

10 (fictitious entities) (collectively, "Defendants"), and alleges as follows:

STATEMENT OF THE CASE

1. The Department brings this summary action against Defendant Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. for their failure to comply with a March 7, 2019 Administrative Consent Order ("ACO").

2. The parties executed the ACO to resolve the Defendants' violations of environmental laws and regulations at a retail gasoline station, located at 1568 John F. Kennedy Boulevard, also known as Block 29602, Lot 1, on the tax maps of Jersey City, Hudson County, New Jersey ("Site").

3. The ACO was necessary because the Defendants discharged hazardous substances (gasoline and its constituent toxic chemicals), which has exposed the Site, neighboring properties, and others in the community, to public health hazards and caused environmental harm.

4. Defendant Kennedy 1658 currently owns the Site. Defendant Fidelity was the operator of regulated underground storage tanks ("USTs") from which the hazardous substances were discharged.

5. Defendants' violations of environmental laws and regulations pose an ongoing risk to public health and the environment in the Jersey City community. 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-158.¹ 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.

6. 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.

7. Gasoline and its toxic components pose threats to the environment and public health when they enter the soil and the groundwater. Remediation of the Site is imperative as 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

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

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. Defendants' obligations to remediate the Site arose in 2008 after the Department discovered gasoline contamination on the Site.

9. To resolve the violations, the owner of the Site, Defendant Kennedy 1658, and the operator of the tanks, Defendant Fidelity, entered an ACO in 2019 with the Department. The ACO requires the Defendants to remediate the Site.

10. The Defendants have not complied with that ACO.

11. The Department therefore seeks an Order compelling Defendants to comply with the entirety of the Compliance Schedule of the ACO and imposing civil penalties consistent with the stipulated penalties provisions in the ACO.

THE PARTIES

12. The Department is a principal agency within the Executive Branch of the State of New Jersey vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9. The Department is located at 401 East State Street, Trenton, New Jersey.

13. Defendant Kennedy 1658 is a limited liability company, organized in 1997 under the laws of the State of New Jersey, with

a principal place of business located at 145 Hastings Street, Brooklyn, New York, 11235. Defendant Kennedy 1658 has owned the Site, since at least February 16, 1998, and is a person in any way responsible for the for a hazardous substance that was discharged on the Site pursuant to N.J.S.A. 58:10-23.11g.c(1).

14. Defendant Fidelity Builders, Inc. is a New Jersey corporation, formed in 2006, with a principal place of business located at 329 Newark Avenue, Jersey City, NJ 07302. Fidelity Builders, Inc. was the operator of regulated underground storage tanks ("USTs") on the Site at the time of discharge and is a person in any way responsible for the for a hazardous substance that was discharged on the Site pursuant to N.J.S.A. 58:10-23.11g.c(1).

FACTUAL ALLEGATIONS

15. This Summary Action is being brought pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq., the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35 ("UST Act"), and the Technical Requirements for Site Remediation ("Tech Regs"), N.J.A.C. 7:26E, and R. 4:67-1 and R. 4:70.

16. The Site is located on a commercial street of Jersey City, bordering residential areas. It is located on the corner of

John F. Kennedy Boulevard and Seaview Avenue, with a Walgreens Pharmacy and Jersey City Education Association located across from the Site. The Site is surrounded by single-family residences.

17. There were three 8,000-gallon USTs on the Site which were used to hold and pump unleaded gasoline for vehicles.

18. Since Defendant Kennedy 1658's ownership from 1998, a retail gasoline station has continuously operated on the Site.

19. In 2008, gasoline contamination was discovered in the soil surrounding the USTs located on the Site.

20. Defendants subsequently retained an environmental consultant, MIG Environmental LLC ("MIG"), to investigate the contamination.

21. In August of 2008, MIG investigated and confirmed petroleum and lead contamination in the surrounding soil. MIG called the Department's Hotline to report gasoline contamination in the soil at the Site.

22. Subsequently, groundwater samples were taken and found to contain benzene and xylene, which are organic compounds found in gasoline, in excess of the Department's Groundwater Quality Standards under N.J.A.C. 7:9C.

23. In August of 2008, MIG installed soil borings on the property. The soil sampling results indicated benzene concentration exceeding the Department's Soil Cleanup Criteria standards.

24. Defendants were required to submit a Remedial Investigation Report ("RIR") to the Department by March 1, 2017, but failed to do so, and the Department issued a Notice of Violation to Defendant Kennedy 1658, on September 21, 2017.

25. On November 29, 2018, the Department filed a complaint against Defendant Kennedy 1658 in Jersey City Municipal Court, alleging violations under the Spill Act and SRRA, N.J.S.A. 58:10C-1 to -29. On January 4, 2019, the Jersey City Municipal Court dismissed the complaint without prejudice because it could not be properly served upon Kennedy 1658.

26. In an effort to avoid any further litigation, Defendant Kennedy 1658 and Defendant Fidelity contacted the Department to settle the violations.

27. Defendants entered an ACO with the Department on March 7, 2019. The ACO required Defendants to remediate the Site in accordance with the SRRA, N.J.S.A. 58:10C-1 to 29, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Tech Regs, N.J.A.C. 7:26E. The ACO also required Defendants to pay a \$3,500 civil administrative penalty.

28. Pursuant to the terms of the ACO, Defendants agreed to 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; complete a remedial

investigation and submit to the Department a RIR by March 1, 2020; and complete a remedial action and submit to the Department a final Remedial Action Report ("RAR") and a Response Action Outcome, by February 28, 2022.

29. Additionally, Defendants agreed to 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.

30. If Defendants failed to comply with any provision of the ACO, stipulated penalties in the amount of \$1,000 per day would be triggered.

