

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorney for Plaintiffs

By: Samuel R. Simon
Deputy Attorney General
Attorney ID No. 288191973
samuel.simon@law.njoag.gov
(609) 376-2740

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - CAMDEN COUNTY

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| NEW JERSEY DEPARTMENT OF | : | |
| ENVIRONMENTAL PROTECTION | : | <u>Civil Action</u> |
| | : | |
| Plaintiff, | : | Docket No. C 50-24 |
| | : | |
| v. | : | |
| | : | |
| PC SHELL PORTFOLIO, LLC; | : | VERIFIED COMPLAINT TO ENFORCE |
| AGREH, LLC; PONTUS CAPITAL | : | FINAL AGENCY ORDER AND RECOVER |
| LLC; SCOTT STOKAS; ANDREW | : | CIVIL PENALTIES IN A SUMMARY |
| HALEY; and MICHAEL PRESS, | : | PROCEEDING PURSUANT TO |
| | : | <u>R.</u> 4:67-6 AND <u>R.</u> 4:70 |
| Defendants. | : | |
| _____ | : | |

Plaintiff, the New Jersey Department of Environmental Protection ("DEP" or "Department"), having its offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through its attorneys, brings this verified complaint against the above-named defendants, and alleges:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. § 58:10-23.11 to -23.24, the Site Remediation Reform Act, N.J.S.A. § 58:10C-1 to -29 ("SRRA"), the Brownfield and Contaminated Site Remediation Act, N.J.S.A. § 58:10B-1 to -31 ("Brownfield Act"), the Water Pollution Control Act, N.J.S.A. § 58:10A-1 to -73, and the Department's enabling legislation, N.J.S.A. 13:1D-1 to -19, relating to the real property located at 1100 Haddonfield-Berlin Road, Voorhees Township, Camden County ("Property"), also known as Block 201, Lot 1 on the Tax Map of Voorhees Township, Camden County, New Jersey.

2. Operations at the Property since the 1950s have consisted of a retail gasoline storage and/or dispensing facility and an automotive repair facility. The Property is directly adjacent to a surface water body known as the Nicholson Branch (Nicholson Creek), whose waters are characterized as FW2-NT (Fresh Water 2, Non-Trout). Nicholson Branch leads into a deciduous wooded wetlands area, and is also located near multiple residences. The Property has a history of discharges, including gasoline, to the soil, groundwater, and Nicholson Branch. Petroleum products are hazardous substances pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. §§ 58:10-23.11b, 58:10-23.11c ("Spill Act"). The Property has an equal history of non-

compliance with Department orders and directives to remediate the contamination. In particular, the hazardous substances discharged at and emanating from the Property have led to neighborhood complaints of air, soil, and water pollution over a period of many months. Defendants have failed and refused to address conditions at the Property despite numerous DEP enforcement orders and multiple visits by the Voorhees Fire Department, the Camden County HazMat ("CCHM"), and the Department's Bureau of Emergency Management.

3. Gasoline and its components pose threats to the environment and public health when they enter the soil, surface water, and groundwater. Human exposure to these contaminants, including through ingestion or inhalation of vapors, can cause dizziness, headaches, lung irritation, nervous system disruptions, and 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.

4. The community that surrounds the Property 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, with accompanying increased negative public health impacts.

5. 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.

6. Through this complaint, Plaintiff seeks to enforce a Final Agency Order ("FAO") compelling defendants to permanently close the Underground Storage Tank System at the Property, retain a Licensed Site Remediation Professional ("LSRP"), remit civil penalties in a summary proceeding pursuant to R. 4:67-6 and R. 4:70, and remediate the Property as required by the Brownfield Act, N.J.S.A. 58:10B-1.3a.

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

THE PARTIES

7. The Department is a principal department within the Executive Branch of the State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

8. Defendant PC Shell Portfolio, LLC ("PC Shell"), a limited liability company, is the current owner of the Property, which it purchased on December 27, 2012. PC Shell is a California investment company that is unrelated to Shell Oil Company or its affiliates. (Shell Oil Products US operates as Equilon Enterprises, LLC).

9. Defendant Agreh, LLC ("Agreh"), a limited liability company, is the Managing Member of PC Shell.

10. Defendant Pontus Capital LLC ("Pontus Capital"), a limited liability company, is the Managing Member of Agreh. Pontus Capital directs and controls Agreh, which directs and controls PC Shell.

11. Defendant Scott Stokas, an individual person, is a Member and Partner of Pontus Capital.

12. Defendant Andrew Haley, an individual person, is a Member and Vice President of Pontus Capital.

13. Defendant Michael Press, an individual person, is a Managing Member and Managing Partner of Pontus Capital.

GENERAL ALLEGATIONS

14. The Property consists of approximately 0.87 acres of land, on which are situated a building containing an office and several garage bays, multiple gas dispensing stations, three (3) underground storage tanks ("USTs"), and surface parking. Certification of Rob Lux ¶ 3 (hereafter, "Lux Certification").

15. Defendants have been on notice since at least early February 2022 that the Property poses an environmental hazard due to the existence of three 12,000-gallon unleaded gasoline USTs at the Property, at least one of which was leaking. Lux Certification ¶¶ 5-7, 9.

16. On February 2, 2022, the Voorhees Fire Department ("VFD") and the CCHM met in the parking lot of the office building located at 1025 Laurel Oak Road across the street from the Property in response to multiple reports from office building employees of the smell of gasoline in the area. The odors had begun emanating from the storm drains on Laurel Oak Road and Haddonfield-Berlin Road four or five days earlier, i.e., in late January 2022. The VFD flushed the storm drains with approximately 3000 gallons of water to disperse the gasoline and reduce the level of combustible gases that had built up and which caused the odor. Of note, combustible gases present a particularly dangerous condition because a spark could cause an explosion and fire. VFD reported these observations to the Department's Environmental Hotline and

was assigned incident Case #22-02-02-1338-28. Lux Certification ¶ 9.

17. On March 16, 2022, a CCHM re-inspection of the affected storm drains again revealed the presence of combustible gases inside the drains. The VFD was again called out to the Property to flush the storm drains with water in an attempt to disperse the gasoline and reduce the level of combustible gases that had built up. The VFD flushed the storm drain designated "Field 1" with approximately 1500 gallons of water, and the storm drain designated as "Parking Lot A" with an additional 500 gallons of water. In addition, a mobile ventilation unit was temporarily set up to ventilate the entirety of Parking Lot A's storm drain system. No combustible gases were detected after these efforts were completed. Lux Certification ¶ 10.

18. Two days later, on March 18, 2022, CCHM visited the Property to conduct a re-inspection of the storm drains. CCHM's combustible gas meter registered gas vapors at a level of 6 percent of the Lower Explosive Level² in the Parking Lot A storm drain, up from the level of zero percent that had been registered two days previously. This dangerously high reading compelled the

² The lower explosive level ("LEL") is the lowest concentration of a substance in air that will produce a flash of fire when an ignition source is present. CCHM's combustible gas meter detecting an LEL of 6% indicates that they were potentially dealing with a flammable substance/atmosphere.

replacement of a gasoline-saturated boom in the storm drain. The storm drain was again flushed using a hydrant, and a mobile ventilation system was again pressed into service to reduce the concentration of gasoline vapors. At the conclusion of this process, no combustible gases were detected. Lux Certification ¶ 11.

19. On March 18, 2022, CCHM also took measurements of the gasoline product level in the three USTs at the Property, which revealed gasoline product ranging in depth from 6 to 16 inches in the USTs. Lux Certification ¶ 11.

20. These incidents led to an April 20, 2022 on-site meeting with personnel from DEP's Bureau of Emergency Response; CCHM; and Licensed Site Remediation Professional ("LSRP") John Romano of Sovereign Consulting, who had been retained by Equilon Enterprises LLC d/b/a Shell Oil Products US ("Equilon"). Lux Certification ¶ 12.

21. During the April 20 on-site meeting, in excess of 12 inches of gasoline/Light Non-Aqueous Phase Liquids ("LNAPL") was found in four (4) existing monitoring wells ("MW") related to the Property, including one well (MW9)³ located at the tree line of

³MW9 was installed by a previous operator in connection with the remediation of certain prior discharges that are not the subject of the present Complaint.

Nicholson Branch.⁴ Defendants PC Shell Portfolio and Pontus Capital did not have a New Jersey Pollutant Discharge Elimination System ("NJPDES") permit, and were not exempted therefrom. On April 21, 2022, LSRP Romano reported this discharge of hazardous substances to the Department; the observations were assigned incident case #22-04-21-1436-09. Lux Certification ¶ 12.

22. The existing monitoring wells in which the gasoline/LNAPL was found are designated MW1, MW3, MW9, and MW15. All four wells were installed by Handex on behalf of Shell Oil Company. MW1 was installed on September 17, 1986 and is located in the apron of the UST field and pump island area. MW3 was also installed on September 17, 1986 and is located in the downgradient side of the UST field apron. MW9 was installed on February 28, 1989 and is located on the 1025 Laurel Oak Property across Haddon Avenue and closest to the wooded wetland area that buffers Nicholson Branch. MW15 was installed on March 12, 1990 and is located on the 1025 Laurel Oak Property, across Haddon Avenue. The on- and off-site monitoring wells, which total 22 in number,

⁴LNAPL means Light Non-Aqueous Phase Liquid. Per the requirements of N.J.A.C. 7:26E-1.7, LNAPLs are hydrocarbons that exist as a separate and immiscible phase liquid when in contact with water and/or air. They can exist in either of two forms -- as a continuous phase (mobile), or as a discontinuous mass (immobile). LNAPLs are always less dense than water at ambient temperature.

were used to determine the extent of a contaminant plume. Lux Certification ¶ 13.

23. Less than two weeks later, on May 2, 2022, SKM Petroleum & Tank Testing performed UST and line tightness tests for the three on-site USTs. Test results on the USTs disclosed that the volume of gasoline remaining in the three USTs ranged from 21 gallons to 58 gallons. Lux Certification ¶ 14.

24. On July 3, 2022, the Department received a phone call from a homeowner near the Property reporting gasoline odors at her residence. The homeowner reported that she often smelled gasoline odors after rain. The incident was reported to DEP and assigned incident Case # 22-07-03-0815-27. Lux Certification ¶ 15.

25. Four days later, on July 7, 2022, LSRP Romano notified the Department that he had been changing out the sorbent booms in the storm drains located nearest to the Property on a weekly basis. But Romano informed DEP that he had been instructed by Equilon to stop replacing the sorbent booms after December 31, 2022. Lux Certification ¶ 16.

26. On July 5, 2022, DEP's Bureau of Enforcement and Investigations ("BEI") issued a Notice of Violation ("NOV") to PC Shell for failure to retain an LSRP and submit a Confirmed Discharge Notification (CDN) form for incident cases #22-02-02-1338-28 and #22-04-21-1436-09. On August 11, 2022, BEI issued an expedited site-specific timeframe letter ("Letter") to PC Shell

under the authority of N.J.S.A. § 58:10C-28 and its implementing regulation, N.J.A.C. 7:26C-3.4. The Letter required PC Shell to submit to BEI, on an expedited basis, various documents, including an Initial Receptor Evaluation ("IRE") (by October 1, 2022), an LNAPL Reporting Form (by October 1, 2022), an LNAPL Interim Remedial Measure ("IRM") Report (by November 15, 2022), and a Site Investigation Report ("SIR") (by November 15, 2022). Lux Certification ¶¶ 20-21.

27. On September 7, 2022, BEI sent an email to Defendant Andrew Haley, Member and Vice President of Pontus Capital, specifically noting and memorializing the presence of gasoline in both the monitoring wells and Nicholson Branch. Lux Certification ¶ 22.

28. On September 20, 2022, BEI placed three (3) telephone calls to numbers associated with Michael Press, Andrew Haley, and Scott Stokas of PC Shell. BEI left voicemails for Michael Press and Andrew Haley, and was able to speak with Scott Stokas directly. Following up on the BEI-issued August 11, 2022 Letter and its requirements, BEI orally explained to Defendant Scott Stokas the Department's concern with the LNAPL in the monitoring wells and Nicholson Branch. Defendant Stokas orally requested that DEP send him an email that he could share with two other Pontus Capital officers, Defendant Andrew Haley and Defendant Michael Press. On September 20, 2022, BEI sent a detailed email to Defendant Stokas

summarizing the phone call from earlier that day. The BEI email encouraged Defendant Pontus Capital to hire an LSRP who would oversee remediation of the Property, and advised Defendants to contact DEP if it wanted a meeting. The September 20, 2022 email attached the August 11, 2022 Letter. Defendant Stokas did not reply or take any action relating to the email or the letter. Lux Certification ¶ 23.

29. On September 26, 2022, in the hope of persuading Defendants to remediate the Property, BEI emailed Defendant Stokas a spreadsheet of current LSRPs and web links thereto. Defendant Stokas did not respond. Lux Certification ¶ 24.

30. During a phone call with Defendant Haley on October 6, 2022, BEI described the areas of non-compliance at the Property. BEI advised Defendant Haley that LSRP John Romano had advised the Department that: (1) Equilon was not remediating LNAPL; and (2) Equilon was authorizing work only on the Ground Water Remedial Action Permit ("GWRAP") requirements. During the course of the phone call, BEI explained why Defendant PC Shell was a responsible party under the Spill Act pursuant to the requirements of N.J.S.A. § 58:10-23.11f.a.(2)(b). Lux Certification ¶ 25.

31. On November 11, 2022, LSRP Romano sent a letter to the Department, copying, inter alia: (1) the Office of Camden County Public Safety; (2) Equilon; (3) Defendant Haley; (4) the Department's Bureau of Emergency Response; and (5) Alex Prakhin of

Bronson Oil Fee Holdings LLC ("Bronson").⁵ The November 11, 2022 Letter advised that Equilon was currently monitoring the booms on Nicholson Branch, but that the monitoring would be discontinued after December 31, 2022. The November 11, 2022 Romano letter stated that Equilon was not responsible for the 2022 release. Lux Certification ¶ 26.

32. Two months later, on January 11, 2023, the Department issued a Directive and Notice to Insurers ("Directive") addressed to Defendant PC Shell and others. A true and correct copy of the Directive is attached to the Lux Certification as Exhibit A. The Directive was served upon recipients via email and through the United States Postal Service. The Directive required Defendant PC Shell to clean up and remove the hazardous substances discharged at the Property by taking the following actions: (1) retain an LSRP; (2) remove the three USTs; (3) submit a Site Investigation Report ("SI Report") for the UST removals; (4) submit an Initial Receptor Evaluation; (5) submit an LNAPL Report; and (6) establish a Remediation Funding Source ("RFS"). Directive ¶ 39; Lux Certification ¶ 27.

33. The Directive and accompanying cover letter gave the recipients seven (7) days to reply to DEP stating whether PC Shell would comply with the Directive. Directive ¶ 38. In the

⁵Bronson owned the Property during the time period October 31, 2007 to March 28, 2008.

alternative, if the recipients chose not to comply with the Directive, the accompanying cover letter directed recipients to sign and return the proffered Site Access Agreement that DEP had enclosed, which would permit the Department to enter the Property for inspection and sampling. The Directive advised recipients that failure to comply would increase recipients' potential liability to the Department to an amount three (3) times the cost of the cleanup and removal of the discharge, and may subject a lien to be placed on recipients' real and personal property. Directive ¶ 44; Lux Certification ¶ 28.

34. Defendant PC Shell received the Directive via email on January 11, 2023, and via Certified Mail on January 14, 2023. Lux Certification ¶ 29.

35. On January 23, 2023, BEI telephoned Defendant PC Shell, and left phone messages and sent emails for Defendants Haley, Press, and Stokas. The phone messages explained: (1) that Defendant PC Shell is a responsible party; and (2) that LSRP Romano was overseeing only the GWRAP, and not incident cases #22-02-02-1338-28 and #22-04-21-1436-09. Lux Certification ¶ 30.

36. On January 26, 2023, BEI telephoned Defendant Haley, leaving a detailed voicemail reiterating the advice and guidance that BEI had left Defendants in the January 23 voicemail messages. BEI followed up the January 26 phone call with an email asking when Defendant Haley could meet with representatives from BEI.

Haley did not respond to the voicemail and the follow-up email. Lux Certification ¶ 31.

37. On January 31, 2023, BEI sent an email to Defendant PC Shell. The email advised PC Shell that BEI would be conducting an inspection at the Property beginning at 10:00 a.m. on February 8, 2023, and that PC Shell was welcome to send a representative to accompany the BEI personnel conducting the inspection. Lux Certification ¶ 32.

38. Two days later, on February 2, 2023, BEI and a New Jersey Deputy Attorney General conducted a Microsoft Teams video call with Defendant Haley to explain Defendant PC Shell's legal responsibility to remediate the Property. BEI also explained that it would be conducting the inspection on February 8, 2023. During the course of the February 2, 2023 Teams video call, BEI requested a copy of the lease agreement between PC Shell and its tenant, and reiterated its previous request that PC Shell voluntarily execute the Site Access Agreement. Lux Certification ¶ 33.

39. The same day, BEI sent PC Shell a follow-up email that reiterated BEI's requests. The February 2, 2023 email included a DEP-issued LSRP Hiring Guide document, as well as another copy of the unexecuted Site Access Agreement. PC Shell did not respond to the phone call and the email, did not hire an LSRP, did not return the Site Access Agreement, and did not comply with the Directive. Lux Certification ¶ 34.

40. On February 13, 2023, a New Jersey Deputy Attorney General left a voice message with Defendant Haley that PC Shell was expected to reply to BEI without further delay. The message was ignored. Lux Certification ¶ 35.

41. On December 20, 2023, DEP's Bureau of UST Compliance and Enforcement ("UST C&E") served an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") upon Defendant Press, in his capacity as Managing Member of Defendants PC Shell and Pontus Capital. A true and correct copy of the December 20, 2023 AONOCAPA is annexed to the Lux Certification as Exhibit B. The AONOCAPA was served via Certified Mail, Return Receipt Requested, and was received on December 26, 2023. Lux Certification ¶ 36.

42. The AONOCAPA informed Defendants PC Shell and Pontus Capital that, as the result of an on-site inspections conducted on March 22, 2022 and December 14, 2022, DEP determined that these Defendants failed to comply with 24 specific environmental rules and regulations promulgated under the Underground Storage of Hazardous Substances Act ("UST Act") and the Air Pollution Control Act. (AONOCAPA at 2-7). Lux Certification ¶ 37.

43. The AONOCAPA imposed civil administrative penalties totaling \$45,000 for the violations, and ordered that Defendants PC Shell and Pontus Capital: (a) submit a completed Underground Storage Tank Facility Certification Questionnaire; (b) obtain a

Notice of Intent to Close ("NOI") permit; (c) Retain an LSRP; (d) Submit a 14-day notification to 14dayUSTnotice@dep.nj.gov; (e) Permanently close the USTs at the Property; and (f) Submit a completed Underground Storage Tank Facility Certification Questionnaire to update the UST status to "closed." AONOCAPA ¶ 8, at page 9. Lux Certification ¶ 38.

44. PC Shell and Pontus Capital received the AONOCAPA via certified mail on December 26, 2023. The AONOCAPA informed Defendants that the Administrative Order was effective upon receipt. AONOCAPA ¶ 10, at page 9. The AONOCAPA further informed Defendants PC Shell and Pontus Capital that if they did not request a hearing within 20 days from receipt of the AONOCAPA, the AONOCAPA would become a Final Agency Order ("FAO") on the 21st day from receipt. AONOCAPA ¶ 14, at page 10. Lux Certification ¶ 36.

45. Defendants PC Shell and Pontus Capital did not request a hearing within 20 days from December 26, 2023, the date the AONOCAPA was received. As a result, the AONOCAPA became a FAO on January 16, 2024. Lux Certification ¶ 36.

46. Since January 16, 2024, when the AONOCAPA became a FAO, the Department has repeatedly attempted to contact Defendants to inform them of their legal responsibilities, to no avail. Defendants have not responded to any attempts by DEP to enforce compliance with legal obligations imposed on them under the

Directive and the FAO to remediate and clean up the Property, including hiring an LSRP. Lux Certification ¶ 39.

47. As of the date of filing this lawsuit, Defendants PC Shell and Pontus Capital have not taken any steps to comply with their legal responsibilities as outlined above, including hiring an LSRP. Lux Certification ¶ 39.

COUNT I

Enforcement of the Final Agency Order against Defendants PC Shell and Pontus Capital

48. Plaintiffs repeat each allegation of Paragraphs 1 through 47 above as though fully set forth herein.

49. Pursuant to the Spill Act, N.J.S.A. § 58:10-23.11u.a.(1) and N.J.S.A. § 58:10-23.11u.b., the Department may bring a civil action to compel compliance with a FAO pursuant to an Order to Show Cause under R. 4:67-6, and to enforce a civil monetary penalty pursuant to an Order to Show Cause pursuant to R. 4:70.

50. The Department may also assess a civil administrative penalty (not to exceed \$50,000 per day, for each day the violation continues) against a person in violation of a provision of the Spill Act or "any rule, regulation, plan, information request, access request, order or directive promulgated or issued pursuant to the Spill Act." N.J.S.A. § 58:10-23.11u.a.(1)(b) and N.J.S.A. § 58:10-23.11u.c.

51. The AONOCAPA dated December 20, 2023, which was served upon Defendants PC Shell and Pontus Capital on December 26, 2023, is a FAO because Defendants did not request a hearing or otherwise respond to the AONOCAPA within the 20-day timeframe, as required by N.J.S.A. § 58:10-23.11u.c(1), N.J.A.C. 7:26C-9.10, and the AONOCAPA.

52. Upon information and belief, Defendants PC Shell and Pontus Capital discharged a hazardous substance in violation of the law, specifically, free product gasoline/LNAPL into the surface water of Nicholson Branch, the soil and groundwater, and the proximity of potable wells and residential properties.

53. Any person who discharges a hazardous substance, or is in any way responsible for the discharge of a hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1), except as provided by N.J.S.A. 58:10-23.11.g.(12), which is not applicable here.

54. PC Shell and Pontus Capital are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

55. To date, PC Shell and Pontus Capital have not complied with the requirement to pay the \$45,000 civil administrative penalty assessed in the FAO, to agree to a schedule for payment thereof, or to comply with any of the affirmative requirements set

forth in paragraphs 8(a) through 8(f) of the FAO (Exhibit B to Lux Certification).

56. Defendants PC Shell and Pontus Capital, and their control persons, are liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred and which will be incurred at the Property as the result of the discharge of hazardous substances as set forth above.

WHEREFORE, Plaintiffs demand judgment against defendants PC Shell and Pontus Capital:

- a. Finding that Defendants PC Shell and Pontus Capital discharged hazardous substances at the Property, or are otherwise in any way responsible for the discharge of the hazardous substances;
- b. Declaring Defendants PC Shell and Pontus Capital liable, jointly and severally liable, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. § 58:10-23.11g.c.(1);
- c. Directing Defendants PC Shell and Pontus Capital to remediate the Property fully and completely in accordance with the Site Remediation Reform Act, N.J.S.A. § 58:10C-1 to -29, and all other pertinent laws and regulations;
- d. Ordering Defendants PC Shell and Pontus Capital to reimburse DEP for all cleanup and removal costs DEP incurred in the past, and which it may incur in the future,

- as the result of the discharge of hazardous substances at the Property, with interest as applicable, if defendants fail to complete remediation;
- e. Compelling Defendants PC Shell and Pontus Capital to comply with each and every requirement of the AONOCAPA (which is now a FAO) that is set forth in paragraphs 8(a) through 8(f) thereof, and to otherwise remediate the Property in accordance with the Site Remediation Reform Act, N.J.S.A. § 58:10C-1 to -29, the Brownfield Act, N.J.S.A. § 58:10B-1.3a, and all other applicable laws and regulations;
- f. Compelling Defendants PC Shell and Pontus Capital to pay the \$45,000 Civil Administrative Penalty Assessment imposed by the AONOCAPA;
- g. Awarding Plaintiff such further and additional relief as the Court deems appropriate.
- h. Plaintiff is not seeking immediate access to the Property at this time. However, if defendants fail to comply with their legal obligations, Plaintiff reserves the right to amend the complaint to include a request for immediate access to the Property.

