

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, N.J. 08625-0093  
Attorney for Plaintiff

By: Samuel R. Simon  
Attorney ID No. 288191973  
Samuel.Simon@law.njoag.gov  
Robert G. Lamilla  
Attorney ID No. 156582015  
Robert.lamilla@law.njoag.gov  
Deputy Attorneys General  
(609) 376-2740

---

STATE OF NEW JERSEY, : SUPERIOR COURT OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL : CHANCERY DIVISION - ESSEX  
PROTECTION, : COUNTY

Plaintiff, :

DOCKET NO.

Civil Action

v. :

VIATHON, INC., and ROBERT :  
COMIZIO, Individually and as :  
President of VIATHON, INC., :

VERIFIED COMPLAINT TO ENFORCE  
FINAL AGENCY ORDER AND TO  
COLLECT ADDITIONAL CIVIL  
PENALTIES IN A SUMMARY  
PROCEEDING PURSUANT TO  
R. 4:67-6 AND R. 4:70

Defendants. :

:

---

Plaintiff State of New Jersey, Department of Environmental Protection ("Department"), having its principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Verified Complaint against defendants Viathon, Inc. and Robert Comizio, individually and as President of Viathon, Inc. says:

## STATEMENT OF THE CASE

1. Viathon, Inc. owns and operates a retail gasoline service station located at 66-68 North Park Street, East Orange, Essex County, New Jersey. As part of its operations, one 6000-gallon Underground Storage Tank of unleaded gasoline, two 4000-gallon Underground Storage Tanks of unleaded fuel, and one 40-gallon waste oil Underground Storage Tank are located on the property.
2. In 2010, the Department determined that Viathon, Inc. and Robert Comizio, individually and as President of Viathon, Inc. (collectively "Defendants"), failed to comply with the regulations governing underground storage tanks, including the requirements to properly test, maintain, and register the underground storage tanks present at the subject property.
3. Through these regulations, the Department seeks to ensure sound underground storage tank management throughout New Jersey, to prevent or detect discharges (whether hazardous substances, oil, or other pollutants altogether) from such tank systems, which can cause contamination of the land and waters of the state.
4. On September 12, 2016, the Department ordered the Defendants to hire a licensed site remediation professional to remove the underground storage tanks and assessed a penalty of \$88,400.00. The order is memorialized in an Administrative

Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA"), EA ID # PEA 160003-010020. The AONOCAPA became a Final Agency Order on October 3, 2016.

5. The Defendants have failed to comply with the Final Agency Order.
6. The Department brings this civil action for enforcement of the Final Agency Order pursuant to Rule 4:67-6.
7. The Department also seeks the imposition of additional civil penalties for the Defendants' failure to comply with the Final Agency Order and pay the civil administrative penalty, pursuant to N.J.S.A. 58:10A-10(e) and N.J.S.A. 26:2C-19(b).
8. The Department is authorized to seek enforcement of the Final Agency Order and to seek imposition of additional statutory civil penalties in a summary manner pursuant to the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to-35 ("UST Act"); the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 to -25.2 ("APCA"); the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12; and R. 4:67-6 and R. 4:70.
9. The validity of the Final Agency Order shall not be judiciable in an enforcement proceeding. R. 4:67-6(c)(3).

#### THE PARTIES

10. The Department is a principal department within the Executive Branch of the State government vested with the authority to

conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9. Pursuant to the authority vested in the Department of Environmental Protection by the Department's Enabling Legislation, the UST Act, and APCA, the Department is empowered to institute legal proceedings to enforce final agency orders and to pursue additional civil penalties in summary proceedings in Superior Court.

11. Defendant Viathon, Inc. ("Viathon") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business at 66 North Park Street, East Orange, New Jersey 07017.
12. Defendant Robert Comizio ("Comizio") is an individual residing in the State of New Jersey, with a principal residence located at 26 Long Hill Road, Basking Ridge, New Jersey 07920. Comizio is the President of Viathon.

#### SITE OWNERSHIP AND PROCEDURAL HISTORY

13. The Property is located at 66-68 North Park Street, East Orange, Essex County, New Jersey, also known as Block 832, Lot 9, on the Tax Map of East Orange ("Property"), and consists of a corner lot, comprising approximately 0.7 acres of improved land in East Orange.
14. The Property is the location of "underground storage tank systems" as defined by N.J.A.C. 7:14B-1.6, consisting of one

6000-gallon Underground Storage Tank of unleaded gasoline, two 4000-gallon Underground Storage Tanks of unleaded fuel, and one 40-gallon waste oil Underground Storage Tank, and associated appurtenances.