31. The ACO also expressly provided that if Defendants failed to comply with any part of the ACO, including paying stipulated penalties, the Department is authorized to enforce the ACO as a Final Agency Order ("FAO").

32. Paragraphs 14 to 18 of the ACO allow the Department to assess stipulated penalties for non-compliance with the ACO's terms. Notably, stipulated penalties "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 Defendants and "accrue through the final day of correction of the violation."

33. Defendants initially took steps to comply with the ACO by hiring an LSRP and paying the \$3,500 civil administrative penalty.

34. However, Defendants failed to fully remediate the Site pursuant to the ACO by failing to perform the remedial investigation, and submit an RIR to the Department, by March 1, 2020, triggering the stipulated penalties.

35. On January 26, 2024, the Department notified Defendants by letter that Defendants failed to submit a RIR and RAR, which constituted a breach of the ACO. The letter demanded, from each Defendant, stipulated penalties of \$36,000.00 - \$1,000 for each month of the missed RIR and \$1,000 annually for the missed RAR.

36. The letter informed Defendants that if payments were not made then the matter could be forwarded to the Attorney General's office for enforcement of the ACO's terms. To date, Defendants have not responded to the Department's January 26, 2024, letter.

37. Paragraph 18 of the ACO provides that if Defendants do not comply with any part of the ACO, the Department may take any action it is authorized to take, including filing a summary action in the Superior Court of New Jersey pursuant to R. 4:67 and R. 4:70 to enforce the Administrative Consent Order as a FAO.

38. To date, based upon the ACO's terms, as of the date of this Complaint, Defendant Kennedy 1658 owes \$23,185.00 in annual remediation fees which were invoiced by the Department as required pursuant to N.J.A.C. 7:26C-4.9(a).

Count I

Enforcement of Final Agency Order Against Defendants on a
Summary Basis

39. The Department incorporates paragraphs 1 through 37 of this Verified Complaint as if fully set forth herein.

40. Paragraph 18 of the ACO provides that if Defendants do not comply with any part of the ACO, the Department may take any action it is authorized to take, including filing a summary action in the Superior Court of New Jersey pursuant to R. 4:67 and R. 4:70 to enforce the ACO as a FAO.

41. The Department is authorized to enter Administrative Consent Orders pursuant to the authority vested in the Commissioner of the Department by N.J.S.A. 13:1D-1, et seq.

42. The Department and Defendants executed the ACO, which was effective March 7, 2019.

43. The ACO required Defendants to remediate the Site in compliance with the ACO, the ARRCs, N.J.A.C. 7:26C-2.3(a), and the Tech Regs, N.J.A.C. 7:26E, and the ACO itself.

44. Defendants have failed to comply with the ACO, in that they have failed to submit the RIR by March 1, 2020, and submit the RAR by February 28, 2022.

WHEREFORE, Plaintiff demands judgment against defendants:

a. Finding Defendants in breach of the ACO;

- b. Directing Defendants to immediately complete the ordered remedial investigation, remedial action, and submit to the Department a RIR and RAR;
- c. Awarding Plaintiff such other relief as the Court deems necessary and proper.

Count II

Enforcement of Stipulated Penalties Due For Violations of Final Agency Order

45. The Department incorporates paragraphs 1 through 43 of this Verified Complaint as if fully set forth herein.

46. Paragraphs 14 through 18 of the ACO authorize the assessment of Stipulated Penalties against Defendants for any failure to comply with the ACO's terms and conditions.

47. By failing to complete the remedial investigation, the remedial action, and submit to the Department a RIR and RAR, Defendants have failed to comply with material terms and conditions of the ACO.

48. On January 26, 2024, the Department sent Defendants a letter demanding, from each Defendant, stipulated penalties of \$36,000.00. Defendants have failed to respond to that letter.

WHEREFORE, Plaintiff demands judgment against defendants:

- a. Finding Defendants in breach of the ACO;
- b. Directing Defendants to remit payment of \$36,000.00 of stipulated penalties that began to accrue on March 2, 2020 to

"Treasurer, State of New Jersey" as authorized by Paragraphs 14-18 of the ACO; and

c. Awarding Plaintiff such other relief as the Court deems necessary and proper.

Count III

Imposition of Civil Penalties Against Defendants on a Summary Basis

49. The Department incorporates paragraphs 1 through 47 of this Verified Complaint as if fully set forth herein.

50. Pursuant to the Spill Act, Defendants are subject to a civil penalty of up to \$50,000 per day for their continuous violations of the ACO, which is enforceable as a FAO, and each day's continuance of the violation constitutes a separate violation. See N.J.S.A. 58:10-23.11u(d).

51. Defendants are a "person" within the meaning of the Spill Act, N.J.S.A. 58:10-23.11b.

52. Also pursuant to the Spill Act and the regulations promulgated pursuant thereto, Defendants are subject to a separate civil penalty of up to \$50,000 per day for their failure to remediate the site. See N.J.S.A. 58:23-11 to -23.24; N.J.A.C. 7:26C-2.3(a).

53. Defendants have violated the ACO and failed to remediate the Site by failing to perform the remedial investigation and submit a RIR and RAR. 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.

