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NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION;	:	LAW DIVISION - CAMDEN COUNTY
COMMISSIONER OF THE NEW	:	DOCKET NO.
JERSEY DEPARTMENT	:	
ENVIRONMENTAL PROTECTION; and	:	
THE ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION	:	
FUND,	:	<u>CIVIL ACTION</u>
	:	
Plaintiffs,	:	COMPLAINT
v.	:	
	:	
HARSHAD M. DESAI; DINESH R.	:	
DESAI; and HIRO B.	:	
PAHLAJANI,	:	
	:	
Defendants.	:	
_____	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), Commissioner of the DEP ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "Plaintiffs" or "Department"), by and through their attorney, file this Complaint against defendants Harshad M. Desai, Dinesh R. Desai, and Hiro B. Pahlajani (collectively, "Defendants"), and allege as follows:

#### **STATEMENT OF THE CASE**

1. Defendants are the former owners of industrial property located at 222-234 Liberty Street, in the City of Camden, Camden County, New Jersey ("Property"). Beginning in 1983, Defendants' company, International Customer Corporation ("ICC"), used the Property to operate a solvent repacking business, where it stored and repackaged chemicals that are classified as hazardous substances, such as acetone, alcohols, turpentine, xylenes, trichloroethene ("TCE"), and 1,1,1-trichloroethane ("1,1,1-TCA"). ICC sold these chemicals to other manufacturers and businesses.

2. By virtue of ICC's operations and Defendants' ownership of the Property, Defendants were required to comply with the Environmental Cleanup and Responsibility Act ("ECRA"), which has since been supplemented and amended and is now known as the Industrial Site Recovery Act ("ISRA"). ECRA, and later ISRA, required Defendants to investigate and, if necessary, remediate

the Property when ICC ceased operations in 1987.

3. Despite multiple notices from the Department since 1987, Defendants have failed to complete the required investigation and remediation.

4. The Property is contaminated with arsenic, tetrachloroethene ("PCE"), lead, nickel and other hazardous substances as a result of past industrial operations, which has exposed the surrounding community to public health hazards and caused environmental harm for decades.

5. Exposure to the hazardous substances used at and contaminating the Property has been linked to miscarriages, birth defects, kidney damage, cardiovascular effects, cognitive and neurological effects, and cancers.

6. Specifically, PCE and TCE are industrial solvents. Exposure to PCE and TCE can harm the nervous system and negatively impact visual memory, color vision, and the ability to process information. Inhalation of PCE and TCE can cause headaches, vision problems, and problems with muscle coordination. Studies have also found PCE and TCE exposure has been associated with several types of cancer including bladder cancer, non-Hodgkin lymphoma, and multiple myeloma. The United States Environmental Protection Agency ("EPA") has classified PCE and TCE as likely to be carcinogenic to humans.

7. Despite being in a predominantly industrial area of

southern Camden, the Property is located in close proximity to several residential properties. A residential property is located approximately 112 feet north of the Property. Additional residential properties are located 275 feet to the northeast of the Property, and a neighborhood recreation center is located approximately 650 feet to the northeast of the Property. The neighborhood recreation center offers childcare services for ages 2 months to 5 years, and after school programs for children and teenagers. A church is located approximately 420 feet to the southeast of the Property.

8. The communities surrounding the Property have significant minority populations such that they are considered "overburdened communities" within the meaning of N.J.S.A. 13:1D-158.<sup>1</sup> 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.

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<sup>1</sup> "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 Camden, which is listed as an overburdened community on the Department's website, pursuant to N.J.S.A. 13:1D-150.

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. To protect human health and the environment, the Department therefore brings this action against Defendants alleging violations of 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 -13, and the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -31. Among other relief, the Department seeks: (1) to compel Defendants to remediate the Property; and (2) to recover from Defendants any costs Plaintiffs have incurred or will incur to remediate the Property.

