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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	SUPERIOR COURT OF NEW JERSEY - CHANCERY DIVISION UNION COUNTY NO.
	:	
Plaintiff,	:	<b><u>CIVIL ACTION</u></b>
	:	
v.	:	VERIFIED COMPLAINT TO ENFORCE A FINAL AGENCY ORDER AND TO COLLECT CIVIL PENALTIES IN A SUMMARY MANNER
B & S OIL CORPORATION; GORAYA OIL CORPORATON; AND SUKWINDER KAUR,	:	
	:	
Defendants.	:	

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Plaintiff, New Jersey Department of Environmental Protection ("Department"), by and through its attorney, brings this Verified Complaint against the above-named defendants ("Defendants"), and alleges as follows:

**STATEMENT OF THE CASE**

1. The Department brings this civil action against Defendants B & S Oil Corporation ("B & S"), Goraya Oil Corporation, a.k.a. Guraya Oil Corporation ("Goraya"), and Sukwinder Kaur

("Kaur") to remedy their noncompliance with environmental laws and regulations at a former gas station in the City of Rahway, which has exposed the Rahway community to public health hazards and caused environmental harm for over a decade.

2. More than six years ago, the Department and the Defendants entered into an Administrative Consent Order ("ACO") requiring Defendants to abate the hazardous conditions resulting from multiple discharges of gasoline and diesel fuel during the operation of the gas station at 1399 Lawrence Street (Route 1/9 North), Rahway, Union County, New Jersey ("Site"). The Site, also known as Block 338.02, Lot 15.02, on the Tax Map of Rahway City, is located within 1,500 feet of a middle school and a childcare center.

3. Despite the ACO's clear requirements, the Defendants have failed to maintain a Licensed Site Remediation Professional ("LSRP") and have missed the regulatory and mandatory timeframes for remediating the discharges and resulting contamination.

4. Gasoline, diesel fuel, and their components pose threats to the environment and public health when they enter the soil and the ground water. These contaminants persist in soil for long periods of time, impeding plant growth and causing birds and mammals irritation and toxicity. Human exposure to these contaminants, including through ingestion or inhalation of vapors, can cause dizziness, headaches, lung irritation, nervous system

disruptions and even damage to the liver, kidneys, central nervous system, and eyes.

5. The community surrounding the Site 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.<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.

6. Residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health without regard to race, language or income. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018); Environmental Justice Law, N.J.S.A. 13:1D-157 to -161.

7. By its terms, the ACO is fully enforceable in Superior Court as a Final Agency Order ("FAO"). The Department seeks to compel Defendants to comply with the FAO in a Summary Proceeding by retaining a LSRP and remediating the Property in accordance

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

with all applicable laws and regulations, and seeks imposition of additional civil penalties for Defendants' violation of the FAO under N.J.S.A. 58:10-23.11u.(d).

#### **THE PARTIES**

8. The Department is a principal department within the Executive Branch of the State government and is charged with protecting human health and the environment by the enforcement of New Jersey's environmental laws, including the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -24 ("Spill Act") and the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA"). These statutes authorize the Department to institute legal proceedings in Superior Court. The Department maintains its principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey.

9. Defendant B & S Oil Corporation was a corporation organized under the laws of the State of New Jersey. Its main business address was 1399 Route 1 North, Rahway, NJ 07065. Its corporate registration was revoked prior to 2015 for failure to pay annual reporting fees.

10. Defendant Goraya is a corporation organized under the laws of the State of New Jersey. Its main business address is 1399 Route 1 North, Rahway, NJ 07065.

11. Defendant Kaur is an individual who resides at 604 Union Avenue, Belleville, NJ 07109. Defendant Kaur is the owner of the Property where the discharge of hazardous substances occurred.

**GENERAL ALLEGATIONS**

12. Defendant Kaur has owned the Property since 2011. The Property is currently vacant and all above-ground structures appear to have been removed.

13. Defendant Goraya owned the Property from 1995 to 2011.

14. Defendant B & S operated the Property as a commercial gas station from at least 1997 to 2010.

15. Defendant B & S was the owner and operator of four underground storage tanks ("USTs") that were located on the Property. Each UST had a capacity of 8,000 gallons. Two of the USTs were used to store gasoline, and two were used to store diesel fuel.

16. When B & S operated the gas station on the Property, it was responsible for at least two discharges of hazardous substances.