54. As set forth above, Defendants have failed to comply with the FAO since at least March 2, 2020.

WHEREFORE, Plaintiff demands judgment against defendants:

- a. Finding Defendants in violation of the Spill Act for violating a FAO by failing to complete the remedial investigation, the remedial action, and submit an RIR and RAR, and Defendants failing to pay \$23,185.00 in outstanding remediation fees.
- 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 Defendants' continuing violation of the FAO since at least March 2, 2020;
- c. For such other relief as the Court may deem just and proper:
and
- d. Reserving the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances on the Site.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for New Jersey Department of
Environmental Protection

By: /s/ Peter Sosinski
Peter Sosinski
Deputy Attorney General

Dated: April 24, 2024

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, the Court is advised that Peter Sosinski, Deputy Attorney General, is hereby designated as trial counsel for Plaintiff New Jersey Department of Environmental Protection in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with Rule 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 Plaintiff Department of Environmental Protection at this time, nor is any non-party known to Plaintiff Department of Environmental Protection at this time who should be joined in this action pursuant to Rule 4:28, or who is subject to joinder pursuant to Rule 4:29-1. If, however, any such non-party later becomes known to Plaintiff Department of Environmental Protection, an amended certification shall be filed and served on all other parties and with this Court in accordance with Rule 4:5-1(b)(2).

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for New Jersey Department
of Environmental Protection

By: /s/ Peter Sosinski
Peter Sosinski
Deputy Attorney General

Dated: 4/24/2024

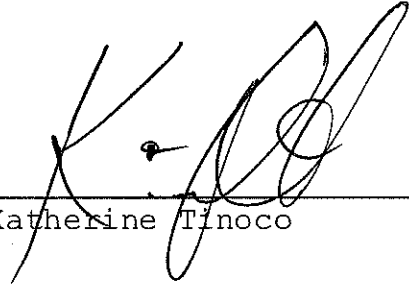
VERIFICATION OF PLEADING

I, Katherine Tinoco, being of full age, certify as follows:

1. I am employed by the New Jersey Department of Environmental Protection within the Contaminated Site Remediation & Redevelopment Program.
2. I am the enforcement manager assigned to the Site.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in 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:

04/24/2024



Katherine Tinoco

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiff

By: Peter Sosinski
Deputy Attorney General
Attorney ID No. 372522021
(609)376-2991
Peter.sosinski@law.njoag.gov

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

KENNEDY 1658 REALTY ASSOCIATES
LLC, FIDELITY UILDERS, INC.,
JOHN/JANE DOES 1-10 and XYZ
CORPORATIONS 1-10
Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - HUDSON
COUNTY

DOCKET NO. **C-51-24**

Civil Action

ORDER TO SHOW CAUSE

This summary action having been opened to the Court by Matthew J. Platkin, Attorney General of New Jersey, by Peter Sosinski, Deputy Attorney General appearing, attorney for Plaintiff New Jersey Department of Environmental Protection ("DEP" or "Department"), seeking relief on the return date by way of summary proceeding, pursuant to R. 4:67 and R. 4:70, based upon the facts set forth in the verified complaint filed herewith; and for good cause being shown;

IT IS on this _____ day of _____, 2024;

ORDERED that Defendants appear and show cause before the Honorable _____, Superior Court of New Jersey, Chancery Division, at the Hudson County Court House, 595 Newark Ave 4th Floor, Jersey City, NJ 07306, on the _____ day of _____, 20____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel may be heard, why an order should not be entered:

1. Enforcing the Administrative Consent Order ("ACO") entered into by Defendants on March 7, 2019;
2. Ordering Defendants to each pay stipulated penalties to the Department in the amount of \$36,000.00;
3. Ordering Defendant Kennedy 1658 to pay remediation fees of \$23,815.00, pursuant to N.J.A.C. 7:26C-4.9(a); and
4. Granting Plaintiff such other relief as this Court deems just and proper.

IT IS FURTHER ORDERED that within _____ days of this date, Plaintiff's attorney shall serve Defendants with true and correct copies of this Order to Show Cause, Verified Complaint, supporting certifications and supporting brief by regular and certified mail, return receipt requested; and

IT IS FURTHER ORDERED that Plaintiff must file with the court its proof of service of the pleadings on Defendants no later than three days before the return date; and

IT IS FURTHER ORDERED that Defendants shall file a written answer, an answering affidavit or a motion returnable on the return date of this Order to Show Cause, and shall serve copies of the same upon Plaintiff's attorney by _____, 20____. The answer, answering affidavit or motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the opposition papers must also be sent directly to the chambers of Judge _____; and

IT IS FURTHER ORDERED that Plaintiff must file and serve any written reply to the Defendants' opposition by _____, 20___. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____; and

IT IS FURTHER ORDERED that if Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date, and the relief may be granted by default, provided that Plaintiff filed its proof of service and a proposed form of order at least three days prior to the return date; and

IT IS FURTHER ORDERED that if Plaintiff has not already done so, Plaintiff shall submit a proposed form of order addressing the relief sought on the return date no later than three days before the return date; and

IT IS FURTHER ORDERED that Defendants take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date of the order to show cause and proof of service within 35 days from the date of service of this order to show cause.

If Defendants are unable to obtain an attorney, Defendants may contact a Lawyer Referral Service or, if Defendants cannot afford to pay for an attorney, contact a Legal Services Office. The telephone numbers for these services in the county in which this action is pending are: (201) 488-0044 (Lawyer Referral Service) and (201) 487-2166 (Legal Services Office).

IT IS FURTHER ORDERED that the Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the parties are advised by the Court to the contrary no later than ____ days before the return date.

