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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY DOCKET NO.
Plaintiffs,	:	<u>CIVIL ACTION</u>
v.	:	<b>VERIFIED COMPLAINT</b>
304 MAIN STREET LLC; SGS & DHIND INC.; RAVI OIL CO. INC.; XYZ CORPORATIONS 1-10; and JOHN and/or JANE DOES 1-10,	:	
Defendants.	:	

Plaintiffs New Jersey Department of Environmental Protection ("DEP") and the Commissioner of DEP (collectively, "Plaintiffs"), by way of Verified Complaint against defendants 304 Main Street LLC ("304 Main Street"), SGS & DHIND Inc. ("SGS & DHIND"), Ravi Oil Co. Inc. ("Ravi Oil"), XYZ Corporations 1-10 (Names Fictitious), John and/or Jane Does 1-10 (Names Fictitious) (collectively, "Defendants"), allege as follows:

**STATEMENT OF THE CASE**

1. For decades, Defendants have violated the law by refusing to remediate contamination at 304 Main Street, Metuchen, New Jersey ("Site"), a vehicle fuel dispensing station, and failing to properly operate underground storage tanks ("USTs"), which stored gasoline. The USTs discharged gasoline and an aboveground storage tank ("AST") discharged heating oil, creating an ongoing threat to the residences and businesses surrounding the Site, several of which are located less than 100 feet from the Site.

2. In 2001, DEP received a report that the gasoline was discharged onto the Site's soil during the removal of UST piping.

3. Sampling conducted later that year confirms that the soil and groundwater at the Site is contaminated with hazardous substances that are components of gasoline including tert-butyl alcohol, methyl tert-butyl ether ("MTBE"), and benzene above DEP's Ground Water Quality Standards and New Jersey's Impact to Groundwater Soil Cleanup Criteria. Exposure to these hazardous substances poses a danger to human health, including damage to the liver, kidneys, central nervous system, and eyes.

4. In 2016, DEP determined that the Site was also out of compliance with UST regulations for failure to replace release detection monitoring equipment. On June 19, 2017, DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Ravi Oil for the violation, which became

a final agency order ("FAO") on August 1, 2017. Ravi Oil has failed to comply with the FAO and has not paid the required penalties.

5. When DEP previously brought municipal and administrative enforcement actions to resolve these issues, Defendants either failed to appear or later reneged on a settlement agreement to address contamination issues at the Site.

6. The community surrounding the Site has a significant minority population such that it is considered an "overburdened community" within the meaning of N.J.S.A. 13:1D-158.1.<sup>1</sup> Historically, across New Jersey, such communities have been disproportionately exposed to high-polluting facilities and to the resultant threats of high levels of air, water, soil, and noise pollution, and accompanying increased negative public health impacts.

7. Residents of all communities should receive fair and equitable treatment in matters affecting their environment,

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

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.

8. Plaintiffs therefore bring this civil action under the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35 ("UST Act"), and the common law to compel Defendants to remediate the discharge of hazardous substances at the Site; reimburse Plaintiffs for the costs that they have incurred, and will incur, related to the discharge; and pay civil penalties for their failures to comply with applicable law.

#### **THE PARTIES**

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

10. DEP'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. DEP's enabling legislation and the Spill Act also empower it to institute legal proceedings seeking injunctive relief, including compelling remediation, and pursuing civil penalties in Superior Court.

11. The Commissioner is the Commissioner of the DEP. N.J.S.A. 58:10-23.11b and N.J.S.A. 58:10A-3. In this capacity, the Commissioner is vested by law with various powers and authority, including those conferred by DEP's enabling legislation, N.J.S.A. 13:1D-1 through -19.

12. 304 Main Street is a limited liability company incorporated and registered in New Jersey in March 2017, with a business address of 40 Woodbridge Avenue, Suite 203, Sewaren, New Jersey 07077.

13. SGS & DHIND is a corporation incorporated and registered in New Jersey in July 2002. Its last known principal place of business was at 15 Prospect Lane, Suite 1C-9, Colonia, New Jersey 07067.

14. Ravi Oil is a corporation incorporated and registered in New Jersey in June 2000. Its last known principal place of business was at 2501 Bridge Avenue, Point Pleasant, New Jersey 08742.

15. "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 the Defendants.

16. "John and/or Jane Does" 1-10, these names being fictitious, are natural 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 and/or one or more of the "XYZ Corporation" defendants.