17. On July 13, 2004, gasoline was spilled during delivery.

18. On June 16, 2005, a leak was discovered in the diesel fuel pipeline.

19. During subsequent sampling, both diesel fuel and gasoline were found in the soil surrounding the USTs.

20. Gasoline and diesel fuel are both hazardous substances pursuant to the Spill Act. N.J.S.A. 58:10-23.11b.

21. In May 2011, December 2011, and January 2012, the Department contacted B & S, informing it of its obligation to remediate the Property.

22. Because B & S and Goraya failed to retain an LSRP pursuant to N.J.S.A. 7.26C-2.3(a)1-2, on May 7, 2015, the Department, utilizing the City of Rahway's Special Form of Complaint, issued municipal tickets to B & S and Goraya.

23. To resolve the outstanding municipal tickets, on September 1, 2015, the Department entered into an ACO with Defendants B & S, Goraya, and Kaur. The ACO required Defendants to:

- a. Pay a \$7,000 penalty for failure to retain an LSRP;
- b. Undertake all remediation necessary at the Property in accordance with the ACO's terms, including all site-specific timeframes, the 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, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.1 to -13.6, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E 1.1 to -5.8. Among the referenced regulations is the requirement to submit a Remedial Investigation Report by the regulatory deadline

of March 1, 2017 established by N.J.A.C. 7:26E-4.10(a)2ii(1);

c. Maintain a LSRP to oversee and/or perform the remediation of the Property in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2; and

d. Pay all outstanding Annual Remediation Fees to the New Jersey Site Remediation & Waste Management Program.

24. Among other things, the ACO and regulations referenced therein required Defendants to retain an LSRP and to timely submit a Remedial Investigation Report, and Remedial Action Report to fully investigate and remediate the contamination.

25. On September 14, 2015 the Department transmitted a copy of the ACO signed by Defendants to Rahway Municipal Court and referred to the matter as settled. The municipal tickets were subsequently dismissed.

26. On September 9, 2015, Defendants sent a copy of a check for \$7,000 to the Department along with a letter stating the check had been sent to the Treasury "pursuant to the ACO executed."

27. While Defendants paid the \$7,000 penalty, they have not otherwise complied with the ACO or applicable regulations or remediated the Property.

28. To date, Defendants have not paid the outstanding Annual Remediation Fees.

29. To date, Defendants have not submitted a Remedial Investigation Report.

30. On September 22, 2017, the Department issued a Notice of Violation to Defendants B & S and Goraya for failing to timely submit a Remedial Investigation Report as required by the ACO and N.J.A.C. 7:26E-4.10(a)2ii(1).

31. Despite the Notice of Violation, Defendants have still failed to submit a Remedial Investigation Report by the mandatory deadline of March 1, 2019 established by N.J.A.C. 7:26C-3.3(a)5.

32. Because the Defendants have missed the mandatory deadline to submit a Remedial Investigation Report, they are subject to direct oversight by the Department. N.J.A.C. 7:26C-14.(a).

33. On September January 15, 2019, and June 13, 2019, the Department sent letters to Defendants B & S and Goraya informing them of their obligations to remediate the Property.

34. Nor have Defendants submitted a Remedial Action Report by the regulatory deadline of February 28, 2022 established by N.J.A.C. 7:26E-5.8B(3)i.

35. Defendants initially retained a LSRP, but the LSRP reported to the Department that he was no longer retained for the Property as of June 13, 2019.

36. As of the filing of this action, Defendants remain in violation of the ACO and applicable regulations.



**COUNT I**

**Enforcement of the Final Agency Order Against Defendants on a Summary Basis**

37. The Department repeats the allegations in the foregoing paragraphs as though set forth in their entirety herein.

38. On September 1, 2015, the Department and Defendants entered into an ACO requiring Defendants to remediate the Property in accordance with the Spill Act and SRRA, and the regulations promulgated thereto, and in accordance with all mandatory and regulatory timeframes. Defendants were specifically required to maintain a LSRP to conduct the remediation.

39. Paragraph 13 of the ACO states that "This Administrative Consent Order shall be enforceable as a Final Order upon filing of a summary action for compliance pursuant to R. 4:67-1 et seq. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act."

40. To date, Defendants have not complied with all of the requirements of the ACO. Defendants do not currently have a LSRP retained for the Site and have failed to adhere to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C 1.1 to -13.6, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E 1.1 to -5.8.