Hon.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
PO Box 116
Trenton, New Jersey 08625
Attorney for Defendant,
Department of Environmental Protection

By: Peter Sosinski (210552017)
Deputy Attorney General
609-376-2776
peter.sosinski@law.njoag.gov

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

KENNEDY 1658 REALTY ASSOCIATES
LLC, FIDELITY UILDERS, INC.,
JOHN/JANE DOES 1-10 and YXZ
CORPORATIONS 1-10

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION HUDSON COUNTY

Docket No. **C-51-24**

CIVIL ACTION

PROPOSED ORDER

This matter having been opened to the Court by Matthew J. Platkin, Attorney General of New Jersey, attorney for the Plaintiff New Jersey Department of Environmental Protection ("Department"), (Peter Sosinski, Deputy Attorney General, appearing), with notice having been given to Defendants; and the Court having considered the Order to Show Cause and supporting brief; and for good cause shown;

IT IS on this _____ day of _____, 2024,

ORDERED that the Administrative Consent Order ("ACO") entered into by Defendants on March 7, 2019 is hereby enforced as a Final Agency Order, wherein Defendants must:

- a. Remediate the Site, including all discharges discovered during the remediation as the Department directs, pursuant to N.J.A.C. 7:26C-14.2(b)(1), and according to the ACO, the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 48:10B-1 to -31, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E;
- b. 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. 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 and;
- d. Within 30 days of the execution of this Order, pay stipulated penalties to the Department in the amount of \$36,000.00 and;
- e. Within 30 days of the execution of this Order, Defendant Kennedy 1658 pay remediation fees of \$23,815.00, pursuant to N.J.A.C. 7:26C-4.9(a).

IT IS FURTHER ORDERED that within 7 days of this date, Plaintiff's attorney shall serve the Defendants with a true and correct copy of this Order, if not served via eCourts.

Hon.

Opposed

Unopposed

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
PO Box 116
Trenton, New Jersey 08625
Attorney for Defendant,
Department of Environmental Protection

By: Peter Sosinski (210552017)
Deputy Attorney General
609-376-2776
peter.sosinski@law.njoag.gov

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

KENNEDY 1658 REALTY ASSOCIATES
LLC, FIDELITY BUILDERS, INC.,
JOHN/JANE DOES 1-10 and YXZ
CORPORATIONS 1-10

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION HUDSON COUNTY
Docket No. C-51-24

CIVIL ACTION

**CERTIFICATION OF KATHERINE
TINOCO IN SUPPORT OF
PLAINTIFF'S ORDER TO SHOW CAUSE**

Katherine Tinoco, of full age, hereby certifies as follows:

1. I am employed by the New Jersey Department of Environmental Protection within the Contaminated Site Remediation & Redevelopment Program.

2. I am an enforcement manager in the New Jersey Department of Environmental Protection's Contaminated Site Remediation and Development Program. I am familiar with the enforcement history for 1568 John F. Kennedy Boulevard, also known as Block 29602,

Lot 1, on the tax maps of Jersey City, Hudson County, New Jersey (the "Site").

3. Since Defendant Kennedy 1658 purchased the property in 1998, a retail gasoline station has continuously operated on the Site.

4. In 2008, gasoline contamination was discovered in the soil surrounding the Underground Storage Tanks ("USTs") located on the Site.

5. Defendants subsequently retained an environmental consultant, MIG Environmental LLC ("MIG"), to investigate the contamination.

6. In August of 2008, MIG investigated and confirmed petroleum and lead contamination in the surrounding soil. MIG called the Department's Hotline to report gasoline contamination in the soil at the Site.

7. Subsequently, groundwater samples were taken and found to contain benzene and xylene, which are organic compounds found in gasoline, in excess of the Department's Groundwater Quality Standards under N.J.A.C. 7:9C.

8. In August of 2008, MIG installed soil borings on the property. The soil sampling results indicated benzene concentration exceeding the Department's Soil Cleanup Criteria standards.

9. Defendants were then required to submit a Remedial Investigation Report ("RIR") to the Department by March 1, 2017, but failed to do so, and the Department issued a Notice of Violation to Defendant Kennedy 1658, on September 21, 2017.

10. On November 29, 2018, the Department filed a complaint against Defendant Kennedy 1658 in Jersey City Municipal Court alleging violations under the Spill Act and SRRA, N.J.S.A. 58:10C-1 to -29.

11. To resolve the outstanding violations and ensure compliance at the Site, the Department and both Defendants entered into an Administrative Consent Order ("ACO") on March 7, 2019.

12. The ACO required the Defendants to "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; complete a remedial investigation and submit to the Department a RIR by March 1, 2020; and complete a remedial action and submit to the Department a final Remedial Action Report ("RAR") and a Response Action Outcome, by February 28, 2022. Attached as Exhibit A is a true and correct copy of the ACO.

13. The ACO allowed the Department to assess stipulated penalties for non-compliance of any provision of the order.

14. Defendants failed to complete a remedial investigation and submit to the Department a RAR by March 1, 2020- triggering the stipulated penalties assessment. Additionally, Defendants

also failed to complete a remedial action and submit to the Department a final Remedial Action Report ("RAR") and a Response Action Outcome, by February 28, 2022.

15. On January 26, 2024, having determined that Defendants had breached the ACO's RAR deadline, the Department served both Defendants, via certified mail, a Demand for Stipulated Penalties in the amount of \$36,000. Attached as Exhibit B & C are true and correct copies of the January 26, 2024, letters served by the Department.

16. Additionally, Defendants have failed to pay all annual remediation fees invoiced by DEP as required pursuant to N.J.A.C. 7:26C-4.9(a). Annual remediation fees are assessed to persons responsible for conducting remediation at a contaminated site as required by N.J.A.C. 7:26C-4.3.

17. Defendants owe \$6,840.00 for 2024, \$3,260.00 for 2022, \$3,260.00 for 2021, \$6,520.00 for 2020, and \$3,150.00 for 2018, which were all invoices by the Department. Therefore, they owe a total of \$23,815.00 in annual remediation fees.

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me are
willfully false, I am subject to punishment.



