

STATEMENT OF THE CASE

1. This is a civil action brought to protect the community of Mays Landing from the immediate threat posed by Defendants' repeated noncompliance with environmental laws and regulations.

2. Defendants, the owners and operators of an abandoned retail gas station, have not properly closed an underground storage tank ("UST") system with a storage capacity of 24,000 gallons on their property. The system contains significant amounts of gasoline and diesel fuel, both of which are hazardous to human health and the environment. Despite the Department's enforcement efforts at this site spanning over two decades, the UST system is entirely unmonitored and lacks basic spill prevention controls or the required leak detection. So long as the UST system remains in its current state, the environment and the surrounding community, including a nearby school, are at risk of harmful effects from the release of diesel fuel and gasoline.

3. Defendants' inaction is not new; they have repeatedly failed to comply with the Department's demands to return the site to compliance.

4. Indeed, Defendants have failed to fulfill their existing responsibilities arising out of a 1996 gasoline spill and 2012 discovery of contaminated soil on the property.

5. The Department seeks to eliminate the risks to the community and the environment via an order requiring Defendants to immediately empty and properly close the UST system, investigate the surrounding area and, if necessary, conduct any required remediation. The Department also seeks to compel Defendants to satisfy outstanding financial obligations, pay civil penalties, and to otherwise comply with the Underground Storage of Hazardous Substances Act ("USTA"), N.J.S.A. 58:10A-21, Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1, the New Jersey Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, and the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"), N.J.S.A. 58:10B-1 to -31.

PARTIES

6. DEP is a principal department in the Executive Branch of the State government and is charged with enforcement of the SRRA, the Spill Act, and the Brownfield Act.

7. The Commissioner is the Commissioner of the DEP, N.J.S.A. 58:10A-3, and is vested by law with various powers and authority, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D-1 to -19. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of the UST Act. N.J.S.A. 58:10A-32; N.J.S.A. 58:10A-10.c.

8. DEP and the Commissioner maintain their principal offices at 401 East State Street in Trenton, Mercer County, New Jersey.

9. Defendant Baja Auto Services, Inc. ("Baja Auto"), is the owner of the property located at 5803 Main Street, Mays Landing, Atlantic County, New Jersey, Block 807, Lot 5, on the Atlantic County tax map ("Site"). It has owned the property since 2006. The Site operated as a retail gas station from at least 1996 onwards. Currently, upon information and belief, the business has ceased operating.

10. Jeff Altman was the owner of Baja Auto until his death on January 13, 2020. Altman's last known address was 401 Copper Landing Rd - Suite C-18, Cherry Hill, NJ 08002. Altman was the president and sole corporate officer for Baja Auto. As the president of Baja Auto, Altman was responsible for ensuring that Baja Auto complied with applicable laws and regulations, including the UST Act and the Spill Act. The Estate of Jeff Altman is liable for Altman's debts, contractual obligations, and liabilities. Upon information and belief, James Tamburro is the Executor of the Estate of Jeff Altman. Altman and his Estate will be referred to collectively as "Defendant Altman."

GENERAL ALLEGATIONS

11. The Site is located in downtown Mays Landing, approximately 300 feet away from a private school for children in

preschool through eighth grade. It was used as a retail gas station from at least 1996 until approximately 2020.

12. The UST system at the Site consists of four USTs, three for storing gasoline and one for storing diesel fuel, with a combined storage capacity of 24,000 gallons. Gasoline and diesel fuel remain in the UST system.

13. On June 12, 1996, a product line leak led to the discharge of fuel into the soil at the Site. The spill was reported to the DEP Spill Hotline. The previous owner, Mays Landing Citgo, conducted some remediation under the Underground Storage Tank rules, N.J.A.C. 7:14B, but the Site remained contaminated. Mays Landing Citgo no longer exists.