41. The Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 to -29, and its implementing regulations established "regulatory" and "mandatory" timeframes for the submission of remediation documents and completion of remedial action. Regulatory timeframes establish the amount of time that is appropriate to complete the specific requirement. A grace period is available following a regulatory timeframe. Mandatory timeframes are timeframes set forth in the regulations that have been determined by the Department to be inappropriate to exceed without appropriate justification. Failure to meet a mandatory timeframe will automatically render a party subject to "direct oversight" by the Department.

42. N.J.A.C. 7:26E-5.8B(3)i establishes that, for discharges that occurred between May 7, 1999, and March 1, 2010, the regulatory timeframe by which responsible parties must submit a Remedial Investigation Report is March 1, 2017.

43. N.J.A.C. 7:26C-3.3(a)(5) establishes the mandatory date by which responsible parties must submit a Remedial Investigation Report as two years after the regulatory timeframe. The mandatory timeframe for Defendants to submit a Remedial Investigation Report was March 1, 2019.

44. Defendants have not submitted a Remedial Investigation Report.

45. N.J.A.C. 7:26E-5.8B(3) establishes the regulatory timeframe to submit a Remedial Action Report as five years subsequent to the regulatory timeframe for the Remedial Investigation Report. The regulatory timeframe for Defendants to submit a Remedial Action Report was February 28, 2022.

46. Defendants have not submitted a Remedial Action Report.

47. Pursuant to R. 4:67-6, and Paragraph 13 of the ACO, the Department is entitled to summary enforcement of the ACO, which requires Defendants to:

- a. Undertake all remaining remediation necessary at the Property in accordance with the ACO, including all site-specific timeframes, the 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, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C 1.1 to -13.6, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E 1.1 to -5.8; and
- b. Maintain a LSRP to oversee and/or perform the remediation of the Property in accordance with N.J.A.C. 7:26C-2.3(a)1 and 2.

**WHEREFORE,** the Department demands judgment against Defendants:

- a. Finding Defendants in violation of the FAO;

- b. Ordering Defendants to comply with the terms of the FAO that they are currently in violation of, including retaining a LSRP, complying with the requirements of direct oversight pursuant to N.J.A.C. 7:26C-14.2(b), and submitting a schedule for the completion of the remedial work at the site within ninety (90) days after the Court's order;
- c. Awarding the Department all costs and fees incurred in relation to this action; and
- d. Awarding such other relief as the Court deems just and proper.

## COUNT II

### Imposition of Civil Penalties Against Defendants for Failure to Comply with a Final Agency Order on a Summary Basis

48. The Department repeats the allegations in the foregoing paragraphs as though set forth in their entirety herein.

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

50. The Department may bring an action in Superior Court seeking the imposition of these penalties, N.J.S.A. 58:10-23.11u.a.(1)(c), which, along with costs, may be recovered by the

Department in a summary proceeding pursuant to the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 to -12, N.J.S.A. 58:10-23.11u.d., and R. 4:70.

51. As set forth above, the Defendants have failed to comply with the FAO.

**WHEREFORE,** the Department demands judgment against Defendants:

- a. Finding Defendants in violation of the FAO;
- b. Imposing upon Defendants, pursuant to N.J.S.A. 58:10-23.11u.a; N.J.S.A. 58:10-23.11u.d and R. 4:70, a civil penalty for Defendants' violation of the ACO; and
- c. Awarding such other relief as the Court deems just and proper.
- d. Reserving the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Site.

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

By: /s/J. Matthew Novak  
J. Matthew Novak  
Deputy Attorney General

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the Court is advised that James Matthew Novak, Deputy Attorney General, is hereby designated as trial counsel for the Plaintiff in this action.

**CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES**

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

MATTHEW J. PLATKIN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: /s/J. Matthew Novak  
J. Matthew Novak  
Deputy Attorney General

DATED: August 23, 2022

**VERIFICATION**

I, Nadine Drake, by way of certification, state that:

1. I am the enforcement manager for the Site and am employed by the New Jersey Department of Environmental Protection.
2. I have read the Verified Complaint.
3. I certify that the factual allegations contained in the Verified Complaint are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

/s/Nadine Drake  
Nadine Drake  
Enforcement Manager,  
Department of Environmental  
Protection

DATED: August 23, 2022