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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - BERGEN COUNTY
	:	DOCKET NO.
Plaintiff,	:	
	:	<u>CIVIL ACTION</u>
v.	:	
THOMAS ARGIRO	:	VERIFIED COMPLAINT TO ENFORCE ADMINISTRATIVE CONSENT ORDER AND TO COLLECT CIVIL PENALTIES IN A SUMMARY PROCEEDING PURSUANT TO <u>R. 4:67-6</u> AND <u>R. 4:70</u>
Defendant.	:	

Plaintiff the New Jersey Department of Environmental Protection (the "Department"), by and through its attorneys, files this verified complaint against Defendant Thomas Argiro ("Defendant") and alleges as follows:

STATEMENT OF THE CASE

1. The Department brings this summary action against Defendant Thomas Argiro to remedy his noncompliance with environmental laws and regulations at a former gas station in the Borough of Fort Lee, which has exposed the Fort Lee community to

public health hazards and caused environmental harm for over two decades.

2. In 1999, Defendant hired an environmental consultant to remove four underground storage tanks ("USTs") on his property located at 2419 Lemoine Avenue, Fort Lee Borough, Bergen County, New Jersey, also known as Block 7056, Lot 10 on the Tax Map of Fort Lee Borough ("Site"). Three USTs were used previously to hold gasoline during the operation of the gas station at the Site; the fourth held waste oil. The Site is located adjacent to multiple single-family homes and duplexes.

3. During the removal process, the consultant discovered that the USTs had discharged gasoline into the soil at the Site on December 15, 1999. Despite this discovery, Defendant has failed to take any remedial action.

4. Due to the discovery of the discharge at the Site on December 15, 1999, and a lack of a complete remedial investigation by the mandatory timeframe of March 1, 2017, the Site Remediation Reform Act required the Department to undertake direct oversight of the remediation of the Site pursuant to the requirements in N.J.S.A. 58:10C-27c. See also N.J.A.C. 7:26C-14.2(b).

5. In 2018, the Department and the Defendant executed an Administrative Consent Order ("ACO") to establish new timeframes for remediation of the Site and settle Defendant's penalty exposure. The ACO required Defendant to submit to the Department

a Remedial Investigation Report ("RIR") by March 25, 2019, and complete the remediation and submit to the Department a Remedial Action Report ("RAR") by April 25, 2020. Pursuant to Governor Murphy's Executive Order 103, the Department extended the deadline to submit the RAR by a total of 455 days, establishing a new deadline of July 24, 2021. 53 N.J.R. 292(a).

6. Despite the ACO's clear requirements and the extension for the RAR afforded by the Department's rule modification under Executive Order 103, Defendant has missed the deadlines for remediating the discharge and resulting contamination, including submittal of the RIR and RAR. Indeed, to date, the contamination at the Site remains unremediated.

7. Gasoline and its components pose threats to the environment and public health when they enter the soil and the groundwater. These contaminants persist in soil for long periods of time, impeding plant growth and threatening birds and mammals with irritation and toxicity. Human exposure to these contaminants, including through ingestion or inhalation of vapors, can cause dizziness, headaches, lung irritation, nervous system disruptions and even damage to the liver, kidneys, central nervous system, and eyes.

8. The community surrounding the Site has a significant low-income, minority or limited English proficiency population such that it is considered an "overburdened community" within the

meaning of N.J.S.A. 13:1D-158.¹ 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.

9. 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.

10. By its terms, the ACO is fully enforceable in Superior Court as a Final Agency Order ("FAO"). The Department seeks to compel Defendant to comply with the FAO in a Summary Proceeding. Specifically, the Department seeks to compel Defendant to retain a Licensed Site Remediation Professional ("LSRP") and remediate the Site in accordance with all applicable laws and regulations,

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 Site is located within an area of the City of Fort Lee that is listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-159.

and seeks imposition of additional civil penalties for Defendant's violation of the FAO under N.J.S.A. 58:10-23.11u.(d).