#### **THE PARTIES**

11. DEP is a principal department in the State of New Jersey's executive branch of government. DEP maintains its principal offices at 401 East State Street, Trenton, New Jersey. Pursuant to the authority vested in DEP by N.J.S.A. 13:1D-9 and the aforementioned statutes that the Legislature enacted to protect human health and the environment, DEP is empowered to compel parties liable for hazardous substances to remediate the

contamination, recover costs incurred to remediate hazardous substance discharges using public funds, and to recover civil penalties in Superior Court.

12. The Commissioner is the Commissioner of DEP, N.J.S.A. 58:10A-3, and is vested by law with various powers and authority, including those conferred by DEP's enabling legislation, N.J.S.A. 13:1D-9. The Commissioner maintains his principal office at 401 East State Street, Trenton, Mercer County, New Jersey. 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, and the Spill Act, N.J.S.A. 58:10-23.11u.

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

14. Defendant Harshad M. Desai was the President and a Director of ICC. Along with co-defendants Dinesh R. Desai and Hiro B. Pahlajani, Defendant Harshad M. Desai owned the Property in his personal capacity from June 24, 1983, to August 6, 1990.

15. Defendant Dinesh R. Desai was a shareholder and a Director of ICC. Along with co-defendants Harshad M. Desai and

Hiro B. Pahlajani, Defendant Dinesh R. Desai owned the Property in his personal capacity from June 24, 1983, to August 6, 1990.

16. Defendant Hiro B. Pahlajani was a Director of ICC. Along with co-defendants Dinesh R. Desai and Harshad M. Desai, Defendant Hiro B. Pahlajani owned the Property in his personal capacity from June 24, 1983, to August 6, 1990.

17. On August 6, 1990, the City of Camden acquired the Property through municipal tax foreclosure and is the current owner of the Property.

#### **FACTUAL ALLEGATIONS**

18. The Property is designated as Block 265, Lots 92 and 94 on the City of Camden tax map.

19. The Property is bounded on the east by the William J. Jones, Inc., drum salvaging operation, to the south by abandoned railroad tracks, to the west by a metal recycling facility, and to the north by a vacant lot formerly containing abandoned tenement housing. The Property is located within the central waterfront area of Camden and is zoned for industrial use. It consists of .195 acres of land. Based on available records, the Property appears to have been in use as a commercial and industrial facility as early as 1884.

20. As detailed below, the soil and ground water at the Property are contaminated with hazardous substances including arsenic, PCE, lead and nickel.

21. DEP assigned the Property Program Interest number G000023493.

22. Beginning in 1983, ICC stored and repackaged hazardous substances on the Property including, but not limited to, acetone, alcohols, turpentine, xylenes, TCE, and 1,1,1-TCA.

23. ICC's operations at the Property qualify it as an "Industrial Establishment" subject to the requirements of ECRA and later, ISRA.

24. An "Industrial Establishment" is defined as any place of business engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or hazardous wastes if the place of business is associated with a range of "Standard Industrial Classification" ("SIC") numbers designated by the statute. N.J.S.A. 13:1K-8.

25. Because ICC's operations included solvent repackaging, which are associated with SIC No. 5169 ("Wholesale Chemical Distribution"), ICC operated an "Industrial Establishment."

26. ICC ceased operations in 1987, triggering obligations under ECRA to investigate and clean up contamination at the Property, i.e., Industrial Establishment. Those obligations fell upon ICC as the operator of the Industrial Establishment, and also on Defendants, in their individual capacities, as the owners of the Property where the Industrial Establishment was located. The



Industrial Establishment was assigned ECRA Case numbers E87280 and E87A25.

27. On March 17, 1987, ICC submitted a General Information Submission ("GIS") and Site Evaluation Submission ("SES") as the initial step in ECRA compliance on ECRA Case number E87A25. The GIS lists the Defendants, as owners of the Property.

28. On April 18, 1987, a representative of DEP's Emergency Response unit informed Defendant Harshad M. Desai that, due to vandalism at the Property, a discharge of hazardous substances had been reported, and the environmental consulting firm Clean Venture Inc. had been contacted to address the discharge. As a result of the vandalism, four 55-gallon drums leaking unknown substances were discovered in the exterior yard area.

