

Compensation Fund ("Administrator") (collectively, "Plaintiffs"), 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 attorneys, file this Verified Complaint against the above-named Defendants, 277 Lincoln Boulevard, LLC ("Lincoln Boulevard"); 277 Lincoln Holdings, LLC ("Lincoln Holdings"); Michael F. Lackland; Gershon Alexander; "ABC Corporations" 1 through 10 (Names Fictitious); and "John and/or Jane Does" 1 through 10 (Names Fictitious) (collectively, "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action against Defendants to remedy their longstanding noncompliance with environmental laws and regulations at a commercial property in Middlesex Borough, which has exposed the surrounding community to public health hazards and caused environmental harm for years.

2. The property, located at 277 Lincoln Boulevard in Middlesex Borough, also known as Block 147, Lot 3 ("Property"), was historically used for industrial purposes, and operations at the Property regularly used hazardous substances. Immediately surrounding the Property are commercial businesses and residential properties.

3. Investigations of the Property uncovered soil and groundwater contamination containing volatile organic compounds

("VOCs"), which may have seeped into neighboring residential property and pose a threat to public health and the environment.

4. Despite this, the Property remains vacant and Defendants have collectively failed to properly remediate the Property for nearly twenty years.

5. EssBee Realty, Inc. ("EssBee Realty") owned the Property from approximately 1961 to 2005. During that time, S. Burger Wire and Tubing Inc. ("S. Burger") manufactured metal wire and tubing at the Property. EssBee Realty and S. Burger were both owned by Sidney Burger. In or around 2012, Sidney Burger died. Upon information and belief, S. Burger and EssBee Realty were dissolved on December 1, 2006.

6. In 2003, when it alerted DEP of its intention to cease industrial operations and sell the Property, EssBee Realty triggered statutory and regulatory obligations under the Industrial Site Recovery Act ("ISRA") to investigate the environmental condition of the Property. Thereafter, investigations of the Property, conducted from 2003 to 2004, revealed the presence of tetrachloroethylene ("PCE"), trichloroethane ("TCE") and cis-1,2-dichloroethene ("1,2-DCE") in the soil and groundwater.

7. These VOCs are known to percolate through soil, resulting in potential impacts to groundwater. They persist in groundwater for an extended period of time, slowly degrading over

a long period and often causing harmful vapors to seep into nearby homes and businesses. These contaminants pose threats to human health and have been linked to neurological, reproductive, developmental, cardiovascular, respiratory, and immunological damage in humans.

8. S. Burger ceased operations at the Property on or around January 1, 2005. To facilitate Essbee Realty's transfer of the Property, on July 28, 2005, Defendant Lincoln Holdings signed a Remediation Agreement agreeing to, *inter alia*, remediate the Property and establish and maintain a remediation funding source ("RFS") in the amount of \$200,000.00 in accordance with N.J.A.C. 7:26C-7. Thereafter, Defendant Lincoln Holdings purchased the Property from EssBee Realty (which had become GGP, LLC, by the time of the sale). Defendant Lincoln Holdings has failed to comply with the Remediation Agreement.

9. On November 21, 2016, Defendant Lincoln Boulevard purchased the Property from Lincoln Holdings.

10. On April 29, 2019, Defendant Lincoln Boulevard and DEP executed an Administrative Consent Order ("ACO") to resolve the outstanding violations and penalties and remediate all hazardous substances and pollutants discharged at the Property ("Contaminated Site"). To date, Defendant Lincoln Boulevard has failed to comply with the ACO, which is fully enforceable as a Final Agency Order ("FAO") in the New Jersey Superior Court.

11. On January 14, 2021, Defendant Lincoln Boulevard sold the Property to Mission Baptist Church, Inc. ("Mission Baptist"), a community-based church. Mission Baptist has applied for grant funding with DEP's Hazardous Discharge Site Remediation Fund in an effort to continue its remediation of the Contaminated Site.

12. The community surrounding the Property has significant low-income populations such that it is considered an "overburdened community" within the meaning of N.J.S.A. 13:1D-158.¹ Historically, across New Jersey, such communities have been disproportionately exposed to high-polluting facilities and to the resultant threats of high levels of air, water, soil, and noise pollution, and accompanying increased negative public health impacts.

13. 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.

¹ "Overburdened community means any census block group, as determined in accordance with the most recent United States Census, in which: (1) at least 35 percent of the households qualify as low-income households; (2) at least 40 percent of the residents identify as minority or as members of a State recognized tribal community; or (3) at least 40 percent of the households have limited English proficiency." N.J.S.A. 13:1D-158. The Property is located within an area of Middlesex Borough that is listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-159.

14. The Plaintiffs now bring this civil action under the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, ISRA, N.J.S.A. 13:1K-6 to -14, the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -31, (as amended by the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29), and the applicable rules and regulations promulgated thereunder, to compel Defendants to fully investigate and remediate the Contaminated Site and for imposition of civil penalties for their noncompliance. The Plaintiffs also bring claims for failure to comply with the FAO against Lincoln Boulevard in a Summary Proceeding pursuant to R. 4:67-6, the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12, and Paragraph 18 of the ACO.

PARTIES

15. DEP is a principal department within the Executive Branch of the New Jersey State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9. Pursuant to the authority vested in the Department by N.J.S.A. 13:1D-1 to -19 and N.J.S.A. 58:10A-10, the Department is empowered to institute legal proceedings to enforce Final Agency Orders and to recover penalties in summary proceedings in Superior Court.

