

Plaintiff State of New Jersey, Department of Environmental Protection (“Department”), by and through its attorney, brings this Verified Complaint against Defendants Frank E. Lach (“Lach”), Martin Reyes (“Reyes”), Yer Gas Service, Inc. (“Yer Gas”), Velez Properties, LLC (“Velez”), Crum & Forster Specialty Insurance Company (“Crum & Forster”), John/Jane Does 1-10 (fictitious persons), and XYZ Corporations 1-10 (fictitious entities) (collectively, “Defendants”), and alleges as follows:

STATEMENT OF THE CASE

1. The Department brings this action, which is a summary action in part, against Defendants to remedy their violations of environmental laws and regulations at a former retail gasoline station, located at 922-926 18th Avenue, Newark (“the Property”). The violations have exposed its neighbors, and the surrounding community as a whole, to potential public health hazards and environmental harm for roughly three decades.

2. In 1990, while Lach owned the Property and operated a gasoline service station, gasoline contamination was discovered in the soil at the Property surrounding five underground storage tanks (“First-Generation USTs”) when the First-Generation USTs were being removed and replaced with five new USTs (“Second-Generation USTs”). Monitoring wells were installed that identified gasoline contamination above the Department’s then groundwater quality standards (“GWQS”).

3. In or around 2003, Defendant Reyes and Yer Gas took over operations of the gasoline distribution business. Since that time, at least four additional discharges of gasoline have been reported at the Property.

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

5. Defendants’ violations of environmental laws and regulations pose an ongoing risk to public health, safety, and the environment in the Newark community. The community

surrounding the Property has a significant low-income, minority or limited English proficiency population such that it is considered an “overburdened community” within the meaning of N.J.S.A. 13:1D-158.¹ Historically across New Jersey, such communities have been disproportionally exposed to high-polluting facilities and to the resultant threats of high levels of air, water, soil, and noise pollution, and the accompanying increased negative public health impacts.

6. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health without regard to race, language or income. See, e.g., Exec. Order No. 23 (April 20, 2018); N.J.A.C. 7:10-1.1 to 10.3; Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

7. After finding that the Property was out of compliance with UST regulations, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”) to Yer Gas for numerous violations of UST regulations on April 17, 2014. Over six years later, and again after finding that the Property was out of compliance with UST regulations, the Department issued a second AONOCAPA to Reyes and Yer Gas for numerous violations of UST regulations on November 13, 2020. The AONOCAPAs became final agency orders (“FAO”) on May 10, 2014 and December 7, 2020, respectively.

8. On December 3, 2020, the Department issued a municipal ticket against defendant Lach seeking penalties for his failure to perform his cleanup obligations, which

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

continue to this day. On August 7, 2024, the Department secured a judgment of conviction in the municipal court matter.

9. On August 14, 2024, Defendant Lach sold the Property to Defendant Velez.

10. Crum & Forster insured Yer Gas from September 2014 to September 2015, during which time a discharge from the USTs occurred. Crum & Forster therefore must provide Yer Gas with funds to remediate the Property.

11. The Department therefore seeks an Order: to enforce the 2014 and 2020 FAOs compelling Defendants Reyes and Yer Gas to submit a completed UST Facility Certification Questionnaire, and remove all USTs and associated appurtenances.

12. The Department also seeks an Order requiring Defendants Reyes, Yer Gas, and Lach to fully remediate the Property and imposing civil penalties that have been accruing since 2014, including the \$50,000 penalty secured by the Department as a result of the Newark municipal court litigation.

THE PARTIES

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

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

15. Defendant Lach is an individual domiciled in the State of New Jersey and is the former owner of the Property.

16. Defendant Reyes is an individual domiciled in the State of New Jersey and is the principal owner of Yer Gas. He conducted business at the Property in the name of Yer Gas.

17. Defendant Yer Gas is a corporation organized under the laws of the State of New Jersey, with a principal place of business located at the Property.

18. Defendant Velez is a limited liability company organized under the State of New Jersey, with a principal place of business located at 11 North 7th Street, Belleville, NJ 07109.

19. Crum & Forster is a corporation organized under the laws of New Jersey, with a principal place of business at 305 Madison Avenue, Morristown, New Jersey, 07962. Crum & Forster was the insurer of Yer Gas from September 2014 to September 2015.

20. "John/Jane Does 1-10," these names being fictitious, are individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to defendants Velez, Lach, Reyes, and Yer Gas, and/or are other dischargers and/or persons in any way responsible for the hazardous substances discharged at the Property.

