

STATEMENT OF THE CASE

1. Wilenta Feed, a food waste recycling business in Secaucus, New Jersey ("Site"), repeatedly has caused pollutants from its operation to run off into the storm sewer system and, ultimately, to New Jersey's surface waters in violation of the Water Pollution Control Act ("Act"), N.J.S.A. 58:10A-1 to -35, and the terms of Defendant's permit despite the Department's numerous administrative efforts to secure Defendant's compliance.

2. Wilenta Feed's business involves converting food waste, largely bakery products, into animal feed or animal feed ingredients.

3. Wilenta Feed received a New Jersey Pollutant Discharge Elimination System ("NJPDDES") basic industrial stormwater permit in 2013, which prohibits Defendant from exposing food waste and by-products and Defendant's industrial activities to stormwater discharges.

4. Despite this prohibition, DEP has observed and documented numerous occasions of Defendant's improper storage practices, including the storing of materials in open-air piles and unsealed containers exposed to stormwater, causing pollutants to run off into the storm sewer system and, ultimately, to New Jersey's surface waters including Penhorn Creek, a tributary to the Hackensack River.

5. The introduction of food waste-related pollutants to surface water bodies can significantly decrease dissolved oxygen levels of the water. This decrease in dissolved oxygen levels can cause stress, asphyxiation, and death in aquatic life. Such harm to aquatic life, in turn reduces opportunities for recreation and enjoyment of these waterways by New Jersey residents and visitors.

6. DEP issued numerous warnings and Notices of Violation ("NOV") to bring Wilenta Feed into compliance with the conditions of its permit and the Act and to prevent further stormwater pollution.

7. The community surrounding the Site has a significant low-income, minority population. 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, and soil pollution, and accompanying potential for increased public health impacts.

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

9. The Department now brings this suit against Wilenta Feed (1) to compel the company to cease the pollution caused by exposure

of food wastes to stormwater at the Site; (2) to recover the costs the Department has incurred and will incur to remove, correct, and/or terminate any adverse effects on surface water quality resulting from the unauthorized discharges; (3) to impose civil statutory penalties; and (4) for other related relief.

PARTIES

10. Plaintiff DEP is a principal department in the executive branch of the State. DEP maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the DEP by the aforementioned statutes to protect human health and the environment, DEP is empowered to compel parties to remediate contamination and to bring proceedings in Superior Court.

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

12. Defendant Wilenta Feed is a New Jersey corporation. Its principal address is 46 Henry Street, Secaucus, Hudson County, New Jersey.

13. "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, Defendant.

14. "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, Defendant and/or one or more of the XYZ Corporation defendants.

FACTUAL ALLEGATIONS

15. The Site, located at 46 Henry Street, Secaucus, Hudson County, New Jersey, is designated as Block 50, Lot 5, on the City of Secaucus tax map.

16. DEP has assigned the Site Water Quality Program Interest ("PI") Number 130633.

17. Defendant operates a food waste recycling business at the Site and, upon information and belief, has operated the business since at least 2006. Defendant's business involves the receipt and storage of food waste, largely bakery products, and the conversion of that food waste into animal feed or animal feed ingredients.

18. Defendant applied for and was issued a NJPDES Basic Industrial Stormwater General Permit, designated as NJG0140325 ("Permit"), on January 8, 2013.

19. The Permit took effect on February 1, 2013, and was renewed on February 1, 2018.

20. The Permit requires Defendant to manage stormwater discharge from the Site. Specifically, the Permit requires Defendant to prevent source materials and/or industrial activity from being exposed to stormwater discharges.

21. The Permit defines "source materials" to include raw materials, intermediate products, final products, waste materials, by-products, industrial machinery, and fuels, lubricants, solvents, and detergents located at the Site that are directly or indirectly related to Defendant's industrial activity and could be a source of pollutants in industrial stormwater discharge.

22. Food waste materials and sawdust are "source materials" under the Permit.

23. The Permit defines "industrial activity" to include manufacturing, processing, disposing, storing, loading and unloading, transporting or conveying any raw material, intermediate product, final product, by-product, waste product, or equipment. "Industrial activity" also includes the treatment of a by-product or waste product and/or the maintenance of equipment associated with the regulated activity.

24. The storage and recycling of food wastes into animal feed are industrial activities as defined in the Permit.

25. On or around June 19, 2017, DEP received a report of trash and debris covering the driveway at the Site, running off into the public street.

