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		SUPERIOR COURT OF NEW JERSEY
NEW JERSEY DEPARTMENT OF	:	LAW DIVISION - SOMERSET COUNTY
ENVIRONMENTAL PROTECTION;	:	
ADMINISTRATOR OF THE NEW JERSEY	:	DOCKET NO.:
SPILL COMPENSATION FUND; and	:	
SHAWN LATOURETTE, COMMISSIONER	:	<u>Civil Action</u>
OF NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	
	:	
Plaintiffs,	:	
	:	<b>COMPLAINT</b>
v.	:	
	:	
RICHARDS FUEL OILS, INC.; JOHN	:	
J. MCCAFFREY; JOHN DOES 1-10;	:	
and ABC CORPORATIONS 1-10,	:	
	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Administrator of the New Jersey Spill Compensation Fund ("Administrator"), and the Commissioner of the DEP Shawn LaTourette ("Commissioner") (collectively, "Department"), by and through their attorneys, bring this Complaint against Defendants Richards Fuel Oils, Inc., John J. McCaffrey, John Does 1-10

(fictitious persons), and ABC Corporations 1-10 (fictitious entities) (collectively, "Defendants") and allege as follows:

**STATEMENT OF THE CASE**

1. The Department is charged with enforcing the environmental laws and regulations that protect the diverse people and communities of the State of New Jersey. The Department brings this action to compel Defendants to remediate discharges of hazardous petroleum products from their now vacant property located in Somerville, Somerset County, New Jersey ("Site"). Defendants' numerous violations of environmental law have contaminated the soil and groundwater onsite and in an adjacent residential neighborhood and cemetery, and their repeated failure to satisfy their legal obligations over the past two decades threatens the health of the residents of Somerville and the environment.

2. Defendant Richards Fuel Oils, Inc. ("RFO, Inc.") owned the Site in 1999 when four improperly secured 10,000 gallon above-ground storage tanks ("ASTs") moved off their foundations during stormwater flooding and spilled petroleum products into the soil and groundwater at the Site. Less than a year later, Defendant RFO, Inc. entered into a Memorandum of Agreement ("MOA") with the Department to remediate the Site, but ultimately failed to complete the required remediation.

3. In 2000, RFO, Inc. removed four underground storage tanks ("USTs") from the Site. During removal of the USTs, evidence of petroleum contamination was observed in the groundwater. But, RFO, Inc. failed to fully investigate, delineate, and remediate the contamination.

4. In October and November 2019, approximately twenty years after the contamination from the ASTs and USTs was identified at the Site, and after the Department's repeated efforts to attain Defendants' cooperation with the investigation and remediation efforts, four of the five groundwater monitoring wells at the Site still contained undissolved petroleum contamination (also known as "free product") of up to 3 feet in thickness.

5. Gasoline, diesel fuel, heating oil, and their components pose threats to the environment and public health when they enter the soil and groundwater because they persist for long periods of time, threatening plant and animal life and human health when ingested or inhaled.

6. 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.<sup>1</sup> Historically, across New Jersey,

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1. "'Overburdened community' means any census block group, as determined in accordance with the most recent United States Census,

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 negative public health impacts.

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

8. The Department seeks an order pursuant to the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10-1 to -20, the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11a to -24, and the Underground Storage of Hazardous Substances Act ("UST Act"), N.J.S.A. 58:10A-21 to -35, to compel Defendants to investigate and clean up the gasoline, diesel fuel, and heating oil spills as required by law and as agreed upon between the parties in March 2000, as well as for civil penalties to deter

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

future violations. Full remediation of the Site is necessary to ensure the health and safety of nearby residents, the public, and the environment.

#### **THE PARTIES**

9. DEP is a principal department within the Executive Branch of the State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-1 to -19. The Spill Act, N.J.S.A. 58:10-23.11 to -24, empowers DEP to compel parties responsible for the discharge of hazardous substances to remediate the contamination, and recover costs incurred to remediate hazardous substance discharges using public funds.

