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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY
DOCKET NO.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
SHAWN LATOURETTE, ACTING
COMMISSIONER, DEPARTMENT OF
ENVIRONMENTAL PROTECTION, and
THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

JAMES MEZEY; CHEROKEE
EQUITIES, LLC; ERC7, LLC;
1065 AMBOY AVENUE, LLC; 19
PETROLEUM DISTRIBUTORS,
INC.; G&V FUEL CORPORATION;
NJ PETROLEUM DISTRIBUTORS,
INC.; "ABC CORPORATIONS" 1
THROUGH 10; AND "JOHN AND/OR
JANE DOES" 1 THROUGH 10,

Defendants.

CIVIL ACTION

COMPLAINT

Plaintiffs, New Jersey Department of Environmental Protection ("DEP"), Shawn LaTourette, Acting Commissioner of the DEP ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "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, bring this Complaint against the above-named Defendants ("Defendants"), allege as follows:

STATEMENT OF THE CASE

1. This action arises from Defendants' failure to remediate contamination at the former Delta Service Station located at 1065 Amboy Avenue, Edison ("Property" or "Site"). The Property historically has been used to operate an automobile repair business, an auto body shop, and a gasoline service station. Defendants are current and former owners, operators, and individuals and corporate entities otherwise responsible for the investigation and cleanup of hazardous substances discharged in the area of underground storage tanks ("USTs") used to store gasoline at the Property.

2. The Property, and other areas where any hazardous substances discharged from the Property are now located, ("Contaminated Site") must be remediated.

3. In June 2005 and June 2008, the DEP observed discharges of gasoline, a hazardous substance, in the area of the USTs at the

Site. Further investigations concluded that gasoline constituents methyl tert-butyl ether (MTBE), benzene, and xylenes were present in the soil and groundwater at the Site. These hazardous substances pose a significant threat to the environment and public health in a number of ways when they are discharged to the soil and groundwater.

4. Gasoline discharged to soil from USTs can be contacted by persons handling contaminated soil and can be ingested or inhaled through gasoline vapors or contaminated groundwater. Gasoline can also toxify flora, fauna, and their water sources. Human exposure to gasoline constituents can lead to neurological symptoms, blood disorders, chromosomal abnormalities, heart damage, impaired lung functioning, faltering memory, impaired liver and kidney functions, cause cancer, and even death.

5. The Property is located in the Clara Barton section of Edison, and is bordered by Amboy Avenue to the north, and Coolidge Avenue to the east. The surrounding area is a mix of commercial and residential properties.

6. The community surrounding the Property 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.

7. 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.

8. The Department made numerous attempts to effectuate Defendants' compliance through administrative enforcement efforts. Those actions resulted in a settlement agreement and a Final Decision of the Commissioner, but Defendants still have failed to meet any of their obligations under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -35 ("WPC Act"), and the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -37 ("UST Act").

9. The Department now seeks an order compelling Defendants to perform all remaining remediation at the Site made necessary by the discharge of hazardous substances and pollutants at the Property, to post a remediation funding source in the amount defined by the Department for the full cost of the remediation, to pay the cleanup and removal costs incurred by the Department at the Site, including any cleanup and removal costs that may be incurred in the future, and to pay a civil penalty for their failure to remediate, among other things.

PARTIES

10. 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-9.

11. Shawn LaTourette, Acting Commissioner of the DEP, is vested by law with authority and various powers, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D-1 through -19.

12. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

13. Defendant James Mezey is an individual with a principal residence located at 49 Fourth Street, Highlands, NJ, 07732.

14. Defendant Cherokee Equities, LLC ("Cherokee"), is a limited liability company formally organized under the laws of the State of New Jersey on May 9, 2002. At all times relevant to this Complaint, Cherokee maintained a business at 133 Maple Avenue, Red Bank, NJ, 07701.

15. Defendant ERC7, LLC ("ERC7"), is a limited liability company formally organized under the laws of the State of New Jersey on August 9, 2002. At all times relevant to this Complaint, ERC7 maintained a business at 133 Maple Avenue, Red Bank, NJ, 07701.