COUNT II

**Civil Penalties for Failure to Comply With a Final Agency Order
Against Defendants PC Shell and Pontus Capital**

57. Plaintiff repeats each allegation of Paragraphs 1 through 47 as though fully set forth herein.

58. Pursuant to N.J.S.A. § 58:10-23.11u.d, “[a]ny person who violates a provision of [the Spill Act] or a court order issued pursuant thereto, or who fails to pay a Civil Administrative Penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000 per day for each violation, and each day’s continuance of the violation shall constitute a separate violation.”

59. 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, and N.J.S.A. § 58:10-23.11u.d.

60. Defendants PC Shell and Pontus Capital have failed to comply with the compliance requirements set forth in paragraph 8(a) through 8(f) of the FAO, have not paid the \$45,000 civil administrative penalties or any portion thereof assessed in the FAO, and have not agreed on a schedule of payments therefor, and are therefore subject to the civil penalties imposed under N.J.S.A. § 58:10-23.11u.d.

61. Pursuant to N.J.S.A. § 58:10-23.11u.d. and R. 4:70-1, Plaintiff may proceed summarily, in accordance with the procedure

set forth in R. 4:67-1, to enforce the statutory penalty provision and collect the penalties imposed.

WHEREFORE, Plaintiff demands judgment against Defendants PC Shell and Pontus Capital:

- a. Finding that Defendants PC Shell and Pontus Capital violated the Spill Act;
- b. Finding that Defendants PC Shell and Pontus Capital failed to pay the \$45,000 civil administrative penalty assessed in the FAO and to otherwise comply with the requirements of the FAO;
- c. Imposing civil penalties upon Defendants PC Shell and Pontus Capital, in accordance with N.J.S.A. § 58:10-23.11.u.d, as a result of the violation of the Spill Act and failure to pay the \$45,000 civil administrative penalty, in such amount as the Court deems reasonable and appropriate;
- d. Awarding Plaintiff such further and additional relief as the Court deems appropriate.

COUNT III

Spill Act Liability Against All Defendants

62. Plaintiff repeats each allegation of Paragraph 1 through 47 as though fully set forth herein.

63. 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, pursuant to N.J.S.A. § 58:10-23.11g.c.(1), except as provided in N.J.S.A. § 58:10-23.11g.12, which is not applicable here.

64. All Defendants named herein are "persons" within the meaning of N.J.S.A. § 58:10-23.11b.

65. On information and belief, all Defendants named herein either discharged hazardous substances, or are persons in any way responsible for such discharges, pursuant to N.J.S.A. § 58:10-23.11g.c.(1).

66. As a result, all Defendants are liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred, and are required to remediate the Site as dischargers or persons in any way responsible pursuant to N.J.S.A. § 58:10B-1.3a.

WHEREFORE, Plaintiff demands judgment against all Defendants:

- a. Finding that Defendants discharged hazardous substances at the Property, or are otherwise in any way responsible for the discharge of the hazardous substances;
- a. Declaring Defendants liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred under N.J.S.A. § 58:10-23.11g.c.(1);

- b. Directing Defendants to pay treble damages, for failing to comply with the Directive, as to all costs DEP has incurred and will incur in taking all such remediation as it deems necessary to protect the public health and safety or the environment, pursuant to N.J.S.A. § 58:10-23.11f;
- c. Directing Defendants to remediate the Property fully and completely in accordance with the Site Remediation Reform Act, N.J.S.A. § 58:10C-1 to -29, the Brownfield Act, N.J.S.A. § 58:10B-1.3a, and all other pertinent laws and regulations;
- d. Ordering Defendants to reimburse DEP for all cleanup and removal costs DEP incurred in the past, and which it may incur in the future, as the result of the discharge of hazardous substances at the Property, with interest as applicable, if defendants fail to complete remediation;
- e. Awarding Plaintiff such further and additional relief as the Court deems appropriate.
- f. Plaintiff is not seeking immediate access to the Property at this time. However, if Defendants fail to comply with their legal obligations, Plaintiff reserves the right to amend the complaint to include a request for immediate access to the Property.

g. 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.

COUNT IV

Violation of the Water Pollution Control Act

67. Plaintiff repeats each allegation of Paragraph 1 through 47 as though fully set forth herein.

68. The Water Pollution Control Act, N.J.S.A. § 58:10A-1 to -12 ("WPCA"), grants the Department authority to regulate discharge of pollutants into the surface and ground waters of the State in order to restore, enhance, and maintain the chemical, physical, and biological integrity of the waters of the State, protect public health and safety, protect potable water supplies, safeguard fish and aquatic life and scenic and ecological values, enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water, and prevent, control, and abate water pollution. N.J.S.A. § 58:10A-2.

69. The WPCA prohibits the discharge by any person of any pollutant into the waters of the State, including the ground waters of the State, except in conformity with a valid NJPDES permit, unless specifically exempted. N.J.S.A. § 58:10A-6.a.

70. The Department may bring a civil action for injunctive relief under the WPCA. N.J.S.A. § 58:10A-10(c).

71. Any person who violates the WPCA shall be subject 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. Any penalty incurred under this subsection may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to "the penalty enforcement law," (N.J.S.A. 2A:58-1 et seq.). The Superior Court has jurisdiction to enforce "the penalty enforcement law" in conjunction with the WPCA. N.J.S.A. § 58:10A-10(e).

72. During the course of the April 20, 2022 on-site meeting set forth above in ¶¶ 20-21, in excess of 12 inches of gasoline/Light Non-Aqueous Liquids ("LNAPL") was found in four (4) existing monitoring wells related to the Property. Lux Certification ¶ 12. On April 21, 2022, LSRP Romano reported to the Department this discharge of hazardous substances into the ground waters of the State; the observations were assigned incident case #22-04-21-1436-09. Lux Certification ¶ 12.

73. On September 7, 2022, BEI sent an email to Defendant Andrew Haley, Member and Vice President of Pontus Capital, specifically noting and memorializing the presence of gasoline in both the monitoring wells and Nicholson Branch. Lux Certification ¶ 22.

74. Based upon inspections of the Site, the Department determined that defendants PC Shell and Pontus Capital discharged

hazardous substances into the ground waters of the State without a valid NJPDES permit or an exemption therefrom, in violation of N.J.S.A. § 58:10A-6.a.

75. To date, defendants PC Shell and Pontus Capital have taken no steps to cease the discharge of hazardous substances, remediate the environmental damage their actions have caused, or obtain a valid NJPDES permit.

WHEREFORE, Plaintiff demands judgment against defendant PC Shell and Pontus Capital:

- a. Finding that Defendants PC Shell and Pontus Capital discharged hazardous substances at the Property, or are otherwise in any way responsible for the discharge of the hazardous substances, in violation of N.J.S.A. § 58:10A-6.a.;
- b. Ordering Defendants PC Shell and Pontus Capital to cease all discharges to the surface water and/or the ground water of the State unless such defendants acquire and comply with a valid NJPDES permit;
- c. Requiring Defendants PC Shell and Pontus Capital to pay a civil penalty for each day of violation of the WPCA, not to exceed \$50,000 per day, plus all costs and interest applicable thereto, pursuant to the Penalty Enforcement Act, N.J.S.A. 2A:58-1 et seq.

d. Awarding Plaintiff such further and additional relief as the Court deems appropriate.

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

By: S/ Samuel R. Simon
Samuel R. Simon
Attorney ID No. 288191973
Deputy Attorney General

Dated: April 23, 2024

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

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

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

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

VERIFICATION

I, Robert L. Lux, 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 serve as Section Chief of the Compliance Assistance Unit and the Responsible Party Investigation Unit.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in paragraphs 14-20, 22, and 24-47 of the Verified Complaint are true and correct to the best of my knowledge.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

/S/ Robert L. Lux

Date: April 24, 2024

VERIFICATION

I, Daniel R. D'Auge, being of full age, certify as follows:

1. I am employed by the New Jersey Department of Environmental Protection.

2. I serve as a Regulatory Officer of the Division of Water Enforcement.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in paragraphs 21 and 23 of the Verified Complaint are true and correct to the best of my knowledge.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

/S/ Daniel R. D'Auge

Date: April 24, 2024

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: S/ Samuel R. Simon
Samuel R. Simon
Attorney ID No. 288191973
Deputy Attorney General

Date: April 25, 2024

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorney for Plaintiffs

By: Samuel R. Simon
Deputy Attorney General
Attorney ID No. 288191973
samuel.simon@law.njoag.gov
(609) 376-2740

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - CAMDEN COUNTY

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| _____ | : | |
| NEW JERSEY DEPARTMENT OF | : | |
| ENVIRONMENTAL PROTECTION | : | <u>Civil Action</u> |
| | : | |
| Plaintiff, | : | Docket No. C 50-24 |
| | : | |
| v. | : | |
| | : | |
| PC SHELL PORTFOLIO, LLC; | : | |
| AGREH, LLC; PONTUS CAPITAL | : | |
| LLC; SCOTT STOKAS; ANDREW | : | |
| HALEY; and MICHAEL PRESS, | : | |
| | : | |
| Defendants. | : | ORDER TO SHOW CAUSE |
| _____ | : | |

This summary action having been opened to the Court by Matthew J. Platkin, Attorney General of New Jersey, by Samuel R. Simon, 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 Camden County Court House, 101 South Fifth Street, Camden, New Jersey 08103, on the _____ day of _____, 202____, 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 Order and Notice of Civil Administrative Assessment dated December 20, 2023, which became a Final Agency Order (FAO) on January 16, 2024;
2. Ordering Defendants PC Shell Portfolio, LLC and Pontus Capital LLC to remediate the Property fully and completely in accordance with the Site Remediation Reform Act, N.J.S.A. §§ 10C-1 to -29, and all other pertinent laws and regulations;
3. Ordering Defendants PC Shell Portfolio, LLC and Pontus Capital LLC to reimburse Plaintiff for all cleanup and removal costs Plaintiff incurred in the past, and which it will incur in the future, as the result of the discharge of hazardous substances at the Property, with

interest as applicable, if Defendants fail to complete remediation;

4. Ordering Defendants PC Shell Portfolio, LLC and Pontus Capital LLC to pay penalties to the Plaintiff in the amount of \$45,000, as set forth in ¶ 11 of the Final Agency Order;
5. Ordering Defendants PC Shell Portfolio, LLC and Pontus Capital LLC to pay a civil penalty of up to \$50,000 per day for each violation of the Final Agency Order, pursuant to N.J.S.A. § 58:10-23.11u.a.(1)(c); N.J.S.A. § 58:10-23.11u.d., and R. 4:70;
6. 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 mail and by certified mail, return receipt requested; and

IT IS FURTHER ORDERED that Plaintiff shall file with the court its proof of service of the pleadings upon Defendant 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 _____, 202____. 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 file and serve any written reply to the Defendant's opposition by _____, 202____. 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 Defendant does 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 Defendant 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 Defendant is unable to obtain an attorney, Defendant may contact a Lawyer Referral Service or, if Defendant 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: (856) 482-0620 (Lawyer Referral Service) and (888) 576-5579 (Legal Services of New Jersey).

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.

Judge, Superior Court of New Jersey

R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorney for Plaintiffs

By: Samuel R. Simon
Deputy Attorney General
Attorney ID No. 288191973
samuel.simon@law.njoag.gov
(609) 376-2740

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - CAMDEN COUNTY

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| _____ | : | |
| NEW JERSEY DEPARTMENT OF | : | |
| ENVIRONMENTAL PROTECTION | : | <u>Civil Action</u> |
| | : | |
| Plaintiff, | : | Docket No. C 50-24 |
| | : | |
| v. | : | |
| | : | |
| PC SHELL PORTFOLIO, LLC; | : | PROPOSED ORDER |
| AGREH, LLC; PONTUS CAPITAL | : | |
| LLC; SCOTT STOKAS; ANDREW | : | |
| HALEY; and MICHAEL PRESS, | : | |
| | : | |
| Defendants. | : | |
| _____ | : | |

THIS MATTER having been opened to the court by Matthew J. Platkin, Acting Attorney General of New Jersey, by Samuel R. Simon, Deputy Attorney General, appearing, attorney for Plaintiff New Jersey Department of Environmental Protection ("Department"), and the Court having read and considered the Verified Complaint, supporting certifications and supporting brief; and good cause shown;

On this _____ day of _____, 2024:

The Court finds that Defendants PC Shell Portfolio, LLC and Pontus Capital LLC ("Defendants") have violated the Final Agency Order by failing to comply with the Department's requirements set forth therein; and

IT IS THEREFORE ORDRED that Defendants shall:

1. Comply fully with the requirements set forth in the Final Agency Order as follows:

- a. Submit a completed Underground Storage Tank Facility Questionnaire updating the owner information, financial responsibility, and tank status to "out of service;"
- b. Obtain a Notice of Intent to Close ("NOI") permit;
- c. Retain a Licensed Site Remedial Professional;
- d. Submit a 14-day notification to 14dayUSTnotice@dep.nj.com;
- e. Permanently close the tank system;
- f. Submit a completed Underground Storage Tank Facility Certification Questionnaire to update the tank status to "closed;"
- g. Pay a civil penalty in the amount of \$45,000.00 by certified check or money order payable to "Treasurer, State of New Jersey," and remit payment to:

New Jersey Department of Treasury

Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

A copy of the certified check or money order shall be mailed to the Department at the following address:

Ann Wolf, Bureau Chief
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, NJ 08625-420;

- h. Pay a civil penalty of up to \$50,000 per day for each day of violation of the Final Agency Order;
- i. Remediate the Property fully and completely in accordance with the requirements of the Site Remediation Act, N.J.S.A. §§ 58:10C-1 to -29, and all other pertinent laws and regulations;
- j. Reimburse Plaintiff for all cleanup and removal costs Plaintiff incurred in the past, and which it may incur in the future, as the result of the discharge of hazardous substances at the Property, with interest if applicable, if Defendants fail to complete remediation.

IT IS FURTHER ORDERED that the State of New Jersey's right to bring a claim against Defendants in the future for natural resource

damages arising out of the discharges of hazardous substances on the Property is hereby reserved; and

IT IS FURTHER ORDERED that within _____ days of this date, Plaintiff's attorney shall serve the Defendant with a true and correct copy of this Order.

, J.S.C.

In accordance with the required statement under Rule 1:6-2(a), this motion was:

_____ opposed

_____ unopposed.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625
Attorney for Plaintiffs

By: Samuel R. Simon
Deputy Attorney General
Attorney ID No. 288191973
samuel.simon@law.njoag.gov
(609) 376-2740

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CAMDEN COUNTY

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|--|---|--|
| NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, | : | |
| | : | <u>Civil Action</u> |
| | : | |
| Plaintiff, | : | |
| | : | |
| | : | Docket No. |
| v. | : | |
| | : | CERTIFICATION OF ROBERT L. LUX IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE |
| PC SHELL PORTFOLIO, LLC, et al., | : | |
| | : | |
| | : | |
| Defendants. | : | |

I, Robert L. Lux, of full age, hereby certify as follows:

1. I am a graduate of The Pennsylvania State University, where I earned the degree of Bachelor of Science in Geoscience in 1984. I began my career with New Jersey's Department of Environmental Protection ("DEP") in February of 1985 as a Geologist Trainee. I have provided training to both internal DEP staff and to external parties. I was the DEP lead for both the original Conceptual Site Model Guidance document and the original Technical Impracticability Guidance document. My current duties and responsibilities as Section Chief include Supervising 16 staff members who work in the

Compliance Assistance Unit and the Responsible Party Investigation Unit. These two units investigate, plan, implement, and oversee enforcement actions related to remediation of sites within New Jersey that are contaminated with "hazardous pollutants" and "hazardous substances" (collectively, "hazardous substances"), as defined in N.J.S.A. 58:10A-3(u) and 58:10-23.11b, respectively. I was promoted to my current position as Section Chief on March 23, 2002.

2. PC Shell Portfolio, LLC (PC Shell or Defendant) is the current owner of the real property located at 1100 Haddonfield Berlin Road, Voorhees Township, Camden County, also known as Block 201, Lot 1 on the Tax Map of Voorhees Township ("the Property"), which it purchased on December 27, 2012. At no time did PC Shell have a New Jersey Pollution Discharge Elimination System ("NJPDES") permit for the Property, and were not exempted therefrom.
3. The Property consists of approximately 0.87 acre of land, on which are situated a building containing an office and several garage bays, multiple gas dispensing stations, three (3) underground storage tanks ("USTs"), and surface parking.
4. The Property has a long history of usage as a gas station and/or auto repair facility dating back to the 1950s, as set forth in the following chart:

| <u>Name of Owner</u> | <u>Dates of Ownership</u> |
|-------------------------------|-------------------------------|
| PC Shell Portfolio, LLC | Dec. 27, 2012 - present |
| HRE Gas, LLC | Mar. 28, 2008 - Dec. 27, 2012 |
| Bronson Oil Fee Holdings, LLC | Oct. 31, 2007 - Mar. 28, 2008 |
| Motiva Enterprises LLC | Sept. 4, 1998 - Oct. 31, 2007 |
| Shell Oil Co. | Oct. 15, 1985 - Sept. 4, 1998 |
| Atlantic Richfield Co. | prior to Oct. 15, 1985. |

5. On numerous occasions, beginning in February 2022, the Camden County HazMat ("CCHM") was called to the Property to evaluate petroleum-like odors emanating from storm drains located at 1025 Laurel Oak Road, Voorhees Township, Camden County, a building located immediately west of the Property.
6. Since February 2022, there have been continued observations of petroleum/motor oil fuel odors in the nearby storm drains and ambient air. In addition, petroleum sheens and/or petroleum product were observed in the storm drains located at 1025 Laurel Oak Road, and extending into a surface water body known as the Nicholson Branch. Light Non-Aqueous Phase

Liquid ("LNAPL") was also present in monitoring wells located on-site and off-site.

7. Equilon Enterprises LLC ("Equilon"), d/b/a Shell Oil Products ("Shell Oil"), a previous Property owner, has denied liability for the contamination identified since 2022.
8. The Licensed Site Remediation Professional ("LSRP") representing Equilon has informed DEP that they will no longer be deploying booms in the Nicholson Branch or removing product from the monitoring wells.
9. Defendant has been on notice since at least early February 2022 that the Property poses an environmental hazard. On February 2, 2022, the Voorhees Fire Department ("VFD"), the natural gas company, and CCHM were called out to the parking lot of the office building located across the street from the Property (1025 Laurel Oak Rd.) to respond to multiple reports emanating from office building employees of the smell of gas in the area -- odors that had begun four to five days earlier, in late January 2022. The fire department flushed the storm drains with 3000 gallons of water to disburse the gasoline and reduce the level of combustible gases that had built up and which caused the odor. Combustible gases present a particularly dangerous condition because a spark could set them ablaze. The incident was reported to DEP and assigned incident Case # 22-02-02-1338-28.
10. Six weeks later, on March 16, 2022, a CCHM re-inspection of the affected storm drains revealed the presence of combustible gases inside the drains. VFD was again called out to the Property to flush the storm drains with water in an attempt to disperse the gasoline and reduce the level of combustible gases that had built up. VFD flushed the storm drain designated "Field 1" with 1500 gallons of water, and the storm drain designated as "Parking Lot A" with an additional 500 gallons of water. In addition, a mobile ventilation unit was used to ventilate the entirety of Parking Lot A's storm drain system. No combustible gases were detected after these efforts were completed.
11. This state of affairs would shortly change. Two days later, on March 18, 2022, CCHM visited the Property to re-inspect the storm drains. Its combustible gas meter registered vapors at 6% of the Lower Explosive Level¹ in the

¹ The lower explosive limit ("LEL") is the lowest concentration of a substance in air that will produce a flash of fire when an ignition source is present. CCHM's combustible

Parking Lot A storm drain, up from 0% two days before. This alarming reading compelled the replacement of a gasoline-saturated boom in the storm drain. The storm drain was flushed using a hydrant, and a mobile ventilation system was again pressed into service to reduce the concentration of gasoline vapors. Afterwards, no combustible gases were detected. CCHM's measurements of the gasoline product level in the three USTs at the Property revealed gasoline product ranging in depth from 6 to 16 inches.

12. The preceding incidents led to an April 20, 2022 on-site meeting with personnel from DEP's Bureau of Emergency Response ("BER"); CCHM; and LSRP John Romano of Sovereign Consulting, who had been retained by Equilon Enterprises LLC d/b/a/ Shell Oil Products US, a previous property owner. In excess of 12 inches of gasoline/LNAPL was found in four (4) existing monitoring wells ("MW") related to the site, including one well located at the tree line of Nicholson Branch. On April 21, 2022, LSRP Romano reported this discharge of hazardous substances to the Department's Environmental Hotline, and DEP incident #22-04-21-1436-09 was created.
13. The existing monitoring wells in which the gasoline/LNAPL was found are designated MW1, MW3, MW9, and MW15. All wells were installed by Handex on behalf of Shell Oil Company. MW1 was installed on September 17, 1986, and is located in the apron of the UST field and pump island area. MW3 was also installed on September 17, 1986, and is located into the downgradient side of the UST field apron. MW9 was installed on February 28, 1989, and is located on the 1025 Laurel Oak Property across Haddon Avenue and closest to the wooded wetland area that buffers Nicholson Branch. MW15 was installed on March 12, 1990, and is located on the 1025 Laurel Oak Property, across Haddon Avenue. The on- and off-site monitoring wells, which total 22 in number, were used to determine the extent of a contaminant plume.
14. Less than two weeks later, on May 2, 2022, SKM Petroleum & Tank Testing attempted to perform tank and line tightness tests for the three on-site USTs. Two of the three USTs failed their integrity tests, preventing line tightness tests on those units. Test results on the USTs disclosed that the

gas meter detecting an LEL of 6% indicates that they are potentially dealing with a flammable substance/atmosphere.

volume of gasoline remaining in the USTs ranged from a low measurement of 21 gallons to a high measurement of 58 gallons.

15. Two months later, on July 3, 2022, DEP received a phone call from a homeowner near the Property reporting gasoline odors at her residence. The homeowner reported that she often smelled gasoline odors after rain. The incident was reported to DEP and assigned incident Case # 22-07-03-0815-27.
16. Four days later, on July 7, 2022, LSRP Romano notified the Department that he was changing out the sorbent booms in the storm drains on a weekly basis. However, the LSRP reported that his client had elected not to replace the sorbent booms after December 31, 2022. On February 8, 2023, DEP Emergency Response, DEP UST Compliance and Enforcement ("UST C&E"), DEP Bureau of Enforcement and Investigations ("BEI"), and CCHM completed a joint site visit to gain a better understanding of the site's current conditions.
17. The above sequence of events set in motion the long and fruitless series of DEP attempts outlined below to compel PC Shell to comply with its legal obligations, all of which have fallen on deaf ears.
18. On April 18, 2022, the DEP UST C&E issued a Notice of Violation ("NOV") to PC Shell for various UST violations.
19. On April 27, 2022, BEI issued a NOV to, inter alia, defendant PC Shell in its capacity as a statutory co-permittee of the Ground Water Remedial Action Permit ("GWRAP") for failure to submit the required biennial certifications.
20. On July 5, 2022, BEI issued a Notice of Violation to PC Shell for failure to retain an LSRP as well as for failure to submit a Confirmed Discharge Notification Form ("CDN") for DEP incident cases #22-02-02-1338-28 and #22-04-21-1436-09.
21. On August 11, 2022, BEI issued an expedited site-specific timeframe letter ("Letter") to PC Shell and others under the authority of N.J.S.A. § 58:10C-28 and its implementing regulation, N.J.A.C. 7:26C-3.4. The Letter included the requirement of expedited submission of the Initial Receptor Evaluation ("IRE"), an LNAPL Reporting Form, an LNAPL Interim Remedial Measure ("IRM") Report, and a Site Investigation Report ("SI").
22. On September 7, 2022, BEI sent an email to Andrew Haley, a Member and Vice President of Pontus Capital, specifically

noting and memorializing the presence of gasoline in both the monitoring wells and the Nicholson Branch.²

23. On September 20, 2022, BEI placed three (3) telephone calls to numbers associated with Michael Press, Andrew Haley, and Scott Stokas of PC Shell. BEI left voicemails for Michael Press and Andrew Haley, and was able to speak with Scott Stokas directly. Following up on the BEI-issued August 11, 2022 Letter and its requirements, BEI orally explained to Defendant Scott Stokas the Department's concern with LNAPL in the monitoring wells and the Nicholson Branch. Defendant Stokas orally requested that DEP send him an email that he could share with two other Pontus Capital officers, Defendant Andrew Haley and Defendant Michael Press. On September 20, 2022, BEI sent a detailed email to defendant Scott Stokas summarizing the phone call from earlier that day. The BEI email encouraged defendant Pontus Capital to hire an LSRP who would oversee remediation of the Property, advising defendants to contact DEP if it wanted a meeting. The September 20, 2022 email attached the August 11, 2022 Letter. Defendant Stokas did not take any action relating to the email or the Letter.
24. On September 26, 2022, in the hope of persuading Defendants to remediate the Property, BEI emailed Defendant Stokas a spreadsheet of current LSRPs and web links thereto. Defendant Stokas did not respond.
25. During a phone call with Defendant Haley on October 6, 2022, BEI described the areas of non-compliance at the Property. BEI advised defendant Haley that Equilon's LSRP, John Romano of Sovereign Consulting, had advised DEP that (1) Equilon was not remediating LNAPL, and (2) Equilon was authorizing work only on the Ground Water Remedial Action Permit ("GWRAP") requirements. During the course of the phone call, BEI explained why defendant PC Shell was a responsible party under the Spill Act pursuant to N.J.S.A. 58:10-23.11f.a.(2)(b).