29. On August 16, 1988, DEP performed an inspection at the Property. At the time of the inspection, all operations at the Industrial Establishment had ceased. All aboveground storage tanks had been removed except for three empty tanks located on the second floor of the building. Staining was found throughout the building, evincing that spills had occurred, and several containers of unknown substances remained at the Property.

30. On November 23, 1988, ICC submitted a soil sampling report to DEP stating that two locations sampled at depths of 0-6 inches and 18-24 inches below ground surface, adjacent to the building on the Property, showed petroleum hydrocarbons at 10,000

parts per million (ppm).

31. On September 1, 1989, DEP informed Defendant Harshad M. Desai by letter that ICC remained out of compliance with ECRA, and that items outlined in the August 1988 Inspection Report had still not been properly addressed, including determining the discharge point for the floor drains.

32. In May 1990, DEP received a sampling report from ICC's new environmental consultant. ICC's May 1990 sampling report showed that soil contamination at the Property/Industrial Establishment included, among other hazardous substances, toluene, xylenes, ethylbenzene, methylene chloride, and 1,1,1-TCA. Toluene, total xylenes, and 1,1,1-TCA concentrations exceeded DEP's Impact to Ground Water Soil Cleanup Criteria.

33. On or about August 6, 1990, the City of Camden obtained title to the Property due to a municipal property tax foreclosure.

34. On or about August 5, 1991, the building at the Property burned down.

35. On March 4, 1992, DEP again notified the Defendants that it was their obligation as ECRA-responsible parties to complete the remediation as required by ECRA.

36. On March 2, 1995, a Remedial Investigation Report ("RIR") was submitted to DEP by Defendant Harshad M. Desai and ICC.

37. On April 6, 1995, DEP informed Defendant Harshad M.

Desai that the March 2, 1995, RIR was deficient. The RIR did not address the presence of elevated petroleum hydrocarbons, base neutrals, and volatile organic contamination found in soils. Furthermore, the concentrations of PCE and lead in ground water were highest in an onsite well, indicating that PCE was discharged onsite. Delineation of ground water in a down-gradient direction was required to determine the extent of contaminant migration offsite.

38. On July 11, 1996, DEP sent a letter reiterating the deficiencies found in the RIR and that the proposals for no further action for soil and ground water were unacceptable.

39. On March 10, 1997, DEP sent a letter to Defendant Harshad M. Desai informing him that DEP had not received any reports/submittals regarding activities concerning the Property or Industrial Establishment since April 1, 1996.

40. On August 26, 2010, DEP sent a letter to Defendant Harshad M. Desai advising him that due to the enactment of the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29, in May 2009, he was now obligated to retain a Licensed Site Remediation Professional ("LSRP"), to conduct the appropriate site cleanup, and satisfy all Department timeframes, including the provisions of ISRA.

41. On January 16, 2020, DEP visited the Property. The Property was vacant with no structures present or foundations

visible. The Property was fenced, overgrown, and littered with trailers, garbage, and debris, including tires and construction debris. Piles of soil mixed with debris were also observed on the Property. Upon information and belief, the Property remains in this condition currently.

42. To date, Defendants, as prior property owners of the Property and owners and operators of the Industrial Establishment, have not fulfilled their obligations under ISRA, N.J.S.A. 13:1K-6 to -14, to fully investigate and remediate the Property.

#### **FIRST COUNT**

##### **Violation of the Industrial Site Recovery Act and Site Remediation Reform Act**

43. Plaintiffs repeat and incorporate each of the foregoing allegations as though set forth in their entirety herein.

44. Pursuant to N.J.S.A. 13:1D-9, DEP is vested with the power to: (1) "initiate complaints of pollution of the environment... and institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have the authority to seek and obtain injunctive relief and the recovery of fines and penalties in a court of competent jurisdiction[;]" and (2) "[e]nforce the State air pollution, water pollution, conservation environmental protection, solid and hazardous waste management laws, rules and regulations, including the making and signing of a complaint and

summons for their violation by serving the summons upon the violator and thereafter filing the complaint promptly with a court having jurisdiction[.]”