16. Defendant 1065 Amboy Avenue, LLC ("1065 Amboy Ave"), is a limited liability company formally organized under the laws of the State of New Jersey on October 29, 2008. At all times relevant to this Complaint, 1065 Amboy Ave maintained a business at 1065 Amboy Avenue, Edison, NJ, 08837-2878. Defendant Mezey is an officer of 1065 Amboy Ave.

17. Defendant 19 Petroleum Distributors, Inc. ("19 Petroleum"), is a corporation formally organized under the laws of the State of New Jersey on February 23, 1996, with a principal address at 79 County Road 520, Englishtown, NJ, 07726. In 2008, Parminder Singh identified himself to the Department as the Operator of 19 Petroleum.

18. Defendant G&V Fuel Corporation ("G&V Fuel") is a corporation formally organized under the laws of the State of New Jersey on November 17, 2003. At all times relevant to this Complaint, G&V Fuel maintained a business at 7 Tulip Drive, Apartment 3J, Fords, NJ, 08863-1147. In 2007, Parminder Singh identified himself to the Department as a Manager of G&V Fuel.

Additionally, Gurmit Kaur is an officer of G&V Fuel and Vinny Singh has also been identified a Member of G&V Fuel.

19. Defendant NJ Petroleum Distributors, Inc. ("NJ Petroleum") is a corporation formally organized under the laws of the State of New Jersey on October 6, 2009. At all times relevant to this Complaint, NJ Petroleum maintained a business at 355 McKinley Ave, Edison, NJ, 08820. Surjeet Singh is the President of NJ Petroleum.

20. Defendant 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, Defendants and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances and pollutants discharged at the Property.

21. Defendant John and/or Jane Does 1-10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, 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 ABC Corporation Defendants, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances and pollutants discharged at the Property.

FACTUAL ALLEGATIONS

Site Ownership and Operational History

22. From February 24, 1984, until December 16, 2008, Defendant Mezey owned a 50% interest in the Property, which is located at 1065 Amboy Avenue, Edison, also known as Block 725.F, Lot 4.M, on the Edison Tax Map.

23. From September 16, 1980, through September 28, 2007, Thomas J. Zeleski owned the other 50% interest in the Property.

24. During Mezey's ownership of the Property, various entities, including Defendant G&V Fuel and Defendant 19 Petroleum, operated a gasoline service station on the Property, d/b/a 19 Petroleum and/or Delta Service station.

25. As of June 2005, the Property was the location of three 3,000-gallon and two 4,000-gallon gasoline USTs that were operated by Defendant G&V Fuel. The USTs at the Property were located on the southeastern side of the dispenser islands. The DEP assigned UST Facility ID, and SRP PI, #032747 to the UST system at the Property.

26. On September 28, 2007, Thomas J. Zaleski transferred his 50% ownership interest in the Property to Defendant ERC7.

27. On December 16, 2008, the Superior Court, Middlesex County, entered a final order transferring James Mezey's 50% ownership interest in the Property to Defendant Cherokee.

28. On June 22, 2009, Defendant ERC7 transferred its 50% ownership interest in the Property to Defendant 1065 Amboy Ave. On the same day, Defendant Cherokee also transferred its 50% ownership interest in the Property to Defendant 1065 Amboy Ave.

29. As of the filing of this Complaint, Defendant 1065 Amboy Ave is the current owner of the Property.

30. During Defendant 1065 Amboy Ave's ownership of the Property, various entities, including Defendant NJ Petroleum, operated a gasoline service station on the Property until sometime in 2016, at which time the UST Facility at the Property was taken out of service.

31. By February 16, 2017, according to an on-site DEP inspection, the UST Facility at the Property was not operating, and the hoses had been removed from the gasoline dispensers.

32. The Property presently consists of a one-story brick building containing office space and a four-bay garage and is presently being operated as an automobile repair garage and auto body shop.

33. The five USTs remain underground at the Property. The last reported owner of these five gasoline USTs is James Mezey.