#### **FACTUAL ALLEGATIONS**

17. The Site has been used as a gas station for automobiles under multiple aliases since the 1940s. The Site is located at 304 Main Street, Metuchen in Middlesex County, New Jersey, also known as Block 183.02, Lots 5.02, 6, 7, 8 on the Metuchen Tax Map. The Site, together with all other areas where any hazardous substances discharged at the Site have come to be located, is referred to herein as the "Contaminated Site."

18. On January 17, 2001, Natalie Terwillige of Petro Science contacted the DEP Hotline to report that Site's soil was contaminated with gasoline during the removal of UST piping. At the time, the Site was owned by Salva Corp. and operated by Igor Berdichevsky. On November 28, 2001, Applied Earth Solutions, Inc. ("AES") collected seven soil samples at the Site using a direct push geoprobe. The soil samples revealed levels of methyl tert-butyl ether ("MTBE") in the Site's soil exceeding the New Jersey Impact to Groundwater Soil Cleanup Criteria.

19. On December 3, 2001, AES installed a groundwater monitoring well at the Site. Two weeks later, AES collected a sample from the monitoring well that revealed tert-butyl alcohol,

MTBE, and benzene in the Site's groundwater at levels exceeding DEP's Ground Water Quality Standards.

20. On November 4, 2002, SGS & DHIND acquired the Site.

21. On September 25, 2003, MIG Environmental Consulting, LLC ("MIG Environmental") submitted a Remedial Action Workplan ("RAW") to the Department on behalf of the Jersey Gas Service Station. The 2003 RAW documented that MTBE in the Site's soil had not been fully delineated, on-site soils did not appear to be an ongoing source of groundwater contamination, and VOCs and lead in the Site's groundwater had not been fully delineated.

22. From August 4, 2004, to February 1, 2015, Ravi Oil operated a gasoline fuel dispensing station at the Site under the names "Ravi Oil Co. Inc." and "Jersey Gas."

23. On December 18 and 19, 2007, MIG Environmental collected groundwater samples from six monitoring wells installed at the Site in late November. The groundwater samples revealed levels of MTBE, tertiary butyl ether, toluene, benzene, total xylenes, and total volatile organic compound tentatively identified compounds exceeding DEP's Ground Water Quality Standards.

24. On March 8, 2011 Ravi Oil submitted a Light Non-Aqueous Phase Liquid ("LNAPL") Free Product Reporting Form for less than 0.05' of gasoline discovered in a monitoring well at the Site and a completed receptor evaluation form to the Department.

25. On February 28, 2012, Ravi Oil submitted another LNAPL Reporting Form with an LNAPL Free Product Interim Remedial Measures Report ("LNAPL Report"). The LNAPL Report indicated that no LNAPL was found in any onsite wells during a May 11, 2011 sampling event.

26. On March 29, 2016, there was a fire at the Site. The Site's USTs' release detection monitoring system was destroyed in the fire.

27. As of April 7, 2016, Ravi Oil operated a UST system at the Site, which consisted of three 3,000-gallon unleaded gasoline USTs, one 10,000-gallon unleaded UST, and associated appurtenances.

28. On April 7, 2016, DEP performed a compliance evaluation at the Site following the fire. DEP determined that Ravi Oil was not in compliance with the UST Act and its regulations because it had failed to replace the USTs' release detection monitoring system.

29. DEP also determined that fuel was no longer being introduced to or dispensed from the Site's USTs following the March 29, 2016 fire, and Ravi Oil—the USTs' owner/operator—had not decided whether to close or reuse the USTs. For these reasons, DEP designated the Site's USTs as "out of service," which required an update to the Site's UST Registration.

30. On January 3, 2017, Gary Landis of G Environmental, a licensed site remediation professional ("LSRP") retained at the



time by Surjeet Singh, president of Ravi Oil and SGS & DHIND, to oversee the remediation of the Site, alerted DEP that groundwater on the Site was contaminated with heating oil. Based on information and belief, the heating oil was stored in an AST and provided heat for the gas station building.

31. On June 19, 2017, DEP issued an AONOCAPA for failing to replace the Site's UST's release detection monitoring system to Ravi Oil via certified mail to Surjeet Singh's home address.

