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	:	SUPERIOR COURT OF NEW JERSEY
THE COMMISSIONER OF THE NEW	:	LAW DIVISION - PASSAIC COUNTY
JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION; and	:	DOCKET NO.:
THE NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	<u>Civil Action</u>
	:	
Plaintiffs,	:	Electronically Filed
	:	
v.	:	COMPLAINT
	:	
ADOLFO GONZALEZ; JOHN DOES 1-10	:	
(FICTITIOUS PERSONS); and ABC	:	
CORPORATIONS 1-10 (FICTITIOUS	:	
ENTITIES),	:	
	:	
Defendants.	:	

Plaintiffs, State of New Jersey, Department of Environmental Protection ("DEP") and the Commissioner of the DEP ("Commissioner") (collectively, the "Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against Defendants Adolfo Gonzalez, John Does 1-10 (fictitious persons), and ABC Corporations 1-10 (fictitious entities) allege as follows:

STATEMENT OF THE CASE

1. The Adolfo Auto Repair site is located on the south corner of Market Street and Rosa Parks Boulevard in Paterson, New Jersey ("Site"). Paterson, New Jersey's third-most-populous city, and one of the most densely populated cities in America, is home to many low-income and minority residents. Indeed, the average household income of a given Paterson resident is \$39,282, and of all Paterson residents, 91% are minorities.

2. Historically, low-income communities and communities of color across the country have been exposed to disproportionately high and unacceptably dangerous levels of air, water, and soil pollution, with the accompanying potential for increased public health impacts. But residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes, and health.

3. After operating his auto repair facility at the Site for many years, in 1998, Adolfo Gonzalez removed his two 500-gallon gasoline underground storage tanks ("USTs") from the Site, in violation of State law and regulations, and sold the Site. At the time they were unearthed, the USTs had laid beneath the Site for over three decades - they were riddled with holes, and contained at least 80 gallons of "tank bottoms," or the sediment, dirt, and

water/petroleum sludge that gathers at the bottoms of USTs when left unmaintained.

4. Despite this, Adolfo Gonzalez ignored environmental cleanup obligations, risking the health and well-being of the local community by failing to conduct a site investigation. A site investigation was necessary, and required by New Jersey law, to determine whether hazardous substances were discharged at the Site, and whether further investigation and remediation was necessary. Without a site investigation, there was little way of knowing whether the soil and groundwater beneath the Site was contaminated, or if dangerous petroleum has impacted the homes and businesses of those living and working near the Site.

5. This action seeks to compel Defendant Adolfo Gonzalez, and any still-unidentified responsible parties or underground storage tank owners or operators at the Site, to hire a Licensed Site Remediation Professional ("LSRP"), conduct a site investigation at the Site, remediate all hazardous substances discharged at or migrating from the Site, and pay civil penalties.

THE PARTIES

6. The Commissioner is the Commissioner of the DEP. The Commissioner maintains her principal office at 401 East State Street, Trenton, Mercer County. The Commissioner may commence a

civil action in Superior Court for appropriate relief for any violation of the USHSA. N.J.S.A. 58:10A-32; N.J.S.A. 58:10A-10.c.

7. DEP 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 DEP by its enabling legislation and the USHSA, DEP is empowered to institute legal proceedings in Superior Court.

8. Defendant Adolfo Gonzalez is a natural person whose last known address is 2 Dixie Avenue, Hawthorne, New Jersey 07506.

9. Defendants "John Does 1-10," these names being fictitious, are natural persons whose identities cannot be ascertained as of the filing of this Complaint, certain of whom may be partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, one or more of the ABC Corporation defendants, and/or are other owners or operators of the USTs at the Site, or are otherwise responsible for the violations alleged in this Complaint.

10. Defendants "ABC 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, or are otherwise related to Defendant(s), and/or are other owners or operators of the USTs at the Site, or are otherwise responsible for the violations alleged in this Complaint.

GENERAL ALLEGATIONS

11. The Site is located in Paterson, New Jersey, on the south corner of Market Street and Rosa Parks Boulevard.

12. The Site, which is still in use as an auto repair facility, is located in a mixed residential and commercial part of Paterson, with many homes and stores nearby.

13. Historically, communities like Paterson have been exposed to disproportionately high and unacceptably dangerous levels of air, water, and soil pollution, with the accompanying potential for increased public health impacts.

14. In approximately 1967, two gasoline USTs were installed at the Site.

15. The USTs were of iron, single-wall construction with no secondary containment, cathodic protection, or leak detection systems, which are used to prevent and identify discharges.

16. Defendant Adolfo Gonzales was an owner of the USTs.

17. Use of the USTs ended in approximately August 1975, but the USTs remained underground at the Site for another 23 years.

18. On October 15, 1998, Adolfo Gonzales excavated and removed the USTs.

19. Upon excavation and inspection, the USTs - which once stored gasoline - were observed to be riddled with holes.

20. In addition, the USTs contained at least 80 gallons of "tank bottoms" - the sediment, dirt, and petroleum sludge that gathers at the bottoms of USTs when not maintained.

21. Gasoline and its components are "hazardous substances" under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 and the USHSA, and "pollutants" under the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20.