PARTIES

11. DEP is a principal agency in the executive branch of State Government and is charged with protecting human health and the environment by the enforcement of New Jersey's environmental laws, including the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("Spill Act"), the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3 to -31 ("Brownfield Act"), the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"), and the rules and regulations promulgated pursuant thereto. These statutes authorize DEP to institute legal proceedings and recover penalties in Superior Court. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey.

12. Defendant Thomas Argiro is an individual residing at 107 Saint Nicholas Avenue, Hillsdale, New Jersey 07642. Defendant Argiro is the owner of the Site, which is located at 2419 Lemoine Avenue, Fort Lee Borough, Bergen County, New Jersey, also known as Block 7056, Lot 10 on the tax map of Fort Lee. Defendant has owned the Site since 1983.

FACTUAL ALLEGATIONS

13. Prior to 1999, the Site contained a gas station with four USTs. The owner of the Site, Defendant Argiro, was the owner and operator of the regulated USTs at the Site.

14. In 1999, Defendant hired Tri-Tech Environmental to remove four underground storage tanks from the Site. On December 15, 1999, Tri-Tech Environmental reported a discharge of gasoline on the Site to the Department. The Department assigned the discharge Incident Report 99-12-15-1003-56. DEP designated the Site as Program Interest Number 011312.

15. A Site investigation conducted by Tri-Tech Environmental in 1999 confirmed the presence of contaminants in the soil including but not limited to benzene and 1,2-dichloroethane.

16. The Department has no record of the discharge being addressed through a Remedial Investigation or Remedial Action following the 1999 discharge. The Department therefore does not know the full extent of the contamination.

17. Hazardous substances in gasoline can migrate through soil and groundwater, spreading beyond the site and impacting other properties.

18. On January 13, 2012, the Department sent a letter to Defendant via certified and regular mail informing him that the Department had received no communications from him for an extended

period of time and that the SRRA now applied to the Site. DEP received no response to this letter.

19. On December 2, 2016, the Department issued Defendant Summons #0219-SC-01271 through the Fort Lee Municipal Court for failure to remediate pursuant to N.J.A.C. 7:26C-2.3(a).

20. On December 4, 2018, Defendant executed an ACO with the Department in which he agreed to remediate the UST area of concern at the Site. Among other provisions, the ACO required Defendant to:

- a. Submit to the Department a public participation plan within 30 days of the effective date of the ACO;
- b. Retain a LSRP to conduct the remediation of the Site;
- c. Submit to the Department a detailed cost review of all costs required for compliance with the ACO within 30 days of the effective date of the ACO and annually thereafter;
- d. Establish a remediation funding source ("RFS") within 30 days of the effective date of the ACO;
- e. Submit to the Department an RIR no later than March 25, 2010; and
- f. Complete a remedial action and submit to the Department a RAR no later than April 25, 2020.

21. In the event Defendant failed to comply with any of the terms or deadlines set forth in the ACO, Defendant agreed to pay stipulated penalties to the Department in the amount of \$1,000 per day. Pursuant to the ACO, each deadline or schedule not complied with would be considered a separate violation of the ACO.

22. The ACO provides that if Defendant failed to comply, he would become subject to all requirements of DEP direct oversight pursuant to N.J.A.C. 7:26C-14.2(b). The ACO also provides that if Defendant failed to comply, including by not paying stipulated penalties, it would become enforceable in Superior Court as a Final Agency Order.

23. On February 15, 2019, and March 13, 2019, the Department notified Defendant by phone that the required annual cost review had not been submitted. The Department informed Defendant that failure to submit the detailed cost review and establish a remediation funding source could result in stipulated penalties of up to \$1,000 per day of violation pursuant to the ACO.

24. On February 26, 2019, the Department notified Defendant by e-mail that the ACO required the establishment of an RFS and that the RIR was due on March 25, 2019.