32. The AONOCAPA incorrectly noted the Site's address as 314 Main Street, Metuchen, New Jersey, instead of the correct address, 304 Main Street. This error was attributable to Ravi Oil denoting the incorrect address in several annual UST registrations.

33. The AONOCAPA was mailed to Surjeet Singh's home address by certified mail and claimed by him on July 11, 2017.

34. Based upon the findings of the AONOCAPA, DEP ordered Ravi Oil to (1) update its UST tank registration to show that the Site's USTs were taken out of service on March 29, 2016; (2) retain a LSRP for UST removal; (3) obtain a Notice of Intent to remove all USTs and piping; (4) remove all USTs and piping from the Site; (5) terminate its UST registration and submit UST closure paperwork to DEP; and (6) pay a civil administrative penalty in the amount of \$15,000.

35. Ravi Oil did not request a hearing to contest the AONOCAPA.

36. As a result, on or about August 1, 2017, 21 days after Surjeet Singh's receipt of the AONOCAPA, the AONOCAPA became an FAO against Ravi Oil.

37. Ravi Oil did not appeal the FAO.

38. To date, Ravi Oil has not complied with any of the terms of the FAO or paid the \$15,000 civil administrative penalty.

39. SGS & DHIND received fuel deliveries at the Site from Woroco Management, LLC ("Woroco").

40. After falling behind in its payments to Woroco, in October, 2012, SGS & DHIND issued Woroco a Promissory Note, which was secured by a mortgage identifying the Site as collateral.

41. On March 7, 2016, Woroco initiated an action to foreclose on the Site under docket number MID-F-006624-16.

42. On February 1, 2017, the Middlesex County Sheriff held a sheriff's sale in which the Site was auctioned for sale.

43. On December 15, 2017, 304 Main Street acquired the Site when issued a deed for the Site to 304 Main Street as assignee of the successful bid at the sheriff's sale.

44. Upon acquiring the Site, 304 Main Street assumed a duty to remediate pursuant to, among other statutes and regulations, the Spill Act, the Brownfield Act (N.J.S.A. 58:10B-1.3), the Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

45. Defendants 304 Main Street and SGS & DHIND have not complied with their obligations to fully investigate and remediate the Contaminated Site:

- a. Defendants 304 Main Street and SGS & DHIND failed to submit an Initial Receptor Evaluation ("IRE") for the 2017 discharge to DEP by the January 2, 2018, deadline as required by N.J.A.C. 7:26E-1.12;
- b. Defendants 304 Main Street and SGS & DHIND failed to submit a Remedial Investigation Report ("RIR") for the 2001 discharge to DEP by the March 1, 2017 deadline;
- c. Defendants 304 Main Street and SGS & DHIND failed to submit an RIR for the 2017 discharge by the January 1, 2022 deadline as required by N.J.A.C. 7:26E-4.10;
- d. Defendants 304 Main Street and SGS & DHIND failed to submit a Remedial Action Report for the 2001 discharge to DEP by the February 28, 2022 deadline as required by N.J.A.C. 7:26E-5.8.

46. On August 30, 2019, DEP issued Defendants 304 Main Street and SGS & DHIND summonses and complaints filed with the Metuchen Municipal Court citing them for a single day violation based on their failure to remediate the Site in violation of N.J.A.C. 7:26C-2.3(a). See N.J.S.A. 58:10-23.11u(d). The municipal complaint issued to 304 Main Street is identified as 1210-DEP-000008, and

the municipal complaint issued to SGS & DHIND is identified as 1210-DEP-000009.

47. SGS & DHIND did not appear in Metuchen Municipal Court to contest the complaint filed against it. Nor did it contact DEP.

48. On August 30, 2021, David Rubin, a DEP Code Enforcement Officer, sent an e-mail to Francis Brennan, Esq., counsel for 304 Main Street, wherein he described the key terms of a potential ACO to resolve the municipal complaint issued to 304 Main Street.

49. Mr. Rubin expressed DEP's willingness to reduce the \$50,000 that could be assessed by the Metuchen Municipal Court to \$12,500, which was lowered from the \$25,000 DEP would normally seek in such a settlement.

50. Mr. Rubin's e-mail stated, in pertinent part:

Mr. Brennan,

There are two cases that are out of compliance for the Jersey Gas site.

Case # 17-01-03-1623-58 onsite ground water contamination due to heating oil past MTF for IRE (if this truly is heating oil, the deadlines may not apply unless there is an IEC).