Katherine Tinoco

DATE: April 24, 2024

Exhibit A



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Site Remediation and Waste Management Program
Enforcement and Information Support Element
Mail Code 401-06A
P.O. Box 420
Trenton, New Jersey 08625-0420
Tel: (609)633-1480
Fax: (609)292-1975

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CATHERINE R. McCABE
Commissioner

Kennedy 1658 Realty Associates LLC
145 Hastings Street
Brooklyn, NY 11235
Attn: Simon Rubinov

Fidelity Builders, Inc.
329 Newark Avenue
Jersey City, NJ 07302-2209
Attn: Arfan Hassan

Re: Gas Mart Service Station Site
1568 Kennedy Boulevard
Jersey City, Hudson County
Program Interest No. 006390
Case #: 08-06-20-1132-59

MAR 07 2019

Dear Mr. Rubinov and Hassan:

Enclosed is a copy of the Administrative Consent Order fully executed by both Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. and the Department regarding the above referenced Site. This Administrative Consent Order is now in effect and resolves all penalties associated with the Complaint number 0906-SF-356931 filed in Jersey City Municipal Court by the Department. Additionally, an invoice for \$2,500.00 is included for payment of the penalty assessment. If Kennedy 1658 Realty Associates LLC fails to pay the penalty, the Department will proceed with follow up enforcement actions as specified in the Administrative Consent Order.

Should you have any questions please contact David Rubin at (609) 633-1284 or email at david.rubin@dep.nj.gov.

Sincerely,

A handwritten signature in black ink that reads "Kevin F. Kratina".

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

Enclosures: Administrative Consent Order
Invoice #

C: David Rubin, BEI
Buffy Wilson, DOL



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Site Remediation and Waste Management Program

Enforcement and Information Support Element

Mail Code 401-06A

P.O. Box 420

Trenton, New Jersey 08625-0420

Tel: (609)633-1480

Fax: (609)292-1975

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CATHERINE R. MCCABE
Commissioner

IN THE MATTER OF :

GAS MART SERVICE STATION SITE :

1568 KENNEDY BOULEVARD :

JERSEY CITY, HUDSON COUNTY :

PROGRAM INTEREST NO. 006390 :

ADMINISTRATIVE
CONSENT ORDER

and :

KENNEDY 1658 REALTY ASSOCIATES LLC :

and :

FIDELITY BUILDERS, INC. :

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 Gas Mart Service Station site is located at 1568 Kennedy Boulevard, also known as Block 29602, Lot 1, on the tax maps of Jersey City, Hudson County, which the Department refers to as Site Remediation Program Interest Number 006390 ("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. Kennedy 1658 Realty Associates LLC is a limited liability company. Its principal address is 145 Hastings Street, Brooklyn, NY 11235.

3. Fidelity Builders, Inc. is a for profit corporation. Arfan Hassan, also known as Irfan Hassan, is the president. Fidelity Builders, Inc.'s principal address is 329 Newark Avenue, Jersey City, NJ 07302-2209.
4. Kennedy 1658 Realty Associates 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 the remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-2.
5. Fidelity Builders, Inc. was the operator of regulated underground storage tanks at the time of the discharge, and a person responsible for conducting the remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-2.
6. On September 21, 2017, the Department issued a Notice of Violation to Kennedy 1658 Realty Associates LLC for failure to complete the remedial investigation and submit the remedial investigation report by the regulatory timeframe of March 1, 2017.
7. Arfan Hassan has retained a licensed site remediation professional to oversee all remediation required at the Contaminated Site.
8. Without any admission of fact, fault, or liability, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree 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

9. Within 30 days after the Effective Date of this Administrative Consent Order, Kennedy 1658 Realty Associates LLC agrees to pay a civil administrative penalty in the amount of \$2,500.00 for past violations of N.J.A.C. 7:26C.
10. Kennedy 1658 Realty Associates LLC shall pay the amount specified in Paragraph 9 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.

Kennedy 1658 Realty Associates 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

11. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 March 1, 2020, with no extensions, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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; and
 - c. By February 28, 2022, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. shall obtain all applicable remedial action permits to meet this deadline.

Annual Remediation Fees and Oversight Costs

12. Within 30 days after the Effective Date of this Administrative Consent Order, Kennedy 1658 Realty Associates LLC shall pay \$3,500.00 for all outstanding annual remediation fees and oversight costs due for this Site prior to the Effective Date of this Administrative Consent Order;
13. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 Kennedy 1658 Realty Associates LLC's and Fidelity Builders, Inc.'s receipt of a written demand from the Department for stipulated penalties, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc.'s responsibility to complete all requirements of this Administrative Consent Order.
18. If Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. do not comply with any part of this Administrative Consent Order, including without limitation, do 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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, Kennedy 1658 Realty Associates LLC agrees to allow the Department and its authorized representatives access to the Site at all times for the purpose of monitoring Kennedy 1658 Realty Associates LLC's and Fidelity Builders, Inc.'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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. retain all rights they may have against any other responsible parties for the remediation of the Contaminated Site.
27. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. consent 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree they will not request an administrative hearing concerning stipulated penalties.
28. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. do not waive their 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 Kennedy 1658 Realty Associates LLC and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Kennedy 1658 Realty Associates LLC.

- 30. This Administrative Consent Order shall be binding on Fidelity Builders, Inc. and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Fidelity Builders, Inc.
- 31. Each undersigned representative of Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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.
- 32. 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.
- 33. The Effective Date of this Administrative Consent Order shall be the date that Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. and the Department have executed this Administrative Consent Order.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: MAR 07 2019

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

KENNEDY 1658 REALTY ASSOCIATION LLC

DATE: _____

By: _____

Name: _____

Title: _____

FIDELITY BUILDERS, INC.