² PC Shell is the current property owner. However, PC Shell is a Limited Liability Company (LLC) consisting of a sole member named Agreh, LLC. Agreh's managing partner, and thus the entity that directs and controls PC Shell, is Pontus Capital LLC ("Pontus Capital"). DEP's contacts with PC Shell have all been with Pontus Capital employees or staff (for example, VP Andrew Haley).

26. On November 11, 2022, LSRP John Romano sent a letter to the Department and copied: (1) the Office of Camden County Public Safety, (2) Equilon; (3) Andrew Haley of PC Shell; (4) DEP Bureau of Emergency Response; and (5) Alex Prakhin of Bronson Oil Fee Holdings LLC ("Bronson")³, advising them and each of them that Equilon was monitoring the booms on the Nicholson Branch, but that the monitoring would be discontinued on December 31, 2022. The November 11, 2022 Romano Letter stated that Equilon was not responsible for the 2022 release.
27. Two months later, on January 11, 2023, plaintiff Department issued a Directive and Notice to Insurers ("Directive") addressed to defendant PC Shell and others. A true and correct copy of the Directive is attached hereto as Exhibit A. The Directive was served upon recipients via email and through the United States Postal Service. The Directive required Defendant PC Shell to clean up and remove the hazardous substances discharged at the Property by taking the following actions:
- a. retain an LSRP;
 - b. remove the three USTs;
 - c. submit a Site Investigation Report for the UST removals;
 - d. submit an Initial Receptor Evaluation;
 - e. submit an LNAPL Report;
 - f. establish a Remediation Funding Source ("RFS").
28. The Directive and accompanying cover letter gave the recipients seven (7) days to reply to the Department on whether PC Shell would comply, including signing and returning the proffered Site Access Agreement that DEP had sent to recipient, and which would permit the Department to enter the Property for inspection and sampling if PC Shell did not intend to comply with the Directive. The Directive advised recipients that failure to comply would increase recipients' potential liability to the Department to an amount three (3) times the cost of the cleanup and removal of the discharge, and may subject a lien to be placed on recipients' real and personal property.
29. Defendant PC Shell received the Directive via email on January 11, 2023, and via Certified Mail on January 14, 2023.

³ Bronson Oil Fee Holdings, LLC owned the property during the time period October 31, 2007 to March 28, 2008.

30. On January 23, 2023, BEI telephoned defendant PC Shell, and left phone messages and sent emails for defendants Andrew Haley, Michael Press, and Scott Stokas in an attempt to follow up on the Directive and PC Shell's receipt thereof on January 11 and January 14, 2023. The phone messages explained that PC Shell was a responsible party under the Spill Act pursuant to N.J.S.A. 58:10-23.11f.a.(2)(b), and that Equilon's LSRP John Romano was overseeing only the GWRAP, and not incident cases #22-02-02-1338-28 and #22-04-21-1436-09.
31. Three days later, on January 26, 2023, BEI telephoned defendant Andrew Haley and left a detailed voicemail reiterating the advice and guidance that BEI had left Defendants in the January 23 voicemail messages. BEI followed up the January 26 phone call with an email asking when Defendant Haley could meet with representatives from BEI. Haley ignored the voicemail and the follow-up email.
32. Five days later, on January 31, 2023, BEI emailed PC Shell to advise it that BEI would be conducting a site inspection at 10:00 a.m. on February 8, 2023, and that PC Shell was welcome to send a representative.
33. On February 2, 2023, BEI and a New Jersey Deputy Attorney General ("DAG") telephoned Andrew Haley and carefully explained PC Shell's legal responsibility to remediate the Property. BEI and the DAG also explained to Haley that BEI would be conducting the site inspection on February 8, 2023. During that phone call, BEI requested a copy of the lease agreement between PC Shell and its tenant, reiterating its request that PC Shell execute the Site Access Agreement and return it promptly.
34. The same day -- February 2, 2023 -- BEI sent PC Shell a follow-up email that again set forth BEI's requests. As a courtesy, the email included an LSRP Hiring Guide document and another copy of the unexecuted Site Access Agreement. PC Shell ignored the phone call and the email, did not hire an LSRP, did not return the Site Access Agreement, and did not comply with the Directive.
35. On February 13, 2023, the Department of Law informed Haley that DEP had directed it to file a lawsuit to obtain access to the property because PC Shell had not executed and returned the proffered Site Access Agreement, and requested that PC Shell reply without delay. The message was ignored.

36. On December 20, 2023, DEP served an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") upon Michael Press in his capacity as Managing Partner of defendants PC Shell and Pontus Capital. The AONOCAPA was served upon Press via Certified Mail, Return Receipt Requested, and was received on December 26, 2023. PC Shell did not respond to the AONOCAPA within 20 days of December 26, and the AONOCAPA therefore became a Final Agency Order ("FAO") on January 16, 2024. A true and correct copy of the December 20, 2023 AONOCAPA is attached hereto as Exhibit B. A true and correct copy of the U.S. Postal Service proof of delivery of the AONOCAPA is attached hereto as Exhibit C.
37. The December 20, 2023 AONOCAPA informed defendants PC Shell and Pontus Capital that, as a result of on-site inspections conducted March 22, 2022 and December 14, 2023, DEP determined that these entities failed to comply with 24 specific environmental rules and regulations promulgated under the Underground Storage of Hazardous Substances Act ("UST") and the Air Pollution Control Act.
38. The AONOCAPA imposed civil administrative penalties totaling \$45,000 for the violations e, and ordered that PC Shell and Pontus Capital: (a) submit a completed Underground Storage Tank Facility Certification Questionnaire; (b) submit a Notice of Intent to Close ("NOI"); (c) retain an LSRP; (d) submit a 14-day notification to 14dayUSTnotice@dep.nj.gov; (e) permanently close the USTs at the Property; and (f) submit a completed Underground Storage Tank Facility Certification Questionnaire to update the UST status to "closed."
39. In the course of the following months, DEP has repeatedly attempted to reach out to defendants to inform them of their legal responsibilities, but to no avail. PC Shell, Pontus Capital, and their controlling individuals have continued to ignore all attempts by DEP to get them to comply with the legal obligations imposed upon them under the Directive and the AONOCAPA to remediate and clean up the Property, including hiring an LSRP.

40. The contamination must be addressed and remediated. It poses an on-going environmental threat to the wells, Nicholson Creek, the ambient air, and the residents of the community.

CERTIFICATION

I certify that the foregoing statements made by me are true. I further certify that any exhibits attached hereto are true and correct copies. I further certify that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



April 24, 2024
Date

Rob L. Lux
Section Chief,
Compliance Assistance Unit
and Responsible Party
Investigative Unit,
New Jersey Department of
Environmental Protection

Exhibit A



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Contaminated Site Remediation & Redevelopment Program
Enforcement and Information Support Element

SHAWN M. LATOURETTE
Commissioner

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

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

CERTIFIED MAIL

7021 1970 0000 8521 7897

PC SHELL PORTFOLIO, LLC
C/O MICHAEL PRESS, PRESIDENT
875 PROSPECT STREET, SUITE 303
LA JOLLA, CA 92037

JAN 11 2023

CERTIFIED MAIL

7021 1970 0000 8521 7903

NATIONAL REGISTERED AGENTS, INC.
C/O PC SHELL PORTFOLIO, LLC
820 BEAR TAVERN ROAD
WEST TRENTON, NJ 08628

CERTIFIED MAIL

7021 1970 0000 8521 7910

ALEX PRAKHIN & BRONSON OIL LEASE HOLDINGS LLC
1800 CHAPEL AVENUE WEST - SUITE 202
CHERRY HILL, NJ 08002

RE: DIRECTIVE AND NOTICE TO INSURERS

Voorhees Gulf
1100 Haddonfield Berlin Road
Voorhees Township, Camden County
PI#: 007629 – PEA220003

Dear Mr. Press and Mr. Prakhin,

There is enclosed for service upon PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin a Directive and Notice to Insurers issued by the New Jersey Department of Environmental Protection ("the Department").

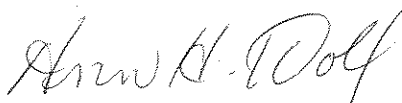
Within 7 days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin must communicate their responses to the Department in writing pursuant to N.J.A.C. 7:26C-9.11(f) regarding their decision to comply

with this Directive and Notice to Insurers. If PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin choose not to follow the enclosed Directive and Notice to Insurers, the required remedial activities will be conducted by the Department using public funds. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin may be responsible for reimbursement of up to three times the amount of public funds expended.

Two Site Access Agreements have been enclosed to allow the Department to conduct remedial activities on-site if PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin do not intend to comply with the enclosed Directive and Notice to Insurers. PC Shell Portfolio, LLC shall return both signed Site Access Agreements within 7 days of receipt of this letter, if PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin do not intend to comply with the enclosed Directive and Notice to Insurers. Please be advised that the Deputy Attorney General's Office will initiate Court action to gain Site access if the Department is required to conduct this work and the Site Access Agreement is not signed and returned.

If you would like to discuss this matter, please contact, Jacob Fitzpatrick, Enforcement Manager at the address above, or by telephone at (609) 633-9285.

Sincerely,



Ann H. Wolf, Assistant Director
Enforcement and Information Support Element

Enclosures: Directive and Notice to Insurers

c: Jacob Fitzpatrick, Enforcement Manager, BEI (with enclosures)
Rob Lux, BEI
Samuel Simon, DAG
Andrew Haley, Pontus Capital, Ahaley@pontuscapital.com (via email only)



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Contaminated Site Remediation & Redevelopment Program
Enforcement and Information Support Element
Mail Code 401-06U
P.O. Box 420
Trenton, New Jersey 08625-0420
Tel: (609)633-1480

SHAWN M. LATOURETTE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

DIRECTIVE AND NOTICE TO INSURERS

EA ID #: PEA220003

Site Name: Voorhees Gulf

Respondents: PC Shell Portfolio, LLC,
Bronson Oil Lease Holdings, LLC,
Alex Prakhin, an individual

Location: 1100 Haddonfield Berlin Road
Voorhees Township, Camden County

PI #: 007629

This Directive and Notice to Insurers is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "NJDEP") by N.J.S.A. 13:1D-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director of the Enforcement and Information Support Element pursuant to N.J.S.A. 13:1B-4. This Directive and Notice to Insurers is issued in order to notify the above-captioned Respondents that the Department, pursuant to the Spill Compensation and Control Act, has determined that it is necessary to cleanup and remove discharges, and in order to notify PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC and Alex Prakhin that the Department believes them to be responsible for the hazardous substances that were discharged and/or the remediation of the discharges.

FINDINGS

1. The Voorhees Gulf Site is located at 1100 Haddonfield Berlin Road, also known as Block 201, Lot 1 on the tax maps of Voorhees Township, Camden County, New Jersey (hereinafter the "Site"). The Site and all other areas to which any hazardous substances discharged on the Site have migrated are collectively referenced hereinafter as "the Contaminated Site".
2. The Site is located directly adjacent to Nicholson Branch, a surface water body classified as FW2-NT (fresh water 2, non-trout), which leads into a deciduous wooded wetlands area, and is also located near multiple residences.

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Underground Storage Tanks (UST)

3. Since at least 1984, the Site has operated as a retail gasoline storage and/or dispensing facility and/or automotive repair facility.
4. Three (3) 12,000-gallon unleaded gasoline USTs (“three (3) USTs”) and associated appurtenances have been onsite since at least 1984 and on June 30, 2022, the UST Registration Certificate expired for these three (3) USTs. The UST Registration Certificate lists Bronson Oil Lease Holdings, LLC as the owner and Alex Prakhin as the operator of the three (3) USTs.

Site Ownership History

5. On October 15, 1985, Atlantic Richfield Company (ARCO) sold the Site to Shell Oil Company.
6. On September 4, 1998, Shell Oil Company and/or Shell Oil Products US sold the Site to Motiva Enterprises, LLC.
7. On October 31, 2017, Motiva Enterprises, LLC sold the Site to Bronson Oil Fee Holdings LLC.
8. On March 21, 2008, Bronson Oil Fee Holdings LLC sold the Site to HRE Gas, LLC.
9. On December 27, 2012, HRE Gas, LLC sold the Site to PC Shell Portfolio, LLC, the current Site owner.

Responsible Parties

10. PC Shell Portfolio, LLC, the current owner of the Site, is a limited liability company formed on December 21, 2012, in the State of Delaware. It was authorized to conduct business in the State of New Jersey on December 26, 2012, with a principal address of 875 Prospect Street, Suite 303, La Jolla, California, 92037.
11. Bronson Oil Lease Holdings, LLC, the owner of the three (3) USTs, is a limited liability company formed on July 13, 2007, in the Commonwealth of Pennsylvania. It was authorized to conduct business in the State of New Jersey in October 2007, with a principal address of 1800 Chapel Avenue West, Suite 202, Cherry Hill, New Jersey 08002.
12. Alex Prakhin, an individual and the president of Bronson Oil Lease Holdings, LLC, is the operator of the three (3) USTs.

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Contamination and Remediation History of the Contaminated Site

13. In May 1985, ARCO, the Site owner at the time, discovered a six-month product inventory loss from the three (3) USTs.
14. In July 1986, light non aqueous phase liquid (LNAPL) was discovered in two (2) of the four (4) onsite monitoring wells. The Department assigned this discharge of hazardous substances case number 86-07-03-11S (LSR100001).
15. On April 24, 2008, a Classification Exception Area/Well Restriction Area (CEA/WRA) was established which encompasses part of the Site and the right of way of Haddon Avenue totaling 0.274 acres. The CEA/WRA has a duration of 16.19 years and is for ground water contamination exceeding the Department's Ground Water Quality Standards (GWQS), specifically, benzene, ethylbenzene, methyl tertiary-butyl ether (MTBE), tertiary butyl alcohol (TBA), and individual/total non-carcinogenic synthetic organic chemicals.
16. On August 28, 2014, a remedial action report was submitted to the Department which proposed no further action for soils, stated that LNAPL had not been detected onsite since 1999, and stated that groundwater contamination would be addressed via monitored natural attenuation in a Ground Water Remedial Action Permit (GWRAP).
17. On August 31, 2015, the Department approved the GWRAP application for which the Department assigned permit activity number RAP150001. This GWRAP listed the Co-Permittees as the current property owner at that time, Bronson Oil Holdings, LLC, and the former property owner, Motiva Enterprises LLC.
18. On December 15, 2016, a Remedial Action Protectiveness/Biennial Certification Form – Ground Water (Bi-Cert) was submitted to the Department pursuant to RAP150001 which stated that the overall trend indicated a decreasing plume; however, the two most recent groundwater sampling events, on August 29 and 30, 2016 and on October 20, 2016, note an increase in contamination over the prior event.
19. Contrary to RAP150001, the GWRAP Co-Permittees did not submit the December 5, 2018 and December 5, 2020 Bi-Certs.
20. On July 31, 2021, the Department approved the UST Registration Certificate for the three (3) USTs.
21. On February 2, 2022, the Camden County Office of Emergency Management (CCOEM) reported to the Department that gasoline had been found in two (2) storm drains across the street from the Site with gasoline odors beginning four (4) to five (5) days prior to discovery. The Department assigned this incident case number 22-02-02-1338-28 (LSR220001). The two (2) storm drains in question discharge into Nicholson Creek, which has a FW2-NT Surface Water Quality

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Classification and is part of a Deciduous Wooded Wetlands area. The Voorhees Fire Department flushed the storm drains and CCOEM continued to monitor the storm drains while utilizing sorbent booms to collect gasoline.

22. In March 2022, CCOEM measured the gasoline level in the three (3) USTs. All three (3) USTs contained gasoline product ranging from 6 inches to 16 inches.
23. On March 22, 2022, the Department's Underground Storage Tank Compliance & Enforcement Unit (UST C&E) imposed a delivery ban on the three (3) USTs, and on March 24, 2022, UST C&E issued a Notice of Violation (NOV) to Bronson Oil Lease Holdings, LLC, the UST owner of record, which outlined multiple violations.
24. On April 18, 2022, UST C&E issued a NOV to PC Shell Portfolio, LLC, the Site owner, which outlined multiple violations.
25. On April 20, 2022, the Department's Emergency Response Unit, CCOEM and licensed site remediation professional (LSRP) John Romano of Sovereign Consulting, who was retained by Equilon Enterprises LLC d/b/a Shell Oil Product, met onsite. Greater than 12 inches of gasoline/LNAPL was found in four (4) monitoring wells related to the Site, including one (1) located at the tree line along Nicholson Creek. On April 21, 2022, LSRP John Romano reported this discharge of hazardous substances to the Department, which assigned case number 22-04-21-1436-09 (LSR220001) to the incident.
26. On April 27, 2022, the Department's Bureau of Enforcement and Investigations-Site Remediation (BEI) issued a NOV to Motiva Enterprises, LLC and Bronson Oil Holdings, LLC as Co-Permittees and PC Shell Portfolio, LLC as a statutory permittee for failure to submit biennial certifications in accordance with the requirement of GWRAP 150001.
27. On May 2, 2022, SKM Petroleum & Tank Testing, on behalf of a prospective UST operator, performed tank and line tightness tests for the three (3) USTs (integrity tests). Two (2) of the three (3) USTs failed their integrity tests; as a result, the lines were not tested. The tests disclosed that the volume of gasoline remaining in the three (3) USTs ranged from 21-gallons to 58-gallons. The prospective UST operator has not assumed any operations.
28. On July 12, 2022, the Department-BEI issued a NOV to PC Shell Portfolio, LLC for failure to retain an LSRP and submit a Confirmed Discharge Notification Form (CDN) for LSR220001.
29. On August 8, 2022, the Department-BEI issued a NOV to Bronson Oil Lease Holdings, LLC for failure to retain an LSRP and submit a CDN for LSR220001.
30. On August 11, 2022, the Department-BEI issued a letter to PC Shell Portfolio, LLC, and Bronson Oil Lease Holdings LLC, setting expedited site-specific timeframes due to the continued, immediate

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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threat of the discharge of free product gasoline/LNAPL into surface water/Nicholson Creek and the proximity of potable wells and residential properties. The expedited timeframes set include the following: October 1, 2022, for submittal of an LNAPL Reporting Form and Initial Receptor Evaluation and November 15, 2022, for submittal of an LNAPL interim remedial measure report and a Site Investigation Report.

31. By the Effective Date of this Directive and Notice to Insurers, the responsible parties have not retained an LSRP nor have the responsible parties met the Site's expedited site-specific timeframes referenced in Paragraph 30 above. To the Department's knowledge, the responsible parties have not conducted any remedial action to address the free product gasoline emanating from the Site.

Liability for Cleanup and Removal Costs

32. The substances referenced in the paragraph(s) above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b.
33. PC Shell Portfolio, LLC, as the owner of a known Contaminated Site, is a person in any way responsible for the hazardous substances discharged at the Site, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g.c, for all cleanup and removal costs the Department has incurred as a result of the hazardous substances discharged at the Site, and is therefore required to remediate the hazardous substances which were discharged to the lands and waters of the State pursuant to N.J.S.A. 58:10B-1.3.
34. Bronson Oil Lease Holdings, LLC is the owner of regulated USTs 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.
35. Alex Prakhin is the operator of regulated USTs 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.
36. Pursuant to N.J.S.A. 58:10-23.11g.c., PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin are strictly liable, without regard to fault, for all cleanup and removal costs.
37. Pursuant to N.J.S.A. 58:10-23.11f., whenever any hazardous substance is discharged, the Department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of such discharge or may direct any person in any way responsible for the hazardous substance to clean up and remove or arrange for the cleanup and removal of the discharge.

DIRECTIVE

38. Within seven (7) calendar days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall reply to the Department

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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pursuant to N.J.A.C. 7:26C-9.11(f), regarding their decision to comply with this Directive and Notice to Insurers. The response shall be sent to Ann H. Wolf, Assistant Director, Enforcement & Information Support Element, Contaminated Site Remediation and Redevelopment Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey 08625-0420.

39. The Department hereby directs PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, to clean up and remove the hazardous substances discharged at the Site by taking the following actions according to the following timeframes, established pursuant to N.J.A.C. 7:26C-3.4. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall conduct the remediation at the Site pursuant to N.J.A.C. 7:26C-2.3. Note the timeframes specified herein do not represent an extension to any past due timeframes and the Department reserves the right to pursue penalties back to the original due dates:
- a. Within fifteen (15) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall retain an LSRP, and thereafter maintain an LSRP for the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-2.3(a)2;
 - b. Within fifteen (15) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC; and Alex Prakhin shall notify the Department, in accordance with N.J.A.C. 7:26C-2.3(a)2, of the name and license information of the LSRP that has been retained to perform remediation;
 - c. Within fifteen (15) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department an Underground Storage Tank Notice of Intent to Close the three (3) USTs in accordance with N.J.A.C. 7:14B-9.2(a);
 - 1) Within thirty (30) days after receipt of the Department's approval/acceptance of the Notice of Intent to Close, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall remove the three (3) USTs, all work shall be conducted in accordance with N.J.A.C. 7:14B-9.2;
 - 2) Within ninety (90) days after receipt of the Department's approval/acceptance of the Notice of Intent to Close, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall close the three (3) USTs in accordance with all applicable state, county, and municipal statutes, permits, rules, and regulations; and
 - 3) Within one hundred fifty (150) days after receipt of the Department's approval/acceptance of the Notice of Intent to Close, PC Shell Portfolio, LLC,

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department a Site Investigation Report for the removed USTs along with an updated UST registration indicating closure. All discharges at the Site discovered during the UST closure event shall be remediated.

- d. Within forty-five (45) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department an Initial Receptor Evaluation;
 - e. Within forty-five (45) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department the LNAPL Reporting Form to report the initial discovery of LNAPL and the initial action taken for LNAPL recovery;
 - 1) Within sixty (60) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall initiate implementation of an LNAPL interim remedial measure, initiate monitoring, and submit to the Department an LNAPL interim remedial measure report;
 - 2) Within sixty (60) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall initiate control of ongoing sources and implement interim remedial measures pursuant to N.J.A.C. 7:26E-1.10;
40. The Department hereby directs PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to conduct the following:
- a. Within sixty (60) days after receipt of this Directive and Notice to Insurers and annually thereafter, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit a detailed Remediation Cost Review Form, prepared and certified by the LSRP retained to oversee the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-5.10(a);
 - b. Within sixty (60) days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall establish and maintain a remediation funding source in the form of a remediation trust fund pursuant to N.J.A.C. 7:26C-5 in the amount determined by the detailed, LSRP-certified cost review, pursuant to 7:26C-5.10, for the full estimated cost of remediation of the Contaminated Site;
 - c. Within sixty (60) days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department the 1% remediation funding source surcharge with the remediation funding

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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source, and annually thereafter pursuant to N.J.A.C. 7:26C-5.9;

- d. Within sixty (60) days after receipt of each annual 1% remediation funding source surcharge invoice from the Department, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department at the address listed on the invoice the 1% remediation funding source surcharge for the remediation of the Site pursuant to N.J.A.C. 7:26C-14.2(b)6 and N.J.A.C. 7:26C-5.9;
41. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall provide the Department with access to all applicable documents concerning remediation.
42. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall conduct the required remediation pursuant to the requirements of N.J.A.C. 7:26E, "Technical Requirements for Site Remediation," and N.J.A.C. 7:26C, "Administrative Requirements for the Remediation of Contaminated Sites".
43. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall pay all Department applicable fees and oversight costs.