Case # 01-01-17-1027-18 contamination due to gas UST piping. Passed MTF for RIR (due 3-1-17). Since it is past a mandatory timeframe, the penalty is \$25,000 and I am authorized to settle for \$12,500. I have no authority to go lower.

If you believe that a \$12,500 penalty is unjust, please send me an explanation why and a counter offer. I will forward to my management for review.

As you are familiar, the ACO will consist of a penalty, new due dates for compliance and stipulated

penalties for non-compliance with the ACO. The municipal complaint will be withdrawn once an ACO is executed.

51. On September 13, 2021, following DEP's agreement to lower the penalty to \$10,000, Mr. Brennan advised DEP by e-mail that "our client has authorized us to settle the penalty issue for 10k per your offer below [Mr. Rubin's August 30, 2021 e-mail], subject to seeing the proposed ACO language."

52. On September 17, 2021, DEP and 304 Main Street appeared before the Metuchen Municipal Court and advised the court that a settlement in principle had been reached, and that additional time was required for 304 Main Street to retain an LSRP, who would confirm with DEP the dates by which certain remedial timeframes could be met by 304 Main Street; those dates would then be memorialized within an ACO. The court then granted an 84-day adjournment to permit DEP and 304 Main Street time to finalize the ACO.

53. On October 1, 2021, DEP advised 304 Main Street that it had yet to retain an LSRP and reminded that retention of an LSRP is necessary for the finalization of an ACO.

54. On October 4, 2021, 304 Main Street retained Gary Landis, LSRP.

55. On October 19, 2021, DEP advised 304 Main Street by e-mail to counsel that its LSRP had not yet reached out to DEP to discuss the remedial timeframes.

56. 304 Main Street's counsel replied that he and his client were "pushing" the LSRP.

57. On November 9, 2021, DEP again advised 304 Main Street by e-mail that DEP had not heard from LSRP.

58. 304 Main Street's counsel responded on November 11, 2021, stating that "I have reminded the client about this. They are speaking to Landis the LSRP. I will update you when I know more."

59. On December 1, 2021, 304 Main Street's counsel e-mailed DEP to ask whether it was drafting an ACO.

60. On December 2, 2021, DEP again advised that the ACO could not be finalized until the LSRP contacted DEP to discuss remedial timeframes.

61. Later that same day, 304 Main Street's counsel requested additional information DEP needed to draft an ACO.

62. DEP responded that it needs "the LSRP to confirm by which dates the remedial actions can be performed e.g. submission of a remedial investigation report."

63. During a phone call later the same day, 304 Main Street's counsel again communicated his client's continued interest in a settlement, but confirmed that the LSRP still had not contacted DEP to discuss remedial timeframes.

64. On December 3, 2021, 304 Main Street's LSRP finally contacted DEP regarding the Site.

65. On December 6, 2021, 304 Main Street's counsel sent an e-mail to DEP stating "[o]ur LSRP advises that he talked to [DEP Code Enforcement Officer] Dave Rubin today and provided all the information necessary for you to prepare [a] draft ACO. Can you confirm that that is the case?"

66. On December 9, 2021, 304 Main Street's counsel e-mailed DEP and said "[d]o you have everything you need to draft the ACO? Is there anything you still need from us or our LSRP?"

67. On December 10, 2021, DEP and 304 Main Street appeared in Metuchen Municipal Court.

68. Although the DEP and 304 Main Street were still attempting to execute an ACO, the Metuchen Municipal Court insisted that the matter be resolved that day.

69. During the hearing, the Metuchen Municipal Court granted DEP and 304 Main Street a brief recess, during which time they agreed that 304 Main Street would enter a guilty plea and DEP counsel would recommend a penalty of \$10,000, which would supplant the \$10,000 penalty figure to be included in the ACO.

70. Although DEP and 304 Main Street had agreed to the key terms of an ACO before the hearing and all that was needed to finalize an ACO were 304 Main Street's LSRP's recommended remedial timeframes, DEP and 304 Main Street could not finalize an ACO during the hearing due to time limitations.

71. Therefore, DEP and 304 Main Street further agreed that they would continue to negotiate with one another following resolution of the municipal action to finalize an ACO. As a result of 304 Main Street's representation that it would continue to negotiate in good faith, DEP was willing to recommend a penalty assessment of \$10,000, rather than the statutory maximum of \$50,000.