14. On July 7, 2006, Defendant Baja Auto, which was owned by Altman, purchased the Site from Walter L. Hoagland.

15. During inspections conducted on April 3, 2008, June 23, 2008, January 7, 2011, June 27, 2011, and July 23, 2012, DEP inspectors determined that Defendants violated the UST Act by operating USTs without proper registration, failing to maintain proper UST monitoring systems, failing to store substances in the USTs for which they were designed, and failing to properly close out-of-service USTs. N.J.A.C. 7:14B-2.1(a); N.J.A.C. 7:14B-9.1(d).

16. On October 24, 2012, a soil investigation conducted by the licensed site remediation professional ("LSRP") for the Site

discovered traces of diesel fuel and oil waste in the soil above the UST system.

17. As a result of Defendants' repeated violations, on January 7, 2013, DEP issued an order to Defendants revoking their UST registration and requiring them to cease all UST operation at the Site. DEP also issued an administrative penalty in the amount of \$100,000.

18. Defendants timely requested an administrative hearing and the matter was referred to the Office of Administrative Law ("OAL").

19. As the subsequent purchaser of a contaminated site, Defendant Baja Auto was required to remediate the 1996 spill and any other discharge of hazardous substances that occurred at the Site prior to its purchase. N.J.S.A. 58:10-23.11g. However, Defendant Baja Auto failed to submit a Remedial Investigation Report ("RIR") related to the 1996 spill by the regulatory deadline of May 7, 2014. N.J.A.C. 7:26C-3.3. This triggered compulsory direct oversight of the Site by DEP. N.J.A.C. 7:26C-14.2

20. Between 2013 and 2016, Defendants resolved all of the outstanding UST violations at the Site. One gasoline UST was converted to a diesel UST during this period.

21. On May 25, 2016, DEP, Baja Auto, and Altman entered into a Stipulation of Settlement agreement ("2016 Settlement") to resolve all violations then pending at the Site. The 2016

Settlement did not in any way excuse Defendants from future compliance with environmental laws and regulations at the Site. Defendant Altman was personally liable for compliance with the 2016 Settlement.

22. The 2016 Settlement required Defendants to pay a penalty of \$47,518.16, on a quarterly basis. The 2016 Settlement also required that, should Defendant miss a payment deadline by over 120 days, the entire settlement amount, plus interest, minus that already paid, would be immediately due and owing, and enforceable in Superior Court pursuant to R. 4:67 or R. 4:70 in a summary manner.

23. On March 15, 2018, Defendants failed to make a payment as required by the 2016 Settlement. Defendants missed subsequent payments on March 15, 2019, September 15, 2019, and December 15, 2019. In total, Defendant failed to pay \$11,879.76 of the agreed-upon \$47,518.16.

24. Defendant Baja Auto also failed to pay the Annual Remediation Fees relating to the 1996 spill in 2020 and 2021, for a total of \$6,520. Defendant Baja Auto also further failed to adhere to the requirements of direct oversight through the

establishment of a Remediation Funding Sources ("RFS") with regard to the 1996 and 2012 incidents.¹

25. DEP contacted Defendants via electronic and regular mail on January 7, 2020, February 25, 2020, April 1, 2020, and May 13, 2020, informing them of the overdue payments required by the 2016 Settlement.

26. On July 31, 2020, DEP docketed a judgment of \$11,879.76 against Defendants for their failure to adhere the 2016 Settlement payment schedule. The judgment was assigned docket number MER DJ-083762. This judgment constitutes a lien against all of Defendants' property statewide.

27. On January 5, 2021, DEP inspected the Site. The DEP inspector found that the business had ceased operations. Yet, the UST system was not only still present, but partially full of gasoline and diesel fuel. Proper closure of an UST system requires all contents to be emptied to prevent a spill, among other requirements. In addition, the UST system's registration was expired, and the system was unmonitored in violation of the UST Act. N.J.A.C. 7:14B-2.1(a); N.J.A.C. 7:14B-9.1(d).