25. On April 29, 2019, the Department discussed the requirement for submittal of the detailed cost estimate with counsel for Defendant, but Defendant failed to submit the required detailed cost estimate.

26. On June 17, 2019, the Department served on the Defendant a demand for \$17,000 in stipulated penalties.

27. Defendant subsequently failed to complete the required remedial action and submit to the Department a RAR and Response Action Outcome ("RAO") by July 24, 2021, this deadline having been extended from April 25, 2020, due to Executive Order No. 103. N.J. Exec. Order No 103 (March 9, 2020).

28. To date, Defendant has not submitted a detailed cost review, RIR, RAR, or RAO, and has not established a RFS or paid annual remediation fees.

29. Nor has Defendant paid the \$17,000 in assessed stipulated penalties.

COUNT I

Enforcement of the Final Agency Order Against Defendant on a Summary Basis

30. The Department repeats and incorporates each of the foregoing paragraphs as if set forth in their entirety herein.

31. On December 4, 2018, the Department and Defendant executed an ACO requiring Defendant to remediate the Site in accordance with the Spill Act, Brownfield Act, and SRRA, and the regulations promulgated thereto, and in accordance with all mandatory and regulatory timeframes.

32. The ACO specifically required Defendant to submit to the Department a proposed public participation plan, a detailed cost review, an RIR, and an RAR, and establish a RFS.

33. Paragraph 36 of the ACO states: "If [Defendant] does not comply with any part of this [ACO], 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 [or] enforcing this [ACO] as an order issued by the Department pursuant to the Spill Act."

34. To date, the Defendant has not complied with the Spill Act, Brownfield Act, SRRA, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C 1.1 to -13.6, and the ACO. Defendant has not completed an RIR or RAR, has not submitted a detailed cost review, has not established a RFS, and has not paid annual remediation fees or stipulated penalties assessed for missed deadlines.

35. As detailed below, SRRA and its implementing regulations establish "regulatory" and "mandatory" timeframes for the submission of remediation documents and completion of remedial action. Regulatory timeframes provide the amount of time that is appropriate to complete the specific requirement. Mandatory timeframes are timeframes set forth in the regulations that have been determined by the Department to be improper to exceed without

appropriate justification. Failure to meet a mandatory timeframe automatically renders a site subject to "direct oversight" by the Department. N.J.A.C. 7:26C-3.3(d).

36. N.J.A.C. 7:26E-5.8B(3)i provides that, for discharges from regulated underground storage tanks discovered between May 7, 1999, and March 1, 2010, the regulatory timeframe by which responsible parties must submit an RIR is March 1, 2017.

37. N.J.A.C. 7:26C-3.3(a)(5) provides that the mandatory date by which responsible parties must submit an RIR is two years after the regulatory timeframe. The mandatory deadline for Defendants to submit an RIR was March 1, 2019.

38. Defendant has not submitted an RIR.

39. N.J.A.C. 7:26E-5.8B(3) provides that the regulatory timeframe to submit an RAR is five years subsequent to the regulatory timeframe for the RIR. The regulatory timeframe for Defendants to submit an RAR was February 28, 2022.

40. Defendant has not submitted an RAR.

41. Pursuant to R. 4:67-6, R. 4:70, and Paragraph 36 of the ACO the Department is entitled to summary enforcement of the ACO as a FAO, which requires Defendant to:

- a. Undertake all remediation necessary at the Site in accordance with the ACO and in compliance with all site-specific timeframes, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-

1 to -31, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C 1.1 to -13.6, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E 1.1 to -5.8; and

- b. Maintain an LSRP to oversee and/or perform the remediation of the Site in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2.