72. During the hearing, 304 Main Street pled guilty to violation of N.J.A.C. 7:26C-2.3(a) for failure to remediate the Contaminated Site, and the Metuchen Municipal Court imposed a civil penalty of \$10,000.

73. On January 28, 2022, DEP Code Enforcement Officer Rubin e-mailed 304 Main Street's counsel a copy of the public notice for proposed adjusted direct oversight requirements to be incorporated into the settlement agreement ("Public Notice").

74. The Public Notice included key remedial timeframes that were first proposed by 304 Main Street's LSRP in an e-mail to DEP dated December 3, 2022, and that DEP and 304 Main Street had previously agreed upon, such as December 30, 2024 and December 30, 2028 deadlines to submit a remedial investigation report and a remedial action report to DEP, respectively.

75. On April 6, 2022, following the conclusion of the public notice period, Mr. Rubin e-mailed Mr. Brennan two copies of a draft ACO that DEP and 304 Main Street had negotiated ("Draft ACO").



76. On April 25, 2022, 304 Main Street's counsel expressed his client's recent reluctance to sign the Draft ACO.

77. On May 24, 2022, DEP (through counsel) informed 304 Main Street's counsel that DEP would initiate litigation in Superior Court if 304 Main Street did not sign the Draft ACO by May 27, 2022.

78. On June 6, 2022, 304 Main Street's counsel sent an e-mail to DEP and its counsel stating, in part: "I have reminded our client that they need to review the draft ACO and either sign it or provide me with any tweaks they may have. I expect to hear back from them this week."

79. On June 20, and October 10, 2022, 304 Main Street's counsel sent DEP e-mails related to the investigatory efforts of a potential purchaser of the Site, but silent as to the Draft ACO.

80. To date, 304 Main Street has not signed the Draft ACO and has not taken any steps toward remediating the Site.

**COUNT I**

**Violation of the Spill Act and Brownfield Act  
(as amended by SRRA)**

**(Against All Defendants)**

81. DEP repeats each and every allegation of the foregoing paragraphs as if set forth in its entirety herein.

82. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

83. The strict liability provision of the Spill Act, N.J.S.A. 58:10-23.11g.c.(1), provides in pertinent part:

[A]ny person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. Such person shall also be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by the department or a local unit pursuant to subsection b. of section 7 of P.L.1976, c. 141 (C:58:10-23.11f).

84. 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).

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

86. Defendants 304 Main Street and SGS & DHIND are dischargers or persons in any way responsible for the hazardous substances discharged on the Site, as defined by N.J.S.A. 58:10-23.11. As such, they are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs incurred by DEP and the Spill Fund to remediate the Contaminated Site.

87. Furthermore, N.J.S.A. 58:10-23.11g.c.(3) of the Spill Act provides, in part:

In addition to the persons liable pursuant to this subsection, any person who owns real property acquired on or after September 14, 1993 on which there has been a discharge prior to the person's acquisition of that property and who knew or should have known that a hazardous substance had been discharged at the real property, shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred.

88. Defendants 304 Main Street and SGS & DHIND acquired the Site after September 14, 1993, and as purchasers of previously contaminated property, knew or should have known that hazardous substances had been discharged on the Site prior to their acquisition of the property.

89. Therefore, Defendants 304 Main Street and SGS & DHIND are strictly liable, jointly and severally, without regard to fault under N.J.S.A. 58:10-23.11g.c.(3) for all cleanup and removal costs incurred by DEP and the Spill Fund to remediate the hazardous substances discharged on the Site.

90. Under N.J.S.A. 58:10-23.11u of the Spill Act, DEP may bring a civil action in the Superior Court against any person who has violated the Spill Act, or any rule, regulation, plan, information request, access request, order, or directive promulgated or issued pursuant thereto:

- a. For injunctive relief, N.J.S.A. 58:10-23.11u.b.(1);
- b. For the costs incurred for any investigation, cleanup or removal, and for the reasonable costs of preparing and

successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2);

c. For any other related costs incurred by DEP under the Spill Act; and

d. For the assessment of civil penalties for violations of the Spill Act, N.J.S.A. 58:10-23.11u.d.