21. "XYZ Corporations 1-10," these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, insurers of, or are otherwise related to defendants Velez, Lach, Reyes, and Yer Gas, and/or are other dischargers and/or persons in any way responsible for the hazardous substances discharged at the Property.

FACTUAL ALLEGATIONS

22. The Property consists of approximately 0.13 acres of real property bordering residential homes, restaurants, and a supermarket.

23. Defendant Lach was the owner of the Property since at least July 2, 1964 until he sold it to Defendant Velez on August 14, 2024. Bogan Certification ¶ 5, Exs. A & B.

24. The Property was utilized as a retail gasoline operation beginning as early as 1973. Bogan Certification ¶ 6, Ex, C.

25. The Property is currently being used as an auto repair facility, operated by Yer Gas.

26. In 1987, Defendant Lach submitted an UST Facility Certification Questionnaire showing that he owned five USTs ("First-Generation USTs") located at the Property that were used to store gasoline. Bogan Certification ¶ 7, Ex, D.

27. In 1989, Defendant Lach hired Pecoriello Contractor & Sons Co. to remove the First-Generation USTs, which included one 4,000-gallon, two 3,000-gallon, and two 2,000-gallon gasoline USTs, from the Property. Bogan Certification ¶ 8, Ex, C.

28. On April 24, 1990, Pecoriello Contractor & Sons Co. removed the First-Generation USTs. Bogan Certification ¶ 9, Ex, C.

29. During the removal of the First-Generation USTs, Pecoriello Contractor & Sons Co. discovered a hole in one of the USTs and observed a gasoline sheen on the water within the excavation area. Bogan Certification ¶ 10, Ex, C.

30. On April 24, 1990, Doreen Daidone, an employee of Pecoriello Contractor & Sons Co., called the Department's Hotline to report that gasoline had leaked from one of the First-Generation USTs being removed from the Property, causing visible contamination of the

surrounding groundwater and soil. The soil was removed and stored in piles on the Property. Bogan Certification ¶ 11.

31. In response, the Department generated a Report of Incident/Complaint to document the details of Ms. Daidone's report of a discharge ("1990 Incident Report"). Bogan Certification ¶ 12, Ex. E.

32. Four new USTs ("Second-Generation USTs") were installed in the excavation location, including three 5,000-gallon and one 2,000-gallon USTs, and the excavation was then filled with approximately 50 tons of clean fill.² Bogan Certification ¶ 13, Ex. C.

33. On the day the First-Generation USTs were removed, soil samples were collected from the stored soil piles on the Property. The analytical results indicated a total petroleum hydrocarbon level of 521 parts per million ("ppm") and a toluene level of 20.4 ppm, well above New Jersey Soil Remediation Standards. Bogan Certification ¶ 14, Ex. C.

34. On May 17, 1990, Summit Drilling Company installed three groundwater monitoring wells ("MW") at the Property, MW-2 and MW-3 are located on the Property, and MW-1 is located off site on the adjacent property. Bogan Certification ¶ 15, Ex. C.

35. On June 22 and August 12, 1993, Hudson Environmental Services Inc. sampled the groundwater and detected benzene, toluene, ethylbenzene, and xylenes at levels far exceeding the Department's GWQS in effect at the time. Bogan Certification ¶ 16, Ex. C.

36. In 1993, Defendant Lach submitted a UST Facility Certification Questionnaire showing that he owned the Second-Generation USTs located at the Property, which were used to store unleaded gasoline, diesel fuel, and waste oil.

² Although the August 1993 Remedial Investigation Report ("RIR") states that four USTs were installed, based on other documents, it is clear that five USTs were actually installed.

37. Upon information and belief, Yer Gas, through Defendant Reyes, took over operations of the gasoline distribution business at the Property in 2003.

38. On April 20, 2006, while performing a routine UST inspection, Anthony D'Agosto of the Essex Regional Health Commission called the Department's Hotline to report the discovery of gasoline contamination impacting the soil at the Property and the discovery of free gasoline product in one of the UST tank field wells.

39. In May 2006, Defendant Reyes and Yer Gas submitted an UST Facility Certification Questionnaire showing that Reyes owned the Second-Generation USTs located at the Property that were used to store gasoline and waste oil since April 2006. Bogan Certification ¶ 17, Ex. F.

40. In response to the April 20, 2006 report, the Department generated a Report of Incident/Complaint to document the details of Mr. D'Agosto's report of a discharge.