10. The Commissioner is authorized to commence a civil action in Superior Court for appropriate relief for any violation of the WPCA, N.J.S.A. 58:10A-10.c.

11. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). 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.

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

13. Defendant Richards Fuel Oils, Inc. ("RFO, Inc.") is a corporation organized and existing under the laws of the State of New Jersey with a principal place of business at 110 South Bridge Street, Somerville, New Jersey 08876. RFO, Inc. was formed in May 1951.

14. John J. McCaffrey ("McCaffrey") is a natural person whose last known address is 214 4<sup>th</sup> Avenue, Haddon Heights, New Jersey 08035. McCaffrey is the President, controlling shareholder, and registered agent of RFO, Inc., and, upon information and belief, has been responsible for the day-to-day operation of the Site since 1999.

15. Defendants "John Does 1-10," these names being fictitious, are natural persons whose identities cannot be ascertained as of the filing of this Complaint, certain of whom may be partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, one or more of the ABC Corporation defendants, and/or Richards Fuel Oils, Inc. are other owners or operators of the USTs at the Site, or are otherwise responsible for the violations alleged in this Complaint.

16. Defendants "ABC 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, or are otherwise related to Defendant(s), and/or are other owners or operators of the USTs at the Site, or are otherwise responsible for the violations alleged in this Complaint.

#### **GENERAL ALLEGATIONS**

17. The Site is located at the terminus of Holly Glen Road in Somerville, and designated as Block 123, Lot 9 on the Tax Map of Somerville Borough, Somerset County. It was developed in the 1950s with a retail fuel oil transfer and distribution station, operational office/shed, nine ASTs and four USTs. The Site is adjacent to a residential community, including single-family homes and apartment complexes, a cemetery, and wetlands.

18. On May 8, 1959, Louis Moore Richards and Ernestine M. Richards conveyed the Site to RFO, Inc. RFO, Inc. has continuously owned the Site since 1959, and is the Site's current owner of record.

19. At all times relevant hereto, McCaffrey was a controlling shareholder, President, and Registered Agent of RFO, Inc., and, upon information and belief, controlled and directed the day-to-day operations of RFO, Inc. RFO, Inc. operated a loading and storage facility for No. 2 oil and diesel fuel at the

Site.

20. In May 1986, RFO, Inc. registered three USTs with DEP: a 15,000-gallon leaded gasoline UST; a 10,000-gallon unleaded diesel UST; and a 15,000-gallon unleaded gasoline UST. A fourth UST was also located at the Site.

21. By October 1998, RFO, Inc. ceased fuel-related operations at the Site. At that time, the ASTs and USTs were no longer in use, but still contained hazardous substances.

22. Upon information and belief, between 1998 and 2008, RFO, Inc. began operating a swimming pool repair and maintenance business at the Site. Upon information and belief, the Site has been vacant since 2008.

23. Tropical Storm Floyd struck New Jersey on September 16, 1999. The ASTs at the site were not properly secured to their foundations. As a result, four 10,000-gallon ASTs moved off their foundations during flooding and spilled petroleum product into the surrounding soil and groundwater.

24. On September 18, 1999, McCaffrey called the Department's hotline to report a discharge of at least 100 gallons of diesel fuel from the overturned ASTs. The responsible party was cited in the DEP incident report as RFO, Inc. The Department assigned case # 99-09-18-1122-54 to the incident.

25. On September 22, 1999, the Department conducted an

environmental survey of the Site and surrounding areas in response to the discovery of oil in residential houses along 5<sup>th</sup> Street in Somerville. The Department observed a plume of oil sludge that had migrated offsite and spilled into adjacent areas, including wetlands, the Somerset Cemetery, and nearby residential homes located at 183, 185, and 187 South Bridge Street. The Department traced the fuel oil contamination back to the Site.