91. Effective January 6, 1998, the Legislature enacted the Brownfield Act, N.J.S.A. 58:10B-1 to -20 ("Brownfield Act").

92. As amended by SRRA, 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.

93. Defendants are "persons" as defined in the Brownfield Act. N.J.S.A. 58:10B-1.

94. As persons liable under the Spill Act, Defendants, pursuant to N.J.S.A. 58:10B-1.3.a of the Brownfield Act, have affirmative obligations, jointly and severally, to remediate the hazardous substances discharged on the Site.

95. As persons responsible for conducting the remediation, Defendants were required to comply with the remediation requirements enumerated in N.J.S.A. 58:10B-1.3.a.

96. A discharger or person in any way responsible for a hazardous substance under the Spill Act is required to remediate the discharge of a hazardous substance pursuant to N.J.S.A. 58:10B-1.3a.

97. Defendants failed to comply with N.J.S.A. 58:10B-1.3.a, because Defendants have not completed remediation of the Contaminated Site.

98. 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 and 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-1.3.e.

99. Pursuant to N.J.S.A. 58:10-23.11u.a and N.J.S.A. 58:10-23.11u.d, Defendants are also subject to civil penalties of up to \$50,000.00 per day for their violations of the Spill Act.

**WHEREFORE**, DEP demands judgment in its favor:

- a. Finding Defendants liable, jointly and severally, for failing to remediate the Contaminated Site and obligating them to remediate the Contaminated Site pursuant to N.J.S.A. 58:10B-1.3a;
- b. Finding Defendants liable, jointly and severally, without regard to fault, for any cleanup and removal costs and damages incurred by DEP as a result of the discharge of hazardous substances at the Site;

- c. Ordering Defendants to reimburse DEP, without regard to fault, for all cleanup and removal costs DEP has incurred, or will incur, as a result of the discharge of hazardous substances at the Site, with applicable interest;
- d. Ordering Defendants to complete the remediation at the Contaminated Site in accordance with the Brownfield Act, N.J.S.A. 58:10B-1.3, SRRA, and all other applicable statutes, regulations and/or DEP directives;
- e. Assessing civil penalties as provided by N.J.S.A. 58:10-23.11u.d against each of the Defendants for their failure to remediate the Contaminated Site;
- f. Awarding DEP its costs and fees in this action;
- g. Awarding DEP any other relief the Court deems appropriate; and
- h. Reserving DEP's right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

**COUNT II**

**Violation of the FAO  
(Against Defendant Ravi Oil)**

100. Plaintiffs repeat each and every allegation of the foregoing paragraphs as if set forth in its entirety herein.

101. To date, Ravi Oil has not complied with any of the requirements of the FAO or paid the \$15,000 civil administrative penalty.

102. Pursuant to N.J.S.A. 58:10-23.11u.c.(3), the rate of interest shall be that established by the New Jersey Supreme Court for the interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

103. Pursuant to Rule 4:42-11(a), judgments for the payment of money shall bear simple interest.

104. Pursuant to Rule 4:67-6, DEP is entitled to the entry of a court order enforcing the FAO, which requires Ravi Oil to comply with the UST Act and its implementing regulations, and to pay a civil administrative penalty, plus interest.

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

- a. Finding Ravi Oil in violation of the FAO;
- b. Ordering Ravi Oil to immediately update its UST tank registration to show that the Site's USTs were taken out of service on March 29, 2016;
- c. Ordering Ravi Oil to, within 14 days, retain an LSRP for UST removal;
- d. Ordering Ravi Oil to, within 30 days, obtain a Notice of Intent to remove all USTs and piping;

- e. Ordering Ravi Oil to, within 4 months of obtaining a Notice of Intent, remove all USTs and piping from the Site;
- f. Ordering Ravi Oil to, within 30 days of removing the Site's USTs, terminate its UST registration and submit closure paperwork to DEP;
- g. Ordering Ravi Oil to, within 30 days, pay the civil administrative penalty in the amount of \$15,000, plus interest on the unpaid penalty at the judgment rate commencing on June 19, 2017; and
- h. Granting such other relief as the Court deems just and proper.

**COUNT III**

**VIOLATION OF THE UST ACT  
(Against Defendant Ravi Oil)**

105. The Commissioner repeat each and every allegation of the foregoing paragraphs as if set forth in its entirety herein.

106. Defendant Ravi Oil is a "person" within the meaning of the UST Act, N.J.S.A. 58:10A-3.

107. An "[o]wner" means any person who owns a facility, or any person who has a legal or equitable title to a site containing a facility and has exercised control of the facility." N.J.A.C. 7:14B-1.6.