16. Shawn LaTourette is the Commissioner of DEP. N.J.S.A. 58:10-23.11b and N.J.S.A. 58:10A-3. The Commissioner is vested by law with various powers and authority, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of ISRA. N.J.S.A. 13:1K-13.1.

17. 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.

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

19. Defendant Lincoln Boulevard is a limited liability company formally organized under the laws of the State of New Jersey on October 13, 2016, with a principal place of business at 17 West Cliff Street in Somerville, New Jersey 08876.

20. Defendant Lincoln Holdings is a limited liability company formally organized under the laws of the State of New

Jersey on February 14, 2005, with a principal place of business at 892 Belmont Avenue in North Haledon, New Jersey 07508.

21. Defendant Michael F. Lackland is an individual who resides at 166 Highland Avenue, Metuchen, Middlesex County, New Jersey. Lackland was the managing member of Lincoln Boulevard. Upon information and belief, Lackland was in charge of the day-to-day activities of Lincoln Boulevard, with the authority to make decisions for Lincoln Boulevard and to correct violations of applicable laws and regulations.

22. Defendant Gershon Alexander is an individual who resides at 892 Belmont Avenue, North Haledon, Passaic County, New Jersey. Alexander is the managing member and president of 277 Lincoln Holdings. Upon information and belief, Alexander is in charge of the day-to-day activities of Lincoln Holdings, with the authority to make decisions for Lincoln Holdings and to correct violations of applicable laws and regulations.

23. Defendant ABC Corporations 1 through 10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Verified 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 and were

responsible for adhering to all applicable ISRA program requirements.

24. Defendant John and/or Jane Does 1 through 10, these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Verified 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 and were responsible for adhering to all applicable ISRA program requirements.

GENERAL ALLEGATIONS

Site Operational History

25. EssBee Realty owned the Property from approximately 1961 to 2005.

26. During that time, S. Burger operated an industrial establishment as defined in N.J.S.A. 13:1K-8² on the Property. S. Burger manufactured fine round metal wire and tubing. S. Burger's

²N.J.S.A. 13:1K-8 provides that an industrial establishment is "any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site . . . having a Standard Industrial Classification number within 22-39 inclusive, 51 or 76 as designated in the Standard Industrial Classifications Manual"

and previous operators' operations on the Property involved the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes on-site, including PCE and Acetylene.

27. Sidney Burger owned EssBee Realty and S. Burger.

28. In 2003, EssBee Realty submitted a General Information Notice ("GIN"), dated April 1, 2003, to DEP. In the GIN, EssBee Realty alerted DEP of its intention to sell the Property to Willard Dunham Construction Company and indicated that operations at the Property would cease on April 1, 2003. EssBee Realty's intention to sell the Property triggered its obligations under ISRA. The Property was assigned ISRA Case #E20030137.

29. Upon information and belief, EssBee Realty did not sell the Property to Willard Dunham Construction Company. However, EssBee Realty continued its investigation under ISRA because it anticipated the possibility of a future sale and had announced the cessation of S. Burger's operations.

30. In 2005, EssBee Realty submitted a subsequent GIN, dated March 7, 2005, to DEP disclosing its intention to sell the Property to Defendant Lincoln Holdings and that operations had ceased on January 1, 2005.

31. On May 5, 2005, Defendant Lincoln Holdings submitted a Remediation Agreement application to DEP. The Remediation Agreement provided EssBee Realty an opportunity to transfer

ownership of the Property to Defendant Lincoln Holdings prior to completing the remediation of the Contaminated Site. N.J.A.C. 7:26B-1.4.

32. On July 28, 2005, Defendant Lincoln Holdings signed a Remediation Agreement with DEP to assume ISRA liability. The Remediation Agreement was issued and entered into pursuant to ISRA and the Spill Act. Under the Remediation Agreement, Lincoln Holdings agreed to, *inter alia*, remediate the Contaminated Site, establish and maintain an RFS in the amount of \$200,000.00, and pay DEP's oversight costs, including all accrued interest incurred. Thereafter, Defendant Lincoln Holdings purchased the Property from EssBee Realty.

33. On September 16, 2010, DEP issued a Notice of Violation ("NOV") to Defendant Lincoln Holdings for its failure to pay DEP's oversight costs in accordance with Paragraph 16 of the Remediation Agreement.

34. On September 26, 2013, DEP filed a Notice with the Superior Court of New Jersey-Middlesex County of a First Priority Lien on the Property in accordance with the Spill Act. The First Priority Lien accounted for all expenditures, including oversight and annual remediation fees to the New Jersey Site Remediation & Waste Management Program, made in connection with the discharge of hazardous substances at the Property, which, at that time, totaled \$12,573.33.

35. Upon information and belief, Defendant Lincoln Holdings established the RFS in the amount of \$200,000.00. However, the funds were not maintained and Defendant Lincoln Holdings failed to re-establish the RFS.

36. In or around 2014, DEP issued a municipal summons to Defendant Lincoln Holdings, which resulted in a judgment awarding DEP \$15,000.00. Upon information and belief, Defendant Lincoln Holdings never issued a payment to DEP to satisfy the \$15,000.00 judgment.

37. On or around November 21, 2016, Defendant Lincoln Boulevard purchased the Property from Defendant Lincoln Holdings.

38. On January 14, 2021, Defendant Lincoln Boulevard sold the Property to Mission Baptist, a community-based church.

39. Mission Baptist, as the current owner of the Property, has retained an LSRP and has been diligently working with DEP to investigate and remediate the Contaminated Site in accordance with the Spill Act.