26. A significant number of grave markers, tombstones, and religious statues at the Somerset Cemetery were covered with oil when flood waters receded.

27. Discharged oil mixed with floodwaters flowed down 5<sup>th</sup> Street before traveling into Peter's Brook, a tributary to the Raritan River. Peter's Brook lies approximately 0.4 miles to the east of the Site. Another Raritan River tributary lies approximately 300 feet to the west of the Site. Both the Raritan River and Peter's Brook are waters of the State.

28. On March 16, 2000, RFO, Inc. entered into a MOA with the Department to remediate the discharges.

29. But, to date, RFO, Inc. has failed to fully remediate the discharges associated with the September 1999 discharges from the ASTs as required under the MOA.

30. In June 2000, RFO, Inc. removed the four USTs from the Site. During the removal, evidence of petroleum was observed in

the groundwater. The discharge was reported to the Department's hotline, and the Department assigned case # 00-06-27-1448-17 to the incident.

31. Subsequently, RFO, Inc. dug test pits to determine the extent of the contamination identified during the UST removals. The test pits identified heavily contaminated soil near the former fuel oil transfer building/loading rack.

32. During November 2001, five groundwater monitoring wells were installed and were identified as "MW-1 through MW-5". Groundwater sampling during December 2001 and January 2002 revealed free product - undissolved petroleum contamination - in MW-2.

33. On March 15, 2007, the five ground water monitoring wells were sampled again. As in 2001-2002, MW-2 once again contained free product. Free product was also identified in MW-3.

34. On November 4, 2007, the Department notified RFO, Inc. that the October 2007 Supplemental Remedial Groundwater Monitoring results, which described the March 2007 sampling event, were mostly unacceptable because of a failure to properly investigate the extent of contamination downgradient of MW-3. The Department notified RFO, Inc. that it needed to collect more data to delineate the location of the plume of contamination.

35. As a result, in 2008, two additional groundwater

monitoring wells, MW-6 and MW-7, were installed approximately fifty feet and thirty feet hydraulically downgradient of MW-2 and MW-3, respectively.

36. In September 2008, the Defendant's environmental consultant, Environmental Waste Management Associates, LLC ("EWMA"), submitted a Supplemental Remedial Investigation Progress Report. That report summarized the activities completed as specified in the environmental workplan for the Site, including installation of MW-6 and MW-7 and placement of a Petro-Trap device in MW-3. The Petro-Trap device was installed to passively capture free product from the groundwater. The report did not contain sampling from MW-4.

37. Despite having agreed to do so in the Supplemental Remedial Investigation Progress Report, RFO, Inc. failed to submit quarterly reports.

38. In September 2010 and March 2012, the Department notified RFO, Inc. of its failure to comply with the quarterly reporting obligations set forth and agreed to in the September 2008 Supplemental Remedial Investigation Progress Report.

39. Between 2012 and 2015, the Department notified McCaffrey several times that he and RFO, Inc. were required to retain a Licensed Site Remediation Professional ("LSRP") and remediate the Site in accordance with the Administrative Requirements for the

Remediation of Contaminated Sites Rules, N.J.A.C. 7:26C ("ARRCS"), including:

- a. On December 20, 2011, DEP sent McCaffrey a letter informing McCaffrey of the need to retain an LSRP.
- b. On January 27, 2012, DEP sent McCaffrey a Compliance Assistance Alert for an Initial Receptor Evaluation, a required evaluation of receptors at or near the Site and contaminant migration pathways. In the same letter, the Department informed McCaffrey that the Department intended to enter into "direct oversight" of the Site for the failure to submit an Initial Receptor Evaluation, requiring McCaffrey and RFO, Inc. to establish a remediation trust fund and implement a Department-selected remedial action, among other requirements.
- c. On March 1, 2012, DEP sent McCaffrey a Notice of Deficiency for failure to submit documents according to the timeframe established.
- d. On October 12, 2012, DEP called McCaffrey, spoke with his secretary, and sent him fax describing Defendants' obligations shortly thereafter.
- e. On December 19, 2012, DEP called McCaffrey and notified him of the need to retain an LSRP, pay Annual Remediation

Fees, and conduct and submit an Initial Receptor Evaluation.

f. On June 18, 2013, DEP discussed with McCaffrey his claim of financial hardship. DEP informed McCaffrey that he needed to retain an accountant to verify his claim of financial hardship.

g. On August 22, 2013, DEP left a voice message for McCaffrey. He did not respond.