108. An "[operator]" means each person who leases, operates, controls, supervises, or has responsibility for, the daily operation of a facility, and each person who has the authority to operate, control, or supervise the daily operation of a facility. There may be more than one operator of an UST facility." N.J.A.C. 7:14B-1.6.

109. A "[facility]" means one or more [UST] systems owned by one person on a contiguous piece of property." N.J.A.C. 7:14B-1.6.

110. An "[out of service storage tank]" means any [UST] system in which hazardous substances are contained or have been contained, but from which hazardous substances are not or have not been introduced or dispensed . . . ." N.J.A.C. 7:14B-1.6.

111. Any UST system that is out of service for more than twelve months must be closed under N.J.A.C. 7:14B-9.1(d) and removed under N.J.A.C. 7:14B-9.2(d).

112. The USTs at the Site have contained and may still contain gasoline.

113. Gasoline contains hazardous substances as that term is defined by N.J.S.A. 58:10-23.11b and N.J.A.C. 7:1E-1.6.

114. The USTs at the Site have been out of service for more than twelve months and are therefore out-of-service storage tanks pursuant to N.J.A.C. 7:14B-1.6.

115. Ravi Oil was the owner and/or operator of the Site at all relevant times.

116. Ravi Oil has repeatedly failed to comply with the UST Act.

117. Any person who violates the UST Act shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day for such violation, and each day's continuance of the violation shall constitute a separate violation the Act. N.J.S.A. 58:10A-10(e); -32; see also N.J.S.A. 58:10A-24.6(c).

118. The UST Act permits the Commissioner to bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10(c)(1), for the reasonable costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10(c)(2); for reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10(c)(3); for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge, N.J.S.A. 58:10A-10(c)(4); and for the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the return earned or that may be earned on the amount of avoided

costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10(c) (5).

**WHEREFORE,** the Commissioner demands judgment against Ravi Oil:

- a. Finding Ravi Oil in violation of the UST Act;
- b. Ordering Ravi Oil to immediately update its UST tank registration to show that the Site's USTs were taken out of service on March 29, 2016;
- c. Ordering Ravi Oil to, within 14 days, retain an LSRP for UST removal;
- d. Ordering Ravi Oil to, within 30 days, obtain a Notice of Intent to remove all USTs and piping;
- e. Ordering Ravi Oil to, within 4 months of obtaining a Notice of Intent, remove all USTs and piping from the Site;
- f. Ordering Ravi Oil to, within 30 days of removing the Site's USTs, terminate its UST registration and submit closure paperwork to DEP;
- g. Compelling Ravi Oil to perform any further cleanup of the Site in conformance with SRRA and all other applicable laws and regulations;

- h. Ordering Ravi Oil to pay a civil penalty pursuant to N.J.S.A. 58:10A-10(e) in an amount the court deems just and proper;
- i. Ordering Ravi Oil to reimburse the reasonable costs for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violations, including the costs of preparing and litigating the case;
- j. Awarding the Commissioner his costs and fees incurred in this action;
- k. Awarding the Commissioner such other relief as this Court deems appropriate.

**COUNT IV**

**Specific Performance  
(Against Defendant 304 Main Street)**

119. DEP repeats each and every allegation of the foregoing paragraphs as if set forth in its entirety herein.

120. On August 30, 2021, DEP circulated the key terms of its settlement proposal to counsel for 304 Main Street by writing in e-mail, which included deadlines (to be determined later) for compliance with the Spill Act, SRRA, and the regulations promulgated thereunder, stipulated penalties for non-compliance with the new compliance deadlines, and an initial penalty offer of \$12,500, which together constituted an initial offer. 304 Main

Street rejected only the penalty offer, not the other key terms circulated by DEP.

121. On September 13, 2021, 304 Main Street accepted the second penalty offer of \$10,000 proposed by DEP. 304 Main Street never objected to any of the key terms previously circulated by DEP.

122. 304 Main Street's words and actions between its acceptance of the penalty figure and resolution of the municipal complaint further demonstrate its assent to the key terms offered by DEP, namely, its agreement to remediate the Contaminated Site.

123. DEP is authorized to bring an action in the Superior Court for injunctive relief pursuant to N.J.S.A. 58:10-23.11u.b.(1).