WHEREFORE, the Plaintiff, Department of Environmental Protection, demands entry of an order against Defendant:

- a. Finding Defendant in violation of the FAO;
- b. Ordering Defendant to comply with the terms of the FAO that he is currently in violation of, including complying with the requirements of direct oversight pursuant to N.J.A.C. 7:26C-14.2(b), and submitting a schedule for the completion of the remedial work at the Site within ninety (90) days after the Court's order;
- c. Awarding the Department all costs and fees incurred in relation to this action; and
- d. Awarding such other relief as the Court deems just and proper.

COUNT II
Imposition of Civil Penalties on a Summary Basis Against Defendant for Failure to Comply with a Final Agency Order

42. The Department repeats and incorporates each of the foregoing paragraphs as if set forth in their entirety herein.

43. Pursuant to N.J.S.A. 58:10-23.11u(d) and N.J.S.A. 58:10A-10(e), Defendant is subject to a civil penalty of up to \$50,000 per day for his continuous violation of the ACO, which is enforceable as an FAO, and each day's continuance of the violation constitutes a separate violation.

44. The Department may bring an action in Superior Court seeking the imposition of these penalties, N.J.S.A. 58:10-23.11u.a.(1)(c), which, along with costs, may be recovered by the Department in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12, N.J.S.A. 58:10-23.118.d., and R. 4:70.

45. As set forth above, Defendant has failed to comply with the FAO.

WHEREFORE, the Plaintiff, Department of Environmental Protection, demands judgment against Defendant:

- a. finding Defendant in violation of the FAO for not completing the remediation of the Site or paying stipulated penalties assessed by the Department;

- b. imposing upon Defendant, pursuant to R. 4:70, N.J.S.A. 58:10-23.11u and N.J.S.A. 58:10A-10(e), a civil penalty for Defendant's violation of the FAO; and
- c. for such other relief as the Court may deem just and proper.
- d. Reserving the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: s/Nell Hryshko
Nell M. Hryshko
Deputy Attorney General

DATED: April 19, 2023

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Nell M. Hryshko, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiff in this action.

CERTIFICATION OF COMPLIANCE WITH R. 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 Rule 1:38-7(b).

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: s/Nell Hryshko
Nell M. Hryshko
Deputy Attorney General

DATED: April 19, 2023

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiff at this time, nor is any non-party known to the Plaintiff at this time who should be joined in this action pursuant to R. 4:28, or who is

subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to the Plaintiff, 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) .

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: s/Nell Hryshko
Nell M. Hryshko
Deputy Attorney General

DATED: April 19, 2023

VERIFICATION

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

1. I am the Assistant Director of the Enforcement and Information Support Element of the New Jersey Department of Environmental Protection's Contaminated Site Remediation & Redevelopment Program.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in the Verified Complaint are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.



Ann Wolf

DATED: April 19, 2023

Nell Hryshko

From: JEDSDoNotReply.Mailbox@njcourts.gov
Sent: Thursday, April 20, 2023 8:13 AM
To: Nell Hryshko
Subject: [EXTERNAL] NJ Courts eFiling Confirmation - EF-1941005

New Jersey Courts

Your filing has been successfully submitted. Below are the details for your reference:

Transaction ID:	EF-1941005
Filing submitted by:	Nell M Hryshko, Attorney General Law
Filed date:	04/20/2023 08:12:30 AM
Court/Division:	General Equity/Chancery
Docket type:	Chancery
Filing type:	Complaint w/ OTSC
Case number:	Not available
Filing fee:	\$300.00
Payment*:	\$0.00 - Exempt

Documents filed:

Document type	Document description	File name
Complaint w/ OTSC	Complaint w/ OTSC	NJDEP v Argiro FINAL.pdf
Proposed order to show cause	Proposed order to show cause	NJDEP v Argiro OTSC final.pdf
Proposed final order	Proposed final order	NJDEP v Argiro form of order final.pdf
Other	Brief in Support of Order to Show Cause	NJDEP v Argiro OTSC Brief Final.pdf
Other	Certification of Ann Wolf	Wolf Cert with Exhibits.pdf

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