40. On February 23, 2017, the Department sent Defendants RFO, Inc. and McCaffrey a Notice of Potential Enforcement Action for failure to retain a LSRP, pay applicable fees, submit an Initial Receptor Evaluation, or comply with the requirements for direct oversight of remediation of the Site.

41. On October 3 and November 25, 2019, the Department inspected the Site. During those inspections, four of the five groundwater monitoring wells identified and sampled contained free product ranging from 1/8 inch to 3 feet in thickness.

42. On December 8, 2020, the Department sent RFO, Inc. and McCaffrey a Spill Act Directive and Notice to Insurers requiring them to clean up and remove discharged hazardous substances.

43. On January 12, 2021 DEP called McCaffrey and left a message with a family member requesting a return call to discuss the Directive and Notice to Insurers. He did not respond.

44. The Site is adjacent to two apartment complexes: South Bridge Gardens complex to the east and Lauren Gardens apartment complex to the north.

45. Contamination detected by the monitoring wells poses a threat to the residents of the adjacent apartments in South Bridge Gardens and the public use of the cemetery. Each building in South Bridge Gardens has a basement that, upon information and belief, houses laundry services and utilities.

46. Vapor intrusion from petroleum products in the soil and groundwater presents a potential danger at both the apartment complexes and the cemetery. The likely heavily trafficked basements of the buildings within South Bridge Gardens poses a potential threat of exposure to hazardous substances to the buildings' residents.

47. Additionally, to the extent people may visit the indoor structure at the cemetery, vapor intrusion from petroleum presents a danger to the public.

48. Defendants' failure to retain an LSRP, delineate the extent of groundwater and/or soil contamination, submit an Initial Receptor Evaluation, comply with the requirements for direct oversight of remediation of the Site, and complete remediation of the Contaminated Site poses an ongoing danger to public health and the environment.

**COUNT I**

**Violation of the Spill Act**

49. The Department repeats each allegation in the foregoing paragraphs as though set forth herein in their entirety.

50. 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).

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

52. The owner of property at the time of a discharge of hazardous substances is a person "in any way responsible" under the Spill Act. N.J.S.A. 58:10-23.11g.c.(1).

53. Petroleum products, including gasoline, diesel and fuel oil, are hazardous substances under the Spill Act. N.J.S.A. 58:10-23.11b.

54. Defendant RFO, Inc., was the owner of the Site at the time of the discharge in September 1999.

55. As the owner of the Site at the time of the discharge of petroleum products from improperly secured ASTs on the Site in 1999, RFO, Inc. is responsible for discharged hazardous substances, and is liable, jointly and severally, without regard

to fault, for all cleanup and removal costs that the Department and Administrator have incurred, and may incur, as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

56. In June 2000, RFO, Inc. removed USTs from the Site and identified petroleum products in the groundwater where the USTs were removed.

57. RFO, Inc., was the owner of the Site in June 2000, when petroleum products were identified where the USTs were removed.

58. RFO, Inc. has failed to remediate the continued presence of contaminants in the groundwater by failing to respond to the Department's requests to retain an LSRP, submit an initial receptor evaluation, and perform remediation of the groundwater at the Contaminated Site.