DATE: 02/28/19

By: 

Name: arfan hassan

Title: _____

- 30. This Administrative Consent Order shall be binding on Fidelity Builders, Inc. and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Fidelity Builders, Inc.
- 31. Each undersigned representative of Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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.
- 32. 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.
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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: MAR 07 2019

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

KENNEDY 1658 REALTY ASSOCIATION LLC

DATE: 2/25/19

By: Simon Ruben
Name: Simon Ruben
Title: VP

FIDELITY BUILDERS, INC.

DATE: _____

By: _____
Name: _____
Title: _____



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Site Remediation and Waste Management Program
Enforcement and Information Support Element

CATHERINE R. MCCABE
Commissioner

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Lt. Governor

Mail Code 401-06A
P.O. Box 420
Trenton, New Jersey 08625-0420
Tel: (609)633-1480
Fax: (609)292-1975

Kennedy 1658 Realty Associates LLC
145 Hastings Street
Brooklyn, NY 11235
Attn: Simon Rubinov

Fidelity Builders, Inc.
329 Newark Avenue
Jersey City, NJ 07302-2209
Attn: Arfan Hassan

Re: Gas Mart Service Station Site
1568 Kennedy Boulevard
Jersey City, Hudson County
Program Interest No. 006390
Case #: 08-06-20-1132-59

MAR 07 2019

Dear Mr. Rubinov and Hassan:

Enclosed is a copy of the Administrative Consent Order fully executed by both Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. and the Department regarding the above referenced Site. This Administrative Consent Order is now in effect and resolves all penalties associated with the Complaint number 0906-SF-356931 filed in Jersey City Municipal Court by the Department. Additionally, an invoice for \$2,500.00 is included for payment of the penalty assessment. If Kennedy 1658 Realty Associates LLC fails to pay the penalty, the Department will proceed with follow up enforcement actions as specified in the Administrative Consent Order.

Should you have any questions please contact David Rubin at (609) 633-1284 or email at david.rubin@dep.nj.gov.

Sincerely,

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

Enclosures: Administrative Consent Order
Invoice #

C: David Rubin, BEI
Buffy Wilson, DOL



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Site Remediation and Waste Management Program
Enforcement and Information Support Element

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PHILIP D. MURPHY
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IN THE MATTER OF :

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GAS MART SERVICE STATION SITE :

1568 KENNEDY BOULEVARD :

JERSEY CITY, HUDSON COUNTY :

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PROGRAM INTEREST NO. 006390 : **ADMINISTRATIVE**

: **CONSENT ORDER**

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and :

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 - a. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 March 1, 2020, with no extensions, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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; and
 - c. By February 28, 2022, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. shall obtain all applicable remedial action permits to meet this deadline.

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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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 Kennedy 1658 Realty Associates LLC's and Fidelity Builders, Inc.'s receipt of a written demand from the Department for stipulated penalties, Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc.'s responsibility to complete all requirements of this Administrative Consent Order.
18. If Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. do not comply with any part of this Administrative Consent Order, including without limitation, do 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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, Kennedy 1658 Realty Associates LLC agrees to allow the Department and its authorized representatives access to the Site at all times for the purpose of monitoring Kennedy 1658 Realty Associates LLC's and Fidelity Builders, Inc.'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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. retain all rights they may have against any other responsible parties for the remediation of the Contaminated Site.
27. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. consent 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. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree they will not request an administrative hearing concerning stipulated penalties.
28. Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. agree 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 Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. do not waive their 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 Kennedy 1658 Realty Associates LLC and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Kennedy 1658 Realty Associates LLC.

- 30. This Administrative Consent Order shall be binding on Fidelity Builders, Inc. and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Fidelity Builders, Inc.
- 31. Each undersigned representative of Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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.
- 32. 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.
- 33. The Effective Date of this Administrative Consent Order shall be the date that Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. and the Department have executed this Administrative Consent Order.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: MAR 07 2019

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

KENNEDY 1658 REALTY ASSOCIATION LLC

DATE: _____

By: _____

Name: _____

Title: _____

FIDELITY BUILDERS, INC.

DATE: 02/28/19

By: 

Name: arfan hassan

Title: _____

- 30. This Administrative Consent Order shall be binding on Fidelity Builders, Inc. and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Fidelity Builders, Inc.
- 31. Each undersigned representative of Kennedy 1658 Realty Associates LLC and Fidelity Builders, Inc. 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.
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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

MAR 07 2019

DATE: _____

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

KENNEDY 1658 REALTY ASSOCIATION LLC

DATE: 2/25/19

By: Simon Ruben
 Name: SIMON RUBEN
 Title: VP

FIDELITY BUILDERS, INC.

DATE: _____

By: _____
 Name: _____
 Title: _____

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

KENNEDY 1658 REALTY ASSOCIATES
LLC, FIDELITY BUILDERS, INC.,
JOHN/JANE DOES 1-10 and XYZ
CORPORATIONS 1-10

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION- HUDSON COUNTY
DOCKET NO. C-51-24

CIVIL ACTION

BRIEF IN SUPPORT OF PLAINTIFFS' VERIFIED COMPLAINT
AND ORDER TO SHOW CAUSE

Matthew J. Platkin
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
P.O. Box 116
Trenton, New Jersey 08625
Attorney for Plaintiff,
Department of Environmental
Protection

Peter Sosinski (210552017)
Deputy Attorney General
On the Brief

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THE ADMINISTRATIVE CONSENT ORDER OF MARCH 7, 20196

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PRELIMINARY STATEMENT

The New Jersey Department of Environmental Protection ("Department" or "DEP") brings this action against Defendants Kennedy 1658 Realty Associates LLC, ("Kennedy 1658") and Fidelity Builders, Inc. ("Fidelity") (collectively "Defendants") to enforce the terms of an Administrative Consent Order ("ACO") dated March 7, 2019. The ACO compels the remediation of 1568 Kennedy Boulevard, in Jersey City ("Site"), located in an overburdened community, that was contaminated with gasoline constituents as a result of an underground storage tank ("UST") leak discovered in 2008. Exposure to the leaked hazardous substances poses a danger to liver, kidney, and central nervous system health.