41. In 2008, 2011, 2012, 2013, and 2014, Defendant Reyes submitted UST Facility Certification Questionnaires indicating that he owned the Second-Generation USTs located at the Property. Bogan Certification ¶ 18, Ex. G.

42. On April 21, 2008, Environmental Alliance, Inc. submitted a report ("2008 Report") to the Department that set forth the results of a March 14, 2008 groundwater sampling event at the Property.

43. The March 2008 groundwater sampling results set forth in the 2008 report revealed the presence of benzene, tert-butyl alcohol ("TBA"), and methyl tert-butyl ether ("MTBE") in the groundwater at the Property at levels exceeding the Department's GWQS at the time. The foregoing substances are considered "hazardous substances" under the New

Jersey Spill Compensation and Control Act (“Spill Act”), N.J.S.A. 58:10-23.11 to -23.24. See N.J.S.A. 58:10-23.11b.

44. On January 30, 2012, the Department sent a Compliance Assistance Alert to Defendant Lach, advising him of an upcoming deadline to submit a report documenting the actions taken to remediate the free product that discharged into the groundwater in 1990 pursuant to N.J.A.C. 7:26E-1.12.

45. On February 13, 2013, Shawn Kerrigan of Crompco, an entity hired by Defendant Reyes, called the Department’s Hotline to report that two USTs on the Property had failed pressure tests and that gasoline was discovered in a monitoring well.

46. In response, the Department generated a Report of Incident/Complaint to document the details of Mr. Kerrigan’s report of a discharge (“2013 Incident Report”).

47. On June 19, 2013, the Department sent a Compliance Assistance Alert to Defendants Lach and Reyes, advising them that they must submit a remedial investigation report for the Property by the May 7, 2014 deadlines established by New Jersey regulations promulgated pursuant to the Spill Act. N.J.A.C. 7:26C-2.3(a).

Final Agency Order, Additional Discharges, and Insurance Coverage

48. On April 19, 2014, the Department served, via certified mail, an Administrative Order and Notice of Civil Administrative Penalty Assessment (“AONOCAPA”) to Defendant Reyes, in his capacity as the owner and operator of Yer Gas Service, for numerous violations of the UST Act and the UST Regulations related to his ownership and operation of the Second-Generation USTs and four violations of the Air Pollution Control Act (“APCA”). N.J.S.A. 26:2C-1 to -68. Bogan Certification ¶ 19, Ex. H.

49. The AONOCAPA informed Defendant Reyes that, as the result of an on-site inspection conducted on August 5, 2013, the Department determined that Defendant Reyes failed to comply with nine specific environmental rules and regulations promulgated under the UST Act and UST Regulations and APCA related to his ownership and operation of the Second-Generation USTs. These violations included, but are not limited to, introducing hazardous substances into a UST which is known to be or suspected to be leaking, using UST equipment while it was not functioning properly, receiving delivery of gasoline to USTs while their spill buckets are not free of debris, product, and/or water. Bogan Certification ¶ 20, Ex. H.

50. The AONOCAPA imposed civil administrative penalties totaling \$16,200 for the violations, and ordered that Defendant Reyes submit a completed UST Facility Certification Questionnaire within 30 days of receipt of the AONOCAPA. Bogan Certification ¶ 21, Ex. H.

51. The AONOCAPA informed Defendant Reyes that the Administrative Order was effective upon receipt and that a failure to respond within 20 days from receipt of the AONOCAPA would result in it becoming a Final Agency Order (“FAO”) on the 21st day from receipt. Bogan Certification ¶ 22, Ex. H.

52. Defendant Reyes did not request a hearing within 20 days of being served the AONOCAPA. The AONOCAPA thus became a FAO on May 10, 2014. Bogan Certification ¶ 24.

53. On April 16, 2015, Kevin Marlowe, an employee of the Department, called the Department’s Hotline to report a suspected discharge at the Property due to elevated vapor readings throughout the Property’s tank field.

54. In response, the Department generated a Report of Incident/Complaint to document the details of Mr. Marlowe’s report of a discharge (“2015 Incident Report”).

55. Between September 8, 2014, and September 8, 2015, Crum & Forster, in consideration for premiums paid, provided pollution liability coverage under Policy No. STP-103953 for the Second-Generation USTs.

56. Upon information and belief, the Crum & Forster insurance policy requires, and Defendants Reyes, Yer Gas, and Crum & Forster intended, that Crum & Forster must compensate for damages caused by hazardous substances discharged from the USTs.

57. Between 2015 and 2018,³ the Department issued Defendants Reyes and Yer Gas numerous Administrative Orders imposing a cease of use and delivery bans of gasoline and diesel fuel at the Site to different USTs, some of which the Department had allowed to continue being used after lifting earlier Administrative Orders.