40. On or around June 30, 2022, Mission Baptist submitted an application to DEP's Hazardous Discharge Site Remediation Fund, seeking grant funding from the State for the remediation of the Contaminated Site.

Investigation of the Property

41. On March 24, 2003, Industrial Waste Management, Inc. ("IWM"), an environmental consulting firm, submitted a Preliminary

Assessment Report ("PAR"), on behalf of S. Burger, to DEP. The PAR revealed areas of the Property that needed further investigation, including an inactive potable well and an air vent that was attached to a former PCE dip tank.

42. On April 7, 2003, DEP issued a letter to IWM, approving the PAR. DEP also advised IWM of its obligation to complete a Site Investigation ("SI") pursuant to N.J.A.C. 7:26E-3.3 and submit a Site Investigation Report ("SIR") to DEP pursuant to N.J.A.C. 7:26E-3.13. Additionally, DEP directed IWM to submit an RI if the SI revealed contaminants with levels above applicable remediation criteria that required further delineation and remediation.

43. IWM submitted a SIR, dated July 15, 2003, on behalf of S. Burger, to DEP. During its investigation of the Property, IWM conducted soil samples in the area immediately beneath the air vent. There, IWM discovered the presence of PCE.

44. In October 2004, Pioneer Environmental Group, LLC ("Pioneer"), investigated the Property and prepared a Remedial Investigation and Remedial Action Report ("RIR/RAR").

45. During its investigation, Pioneer excavated the solvent impacted soil and sampled groundwater. The RIR/RAR confirmed the presence of contamination in the groundwater on the Property, including PCE, TCE and 1,2-DCE, at concentrations that exceeded the New Jersey Department of Environmental Protection's Impact to

Ground Water Soil Cleanup Criteria. Specifically, the RIR/RAR identified PCE exceedances that ranged from 3.6 parts per billion ("ppb") at Monitoring Well ("MW")-3 to 1,900 ppb in MW-1, TCE exceedances that ranged from 1.7 ppb at MW-4 to 70 ppb in MW-1 and 1,2 -DCE that ranged from 29 ppb at MW-2 to 79 ppb in MW-1.

46. On July 3, 2007, DEP issued a Notice of Deficiency to Lincoln Holdings and Sidney Burger identifying deficiencies in the PAR, SIR and RIR/RAR.

47. Following the issuance of the Notice of Deficiency, Eikon Planning and Design, LLC ("Eikon"), submitted a letter to DEP on behalf of Defendant Lincoln Holdings on October 2, 2007, to advise that it would address the deficiencies outlined in the July 3, 2007 letter.

48. On December 6, 2007, Eikon prepared a Remedial Investigation Report Addendum and Remedial Investigation Workplan for the Property. This Report proposed further ecological/receptor evaluations, supplemental groundwater investigations and the installation of shallow zone monitoring wells, among other things. Upon the installation of the monitoring wells, Eikon stated that it would conduct a full round of groundwater samples.

49. Following this report, Eikon did not complete the remediation of the Contaminated Site and failed to submit any

additional reports to the DEP. To date, Lincoln Holdings has failed to continue its remediation of the Contaminated Site.

50. In or around June 2018, Defendant Lincoln Boulevard retained Brockerhoff Environmental Services LLC ("BES").

51. On June 12, 2018, BES submitted an Initial Receptor Evaluation to DEP, as required under N.J.A.C. 7:26E-1.12.

52. Thereafter, on June 27, 2018, BES called the DEP hotline to report an incident involving known soil and groundwater contamination on the Property and noted the previous investigations that were conducted on the Property in 2003 and 2004. This report was assigned Incident Id. Number 18-06-27-1115-58.

53. In its Source Control Report, BES stated that it reported this incident to DEP to separate the responsibilities of its client, Lincoln Boulevard, from that of the prior owner, Lincoln Holdings. BES acknowledged that Lincoln Boulevard is liable for conducting remediation of the Contaminated Site under the Spill Act. Lincoln Holdings is also liable under ISRA because it agreed to remediate the Contaminated Site and accepted ISRA liability.

54. On April 29, 2019, Defendant Lincoln Boulevard and DEP executed an ACO after Defendant Lincoln Boulevard failed to complete an RI pursuant to N.J.A.C. 7:26E-4 and submit an RIR to DEP as required by N.J.A.C. 7:26E-4.9.

55. The presence of chlorinated VOCs in the groundwater required a vapor intrusion evaluation at nearby properties.

56. In 2019, BES collected soil gas ("SG") and indoor air samples from parcels surrounding the Property and discovered traces of PCE and TCE in SG samples at one residential property, located approximately 1,056 feet away from the Property. Upon information and belief, the residential property was occupied at the time the samples were collected.

57. Upon the identification of a vapor intrusion immediate environmental concern ("IEC"), Defendant Lincoln Boulevard, as the person responsible for conducting remediation, was required to, among other things, provide an interim response action to address any building subject to the vapor intrusion; provide a copy and explanation of the vapor intrusion analytical results to the property owner, occupant, and designated local health department; and install a vapor remedial action system for each building where the indoor air results exceed DEP's rapid action level. N.J.A.C. 7:26E-1.11.

58. On or around March 1, 2019, BES installed a sub-slab depressurization system at the residential property. BES also submitted several Response Action Forms, which included an annual monitoring and maintenance report for its vapor intrusion investigation.