Despite taking preliminary steps to remediate the Site, Defendants failed to comply with the ACO. The Department now seeks to enforce the ACO pursuant to its Paragraph 18, which permits enforcement of the ACO as a Final Agency Order ("FAO") pursuant to Rule 4:67, and seeks imposition of an additional civil penalty pursuant to Rule 4:70. Specifically, the Department seeks that Defendants remediate the property, pay stipulated penalties, and pay overdue annual remediation fees. These rules permit the Court to conduct the adjudication of this case in a summary proceeding.

STANDARD OF REVIEW

Pursuant to paragraph 28 of the ACO, Defendants agreed not to contest the terms or conditions of the ACO, only the interpretation or application of such terms and conditions. Accordingly, the purpose of this proceeding is to enforce the terms of the ACO and assess appropriate penalties demanded pursuant to its provisions. As set forth in more detail below, Defendants should be required to comply with their obligations under the ACO.

BACKGROUND

The Site is located at 1568 John F. Kennedy Boulevard, also known as Block 29602, Lot 1, on the tax maps of Jersey City, Hudson County, New Jersey. Verified Complaint at ¶ 2. Defendant Kennedy 1658 Realty Associates LLC ("Kennedy 1658") has been the current owner of the property since 1998. Id. at ¶ 4, 13. The Property has been utilized for retail gasoline operations since 1998. Id. ¶ 18. There were three 8,000-gallon underground storage tanks ("USTs") located on the Site, which were operated by Defendant Fidelity Builders Inc. ("Fidelity"), to hold and pump unleaded gasoline for vehicles. Id. at 17.

In 2008, gasoline contamination was discovered in the soil surrounding the USTs located on the Site. Id. at ¶ 19. Defendants subsequently retained an environmental consultant, MIG

Environmental LLC ("MIG"), to investigate the contamination. Id. at ¶ 20.

In August of 2008, MIG investigated and confirmed petroleum and lead contamination in the surrounding soil. MIG called the Department's Hotline to report gasoline contamination in the soil at the Site. Id. at ¶ 20. Subsequently, groundwater samples were taken and found to contain benzene and xylene, which are compounds found in gasoline, in excess of the Department's Groundwater Quality Standards contained at N.J.A.C. 7:9C. Following the discovery of this contamination, two monitoring wells were installed. Id. at ¶ 22.

In August of 2008, MIG installed soil borings on the property. The soil sampling results indicated benzene concentration exceeding the Department's Soil Cleanup Criteria standards. Id. at ¶ 8. Exposure to these hazardous substances poses a danger to human health effects including damage to the liver, kidneys, central nervous system, and eyes. Therefore, Defendants failure to remediate the Site presents a continued health hazard to all local residents.

On November 29, 2018, the Department filed a complaint against Defendant Kennedy 1658 in Jersey City Municipal Court alleging violations under the Spill Act Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq., and the Site Remediation and Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29. Id. at 25. To

resolve the outstanding violations and ensure compliance at the Site, the Department and both Defendants entered into the ACO on March 7, 2019. Id. at ¶ 27.

Pursuant to the ACO, Defendants were required to:

[r]emediate the Contaminated Site, including all discharges at the Site discovered during the remediation, in accordance with [the] Administrative Consent Order, the Brownfield and Contaminated Site Remediation Act... the Administrative Requirements for the Remediation of Contaminated Sites... and the Technical Requirements for Site Remediation.

[Exhibit A at ¶ 11.]

The ACO also required the Defendants to maintain a Licensed Site Remediation Professional ("LSRP") to perform the remediation of the Site in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2; complete a remedial investigation and submit to the Department a Remedial Action Report ("RIR") by March 1, 2020; and complete a remedial action and submit to the Department a final Remedial Action Report ("RAR") and a Response Action Outcome ("RAO"), by February 28, 2022. See Id. at ¶11a-c.

Paragraphs 14 to 18 of the ACO permits the Department to assess stipulated penalties for non-compliance with the ACO's terms. Notably, the stipulated penalties "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 Defendants and “accrue through the final day of correction of the violation.” Id. at ¶ 14, 18.

Lastly, the Defendants agreed to 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. Id. at ¶ 13.

By signing the ACO, Defendants agreed that if they did not “comply with any part” of the order, the Department can take any action to enforce it as a final order. Id. at ¶ 18.

In breach of the ACO’s terms, Defendants failed to properly perform remediation of the contamination at the Site. Specifically, Defendants failed to complete a remedial investigation and submit to the Department a RAR by March 1, 2020. Verified Complaint at ¶ 11b. Defendants also failed to complete a remedial action and submit to the Department a final RAR and a RAO, by February 28, 2022. Id. at ¶ 43.

Having determined that Defendants breached the ACO by failing to comply with the March 1, 2020 RAR deadline, the Department served both Defendants, via certified mail, a Demand for Stipulated Penalties in the amount of \$36,000 within 30 days of receipt. Verified Complaint at ¶ 34. To date, Defendants have not paid the Department the demanded stipulated penalties. Id. at ¶ 35.

Defendants have both ignored the ACO that they signed and elected not to comply with the Department’s further warnings. Therefore, the Department respectfully requests that the Court

enforce the ACO and require payment of the demanded stipulated penalties for Defendants' failure to comply. Additionally, the Department requests that the Court require Defendants to pay the outstanding annual remediation fees in accordance with N.J.A.C. 7:26C-4.9(a).