34. Thomas J. Zaleski died on December 1, 2010.

The 2005 Discharge

35. On June 20, 2005, Michael Hollis, Environmental Specialist 3 with DEP, inspected the Property. 19 Petroleum was conducting business at the Property on this date.

36. Using a photo ionization detector, Hollis confirmed the presence of motor fuel-contaminated soil at the tank field where the USTs were located.

37. The DEP issued a Field Notice of Violation ("2005 FNOV") to Parminder Singh of 19 Petroleum, citing it for, among other violations, failure to provide overfill protection for the tanks pursuant to N.J.A.C. 7:14B-6.5.

38. The 2005 FNOV required 19 Petroleum to, among other things, submit written documentation of release detection monitoring for the tanks and lines, perform required cathodic tests, and perform a site investigation and submit a site investigation report addressing the gasoline-contaminated soil.

39. The DEP reported the discharge of hazardous substances found by Hollis to the DEP Hotline, and the matter was assigned Case Number 05-06-20-1357-58.

40. Parminder Singh corrected the violations within the timeframe specified on the 2005 FNOV, except for the site investigation and report.

41. On July 20, 2007, Parminder Singh submitted the results of the environmental Site Investigation Report ("2007 SI Report").

42. Parminder Singh retained the environmental consultant All-Phases Environmental to investigate the soil at the tank field and ground water at the Property as directed by the 2005 FNOV.

43. All-Phases collected eight soil samples (samples SB-1 through SB-8) that were analyzed for volatile organic compounds, plus ten tentatively identified compounds (VOC+10), and methyl tert-butyl ether (MTBE). Sample SB-1 exceeded the DEP's Soil Cleanup Criteria for total xylenes, which is a petrochemical found in motor fuel, or gasoline. All-Phases installed a temporary well point at soil boring SB-1. Analyses of groundwater samples taken from that well point exceeded the DEP's Class II-A Ground Water Quality Standards ("GWQS") for MTBE and benzene; both compounds are associated with gasoline.

44. Gasoline and its constituent components are "hazardous substances" covered under the UST Act and Spill Act.

45. Parminder Singh submitted the 2007 SI Report along with the UST Site/Remedial Investigation Report Certification Form. On that form, Singh identified that G&V Fuel Corporation owned the UST Facility ID #632747, naming the Facility as 19 Petroleum, and identified that he, Parminder Singh, was Manager of G&V Fuel Corporation, and thus was the party responsible for the UST facility. This form was signed and dated July 09, 2007.

46. After reviewing the report, on July 26, 2007, the DEP notified Parminder Singh that due to the confirmed presence of

hazardous substances found in the soil and ground water at the Property, the matter was being referred to the Bureau of Risk Management, Initial Notice and Case Assignment in the Site Remediation Program for processing and oversight.

47. On March 6, 2007, the DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to 19 Petroleum requiring that 19 Petroleum immediately comply with the provisions of the UST Act and the regulations promulgated thereto, and additionally imposing a \$30,000 penalty for the violations identified on June 20, 2005.

48. On October 21, 2008, Parminder Singh signed a Stipulation of Settlement and Withdrawal of Administrative Hearing Request on behalf of 19 Petroleum, as Operator of the gas station, admitting liability for all violations cited in the 2007 AONOCAPA. Singh agreed to pay \$17,000 in penalties in accordance with an attached payment schedule; the failure to do so would result in 19 Petroleum owing the full \$30,000 amount assessed in the 2007 AONOCAPA.

49. On October 24, 2017, the Clerk of the Superior Court entered docketed judgment DJ-183558-17 against 19 Petroleum for failure to pay the stipulated \$17,000 penalty. Because, as of October 18, 2017, only a \$5,900.50 payment had been received, a judgment of \$24,099.50 was entered against 19 Petroleum. As of the date of this Complaint, the judgment has not been paid.

50. To date, no remedial investigation report has been submitted to the DEP; the extent to which gasoline or other hazardous substances may have been discharged at the Site has not been properly investigated by Defendants; and the hazardous substances discharged at the Site have not been remediated.

The 2008 Discharge

51. On June 5, 2008, DEP Environmental Specialist 3 Michael Hollis again inspected the Property. G&V Fuel d/b/a Delta Service Station was conducting business at the Property on this date.