59. However, DEP has not received any additional reports or updates from BES since its last Response Action Form, dated December 9, 2020.

60. Nor has Defendant Lincoln Boulevard continued its remediation of the Contaminated Site.

61. At this juncture, Appalachia Hydrogeologic & Environmental Consulting, LLC, is remediating the Contaminated Site, on behalf of Mission Baptist, and, to date, remains in compliance.

Failure to Comply with the ACO

62. On April 29, 2019, DEP and Defendant Lincoln Boulevard executed an ACO to resolve the outstanding violations and penalties after Lincoln Boulevard failed to complete an RI and submit an RIR to the DEP by the regulatory timeframe of May 7, 2017.

63. The ACO required Defendant Lincoln Boulevard to pay both a civil administrative penalty in the amount of \$2,000.00 for past violations of N.J.A.C. 7:26C and \$12,573.33 to satisfy a first priority lien filed by DEP related to outstanding oversight charges and Annual Remediation Fees to the New Jersey Site Remediation & Waste Management Program incurred by Defendant Lincoln Holdings between 2009 and 2017. See Exhibit A.

64. The ACO also required Defendant Lincoln Boulevard to maintain an LSRP to fully investigate the contamination and perform the remediation of the Contaminated Site in accordance with

N.J.A.C. 7:26C-2.3(a)1 and 2; complete an RI by March 1, 2022, pursuant to N.J.A.C. 7:26E-4; and submit an RIR to DEP by March 1, 2022, pursuant to N.J.A.C. 7:26E-4.9. See Exhibit A.

65. The ACO also contained provisions for the payment of Stipulated Penalties to DEP if Defendant Lincoln Boulevard failed to comply with any of its provisions.

66. Pursuant to paragraph 16 of the ACO, Stipulated Penalties would be due and payable thirty (30) days following written demand by DEP.

67. Additionally, the ACO provides that it is enforceable as a FAO in the Superior Court of New Jersey.

68. The ACO came into force and effect as a FAO when it was signed by DEP on April 29, 2019.

69. In 2019, Defendant Lincoln Boulevard paid the \$2,000.00 civil administrative penalty. It also paid \$12,573.33 to satisfy the first priority lien.

70. Defendant Lincoln Boulevard failed to maintain an LSRP, complete an RI, or submit an RIR to DEP in violation of the ACO. Consequently, Defendant Lincoln Boulevard's failure to meet the mandatory timeframe to complete an RI and submit an RIR, triggered compulsory direct oversight by DEP under N.J.A.C. 7:26C-14.2.

71. On May 31, 2022, DEP issued a demand letter to Defendant Lincoln Boulevard for Stipulated Penalties in the amount of

\$40,000.00 in light of Defendant's failure to comply with the ACO. These Stipulated Penalties were due on July 8, 2022.

72. On June 30, 2022, Defendant Lackland responded to DEP by letter, on behalf of Lincoln Boulevard, acknowledging receipt of DEP's demand for Stipulated Penalties. In the letter, Lackland also advised DEP that Defendant Lincoln Boulevard was dissolved on March 18, 2021.

73. As of the filing of this action, Defendant Lincoln Boulevard remains in violation of the ACO and has also failed to pay the Stipulated Penalties in the amount of \$40,000.00.

COUNT I

Enforcement of the Final Agency Order on a Summary Basis (Against 277 Lincoln Boulevard, LLC)

74. The Plaintiffs repeat each allegation in the foregoing paragraphs as though set forth in their entirety herein.

75. On April 29, 2019, Defendant Lincoln Boulevard entered into an ACO with DEP.

76. The ACO is fully enforceable in Superior Court as a FAO pursuant to paragraph 18 of the ACO and R. 4:67-6. Defendant did not appeal the FAO or seek further review thereof.

77. Defendant Lincoln Boulevard has failed to comply with the provisions of the ACO requiring it to remediate the Contaminated Site as set forth in Paragraph 9 of the ACO. Specifically, Lincoln Boulevard failed to maintain an LSRP to

perform the remediation of the Contaminated Site, complete an RI by March 1, 2022, or submit an RIR to DEP by March 1, 2022.

78. Defendant Lincoln Boulevard's failure to comply with the pertinent provisions of the ACO as outlined above constitutes a violation of a FAO.

79. Pursuant to R. 4:67-6, the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12 and Paragraph 18 of the ACO, DEP is entitled to summary enforcement of the FAO, requiring Defendant Lincoln Boulevard to:

- a. Remediate the Contaminated Site, including all discharges at the Property discovered during the remediation;
- b. Maintain a LSRP to perform the remediation of the Contaminated Site in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2;
- c. Complete a remedial investigation pursuant to N.J.A.C. 7:26E-4; and
- d. Submit a remedial investigation report to DEP, in accordance with N.J.A.C. 7:26E-4.9.

80. Defendant Lincoln Boulevard is a "person" within the meaning of the Spill Act, N.J.S.A. 58:10-23.11b.

81. Any person who violates a provision of the Spill Act, or a court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day's

continuance of the violation shall constitute a separate violation. N.J.S.A. 58:10-23.11u.a and 58:10-23.11u.d.

