible for discharged hazardous substances or otherwise liable under the Spill Act, jointly and severally, without regard to fault, in connection with the remediation of hazardous substances at the Site, pursuant to N.J.S.A. 58:10-23.11g.c. and -d.(3).

65. Pursuant to N.J.S.A. 58:10-23.11g.c., -d.(3) and -d.(5), Moradi, and the fictitious party defendants, are liable, jointly and severally, without regard to fault, for all cleanup and removal costs the Department has incurred, or will incur, in connection with the remediation of hazardous substances at the Site.

WHEREFORE, the Department demands judgment in its favor:

- a. Finding Defendants 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), -d.(3) and -d.(5);
- b. Ordering Defendants to remediate the Contaminated Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3, SRRA, and all remediation statutes, regulations and/or DEP directions;
- c. Ordering the Defendants to reimburse the Department for all cleanup and removal costs it has incurred as a result of the discharge of hazardous substances at the Site, with interest as applicable;
- d. Awarding the Department any other legal or equitable relief this Court deems appropriate; and
- e. Reserving the Department's right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

COUNT II

Public Nuisance

66. The DEP incorporates the preceding paragraphs as if fully set forth herein.

67. Soil and groundwater are natural resources of the State held in trust by the State for the benefit of the public.

68. The use, enjoyment, and existence of uncontaminated natural resources are rights common to the general public.

69. Pursuant to N.J.S.A. 13:1D-9(e), the Department possesses the power to "initiate complaints of pollution of the environment ... and institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have the authority to seek and obtain injunctive relief and the recovery of fines and penalties in a court of competent jurisdiction."

70. The soil and groundwater contamination at the Site constitute a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

71. As long as the soil and groundwater remain contaminated, the public nuisance continues.

72. Until the soil and groundwater are restored to their pre-injury quality, Defendants are liable for the creation and/or

continued maintenance of a public nuisance in contravention of the public's common right to clean soil and groundwater.

WHEREFORE, the DEP demands judgment in its favor:

- a. Ordering the Defendants to abate the public nuisance in accordance with this State's environmental statutes and DEP regulations governing the remediation of contamination of the soils and waters of the State;
- b. Ordering Defendants to abate the public nuisance in accordance with this State's environmental statutes and DEP regulations governing the remediation of contamination of the soils and waters of the State;
- c. Awarding DEP its costs and fees in this action;
- d. Awarding DEP any other legal or equitable relief this Court deems appropriate; and
- e. Reserving the Department's right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

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

By: s/ Mark A. Fisher
Mark A. Fisher
Deputy Attorney General

DATED: May 10, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Mark A. Fisher, 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).

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

By: s/ Mark A. Fisher
Mark A. Fisher
Deputy Attorney General

DATED: May 10, 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).

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

By: s/ Mark A. Fisher
Mark A. Fisher
Deputy Attorney General

DATED: May 10, 2021

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-001888-21

Case Caption: NJ DEPT. OF ENV. PROTECTION VS MORADI ISAAC

Case Initiation Date: 05/07/2021

Attorney Name: MARK A FISHER

Firm Name: ATTORNEY GENERAL LAW

Address: 25 MARKET STREET PO BOX 93

TRENTON NJ 08625

Phone: 6093762965

Name of Party: PLAINTIFF : NJ Dept. of Env. Protection

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

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

Are sexual abuse claims alleged by: NJ Dept. of Env. Protection?
NO

Are sexual abuse claims alleged by: Administrator, NJ Spill Fund?
NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

05/07/2021

Dated

/s/ MARK A FISHER

Signed