58. On September 18, 2017, Scott Green of First Environment called the Department's Hotline to report that an UST failed a pressure test, water was found within the UST, and free-phase gasoline was discovered in a monitoring well at the Property.

59. In response, the Department generated a Report of Incident/Complaint to document the details of Mr. Green's report of a discharge ("2017 Incident Report").

60. On August 21, 2019, the Department sent Defendants Lach and Reyes a Notice of Violation and Offer of Settlement to rectify Defendant's violations of failing to remediate the Property and comply with the statutory requirements of direct oversight, but Defendants did not respond.

³ Although USTs were no longer being used as of 2018, two additional Administrative Orders were issued in 2020 and 2023.

61. On November 24, 2020, the Department served, via certified mail, an AONOCAPA to Defendants Reyes and Yer Gas for numerous violations of the UST Act and UST Regulations. Bogan Certification ¶ 25, Ex. I.

62. The AONOCAPA informed Defendants Reyes and Yer Gas that, as the result of on-site inspections conducted on April 16, 2015, October 2, 2017, February 14, 2018, and June 23, 2020, the Department determined that Defendants Reyes and Yer Gas had failed to comply with thirty-six requirements of the UST Act and UST Regulations related to the ownership and operation of the Second-Generation USTs. Bogan Certification ¶ 26, Ex. I.

63. The AONOCAPA imposed civil administrative penalties totaling \$15,000 for the violations, and ordered that Defendants Reyes and Yer Gas submit a completed UST Facility Certification Questionnaire, submit forms notifying the Department of the intent to close the Second-Generation USTs, hire a properly certified UST firm and licensed site remediation professional (“LSRP”) to oversee the removal and remediation of the Second-Generation USTs, and remove all of the Second-Generation USTs and associated appurtenances. Bogan Certification ¶ 27, Ex. I.

64. The AONOCAPA informed Defendants Reyes and Yer Gas that the Administrative Order was effective upon receipt and that a failure to respond within 20 days from receipt of the AONCOAPA would result in it becoming a FAO on the 21st day from receipt. Bogan Certification ¶ 28, Ex. I.

65. Defendants Reyes and Yer Gas did not request a hearing within 20 days of being served the AONOCAPA. The AONOCAPA thus became a FAO on December 7, 2020. Bogan Certification ¶ 29.

66. Despite the multitude of discharges at the Property and multiple AONOCAPAs, Defendants have not complied with their obligations to fully investigate and remediate the contamination and remove the Second-Generation USTs. Bogan Certification ¶ 24, 30.

Municipal Court Litigation and Judgment of Conviction

67. On December 3, 2020, the Department issued a municipal complaint and summons to Defendant Lach, alleging that his inaction constituted failures to remediate the Property in violation of the Spill Act and N.J.A.C. 7:26C-2.3(a). Nachman Certification ¶ 4, Ex. A.

68. Specifically, as of the date the municipal complaint was issued, Defendant Lach failed to: hire an LSRP to oversee the remediation of the Property and submit an LSRP retention form to the Department within 45 days of dismissal of the prior LSRP in 2016; submit a remedial investigation report (“RIR”) to the Department by the May 7, 2014 statutory deadline; submit a Light Non-Aqueous Phase Liquid (“LNAPL”) Form; submit a LNAPL interim remedial measure (“IRM”) report; and complete a remedial action and submit a Remedial Action Report (“RAR”).

69. After Defendant Lach failed to appear in municipal court on March 31, April 15, and May 6, 2021, the municipal court entered a bench warrant for Defendant Lach’s arrest. The bench warrant remained pending for approximately three years, until Defendant Lach contacted the Court and made his first appearance on February 27, 2024, at which time the Court’s bench warrant was rescinded.

70. On May 21, 2024, the Department submitted a motion for judgment to the Newark municipal court. Nachman Certification ¶ 5, Ex. B. The motion papers argued that

Defendant Lach is a person in any way responsible under the Spill Act and violated the Spill Act and ARRCs by failing to remediate the Property. Nachman Certification ¶ 5, Ex. B.

71. On or around June 5, 2024, Defendant Lach retained an attorney for the sale of the Property. Nachman Certification ¶ 6.

72. On July 25, 2024, with notice of the hearing having been sent to all parties, and Defendant Lach having failed to appear, the Newark municipal court heard the Department's arguments in favor of entering a Judgment of Conviction on the merits against Defendant Lach. Nachman Certification ¶ 7.