26. On or around June 20, 2017, a Hudson Regional Health Commission ("HRHC") representative investigated the Site and discovered that large amounts of food waste material were being stored in the Site's asphalt parking lot with no cover.

27. The HRHC representative observed a red liquid running from the food waste (source material) into a stormwater basin at the Site.

28. On or around June 21, 2017, DEP conducted an inspection of the Site. The DEP inspector observed the piles of food waste stored uncovered in Defendant's parking lot.

29. The DEP inspector also observed the red liquid running from the food waste into a storm drain at the Site.

30. The discharge of red liquid was an unauthorized discharge of a pollutant into the waters of the State via the stormwater basin in violation of the Act's regulations, including, N.J.A.C. 7:14A-2.1(d).

31. Upon information and belief, the red liquid running from the food waste into a storm drain at the Site resulted from Defendant's failure to eliminate exposure of source material and industrial activity to stormwater in violation of Part I, Section D.1(a) of the Permit.

32. DEP issued a NOV to Defendant on June 21, 2017. In response to the NOV, Defendant claimed through their consultant George C. Cascino in a letter received by DEP on June 23, 2017 that the mill to which they usually shipped their processed materials was temporarily out of service, causing a buildup of excess materials, and that the circumstances giving rise to the violations would be promptly resolved.

33. On or around June 22, 23, and 26 and July 6, 2017, DEP conducted follow-up inspections at the Site. Each of these inspections revealed that piles of food waste and sawdust continued to be stored uncovered in the parking area at the Site. DEP also observed that the red liquid continued to run from the source material into a stormwater basin at the Site.

34. On or around July 6, 2017, a DEP inspector also observed a yellow-gray material in the storm drain at the Site, as well as in the stormwater basin.

35. The discharge of yellow-gray material was an unauthorized discharge of a pollutant into the waters of the State via the stormwater basin in violation of the Act. N.J.A.C 7:14A-2.1(d).

36. Upon information and belief, the yellow-gray material observed in the storm drain and in the stormwater basin at the Site was the result of Defendant's failure to eliminate exposure

of source material and industrial activity to stormwater in violation of Part I, Section D.1(a) of the Permit.

37. On or around July 6, 2017, DEP issued another NOV to Defendant for the violations observed on inspection.

38. By August 2017, Defendant had not remedied the violations.

39. On or around August 25, 2017, DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Defendant.

40. The AONOCAPA cited multiple violations, including the repeated and continued exposure of food waste materials to stormwater and the discharge of red liquid material through the storm drain and stormwater basin, ordered Defendant to comply with the Act and the Permit, and assessed a \$90,000 civil administrative penalty.

41. On or around September 12, 2017, DEP conducted another inspection of the Site. The DEP inspector again observed food waste (source material) stored uncovered in the Site parking area.

42. DEP issued another NOV on or around September 12, 2017, for the violations observed during its inspection.

43. On September 18, 2017, Defendant responded to the August 25, 2017 AONOCAPA and timely requested an administrative hearing. DEP granted the hearing request on January 19, 2018. The AONOCAPA was not forwarded to the Office of Administrative Law.

44. On or around June 21, 2019, the Department conducted another compliance evaluation at the Site.

45. The DEP inspector observed several violations of the Act and the Permit, including failure to eliminate the exposure of food waste materials to stormwater.

46. DEP issued another NOV on July 1, 2019, for the violations observed on June 21, 2019.

47. On or around November 8, 2019, DEP conducted yet another compliance evaluation at the Site.

48. The DEP inspector observed that Defendant was still storing food waste material in uncovered piles, that Defendant had failed to remove food waste material from its retention pond, and that a brown fluid ran through the stormwater trough that discharges into Penhorn Creek.

49. On or around November 8, 2019, DEP issued another NOV for the observed violations.

50. On or around April 21, 2020, the DEP inspector again observed uncovered food waste scattered in the parking areas at the Site.

51. The inspector also observed that Defendant had not cleaned the stormwater retention pond, which had collected discharged material for at least two years.

52. On or around June 12, 2020, DEP conducted another compliance evaluation at the Site. The DEP inspector observed

food waste material stored uncovered and a yellowish liquid running off into a storm drain.