WHEREFORE, the Plaintiffs demand judgment against Defendant Lincoln Boulevard:

- a. Finding Defendant in violation of the FAO;
Ordering Defendant to comply with the terms of the FAO by
 - (1) remediating the Contaminated Site, including all discharges at the Property discovered during remediation;
 - (2) completing a remedial investigation pursuant to N.J.A.C. 7:26E-4; (3) submitting a remedial investigation report to DEP in accordance with N.J.A.C. 7:26E-4.9; and
 - (4) maintaining a LSRP to perform the remediation of the Contaminated Site;
- b. Ordering Defendant to pay a civil penalty pursuant to N.J.S.A. 58:10-23.11u.a; 58:10-23.11u.d and R. 4:70 in an amount the Court deems just and proper; and
- c. Awarding Plaintiffs any other relief this Court deems appropriate.

COUNT II

**Stipulated Penalties for Failure to Comply with the Final Agency
Order on a Summary Basis
(Against 277 Lincoln Boulevard, LLC)**

82. The Plaintiffs repeat each allegation in the foregoing paragraphs as though set forth in their entirety herein.

83. Pursuant to Paragraph 14 of the ACO, Lincoln Boulevard's failure to comply with the provision of the ACO warrants the assessment of Stipulated Penalties.

84. Furthermore, Paragraph 16 of the ACO states that "[w]ithin 30 days after Lincoln Boulevard's receipt of a written demand from DEP for Stipulated Penalties, Lincoln Boulevard shall submit a check [to the Department]."

85. Paragraph 18 of the ACO, in pertinent part, states that if Lincoln Boulevard does not, *inter alia*, pay Stipulated Penalties, "the Department may take any action it is authorized to take, including, . . . filing of a summary action in the Superior Court of New Jersey pursuant to R. 4:67 and R. 4:70 to enforce this ACO as a final order"

86. On May 31, 2022, DEP issued a demand letter to Defendant Lincoln Boulevard for Stipulated Penalties in the amount of \$40,000.00. These Stipulated Penalties were due on July 8, 2022. Defendant Lackland responded to DEP on behalf of Defendant Lincoln Boulevard acknowledging receipt of the letter.

87. As of the filing of this action, Defendant Lincoln Boulevard has failed to issue a payment in the amount of \$40,000.00 in accordance with DEP's Demand for Stipulated Penalties.

WHEREFORE, the Plaintiffs demand judgment against Defendant Lincoln Boulevard:

a. Finding Defendant in violation of the FAO;

- b. Ordering Defendant to pay Stipulated Penalties in the amount of \$40,000.00; and
- c. Awarding Plaintiffs any other relief this Court deems appropriate.

COUNT III

**Violation of the Spill Act and
the Brownfield Act (as Amended by SRRA)
(Against 277 Lincoln Holdings, LLC, 277 Lincoln Boulevard, LLC,
Michael F. Lackland, and Gershon Alexander)**

88. The Plaintiffs repeat each allegation in the foregoing paragraphs as though set forth in their entirety herein.

89. The above-referenced contamination at the Contaminated Site has not been remediated in violation of the Spill Act. N.J.S.A. 58:10-23.11.c.

90. Defendants Lincoln Holdings, Lincoln Boulevard, Lackland, and Alexander are "persons" within the meaning of the Spill Act. N.J.S.A. 58:10-23.11b.

91. The strict liability provision of the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), provides in pertinent part:

[A]ny person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c. 141 (C:58:10-23.11f).

92. Furthermore, N.J.S.A. 58:10-23.11g.c.(3) of the Spill Act provides, in part:

In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.

93. Defendants acquired the Property after September 14, 1993, and knew or should have known that hazardous substances had been discharged on the Property prior to their acquisition of the property. Additionally, Defendants are dischargers or persons in any way responsible for the hazardous substances discharged on the Property.

94. Therefore, Defendants are strictly liable, jointly and severally, without regard to fault under N.J.S.A. 58:10-23.11g.c.(3) for all cleanup and removal costs incurred by DEP and the Spill Fund to remediate the hazardous substances discharged on the property.

95. Under the Spill Act, N.J.S.A. 58:10-23.11u, DEP may bring a civil action in the Superior Court against any person who has violated the Spill Act, or any rule, regulation, plan,

information request, access request, order, or directive promulgated or issued pursuant thereto:

- a. For injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);
- b. For the costs incurred for any investigation, cleanup or removal, and for the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and
- c. For any other related costs incurred by the Department under the Spill Act.

96. Effective January 6, 1998, the Legislature enacted the Brownfield Act, N.J.S.A. 58:10B-1 to -20.

97. As amended by the Site Remediation Reform Act ("SRRA") (P.L. 2009, c. 60, §30, effective May 7, 2009), the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances. N.J.S.A. 58:10B-1.3.a.

98. Defendants Lincoln Holdings, Lincoln Boulevard, Lackland, and Alexander are "persons" as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

99. As persons liable under the Spill Act, Defendants, pursuant to N.J.S.A. 58:10B-1.3.a of the Brownfield Act, have

affirmative obligations, jointly and severally, to remediate the hazardous substances discharged on the Property.

100. As persons responsible for conducting the remediation, Defendants were required to comply with the remediation requirements enumerated in N.J.S.A. 58:10B-1.3.a.

101. An owner or operator of an industrial establishment subject to ISRA or a person in any way responsible for a hazardous substance under the Spill Act is required to remediate the discharge of a hazardous substance pursuant to N.J.S.A. 58:10B-1.3.a.

102. Here, Defendants failed to comply with N.J.S.A. 58:10B-1.3a, as Defendants have not completed the remediation of the Contaminated Site.

