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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - CUMBERLAND COUNTY DOCKET NO.
	:	
Plaintiff,	:	<u>CIVIL ACTION</u>
v.	:	<b>VERIFIED COMPLAINT TO ENFORCE FINAL AGENCY ORDER AND RECOVER CIVIL PENALTIES IN A SUMMARY PROCEEDING PURSUANT TO <u>R. 4:67-</u> <u>6 AND R. 4:70</u></b>
ZEBBS AUTO SERVICE AND DETAILING INC.,	:	
	:	
Defendant.	:	

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Plaintiff New Jersey Department of Environmental Protection (the "Department"), and the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner") (collectively, "Plaintiffs"), by way of verified complaint against Defendant Zebs Auto Service and Detailing Inc. ("Zebs Auto"), alleges as follows:

## STATEMENT OF THE CASE

1. The Plaintiffs bring this summary action to compel Defendant Zebs Auto to comply with a final agency order ("FAO") requiring it to remedy its violations of the Underground Storage of Hazardous Substances Act, N.J.S.A 58:10A-21 to -35 ("UST Act") and the Regulations Implementing the Underground Storage of Hazardous Substances Act, N.J.A.C. 7:14B ("UST Regulations"), and to collect civil penalties for its violation of the FAO.

2. Zebs Auto owned and operated a gas station in Millville City, Cumberland County ("Site") with three underground storage tanks ("USTs") containing gasoline. Zebs Auto operated the gas station and USTs until 2007, when the gas station ceased operations.

3. As USTs age, they deteriorate and may leak the remaining contents into the surrounding soil and groundwater. To prevent contamination, out-of-service USTs must be properly closed or removed after being out of service for more than 12 months. Despite taking the three USTs out of service, Zebs Auto has failed to properly close or remove them as required by the UST Act and UST Regulations.

4. After repeated attempts to bring Zebs Auto into compliance proved unsuccessful, the Department issued an Administrative Order and Notice of Civil Penalty Assessment ("AONOCAPA") on May 31, 2022, which was reissued on September 6,

2022. The AONOCAPA directed Zebs Auto to close the three USTs, perform a Site Investigation, remediate any contamination discovered on the Site, and pay a civil administrative penalty of \$45,000. Certification of Grace Jacob ("Jacob Cert."), Ex. A. Service was perfected on September 9, 2022.

5. Because Zebs Auto failed to request an administrative hearing challenging the AONOCAPA, it became a FAO on September 30, 2022. Jacob Cert., Ex. B.

6. To date, Zebs Auto has failed to comply with the FAO; the USTs remain on the Site and no Site Investigation has been performed.

7. Gasoline and its components pose threats to the environment and public health when they enter the soil and the groundwater. 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. These contaminants also persist in soil for long periods of time, impeding plant growth and threatening birds and mammals with irritation and toxicity.

8. The community surrounding the Site has a significant minority population such that it is considered an "overburdened

community" within the meaning of N.J.S.A. 13:1D-158.<sup>1</sup> Historically, across New Jersey, 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. To ensure any contamination is identified and remediated and to eliminate the risk of future contamination, the Department seeks through this summary proceeding to require Defendant Zebs Auto to comply with the FAO. Specifically, the Department seeks an order requiring Defendant to properly close the USTs, retain a Licensed Site Remediation Professional ("LSRP"), perform a Site

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

Investigation, and remediate any discharges discovered on the Site in accordance with all applicable laws and regulations, and also imposing civil penalties for violation of the FAO.

#### **THE PARTIES**

11. The Department is a principal department within the Executive Branch of the State government, with its principal offices at 401 East State Street, Trenton, in Mercer County, New Jersey.

12. The Department's enabling legislation, N.J.S.A. 13:D-1 to -19, vests it with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. The Department's enabling legislation and the UST Act empower the Department to institute legal proceedings seeking injunctive relief, including compelling remediation, and pursuing civil penalties in Superior Court.

13. The Commissioner is the Commissioner of the Department. In this capacity, the Commissioner is vested by law with various powers and authority, including those conferred by DEP's enabling legislation, N.J.S.A. 13:1D-1 through -19, and the UST Act, N.J.S.A. 58:10A-21 to -35.