73. After the motion was argued, Judge Masiel Valentin noted it appeared that the Department was entitled to the relief requested, and scheduled an additional hearing for August 7, 2024 to render judgment. Nachman Certification ¶ 8.

74. On August 7, 2024, with notice of the hearing sent to all parties, and with Defendant Lach again failing to appear, Judge Maisel Valentin entered a Judgment of Conviction against Defendant Lach on the December 3, 2020 municipal ticket, specifically finding that Defendant Lach violated the Spill Act by failing to remediate the Property pursuant to ARRCs despite being a responsible party under the Spill Act. Nachman Certification ¶ 8, Ex. C.

75. Judge Maisel Valentin assessed the full \$50,000 penalty requested by the Department, finding it reasonable and noting that the Department could have assessed a much larger penalty, as failing to remediate is a violation that allows the Department to assess a \$50,000 penalty every day and Defendant Lach has failed to remediate for many years. Nachman Certification ¶ 10, Ex. C.

76. As of September 21, 2024, and forty-five days having passed since the Judgment of Conviction was entered, the Judgment of Conviction is final and no longer appealable.⁴ Nachman Certification ¶ 11.

Sale of the Property and Subsequent Inspection

77. On August 14, 2024, defendant Lach sold the Property to Velez.

78. On August 29, 2024, the Department performed a site inspection at the Property. During the inspection, each Second-Generation UST was inspected, and gasoline was discovered in multiple tanks.

79. Also, during the inspection, free gasoline product was discovered in MW-1 and MW-2.

80. On September 18, 2024, more than a month after Velez purchased the Property, the Department issued a Notice of Violation (“NOV”) to Velez, pursuant to N.J.A.C. 7:26C-2.3(a), for failing to hire an LSRP after becoming a party responsible to remediate the Property by purchasing it from Defendant Lach.

COUNT I

ENFORCEMENT OF FINAL AGENCY ORDERS AGAINST DEFENDANTS REYES AND YER GAS

81. The Department incorporates paragraphs 1-80 of this Verified Complaint as if fully set forth herein.

82. The 2014 and 2020 AONOCAPAs are FAOs.

83. Pursuant to Rule 4:67-6 and Rule 4:70, the Department is entitled to summary

⁴ Despite Judge Valentin entering the JOC on August 7, 2024, and despite contacting the Clerk of the Newark municipal court on numerous occasions, this office is still waiting to be provided a copy of the JOC. Nachman Cert. ¶ 12.

enforcement of the FAO.

84. Paragraph 14 of both AONOCAPAs provide that Defendants Reyes and Yer Gas's failure to request a hearing within twenty calendar days from receipt of the AONOCAPA would result in the AONOCAPAs becoming FAOs.

85. To date, Defendants Reyes and Yer Gas have not fully complied with the 2014 and 2020 AONOCAPAs, including: failing to remove all Second-Generation USTs and associated appurtenances; failing to submit a completed Underground Storage Tank Facility Certification Questionnaire; and failing to pay the civil administrative penalties assessed in the AONOCAPAs totaling \$31,200.

WHEREFORE, the Department demands judgment against Defendants Martin Reyes and Yer Gas Service, Inc.:

- a. Finding Defendants Reyes and Yer Gas in violation of the 2014 and 2020 AONOCAPAs;
- b. Ordering Defendants Reyes and Yer Gas to submit a completed Underground Storage Tank Facility Certification Questionnaire;
- c. Ordering Defendants Reyes and Yer Gas to submit forms notifying the Department of the intent to close the Second-Generation USTs;
- d. Ordering Defendants Reyes and Yer Gas to remove all Second-Generation USTs and associated appurtenances;
- e. Compelling Defendants Reyes and Yer Gas to pay the \$31,200 Civil Administrative Penalty Assessment imposed by the AONOCAPAs;

- f. Ordering Defendants Reyes and Yer Gas to pay civil penalties pursuant to N.J.S.A. 58:10A-24.6(c) for continuing noncompliance with the FAOs issued pursuant to the UST Act;
- g. Ordering Defendants Reyes and Yer Gas to pay civil penalties pursuant to N.J.S.A. 26:2C-19(b) for continuing noncompliance with the 2014 FAO issued, in part, pursuant to the APCA.
- h. Awarding the Department such other relief as the Court deems just and proper.