NOTICE

44. Failure to comply with this Directive and Notice to Insurers will increase PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin's potential liability to the Department in an amount equal to three (3) times the cost of the cleanup and removal of the discharge and may cause a lien to be placed on PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and, Alex Prakhin's real and personal property pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.
45. Pursuant to N.J.S.A. 58:10-23.11u., the Department may issue an Order to require compliance with the Spill Compensation and Control Act. Failure by PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to comply with this Directive may result in the issuance of an Order by the Department, which will subject PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to penalties of up to \$50,000 per day, with each day of violation constituting an additional, separate, and distinct violation of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

RESERVATION OF RIGHTS

46. The Department reserves the right to direct PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to take or arrange for the taking of any and all additional remediation which the Department determines to be necessary to protect the public health and safety or the environment

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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and to seek full reimbursement and treble damages for all costs incurred in taking such additional remediation.

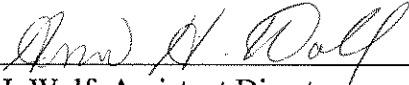
47. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin are advised that the discharges referenced in this Directive and Notice to Insurers may also constitute violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and that PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin may, therefore, be subject to the penalties prescribed for violations of these Acts. The Department reserves all rights and remedies under those Acts as well as any other rights and remedies under any applicable law.

NOTICE TO INSURERS

48. BE ON NOTICE THAT, pursuant to N.J.S.A. 58:10-23.11s., any claims for costs of cleanup or civil penalties by the State and any claim for damages by any injured person may be brought directly against the bond, insurer, or any other person providing evidence of financial responsibility. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin are therefore urged to contact such insurers and notify them of the issuance of this Directive and Notice to Insurers.

Date:

January 14, 2023



Ann H. Wolf, Assistant Director
Enforcement and Information Support Element

Exhibit B



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Waste & UST Compliance & Enforcement
Bureau of UST Compliance & Enforcement

SHAWN M. LATOURETTE
Commissioner

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Mail Code 09-03
P.O Box 420
Trenton, NJ 08625-0420
Tel. (609)-633-1205
Fax. (609)-292-3970

CERTIFIED MAIL/RRR

7022 3330 0001 3350 0743

December 20, 2023

Mr. Michael Press, Managing Partner
PC SHELL PORTFOLIO LLC & PONTUS CAPITAL LLC
875 Prospect Street - Suite 303
La Jolla, CA 92037

**RE: ADMINISTRATIVE ORDER AND NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT
VOORHEES GULF
EA ID #: PEA230001 - 007629**

Dear Mr. Press:

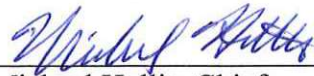
Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department pursuant to the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

The Department may be available to meet informally with the principals of the case to discuss the enclosed enforcement action. Should such a meeting be requested and granted, be advised this does not affect the time frame within which you may request an administrative hearing under the **NOTICE OF RIGHT TO A HEARING** provision in the enclosed Notice of Civil Administrative Penalty Assessment.

If multiple respondents are named, each respondent interested in contesting the AONOCAPA must individually file an Administrative Hearing Request Checklist and Tracking Form. The Administrative Hearing Request Checklist and Tracking Form is enclosed with this letter.

Should you have any questions concerning the enforcement action or wish to request an informal meeting, please contact **Mrs. Jenna DiNuzzo at (609) 672-1309.**

Sincerely,



Michael Hollis, Chief
Bureau UST Compliance and Enforcement

Enclosure



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Division of Waste & UST Compliance & Enforcement
 Bureau of UST Compliance & Enforcement
 Mail Code 09-03
 P.O Box 420
 Trenton, NJ 08625-0420
 Tel. (609)-633-1205
 Fax. (609)-292-3970

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

SHAWN M. LATOURETTE
Commissioner

IN THE MATTER OF

PC SHELL PORTFOLIO LLC

And

PONTUS CAPITAL LLC

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:
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:
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:

ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT

EA ID # PEA230001 - 007629

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Chief, Bureau of UST Compliance and Enforcement, pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. PC SHELL PORTFOLIO LLC and PONTUS CAPITAL LLC own a retail gas station located at 1100 Haddonfield Berlin Road, Voorhees, Camden County, NJ. PC SHELL PORTFOLIO LLC and PONTUS CAPITAL LLC shall herein after be collectively known as the "RESPONDENTS".
2. RESPONDENTS maintains on-site "underground storage tank (UST) systems" as defined by N.J.A.C. 7:14B-1.6, consisting of three (3) – 12,000 gallon unleaded gasoline USTs and associated appurtenances. (ID# 007629)
3. Pursuant to N.J.A.C. 7:14B-1.6, all grades of gasoline and diesel fuel are defined as "Motor Fuel" which are further defined as "Hazardous Substances".
4. As the result of a compliance evaluation conducted on March 22, 2022, the Department has

determined that RESPONDENTS failed to comply with applicable requirements as follows:

- a. **Requirement:** Pursuant to N.J.A.C. 7:27- 8.3(b), no person shall operate (nor cause to be operated,) a significant source or control apparatus serving the significant source without a valid operating certificate.

Description of Noncompliance: The owner failed to have a valid air permit. There is a terminated GP-004B permit. The termination date was September 11, 2019.

- b. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(e)1, the owner or operator of a gasoline dispensing facility with an existing Phase II vapor recovery system for the transfer of gasoline into any gasoline-laden vehicular fuel tank shall either: 1. Decommission the system on or before December 23, 2020.

Description of Noncompliance: The owner and/or operator failed to decommission the stage 2 vacuum assist system by the December 23, 2020 deadline.

- c. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(f), the owner or operator of an existing gasoline dispensing facility with existing Phase 2 vapor recovery system shall ensure that: 1. The transfer of gasoline into any gasoline-laden vehicular fuel tank is made using a vapor recovery system that is approved by the Department and that reduces the total applicable VOC emissions into the outdoor atmosphere by no less than 95 percent of the concentration of applicable VOC by volume in the air-vapor mixture displaced during the transfer of gasoline; 2. The vapor recovery system is one of the following: (i) A Phase 2 vapor recovery system that is CARB-certified; (ii) A Phase 2 vapor recovery system that was CARB-certified by CARB prior to July 25, 2001, for which all replacement parts/equip./components and all subsequent construction modifications are: 1. Approved in an Exec. Order or approval letter issued by CARB on or after July 25, 2001; and 2. Do not decrease the VOC emission control efficiency of the system; or (iii) A system equivalent for the purpose of VOC emission control to a CARB certified system and that is approved by the NJDEP and EPA.

Description of Noncompliance: All Stage II related components were either not present or not properly functioning. The site was not decommissioned.

- d. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(j)1, the owner or operator of a gasoline dispensing facility shall perform the tests to demonstrate the facility's vapor control system or equipment are performing properly. 1. Each test set forth in Table 3A, that is applicable to the facility, shall be conducted in accordance with the schedule for testing given in the Table.

Description of Noncompliance: The owner and/or operator failed to have a passing static pressure performance (SPP) test within the last 12 months.

- e. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(j)1, the owner or operator of a gasoline dispensing facility shall perform the tests to demonstrate the facility's vapor control system or equipment are performing properly. 1. Each test set forth in Table 3A, that is applicable to the facility, shall be conducted in accordance with the schedule for testing given in the Table.

Description of Noncompliance: The owner and/or operator failed to have a passing pressure vent valve (PVV) test within the last 12 months.

- f. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(t), the owner or operator shall of a gasoline dispensing facility shall maintain the following records at the facility: 1. A record of the monthly throughput of gasoline; 2. If the facility is required to test a vapor control system pursuant to 16.3(j): (i) Documentation of the performance of each test required pursuant to 16.3(j), including the date, the name of the testing company, and the test method used; and (ii) A record of the results of each test performed.

Description of Noncompliance: The owner and/or operator failed to maintain testing records.

- g. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(a), the owner and operator shall register each underground storage tank facility with the Department pursuant to N.J.A.C. 7:14B-2.2.

Description of Noncompliance: The owner and operator failed to properly register all regulated tanks with the Department. The tanks are registered as in service however they were out of service at the time of inspection. They must be registered as out of service.

- h. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(b), the owner and each operator shall amend the underground storage tank facility registration pursuant to N.J.A.C. 7:14B-2.2: 1. Within 30 days after a substantial modification to a facility or the underground storage tank system; 2. Within 30 days after a change in the hazardous substance stored in an underground storage tank, except for any regulated substance that contains greater than 10 percent ethanol, greater than 20 percent biodiesel, or as identified by the Department which requires notification 30 days prior to introducing the substance into the system pursuant to N.J.A.C. 7:14B-5.3; 3. Within 30 days after any change in the ownership of the facility, including, but not limited to, the sale or transfer of all or a portion of the ownership; 4. Within 30 days after the addition, removal, replacement, or other change to an operator of the facility; 5. Within 30 days after the addition, removal, or replacement of the facility's designated Class A or Class B operator; 6. Within 30 days after termination, modification, addition, or other change to the financial responsibility for the UST system, as set forth in N.J.A.C. 7:14B-15; 7. Within seven days after taking an underground storage tank system out of service or closure of an underground storage tank system; and 8. At least 30 days prior to putting an out-of-service underground storage tank system back into service.

Description of Noncompliance: The owner and operator failed to submit an UST questionnaire to reflect changes.

- i. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(c), the owner and operator shall only use an underground storage tank upon receipt from the Department of a valid UST registration certificate. The UST registration certificate shall reflect an expiration date, which shall not exceed one year from the date of issuance.

Description of Noncompliance: The owner and operator used an UST system without a valid UST registration.

- j. **Requirement:** Pursuant to N.J.A.C. 7:14B- 4.1(a)3ii, [The owner and operator shall ensure the overfill prevention equipment is compatible with the delivery method used to fill the tank and will]: 1. Automatically shut off flow into the tank when the tank is no more than 95 percent full; 2. Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or 3. Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

Description of Noncompliance: The owner and operator failed to provide overfill prevention for all tanks.

- k. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.10(a)1ii, [The owner and operator shall ensure that the spill prevention equipment is] tested at installation and at least once every three years by using vacuum, pressure, or liquid testing to ensure that the spill prevention equipment is liquid tight, in accordance with one of the following: 1. Requirements developed by the manufacturer, if any; 2. A code of practice developed by a nationally recognized association or independent testing laboratory, such as Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST facilities"(available at www.pei.org); or 3. A method that the owner and operator demonstrate is no less protective of human health and the environment than the requirements of (a)1ii(1) and (2) above.

Description of Noncompliance: The owner and operator failed to test the spill buckets at installation and/or at least once every three years.

- l. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.14(a), the owner and operator of an UST system shall designate Class A, Class B, and Class C operators, trained pursuant to N.J.A.C. 7:14B-5A and notify the Department of each designated Class A and Class B operator in accordance with N.J.A.C. 7:14B-2. An individual may be designated under more than one operator class, provided the individual is trained in accordance with N.J.A.C. 7:14B-5A for each class for which he or she is designated.

Description of Noncompliance: The owner and operator failed to designate class A, Class B, and class C operators. The facility has Eugene Babcock listed as the AB operator. Eugene has previously stated that he is no longer the AB operator for all ARFA/Bronson Oil Lease Holdings LLC properties.

- m. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.6(b), owners and operators shall keep records required either: 1. At the underground storage tank site and immediately available for inspection to the implementing agency; or 2. At a readily available alternative site and be provided for inspection to the implementing agency upon request.

Description of Noncompliance: The owner and operator failed to have the required test results available for inspection.

- n. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.9(b), no person or business firm shall introduce hazardous substances into a regulated underground storage tank which is not

properly registered with the Department pursuant to N.J.A.C. 7:14B-2.1. or where any registration has been revoked or denied.

Description of Noncompliance: A person or business firm introduced a hazardous substance into a regulated UST which was not properly registered with the Department.

- o. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.1(h), The owner and operator shall ensure that testing of electronic and mechanical components in accordance with (g) above is performed at least annually and shall include, as applicable, the following: 1. For automatic tank gauge and other controllers: testing alarm, verifying system configuration, and testing battery backup; 2. For probes and sensors: inspecting for residual buildup and ensuring floats move freely, ensuring shaft is not damaged, ensuring cables are free of kinks and breaks, and ensuring that the alarm is operable and communicates with the controller; 3. For automatic line leak detectors: ensuring that the detectors meet the criteria at N.J.A.C. 7:14B-6.6(a)1; 4. For vacuum pumps and pressure gauges: ensuring proper communication with sensors and controller; and 5. For handheld electronic sampling equipment associated with ground water and vapor monitoring: ensuring proper operation.
Description of Noncompliance: The owner and operator failed to test all electronic and mechanical components at least annually.
- p. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.2(a)2i, The owner and operator shall ensure underground piping that conveys regulated substances under pressure have an annual line tightness test conducted in accordance with N.J.A.C. 7:14B-6.6(a)2 or have monthly monitoring conducted in accordance with N.J.A.C 7:14B-6.6(a)3.
Description of Noncompliance: The owner and operator failed to perform leak detection for product piping pursuant to the rules.
- q. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.5(a)4, The owner and operator shall perform release detection for tanks by using equipment for automatic tank gauging that tests for the loss of product and conducts inventory control shall meet the following requirements: (i) The automatic product level monitor test shall detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product, when performing a test in one of the following modes: (1) In-tank static testing conducted with passing results at least once every 30 days; or (2) Continuous in-tank leak detection operating either on a uninterrupted basis, or with a process that allows the system to gather incremental measurements to ensure an accurate, passing test at least once every 30 days; and (ii) Inventory control (or another test of equivalent performance) shall be conducted in accordance with the requirements of N.J.A.C. 7:14B-6.5(a)1.
Description of Noncompliance: The site failed to pass a 0.2 gallon per hour automatic in-tank (ATG) leak detection test at least once every 30 Days.
- r. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.6(a)1, The owner and operator shall ensure that automatic line leak detectors which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at

10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

Description of Noncompliance: The owner and operator failed to test line leak detector (LLD) at least once every year.

- s. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.1(a), owners and operators of underground storage tank systems shall provide a method, or combination of methods, of release detection that: 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product; 2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and 3. Meets the performance requirements in N.J.A.C. 7:14B-4A, 6.5 or 6.6, as applicable, with any performance claims and the manner of determination of the performance claims described in writing by the equipment manufacturer or installer. Permanent methods installed on or after September 4, 1990 shall be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Description of Noncompliance: The owner and operator failed to perform an acceptable method of release detection monitoring on the tanks and/or product piping. The monitoring system is turned off. The tanks have less than 1" of liquid in them therefore monitoring cannot be performed utilizing the Veeder Root. The lines have an in-line pressure monitor that is connected to the turned off Veeder Root.

- t. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(a), the owner and operator of an underground storage tank system which is out-of-service shall: 1. Submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire, pursuant to N.J.A.C. 7:14B-2.1(b)7, within seven calendar days after the underground storage tank system is placed out of service. The information shall include: (i) The location of the underground storage tank facility; (ii) The underground storage tank facility registration number; (iii) The underground storage tank number; and (iv) A description of the activity being performed. 2. Remain in compliance with all applicable environmental rules, including N.J.A.C. 7:14B-7, 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; 3. Maintain release detection monitoring in accordance with N.J.A.C. 7:14B-6.1 and 6.2 or 6.1 and 6.3; 4. Maintain all existing corrosion protection systems pursuant to N.J.A.C. 7:14B-4.1, 4.2 and 5.2; 5. Install spill and overflow prevention and corrosion protection in accordance with the requirements of N.J.A.C. 7:14B-4.1 and 4.2 for systems which do not have these.

Description of Noncompliance: The owner and operator failed to update the UST registration to update a tank(s) status to out of service. The shop manager and the Fire Department Battalion Chief both confirmed that the facility has been out of service since November 2021.

- u. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(b), the owner and operator of an underground storage tank system which is out-of-service for a period greater than three

months shall follow the guidelines in the American Petroleum Institute Publication 1604, "Closure of Underground Petroleum Storage Tanks" titled "Temporarily Out-of-Service," incorporated herein by reference, as amended and supplemented, no later than the end of the third month in which the system is out-of-service.

Description of Noncompliance: The owner and operator of an underground storage tank system which was out-of-service for greater than or equal to three months failed to follow the guidelines in the American Petroleum Institute (API) Publication 1604 by disconnecting and capping product lines.

- v. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(e), the owner and operator intending to put an out-of-service underground storage tank system back into service shall: 1. Submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2, at least 30 calendar days prior to introducing product into the underground storage tank system, including documentation that corrosion protection was operated and maintained in accordance with (c)2ii above and N.J.A.C. 7:14B-5.2 during the out-of-service period; and 2. The New Jersey Underground Storage Tank Facility Certification Questionnaire shall include a statement from a certified installer pursuant to N.J.A.C. 7:14B-13, certifying that the system is properly designed and capable of being put back into service in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or in accordance with the manufacturer's instructions.

Description of Noncompliance: The owner and operator failed to update the UST registration to show the out of service tank(s) were put back into service and/or failed to provide contractor certification.

5. As the result of a compliance evaluation conducted on December 14, 2023, the Department has determined that RESPONDENTS failed to comply with applicable requirements as follows:

- a. **Requirement:** Pursuant to N.J.A.C. 7:14B-15.1(h), the owner and operator shall identify the financial assurance mechanism being used to comply with this subchapter on the New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2(c)9 and submit to the Department evidence of financial assurance with any supporting documentation. An owner and operator shall maintain evidence of financial assurance at the site or at the owner or operator's place of business.

Description of Noncompliance: The owner and operator failed to maintain evidence of financial assurance.

- b. **Requirement:** Pursuant to N.J.A.C. 7:14B-15.2(a), owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence or pre-incident amounts as follows: 1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; 2. For all other petroleum underground storage tanks:

\$250,000; and 3. For underground storage tanks systems containing hazardous substances other than petroleum: \$1,000,000.

Description of Noncompliance: The owner and operator failed to have financial responsibility assurance mechanism as required.

- c. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(a), the owner and operator shall register each underground storage tank facility with the Department pursuant to N.J.A.C. 7:14B-2.2.

Description of Noncompliance: The owner and operator failed to properly register all regulated tanks with the Department.

- d. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.1(a), owners and operators of underground storage tank systems shall provide a method, or combination of methods, of release detection that: 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product; 2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and 3. Meets the performance requirements in N.J.A.C. 7:14B-4A, 6.5 or 6.6, as applicable, with any performance claims and the manner of determination of the performance claims described in writing by the equipment manufacturer or installer. Permanent methods installed on or after September 4, 1990 shall be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Description of Noncompliance: The owner and operator failed to perform an acceptable method of release detection monitoring on the tanks and/or product piping.

- e. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(d), [The owner and operator shall ensure that unless the requirements of N.J.A.C. 7:14B-9.1(c) were met] any underground storage tank system which is out of service for greater than 12 months shall be closed in accordance with N.J.A.C. 7:14B-9.2 through 9.3.

Description of Noncompliance: The owner and operator failed to close the underground storage tank system which was out of service for greater than 12 months.

- f. **Requirement:** Pursuant to N.J.A.C. 7:14B-15.2(a), owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence or pre-incident amounts as follows: 1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; 2. For all other petroleum underground storage tanks: \$250,000; and 3. For underground storage tanks systems containing hazardous substances other than petroleum: \$1,000,000.

Description of Noncompliance: The owner and operator failed to have financial responsibility assurance mechanism as required.

6. As the result of a compliance review conducted on December 14, 2023, the Department has determined that RESPONDENTS has **not** achieved compliance with the all the Requirements listed above.
7. Based on the facts set forth in these FINDINGS, the Department has determined that RESPONDENTS has violated the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and/or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the regulations promulgated pursuant thereto, specifically,

| | | |
|------------------------|----------------------------|-------------------------|
| N.J.A.C. 7:27- 8.3(b) | N.J.A.C. 7:14B- 4.1(a)3ii | N.J.A.C. 7:14B- 6.5(a)4 |
| N.J.A.C. 7:27-16.3(e)1 | N.J.A.C. 7:14B- 5.10(a)1ii | N.J.A.C. 7:14B- 6.6(a)1 |
| N.J.A.C. 7:27-16.3(f) | N.J.A.C. 7:14B- 5.14(a) | N.J.A.C. 7:14B- 9.1(a) |
| N.J.A.C. 7:27-16.3(j)1 | N.J.A.C. 7:14B- 5.6(b) | N.J.A.C. 7:14B- 9.1(b) |
| N.J.A.C. 7:27-16.3(t) | N.J.A.C. 7:14B- 5.9(b) | N.J.A.C. 7:14B- 9.1(e) |
| N.J.A.C. 7:14B- 2.1(a) | N.J.A.C. 7:14B- 6.1(a) | N.J.A.C. 7:14B- 9.1(d) |
| N.J.A.C. 7:14B- 2.1(b) | N.J.A.C. 7:14B- 6.1(h) | N.J.A.C. 7:14B-15.1(h) |
| N.J.A.C. 7:14B- 2.1(c) | N.J.A.C. 7:14B- 6.2(a)2i | N.J.A.C. 7:14B-15.2(a) |

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

8. RESPONDENTS shall immediately comply with the following:
- a. Submit a completed Underground Storage Tank Facility Certification Questionnaire: updating the owner information, financial responsibility and tank status to out of service.
 - b. Obtain a Notice of Intent to Close (NOI) permit
 - c. Retain a Licensed Site Remediation Professional
 - d. Submit a 14-day notification to 14dayUSTnotice@dep.nj.gov
 - e. Permanently close the tank system
 - f. Submit a completed Underground Storage Tank Facility Certification Questionnaire to update the tank status to closed.
9. This Order shall be effective upon receipt by RESPONDENTS or someone on the violator's behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

AND

NOTICE OF RIGHT TO A HEARING

10. This notice shall be effective upon receipt by RESPONDENTS or someone on the violator's behalf authorized to accept service.

11. Pursuant to N.J.S.A. 58:10A-10, N.J.S.A. 26:2C et seq. and/or N.J.A.C. 7:1E-6.5, 6.6, 6.7 and 6.8 and N.J.A.C. 7:26C-9 et seq and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against the RESPONDENTS in the amount of **\$45,000.00**. The Department's rationale for the civil administrative penalty is set forth in the enclosed Penalty Assessment Worksheets, and incorporated herein.
12. Pursuant to N.J.S.A. 58:10A-10(c)5, the Department may amend the civil administrative penalty amount for any economic benefit (in dollars) which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of this Act.
13. Pursuant to N.J.S.A. 52:14B-1 et seq., RESPONDENTS are entitled to request a hearing. RESPONDENTS shall, in its request for a hearing, complete and submit the enclosed **ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM** along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this NOTICE.
14. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
15. If a timely request for a hearing is received, payment of the penalty is due when RESPONDENTS receive a notice of the denial of the request, or, if the hearing request is granted, when RESPONDENTS withdraw the request or abandons the hearing, or, if the hearing is conducted, when RESPONDENTS receive a final decision from the Commissioner in this matter.
16. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

GENERAL PROVISIONS

17. This AONOCAPA is binding on RESPONDENTS, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
18. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.