22. Gasoline discharged to soil and groundwater from USTs threatens human health and the environment in several ways.

23. Persons handling soil can contact the hazardous constituents of gasoline discharged from USTs.

24. Gasoline discharged to soil and groundwater from USTs can also evaporate through soil, and the resulting vapor can intrude into human-occupied spaces that are either currently on the Site, or might be constructed at the Site in the future, and that are located wherever contaminated groundwater has migrated, posing an inhalation threat.

25. Gasoline discharged to groundwater from USTs can be

drawn into nearby potable or irrigation wells and ingested, or otherwise contacted, by persons using the wells.

26. Typically, gasoline contains more than 150 chemicals, including benzene, toluene, ethylbenzene, xylene, and, at times, historically, lead.

27. Neurological symptoms of inhalation exposure to benzene, for example, include drowsiness, dizziness, headaches, and unconsciousness in humans.

28. Ingestion of large amounts of benzene may result in vomiting, dizziness, and convulsions in humans.

29. Chronic exposure to benzene can cause blood disorders, as well as structural and numerical chromosomal aberrations in humans.

30. Benzene is also a known human carcinogen, and is associated with increased incidence of leukemia.

31. Exposure to toluene is linked to liver and kidney damage.

32. Exposure to ethylbenzene can result in decreased lung functioning and associated permanent, respiratory ailments, as well as chronic dizziness due to lack of oxygen.

33. Exposure to xylene is clinically linked to thoracic pain, irregular electrocardiograms and heart damage, impaired lung functioning, faltering memory, and impaired liver and kidney

function.

34. Adolfo Gonzalez removed the USTs from the Site, and filled in the UST pits, without conducting a site investigation as required by N.J.A.C. 7:14B-9.2. Without a site investigation, there was no reliable way to know if gasoline or its component chemicals discharged from the Site's USTs to soil and groundwater, and impacted the Site or nearby properties.

35. Sometime after the USTs were removed, Adolfo Gonzalez sold the Site.

36. Since the UST removal, DEP issued letters regarding violations at the Site, but to no avail.

37. DEP has no records of Adolfo Gonzalez retaining an LSRP, conducting any site investigations, conducting any necessary remediation, or submitting a Response Action Outcome.

COUNT I

Violation of the Underground Storage of Hazardous Substances Act

38. The Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs of the Complaint as if fully set forth herein.

39. An "owner and operator who intends to close an underground storage tank containing hazardous substances . . . shall implement a closure plan which consists of a site

investigation set forth at N.J.A.C. 7:26E-3.3 and a tank decommissioning plan. . . .” N.J.A.C. 7:14B-9.2.

40. When there is a suspected discharge, the owner or operator of a UST shall investigate for a suspected release. N.J.A.C. 7:14B-7.1. If the investigation is inconclusive as to whether a discharge occurred, the owner or operator shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.14. N.J.A.C. 7:14B-7.2.

41. Defendant Adolfo Gonzales was the owner and operator of the gasoline USTs on the Site.

42. In 1998, Adolfo Gonzales closed the USTs and removed them from the Site without implementing a closure plan, which consists of a site investigation required by N.J.A.C. 7:26E-3.3 and a tank decommissioning plan.

43. The USTs contained holes, potentially resulting in a discharge.

44. Adolfo Gonzalez failed to investigate the potential discharge, and failed to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.14.

WHEREFORE, the Plaintiffs demand judgment in their favor:

- a) Declaring Defendant Adolfo Gonzalez to be in violation of the USHSA and its implementing regulations;

- b) Ordering Adolfo Gonzalez to immediately hire and maintain an LSRP;
- c) Ordering Adolfo Gonzalez to conduct a site investigation as required by and in accordance with all applicable laws and regulations.
- d) Ordering Adolfo Gonzalez, to the extent discharges from the USTs are discovered, to fully investigate and remediate all hazardous substances and pollutants at and migrating from the Site according to all applicable laws and regulations;
- e) Ordering Adolfo Gonzalez to pay a civil penalty pursuant to N.J.S.A. 58:10A-10e;
- f) Ordering Adolfo Gonzalez to compensate the Plaintiffs for all reasonable costs 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;
- g) Ordering Adolfo Gonzalez to pay to the Plaintiffs the actual amount of any economic benefits he has accrued or will accrue, including any savings realized from avoided capital or noncapital costs, the return he has earned or

will earn on the amount of avoided costs, any benefits he has enjoyed or will enjoy as a result of a competitive market advantage, or any other benefit he has received or will receive as a result of having violated the USHSA;

- h) Awarding the Plaintiffs their costs and fees in this action; and,
- i) Awarding the Plaintiffs any other relief that this Court deems just and proper.

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

By: /s/ Matthew D. Orsini
Matthew D. Orsini
Deputy Attorney General

Dated: August 27, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the court is advised that Matthew D. Orsini, Deputy Attorney General, is hereby designated as trial counsel for the plaintiffs, the Commissioner of the New Jersey Department of Environmental Protection and the New Jersey Department of Environmental Protection, in the above-captioned action.

CERTIFICATION PURSUANT TO RULE 1:38-7

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).

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that the matter in controversy in the within action is not, as far as I am aware, the subject of any other action pending in any court or of a pending arbitration proceeding and that no such action or arbitration proceeding is contemplated. I further certify that I am not aware of any other parties who should be joined in this action at this time. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

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

By: /s/ Matthew D. Orsini
Matthew D. Orsini
Deputy Attorney General

Dated: August 27, 2020