14. Defendant Zebs Auto is a New Jersey corporation with a principal place of business at 815 Wheaton Avenue, Millville City, Cumberland County, also known as Block 328, Lot 1 on the tax maps of Millville City. The owner of Zebs Auto is Zeb Phillips, Jr.

## **FACTUAL ALLEGATIONS**

15. Zebs Auto is the owner of the Site, which is located at 815 Wheaton Avenue, Millville City, Cumberland County, also known as Block 328, Lot 1 on the tax maps of Millville City. Zebs Auto has owned the Site since April 1, 2003. The Department has designated the Site as Site Remediation Program Interest Number 004986.

16. Zebs Auto operated a gas station on the Site until it ceased operations in 2007.

17. Zebs Auto also owns, and as part of its operation of the gas station, operated USTs used to store gasoline on the Site. Jacob Cert., Ex. C.

18. Despite the FAO's clear requirements, Defendant has missed the deadlines for closing the USTs and performing the required Site Investigation. To date, the USTs remain on the Site and no Site Investigation has been performed.

19. The volume of each UST is 4,000 gallons. Each UST contained unleaded gasoline.

20. The USTs are regulated under the UST Act and UST Regulations.

21. On October 1, 2002, Zebs Auto submitted an Underground Storage Tank Facility Certification Questionnaire ("USTFCQ") changing the facility name to Zebs Auto Service and Detailing, and

providing the types of monitoring and associated piping of each of the three USTs. Jacob Cert., Ex. C.

22. Zebs Auto took the three USTs out of service on June 30, 2007, but did not close or remove them.

23. On November 16, 2010, Zebs Auto submitted an USTFCQ registering as the owner of the three USTs and indicating that it took ownership of the three USTs on April 1, 2002. Jacob Cert. Ex. D.

24. On September 11, 2011, Zebs Auto submitted an USTFCQ stating that the three USTs were still in the ground, but had been taken out of service on June 30, 2007. Jacob Cert. Ex. E.

25. In 2011, 2012, 2013, 2015, and 2016 the Department placed telephone calls to Phillips, the owner of Zebs Auto, regarding the three USTs.

26. Phillips stated during the September 2016 call that he was aware that the three USTs needed to be removed. Jacob Cert., ¶9.

27. On May 16, 2018, the Department sent a Notice of Violation to Defendant regarding its failure to comply with the UST Act's and UST Regulations' requirements to properly close or remove the USTs. Jacob Cert., Ex. F.

28. The DEP issued an AONOCAPA on May 31, 2022, directing Zebs Auto to close the three USTs, perform a Site Investigation,

remediate any contamination discovered on the Site, and pay a civil administrative penalty of \$45,000.

29. On September 6, 2022, the Department reissued its May 31, 2022 AONOCAPA to Zebs Auto for failure to close the USTs after they have been out of service for more than 12 months, pursuant to N.J.A.C. 7:14B-9.1(d). Jacob Cert., Exh. A. Service was perfected on September 9, 2022.

30. Pursuant to N.J.A.C. 7:26C-9.9 and -9.10, Defendant had twenty calendar days to request an administrative hearing, or the AONOCAPA would become a Final Agency Order and the penalty due and payable.

31. The AONOCAPA was sent by regular and certified mail, and delivered on September 9, 2022. Jacob Cert. Exh. A. Defendant did not request a hearing within twenty calendar days, and the AONOCAPA therefore became a Final Order ("FAO") on September 30, 2022. On November 1, 2022, by letter, the Department advised Defendant that the AONOCAPA had become a FAO. Jacob Cert. Exh. B. Defendant received the letter on November 4, 2022. Jacob Cert. Ex. B.

32. On May 31, 2023, inspectors from the Department's Responsible Party Investigation Unit visited the Site. The inspectors observed that the three USTs had not been closed or removed, and Zeb Phillips, Sr. confirmed the accuracy of the inspector's observation. Certification of Derek Carano, ¶3, 4.