COUNT II

ENFORCEMENT OF THE JUDGEMENT OF CONVICTION

86. The Department incorporates paragraphs 1-85 of this Verified Complaint as if fully set forth herein.

87. Pursuant to Rule 4:67-6, the Department is entitled to summary enforcement of the Judgment of Conviction.

88. On July 25, 2024, with notice of the hearing having been sent to all parties, and Defendant Lach having failed to appear, the municipal court heard the Department's arguments in favor of entering a Judgment of Conviction on the merits against Defendant Lach for violations of the Spill Act.

89. On August 7, 2024, with notice of the hearing sent to all parties, and with Defendant Lach again failing to appear, Judge Maisel Valentin entered a Judgment of Conviction against Defendant Lach on the December 3, 2020 municipal ticket, specifically finding that Defendant Lach is a person in any way responsible under the Spill Act and failed to remediate the Property in violation of the Spill Act and ARRCs.

90. On August 7, 2024, Judge Valentin Judgement of Conviction and assessed a \$50,000 penalty.

91. To date, Defendant Lach has not complied with the Judgment of Conviction to pay the penalty amount of \$50,000.

92. Pursuant to Rule 4:67-6, the Department is entitled to summary enforcement of the Judgment of Conviction.

WHEREFORE, the Department demands judgment against Defendant Frank Lach:

- a. Finding Defendant Lach in violation of the Judgment of Conviction;
- b. Ordering Defendant Lach to comply with the Judgment of Conviction.
- c. Ordering Defendant Lach to pay the fine of \$50,000 and costs pursuant to N.J.S.A. 58:10-23.11; and
- d. Awarding the Department such other relief as the Court deems just and proper.

COUNT III

SPILL ACT AND BROWNFIELD ACT LIABILITY AGAINST DEFENDANT LACH

93. The Department incorporates paragraphs 1-92 of this Verified Complaint as if fully set forth herein.

94. Pursuant to Rule 4:70-1(a), the Department may include a count seeking injunctive relief or other relief based on the same series of actions as those for which the penalty, here, the penalty assessed in the municipal court judgment, is sought.

95. 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.

96. Defendant Lach owned the Property when all five discharges occurred, starting in 1990.

97. Effective January 6, 1998, the Legislature enacted the Brownfield Act.

98. As amended by SRRA, the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances. N.J.S.A. 58:10B-1.3.a.

99. The Property requires remediation pursuant to the Spill Act and the Brownfield Act as benzene, TBA, and MTBE, all hazardous substances, were identified in the 2008 ground water sampling event.

100. As the former owner of the Property and the owner of the Property when hazardous substances were discharged, Defendant Lach is a person responsible for remediation.

101. Defendant Lach has failed to remediate the Property.

102. During an August 7, 2024 hearing, the Newark municipal court held that Defendant Lach is liable as a person in any way responsible for violations under the Spill Act.

103. Specifically, the Newark municipal court found that Defendant Lach failed to remediate the Property pursuant to the ARRCs, N.J.A.C. 7:26C-2.3(a) and N.J.A.C. 7:26C-2.3(a)(1), which are regulations promulgated pursuant to the Spill Act.

104. Defendant Lach has not conducted remediation at the Property in accordance with the ARRCs, N.J.A.C. 7:26C-2.3, applicable rules and guidance. Specifically, Defendant Lach failed to hire/maintain a LSRP to oversee the remediation of the Property, submit an

LSRP retention form to the Department within 45 days of dismissal of the prior LSRP in 2016, submit an LNAPL Form, submit a LNAPL interim remedial measure (“IRM”) report, submit an RIR, and complete a remedial action and submit an RAR.

105. Defendant Lach’s failure to remediate the Property pursuant to ARRCs, N.J.A.C. 7:26C-2.3(a) arises from the same series of actions that led to the request for summary action and a finding of liability and an assessment of civil penalties in the municipal court judgment for failure to remediate per N.J.A.C. 7:26C-2.3(a).

106. Defendant Lach is a “person” as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

107. The violation of N.J.S.A. 58:10B-1.3 is a similar violation to an assessment of civil penalties in the municipal court judgment for failure to remediate per N.J.A.C. 7:26C-2.3(a) against Defendant Lach.

108. Pursuant to the Spill Act, N.J.S.A. 58:10-23.11u(d), Defendant is subject, upon order of the Court, to a civil penalty of up to \$50,000 per day for Defendant Lach’s continuous violation of the Judgment of Conviction.