28. After the January 5, 2021 inspection, DEP immediately issued a delivery ban, citing the failure to close the out-of-

¹ An RFS is a funding mechanism created and maintained by a responsible party to ensure that sufficient money is available to remediate a contaminated site. N.J.A.C. 7:26C-5.

service UST system, failure to maintain proper monitoring equipment, failure to register the UST system, and failure to maintain safety equipment such as catchment basins.

29. DEP also immediately issued a Field Notice of Violation ("NOV"), citing the same violations as in the delivery ban. This NOV was mailed to Defendant Altman.

30. On July 27, 2021, DEP inspected the Site again. The UST system was still present and partially full of diesel fuel and gasoline.

31. During the July 2021 inspection, DEP also observed that Defendants had failed to maintain a number of required safety precautions on the UST system. Defendants did not establish release detection mechanisms for the tank or pipes (N.J.A.C. 7:14B-6.1(a).), properly mark the fill ports (N.J.A.C. 7:14B-5.8.), or test the cathodic protection systems (N.J.A.C. 7:14B-5.2(a)2i), overflow prevention equipment (N.J.A.C. 7:14B-5.10(a)3), catchment basins (N.J.A.C. 7:14B-5.2(a)1ii), electronic and mechanical components, (N.J.A.C. 7:14B-6.6(1)), automatic line leak detectors (N.J.A.C. 7:14B-6.6(a)(1)), or containment sumps (N.J.A.C. 7:14B-5.10(a)1ii). These safety measures are required by DEP in order to prevent, detect, and mitigate the risk of spills.

32. Defendants also failed to implement an UST closure plan consisting of a site investigation and a tank decommissioning plan. N.J.A.C. 7:14B.

33. As the president of Baja Auto, Defendant Altman was responsible for ensuring that Baja Auto complied with applicable laws and regulations, including, but not limited to, the UST Act and the Spill Act.

34. On July 28, 2021, DEP issued an order requiring Defendant Baja Auto to submit a UST Questionnaire, remove all product from the tanks, retain an LSRP within 15 days, and close the UST system within 90 days. To date, Defendants have not complied with any of those requirements.

35. Although there is an LSRP retained for the Site in connection with past environmental compliance issues, the LSRP has not performed any duties relating to the UST issues discovered in 2021.

36. USTs that are not properly closed have the potential to leak their contents into the surrounding soil. This is particularly the case when the tanks are not monitored and proper safety measures are not in place.

37. Gasoline, diesel fuel, and their constituent components are "hazardous substances" covered under the UST Act.

38. Gasoline and diesel fuel discharged to soil and groundwater from USTs threaten human health and the environment in a number of ways.

39. Gasoline and diesel fuel discharged to soil from USTs can be contacted by persons handling contaminated soil.

40. Gasoline and diesel fuel discharged to soil and ground water from USTs can evaporate through soil, and the vapor can intrude into nearby human-occupied spaces. Contaminated ground water can impact drinking water supplies.

41. Consequences of exposure to gasoline and diesel fuel include dizziness, nausea, damage to internal organs, and damage to cognitive functions.

COUNT I

Violation of the UST Act

42. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

43. A "[f]acility" means one or more underground storage tank systems owned by one person on a contiguous piece of property." N.J.A.C. 7:14B-1.6.

44. The UST system on the Site constitutes a "facility" under N.J.A.C. 7:14B-1.6.

45. "'Close' or 'closure' means the permanent elimination from service of any [UST] system by removal or abandonment in place." N.J.A.C. 7:14B-1.6.

46. 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.

47. Defendant Baja Auto is the owner of the UST system at the Site, per UST Registration # 04832.

48. 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."

49. Altman was an operator of the UST system at the Site, because as the President and sole corporate officer of Baja Auto he controlled and had responsibility for the daily operation of the facility.