LEGAL ARGUMENT

POINT I

PURSUANT TO N.J.S.A 58:4A-24(B) AND RULE 4:67-6, THE DEPARTMENT IS ENTITLED TO THE ENTRY OF A COURT ORDER ENFORCING THE ADMINISTRATIVE CONSENT ORDER OF MARCH 7, 2019.

Because the Defendants violated the Spill Act (N.J.S.A. 58:10-23.11 et seq.) the Department entered into an ACO with Defendants to resolve the November 29, 2018 complaint and bring the Site into compliance. The Department now seeks enforcement of the ACO as a FAO pursuant to paragraph 18 of the ACO and R. 4:67. Paragraph 18 of the ACO specifically authorizes this action, stating that "If Defendants do not comply with any part of this Administrative Consent Order... the Department may take any action it is authorized to take, including... [f]iling of a summary action in the Superior Court of New Jersey pursuant to R. 4:67 and 4:70 to enforce this [ACO] as a final order." Exhibit A at ¶ 18.

The procedure for enforcing FAOs, including penalty assessments, is set forth in Rule 4:67-6, which applies to:

[A]ll actions by a state administrative agency
... brought to enforce a written order or

determination made by it, whether final or interlocutory, and whether the order to be enforced requires the payment of money or imposes a non-monetary requirement or includes a combination of monetary and non-monetary remedies.

[R. 4:67-6(a).]

Summary actions filed pursuant to Rule 4:67-6 do not allow a review of the validity of the underlying agency order. Dep't of Env'tl. Prot. v. Mazza & Sons, Inc., 406 N.J. Super. 13, 23 (App. Div. 2009)) (A "party cannot simply disregard the final agency action, wait for the agency to bring an enforcement action under Rule 4:67-6 in a trial court, and then challenge the agency action in defense of the enforcement action"). Moreover, paragraph 28 of the ACO states that Defendant "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 [Defendants] do not waive their rights 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." Exhibit A at ¶ 28. Thus, Defendants cannot challenge the unambiguous terms of the Order, which require the Defendant to comply with the regulations and timeframes governing the remediation of contaminated sites.

Defendants' failures to remediate the site, in breach of the March 7, 2019 ACO, presents an ongoing risk to the environment and

surrounding community. Accordingly, the Court should enforce the ACO and require full compliance from the Defendants.

A. THE COURT SHOULD ENFORCE THE ACO AND REQUIRE DEFENDANTS TO IMMEDIATELY COMPLETE THE REMEDIAL ACTION AND SUBMIT A REMEDIAL ACTION REPORT AND RESPONSE ACTION OUTCOME.¹

By executing the March 7, 2019 ACO, Defendants agreed that they would "complete a remedial investigation and submit to the Department a RIR" by March 1, 2020, and "complete a remedial action and submit a RAR" by February 28, 2022. Exhibit A at ¶ 11b & c. The Defendants have not completed the remedial investigation and the Department has not received a RIR or a RAR. Verified Complaint at ¶ 32.

The protection of the groundwater and neighboring property in this overburdened community, and therefore the public health and the environment, necessitate that Defendants comply with the entirety of the Compliance Schedule of the ACO, including by completing the remedial investigation and notifying the Department of same, and the Court should order Defendants to do so.

B. THE COURT SHOULD ENFORCE THE ACO AND ORDER DEFENDANTS PAY THE DEMANDED STIPULATED PENALTIES.

The ACO in this matter has a built-in enforcement mechanism in the form of stipulated penalties. Paragraphs 14 through 18 of

¹ The Spill Act empowers the Department to institute an action in Superior Court for injunctive and other relief for any violation of a Department Order issued under this Act. N.J.S.A. 58:10-23.11u(d).

the ACO set forth that Defendants shall pay stipulated penalties to the Department for failure to comply with the enforcement compliance schedule of the ACO, among other provisions. Exhibit A at ¶ 15. Pursuant to the ACO, Defendants agreed to “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.” Id. at ¶ 14.

In the present matter, Defendants are in violation of the ACO for failing to complete a remedial investigation and submit a RIR by March 1, 2020, and for failing to complete a remedial action and submit a final RAR by February 28, 2022. See Verified Complaint at ¶ 34. Plaintiff therefore requests that the Court impose the demanded \$36,000 stipulated penalty against each Defendant consistent with the stipulated penalties provisions in the ACO.

C. THE COURT SHOULD REQUIRE DEFENDANTS TO PAY ALL OUTSTANDING REMEDIATION FEES.

Under the ACO, Defendants agreed to “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”. Exhibit A ¶ 13. Defendants have failed to pay all annual remediation fees invoiced by DEP as required pursuant to N.J.A.C. 7:26C-4.9(a). Tinoco Cert ¶ 17. Annual remediation fees are assessed to persons responsible for conducting remediation at a contaminated site as required by

N.J.A.C. 7:26C-4.3. Id. Defendants owe \$6,840.00 for 2024, \$3,260.00 for 2022, \$3,260.00 for 2021, \$6,520.00 for 2020, and \$3,150.00 for 2018. Tinoco Cert. ¶ 18. Therefore, Defendants owes a total of \$23,815.00 in annual remediation fees, and the Court should require the outstanding fees be paid. Id.

CONCLUSION

For the foregoing reasons, DEP respectfully requests the Court enter an order granting the relief sought in the Order to Show Cause and Verified Complaint, and such other relief as the Court deems appropriate.

Respectfully submitted,

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/Peter Sosinski
Peter Sosinski
Deputy Attorney General

DATE: April 24, 2024