59. As the owner the Site at the time of the discharge, Defendant RFO, Inc. is in any way responsible for discharged hazardous substances, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs that plaintiffs Department and Administrator have incurred, and will incur, as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

60. At all times relevant above, Defendant McCaffrey was the President, Registered Agent, and controlling shareholder of RFO,

Inc., and, upon information and belief, controlled the day-to-day operations of RFO, Inc. at the Site.

61. As the controlling shareholder and person exerting control over the day-to-day operations of RFO, Inc., Defendant McCaffrey is in any way responsible for discharged hazardous substances, and is liable, jointly and severally, without regard to fault, for all cleanup and removal costs that the Department incurred, and will incur, as a result of hazardous substances discharged at the Site. N.J.S.A. 58:10-23.11g.c.(1).

62. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department 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 the 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).

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

**WHEREFORE**, the Department requests judgment in its favor:

- a. Finding that Defendants discharged hazardous substances at the Site, or are otherwise responsible in any way for the discharge of hazardous substances at the Site;
- b. Ordering Defendants to complete any further remediation in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3(a), the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable statutes and regulations including, but not limited to the ARRCs and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
- c. Ordering Defendants, jointly and severally, without regard to fault, to reimburse the Department for all cleanup and removal costs it has incurred or may incur in the future as a result of the discharge of hazardous substances at the Site, with applicable interest;
- d. Ordering Defendants, jointly and severally, without regard to fault to reimburse the Department for unpaid annual remediation fees totaling \$29,345, with applicable interest, subject to amendment;
- e. Awarding the Department its costs and fees associated with this action;
- f. Awarding the Department any other relief this court deems appropriate; and

g. 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**

69. The Commissioner repeats each allegation in the foregoing paragraphs as though set forth herein in their entirety.

70. It is unlawful for any person to discharge any pollutant into the waters of the State, except to the extent the discharge conforms with a valid New Jersey Pollution Discharge Elimination System permit issued by the Commissioner pursuant to the WPCA, or with a valid national pollutant discharge elimination system permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A §§1251 to 1387. N.J.S.A. 58:10A-6(a).

71. The unauthorized discharge of pollutants into the waters of the State 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-6(a).

72. Defendant RFO, Inc., as a corporation, and Defendant McCaffrey, as a responsible corporate officer of RFO, Inc., are "persons" within the meaning of the WPCA. N.J.S.A. 58:10A-3.

73. Defendants RFO, Inc., and McCaffrey discharged pollutants from ASTs improperly secured at the Site, which

discharges were neither permitted pursuant to N.J.S.A. 58:10A-6(a), nor exempt pursuant to N.J.S.A. 58:10A-6(d) or N.J.S.A. 58:10A-6(p), and are liable, without regard to fault, for all costs and damages incurred by the Commissioner for the discharges of pollutants into the waters of the State at and near the Site.

74. The Commissioner may incur, costs and damages as a result of the discharges of pollutants into the waters of the State at and near the Site and these costs are recoverable within the meaning of N.J.S.A. 58:10A-10.c(2).

75. Under N.J.S.A. 58:10A-10c, 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 which led to establishment of a violation of the WPCA, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10.c(2); for reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10.c(3); 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 Commissioner requests judgment in his favor:

- a. Ordering Defendants RFO, Inc. and McCaffrey to remove, correct, or terminate the adverse effects upon water quality resulting from the unauthorized discharges of pollutants into the waters of the State;
- b. Ordering Defendants RFO, Inc. and McCaffrey, without regard to fault, to reimburse the Commissioner for the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of their violation of the WPCA, including the costs of preparing and litigating this case;
- c. Ordering Defendants RFO, Inc. and McCaffrey, without regard to fault, to reimburse the Commissioner for all reasonable costs that may have been incurred for removing, correcting or terminating the adverse effects upon water quality resulting from their unauthorized discharge of pollutants into the waters of the State;
- d. Awarding the Commissioner his costs and fees associated with this action;

e. Awarding the Commissioner such other relief as this court deems appropriate;

f. Reserving Plaintiffs' right to bring a claim against Defendants RFO, Inc. and McCaffrey in the future for natural resource damages arising out of the discharge of hazardous substances at the Site; and

g. Reserving Plaintiffs' right to bring a claim against Defendants RFO, Inc. and McCaffrey, without regard to fault, for the actual amount of any economic benefits they have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits they 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.