19. This AONOCAPA is issued only for the violation(s) identified in the FINDINGS hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
20. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve RESPONDENTS of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
21. Pursuant to N.J.S.A. 58:10A-10(e), any person who violates the provisions of the Water Pollution Control Act or any code, rule, or regulation promulgated pursuant thereto shall be liable to a penalty of not more than \$50,000 per day to be collected in a civil action, and any person who violates a NOCAPA issued pursuant to N.J.S.A. 58:10A-10(b), including this NOCAPA, or a court order issued pursuant to N.J.S.A. 58:10A-10(c), or who fails to pay a civil administrative penalty assessed pursuant to N.J.S.A. 58:10A-10(d) in full after it is due is subject to a civil penalty not to exceed \$50,000 per day of such violations. Each day during which the violation continues constitutes an additional, separate and distinct offense.
22. Pursuant to N.J.S.A. 58:10A-10f(1)a, any person who purposely, knowingly, or recklessly violates the Water Pollution Control Act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime in the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, be subject to a fine of not less than \$25,000 and not more than \$250,000 per day of violation, or by imprisonment, or by both.
23. Pursuant to N.J.A.C. 7:14B-2.7(b), the Department may revoke the [UST] registration of a facility upon a determination of the following: 1. The New Jersey Underground Storage Tank Facility Certification Questionnaire contains false or inaccurate information; 2. The owner or operator has failed to submit a New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2; 3. The owner or operator has failed to pay the Facility Certification fee pursuant to N.J.A.C. 7:14B-3.2; 4. An authorized representative is denied access to the facility during any reasonable hour; or 5. The owner or operator has failed to comply with any requirement of the State Act or this chapter.
24. Pursuant to N.J.S.A. 26:2C-19(b) and N.J.S.A. 26:2C-19(d), any person who violates the provisions of the Air Pollution Control Act, or any code, rule regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be liable to a penalty of up to \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.
25. Pursuant to N.J.S.A. 26:2C-19(f)1, any person who purposely or knowingly violates the provisions of the Air Pollution Control Act, or any code, rule, regulation, administrative order or court order, promulgated or issued pursuant thereto, is guilty of a crime of the third degree.

26. Pursuant to N.J.S.A. 26:2C-19(f)2, any person who recklessly violates the provisions of the Air Pollution Control Act or any code, rule, regulation, administrative order or court order promulgated or issued pursuant thereto, is guilty of a crime of the fourth degree.
27. Pursuant to N.J.A.C. 7:27-8.16(a), the Department may revoke a [Air] permit or certificate if the permittee: 1. Uses, or allows to be used, equipment or control apparatus not in compliance with the permit or certificate, or with any applicable Federal, or State law, regulation, or rule; 2. Takes any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit under any applicable provision at N.J.A.C. 7:27-8.17 through 22, without complying with the applicable provision; 3. Fails to allow lawful entry by authorized representatives of the Department, pursuant to N.J.A.C. 7:27-1.31; 4. Fails to pay any penalty assessed pursuant to a final order issued by the Department; 5. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.6, within 60 days of receipt of a fee invoice or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed; 6. Fails to reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department: i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a preconstruction permit or certificate; or 7. Fails to dispose lawfully of all aqueous and solid wastes generated as a result of the operation of the equipment or control apparatus.

DATE: 12/20/23



Michael Hollis, Chief
Bureau of UST Compliance and Enforcement

BASE UST - PENALTY ASSESSMENT WORKSHEET**Respondent(s):** PC SHELL PORTFOLIO LLC & PONTUS CAPITAL LLC**Date of Violation:** 03/22/2022 and 12/14/2023**Rule violated as listed in N.J.A.C 7:14B-8.18 Table 2:** N.J.A.C. 7:14B-2.1(a) Failure to register the tank systems.**Primary Penalty for rule violated:** \$5,000.00**Rule violated as listed in N.J.A.C 7:14B-8.18 Table 2:** N.J.A.C. 7:14B-6.1(a) Failure to maintain release detection monitoring for the tanks and product piping.**Primary Penalty for rule violated:** \$5,000.00**Rule violated as listed in N.J.A.C 7:14B-8.18 Table 2:** N.J.A.C. 7:14B-15.2(a) Failure to maintain financial assurance for the tank systems.**Primary Penalty for rule violated:** \$5,000.00**Rule violated as listed in N.J.A.C 7:26C-9.5(b):** N.J.A.C. 9.1(e) Failure to comply with 3 month of service requirements.**Primary Penalty for rule violated:** \$15,000.00**Rule violated as listed in N.J.A.C 7:26C-9.5(b):** N.J.A.C. 9.1(d) Failure to close tanks which have been out of service greater than 12 months.**Primary Penalty for rule violated:** \$15,000.00**TOTAL CIVIL ADMINISTRATIVE PENALTY** = **\$45,000.00****VIOLATIONS CITED WITHOUT PENALTY ASSESSMENT**

The following is a list of violations that were cited in this document, but did not result in a penalty assessment. In most cases, a penalty was not assessed because the violation qualified for a grace period in accordance with P.L. 1995, c.296 (N.J.S.A. 13:1D-125 et seq.) "Fast Track Compliance Law".

| | | |
|------------------------|----------------------------|-------------------------|
| N.J.A.C. 7:27- 8.3(b) | N.J.A.C. 7:14B- 4.1(a)3ii | N.J.A.C. 7:14B- 6.5(a)4 |
| N.J.A.C. 7:27-16.3(e)1 | N.J.A.C. 7:14B- 5.10(a)1ii | N.J.A.C. 7:14B- 6.6(a)1 |
| N.J.A.C. 7:27-16.3(f) | N.J.A.C. 7:14B- 5.14(a) | N.J.A.C. 7:14B- 9.1(a) |
| N.J.A.C. 7:27-16.3(j)1 | N.J.A.C. 7:14B- 5.6(b) | N.J.A.C. 7:14B- 9.1(b) |
| N.J.A.C. 7:27-16.3(t) | N.J.A.C. 7:14B- 5.9(b) | N.J.A.C. 7:14B-15.1(h) |
| N.J.A.C. 7:14B- 2.1(b) | N.J.A.C. 7:14B- 6.1(h) | |
| N.J.A.C. 7:14B- 2.1(c) | N.J.A.C. 7:14B- 6.2(a)2i | |

**Administrative Hearing Request Checklist
and Tracking Form**

I. Document Being Appealed: **EA ID # PEA230001 - 007629**
December 20, 2023
Date Document Issued

II. Person Requesting Hearing (Each Respondent named in the Enforcement Document, who wants to contest the Enforcement Document must individually file a hearing request):

| | |
|--------------|----------------------------------|
| _____ | _____ |
| Name/Company | Name of Attorney (if applicable) |
| _____ | _____ |
| _____ | _____ |
| Address | Address |
| _____ | _____ |
| Telephone # | Telephone # |

- III. Please Include the Following Information As Part of Your Request:
- A. The date the alleged violator received the Enforcement Document.
 - B. **A copy of the Enforcement Document** and a list of all issues being appealed.
 - C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
 - D. The defenses to each of the findings of fact in the enforcement document;
 - E. Information supporting the request;
 - F. An estimate of the time required for the hearing;
 - G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
 - H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
 - I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
Office of Administrative Hearings and Dispute Resolution
ATTENTION: Adjudicatory Hearing Requests
401 E. State Street
Mail Code 401-07A
P.O. Box 420
Trenton, NJ 08625-0420
- 2. Michael Hollis, Chief
Bureau of UST Compliance and Enforcement
New Jersey Department of Environmental Protection
Mail Code 09-03
PO Box 420
Trenton, NJ 08625-0420
- 3. All co-permittees (w/attachments)

IV. Signature: _____ Date: _____

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

INVOICE NO.
 232007480

COMPLIANCE AND ENFORCEMENT

| Program Interest |
|----------------------------|
| VOORHEES GULF |
| 1100 HADDONFIELD BERLIN RD |
| Voorhaes, NJ. 08043 |
| 007629 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Amount Due |
|--------------|
| \$ 45,000.00 |

| Billing Date |
|--------------|
| 12/19/23 |

| Due Date |
|----------|
| 01/22/24 |

| NJEMS Bill ID |
|-----------------|
| 000000265355900 |

| Summary | |
|--|------------------|
| Total Amount Assessed | 45,000.00 |
| Amount Received Before Creating Installment Plan (if installment plans is allowed) | 0.00 |
| Amount Transferred To Installment Plan | 45,000.00 |
| Installment Amount | 0.00 |
| Total Amount Credited | 0.00 |
| Total Amount Debited (Other Than Amounts Assessed) | 0.00 |
| Total Amount Due | 45,000.00 |

REMINDER:

YOU CAN PAY THIS BILL ONLINE WITH A CREDIT CARD OR E-CHECK.
 GO TO [HTTP://WWW.NJ.GOV/DEP/ONLINE](http://www.nj.gov/dep/online) AND CLICK PAY A PAPER INVOICE.
 THE SYSTEM WILL ASK FOR THE INVOICE NUMBER THAT IS FOUND AT THE TOP-RIGHT CORNER OF THIS BILL.
 THERE IS NO FEE FOR PAYING VIA E-CHECK; FOR CREDIT CARD USE, 2.0% OF THE TOTAL + \$.50 IS CHARGED.
 TO PAY BILL BY MAIL SEND A CHECK PAYABLE TO TREASURER-STATE OF NEW JERSEY.
 WRITE INVOICE NUMBER AND PROGRAM INTEREST NUMBER ON CHECK.
 RETURN CHECK WITH BOTTOM PORTION OF THIS INVOICE TO THE NJ DEPARTMENT OF TREASURY.
 IF YOU HAVE QUESTIONS SEE BACK OF INVOICE FOR CONTACT INFORMATION.

See Back Of Page for Billing Inquiries

INVOICE NO.
 232007480

D9901F (R 3/14/02)

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

INVOICE NO.
 232007480

COMPLIANCE AND ENFORCEMENT

| NJEMS Bill ID |
|-----------------|
| 000000265355900 |

| Program Interest ID |
|---------------------|
| 007629 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Billing Date |
|--------------|
| 12/19/23 |

| Due Date |
|----------|
| 01/22/24 |

| Amount Due |
|--------------|
| \$ 45,000.00 |

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment →

| |
|----|
| \$ |
|----|

RETURN THIS PORTION

with your check made payable to:

TREASURER - STATE OF NEW JERSEY
 and mail to:

NJ DEPARTMENT OF TREASURY
 DIVISION OF REVENUE
 PO BOX 417
 TRENTON, NJ 08646-0417

95

BRONSON OIL LEASE HOLDINGS LLC
 ATTN: ALEX PRAKHIN
 1800 CHAPEL AVE W STE 160
 Cherry Hill NJ 08002-4605

EP10101010101010100000070602091111110045000000002252320074800955

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
 232007480

| Program Interest |
|--|
| VOORHEES GULF 1100 HADDONFIELD BERLIN RD Voorhees, NJ. 08043 007629 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Amount Due |
|--------------|
| \$ 45,000.00 |

| Billing Date |
|--------------|
| 12/19/23 |

| Due Date |
|----------|
| 01/22/24 |

| NJEMS Bill ID |
|-----------------|
| 000000265355900 |

AONOCAPA
 Prescribed Enforcement Action
 This bill was created by the Assessments Trigger.

ASSESSMENTS

Start-End Date: 12/19/2023-12/19/2023 Activity: PEA230001

Assessment Type: PENALTY

Regulatory Basis:

Status: Open (Pending Payment)

Amount: \$ 45000.00

Total Amount Assessed: \$ 45,000.00

Exhibit C

Copy **ADD TO Informed Delivery** (<https://informedelivery.usps.com/>)**Latest Update**

Your item was delivered to an individual at the address at 12:00 pm on December 26, 2023 in LA JOLLA, CA 92037.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered**Delivered, Left with Individual**

LA JOLLA, CA 92037

December 26, 2023, 12:00 pm

[See All Tracking History](#)

PC SHELL PORTFOLIO LLC & FONTS CAPITAL LLC
875 Prospect Street - Suite 303
La Jolla, CA 92037

**RE: ADMINISTRATIVE ORDER AND NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT
VOORHEES GULF
EA ID #: PEA230001 - 007629**

Dear Mr. Press:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department pursuant to the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

The Department may be available to meet informally with the principals of the case to discuss the enclosed enforcement action. Should such a meeting be requested and granted, be advised this does not affect the time frame within which you may request an administrative hearing under the **NOTICE OF RIGHT TO A HEARING** provision in the enclosed Notice of Civil Administrative Penalty Assessment.

If multiple respondents are named, each respondent interested in contesting the AONOCAPA must individually file an Administrative Hearing Request Checklist and Tracking Form. The Administrative Hearing Request Checklist and Tracking Form is enclosed with this letter.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625
Attorney for Plaintiffs

By: Samuel R. Simon
Deputy Attorney General
Attorney ID No. 288191973
samuel.simon@law.njoag.gov
(609) 376-2740

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CAMDEN COUNTY

| | | |
|--|---|----------------------------|
| NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, | : | |
| | : | <u>Civil Action</u> |
| | : | |
| Plaintiff, | : | |
| | : | |
| | : | Docket No. C 50-24 |
| v. | : | |
| | : | CERTIFICATION OF ROBERT L. |
| PC SHELL PORTFOLIO, LLC, | : | LUX IN SUPPORT OF MOTION |
| et al., | : | FOR ORDER TO SHOW CAUSE |
| | : | |
| | : | |
| Defendants. | : | |

I, Robert L. Lux, of full age, hereby certify as follows:

1. I am a graduate of The Pennsylvania State University, where I earned the degree of Bachelor of Science in Geoscience in 1984. I began my career with New Jersey's Department of Environmental Protection ("DEP") in February of 1985 as a Geologist Trainee. I have provided training to both internal DEP staff and to external parties. I was the DEP lead for both the original Conceptual Site Model Guidance document and the original Technical Impracticability Guidance document. My current duties and responsibilities as Section Chief include Supervising 16 staff members who work in the

Compliance Assistance Unit and the Responsible Party Investigation Unit. These two units investigate, plan, implement, and oversee enforcement actions related to remediation of sites within New Jersey that are contaminated with "hazardous pollutants" and "hazardous substances" (collectively, "hazardous substances"), as defined in N.J.S.A. 58:10A-3(u) and 58:10-23.11b, respectively. I was promoted to my current position as Section Chief on March 23, 2002.

2. PC Shell Portfolio, LLC (PC Shell or Defendant) is the current owner of the real property located at 1100 Haddonfield Berlin Road, Voorhees Township, Camden County, also known as Block 201, Lot 1 on the Tax Map of Voorhees Township ("the Property"), which it purchased on December 27, 2012. At no time did PC Shell have a New Jersey Pollution Discharge Elimination System ("NJPDES") permit for the Property, and were not exempted therefrom.
3. The Property consists of approximately 0.87 acre of land, on which are situated a building containing an office and several garage bays, multiple gas dispensing stations, three (3) underground storage tanks ("USTs"), and surface parking.
4. The Property has a long history of usage as a gas station and/or auto repair facility dating back to the 1950s, as set forth in the following chart:

| <u>Name of Owner</u> | <u>Dates of Ownership</u> |
|-------------------------------|-------------------------------|
| PC Shell Portfolio, LLC | Dec. 27, 2012 - present |
| HRE Gas, LLC | Mar. 28, 2008 - Dec. 27, 2012 |
| Bronson Oil Fee Holdings, LLC | Oct. 31, 2007 - Mar. 28, 2008 |
| Motiva Enterprises LLC | Sept. 4, 1998 - Oct. 31, 2007 |
| Shell Oil Co. | Oct. 15, 1985 - Sept. 4, 1998 |
| Atlantic Richfield Co. | prior to Oct. 15, 1985. |

5. On numerous occasions, beginning in February 2022, the Camden County HazMat ("CCHM") was called to the Property to evaluate petroleum-like odors emanating from storm drains located at 1025 Laurel Oak Road, Voorhees Township, Camden County, a building located immediately west of the Property.
6. Since February 2022, there have been continued observations of petroleum/motor oil fuel odors in the nearby storm drains and ambient air. In addition, petroleum sheens and/or petroleum product were observed in the storm drains located at 1025 Laurel Oak Road, and extending into a surface water body known as the Nicholson Branch. Light Non-Aqueous Phase

Liquid ("LNAPL") was also present in monitoring wells located on-site and off-site.

7. Equilon Enterprises LLC ("Equilon"), d/b/a Shell Oil Products ("Shell Oil"), a previous Property owner, has denied liability for the contamination identified since 2022.
8. The Licensed Site Remediation Professional ("LSRP") representing Equilon has informed DEP that they will no longer be deploying booms in the Nicholson Branch or removing product from the monitoring wells.
9. Defendant has been on notice since at least early February 2022 that the Property poses an environmental hazard. On February 2, 2022, the Voorhees Fire Department ("VFD"), the natural gas company, and CCHM were called out to the parking lot of the office building located across the street from the Property (1025 Laurel Oak Rd.) to respond to multiple reports emanating from office building employees of the smell of gas in the area -- odors that had begun four to five days earlier, in late January 2022. The fire department flushed the storm drains with 3000 gallons of water to disburse the gasoline and reduce the level of combustible gases that had built up and which caused the odor. Combustible gases present a particularly dangerous condition because a spark could set them ablaze. The incident was reported to DEP and assigned incident Case # 22-02-02-1338-28.
10. Six weeks later, on March 16, 2022, a CCHM re-inspection of the affected storm drains revealed the presence of combustible gases inside the drains. VFD was again called out to the Property to flush the storm drains with water in an attempt to disperse the gasoline and reduce the level of combustible gases that had built up. VFD flushed the storm drain designated "Field 1" with 1500 gallons of water, and the storm drain designated as "Parking Lot A" with an additional 500 gallons of water. In addition, a mobile ventilation unit was used to ventilate the entirety of Parking Lot A's storm drain system. No combustible gases were detected after these efforts were completed.
11. This state of affairs would shortly change. Two days later, on March 18, 2022, CCHM visited the Property to re-inspect the storm drains. Its combustible gas meter registered vapors at 6% of the Lower Explosive Level¹ in the

¹ The lower explosive limit ("LEL") is the lowest concentration of a substance in air that will produce a flash of fire when an ignition source is present. CCHM's combustible

Parking Lot A storm drain, up from 0% two days before. This alarming reading compelled the replacement of a gasoline-saturated boom in the storm drain. The storm drain was flushed using a hydrant, and a mobile ventilation system was again pressed into service to reduce the concentration of gasoline vapors. Afterwards, no combustible gases were detected. CCHM's measurements of the gasoline product level in the three USTs at the Property revealed gasoline product ranging in depth from 6 to 16 inches.

12. The preceding incidents led to an April 20, 2022 on-site meeting with personnel from DEP's Bureau of Emergency Response ("BER"); CCHM; and LSRP John Romano of Sovereign Consulting, who had been retained by Equilon Enterprises LLC d/b/a/ Shell Oil Products US, a previous property owner. In excess of 12 inches of gasoline/LNAPL was found in four (4) existing monitoring wells ("MW") related to the site, including one well located at the tree line of Nicholson Branch. On April 21, 2022, LSRP Romano reported this discharge of hazardous substances to the Department's Environmental Hotline, and DEP incident #22-04-21-1436-09 was created.
13. The existing monitoring wells in which the gasoline/LNAPL was found are designated MW1, MW3, MW9, and MW15. All wells were installed by Handex on behalf of Shell Oil Company. MW1 was installed on September 17, 1986, and is located in the apron of the UST field and pump island area. MW3 was also installed on September 17, 1986, and is located into the downgradient side of the UST field apron. MW9 was installed on February 28, 1989, and is located on the 1025 Laurel Oak Property across Haddon Avenue and closest to the wooded wetland area that buffers Nicholson Branch. MW15 was installed on March 12, 1990, and is located on the 1025 Laurel Oak Property, across Haddon Avenue. The on- and off-site monitoring wells, which total 22 in number, were used to determine the extent of a contaminant plume.
14. Less than two weeks later, on May 2, 2022, SKM Petroleum & Tank Testing attempted to perform tank and line tightness tests for the three on-site USTs. Two of the three USTs failed their integrity tests, preventing line tightness tests on those units. Test results on the USTs disclosed that the

gas meter detecting an LEL of 6% indicates that they are potentially dealing with a flammable substance/atmosphere.

volume of gasoline remaining in the USTs ranged from a low measurement of 21 gallons to a high measurement of 58 gallons.

15. Two months later, on July 3, 2022, DEP received a phone call from a homeowner near the Property reporting gasoline odors at her residence. The homeowner reported that she often smelled gasoline odors after rain. The incident was reported to DEP and assigned incident Case # 22-07-03-0815-27.
16. Four days later, on July 7, 2022, LSRP Romano notified the Department that he was changing out the sorbent booms in the storm drains on a weekly basis. However, the LSRP reported that his client had elected not to replace the sorbent booms after December 31, 2022. On February 8, 2023, DEP Emergency Response, DEP UST Compliance and Enforcement ("UST C&E"), DEP Bureau of Enforcement and Investigations ("BEI"), and CCHM completed a joint site visit to gain a better understanding of the site's current conditions.
17. The above sequence of events set in motion the long and fruitless series of DEP attempts outlined below to compel PC Shell to comply with its legal obligations, all of which have fallen on deaf ears.
18. On April 18, 2022, the DEP UST C&E issued a Notice of Violation ("NOV") to PC Shell for various UST violations.
19. On April 27, 2022, BEI issued a NOV to, inter alia, defendant PC Shell in its capacity as a statutory co-permittee of the Ground Water Remedial Action Permit ("GWRAP") for failure to submit the required biennial certifications.
20. On July 5, 2022, BEI issued a Notice of Violation to PC Shell for failure to retain an LSRP as well as for failure to submit a Confirmed Discharge Notification Form ("CDN") for DEP incident cases #22-02-02-1338-28 and #22-04-21-1436-09.
21. On August 11, 2022, BEI issued an expedited site-specific timeframe letter ("Letter") to PC Shell and others under the authority of N.J.S.A. § 58:10C-28 and its implementing regulation, N.J.A.C. 7:26C-3.4. The Letter included the requirement of expedited submission of the Initial Receptor Evaluation ("IRE"), an LNAPL Reporting Form, an LNAPL Interim Remedial Measure ("IRM") Report, and a Site Investigation Report ("SI").
22. On September 7, 2022, BEI sent an email to Andrew Haley, a Member and Vice President of Pontus Capital, specifically

noting and memorializing the presence of gasoline in both the monitoring wells and the Nicholson Branch.²

23. On September 20, 2022, BEI placed three (3) telephone calls to numbers associated with Michael Press, Andrew Haley, and Scott Stokas of PC Shell. BEI left voicemails for Michael Press and Andrew Haley, and was able to speak with Scott Stokas directly. Following up on the BEI-issued August 11, 2022 Letter and its requirements, BEI orally explained to Defendant Scott Stokas the Department's concern with LNAPL in the monitoring wells and the Nicholson Branch. Defendant Stokas orally requested that DEP send him an email that he could share with two other Pontus Capital officers, Defendant Andrew Haley and Defendant Michael Press. On September 20, 2022, BEI sent a detailed email to defendant Scott Stokas summarizing the phone call from earlier that day. The BEI email encouraged defendant Pontus Capital to hire an LSRP who would oversee remediation of the Property, advising defendants to contact DEP if it wanted a meeting. The September 20, 2022 email attached the August 11, 2022 Letter. Defendant Stokas did not take any action relating to the email or the Letter.
24. On September 26, 2022, in the hope of persuading Defendants to remediate the Property, BEI emailed Defendant Stokas a spreadsheet of current LSRPs and web links thereto. Defendant Stokas did not respond.
25. During a phone call with Defendant Haley on October 6, 2022, BEI described the areas of non-compliance at the Property. BEI advised defendant Haley that Equilon's LSRP, John Romano of Sovereign Consulting, had advised DEP that (1) Equilon was not remediating LNAPL, and (2) Equilon was authorizing work only on the Ground Water Remedial Action Permit ("GWRAP") requirements. During the course of the phone call, BEI explained why defendant PC Shell was a responsible party under the Spill Act pursuant to N.J.S.A. 58:10-23.11f.a.(2)(b).

² PC Shell is the current property owner. However, PC Shell is a Limited Liability Company (LLC) consisting of a sole member named Agreh, LLC. Agreh's managing partner, and thus the entity that directs and controls PC Shell, is Pontus Capital LLC ("Pontus Capital"). DEP's contacts with PC Shell have all been with Pontus Capital employees or staff (for example, VP Andrew Haley).