52. Again, Hollis confirmed the presence of hazardous substances in the soil at the tank field using a photo ionization device. Additionally, Hollis observed uncontained and on-going discharges of motor fuel at the gasoline dispensers.

53. The DEP issued a FNOV to G&V Fuel d/b/a Delta ("2008 FNOV"), requiring it to install documented overfill protection for each of the five USTs, document a proper method of filling the tanks, repair the leaking gasoline pumps, and submit a site investigation report within 60 days. It also placed a delivery ban on the UST Facility.

54. The DEP reported the incident to the DEP Hotline and the matter was assigned Case Number 08-06-05-1133-05.

55. All violations cited in the 2008 FNOV were remedied by June 26, 2008, and the second Site Investigation Report for testing conducted at the Property was submitted to the DEP on August 15,

2008 (2008 SI Report). All-Phases Environmental investigated the tank field and pump island soil, collecting seven soil samples (SB-1A through SB-7A) that were analyzed for VOC+10. Sample SB-1A exceeded the impact to ground water trigger for xylenes.

56. For the second time, due to the confirmed presence of motor fuel contamination at the Property, on September 16, 2008, the DEP referred the matter to the Site Remediation Program for processing and oversight.

57. On October 8, 2008, the DEP issued an AONOCAPA to G&V Fuel, d/b/a Delta, ordering it to immediately comply with the provisions of the UST Act and the regulations promulgated thereto, and additionally to pay an administrative civil penalty of \$40,000 for the violations cited in the 2008 FNOV.

58. On January 15, 2013, Office of Administrative Law Judge Carol I. Cohen conducted a hearing. ALJ Cohen issued a written Initial Decision on February 11, 2013, ordering Delta Fuel to pay the \$40,000 penalty. Neither DEP nor Delta filed exceptions to the Initial Decision.

59. On May 10, 2013, the Commissioner issued a Final Decision, adopting the ALJ's Initial Decision, and ordering Delta Fuel to pay the administrative penalty of \$40,000.

60. On October 2, 2013, the Clerk of the Superior Court docketed the Final Decision under Judgment Number DJ-201224-13 against Delta Fuel for failure to pay the \$40,000 penalty.

61. The DEP has no records of the Defendants retaining a Licensed Site Remediation Professional ("LSRP"), conducting any remedial investigation, conducting any necessary remediation work, or submitting a Response Action Outcome.

62. Therefore, as a result of Defendants' actions, the Contaminated Site has not been fully investigated or remediated.

63. Gasoline and its components pose threats to the environment and public health in a number of ways when they are discharged to the soil and groundwater. Gasoline discharged to soil from USTs can be contacted by persons handling contaminated soil. Gasoline persists in soil for long periods of time, impeding plant growth and threatening birds and mammals with irritation and toxicity.

64. Gasoline also poses a threat to human health, as ingesting gasoline or inhaling gasoline vapors can cause dizziness, headaches, lung irritation and nervous system disruptions. See, e.g., Agency for Toxic Substances and Disease Registry, Public Health Statement for Automotive Gasoline, Center for Disease Control (June 1995) <https://www.atsdr.cdc.gov/phs/phs.asp?id=466&tid=83> (last visited February 2, 2021).

65. Gasoline discharged to soil from USTs can evaporate through soil. It can pose an inhalation hazard if it spreads

beneath buildings on nearby properties, evaporates through soil, and intrudes into human-occupied areas.

66. Gasoline discharged from USTs to soil and then groundwater can be drawn into nearby potable wells and ingested by persons using the wells.

67. Typically, gasoline contains more than 150 chemical constituents, including benzene, toluene, and xylene. Exposure to these constituent components of gasoline can pose significant hazards to humans.