### **COUNT III**

#### **Violation of the UST Act**

76. The Commissioner repeats each allegation in the foregoing paragraphs as though set forth herein in their entirety.

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

78. 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.

79. An "[operator]" means each person who leases, operates, controls, supervises, or has responsibility for, the daily operation of a facility, and each person who has the authority to operate, control, or supervise the daily operation of a facility. There may be more than one operator of an UST facility." N.J.A.C. 7:14B-1.6.

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

81. A "discharge" from a UST means "an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State." N.J.A.C. 7:14B-1.6.

82. "The owner and operator [of a UST] shall remediate any discharge from the underground storage tank system, in accordance with [the UST rules, N.J.A.C. 7:14B-1 to -16,] and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C." N.J.A.C. 7:14B-7.3.

83. RFO, Inc. was the registered owner and operator of the USTs at the time of their removal, and Defendant McCaffrey, was a responsible corporate officer of RFO, Inc. at that time.

84. Leaked petroleum product was identified at the time of the UST removals, constituting a discharge.

85. RFO, Inc. and McCaffrey are required to remediate the discharge from the USTs pursuant to the UST rules and ARRCs rules, including remediating the Site and retaining a LSRP.

86. Defendant RFO, Inc. failed to fully remediate the discharge from its USTs and retain a LSRP to conduct remediation according to the ARRCs rules.

**WHEREFORE,** the Commissioner demands judgment in his favor:

- a. Finding Defendants RFO, Inc. and McCaffrey to be in violation of the UST Act and its implementing regulations;
- b. Ordering Defendants to retain and maintain a LSRP within fifteen days;
- c. Directing Defendants to fully investigate and remediate all hazardous substances and pollutants at and migrating from the Site in accordance with all applicable laws and regulations;
- d. 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;
- e. Ordering the Defendants to compensate the Commissioner for all reasonable costs that have been and may be incurred for any investigation, inspection, or monitoring survey,

- which led, or will lead, to the establishment of a violation, including the costs of preparing and litigating the case;
- f. Awarding the Commissioner such other relief as this Court deems appropriate; and
- 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.

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

By:



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Andrew P. Verdone  
Deputy Attorney General

Dated: October 8, 2021

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the court is advised that Andrew P. Verdone, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

**CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES**

Undersigned counsel hereby certifies, 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 the Plaintiffs at this time, nor is any non-party known to the 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 the 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

By:   
\_\_\_\_\_  
Andrew P. Verdone  
Deputy Attorney General

Dated: October 8, 2021

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

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

By:



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Andrew P. Verdone  
Deputy Attorney General

Dated: October 8, 2021

# Civil Case Information Statement

**Case Details: SOMERSET | Civil Part Docket# L-001316-21**

**Case Caption:** NJ DEP'T OF ENVIR. P ROT. VS RICHARDS FUEL OILS,

**Case Initiation Date:** 10/08/2021

**Attorney Name:** ANDREW P VERDONE

**Firm Name:** ATTORNEY GENERAL LAW

**Address:** 25 MARKET ST PO BOX 112

TRENTON NJ 08625

**Phone:** 6099843900

**Name of Party:** PLAINTIFF : NJ Dep't of Envir. Prot.

**Name of Defendant's Primary Insurance Company**  
(if known): None

**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 Dep't of Envir. Prot.?** NO

**Are sexual abuse claims alleged by: Comm'r of NJDEP?** NO

**Are sexual abuse claims alleged by: Administrator of 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)*

10/08/2021  
Dated

/s/ ANDREW P VERDONE  
Signed