26. On November 11, 2022, LSRP John Romano sent a letter to the Department and copied: (1) the Office of Camden County Public Safety, (2) Equilon; (3) Andrew Haley of PC Shell; (4) DEP Bureau of Emergency Response; and (5) Alex Prakhin of Bronson Oil Fee Holdings LLC ("Bronson")³, advising them and each of them that Equilon was monitoring the booms on the Nicholson Branch, but that the monitoring would be discontinued on December 31, 2022. The November 11, 2022 Romano Letter stated that Equilon was not responsible for the 2022 release.
27. Two months later, on January 11, 2023, plaintiff Department issued a Directive and Notice to Insurers ("Directive") addressed to defendant PC Shell and others. A true and correct copy of the Directive is attached hereto as Exhibit A. The Directive was served upon recipients via email and through the United States Postal Service. The Directive required Defendant PC Shell to clean up and remove the hazardous substances discharged at the Property by taking the following actions:
- a. retain an LSRP;
 - b. remove the three USTs;
 - c. submit a Site Investigation Report for the UST removals;
 - d. submit an Initial Receptor Evaluation;
 - e. submit an LNAPL Report;
 - f. establish a Remediation Funding Source ("RFS").
28. The Directive and accompanying cover letter gave the recipients seven (7) days to reply to the Department on whether PC Shell would comply, including signing and returning the proffered Site Access Agreement that DEP had sent to recipient, and which would permit the Department to enter the Property for inspection and sampling if PC Shell did not intend to comply with the Directive. The Directive advised recipients that failure to comply would increase recipients' potential liability to the Department to an amount three (3) times the cost of the cleanup and removal of the discharge, and may subject a lien to be placed on recipients' real and personal property.
29. Defendant PC Shell received the Directive via email on January 11, 2023, and via Certified Mail on January 14, 2023.

³ Bronson Oil Fee Holdings, LLC owned the property during the time period October 31, 2007 to March 28, 2008.

30. On January 23, 2023, BEI telephoned defendant PC Shell, and left phone messages and sent emails for defendants Andrew Haley, Michael Press, and Scott Stokas in an attempt to follow up on the Directive and PC Shell's receipt thereof on January 11 and January 14, 2023. The phone messages explained that PC Shell was a responsible party under the Spill Act pursuant to N.J.S.A. 58:10-23.11f.a.(2)(b), and that Equilon's LSRP John Romano was overseeing only the GWRAP, and not incident cases #22-02-02-1338-28 and #22-04-21-1436-09.
31. Three days later, on January 26, 2023, BEI telephoned defendant Andrew Haley and left a detailed voicemail reiterating the advice and guidance that BEI had left Defendants in the January 23 voicemail messages. BEI followed up the January 26 phone call with an email asking when Defendant Haley could meet with representatives from BEI. Haley ignored the voicemail and the follow-up email.
32. Five days later, on January 31, 2023, BEI emailed PC Shell to advise it that BEI would be conducting a site inspection at 10:00 a.m. on February 8, 2023, and that PC Shell was welcome to send a representative.
33. On February 2, 2023, BEI and a New Jersey Deputy Attorney General ("DAG") telephoned Andrew Haley and carefully explained PC Shell's legal responsibility to remediate the Property. BEI and the DAG also explained to Haley that BEI would be conducting the site inspection on February 8, 2023. During that phone call, BEI requested a copy of the lease agreement between PC Shell and its tenant, reiterating its request that PC Shell execute the Site Access Agreement and return it promptly.
34. The same day -- February 2, 2023 -- BEI sent PC Shell a follow-up email that again set forth BEI's requests. As a courtesy, the email included an LSRP Hiring Guide document and another copy of the unexecuted Site Access Agreement. PC Shell ignored the phone call and the email, did not hire an LSRP, did not return the Site Access Agreement, and did not comply with the Directive.
35. On February 13, 2023, the Department of Law informed Haley that DEP had directed it to file a lawsuit to obtain access to the property because PC Shell had not executed and returned the proffered Site Access Agreement, and requested that PC Shell reply without delay. The message was ignored.

36. On December 20, 2023, DEP served an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") upon Michael Press in his capacity as Managing Partner of defendants PC Shell and Pontus Capital. The AONOCAPA was served upon Press via Certified Mail, Return Receipt Requested, and was received on December 26, 2023. PC Shell did not respond to the AONOCAPA within 20 days of December 26, and the AONOCAPA therefore became a Final Agency Order ("FAO") on January 16, 2024. A true and correct copy of the December 20, 2023 AONOCAPA is attached hereto as Exhibit B. A true and correct copy of the U.S. Postal Service proof of delivery of the AONOCAPA is attached hereto as Exhibit C.
37. The December 20, 2023 AONOCAPA informed defendants PC Shell and Pontus Capital that, as a result of on-site inspections conducted March 22, 2022 and December 14, 2023, DEP determined that these entities failed to comply with 24 specific environmental rules and regulations promulgated under the Underground Storage of Hazardous Substances Act ("UST") and the Air Pollution Control Act.
38. The AONOCAPA imposed civil administrative penalties totaling \$45,000 for the violations e, and ordered that PC Shell and Pontus Capital: (a) submit a completed Underground Storage Tank Facility Certification Questionnaire; (b) submit a Notice of Intent to Close ("NOI"); (c) retain an LSRP; (d) submit a 14-day notification to 14dayUSTnotice@dep.nj.gov; (e) permanently close the USTs at the Property; and (f) submit a completed Underground Storage Tank Facility Certification Questionnaire to update the UST status to "closed."
39. In the course of the following months, DEP has repeatedly attempted to reach out to defendants to inform them of their legal responsibilities, but to no avail. PC Shell, Pontus Capital, and their controlling individuals have continued to ignore all attempts by DEP to get them to comply with the legal obligations imposed upon them under the Directive and the AONOCAPA to remediate and clean up the Property, including hiring an LSRP.

40. The contamination must be addressed and remediated. It poses an on-going environmental threat to the wells, Nicholson Creek, the ambient air, and the residents of the community.

CERTIFICATION

I certify that the foregoing statements made by me are true. I further certify that any exhibits attached hereto are true and correct copies. I further certify that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



April 24, 2024
Date

Rob L. Lux
Section Chief,
Compliance Assistance Unit
and Responsible Party
Investigative Unit,
New Jersey Department of
Environmental Protection

Exhibit A



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Contaminated Site Remediation & Redevelopment Program
Enforcement and Information Support Element

SHAWN M. LATOURETTE
Commissioner

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

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

CERTIFIED MAIL

7021 1970 0000 8521 7897

PC SHELL PORTFOLIO, LLC
C/O MICHAEL PRESS, PRESIDENT
875 PROSPECT STREET, SUITE 303
LA JOLLA, CA 92037

JAN 11 2023

CERTIFIED MAIL

7021 1970 0000 8521 7903

NATIONAL REGISTERED AGENTS, INC.
C/O PC SHELL PORTFOLIO, LLC
820 BEAR TAVERN ROAD
WEST TRENTON, NJ 08628

CERTIFIED MAIL

7021 1970 0000 8521 7910

ALEX PRAKHIN & BRONSON OIL LEASE HOLDINGS LLC
1800 CHAPEL AVENUE WEST - SUITE 202
CHERRY HILL, NJ 08002

RE: DIRECTIVE AND NOTICE TO INSURERS

Voorhees Gulf
1100 Haddonfield Berlin Road
Voorhees Township, Camden County
PI#: 007629 – PEA220003

Dear Mr. Press and Mr. Prakhin,

There is enclosed for service upon PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin a Directive and Notice to Insurers issued by the New Jersey Department of Environmental Protection ("the Department").

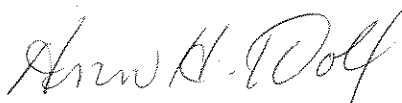
Within 7 days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin must communicate their responses to the Department in writing pursuant to N.J.A.C. 7:26C-9.11(f) regarding their decision to comply

with this Directive and Notice to Insurers. If PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin choose not to follow the enclosed Directive and Notice to Insurers, the required remedial activities will be conducted by the Department using public funds. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin may be responsible for reimbursement of up to three times the amount of public funds expended.

Two Site Access Agreements have been enclosed to allow the Department to conduct remedial activities on-site if PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin do not intend to comply with the enclosed Directive and Notice to Insurers. PC Shell Portfolio, LLC shall return both signed Site Access Agreements within 7 days of receipt of this letter, if PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and Alex Prakhin do not intend to comply with the enclosed Directive and Notice to Insurers. Please be advised that the Deputy Attorney General's Office will initiate Court action to gain Site access if the Department is required to conduct this work and the Site Access Agreement is not signed and returned.

If you would like to discuss this matter, please contact, Jacob Fitzpatrick, Enforcement Manager at the address above, or by telephone at (609) 633-9285.

Sincerely,



Ann H. Wolf, Assistant Director
Enforcement and Information Support Element

Enclosures: Directive and Notice to Insurers

c: Jacob Fitzpatrick, Enforcement Manager, BEI (with enclosures)
Rob Lux, BEI
Samuel Simon, DAG
Andrew Haley, Pontus Capital, Ahaley@pontuscapital.com (via email only)



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Contaminated Site Remediation & Redevelopment Program
Enforcement and Information Support Element
Mail Code 401-06U
P.O. Box 420
Trenton, New Jersey 08625-0420
Tel: (609)633-1480

SHAWN M. LATOURETTE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

DIRECTIVE AND NOTICE TO INSURERS

EA ID #: PEA220003

Site Name: Voorhees Gulf

Respondents: PC Shell Portfolio, LLC,
Bronson Oil Lease Holdings, LLC,
Alex Prakhin, an individual

Location: 1100 Haddonfield Berlin Road
Voorhees Township, Camden County

PI #: 007629

This Directive and Notice to Insurers is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter "the Department" or "NJDEP") by N.J.S.A. 13:1D-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director of the Enforcement and Information Support Element pursuant to N.J.S.A. 13:1B-4. This Directive and Notice to Insurers is issued in order to notify the above-captioned Respondents that the Department, pursuant to the Spill Compensation and Control Act, has determined that it is necessary to cleanup and remove discharges, and in order to notify PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC and Alex Prakhin that the Department believes them to be responsible for the hazardous substances that were discharged and/or the remediation of the discharges.

FINDINGS

1. The Voorhees Gulf Site is located at 1100 Haddonfield Berlin Road, also known as Block 201, Lot 1 on the tax maps of Voorhees Township, Camden County, New Jersey (hereinafter the "Site"). The Site and all other areas to which any hazardous substances discharged on the Site have migrated are collectively referenced hereinafter as "the Contaminated Site".
2. The Site is located directly adjacent to Nicholson Branch, a surface water body classified as FW2-NT (fresh water 2, non-trout), which leads into a deciduous wooded wetlands area, and is also located near multiple residences.

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Underground Storage Tanks (UST)

3. Since at least 1984, the Site has operated as a retail gasoline storage and/or dispensing facility and/or automotive repair facility.
4. Three (3) 12,000-gallon unleaded gasoline USTs (“three (3) USTs”) and associated appurtenances have been onsite since at least 1984 and on June 30, 2022, the UST Registration Certificate expired for these three (3) USTs. The UST Registration Certificate lists Bronson Oil Lease Holdings, LLC as the owner and Alex Prakhin as the operator of the three (3) USTs.

Site Ownership History

5. On October 15, 1985, Atlantic Richfield Company (ARCO) sold the Site to Shell Oil Company.
6. On September 4, 1998, Shell Oil Company and/or Shell Oil Products US sold the Site to Motiva Enterprises, LLC.
7. On October 31, 2017, Motiva Enterprises, LLC sold the Site to Bronson Oil Fee Holdings LLC.
8. On March 21, 2008, Bronson Oil Fee Holdings LLC sold the Site to HRE Gas, LLC.
9. On December 27, 2012, HRE Gas, LLC sold the Site to PC Shell Portfolio, LLC, the current Site owner.

Responsible Parties

10. PC Shell Portfolio, LLC, the current owner of the Site, is a limited liability company formed on December 21, 2012, in the State of Delaware. It was authorized to conduct business in the State of New Jersey on December 26, 2012, with a principal address of 875 Prospect Street, Suite 303, La Jolla, California, 92037.
11. Bronson Oil Lease Holdings, LLC, the owner of the three (3) USTs, is a limited liability company formed on July 13, 2007, in the Commonwealth of Pennsylvania. It was authorized to conduct business in the State of New Jersey in October 2007, with a principal address of 1800 Chapel Avenue West, Suite 202, Cherry Hill, New Jersey 08002.
12. Alex Prakhin, an individual and the president of Bronson Oil Lease Holdings, LLC, is the operator of the three (3) USTs.

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Contamination and Remediation History of the Contaminated Site

13. In May 1985, ARCO, the Site owner at the time, discovered a six-month product inventory loss from the three (3) USTs.
14. In July 1986, light non aqueous phase liquid (LNAPL) was discovered in two (2) of the four (4) onsite monitoring wells. The Department assigned this discharge of hazardous substances case number 86-07-03-11S (LSR100001).
15. On April 24, 2008, a Classification Exception Area/Well Restriction Area (CEA/WRA) was established which encompasses part of the Site and the right of way of Haddon Avenue totaling 0.274 acres. The CEA/WRA has a duration of 16.19 years and is for ground water contamination exceeding the Department's Ground Water Quality Standards (GWQS), specifically, benzene, ethylbenzene, methyl tertiary-butyl ether (MTBE), tertiary butyl alcohol (TBA), and individual/total non-carcinogenic synthetic organic chemicals.
16. On August 28, 2014, a remedial action report was submitted to the Department which proposed no further action for soils, stated that LNAPL had not been detected onsite since 1999, and stated that groundwater contamination would be addressed via monitored natural attenuation in a Ground Water Remedial Action Permit (GWRAP).
17. On August 31, 2015, the Department approved the GWRAP application for which the Department assigned permit activity number RAP150001. This GWRAP listed the Co-Permittees as the current property owner at that time, Bronson Oil Holdings, LLC, and the former property owner, Motiva Enterprises LLC.
18. On December 15, 2016, a Remedial Action Protectiveness/Biennial Certification Form – Ground Water (Bi-Cert) was submitted to the Department pursuant to RAP150001 which stated that the overall trend indicated a decreasing plume; however, the two most recent groundwater sampling events, on August 29 and 30, 2016 and on October 20, 2016, note an increase in contamination over the prior event.
19. Contrary to RAP150001, the GWRAP Co-Permittees did not submit the December 5, 2018 and December 5, 2020 Bi-Certs.
20. On July 31, 2021, the Department approved the UST Registration Certificate for the three (3) USTs.
21. On February 2, 2022, the Camden County Office of Emergency Management (CCOEM) reported to the Department that gasoline had been found in two (2) storm drains across the street from the Site with gasoline odors beginning four (4) to five (5) days prior to discovery. The Department assigned this incident case number 22-02-02-1338-28 (LSR220001). The two (2) storm drains in question discharge into Nicholson Creek, which has a FW2-NT Surface Water Quality

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Classification and is part of a Deciduous Wooded Wetlands area. The Voorhees Fire Department flushed the storm drains and CCOEM continued to monitor the storm drains while utilizing sorbent booms to collect gasoline.

22. In March 2022, CCOEM measured the gasoline level in the three (3) USTs. All three (3) USTs contained gasoline product ranging from 6 inches to 16 inches.
23. On March 22, 2022, the Department's Underground Storage Tank Compliance & Enforcement Unit (UST C&E) imposed a delivery ban on the three (3) USTs, and on March 24, 2022, UST C&E issued a Notice of Violation (NOV) to Bronson Oil Lease Holdings, LLC, the UST owner of record, which outlined multiple violations.
24. On April 18, 2022, UST C&E issued a NOV to PC Shell Portfolio, LLC, the Site owner, which outlined multiple violations.
25. On April 20, 2022, the Department's Emergency Response Unit, CCOEM and licensed site remediation professional (LSRP) John Romano of Sovereign Consulting, who was retained by Equilon Enterprises LLC d/b/a Shell Oil Product, met onsite. Greater than 12 inches of gasoline/LNAPL was found in four (4) monitoring wells related to the Site, including one (1) located at the tree line along Nicholson Creek. On April 21, 2022, LSRP John Romano reported this discharge of hazardous substances to the Department, which assigned case number 22-04-21-1436-09 (LSR220001) to the incident.
26. On April 27, 2022, the Department's Bureau of Enforcement and Investigations-Site Remediation (BEI) issued a NOV to Motiva Enterprises, LLC and Bronson Oil Holdings, LLC as Co-Permittees and PC Shell Portfolio, LLC as a statutory permittee for failure to submit biennial certifications in accordance with the requirement of GWRAP 150001.
27. On May 2, 2022, SKM Petroleum & Tank Testing, on behalf of a prospective UST operator, performed tank and line tightness tests for the three (3) USTs (integrity tests). Two (2) of the three (3) USTs failed their integrity tests; as a result, the lines were not tested. The tests disclosed that the volume of gasoline remaining in the three (3) USTs ranged from 21-gallons to 58-gallons. The prospective UST operator has not assumed any operations.
28. On July 12, 2022, the Department-BEI issued a NOV to PC Shell Portfolio, LLC for failure to retain an LSRP and submit a Confirmed Discharge Notification Form (CDN) for LSR220001.
29. On August 8, 2022, the Department-BEI issued a NOV to Bronson Oil Lease Holdings, LLC for failure to retain an LSRP and submit a CDN for LSR220001.
30. On August 11, 2022, the Department-BEI issued a letter to PC Shell Portfolio, LLC, and Bronson Oil Lease Holdings LLC, setting expedited site-specific timeframes due to the continued, immediate

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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threat of the discharge of free product gasoline/LNAPL into surface water/Nicholson Creek and the proximity of potable wells and residential properties. The expedited timeframes set include the following: October 1, 2022, for submittal of an LNAPL Reporting Form and Initial Receptor Evaluation and November 15, 2022, for submittal of an LNAPL interim remedial measure report and a Site Investigation Report.

31. By the Effective Date of this Directive and Notice to Insurers, the responsible parties have not retained an LSRP nor have the responsible parties met the Site's expedited site-specific timeframes referenced in Paragraph 30 above. To the Department's knowledge, the responsible parties have not conducted any remedial action to address the free product gasoline emanating from the Site.

Liability for Cleanup and Removal Costs

32. The substances referenced in the paragraph(s) above are hazardous substances pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b.
33. PC Shell Portfolio, LLC, as the owner of a known Contaminated Site, is a person in any way responsible for the hazardous substances discharged at the Site, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11g.c, for all cleanup and removal costs the Department has incurred as a result of the hazardous substances discharged at the Site, and is therefore required to remediate the hazardous substances which were discharged to the lands and waters of the State pursuant to N.J.S.A. 58:10B-1.3.
34. Bronson Oil Lease Holdings, LLC is the owner of regulated USTs 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.
35. Alex Prakhin is the operator of regulated USTs 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.
36. Pursuant to N.J.S.A. 58:10-23.11g.c., PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin are strictly liable, without regard to fault, for all cleanup and removal costs.
37. Pursuant to N.J.S.A. 58:10-23.11f., whenever any hazardous substance is discharged, the Department may, in its discretion, act to clean up and remove or arrange for the cleanup and removal of such discharge or may direct any person in any way responsible for the hazardous substance to clean up and remove or arrange for the cleanup and removal of the discharge.

DIRECTIVE

38. Within seven (7) calendar days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall reply to the Department

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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pursuant to N.J.A.C. 7:26C-9.11(f), regarding their decision to comply with this Directive and Notice to Insurers. The response shall be sent to Ann H. Wolf, Assistant Director, Enforcement & Information Support Element, Contaminated Site Remediation and Redevelopment Program, New Jersey Department of Environmental Protection, Mail Code 401-06A, P.O. Box 420, Trenton, New Jersey 08625-0420.

39. The Department hereby directs PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b, to clean up and remove the hazardous substances discharged at the Site by taking the following actions according to the following timeframes, established pursuant to N.J.A.C. 7:26C-3.4. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall conduct the remediation at the Site pursuant to N.J.A.C. 7:26C-2.3. Note the timeframes specified herein do not represent an extension to any past due timeframes and the Department reserves the right to pursue penalties back to the original due dates:
- a. Within fifteen (15) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall retain an LSRP, and thereafter maintain an LSRP for the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-2.3(a)2;
 - b. Within fifteen (15) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC; and Alex Prakhin shall notify the Department, in accordance with N.J.A.C. 7:26C-2.3(a)2, of the name and license information of the LSRP that has been retained to perform remediation;
 - c. Within fifteen (15) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department an Underground Storage Tank Notice of Intent to Close the three (3) USTs in accordance with N.J.A.C. 7:14B-9.2(a);
 - 1) Within thirty (30) days after receipt of the Department's approval/acceptance of the Notice of Intent to Close, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall remove the three (3) USTs, all work shall be conducted in accordance with N.J.A.C. 7:14B-9.2;
 - 2) Within ninety (90) days after receipt of the Department's approval/acceptance of the Notice of Intent to Close, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall close the three (3) USTs in accordance with all applicable state, county, and municipal statutes, permits, rules, and regulations; and
 - 3) Within one hundred fifty (150) days after receipt of the Department's approval/acceptance of the Notice of Intent to Close, PC Shell Portfolio, LLC,

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department a Site Investigation Report for the removed USTs along with an updated UST registration indicating closure. All discharges at the Site discovered during the UST closure event shall be remediated.

- d. Within forty-five (45) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department an Initial Receptor Evaluation;
 - e. Within forty-five (45) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department the LNAPL Reporting Form to report the initial discovery of LNAPL and the initial action taken for LNAPL recovery;
 - 1) Within sixty (60) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall initiate implementation of an LNAPL interim remedial measure, initiate monitoring, and submit to the Department an LNAPL interim remedial measure report;
 - 2) Within sixty (60) days after receipt of this Directive and Notice to Insurers PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall initiate control of ongoing sources and implement interim remedial measures pursuant to N.J.A.C. 7:26E-1.10;
40. The Department hereby directs PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to conduct the following:
- a. Within sixty (60) days after receipt of this Directive and Notice to Insurers and annually thereafter, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit a detailed Remediation Cost Review Form, prepared and certified by the LSRP retained to oversee the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-5.10(a);
 - b. Within sixty (60) days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall establish and maintain a remediation funding source in the form of a remediation trust fund pursuant to N.J.A.C. 7:26C-5 in the amount determined by the detailed, LSRP-certified cost review, pursuant to 7:26C-5.10, for the full estimated cost of remediation of the Contaminated Site;
 - c. Within sixty (60) days after receipt of this Directive and Notice to Insurers, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department the 1% remediation funding source surcharge with the remediation funding

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

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source, and annually thereafter pursuant to N.J.A.C. 7:26C-5.9;

- d. Within sixty (60) days after receipt of each annual 1% remediation funding source surcharge invoice from the Department, PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall submit to the Department at the address listed on the invoice the 1% remediation funding source surcharge for the remediation of the Site pursuant to N.J.A.C. 7:26C-14.2(b)6 and N.J.A.C. 7:26C-5.9;
41. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall provide the Department with access to all applicable documents concerning remediation.
42. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall conduct the required remediation pursuant to the requirements of N.J.A.C. 7:26E, "Technical Requirements for Site Remediation," and N.J.A.C. 7:26C, "Administrative Requirements for the Remediation of Contaminated Sites".
43. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin shall pay all Department applicable fees and oversight costs.

NOTICE

44. Failure to comply with this Directive and Notice to Insurers will increase PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin's potential liability to the Department in an amount equal to three (3) times the cost of the cleanup and removal of the discharge and may cause a lien to be placed on PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC and, Alex Prakhin's real and personal property pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.
45. Pursuant to N.J.S.A. 58:10-23.11u., the Department may issue an Order to require compliance with the Spill Compensation and Control Act. Failure by PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to comply with this Directive may result in the issuance of an Order by the Department, which will subject PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to penalties of up to \$50,000 per day, with each day of violation constituting an additional, separate, and distinct violation of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

RESERVATION OF RIGHTS

46. The Department reserves the right to direct PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin to take or arrange for the taking of any and all additional remediation which the Department determines to be necessary to protect the public health and safety or the environment

PC Shell Portfolio, LLC, Bronson Oil Lease Holdings, LLC, and Alex Prakhin

PEA220003 PI#007629

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and to seek full reimbursement and treble damages for all costs incurred in taking such additional remediation.

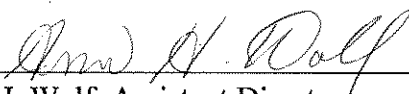
47. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin are advised that the discharges referenced in this Directive and Notice to Insurers may also constitute violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and that PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin may, therefore, be subject to the penalties prescribed for violations of these Acts. The Department reserves all rights and remedies under those Acts as well as any other rights and remedies under any applicable law.