45. 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 the defendants liable for their ISRA non-compliance.

46. ISRA provides that “the owner or operator of an industrial establishment planning to close operations ... shall notify the department in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first....” N.J.S.A. 13-1K-9a.

47. An Industrial Establishment “means 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, above or below ground....” N.J.S.A. 13:1K-8.

48. ISRA further provides that “subsequent to the submittal of the notice required pursuant to subsection a. of this section, the owner or operator of an industrial establishment shall, except as otherwise provided by P.L. 1983, c.330 or P.L. 1993, c. 139 (C. 13:1K-9.6 et al) [which are not applicable here], remediate the industrial establishment.” N.J.S.A. 13:1K-9b(1).

49. The owner or operator of an Industrial Establishment includes “any person who owns the real property of an industrial

establishment or who owns the industrial establishment.”  
N.J.S.A. 13:1K-8.

50. Furthermore, “the acquiring of title to an industrial establishment by a municipality pursuant to a foreclosure action pertaining to a certificate of tax sale purchased and held by the municipality shall not relieve the previous owner or operator of the industrial establishment of his duty to remediate the industrial establishment as required pursuant to P.L.1983, c.330 [Environmental Cleanup and Responsibility Act as amended by ISRA in 1993].” N.J.S.A. 13:1K-9.2.

51. Defendants violated ISRA when, as owners and operators of the Industrial Establishment in 1987, ICC ceased operations and failed to remediate the Industrial Establishment pursuant to ISRA.

52. Defendants were required, pursuant to the SRRA, N.J.A.C. 7:26E-4.10, and N.J.A.C. 7:26C-3.3(a), to complete a remedial investigation for the Industrial Establishment and submit a RI Report to the Department by May 7, 2014.

53. To date, a remedial investigation report for the Industrial Establishment has not been submitted to the Department.

54. Defendants were required, pursuant to the SRRA, N.J.A.C. 7:26E-5.8, and N.J.A.C. 7:26C-3.3(a), to complete a remedial action for the Industrial Establishment and submit a RA Report to the Department by May 7, 2021.

55. To date, a remedial action report for the Industrial

Establishment has not been submitted to the Department.

56. Further, having failed to submit a remedial investigation report and remedial action report for the Industrial Establishment by the statutory and mandatory timeframes respectively, Defendants were required to comply with the requirements of direct oversight, pursuant to N.J.A.C. 7:26C-14.2(b) and N.J.S.A. 58:10C-27.a(2).

57. To date, Defendants have failed to comply with the requirements of direct oversight pursuant to N.J.A.C. 7:26C-14.2(b) and N.J.S.A. 58:10C-27.a(2).

58. Defendants were also required, pursuant to N.J.A.C. 7:26C-4.9(a), to pay all Annual Remediation fees invoiced by the Department.

59. To date, Defendants have not paid Annual Remediation fees for the Industrial Establishment for years 2012 through 2022.

**WHEREFORE**, Plaintiffs demand judgment in their favor:

- a. Ordering Defendants to comply with ISRA, including but not limited to remediating the Property or Industrial Establishment in accordance with N.J.S.A. 13:1K-6 to -13, N.J.A.C. 7:26E, N.J.S.A. 58:10B-1.3(a), N.J.A.C. 7:26C-14.2(b), N.J.S.A. 58:10C-27.a(2), and all remediation statutes and regulations;
- b. Ordering Defendants to pay all annual remediation fees invoiced by the Department in accordance with N.J.A.C.

7:26C-4.9(a);

- c. Awarding all costs recoverable under N.J.S.A. 13:1K-13.1(c)(2) including but not limited to reasonable costs of preparing and litigating this matter;
- d. Awarding Plaintiffs any other relief this Court deems appropriate; and
- e. 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 Property.