50. The owner and operator closing the out of service UST system as required by N.J.A.C. 7:14B-9.1(d) must comply with the following requirements set forth at N.J.A.C. 7:14B-9.2(a):

- a. Ensure that the facility is registered as required by N.J.A.C. 7:14B-2.2 prior to closing any tank(s);
- b. Notify DEP of the intent to close the UST system at least fourteen calendar days prior to the closure date;
- c. Provide a copy of DEP's approval of the notice of intent to close the tanks to the applicable municipal and county health departments and the applicable local authority with the application for a local demolition permit;
- d. Comply with the applicable requirements for the New Jersey Uniform Construction Code, N.J.A.C. 5:23; and

e. Retain a LSRP pursuant to the Administrative Requirements for the remediation of Contaminated Sites, N.J.A.C. 7:26C and conduct a Site Investigation pursuant to N.J.A.C. 7:26E. If any contamination is detected above any applicable remediation standard, conduct the remediation pursuant to N.J.A.C. 7:26C and N.J.A.C. 7:26E.

51. Defendants performed none of the above closure requirements, despite Department records showing that an LSRP is retained.

52. The owner and operator closing an UST system must implement a closure plan, which consists of a site investigation as set forth at N.J.A.C. 7:26E-3.3, and a tank decommissioning plan. N.J.A.C. 7:14B-9.2(b). The owner and operator must also hire an UST contractor certified with the Department in UST Closure and retain an LSRP. N.J.S.A. 58:10b-1.3.

53. Defendants did not perform a site investigation, create a tank decommissioning plan, or retain an LSRP or UST contractor for this purpose.

54. The owner and operator of an out-of-service UST system must still comply with all relevant environmental laws and regulations. N.J.A.C. 7:14B-9.1(a)2.

55. The owner and operator of an UST system must establish an effective method to detect releases from the tank and the pipes. N.J.A.C. 7:14B-6.1(a).

56. Defendants did not establish an effective method to detect releases from the tank and pipes.

57. The owner and operator of a UST system must mark fill ports in accordance with the colors and codes established by the American Petroleum Institute. N.J.A.C. 7:14B-5.8.

58. Defendants did not mark the fill ports of their UST system.

59. The owner and operator of a UST system must regularly test the following mechanisms:

- a) Cathodic protection systems. N.J.A.C. 7:14B-5.2(a)2i;
- b) Overflow prevention equipment. N.J.A.C. 7:14B-5.10(a)3;
- c) Catchment basins. N.J.A.C. 7:14B-5.2(a)lii;
- d) All electronic and mechanical components. N.J.A.C. 7:14B-6.6(1)h;
- e) Automatic line leak detectors. N.J.A.C. 7:14B-6.6(a)(1); and
- f) Containment sumps. N.J.A.C. 7:14B-5.10(a)lii.

60. Defendants have not provided DEP with any records of tests of any of the above mechanisms in the past three years.

61. The UST Act permits the Department to seek penalties pursuant to the Water Pollution Control Act's ("WPCA") penalty

provision, N.J.S.A. 58:10A-10(c). N.J.S.A. 58:10A-32. Pursuant to the WPCA, the Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c(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-10c(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-10c(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-10c(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-10c(5).

WHEREFORE, Plaintiffs demand judgment in their favor:

- a. Finding Defendants to be in violation of the UST Act and its implementing regulations;

- b. Granting immediate preliminary injunctive relief against Defendants on the return date of the concurrently entered Order to Show Cause;
- c. Ordering Defendants to empty the UST system and dispose of the contents in accordance with applicable regulations within seven days;
- d. Ordering Defendants to hire and maintain an LSRP for the purpose of closing the tanks, submit a notice of intent, and provide a signed contract for the closure of the UST system within 15 days;
- e. Ordering Defendants to properly close the UST as required by and in accordance with all applicable laws and regulations within 90 days;
- f. Ordering Defendants to submit an Underground Storage Tank Questionnaire and documentation of system closure within seven days of UST closure;
- g. Ordering Defendants to fully investigate and remediate all hazardous discharges at and migrating from the site in accordance with all applicable laws and regulations;
- h. Ordering Defendants to pay a civil penalty pursuant to N.J.S.A. 58:10A-10e in an amount the Court deems just and proper;
- i. Ordering Defendants to compensate the Department for all reasonable costs and fees that have been and will be incurred

for any investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;

j. Reserving the Department's rights to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the site;

k. Reserving the right to bring a claim against Defendants in the future 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-10c(5)

l. Awarding the Department any other relief that this Court deems just and proper.