NOTICE TO INSURERS

48. BE ON NOTICE THAT, pursuant to N.J.S.A. 58:10-23.11s., any claims for costs of cleanup or civil penalties by the State and any claim for damages by any injured person may be brought directly against the bond, insurer, or any other person providing evidence of financial responsibility. PC Shell Portfolio, LLC, Bronson Oil Lease Holdings LLC, and Alex Prakhin are therefore urged to contact such insurers and notify them of the issuance of this Directive and Notice to Insurers.

Date:

January 14, 2023



Ann H. Wolf, Assistant Director
Enforcement and Information Support Element

Exhibit B



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Waste & UST Compliance & Enforcement
Bureau of UST Compliance & Enforcement

SHAWN M. LATOURETTE
Commissioner

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

Mail Code 09-03
P.O Box 420
Trenton, NJ 08625-0420
Tel. (609)-633-1205
Fax. (609)-292-3970

CERTIFIED MAIL/RRR

7022 3330 0001 3350 0743

December 20, 2023

Mr. Michael Press, Managing Partner
PC SHELL PORTFOLIO LLC & PONTUS CAPITAL LLC
875 Prospect Street - Suite 303
La Jolla, CA 92037

**RE: ADMINISTRATIVE ORDER AND NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT
VOORHEES GULF
EA ID #: PEA230001 - 007629**

Dear Mr. Press:

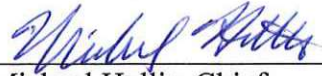
Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department pursuant to the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

The Department may be available to meet informally with the principals of the case to discuss the enclosed enforcement action. Should such a meeting be requested and granted, be advised this does not affect the time frame within which you may request an administrative hearing under the **NOTICE OF RIGHT TO A HEARING** provision in the enclosed Notice of Civil Administrative Penalty Assessment.

If multiple respondents are named, each respondent interested in contesting the AONOCAPA must individually file an Administrative Hearing Request Checklist and Tracking Form. The Administrative Hearing Request Checklist and Tracking Form is enclosed with this letter.

Should you have any questions concerning the enforcement action or wish to request an informal meeting, please contact **Mrs. Jenna DiNuzzo at (609) 672-1309.**

Sincerely,



Michael Hollis, Chief
Bureau UST Compliance and Enforcement

Enclosure



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Division of Waste & UST Compliance & Enforcement
 Bureau of UST Compliance & Enforcement
 Mail Code 09-03
 P.O Box 420
 Trenton, NJ 08625-0420
 Tel. (609)-633-1205
 Fax. (609)-292-3970

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

SHAWN M. LATOURETTE
Commissioner

IN THE MATTER OF

PC SHELL PORTFOLIO LLC

And

PONTUS CAPITAL LLC

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:
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:
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ADMINISTRATIVE ORDER
AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT

EA ID # PEA230001 - 007629

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Chief, Bureau of UST Compliance and Enforcement, pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. PC SHELL PORTFOLIO LLC and PONTUS CAPITAL LLC own a retail gas station located at 1100 Haddonfield Berlin Road, Voorhees, Camden County, NJ. PC SHELL PORTFOLIO LLC and PONTUS CAPITAL LLC shall herein after be collectively known as the "RESPONDENTS".
2. RESPONDENTS maintains on-site "underground storage tank (UST) systems" as defined by N.J.A.C. 7:14B-1.6, consisting of three (3) – 12,000 gallon unleaded gasoline USTs and associated appurtenances. (ID# 007629)
3. Pursuant to N.J.A.C. 7:14B-1.6, all grades of gasoline and diesel fuel are defined as "Motor Fuel" which are further defined as "Hazardous Substances".
4. As the result of a compliance evaluation conducted on March 22, 2022, the Department has

determined that RESPONDENTS failed to comply with applicable requirements as follows:

- a. **Requirement:** Pursuant to N.J.A.C. 7:27- 8.3(b), no person shall operate (nor cause to be operated,) a significant source or control apparatus serving the significant source without a valid operating certificate.

Description of Noncompliance: The owner failed to have a valid air permit. There is a terminated GP-004B permit. The termination date was September 11, 2019.

- b. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(e)1, the owner or operator of a gasoline dispensing facility with an existing Phase II vapor recovery system for the transfer of gasoline into any gasoline-laden vehicular fuel tank shall either: 1. Decommission the system on or before December 23, 2020.

Description of Noncompliance: The owner and/or operator failed to decommission the stage 2 vacuum assist system by the December 23, 2020 deadline.

- c. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(f), the owner or operator of an existing gasoline dispensing facility with existing Phase 2 vapor recovery system shall ensure that: 1. The transfer of gasoline into any gasoline-laden vehicular fuel tank is made using a vapor recovery system that is approved by the Department and that reduces the total applicable VOC emissions into the outdoor atmosphere by no less than 95 percent of the concentration of applicable VOC by volume in the air-vapor mixture displaced during the transfer of gasoline; 2. The vapor recovery system is one of the following: (i) A Phase 2 vapor recovery system that is CARB-certified; (ii) A Phase 2 vapor recovery system that was CARB-certified by CARB prior to July 25, 2001, for which all replacement parts/equip./components and all subsequent construction modifications are: 1. Approved in an Exec. Order or approval letter issued by CARB on or after July 25, 2001; and 2. Do not decrease the VOC emission control efficiency of the system; or (iii) A system equivalent for the purpose of VOC emission control to a CARB certified system and that is approved by the NJDEP and EPA.

Description of Noncompliance: All Stage II related components were either not present or not properly functioning. The site was not decommissioned.

- d. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(j)1, the owner or operator of a gasoline dispensing facility shall perform the tests to demonstrate the facility's vapor control system or equipment are performing properly. 1. Each test set forth in Table 3A, that is applicable to the facility, shall be conducted in accordance with the schedule for testing given in the Table.

Description of Noncompliance: The owner and/or operator failed to have a passing static pressure performance (SPP) test within the last 12 months.

- e. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(j)1, the owner or operator of a gasoline dispensing facility shall perform the tests to demonstrate the facility's vapor control system or equipment are performing properly. 1. Each test set forth in Table 3A, that is applicable to the facility, shall be conducted in accordance with the schedule for testing given in the Table.

Description of Noncompliance: The owner and/or operator failed to have a passing pressure vent valve (PVV) test within the last 12 months.

- f. **Requirement:** Pursuant to N.J.A.C. 7:27-16.3(t), the owner or operator shall of a gasoline dispensing facility shall maintain the following records at the facility: 1. A record of the monthly throughput of gasoline; 2. If the facility is required to test a vapor control system pursuant to 16.3(j): (i) Documentation of the performance of each test required pursuant to 16.3(j), including the date, the name of the testing company, and the test method used; and (ii) A record of the results of each test performed.

Description of Noncompliance: The owner and/or operator failed to maintain testing records.

- g. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(a), the owner and operator shall register each underground storage tank facility with the Department pursuant to N.J.A.C. 7:14B-2.2.

Description of Noncompliance: The owner and operator failed to properly register all regulated tanks with the Department. The tanks are registered as in service however they were out of service at the time of inspection. They must be registered as out of service.

- h. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(b), the owner and each operator shall amend the underground storage tank facility registration pursuant to N.J.A.C. 7:14B-2.2: 1. Within 30 days after a substantial modification to a facility or the underground storage tank system; 2. Within 30 days after a change in the hazardous substance stored in an underground storage tank, except for any regulated substance that contains greater than 10 percent ethanol, greater than 20 percent biodiesel, or as identified by the Department which requires notification 30 days prior to introducing the substance into the system pursuant to N.J.A.C. 7:14B-5.3; 3. Within 30 days after any change in the ownership of the facility, including, but not limited to, the sale or transfer of all or a portion of the ownership; 4. Within 30 days after the addition, removal, replacement, or other change to an operator of the facility; 5. Within 30 days after the addition, removal, or replacement of the facility's designated Class A or Class B operator; 6. Within 30 days after termination, modification, addition, or other change to the financial responsibility for the UST system, as set forth in N.J.A.C. 7:14B-15; 7. Within seven days after taking an underground storage tank system out of service or closure of an underground storage tank system; and 8. At least 30 days prior to putting an out-of-service underground storage tank system back into service.

Description of Noncompliance: The owner and operator failed to submit an UST questionnaire to reflect changes.

- i. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(c), the owner and operator shall only use an underground storage tank upon receipt from the Department of a valid UST registration certificate. The UST registration certificate shall reflect an expiration date, which shall not exceed one year from the date of issuance.

Description of Noncompliance: The owner and operator used an UST system without a valid UST registration.

- j. **Requirement:** Pursuant to N.J.A.C. 7:14B- 4.1(a)3ii, [The owner and operator shall ensure the overfill prevention equipment is compatible with the delivery method used to fill the tank and will]: 1. Automatically shut off flow into the tank when the tank is no more than 95 percent full; 2. Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or 3. Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

Description of Noncompliance: The owner and operator failed to provide overfill prevention for all tanks.

- k. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.10(a)1ii, [The owner and operator shall ensure that the spill prevention equipment is] tested at installation and at least once every three years by using vacuum, pressure, or liquid testing to ensure that the spill prevention equipment is liquid tight, in accordance with one of the following: 1. Requirements developed by the manufacturer, if any; 2. A code of practice developed by a nationally recognized association or independent testing laboratory, such as Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST facilities"(available at www.pei.org); or 3. A method that the owner and operator demonstrate is no less protective of human health and the environment than the requirements of (a)1ii(1) and (2) above.

Description of Noncompliance: The owner and operator failed to test the spill buckets at installation and/or at least once every three years.

- l. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.14(a), the owner and operator of an UST system shall designate Class A, Class B, and Class C operators, trained pursuant to N.J.A.C. 7:14B-5A and notify the Department of each designated Class A and Class B operator in accordance with N.J.A.C. 7:14B-2. An individual may be designated under more than one operator class, provided the individual is trained in accordance with N.J.A.C. 7:14B-5A for each class for which he or she is designated.

Description of Noncompliance: The owner and operator failed to designate class A, Class B, and class C operators. The facility has Eugene Babcock listed as the AB operator. Eugene has previously stated that he is no longer the AB operator for all ARFA/Bronson Oil Lease Holdings LLC properties.

- m. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.6(b), owners and operators shall keep records required either: 1. At the underground storage tank site and immediately available for inspection to the implementing agency; or 2. At a readily available alternative site and be provided for inspection to the implementing agency upon request.

Description of Noncompliance: The owner and operator failed to have the required test results available for inspection.

- n. **Requirement:** Pursuant to N.J.A.C. 7:14B- 5.9(b), no person or business firm shall introduce hazardous substances into a regulated underground storage tank which is not

properly registered with the Department pursuant to N.J.A.C. 7:14B-2.1. or where any registration has been revoked or denied.

Description of Noncompliance: A person or business firm introduced a hazardous substance into a regulated UST which was not properly registered with the Department.

- o. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.1(h), The owner and operator shall ensure that testing of electronic and mechanical components in accordance with (g) above is performed at least annually and shall include, as applicable, the following: 1. For automatic tank gauge and other controllers: testing alarm, verifying system configuration, and testing battery backup; 2. For probes and sensors: inspecting for residual buildup and ensuring floats move freely, ensuring shaft is not damaged, ensuring cables are free of kinks and breaks, and ensuring that the alarm is operable and communicates with the controller; 3. For automatic line leak detectors: ensuring that the detectors meet the criteria at N.J.A.C. 7:14B-6.6(a)1; 4. For vacuum pumps and pressure gauges: ensuring proper communication with sensors and controller; and 5. For handheld electronic sampling equipment associated with ground water and vapor monitoring: ensuring proper operation.
Description of Noncompliance: The owner and operator failed to test all electronic and mechanical components at least annually.
- p. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.2(a)2i, The owner and operator shall ensure underground piping that conveys regulated substances under pressure have an annual line tightness test conducted in accordance with N.J.A.C. 7:14B-6.6(a)2 or have monthly monitoring conducted in accordance with N.J.A.C 7:14B-6.6(a)3.
Description of Noncompliance: The owner and operator failed to perform leak detection for product piping pursuant to the rules.
- q. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.5(a)4, The owner and operator shall perform release detection for tanks by using equipment for automatic tank gauging that tests for the loss of product and conducts inventory control shall meet the following requirements: (i) The automatic product level monitor test shall detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product, when performing a test in one of the following modes: (1) In-tank static testing conducted with passing results at least once every 30 days; or (2) Continuous in-tank leak detection operating either on a uninterrupted basis, or with a process that allows the system to gather incremental measurements to ensure an accurate, passing test at least once every 30 days; and (ii) Inventory control (or another test of equivalent performance) shall be conducted in accordance with the requirements of N.J.A.C. 7:14B-6.5(a)1.
Description of Noncompliance: The site failed to pass a 0.2 gallon per hour automatic in-tank (ATG) leak detection test at least once every 30 Days.
- r. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.6(a)1, The owner and operator shall ensure that automatic line leak detectors which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at

10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer's requirements.

Description of Noncompliance: The owner and operator failed to test line leak detector (LLD) at least once every year.

- s. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.1(a), owners and operators of underground storage tank systems shall provide a method, or combination of methods, of release detection that: 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product; 2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and 3. Meets the performance requirements in N.J.A.C. 7:14B-4A, 6.5 or 6.6, as applicable, with any performance claims and the manner of determination of the performance claims described in writing by the equipment manufacturer or installer. Permanent methods installed on or after September 4, 1990 shall be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Description of Noncompliance: The owner and operator failed to perform an acceptable method of release detection monitoring on the tanks and/or product piping. The monitoring system is turned off. The tanks have less than 1" of liquid in them therefore monitoring cannot be performed utilizing the Veeder Root. The lines have an in-line pressure monitor that is connected to the turned off Veeder Root.

- t. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(a), the owner and operator of an underground storage tank system which is out-of-service shall: 1. Submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire, pursuant to N.J.A.C. 7:14B-2.1(b)7, within seven calendar days after the underground storage tank system is placed out of service. The information shall include: (i) The location of the underground storage tank facility; (ii) The underground storage tank facility registration number; (iii) The underground storage tank number; and (iv) A description of the activity being performed. 2. Remain in compliance with all applicable environmental rules, including N.J.A.C. 7:14B-7, 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; 3. Maintain release detection monitoring in accordance with N.J.A.C. 7:14B-6.1 and 6.2 or 6.1 and 6.3; 4. Maintain all existing corrosion protection systems pursuant to N.J.A.C. 7:14B-4.1, 4.2 and 5.2; 5. Install spill and overflow prevention and corrosion protection in accordance with the requirements of N.J.A.C. 7:14B-4.1 and 4.2 for systems which do not have these.

Description of Noncompliance: The owner and operator failed to update the UST registration to update a tank(s) status to out of service. The shop manager and the Fire Department Battalion Chief both confirmed that the facility has been out of service since November 2021.

- u. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(b), the owner and operator of an underground storage tank system which is out-of-service for a period greater than three

months shall follow the guidelines in the American Petroleum Institute Publication 1604, "Closure of Underground Petroleum Storage Tanks" titled "Temporarily Out-of-Service," incorporated herein by reference, as amended and supplemented, no later than the end of the third month in which the system is out-of-service.

Description of Noncompliance: The owner and operator of an underground storage tank system which was out-of-service for greater than or equal to three months failed to follow the guidelines in the American Petroleum Institute (API) Publication 1604 by disconnecting and capping product lines.

- v. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(e), the owner and operator intending to put an out-of-service underground storage tank system back into service shall: 1. Submit an amended New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2, at least 30 calendar days prior to introducing product into the underground storage tank system, including documentation that corrosion protection was operated and maintained in accordance with (c)2ii above and N.J.A.C. 7:14B-5.2 during the out-of-service period; and 2. The New Jersey Underground Storage Tank Facility Certification Questionnaire shall include a statement from a certified installer pursuant to N.J.A.C. 7:14B-13, certifying that the system is properly designed and capable of being put back into service in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or in accordance with the manufacturer's instructions.

Description of Noncompliance: The owner and operator failed to update the UST registration to show the out of service tank(s) were put back into service and/or failed to provide contractor certification.

5. As the result of a compliance evaluation conducted on December 14, 2023, the Department has determined that RESPONDENTS failed to comply with applicable requirements as follows:

- a. **Requirement:** Pursuant to N.J.A.C. 7:14B-15.1(h), the owner and operator shall identify the financial assurance mechanism being used to comply with this subchapter on the New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2(c)9 and submit to the Department evidence of financial assurance with any supporting documentation. An owner and operator shall maintain evidence of financial assurance at the site or at the owner or operator's place of business.

Description of Noncompliance: The owner and operator failed to maintain evidence of financial assurance.

- b. **Requirement:** Pursuant to N.J.A.C. 7:14B-15.2(a), owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence or pre-incident amounts as follows: 1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; 2. For all other petroleum underground storage tanks:

\$250,000; and 3. For underground storage tanks systems containing hazardous substances other than petroleum: \$1,000,000.

Description of Noncompliance: The owner and operator failed to have financial responsibility assurance mechanism as required.

- c. **Requirement:** Pursuant to N.J.A.C. 7:14B- 2.1(a), the owner and operator shall register each underground storage tank facility with the Department pursuant to N.J.A.C. 7:14B-2.2.

Description of Noncompliance: The owner and operator failed to properly register all regulated tanks with the Department.

- d. **Requirement:** Pursuant to N.J.A.C. 7:14B- 6.1(a), owners and operators of underground storage tank systems shall provide a method, or combination of methods, of release detection that: 1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product; 2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and 3. Meets the performance requirements in N.J.A.C. 7:14B-4A, 6.5 or 6.6, as applicable, with any performance claims and the manner of determination of the performance claims described in writing by the equipment manufacturer or installer. Permanent methods installed on or after September 4, 1990 shall be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

Description of Noncompliance: The owner and operator failed to perform an acceptable method of release detection monitoring on the tanks and/or product piping.

- e. **Requirement:** Pursuant to N.J.A.C. 7:14B- 9.1(d), [The owner and operator shall ensure that unless the requirements of N.J.A.C. 7:14B-9.1(c) were met] any underground storage tank system which is out of service for greater than 12 months shall be closed in accordance with N.J.A.C. 7:14B-9.2 through 9.3.

Description of Noncompliance: The owner and operator failed to close the underground storage tank system which was out of service for greater than 12 months.

- f. **Requirement:** Pursuant to N.J.A.C. 7:14B-15.2(a), owners and operators shall maintain financial responsibility assurance for regulated underground storage tank systems in the per-occurrence or pre-incident amounts as follows: 1. For petroleum underground storage tank systems located at petroleum marketing facilities, or facilities that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year: \$1,000,000; 2. For all other petroleum underground storage tanks: \$250,000; and 3. For underground storage tanks systems containing hazardous substances other than petroleum: \$1,000,000.

Description of Noncompliance: The owner and operator failed to have financial responsibility assurance mechanism as required.

6. As the result of a compliance review conducted on December 14, 2023, the Department has determined that RESPONDENTS has **not** achieved compliance with the all the Requirements listed above.
7. Based on the facts set forth in these FINDINGS, the Department has determined that RESPONDENTS has violated the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and/or the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the regulations promulgated pursuant thereto, specifically,

| | | |
|------------------------|----------------------------|-------------------------|
| N.J.A.C. 7:27- 8.3(b) | N.J.A.C. 7:14B- 4.1(a)3ii | N.J.A.C. 7:14B- 6.5(a)4 |
| N.J.A.C. 7:27-16.3(e)1 | N.J.A.C. 7:14B- 5.10(a)1ii | N.J.A.C. 7:14B- 6.6(a)1 |
| N.J.A.C. 7:27-16.3(f) | N.J.A.C. 7:14B- 5.14(a) | N.J.A.C. 7:14B- 9.1(a) |
| N.J.A.C. 7:27-16.3(j)1 | N.J.A.C. 7:14B- 5.6(b) | N.J.A.C. 7:14B- 9.1(b) |
| N.J.A.C. 7:27-16.3(t) | N.J.A.C. 7:14B- 5.9(b) | N.J.A.C. 7:14B- 9.1(e) |
| N.J.A.C. 7:14B- 2.1(a) | N.J.A.C. 7:14B- 6.1(a) | N.J.A.C. 7:14B- 9.1(d) |
| N.J.A.C. 7:14B- 2.1(b) | N.J.A.C. 7:14B- 6.1(h) | N.J.A.C. 7:14B-15.1(h) |
| N.J.A.C. 7:14B- 2.1(c) | N.J.A.C. 7:14B- 6.2(a)2i | N.J.A.C. 7:14B-15.2(a) |

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

8. RESPONDENTS shall immediately comply with the following:
- a. Submit a completed Underground Storage Tank Facility Certification Questionnaire: updating the owner information, financial responsibility and tank status to out of service.
 - b. Obtain a Notice of Intent to Close (NOI) permit
 - c. Retain a Licensed Site Remediation Professional
 - d. Submit a 14-day notification to 14dayUSTnotice@dep.nj.gov
 - e. Permanently close the tank system
 - f. Submit a completed Underground Storage Tank Facility Certification Questionnaire to update the tank status to closed.
9. This Order shall be effective upon receipt by RESPONDENTS or someone on the violator's behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

AND

NOTICE OF RIGHT TO A HEARING

10. This notice shall be effective upon receipt by RESPONDENTS or someone on the violator's behalf authorized to accept service.

11. Pursuant to N.J.S.A. 58:10A-10, N.J.S.A. 26:2C et seq. and/or N.J.A.C. 7:1E-6.5, 6.6, 6.7 and 6.8 and N.J.A.C. 7:26C-9 et seq and based upon the above FINDINGS, the Department has determined that a civil administrative penalty is hereby assessed against the RESPONDENTS in the amount of **\$45,000.00**. The Department's rationale for the civil administrative penalty is set forth in the enclosed Penalty Assessment Worksheets, and incorporated herein.
12. Pursuant to N.J.S.A. 58:10A-10(c)5, the Department may amend the civil administrative penalty amount for any economic benefit (in dollars) which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of this Act.
13. Pursuant to N.J.S.A. 52:14B-1 et seq., RESPONDENTS are entitled to request a hearing. RESPONDENTS shall, in its request for a hearing, complete and submit the enclosed **ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM** along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this NOTICE.
14. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
15. If a timely request for a hearing is received, payment of the penalty is due when RESPONDENTS receive a notice of the denial of the request, or, if the hearing request is granted, when RESPONDENTS withdraw the request or abandons the hearing, or, if the hearing is conducted, when RESPONDENTS receive a final decision from the Commissioner in this matter.
16. Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, NJ 08646-0417

GENERAL PROVISIONS

17. This AONOCAPA is binding on RESPONDENTS, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
18. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.

19. This AONOCAPA is issued only for the violation(s) identified in the FINDINGS hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, NJDEP does not waive its rights to initiate additional enforcement actions.
20. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve RESPONDENTS of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
21. Pursuant to N.J.S.A. 58:10A-10(e), any person who violates the provisions of the Water Pollution Control Act or any code, rule, or regulation promulgated pursuant thereto shall be liable to a penalty of not more than \$50,000 per day to be collected in a civil action, and any person who violates a NOCAPA issued pursuant to N.J.S.A. 58:10A-10(b), including this NOCAPA, or a court order issued pursuant to N.J.S.A. 58:10A-10(c), or who fails to pay a civil administrative penalty assessed pursuant to N.J.S.A. 58:10A-10(d) in full after it is due is subject to a civil penalty not to exceed \$50,000 per day of such violations. Each day during which the violation continues constitutes an additional, separate and distinct offense.
22. Pursuant to N.J.S.A. 58:10A-10f(1)a, any person who purposely, knowingly, or recklessly violates the Water Pollution Control Act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime in the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S. 2C:43-3, be subject to a fine of not less than \$25,000 and not more than \$250,000 per day of violation, or by imprisonment, or by both.
23. Pursuant to N.J.A.C. 7:14B-2.7(b), the Department may revoke the [UST] registration of a facility upon a determination of the following: 1. The New Jersey Underground Storage Tank Facility Certification Questionnaire contains false or inaccurate information; 2. The owner or operator has failed to submit a New Jersey Underground Storage Tank Facility Certification Questionnaire pursuant to N.J.A.C. 7:14B-2.2; 3. The owner or operator has failed to pay the Facility Certification fee pursuant to N.J.A.C. 7:14B-3.2; 4. An authorized representative is denied access to the facility during any reasonable hour; or 5. The owner or operator has failed to comply with any requirement of the State Act or this chapter.
24. Pursuant to N.J.S.A. 26:2C-19(b) and N.J.S.A. 26:2C-19(d), any person who violates the provisions of the Air Pollution Control Act, or any code, rule regulation or order promulgated or issued pursuant thereto, or who fails to pay a civil administrative penalty in full, shall be liable to a penalty of up to \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.
25. Pursuant to N.J.S.A. 26:2C-19(f)1, any person who purposely or knowingly violates the provisions of the Air Pollution Control Act, or any code, rule, regulation, administrative order or court order, promulgated or issued pursuant thereto, is guilty of a crime of the third degree.