15. Viathon is the current owner of the Property, having acquired it on December 30, 2005.
16. On September 12, 2016, the Department issued an AONOCAPA to Defendants.
17. In the AONOCAPA, the Department found that during Viathon's ownership of the Property, compliance evaluations conducted at the Property on July 29, 2010, November 28, 2015, and January 27, 2016 revealed numerous failures by Defendants to comply with the UST Act, APCA, and the regulations promulgated pursuant thereto.
18. The Department conducted a follow-up compliance review on June 14, 2016 and determined that Defendants had not achieved compliance with the UST Act, APCA, and the regulations promulgated pursuant thereto.
19. In the AONOCAPA, the Department found that the Defendants had violated the UST Act, APCA, and the regulations promulgated pursuant thereto, specifically, the Department determined that Defendants violated the following regulations:

N.J.A.C. 7:27-8.3(e), by using a control apparatus without having all components connected and functioning



properly and in accordance with the preconstruction permit and certificate;

N.J.A.C. 7:27-16.3(d), by failing to equip and operate an emission control, specifically, Defendants failed to connect the pressure vacuum valve to the vent pipe;

N.J.A.C. 7:27-16.3(e), by failing to equip and operate a vapor control system, specifically, pump #1 had a torn whip hose and a liquid blockage;

N.J.A.C. 7:14B-5.1(d)1, by failing to keep the spill buckets free of debris, product, and/or water because water was present in all spill buckets;

N.J.A.C. 7:14B-5.2(a)2i, by failing to test the cathodic protection system every three years;

N.J.A.C. 7:14B-6.6(a)1, by failing to test the automatic line leak detectors at least once every year;

N.J.A.C. 7:14B-2.1(a), by failing to properly register all regulated tanks with the Department;

N.J.A.C. 7:14B-5.1(d), by failing to inspect and clean all submersible turbine pumps, dispenser and piping sumps, spill buckets and catchment basins every thirty days;

N.J.A.C. 7:14B-5.9(b), by introducing a hazardous substance into a regulated underground storage tank which was not properly registered with the Department;

N.J.A.C. 7:14B-6.1(a)2, by failing to operate the monitoring system in accordance with the requirements of the manufacturer;

N.J.A.C. 7:14B-6.1(a), by failing to perform leak detection for piping pursuant to the applicable rules and regulations;

N.J.A.C. 7:14B-6.2(a)1, by failing to test the interstitial continuously or at least once every thirty days;

N.J.A.C. 7:14B-6.7(f), by failing to maintain records of any sampling, testing, or monitoring and monthly inventory reconciliations;

N.J.A.C. 7:14B-9.1, by failing to comply with the requirements for out-of-service underground storage tank systems; and

N.J.A.C. 7:14B-15.2(a), by failing to have a financial responsibility assurance mechanism.

20. Based upon the Findings of the AONOCAPA, the Department ordered the Defendants to:

a. Within 7 days after receipt of the AONOCAPA, update the Underground Storage Tank registration to show that the tanks are out of service;

b. Within 30 days after receipt of the AONOCAPA, retain a Licensed Site Remediation Professional and file for a Notice

of Intent to remove all Underground Storage Tank systems onsite;

- c. Within 90 days after receipt of the AONOCAPA, remove all Underground Storage Tank systems;
  - d. Within 14 days of the Underground Storage Tank removal, submit a questionnaire to show that the tanks have been removed.
21. Based upon the Findings in the AONOCAPA and the violations listed in paragraph 18 above, the Department assessed a civil administrative penalty against the Defendants in the amount of \$88,400, as reflected in the Penalty Assessment Worksheets attached to the AONOCAPA.
  22. On or about September 12, 2016, the Department mailed the AONOCAPA to the Defendants via certified mail at Comizio's home address.
  23. On or about September 16, 2016, the Defendants received the AONOCAPA and the signed certified mail green card was returned to the Department.
  24. On or about October 7, 2016, or the twenty-first calendar day following the Defendants' receipt of the AONOCAPA, having not requested an administrative hearing, the AONOCAPA became a Final Agency Order against the Defendants.
  25. The Defendants did not appeal the Final Agency Order.



26. To date, the Defendants have not complied with the terms of the Final Agency Order, and have not paid the \$88,400 civil administrative penalty.
27. The Defendants are obligated to comply with the terms of the Final Agency Order and pay the \$88,400 civil administrative penalty.