WHEREFORE, the Department demands judgment against Defendant Lach:

- a. Finding Defendant Lach discharged hazardous substances at the Property, or is 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 Defendant Lach to complete the remediation at the Property in accordance with the Brownfield Act, SRRA, and all other applicable statutes, regulations and/or Department directives;

- c. Assessing all civil penalties that have accrued since May 7, 2014 when defendant Lach failed to submit a RIR to the Department;
- d. Reserving the right to bring a claim against Defendant Lach in the future for natural resource damages arising from the discharge of hazardous substances at the Property;
- e. Reserving the right to bring a claim in the future to recover any cleanup, removal, or other costs expended by the Department to remediate the Site pursuant to N.J.S.A. 58:10-23g12 and N.J.S.A. 58:10-23.11u.b.(2),(4), and (5); and
- f. Awarding the Department such further and additional relief as the Court deems just and proper.

COUNT IV

SPILL ACT LIABILITY AGAINST DEFENDANTS VELEZ, LACH, REYES, AND YER GAS

109. The Department incorporates paragraphs 1-107 of this Verified Complaint as if fully set forth herein.

110. Defendants Velez, Reyes, Yer Gas, and Lach are “persons” within the meaning of N.J.S.A. 58:10-23.11b.

111. Contamination, as defined by N.J.S.A. 58:10-23.11, means any discharged hazardous substance, hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), or pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3).

112. The contamination at the Property and emanating therefrom has not been remediated in violation of the Spill Act. N.J.S.A. 58:10-23.11.c.

113. As the owner of the Property and operator of the First-Generation USTs at the

time when they were found to have discharged hazardous substances, and as the owner of the Property at the time when four subsequent dischargers of hazardous substances occurred, Defendant Lach is in any way responsible and a person responsible for conducting the remediation of the Property.

114. As owners and operators of the Second-Generation USTs at the time when they were found to have discharged hazardous substances, Defendants Reyes and Yer Gas are in any way responsible and a person responsible for conducting the remediation of the Property.

115. As the purchaser, and current owner, of the previously contaminated Property that knew or should have known about the contamination at the time of its acquisition, defendant Velez is a person in any way responsible and persons responsible for conducting the remediation of the Property.

116. As amended by the Site Remediation and Reform Act, N.J.S.A. 58:10C-1 to -29, the Brownfield Act provides in part that a discharger of a hazardous substance or a person in any way responsible for a hazardous substance under N.J.S.A. 58:10-23.11g of the Spill Act has an affirmative obligation to remediate discharges of hazardous substances. N.J.S.A. 58:10B-1.3.a.

117. Defendants Velez, Lach, Reyes, and Yer Gas are “persons” as defined in the Brownfield Act.

118. As persons responsible for conducting the remediation, Defendants Velez, Lach, Reyes, Yer Gas are required to comply with the remediation requirements enumerated in N.J.S.A 58:10B-1.3.a.

119. Defendants Velez, Lach, Reyes, and Yer Gas failed to comply with N.J.S.A. 58:10B-1.3a because Defendants have not completed the remediation of the Property.

120. Any person who fails to comply with the provisions of N.J.S.A 58:10B-1.3 of the Brownfield Act shall be liable subject to the enforcement provisions established in N.J.S.A. 58:10-23.11.u of the Spill Act. N.J.S.A. 58:10B-1.3e.

121. Pursuant to N.J.S.A. 58:10-23.11u.a and N.J.S.A. 58:10-23.11u.d, Defendants Velez, Lach, Reyes, and Yer Gas are also subject to civil penalties of up to \$50,000 per day for their violations of the Spill Act.

WHEREFORE, the Department demands judgment against Defendants Velez, Lach, Reyes, and Yer Gas:

- a. Finding Defendants Velez, Lach, Reyes, and Yer Gas liable for failing to remediate the Property and obligating them to remediate the contaminated Property pursuant to N.J.S.A. 58:10B-1.3a, including, but not limited to, hiring a LSRP to conduct the remediation, submitting an LNAPL Form, submit a LNAPL IRM report, submitting an LSRP retention form to the Department, submitting a RIR, and completing a remedial action and submitting a RAR.
- b. Ordering Defendants Velez, Lach, Reyes, and Yer Gas to complete the remediation at the contaminated Property in accordance with the Brownfield Act, SRRA, and all other applicable statutes, regulations and/or Department directives;
- c. Assessing civil penalties as provided by N.J.S.A. 58:10-23.11u.d against each of the Defendants Velez, Lach, Reyes, and Yer Gas for their failure to remediate the contaminated Property;
- d. Awarding the Department its costs and fees in this action;

- e. Reserving the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances of the Property.
- f. Reserving the right to bring a claim in the future to recover any clean up, removal, or other costs expended by the Department to remediate the Site pursuant to N.J.S.A. 58:10-23.11g12 and N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).
- g. Awarding the Department such further and additional relief as the Court deems just and proper.