**WHEREFORE,** DEP demands judgment in its favor:

- a. Finding that 304 Main Street is liable and obligated to remediate the Contaminated Site pursuant to the Draft ACO;
- b. Ordering 304 Main Street to comply with the 2019 ACO and specifically perform by completing the remediation at the Contaminated Site in accordance with the Brownfield Act, SRRA, and all other applicable statutes and regulations and/or DEP directives;
- c. Awarding DEP its costs and fees in this action;

- d. Awarding DEP any other relief the Court deems appropriate; and
- e. Reserving DEP's right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

**COUNT V**

**Promissory Estoppel  
(Against Defendant 304 Main Street)**

124. DEP repeats each and every allegation of the foregoing paragraphs as if set forth in its entirety herein.

125. On December 10, 2021, 304 Main Street made a clear and definite promise that it would finalize an ACO following resolution of the municipal action.

126. 304 Main Street made this promise with the expectation that DEP would rely on it.

127. DEP reasonably relied on this promise.

128. In reliance on 304 Main Street's promise, DEP recommended a penalty to the Metuchen Municipal Court far lower than the figure it would have recommended at sentencing had it known 304 Main Street would later withdraw from negotiations to finalize the ACO.

**WHEREFORE**, DEP demands judgment in its favor:

- a. Finding that 304 Main Street benefited from a reduced penalty recommendation made by DEP, which was made in reasonable reliance on a misrepresentation by 304 Main Street.
- b. Finding 304 Main Street liable for all other compensatory and consequential damages, including the difference between the penalty assessment figure recommended to, and adopted by, the municipal court (\$10,000) and the penalty assessment DEP would have recommended had 304 Main Street not misrepresented that it would continue to negotiate in good faith (\$50,000);
- c. Awarding DEP its costs and fees in this action;
- d. Awarding DEP any other relief the Court deems appropriate; and
- e. Reserving DEP's right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

**COUNT VI**

**Unjust Enrichment  
(Against Defendant 304 Main Street)**

129. DEP repeats each and every allegation of the foregoing paragraphs as if set forth in its entirety herein.

130. 304 Main Street benefitted from DEP's reduced penalty recommendation at the December 10, 2021 hearing and the subsequent penalty assessment by the Metuchen Municipal Court based on a misrepresentation made to DEP.

131. 304 Main Street's retention of this benefit is therefore unjust.

**WHEREFORE**, DEP demands judgment in its favor:

- a. Finding that 304 Main Street has been unjustly enriched by its misrepresentation made to DEP during plea negotiations;
- b. Finding 304 Main Street liable for all other compensatory and consequential damages, including the difference between the penalty assessment figure recommended to, and adopted by, the municipal court (\$10,000) and the penalty assessment DEP would have recommended had 304 Main Street not misrepresented that it would continue to negotiate in good faith (\$50,000);
- c. Awarding DEP its costs and fees in this action;
- d. Awarding DEP any other relief the Court deems appropriate; and
- e. Reserving DEP's right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.



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

By: s/ Willis A. Doerr  
Willis A. Doerr  
Deputy Attorney General

DATED: September 28, 2023

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, the Court is advised that Willis A. Doerr, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

**CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES**

Undersigned counsel hereby certifies, in accordance with 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 Plaintiffs at this time, nor is any non-party known to Plaintiffs 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 Plaintiffs, 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: s/ Willis A. Doerr  
Willis A. Doerr  
Deputy Attorney General

DATED: September 28, 2023

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

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

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

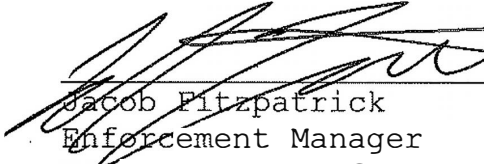
By: s/ Willis A. Doerr  
Willis A. Doerr  
Deputy Attorney General

DATED: September 28, 2023

**VERIFICATION**

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

1. I am an Enforcement Manager within the New Jersey Department of Environmental Protection's Bureau of Enforcement & Investigations, Division of Enforcement, Technical & Financial Support, Contaminated Site Remediation & Redevelopment Program.
3. I certify that the factual allegations contained in Paragraphs 17-45 and 80 of the Verified Complaint are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

  
Jacob Fitzpatrick  
Enforcement Manager  
NJ Department of  
Environmental Protection

DATED: September 25, 2023