FIRST COUNT

Compliance with Final Agency Order and Payment of the Civil  
Administrative Penalty

28. The Department repeats each allegation of Paragraphs Nos. 1 through 26 above as though fully set forth in their entirety herein.
29. To date, Defendants have not complied with the requirements of the Final Agency Order.
30. Additionally, to date, Defendants have not complied with the requirement of the Final Agency Order to pay the \$88,400 civil administrative penalty.
31. 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 forth in the Rules Governing the Courts of the State of New Jersey.
32. Pursuant to R. 4:42-11(a), judgments for the payment of money shall bear simple interest.

33. Pursuant to R. 4:67-6, the Department is entitled to the entry of a court order enforcing the Final Agency Order, which requires the Defendants to comply with the UST Act, APCA, and its implementing regulations, and to pay a civil administrative penalty, plus interest.

WHEREFORE, the Department demands entry of an order against the Defendants:

- a) Finding the Defendants in violation of the Final Agency Order;
- b) Enforcing the Department's Final Agency Order requiring the Defendants to update the Underground Storage Tank registration to show that the tanks are out of service;
- c) Enforcing the Department's Final Agency Order requiring the Defendants to retain a Licensed Site Remediation Professional and file for a Notice of Intent to remove all Underground Storage Tank systems;
- d) Enforcing the Department's Final Agency Order requiring the Defendants to remove all Underground Storage Tank systems;
- e) Enforcing the Department's Final Agency Order requiring the Defendants to submit a questionnaire to show that the tanks have been removed;
- f) Ordering the Defendants, within thirty days after the Court's Order, to pay the civil administrative penalty in the amount of \$88,400, plus interest on the unpaid penalty at the judgment rate commencing on October 7, 2016;

- g) Granting such other relief as the Court deems just and proper;  
and
- h) Reserving the right of Plaintiffs to bring a claim or claims in the future for relief under the Spill Act, including for remediation and/or natural resource damages arising out of the discharge of hazardous substances at the Property.

SECOND COUNT

Additional Civil Penalties Pursuant to N.J.S.A. 58:10A-24.6 and  
N.J.S.A. 26:2C-19(b)

- 34. The Department repeats each allegation of paragraphs 1 through 32, above, as if fully set forth in their entirety herein.
- 35. To date, Defendants have not complied with the requirements of the Final Agency Order.
- 36. Pursuant to N.J.S.A. 58:10A-24.6, the Department is entitled to the assessment of penalties against any person who violates the UST Act, the Underground Storage Tank Regulations, or an administrative order issued pursuant to the UST Act. The UST Act provides a maximum penalty of \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense.

37. Pursuant to N.J.S.A. 26:2C-19(b) and N.J.S.A. 26:2C-19(d) any person who violates any order adopted or issued pursuant to the APCA, or who fails to pay a civil administrative penalty in full, shall be liable for a penalty of up to \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and each subsequent offense. Each day during which the violation continues constitutes a separate and distinct offense.

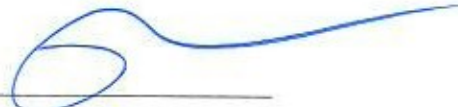
WHEREFORE the Department demands judgment against the Defendants:

- a. Finding the Defendants in violation of the Final Agency Order;
- b. Finding that the Defendants have failed to pay the \$88,400 civil administrative penalty in full;
- c. Imposing upon the Defendants, pursuant to R. 4:70, an additional civil penalty for the Defendants' violation of the Final Agency Order;
- d. Requiring Defendants to pay a penalty of \$1,000 per day starting from the return date of the Order to Show Cause, and each subsequent day until Defendants fully comply with the Final Agency Order;
- e. Granting such other relief as the Court deems just and proper; and
- f. Reserving the right of Plaintiffs to bring a claim or claims in the future for relief under the Spill Act, including for

remediation and/or natural resource damages arising out of  
the discharge of hazardous substances at the Property.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiff

By: 

  
\_\_\_\_\_  
Samuel R. Simon  
Robert G. Lamilla  
Deputy Attorneys General

Dated: *October 23, 2019*



VERIFICATION

I, JENNA DINUZZO, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection as an Environmental Specialist in the Bureau of Underground Storage Tanks Compliance and Enforcement Program.
2. I have been the enforcement manager for the Viathon, Inc. a/k/a Gas Mart Site since I conducted a compliance inspection on January 27, 2016.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in the Verified Complaint are true and correct.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

  
Jenna DiNuzzo

DATED: 10/24/19

DESIGNATION OF TRIAL COUNSEL

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

R. 4:5-1(b)(2) CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

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

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:   
\_\_\_\_\_  
Samuel R. Simon  
Deputy Attorney General

Dated: *October 23, 2019*

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

I certify 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).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:   
\_\_\_\_\_  
Samuel R. Simon  
Deputy Attorney General

Dated: *October 23, 2019*