103. Any person who fails to comply with the provisions of N.J.S.A. 58:10B-1.3 of the Brownfield Act shall be liable and subject to the enforcement provisions established in N.J.S.A. 58:10-23.11.u of the Spill Act. N.J.S.A. 58:10B-1.3.e.

104. Pursuant to N.J.S.A. 58:10-23.11u.a and N.J.S.A. 58:10-23.11u.d, Defendants are also subject to civil penalties of up to \$50,000.00 per day for their violations of the Spill Act.

WHEREFORE, the Plaintiffs demand judgment against Defendants:

- a. Finding Defendants liable and obligated to remediate the Contaminated Site pursuant to N.J.S.A. 58:10B-1.3a, and in

- violation of N.J.S.A. 58:10B-1.3a for their failure to do so;
- b. Finding Defendants liable, jointly and severally, without regard to fault, for any cleanup and removal costs and damages incurred by DEP as a result of the discharge of hazardous substances at the Property;
 - c. Ordering Defendants to reimburse Plaintiffs, without regard to fault, for all cleanup and removal costs DEP and the Administrator have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;
 - d. Ordering Defendants to complete the remediation at the Contaminated Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3, SRRA, and all other applicable statutes and regulations and/or DEP directives;
 - e. Ordering the Defendants to immediately retain, and maintain, a Licensed Site Remediation Professional to implement the remediation of this Contaminated Site;
 - f. Assessing civil penalties as provided by N.J.S.A. 58:10-23.11u.d against each of the Defendants for their failure to remediate the Contaminated Site;
 - g. Awarding Plaintiffs its costs and fees in this action; and
 - h. Awarding Plaintiffs any other relief this Court deems appropriate.

COUNT IV

**Violation of ISRA
(Against 277 Lincoln Holdings, LLC)**

105. The Plaintiffs repeat each allegation in the foregoing paragraphs as though set forth in their entirety herein.

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

107. Under ISRA, an "owner" is defined as any person who owns the real property of an industrial establishment or who owns the industrial establishment. N.J.S.A. 13:1K-8.

108. Defendant Lincoln Holdings acquired ownership of the Property, an industrial establishment, when it purchased the Property from EssBee Realty. Defendants also assumed ISRA liability when it signed the Remediation Agreement on July 28, 2005.

109. Defendant Lincoln Holdings failed to comply with the terms of the Remediation Agreement. Specifically, Defendant failed to remediate the Contaminated Site and re-establish and maintain an RFS in the amount of \$200,000.00 in accordance with N.J.A.C. 7:26C-7.

110. Defendant Lincoln Holdings remain in violation of the Remediation Agreement, to date.

WHEREFORE, the Commissioner demands judgment against Defendant Lincoln Holdings:

- a. Finding Defendant in violation of its Remediation Agreement, ISRA, the SRRA, and its implementing regulations;
- b. Ordering Defendant to comply with ISRA;
- c. Awarding all costs recoverable under N.J.S.A. 13:1K-13(c)(2), including but not limited to reasonable costs of preparing and litigating this matter;
- d. Awarding the Commissioner statutory penalties pursuant to N.J.S.A. 13:1K-13(e) arising from Defendant's violations of ISRA, which may be up to \$25,000.00 per day for each day in violation; and
- e. Awarding Plaintiffs any other relief this Court deems appropriate.

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Ogechi O. Onyeani
Ogechi O. Onyeani
Deputy Attorney General

DATED: August 24, 2022

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).

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: /s/ Ogechi O. Onyeani
Ogechi O. Onyeani
Deputy Attorney General

DATED: August 24, 2022

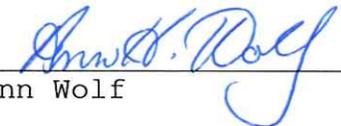
VERIFICATION

I, Ann Wolf, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection within the Site Remediation Program.
2. I am the Chief of the Bureau of Enforcement and Investigations.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in paragraphs 25 through 73 of the Verified Complaint are true and correct to the best of my knowledge.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

DATED:

8/24/2022



Ann Wolf

EXHIBIT A



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Enforcement and Information Support Element
Bureau of Enforcement and Investigations

CATHERINE R. McCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

401 East State Street
401-06U
Trenton, New Jersey 08625
Telephone: (609) 633-1480
Fax: (609) 292-1975

CERTIFIED MAIL
7018 2290 0002 1062 3795

277 Lincoln Boulevard LLC
c/o Jared Cucci
17 West Cliff Street
Somerville, NJ 08876

APR 29 2019

Re: Administrative Consent Order
277 Lincoln Boulevard
Middlesex, Middlesex County
PI #: G000001981
CASE #: 18-06-27-1115-58

Dear Mr. Cucci:

Enclosed is a copy of the Administrative Consent Order fully executed by both 277 Lincoln Boulevard LLC and the Department regarding the above referenced Site. Additionally, an invoice for \$2,000.00 is included for payment of the penalty assessment and an invoice for \$12,573.33 is included for the first priority lien. If 277 Lincoln Boulevard LLC fails to pay the penalty or lien, the Department will proceed with follow up enforcement actions as specified in the Administrative Consent Order. This Administrative Consent Order is now in effect.

Should you have any questions please contact Sam Rosen at (609) 633-0744 or email at sam.rosen@dep.nj.gov.