53. On July 14, 2020, DEP issued a NOV for the violations observed on June 12, 2020.

54. On August 24, 2020, DEP conducted another compliance evaluation at the Site. The DEP inspector observed a breach along the bottom of the wall of a building used to store feed, through which food waste leachate seeped out and ultimately discharged into a storm drain.

55. On October 8, 2020, DEP issued another NOV for the violations observed on August 24, 2020.

56. On February 8, 2021, DEP conducted another compliance evaluation at the Site. The DEP inspector observed a grayish-brown frozen material present in and around the stormwater drain in the middle of the property, a container with food material discharging liquid onto the ground, and the continued presence of food-waste material in the stormwater retention pond.

57. On February 22, 2021, DEP issued another NOV for the violations observed on February 8, 2021.

58. To date, DEP has issued eight NOVs related to Defendant's violations of the Act and noncompliance with the requirements of its Permit.

COUNT I

Violations of the Water Pollution Control Act

59. Plaintiffs repeat each allegation of the preceding paragraphs as if set forth fully herein.

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

61. The unauthorized discharge of pollutants is a violation of the Act for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6(a).

62. It is unlawful for any person to discharge any pollutant except in conformity with a valid NJPDES permit issued by DEP, as stated in the New Jersey Pollutant Discharge Elimination System rules. N.J.A.C. 7:14A-2.1.

63. Defendant's Permit requires no exposure of source materials to stormwater.

64. The Permit requires that "[e]very facility authorized under this permit shall eliminate the exposure of source materials and/or industrial activity to stormwater discharges" through application of a Stormwater Pollution Prevention Plan.

65. Defendant has repeatedly failed to eliminate the exposure of source materials to stormwater discharges and otherwise failed to comply with the conditions of the Permit, as detailed herein.

66. Failure to comply with the Permit's conditions is a violation of the Act. N.J.S.A. 58:10A-6(a); N.J.A.C. 7:14A-2.1.

67. Defendant has repeatedly violated the conditions of the Permit and the Act.

68. Upon information and belief, Defendant's improper storage practices, including the storing of source materials in open-air piles and unsealed containers exposed to stormwater, conferred economic benefits upon Defendant. These benefits include but are not limited to, savings realized from avoided capital or noncapital costs necessary to eliminate the exposure of source materials to stormwater, the return earned or that may be earned on the amount of avoided costs, and benefits accruing as a result of a competitive market advantage enjoyed by reason of Defendant's improper storage practices that allow for the unpermitted exposure of source materials to stormwater.

69. Plaintiffs have incurred, and will incur, costs and damages because of the discharge of pollutants at the Site.

70. The costs and damages Plaintiffs have incurred, and will incur, for the Site are recoverable under the Act, N.J.S.A. 58:10A-10(c)(2)-(4).

71. Any person who violates the Act shall be subject upon order of a court to a civil penalty not to exceed \$50,000.00 per day of 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).

72. Pursuant to the Act, Plaintiffs may seek injunctive relief, N.J.S.A. 58:10A-10c(1); 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); 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); 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 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, Plaintiffs demand judgment:

- a. Ordering Defendant to remove, correct, and/or terminate the adverse effect upon water quality resulting from any

unauthorized discharge of pollutants in accordance with their NJPDES Permit, by taking actions including but not limited to, storing all source materials in a manner that prevents any exposure to stormwater, removing all food waste materials from the on-site stormwater retention pond, and keeping all equipment that is used in the storage and transportation process free of residual food waste;

- b. Ordering Defendant to reimburse the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- c. Ordering Defendant to reimburse all reasonable costs that will be incurred 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;
- d. Ordering Defendant to reimburse all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Site;
- e. Awarding Plaintiffs their costs and fees in this action;

- f. Ordering Defendant to pay a civil penalty pursuant to the Act, N.J.S.A. 58:10A-10(e).
- g. Awarding Plaintiffs such other relief as this Court deems appropriate; and
- h. 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. Reserving the right to bring a claim in the future for any economic benefits that have or will accrue to Defendant, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage Defendant enjoyed, or any other benefit that will accrue as a result of having violated the Act pursuant to N.J.S.A. 58:10A-10(c)(5).

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

Dated: 05/07/2021

By:


Daniel P. Resler
Deputy Attorney General

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Daniel P. Resler, 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).

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

Dated: 05/07/2021


By:


Daniel P. Resler
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).

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

Dated: 05/07/2021 By: 
Daniel P. Resler
Deputy Attorney General