68. For example, exposure to benzene can lead to neurological symptoms, including, for example, drowsiness, dizziness, headaches, and unconsciousness in humans. Benzene is a well-established cause of cancer in humans. The International Agency for Research on Cancer has classified benzene as carcinogenic to humans (Group 1). Ingestion of large amounts of benzene may result in vomiting, dizziness, and convulsions in humans. Chronic exposure to benzene can cause blood disorders, as well as structural and numerical chromosomal aberrations in humans. Benzene causes acute myeloid leukemia (acute non-lymphocytic leukemia), and there is evidence that benzene may also cause acute and chronic lymphocytic leukemia, non-Hodgkin's lymphoma and multiple myeloma. See World Health Organization, International Program on Chemical Safety's Feature on Benzene, at

www.who.int/ipcs/features/benzene.pdf (last visited February 2, 2021).

69. Human exposure to toluene has been clinically linked to liver and kidney damage.

70. Human exposure to xylene has been clinically linked to thoracic pain, irregular electrocardiograms and heart damage, impaired lung functioning, faltering memory, and impaired liver and kidney functions. According to the Center for Disease Control's Agency for Toxic Substances and Disease Registry's Medical Management Guidelines, human exposure to xylene vapors in small amounts can cause headache, dizziness, drowsiness, and nausea. With more serious exposure, xylene can cause sleepiness, stumbling, irregular heartbeat, fainting, or even death. Xylene vapors are mildly irritating to the skin, eyes, and lungs. See CDC Toxic Substances Portal - Xylenes, <https://www.atsdr.cdc.gov/mmg/mmg.asp?id=291&tid=53> (last visited February 2 2021).

71. According to the United State Environmental Protection Agency, exposure to MTBE poses a danger to human health, including damage to the liver, kidneys, central nervous system, and eyes. See EPA's Methyl tert-butyl ether Fact Sheet, located at <https://www.epa.gov/sites/production/files/2016-09/documents/methyl-tert-butyl-ether.pdf> (last visited February 2, 2021).

COUNT I

**Spill Act
(All Defendants)**

72. The Department repeats and incorporates by reference each and every allegation contained in the preceding paragraphs of the Complaint as if set forth fully herein.

73. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b and N.J.A.C 7:26C.

74. The Department has incurred, and will continue to incur, cleanup and removal costs and damages as a result of the discharge of hazardous substances at the Property.

75. The costs that the Department has incurred, and will incur, at the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

76. Plaintiff Administrator either has approved, or may approve, appropriations for the Site.

77. As dischargers of hazardous substances or persons in any way responsible for the hazardous substances discharged at the Property under the Spill Act, Defendants James Mezey, Cherokee Equities, ERC7, 1065 Amboy Ave., 19 Petroleum, G&V Fuel, and NJ Petroleum are required to remediate the discharges of hazardous substances. N.J.S.A. 58:10B-1.3(a).

78. Defendants have failed to remediate the hazardous substances discharged at the Property and have failed to meet all

remediation timeframes, including the mandatory Remedial Investigation Report remediation timeframes set forth in N.J.A.C. 7:26C-3.3. As a result, the Site is subject to direct oversight pursuant to N.J.S.A. 58:10C-27 and N.J.A.C. 7:26C-14.2(b).

79. Except as otherwise provided in N.J.S.A. 58:10-23.11g12, 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 the Department has incurred and will incur as a result of a hazardous substances discharge. N.J.S.A. 58:10-23.11g.c.

80. During Defendants James Mezey's and ERC7's ownership of the Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b, which substances included gasoline and gasoline-related chemicals.

81. Defendants James Mezey and ERC7, as the owners of the Property at the time hazardous substances were discharged there, are persons in any way responsible and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department pursuant to the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), and for the completion of the remediation of those discharges pursuant to the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A.

58:10B-1.3(a), in accordance with the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29.

82. Defendants James Mezey, 19 Petroleum, G&V Fuel, and NJ Petroleum, as owners or operators of underground storage tanks located at the Property at the time hazardous substances were discharged therefrom, are dischargers and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department pursuant to the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), and for the completion of the remediation of those discharges pursuant to SRRA and the Brownfield Act, N.J.S.A. 58:10B-1.3(a).