COUNT V

DIRECT ACTION AGAINST DEFENDANT CRUM & FORSTER

122. The Department incorporates paragraphs 1-121 of this Verified Complaint as if fully set forth herein.

123. Any claims for costs of cleanup, civil penalties or damages by the State, and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility. N.J.S.A. 58:10-23.11s.

124. Upon information and belief Reyes and Yer Gas have performed their obligations under the Policies, including obligations serving as preconditions to coverage or an action on the Policies, if any, or Crum & Forster has waived, or are estopped from asserting, nonperformance of such obligations.

125. Upon information and belief Defendants Reyes and Yer Gas have performed their obligations under the Policy.

126. Crum & Forster is Defendants' Reyes and Yer Gas insurer.

127. Because Defendants Reyes and Yer Gas are persons in any way responsible for discharged hazardous substances, and because both Reyes and Yer Gas are also dischargers, Crum & Forster, as their insurer, is directly liable in this action, to the same extent as Reyes and Yer Gas. N.J.S.A. 58:10-23.11s.

WHEREFORE, the Department demands judgment against Defendant Crum & Forster:

- a. Entering declaratory judgment against Crum & Forster compelling it to fund any further cleanup of hazardous substances discharged at the Property conducted in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- b. Awarding the Department their costs and fees in this action, and;
- c. Reserving the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances of the Property.
- d. Reserving the right to bring a claim in the future to recover any clean up, removal, or other costs expended by the Department to remediate the Site pursuant to N.J.S.A. 58:10-23.11g12 and N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).
- e. Awarding the Department such other relief as the Court deems just and proper.

COUNT VI

THIRD PARTY CONTRIBUTION FOR DAMAGES PURSUANT TO THE SPILL ACT AND THE BROWNFIELDS ACT AGAINST DEFENDANT CRUM & FORSTER

128. The Department incorporates paragraphs 1-127 of this Verified Complaint as if

fully set forth herein.

129. A third party may seek enforcement of a contract where the contracting parties intended that the third party would be a beneficiary of the contract and that the third party could enforce the contract in court.


130. By entering into insurance agreements that covered damages resulting from the discharge of hazardous substances from the Property, Crum & Forster, Reyes, and Yer Gas intended that persons damaged by hazardous substances discharged from the Property would receive the benefits of such policies.

131. Ground water is held by the State in trust for the benefit of its citizens, and the contamination of groundwater constitute damages to a third party's property, to which Crum & Forster's policy applies. The hazardous substances discharged at the Property have damaged the Department by releasing gasoline and its components that damage the environment and harm individuals that it comes into contact with.

WHEREFORE, the Department demand judgment against Defendant Crum and Forster:

- a. Ordering Crum & Forster to indemnify Defendants Reyes and Yer Gas, as applicable, against all liability, loss, or expense cause by reason of the claims asserted by the Department against Reyes and Yer Gas;
- b. Declaring and adjudging the rights and obligations of the parties under the insurance agreements issued to Reyes and Yer Gas by Crum & Forster, with respect to past and future claims based upon events at the Property;
- c. Declaring and adjudging the Department to be third party beneficiaries to the insurance agreements between Reyes, Yer Gas, and Crum & Forster;
- d. Awarding the Department such other relief as the Court deems appropriate.

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

By: 

Daniel Nachman
Deputy Attorney General

Dated: October 21, 2024

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, the Court is advised that Daniel Nachman, Deputy Attorney General, is hereby designated as trial counsel for the Department in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

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

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

By: _____



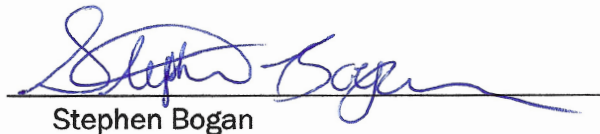
Daniel Nachman
Deputy Attorney General

Dated: October 21, 2024

VERIFICATION OF PLEADING

I, Stephen Bogan, being of full age, certify as follows:

1. I am an Environmental Specialist II employed by the New Jersey Department of Environmental Protection as an enforcement manager in the Bureau of Enforcement and Investigations within the Contaminated Site Remediation & Redevelopment Program.
2. I am the enforcement manager assigned to the Property.
3. I have read the partially verified Complaint.
4. I certify that the factual allegations contained in the Verified portion of the 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.


Stephen Bogan

Dated: October 21, 2024