COUNT II

Violation of the Spill Act

62. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth herein.

63. Any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be

liable, jointly and severally, without regard to fault for all cleanup and removal costs no matter by whom incurred, except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here. N.J.S.A. 58:10-23.11g.c(1).

64. As an owner of the Site, Defendant Baja Auto is a person "in any way responsible" for the discharges resulting from the 1996 spill and any other hazardous discharges at the Site.

65. Pursuant to the Brownfield Act, Defendants liable under the Spill Act are also required to remediate the hazardous substances at the Site in accordance with the SRRA. N.J.S.A. 58:10B-1.3.

66. Defendant Baja Auto has failed to remediate the hazardous substances discharged at the Site.

67. SRRA requires that the Department engage in Direct Oversight when a person responsible for conducting a remediation fails to meet a statutory, mandatory, or expedited site-specific remediation deadline. N.J.S.A. 58:10C-27.

68. If a spill occurred prior to May 7, 1999, and the remedial investigation was not completed by May 7, 2009, SRRA established a statutory timeframe for completion of the remedial investigation report by May 7, 2014. Compulsory Direct Oversight was triggered if the May 7, 2014 deadline was missed and a statutorily allowed extension to May 7, 2016, was not requested.

69. Defendant Baja Auto's failure to submit a Remedial Investigation Report by May 7, 2014, triggered compulsory Direct Oversight.

70. The person responsible for remediation of a site in Direct Oversight must establish and maintain a RFS. N.J.A.C. 7:26C-5.2(k).

71. Defendant Baja Auto has failed to establish or maintain a Remediation Funding Source or comply with other Direct Oversight requirements.

72. A person responsible for conducting remediation must submit an Annual Remediation Fee to the Department. N.J.A.C. 7:26C-4.3.

73. Defendant Baja Auto failed to pay the Annual Remediation Fee in 2020 and 2021.

WHEREFORE, Plaintiffs demand judgment in their favor:

- a. Finding Defendant Baja Auto to be in violation of the Spill Act and the SRRA and its implementing regulations;
- b. Ordering Defendant Baja Auto to pay the outstanding Annual Remediation Fees for 2020 and 2021;
- c. Ordering Defendant Baja Auto to establish and maintain a Remediation Funding Source, comply with all other Direct Oversight requirements at N.J.A.C. 7:26C-14 and enter into an Administrative Consent Order with the Department to establish

due dates for direct oversight requirements and completion of remediation requirements;

d. Reserving the Department's right to bring a claim against Defendant Baja Auto in the future for natural resource damages arising out of the discharge of hazardous substances at the Site during Baja Auto's ownership;

e. Assessing civil penalties as provided by N.J.S.A. 58:10-23.11u against Defendant Baja Auto for their failure to remediate the Site.

f. Awarding the Department its costs and fees in this action; and

g. Awarding the Department any other relief that this Court deems just and proper.

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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

Dated: October 8, 2021

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that J. Matthew Novak, 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 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 Plaintiffs at this time, nor is any non-party known to Plaintiffs 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 Plaintiffs, 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).

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

 /s/ J. Matthew Novak
J. Matthew Novak

DATED: October 8, 2021

Deputy Attorney General

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 R. 1.38-7(b).

ANDREW J. BRUCK
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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

DATED: October 8, 2021

VERIFICATION

I, Zachary Dorf, by way of certification, state that:

1. I have read the Verified Complaint.
2. I certify that the factual allegations in paragraphs 11-35 are true and correct.
3. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

By: /s/ Zachary Dorf

DATED: October 8, 2021