83. As a person who purchased the contaminated Property, and subsequently owned, operated at, and otherwise controlled the Property at the time of or subsequent to discharges of hazard substances, Defendants Cherokee and ERC7, and Defendant 1065 Amboy Ave. as the current owner of the Property, and the John and/or Jane Doe Corporate Officers, are persons in any way responsible and are therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the Department pursuant to the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), and for the completion of the remediation of those discharges pursuant to the Brownfield Act, N.J.S.A. 58:10B-1.3(a).

84. Pursuant to N.J.S.A. 58:10-23.11u.d, Defendants and the John and/or Jane Doe Corporate Officers are subject, upon order of

the court, to a civil penalty of up to \$50,000 per day for their failure to remediate the Site. Each day the violation continues is a separate and distinct violation.

85. Pursuant to N.J.A.C. 7:26C-3.3 and N.J.A.C. 7:26C-14.2, the Site is subject to direct oversight for the failure to remediate the Site in compliance with mandatory remediation timeframes, and the Defendants are required to hire a licensed site remediation professional, establish a remediation funding source for the cost of the remediation, and obtain a response action outcome, among other things.

86. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., Plaintiff 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 the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs or damages Plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

87. 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. Ordering Defendants to reimburse the Department, without regard to fault, for all cleanup and removal costs the

Department and the Administrator have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;

- b. Entering an order finding Defendants liable, without regard to fault, for any cleanup and removal costs and damages the Department will incur as a result of the discharge of hazardous substances at the Property;
- c. Ordering Defendants to complete the remediation at the Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3(a), SRRA, and all other applicable statutes and regulations including, but not limited to, the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
- d. Ordering the Defendants to immediately retain, and maintain, a Licensed Site Remediation Professional to investigate the contamination and conduct the remediation of this Site;
- e. Ordering Defendants to comply with direct oversight pursuant to N.J.S.A. 58:10C-27 and N.J.A.C. 7:26C-14.2 and requiring the Defendants to enter into an Administrative Consent Order with the Department to

memorialize the requirements and timeframes associated the provisions of direct oversight;

- f. Assessing civil penalties as provided by N.J.S.A. 58:10-23.11u against each of the Defendants for their failure to remediate the Site;
- g. Awarding the Department its costs and fees in this action; and
- h. Awarding the Department any other relief this Court deems appropriate. The Department is not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. The Department reserves the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

COUNT II

**Water Pollution Control Act
(Defendants 19 Petroleum, G&V Fuel, and their Responsible
Corporate Officials)**

88. The Commissioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs of the Complaint as if set forth fully herein.

89. Defendants 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials, are each a "person" within the meaning of N.J.S.A. 58:10A-3.

90. During Defendants 19 Petroleum and G&V Fuel's operation of the USTs at the Property, "hazardous pollutants," as defined in N.J.S.A. 58:10A-3, were "discharged" there within the meaning of N.J.S.A. 58:10A-3, which substances included gasoline, and gasoline-related chemicals.

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

92. An unauthorized discharge of pollutants is a violation of the Water Pollution Control Act such that Plaintiff Commissioner may assess a penalty against the discharger of not more than \$50,000 per day, N.J.S.A. 58:10A-10e. Each day the violation continues is a separate and distinct violation.

93. The discharges that occurred at the Property during Defendants 19 Petroleum's and G&V Fuel's operation of the USTs at the Property, 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), make Defendants 19 Petroleum and G&V Fuel, as well as the members of 19 Petroleum and G&V Fuel as responsible corporate officials, liable, without regard to fault, for all costs and damages incurred by the Commissioner for the discharges at the Property of pollutants into the waters of the State. N.J.S.A. 58:10A-6.

94. Plaintiff Commissioner has incurred, and will incur, costs and damages as a result of the discharge of pollutants at the Property.

95. The costs and damages Plaintiff Commissioner has incurred, and will incur, for the Site are recoverable within the meaning of N.J.S.A. 58:10A-10(c)(2) to (4).

96. Pursuant to N.J.S.A. 58:10A-10(c), Plaintiff Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10(c)(1); for the reasonable costs of any investigation, inspection, or monitoring survey that led to establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10(c)(2); any reasonable cost 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 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).