Sincerely,

Kevin F. Kratina, Assistant Director
Enforcement and Information Support Element

Enclosure: Administrative Consent Order (1 Original)

C: Sam Rosen, BEI
Sean Clifford, LSRP (via email)



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Enforcement, Technical and Financial Support
Site Remediation and Waste Management Program

CATHERINE R. McCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

401 East State Street
Mail Code 401-06A
P.O. Box 420
Trenton, NJ 08625-0420
Phone: (609) 633-1480 Fax: (609) 292-1975

IN THE MATTER OF :
S. BURGER WIRE & TUBING INC. SITE :
277 LINCOLN BOULEVARD :
MIDDLESEX BOROUGH, :
MIDDLESEX COUNTY : ADMINISTRATIVE CONSENT ORDER
PROGRAM INTEREST NO. G000001981 :
and :
277 LINCOLN BOULEVARD LLC :

The following Administrative Consent Order is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey ("Department") by N.J.S.A. 13:1D-1 to -19, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.11z ("Spill Act"), and duly delegated to the Assistant Director of the Enforcement and Information Support Element within the Site Remediation and Waste Management Program of the Department pursuant to N.J.S.A. 13:1B-4.

FINDINGS

- 1. The S. Burger Wire & Tubing Inc. site is located at 277 Lincoln Boulevard, also known as Block 147, Lot 3, on the tax maps of Middlesex Borough, Middlesex County, which the Department refers to as Site Remediation Program Interest Number G000001981 ("Site"). The Site and all other areas to which any hazardous substance discharged there has migrated, shall be hereinafter referred to as the "Contaminated Site."
2. 277 Lincoln Boulevard LLC is a limited liability corporation. Its principal address is 17 West Cliff Street, Somerville, NJ, 08876.
3. 277 Lincoln Boulevard LLC is the current owner of the Site and therefore is a person in any way responsible for any hazardous substance discharged at the Site pursuant to the

Spill Act, and a person responsible for conducting remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-2

4. The Site is an Industrial Establishment pursuant to the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -13 ("ISRA") and is the subject of a pending ISRA matter for the cessation of operations under ISRA case number E20030137 which remains open until a Response Action Outcome is issued for the former Industrial Establishment.
5. 277 Lincoln Boulevard LLC did not complete the remedial investigation and submit the remedial investigation report by the regulatory timeframe of May 7, 2017 and 277 Lincoln Boulevard LLC will not complete the remedial investigation and submit the remedial investigation report by the original mandatory timeframe of ~~March 1~~, 2019. (SR) May 7,
6. Without any admission of fact, fault, or liability, 277 Lincoln Boulevard LLC agrees to remediate, pursuant to this Administrative Consent Order, all hazardous substances, hazardous wastes, and pollutants discharged at the Site.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

Civil Administrative Penalty for Past Violations

7. Within 30 days after the Effective Date of this Administrative Consent Order, 277 Lincoln Boulevard LLC agrees to pay a civil administrative penalty in the amount of \$2,000.00 for past violations of N.J.A.C. 7:26C.
8. 277 Lincoln Boulevard LLC shall pay the amount specified in Paragraph 7 above by check made payable to "Treasurer, State of New Jersey," and shall remit payment, and the payment invoice sent by the Department, to the Division of Revenue at the following address: NJ Department of Treasury, Division of Revenue, PO Box 417, Trenton, New Jersey 08646-0417.

277 Lincoln Boulevard LLC shall also simultaneously mail a photocopy of the check and a copy of the enforcement invoice to the Department at the following address: Kevin F. Kratina, Assistant Director, Enforcement & Information Support Element, Site Remediation and Waste Management Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey 08625-0420.

Remediation

9. 277 Lincoln Boulevard LLC shall remediate the Contaminated Site, including all discharges at the Site discovered during the remediation, in accordance with this Administrative Consent Order, the Brownfield and Contaminated Site Remediation Act, N.J.S.A.58:10B-1 to -31, the Administrative Requirements for the Remediation of

Contaminated Sites, N.J.A.C. 7:26C-2.3(a), and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; including, without limitation, the following:

- a. 277 Lincoln Boulevard LLC shall maintain a licensed site remediation professional (“LSRP”) to perform the remediation of the Contaminated Site in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2;
- b. By the revised mandatory timeframe of March 1, 2022, with no extensions, 277 Lincoln Boulevard LLC shall complete a remedial investigation pursuant to N.J.A.C. 7:26E-4 and submit to the Department a remedial investigation report, pursuant to N.J.A.C. 7:26E-4.9;
- c. By the revised mandatory timeframe of March 1, 2027, with no extensions, 277 Lincoln Boulevard LLC shall complete a remedial action and submit to the Department a final remedial action report, pursuant to N.J.A.C. 7:26E-5.8 and a Response Action Outcome in accordance with N.J.A.C. 7:26C-6.2. 277 Lincoln Boulevard LLC shall obtain all applicable remedial action permits to meet this deadline; and
- d. Should 277 Lincoln Boulevard LLC miss either of the mandatory timeframes in b or c above, the Site is immediately subject to the direct oversight requirements at N.J.A.C. 7:26C-14.2(b) and 277 Lincoln Boulevard LLC shall comply with all requirements.

Annual Remediation Fees and Oversight Costs

10. 277 Lincoln Boulevard LLC owes \$12,573.33 to satisfy a first priority lien filed by the Department related to outstanding oversight charges and Annual Remediation Fees incurred between the years 2009 and 2017. This lien was assigned Docket No. DJ-202463-13.
11. 277 Lincoln Boulevard LLC shall pay \$12,573.33 within 90 days after the Effective Date of this Administrative Consent Order to satisfy the first priority lien specified in paragraph 10 above.
12. The Department will issue a Warrant of Satisfaction once the lien amount of \$12,573.33 is paid.
13. 277 Lincoln Boulevard LLC shall pay, by the due date printed on any invoice, annual remediation and/or oversight costs, pursuant to N.J.A.C. 7:26C-4.9. Payment shall be made by mail to the address listed on the invoice.