**SECOND COUNT**

**Violation of the Spill Act**

60. Plaintiffs repeat and incorporate each of the foregoing allegations as though set forth in their entirety herein.

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

62. Pursuant to the Brownfield Act, Defendants are required to remediate the hazardous substances at the Property.

63. Specifically, N.J.S.A. 58:10B-1.3 provides that “[a]n owner or operator of an industrial establishment subject to the provisions [of ISRA], the discharger of a hazardous substance or



a person in any way responsible for a hazardous substance pursuant to the provisions of [the Spill Act], . . . shall remediate the discharge of a hazardous substance.”

64. Under the Spill Act, the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

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

66. The costs that Plaintiffs have incurred, or will incur, for the remediation of the Property are “cleanup and removal costs” within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable under N.J.S.A. 58:10-23.11u.b.(2), (4) and (5).

67. Defendants are “persons” within the meaning of N.J.S.A. 58:10-23.11b.

68. Defendants, under N.J.S.A. 58:10-23.11g.c.(1), are liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, or will incur, in connection with the remediation of hazardous substances at the Property.

69. Defendants' failure to remediate discharges under ISRA also makes them persons in any way responsible pursuant to the Spill Act. N.J.S.A. 58:10-23.11g.c.

70. As stated above, Defendants violated ISRA when ICC ceased operations and failed to remediate the Industrial Establishment pursuant to ISRA. N.J.S.A. 13:1K-9b(1)

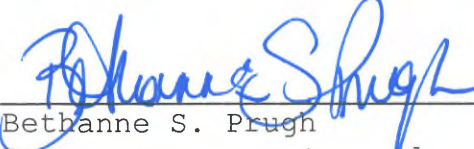
71. Further, Defendants violated the Spill Act when they failed to complete a remedial investigation and a remedial action for the Industrial Establishment; failed to submit a remedial investigation report and remedial action report for the Industrial Establishment by the statutory and mandatory timeframes respectively; and failed to comply with the requirements of direct oversight. N.J.A.C. 7:26E-4.10, N.J.A.C. 7:26C-3.3(a), N.J.A.C. 7:26E-5.8, N.J.A.C. 7:26C-3.3(a), N.J.A.C. 7:26C-14.2(b), and N.J.S.A. 58:10C-27.a(2).

**WHEREFORE**, Plaintiffs demand judgment in their favor:

- a. Finding Defendants liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred, pursuant to N.J.S.A. 58:10-23.11g.c(1).
- b. Ordering Defendants to reimburse Plaintiffs for all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous substances at the Property, with interest as applicable;

- c. Ordering Defendants to remediate the Property in accordance with N.J.S.A. 58:10B-1.3(b) and all remediation statutes, regulations and/or DEP directions;
- d. Awarding Plaintiffs any other relief this Court deems appropriate; and
- e. 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 Property.

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

By:   
Bethanne S. Prugh  
Deputy Attorney General

Dated: 4/20/23

**DESIGNATION OF TRIAL COUNSEL**

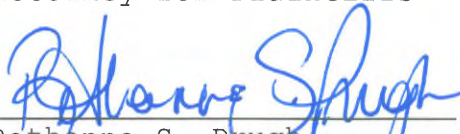
Pursuant to R. 4:25-4, the Court is advised that Bethanne S. Prugh, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

**CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES**

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Plaintiffs at this time, nor is any non-party known to Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

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

By:

  
Bethanne S. Prugh  
Deputy Attorney General

Dated:

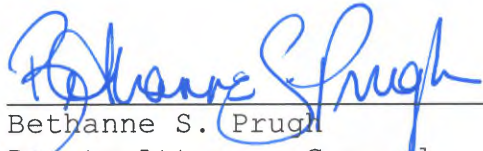
4/20/23

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

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

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

By:

  
Bethanne S. Prugh  
Deputy Attorney General

Dated:

4/20/23