97. Defendants 19 Petroleum's and G&V Fuel's operation of the USTs and failure to investigate the confirmed discharge from the USTs conferred economic benefits upon Defendants 19 Petroleum and G&V Fuel, as well as upon the members of both 19 Petroleum and G&V Fuel as responsible corporate officials. 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 investigating the confirmed discharges from the USTs, 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 19 Petroleum's and G&V Fuel's failure to investigate the confirmed discharge onto the Site.

WHEREFORE, Plaintiff Commissioner requests judgment in his favor:

- a. Permanently enjoining Defendants 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials, to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Entering an order assessing Defendants 19 Petroleum and G&V Fuel, as well as the members of 19 Petroleum and G&V Fuel as responsible corporate officials, without regard

to fault, the reasonable costs the Department has incurred for any investigation, inspection, or monitoring survey, that led to establishment of the violation, including the costs of preparing and litigating the case;

- c. Entering an order against Defendants 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials, without regard to fault, assessing all reasonable costs that the Department will incur for any investigation, inspection, or monitoring survey;
- d. Entering an order assessing Defendants 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials, without regard to fault, for all reasonable costs the Department incurred for removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Property;
- e. Entering an order against Defendants 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials, without regard to fault, assessing all reasonable costs that the Department will incur for removing, correcting, or terminating the adverse effects upon water quality

resulting from any unauthorized discharge of pollutants at the Property;

- f. Awarding Plaintiff Commissioner his costs and fees in this action;
- g. Awarding Plaintiff Commissioner such other relief as this Court deems appropriate;
- h. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site; and
- i. Reserving the right to bring a claim in the future for any economic benefits that have or will accrue to Defendants 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials, for the operation of the USTs and failure to investigate and remediate the confirmed discharge from the USTs, 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 19 Petroleum and G&V Fuel, as well as the members of both 19 Petroleum and G&V Fuel as responsible corporate officials have enjoyed, or any

other benefit that will accrue as a result of having violated the WPC Act pursuant to N.J.S.A. 58:10A-10c(5).

COUNT III

**Underground Storage of Hazardous Substances Act
(Defendants James Mezey, G&V Fuel, 19 Petroleum, & NJ Petroleum)**

98. The Department repeats and incorporates by reference each and every allegation contained in the preceding paragraphs of the Complaint as if set forth fully herein.

99. As the former owner and/or operator of underground storage tanks regulated under the provisions of the UST Act that have discharged hazardous substances at the Property, Defendants James Mezey, 19 Petroleum, G&V Fuel, and NJ Petroleum are required to remediate the discharges of hazardous substances. N.J.S.A. 58:10B-1.3(a).

100. As the last known operator of the UST system at the Site, which has been out-of-service for a period of greater than 12 months, Defendant NJ Petroleum is required to close the UST system at the Site in accordance with N.J.A.C. 7:14B-9.2. N.J.A.C. 7:14B-9.1(d).

101. Where there has been a confirmed discharge from an UST system, the "owner or operator shall remediate any discharge from the underground storage tank system in accordance with [the UST Regulations, N.J.A.C. 7:14B] and the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C."

N.J.A.C. 7:14B-7.3(c). See also N.J.A.C. 7:26C-2.2(a)(2)(i) (requiring the owner or operator to remediate the site where a discharge from a regulated UST has been determined).

102. Defendants James Mezey and/or G&V Fuel were owners of one or more USTs that remain at the Property, with James Mezey being the last reported owner of these USTs.

103. Defendants G&V Fuel, 19 Petroleum, and NJ Petroleum were operators of one or more USTs that remain at the Property, with NJ Petroleum being the most recent registered operator of the USTs.

104. Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum have failed to investigate the reported discharge on the Site by conducting a remedial investigation pursuant to N.J.A.C. 7:26E-4.1.

105. Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum have failed to remediate the reported discharge at the Property pursuant to N.J.A.C. 7:26C.

106. Defendant NJ Petroleum has failed to close the out-of-service USTs at the Property in accordance with N.J.A.C. 7:14B-9.2, pursuant to N.J.A.C. 7:14B-9.1(d).

107. Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum's ownership and/or operation of the USTs and failure to investigate the confirmed discharge from the USTs conferred economic benefits upon Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum. 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 investigating the confirmed discharges from the USTs, 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 James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum's failure to investigate the confirmed discharge onto the Site.

108. Defendant NJ Petroleum's failure to properly close and remove the USTs conferred economic benefits upon Defendant NJ Petroleum. Upon information and belief, the benefits include but are not limited to, savings realized from avoided capital or noncapital costs necessary to make a tank decommissioning plan and remove the USTs from the Site, the return earned on the amount of avoided costs, and benefits accruing as a result of a competitive market advantage enjoyed by reason of Defendant's failure to properly close and remove the USTs from the Site.

WHEREFORE, the Department demands judgment in its favor:

- a. Finding Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum are in violation of the UST Act and its implementing regulations;
- b. Ordering Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum to immediately hire and maintain an LSRP;

- c. Ordering Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum to fully investigate and remediate the Contaminated Site in accordance with all applicable laws and regulations;
- d. Ordering Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum to comply with direct oversight pursuant to N.J.S.A. 58:10C-27 and N.J.A.C. 7:26C-14.2 and requiring Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum to enter into an Administrative Consent Order with the Department to memorialize the requirements and timeframes associated the provisions of direct oversight;
- e. Ordering Defendant NJ Petroleum to close all out-of-service USTs at the Site in accordance with N.J.A.C. 7:14B-9.2;
- f. Ordering Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum to pay a civil penalty pursuant to N.J.S.A. 58:10A-10e;
- g. Ordering Defendants James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum to compensate the Department for all reasonable costs that have been and will 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;

- h. Awarding the Department its costs and fees in this action;
- i. Awarding the Department any other relief that this Court deems just and proper;
- j. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site; and
- k. Reserving the right to bring a claim in the future for any economic benefits that have or will accrue to James Mezey, G&V Fuel, 19 Petroleum for the operation of the USTs and failure to investigate and remediate the confirmed discharge from the USTs, and to NJ Petroleum for failure to properly close and remove the USTs, 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 James Mezey, G&V Fuel, 19 Petroleum, and NJ Petroleum have enjoyed, or any other benefit that will

accrue as a result of having violated the WPC Act pursuant to N.J.S.A. 58:10A-10c(5).

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

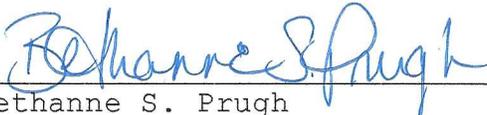
Dated: 5/7/2021

By: Bethanne S. Prugh
Bethanne S. Prugh
Deputy Attorney General

DESIGNATION OF TRIAL COUNSEL

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

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

By: 
Bethanne S. Prugh
Deputy Attorney General

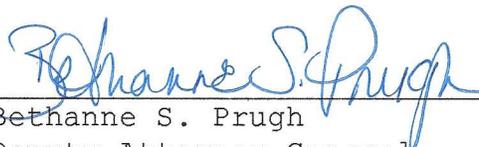
Dated: 5/7/2021

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel certifies that the matters in controversy in this action are currently not the subject of any other pending action in any court or arbitration proceeding known to the Plaintiffs at this time. However, undersigned counsel notes the existence of related judgements entered against Defendants 19 Petroleum and G&V Fuel in Superior Court under docket numbers DJ-183558-17 and DJ-201224-13, respectively. Undersigned counsel certifies that there is no 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 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:


Bethanne S. Prugh
Deputy Attorney General

Dated: 5/7/2021

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).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Department

By: 
Bethanne S. Prugh
Deputy Attorney General

Dated: 5/7/2021

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-002753-21

Case Caption: NJ DEPT OF ENV PROT VS MEZEY JAMES

Case Initiation Date: 05/07/2021

Attorney Name: BETHANNE SONNE PRUGH

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 Prot

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 Prot? NO

Are sexual abuse claims alleged by: Commissioner 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)*

05/07/2021
Dated

/s/ BETHANNE SONNE PRUGH
Signed