Stipulated Penalties and Other Enforcement

14. 277 Lincoln Boulevard LLC shall pay stipulated penalties in the amount of \$1,000 per day to the Department for failure to comply with any provision of this Administrative Consent Order.
15. Stipulated penalties shall begin to accrue on the first calendar day after the applicable due date or noncompliance, and not at the time the Department gives notice of the violation or non-compliance to 277 Lincoln Boulevard LLC or issues a demand for stipulated penalties. Stipulated penalties shall continue to accrue through the final day of correction of the violation or non-compliance. The Department does not have to provide notice of the violation or non-compliance for the stipulated penalties to begin to accrue.
16. Within 30 days after 277 Lincoln Boulevard LLC's receipt of a written demand from the Department for stipulated penalties, 277 Lincoln Boulevard LLC shall submit a check made payable to "Treasurer, State of New Jersey," along with the applicable invoice enclosed with the demand, to the Division of Revenue at the address stated on the invoice. 277 Lincoln Boulevard LLC shall also simultaneously mail a photocopy of the check and the payment invoice to the Department at the address: Assistant Director, Enforcement & Information Support Element, Site Remediation and Waste Management Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey 08625-0420.
17. The payment of stipulated penalties does not alter 277 Lincoln Boulevard LLC's responsibility to complete all requirements of this Administrative Consent Order.
18. If 277 Lincoln Boulevard LLC does not comply with any part of this Administrative Consent Order, including without limitation, does not pay stipulated penalties, the Department may take any action it is authorized to take, including without limitation, issuing an administrative order, assessing a civil administrative penalty, filing of a summary action in the Superior Court of New Jersey pursuant to R. 4:67 and R. 4:70 to enforce this Administrative Consent Order as a final order, enforcing this Administrative Consent Order as an order issued by the Department pursuant to the Spill Act, and issuing a Spill Act directive, conducting the remediation itself and recovering three times the Department's costs, and taking any other action.

General Provisions

19. 277 Lincoln Boulevard LLC shall make all submissions required by this Administrative Consent Order to the Department at the address listed in N.J.A.C. 7:26C-1.6(a), except as otherwise indicated in this Administrative Consent Order.
20. In addition to the Department's statutory and regulatory rights to enter and inspect the Site, 277 Lincoln Boulevard LLC agrees to allow the Department and its authorized representatives access to the Site at all times for the purpose of monitoring 277 Lincoln Boulevard LLC's compliance with this Administrative Consent Order and for the

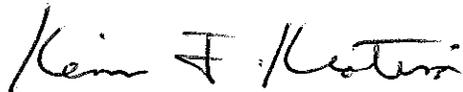
Department to perform any remediation necessary to protect public health and safety and the environment.

21. 277 Lincoln Boulevard LLC agrees to stop conducting all or part of the remediation of the Site under this Administrative Consent Order upon receipt of written notice from the Department that the Department has decided to complete all or part of the remediation itself in order to protect the public health and safety and the environment.
22. The Department reserves, and this Administrative Consent Order is without prejudice to, all rights against 277 Lincoln Boulevard LLC concerning all other matters.
23. Nothing in this Administrative Consent Order shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey.
24. Nothing in this Administrative Consent Order shall restrict the ability of the Department to raise or make the above findings in any other proceeding.
25. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.
26. 277 Lincoln Boulevard LLC retains all rights they may have against any other responsible parties for the remediation of the Contaminated Site.
27. 277 Lincoln Boulevard LLC consents to entry of this Administrative Consent Order and waives its right to request an administrative hearing concerning the terms of this Administrative Consent Order pursuant to N.J.A.C. 7:26C-9.10. 277 Lincoln Boulevard LLC agrees it will not request an administrative hearing concerning stipulated penalties.
28. 277 Lincoln Boulevard LLC agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, and (b) the terms or conditions hereof, except that 277 Lincoln Boulevard LLC does not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Administrative Consent Order.
29. This Administrative Consent Order shall be binding on 277 Lincoln Boulevard LLC and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of 277 Lincoln Boulevard LLC.
30. Each undersigned representative of 277 Lincoln Boulevard LLC and the Department certifies that he or she is authorized to enter into this Administrative Consent Order, and to execute and legally bind each party to this Administrative Consent Order.

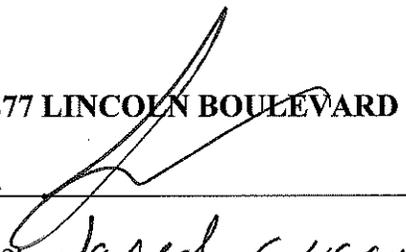
31. This Administrative Consent Order may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Administrative Consent Order.
32. The Effective Date of this Administrative Consent Order shall be the date that both 277 Lincoln Boulevard LLC and the Department have executed this Administrative Consent Order.

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

DATE: APR 29 2019

By: 
Kevin F. Kratina, Assistant Director
Enforcement & Information Support Element

DATE: 4/10/19

277 LINCOLN BOULEVARD LLC
By: 
Name: Jared Cucci
Title: COO