26. Pursuant to N.J.S.A. 26:2C-19(f)2, any person who recklessly violates the provisions of the Air Pollution Control Act or any code, rule, regulation, administrative order or court order promulgated or issued pursuant thereto, is guilty of a crime of the fourth degree.
27. Pursuant to N.J.A.C. 7:27-8.16(a), the Department may revoke a [Air] permit or certificate if the permittee: 1. Uses, or allows to be used, equipment or control apparatus not in compliance with the permit or certificate, or with any applicable Federal, or State law, regulation, or rule; 2. Takes any action which requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit under any applicable provision at N.J.A.C. 7:27-8.17 through 22, without complying with the applicable provision; 3. Fails to allow lawful entry by authorized representatives of the Department, pursuant to N.J.A.C. 7:27-1.31; 4. Fails to pay any penalty assessed pursuant to a final order issued by the Department; 5. Fails to pay any outstanding service fees, charged in accordance with the schedules contained in N.J.A.C. 7:27-8.6, within 60 days of receipt of a fee invoice or, in the case of a renewal of a certificate, by the date of expiration of the certificate being renewed; 6. Fails to reimburse the Department within 60 days after receipt of an invoice for any of the following charges incurred by the Department: i. The charges billed by any telephone company for the maintenance of a dedicated telephone line required by the conditions of approval of a preconstruction permit or certificate for the electronic transmission of data; or ii. The charges billed by any laboratory for performing the analysis of audit samples collected pursuant to monitoring any testing required by the conditions of approval of a preconstruction permit or certificate; or 7. Fails to dispose lawfully of all aqueous and solid wastes generated as a result of the operation of the equipment or control apparatus.

DATE: 12/20/23



Michael Hollis, Chief
Bureau of UST Compliance and Enforcement

BASE UST - PENALTY ASSESSMENT WORKSHEET**Respondent(s):** PC SHELL PORTFOLIO LLC & PONTUS CAPITAL LLC**Date of Violation:** 03/22/2022 and 12/14/2023**Rule violated as listed in N.J.A.C 7:14B-8.18 Table 2:** N.J.A.C. 7:14B-2.1(a) Failure to register the tank systems.**Primary Penalty for rule violated:** \$5,000.00**Rule violated as listed in N.J.A.C 7:14B-8.18 Table 2:** N.J.A.C. 7:14B-6.1(a) Failure to maintain release detection monitoring for the tanks and product piping.**Primary Penalty for rule violated:** \$5,000.00**Rule violated as listed in N.J.A.C 7:14B-8.18 Table 2:** N.J.A.C. 7:14B-15.2(a) Failure to maintain financial assurance for the tank systems.**Primary Penalty for rule violated:** \$5,000.00**Rule violated as listed in N.J.A.C 7:26C-9.5(b):** N.J.A.C. 9.1(e) Failure to comply with 3 month of service requirements.**Primary Penalty for rule violated:** \$15,000.00**Rule violated as listed in N.J.A.C 7:26C-9.5(b):** N.J.A.C. 9.1(d) Failure to close tanks which have been out of service greater than 12 months.**Primary Penalty for rule violated:** \$15,000.00**TOTAL CIVIL ADMINISTRATIVE PENALTY** = **\$45,000.00****VIOLATIONS CITED WITHOUT PENALTY ASSESSMENT**

The following is a list of violations that were cited in this document, but did not result in a penalty assessment. In most cases, a penalty was not assessed because the violation qualified for a grace period in accordance with P.L. 1995, c.296 (N.J.S.A. 13:1D-125 et seq.) "Fast Track Compliance Law".

| | | |
|------------------------|----------------------------|-------------------------|
| N.J.A.C. 7:27- 8.3(b) | N.J.A.C. 7:14B- 4.1(a)3ii | N.J.A.C. 7:14B- 6.5(a)4 |
| N.J.A.C. 7:27-16.3(e)1 | N.J.A.C. 7:14B- 5.10(a)1ii | N.J.A.C. 7:14B- 6.6(a)1 |
| N.J.A.C. 7:27-16.3(f) | N.J.A.C. 7:14B- 5.14(a) | N.J.A.C. 7:14B- 9.1(a) |
| N.J.A.C. 7:27-16.3(j)1 | N.J.A.C. 7:14B- 5.6(b) | N.J.A.C. 7:14B- 9.1(b) |
| N.J.A.C. 7:27-16.3(t) | N.J.A.C. 7:14B- 5.9(b) | N.J.A.C. 7:14B-15.1(h) |
| N.J.A.C. 7:14B- 2.1(b) | N.J.A.C. 7:14B- 6.1(h) | |
| N.J.A.C. 7:14B- 2.1(c) | N.J.A.C. 7:14B- 6.2(a)2i | |

**Administrative Hearing Request Checklist
and Tracking Form**

I. Document Being Appealed: **EA ID # PEA230001 - 007629**
December 20, 2023
Date Document Issued

II. Person Requesting Hearing (Each Respondent named in the Enforcement Document, who wants to contest the Enforcement Document must individually file a hearing request):

| | |
|--------------|----------------------------------|
| _____ | _____ |
| Name/Company | Name of Attorney (if applicable) |
| _____ | _____ |
| _____ | _____ |
| Address | Address |
| _____ | _____ |
| Telephone # | Telephone # |

- III. Please Include the Following Information As Part of Your Request:
- A. The date the alleged violator received the Enforcement Document.
 - B. **A copy of the Enforcement Document** and a list of all issues being appealed.
 - C. An admission or denial of each of the findings of fact, or a statement of insufficient knowledge;
 - D. The defenses to each of the findings of fact in the enforcement document;
 - E. Information supporting the request;
 - F. An estimate of the time required for the hearing;
 - G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
 - H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
 - I. This form, completed, signed and dated with all of the information listed above, including attachment, to:

- 1. New Jersey Department of Environmental Protection
Office of Administrative Hearings and Dispute Resolution
ATTENTION: Adjudicatory Hearing Requests
401 E. State Street
Mail Code 401-07A
P.O. Box 420
Trenton, NJ 08625-0420
- 2. Michael Hollis, Chief
Bureau of UST Compliance and Enforcement
New Jersey Department of Environmental Protection
Mail Code 09-03
PO Box 420
Trenton, NJ 08625-0420
- 3. All co-permittees (w/attachments)

IV. Signature: _____ Date: _____

Let's protect our earth



NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
232007480

| Program Interest |
|----------------------------|
| VOORHEES GULF |
| 1100 HADDONFIELD BERLIN RD |
| Voorhaes, NJ. 08043 |
| 007629 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Amount Due |
|--------------|
| \$ 45,000.00 |

| Billing Date |
|--------------|
| 12/19/23 |

| Due Date |
|----------|
| 01/22/24 |

| NJEMS Bill ID |
|-----------------|
| 000000265355900 |

| Summary | |
|--|------------------|
| Total Amount Assessed | 45,000.00 |
| Amount Received Before Creating Installment Plan (if installment plans is allowed) | 0.00 |
| Amount Transferred To Installment Plan | 45,000.00 |
| Installment Amount | 0.00 |
| Total Amount Credited | 0.00 |
| Total Amount Debited (Other Than Amounts Assessed) | 0.00 |
| Total Amount Due | 45,000.00 |

REMINDER:

YOU CAN PAY THIS BILL ONLINE WITH A CREDIT CARD OR E-CHECK.
 GO TO [HTTP://WWW.NJ.GOV/DEP/ONLINE](http://WWW.NJ.GOV/DEP/ONLINE) AND CLICK PAY A PAPER INVOICE.
 THE SYSTEM WILL ASK FOR THE INVOICE NUMBER THAT IS FOUND AT THE TOP-RIGHT CORNER OF THIS BILL.
 THERE IS NO FEE FOR PAYING VIA E-CHECK; FOR CREDIT CARD USE, 2.0% OF THE TOTAL + \$.50 IS CHARGED.
 TO PAY BILL BY MAIL SEND A CHECK PAYABLE TO TREASURER-STATE OF NEW JERSEY.
 WRITE INVOICE NUMBER AND PROGRAM INTEREST NUMBER ON CHECK.
 RETURN CHECK WITH BOTTOM PORTION OF THIS INVOICE TO THE NJ DEPARTMENT OF TREASURY.
 IF YOU HAVE QUESTIONS SEE BACK OF INVOICE FOR CONTACT INFORMATION.

See Back Of Page for Billing Inquiries

INVOICE NO.
232007480

D9901F (R 3/14/02)

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
232007480

| NJEMS Bill ID |
|-----------------|
| 000000265355900 |

| Program Interest ID |
|---------------------|
| 007629 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Billing Date |
|--------------|
| 12/19/23 |

| Due Date |
|----------|
| 01/22/24 |

| Amount Due |
|--------------|
| \$ 45,000.00 |

For name and/or address change, check box and write corrections on the back of this invoice.

DO NOT FOLD, BEND OR MARK

Enter the Amount of your payment →

| |
|----|
| \$ |
|----|

RETURN THIS PORTION

with your check made payable to:

TREASURER - STATE OF NEW JERSEY
and mail to:

NJ DEPARTMENT OF TREASURY
DIVISION OF REVENUE
PO BOX 417
TRENTON, NJ 08646-0417

95

BRONSON OIL LEASE HOLDINGS LLC
 ATTN: ALEX PRAKHIN
 1800 CHAPEL AVE W STE 160
 Cherry Hill NJ 08002-4605

EP1010101010101010000007060209111111004500000002252320074800955

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
 COMPLIANCE AND ENFORCEMENT

INVOICE NO.
232007480

| Program Interest |
|--|
| VOORHEES GULF 1100 HADDONFIELD BERLIN RD Voorhees, NJ. 08043 007629 |

| Type of Notice |
|------------------------|
| ORIGINAL (NON-INITIAL) |

| Amount Due |
|--------------|
| \$ 45,000.00 |

| Billing Date |
|--------------|
| 12/19/23 |

| Due Date |
|----------|
| 01/22/24 |

| NJEMS Bill ID |
|-----------------|
| 000000265355900 |

AONOCAPA
 Prescribed Enforcement Action
 This bill was created by the Assessments Trigger.

ASSESSMENTS

Start-End Date: 12/19/2023-12/19/2023 Activity: PEA230001

Assessment Type: PENALTY

Regulatory Basis:

Status: Open (Pending Payment)

Amount: \$ 45000.00

Total Amount Assessed: \$ 45,000.00

Exhibit C

Copy **ADD TO Informed Delivery** (<https://informedelivery.usps.com/>)**Latest Update**

Your item was delivered to an individual at the address at 12:00 pm on December 26, 2023 in LA JOLLA, CA 92037.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered**Delivered, Left with Individual**

LA JOLLA, CA 92037

December 26, 2023, 12:00 pm

[See All Tracking History](#)

PC SHELL PORTFOLIO LLC & FONTS CAPITAL LLC
875 Prospect Street - Suite 303
La Jolla, CA 92037

**RE: ADMINISTRATIVE ORDER AND NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT
VOORHEES GULF
EA ID #: PEA230001 - 007629**

Dear Mr. Press:

Enclosed for service upon you is an Administrative Order and Notice of Civil Administrative Penalty Assessment issued by the Department pursuant to the provisions of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

The Department may be available to meet informally with the principals of the case to discuss the enclosed enforcement action. Should such a meeting be requested and granted, be advised this does not affect the time frame within which you may request an administrative hearing under the **NOTICE OF RIGHT TO A HEARING** provision in the enclosed Notice of Civil Administrative Penalty Assessment.

If multiple respondents are named, each respondent interested in contesting the AONOCAPA must individually file an Administrative Hearing Request Checklist and Tracking Form. The Administrative Hearing Request Checklist and Tracking Form is enclosed with this letter.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - CAMDEN COUNTY

| | | |
|---|---|---------------------|
| THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION | : | |
| | : | <u>Civil Action</u> |
| Plaintiff, | : | |
| | : | |
| v. | : | Docket No. C 50-24 |
| | : | |
| PC SHELL PORTFOLIO, LLC; | : | |
| AGREH, LLC; PONTUS CAPITAL, | : | |
| LLC; SCOTT STOKAS; ANDREW | : | |
| HALEY; and MICHAEL PRESS, | : | |
| | : | |
| Defendants. | : | |

**BRIEF IN SUPPORT OF PLAINTIFF'S
VERIFIED COMPLAINT AND ORDER TO SHOW CAUSE**

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Plaintiff
The New Jersey Department of
Environmental Protection
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

By: Samuel R. Simon
Deputy Attorney General
Attorney ID No. 288191973
samuel.simon@law.njoag.gov
(609) 376-2740

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PRELIMINARY STATEMENT

Defendant PC Shell Portfolio, LLC ("PC Shell") is the owner of a former gas station and auto repair shop located adjacent to an overburdened community in Voorhees, New Jersey ("Property"). In 2023, the New Jersey Department of Environmental Protection ("Department" or "DEP") issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to PC Shell and to Pontus Capital, LLC ("Pontus Capital") (collectively, "Defendants"), the Managing Partner of PC Shell's sole owner Agreh, LLC. The AONOCAPA informed PC Shell and Pontus Capital that they had failed to comply with 28 specific environmental rules and regulations arising under the New Jersey Underground Storage of Hazardous Substances Act ("UHSA"), N.J.S.A. 58:10A-21 et seq., and the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq. The AONOCAPA directed Defendants to permanently close the underground storage tank system on the Property, hire a Licensed Site Remediation Professional ("LSRP") to remediate the property, and imposed Civil Administrative Penalty Assessments totaling \$45,000. Defendants failed to request an administrative hearing, and as a result, the AONOCAPA became a Final Agency Order ("FAO") on January 16, 2024. To date, Defendants have failed to comply with the FAO.

The Department issued the AONOCAPA because defendants' conduct caused multiple harms to the Property and the surrounding

neighborhood, including continuing health threats and environmental threats to the soil, surface water, and groundwater. Exposure to the contaminants released at the Property, including through ingestion or inhalation of vapors, can cause dizziness, headaches, lung irritation, nervous system disruptions, and damage to the liver, kidneys, central nervous system, and eyes. The contaminants persist in the surrounding soil for long periods of time, impeding plant growth and threatening birds and animals with irritation and toxicity. The persistence of hazardous substances in the surrounding ground water and surface water, including Nicholson Branch, contaminates the water and can render it unfit for drinking and human exposure.

The Department now seeks an order: (1) enforcing the FAO pursuant to R. 4:67-6 and R. 4:70, including requiring defendants to permanently close the underground storage tank system, hire a LSRP to conduct remediation, and pay the monetary penalties assessed therein; and (2) imposing civil penalties on Defendants pursuant to N.J.S.A. 58:10A-10(e) and R. 4:70 for failing to comply with the FAO.

STATEMENT OF FACTS

The Property is located at 1100 Haddonfield-Berlin Road, Voorhees Township, Camden County, New Jersey, and designated as Block 201, Lot 1 on the Tax Map of Voorhees Township, which the

Department has designated as Site Remediation Program Interest Number PEA230001 - 007629. Verified Complaint ¶ 1.

PC Shell has owned and operated underground storage tanks ("USTs") on the Site since 2012. Verified Complaint ¶ 6. The UST system consists of three 12,000-gallon unleaded tanks, associated piping, and other equipment. Verified Complaint ¶ 14.

Defendants PC Shell and Pontus Capital have been on notice since at least early February 2022 that the Property poses a continuing environmental hazard due to the existence of the leaking USTs, which has led to multiple neighborhood complaints of air, soil, and water pollution over a period of many months -- conditions that Department enforcement orders have failed to alleviate because they have been ignored. Verified Complaint ¶ 16. As set forth in detail in the Verified Complaint and the accompanying Certification of Robert L. Lux ("Lux Certification"), Defendants have disregarded all governmental attempts to dissipate the pollution, including multiple visits to the Property by the Voorhees Fire Department, the Camden Office of Emergency Management, and the Department's Bureau of Emergency Management. Verified Complaint ¶¶ 16-18; Lux Certification ¶¶ 9-11. Defendants have also ignored every attempt by the Department -- and there have been many -- to reach out to them to ameliorate the environmental problems for which they are responsible. Verified Complaint ¶¶ 20-47; Lux Certification ¶¶ 12-39.

Along with its many other efforts, the Department served a Directive and Notice to Insurers upon PC Shell in January 2023, requiring it, inter alia, to retain a Licensed Site Remediation Professional ("LSRP") and remove the three USTs. Verified Complaint ¶ 32; Lux Certification ¶ 27. PC Shell did not comply, and ignored all subsequent Department attempts to get it to comply. Verified Complaint ¶¶ 33-40; Lux Certification ¶¶ 28-35.

On December 20, 2023, the Department served an AONOCAPA upon Defendants. Among its other requirements, the AONOCAPA ordered Defendants hire an LSRP to address and remediate the contamination. It also imposed civil administrative penalties totaling \$45,000 for the violations set forth therein. Verified Complaint ¶¶ 41-43; Lux Certification ¶¶ 36-38.

Defendants received the AONOCAPA on December 26, 2023. Because defendants did not request a hearing within 20 days from December 26, the AONOCAPA became a FAO on January 16, 2024. Verified Complaint ¶ 44-45; Lux Certification ¶ 36. To date, defendants have not complied with any of the above requirements as specified under the FAO. Verified Complaint ¶¶ 46-47; Lux Certification ¶ 39.

Because the Defendants ignored the requirements of the FAO, and otherwise violated state laws, the Department now seeks an order from the Court: (1) enforcing the FAO pursuant to R. 4:67-6 and R. 4:70, including requiring defendants to permanently close

the underground storage tank system, hire an LSRP, and pay the monetary penalties assessed therein; and (2) imposing civil penalties on Defendants pursuant to N.J.S.A. 58:10A-10(e) and R. 4:70 for failing to comply with the FAO.

LEGAL ARGUMENT

The Department seeks enforcement of the FAO pursuant to R. 4:67. R. 4:67-6 applies to "all 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 penalties."

R. 4:67-6(c)(3) states: "The validity of an agency order shall not be justiciable in an enforcement proceeding." In a summary action to enforce an agency's written order or determination, such as the case at bar, R. 4:67-6(c)(3) does not permit any review of the validity of the underlying agency order. In re Valley Road Sewerage Co., 295 N.J. Super. 278, 290 (App. Div. 1996), aff'd, 154 N.J. 224 (1998); State Farm v. Dep't of Pub. Advoc., 227 N.J. Super. 99, 130 (App. Div. 1988), aff'd, 118 N.J. 336 (1990); DEP v. River Lookout Associates, LLC, 2021 N.J. Super. Unpub. LEXIS 2510, at *9 (App. Div.). Rather, pursuant to R. 2:2-3(a)(2), the Appellate Division has exclusive jurisdiction to review the merits of final state agency determinations. DEP v. Mazza & Sons, Inc.,

406 N.J. Super. 13, 22-23 (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.")¹

For the Court to grant the requested relief, the Department need only show that defendants have failed to comply with the FAO by failing to take the actions required by the FAO. As noted above, there is no pending or available administrative or appellate review of the FAO or the Department's findings therein that would preclude the Court from enforcing the FAO. See R. 4:67-6(c)(1). Defendants may challenge only the interpretation or application of the terms of the FAO. Those terms are unambiguous, requiring defendants to comply with the Requirements set forth in paragraph 8 of the FAO, as follows:

8. RESPONDENTS shall immediately comply with the following:
 - a. Submit a completed Underground Storage Tank Facility Certification Questionnaire: updating the owner information, financial responsibility and tank status to out of service.
 - b. Obtain a Notice of Intent to Close (NOI) permit.
 - c. Retain a Licensed Site Remediation Professional.
 - d. Submit a 14-day notification to 14dayUSTnotice@ dep.nj.gov.
 - e. Permanently close the tank system.

¹Defendants did not challenge the FAO in the Appellate Division.

- f. Submit a completed Underground Storage Tank Facility Certification Questionnaire to update the tank status to closed.

FAO at 9.

POINT I

THE DEPARTMENT IS ENTITLED TO AN ORDER ENFORCING THE FAO

Defendants have not complied with the FAO -- or any portion of the FAO. The Department ordered defendants to close the USTs, file the associated paperwork therefore, and retain an LSRP to remediate the Property, but defendants have failed to do. The Department also imposed civil administrative penalties on defendants totaling \$45,000, which defendants have not paid.

As documented in great detail in the Certification of Robert Lux, PC Shell's conduct presents an ongoing risk to the environment and surrounding community. As stated above, the hazardous substances discharged at and emanating from the Property have led to neighborhood complaints of air, soil, and water pollution over a period of many months. Human exposure to these contaminants, including through ingestion or inhalation of vapors, can cause dizziness, headaches, lung irritation, nervous system disruptions, and damage to the liver, kidneys, central nervous system, and eyes. Such contaminants persist in the soil and underground water for long periods of time, impeding plant growth and threatening birds and mammals with irritation and toxicity. Multiple emergency

visits by the Voorhees Fire Department; the Camden County Department of Public Safety, Camden County Office of Emergency Management, Hazardous Materials Unit; and DEP's Bureau of Emergency Management, at a cost of many thousands of dollars to the taxpayers, have been insufficient to quell the manifold environmental problems defendants' conduct has caused. Accordingly, the Court should issue an Order enforcing the FAO in its entirety.

POINT II

THE COURT SHOULD ASSESS A CIVIL PENALTY AGAINST PC SHELL AND PONTUS CAPITAL FOR FAILING TO COMPLY WITH THE FAO

The AONOCAPA became a FAO on January 16, 2024. As discussed above, the FAO requires defendants to comply with certain requirements and deadlines concerning the closure of the USTs, and requires defendants to retain an LSRP to remediate the contamination on and emanating from the Site. However, defendants have failed to comply with their obligations under the FAO. Each day that defendants fail to comply with the FAO constitutes an additional, separate, and distinct violation of the FAO and the UST Act. N.J.S.A. 58:10A-10(e).

A person violating the provisions of the UST Act or a FAO issued pursuant to the UST Act is subject to the penalties prescribed in N.J.S.A. § 58:10A-10(e). N.J.S.A. 58:10A-32. This Court should assess a civil penalty accordingly.

R. 4:70 provides for summary proceedings to recover statutory penalties. Such summary proceedings are to be brought in accordance with R. 4:67-6 unless the applicable statute requires a plenary action. R. 4:70-1(a).

Pursuant to N.J.S.A. § 58:10A-10(e), the Court may impose a civil penalty of up to \$50,000 per day for each day of such violation, and each day's continuance of the violation shall constitute a separate violation.

Defendants have conspicuously failed to comply with their obligations for more than two years. They have failed to comply with their obligations under the FAO. They have not submitted to the Department an Underground Storage Tank Notice of Intent to Close, have not closed the tank system, and have not retained an LSRP to both oversee the Site Investigation and to submit the required Site Investigation Report to the Department.

Pursuant to R. 4:70, and in accordance with N.J.S.A. § 58:10A-10(e) and -32, the Department requests the Court to assess an additional civil penalty against defendants and their members proportionate to their repeated and continuing failure to comply with the FAO. Imposition of an additional civil penalty in such amount as the Court deems fair, reasonable, and just will serve as an appropriate deterrent to such conduct in the future.

CONCLUSION

For the foregoing reasons, DEP respectfully requests the Court to enter an order requiring Defendants to comply with the FAO and pay a penalty for their failure to comply with the FAO, as well as such other and further relief as the Court deems appropriate.

Respectfully submitted,

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

By: s/Samuel R. Simon
Samuel R. Simon
Deputy Attorney General

DATE: April 25, 2024