33. Nor has Zebs Auto provided any evidence that conducted sampling or obtained an engineer's certification demonstrating that no contamination is detected above applicable standards or that removal is not feasible as required avoid removal. N.J.A.C. 7:14-9.2(e), (f).

### COUNT I

#### **ENFORCEMENT OF THE FINAL AGENCY ORDER**

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

35. Pursuant to N.J.A.C. 7:14B-9.1(d), the owner and operator of an UST system are required to close any UST system which is out of service for greater than 12 months.

36. To "close" an UST, the owner or operator must follow the procedures in the edition of American Petroleum Institute Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks," in publication at the time of closure. N.J.A.C. 7:14B-9.2(d). Closed USTs may only be left in place if no contamination is detected above applicable standards or if removal is not feasible; otherwise, they must be removed. N.J.A.C. 7:14-9.2(d), (e).

37. The May 31, 2022 AONOCAPA became a Final Agency Order on September 30, 2022.

38. To date, Defendant has not complied with any of the requirements of the FAO and has not paid the civil administrative penalty.

39. Pursuant to R. 4:67-6 and R. 4:70, the Department is entitled to summary enforcement of the FAO, which requires Defendant to:

- a. Comply with the provisions of the UST Act, N.J.S.A. 58:10A-21 to -35, and UST Regulations, N.J.A.C. 7:14B-1 to -16;
- b. Update the UST registrations for the USTs;
- c. Provide the Department the name and certification number for the individual certified to close USTs and the firm at which that individual is permanently employed.
- d. Submit to the Department Underground Storage Tank Notice of Intent to Close pursuant to N.J.A.C. 7:14B-9.2(a)2;
- e. Retain a Licensed Site Remediation Professional to oversee the Site Investigation and prepare a Site Investigation Report;
- f. Immediately notify the Department's Environmental Action Hotline, 877-927-6337, if holes are noted in the USTs or a discharge of hazardous substance is noted;
- g. Prepare a Site Investigation Report pursuant to the Technical Regulations for Site Remediation, N.J.A.C. 7:26E-3.13, and submit it to the Department;

- h. Remediate all discharges at the Site discovered during the UST closure, pursuant to the UST Regulations, the Administrative Regulations 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; and
- i. Pay a civil administrative penalty of \$45,000.

**WHEREFORE**, the Plaintiffs demand 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 it is currently in violation of, including closing the UST systems on the Site pursuant to N.J.A.C. 7:14B-9.1(d), performing a Site Investigation, remediating any discharges found, and paying a civil administrative penalty;
- 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**

**CIVIL PENALTY FOR VIOLATION OF THE FINAL AGENCY ORDER**

40. Plaintiffs repeat each allegation of the foregoing paragraphs as if fully set forth herein.

41. Any person who violates the UST Act shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day for such violation, and each day's continuance of the violation shall constitute a separate violation the Act. N.J.S.A. 58:10A-10(e); -32.

42. Any person who violates an administrative order issued pursuant to the UST Act, or who fails to pay a civil administrative penalty in full, shall be subject upon order of a court to a civil penalty not to exceed \$50,000.00 per day of such violation, and each day's continuance of the violation shall constitute a separate violation. N.J.S.A. 58:10A-32, N.J.S.A. 58:10A-10(e).

43. The Commissioner may bring an action in Superior Court seeking the imposition of these penalties, which, along with costs, may be recovered by 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. 58:10A-10(a), (e).

44. As set forth above, Zebs Auto has failed to comply with the FAO.

**WHEREFORE,** the Commissioner demands judgment against Zebs Auto:

- a. Finding Zebs Auto in violation of the FAO;
- b. Ordering Zebs Auto to pay a civil penalty pursuant to N.J.S.A. 58:10A-10(e) in an amount the court deems just and proper; and

- c. For such other relief as this Court deems appropriate.
- 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: September 28, 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 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: September 28, 2023

**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: September 28, 2023

**VERIFICATION**

I, Grace Jacob, by way of certification, state that:

1. I am an Enforcement Manager in the Department of Environmental Protection's Bureau of Enforcement & Investigations.
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.

s/Grace Jacob  
Grace Jacob

DATED: September 28, 2023