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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ATLANTIC COUNTY  
DOCKET NO.

\_\_\_\_\_  
NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
  
Plaintiff,  
  
v.  
  
ARJUN GOYAL,  
  
Defendant.

**CIVIL ACTION**

VERIFIED COMPLAINT TO  
ENFORCE A FINAL AGENCY  
ORDER, FOR PENALTIES,  
AND FOR ENFORCEMENT OF  
THE SPILL ACT

Plaintiff, 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 and through their attorney, files this Complaint against Defendant Arjun Goyal ("Defendant"), and alleges as follows:

**STATEMENT OF THE CASE**

1. The Department brings this summary action for enforcement of a Final Agency Order requiring Defendant to comply with his obligation to remediate his property known as the Gulf Gas Stop site located in Egg Harbor City, Atlantic County, and to pay duly assessed civil penalties.

2. The Department is also seeking enforcement of the Direct Oversight requirement of the Administrative Requirements for the Remediation of Contaminated Sites, which has been triggered by Defendant's failure to remediate the site subsequent to issuance of the Final Agency Order.

3. Defendant has owned the property and it has been used for a retail gasoline station since 1997.

4. In 2004, the Department detected gasoline contamination in the soil on the Site. Sampling conducted in 2008, 2010, and 2011 showed that the groundwater on the Site was contaminated with the gasoline constituents benzene, toluene, ethyl benzene, xylenes, and methyl tertiary butyl ether, along with 1,2-dichloroethane, at levels above the Department's applicable Ground Water Quality Standards.

5. In 2013, the Department issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Defendant. Following litigation in the Office of Administrative

Law ("OAL"), the Department issued a Final Agency Order requiring, inter alia, that Defendant remediate the contamination on and emanating from his property and pay a civil administrative penalty.

6. To date, Defendant has not complied with the Final Agency Order. Defendant's failure to remediate the property exposes the local community to the risks of contamination.

7. Gasoline, its components, and 1,2-DCA pose threats to the environment and public health when they enter the soil and the ground water. These contaminants persists in soil for long periods of time, impeding plant growth and threatening birds and mammals with 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.

8. The community surrounding the Gulf Gas Stop site has a significant low-income and 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 contamination, and accompanying potential for increased public health impacts.

9. 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.

10. The Department brings this civil action to enforce the Final Agency Order, pursuant to the authority vested in the Department by its enabling legislation, N.J.S.A. 13:1D-1 to -19, the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("Spill Act"), the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3 to -31 ("Brownfield Act"), the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA") and the rules and regulations promulgated thereunder, the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12, and R. 4:67-6 and R. 4:70. The Department also seeks civil penalties for the Defendant's violation of the Final Agency Order, pursuant to N.J.S.A. 58:10-23.11u(d). The Spill Act, the Brownfield Act, SRRA, the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12, and R. 4:67-6 and R. 4:70 authorize the Department to seek enforcement of the Final Agency Order, and to proceed for additional civil penalties, in a summary manner.

11. Finally, the Department brings a claim, in a non-summary fashion, to enforce the Direct Oversight provision of the Administrative Requirements for the Remediation of Contaminated

Sites, promulgated under the Department's enabling legislation, the Spill Act, the Brownfield Act, and SRRA.

### **PARTIES**

12. The Department is a principal agency in the executive branch of State Government. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the Department by the aforementioned statutes, it is empowered to institute legal proceedings to enforce final agency orders and to recover penalties in summary proceedings in Superior Court.

12. Defendant Arjun Goyal is an individual whose dwelling or usual place of abode is 1434 Windsor Drive, West Deptford Township, Gloucester County, New Jersey, 08086.

### **GENERAL ALLEGATIONS**

#### **THE SITE**

13. Since 1997 Defendant has been the owner of property known as the Gas Stop site (a/k/a Egg Harbor Gas & Go site) located at 501 White Horse Pike, Block 206, Lot 11, on the Tax Map of Egg Harbor City, Atlantic County, New Jersey ("Property").

14. The Property, along with all other areas where hazardous substances discharged there have come to be located (collectively, "Site"), has been designated by the Department as Site Remediation Program Interest Number 004326.

15. The Site was the location of five underground storage tanks ("USTs") - three 3,000-gallon tanks, and two 2,000-gallon tanks. The five USTs contained unleaded gasoline, which contains hazardous substances as that term is defined by N.J.S.A. 58:10-23.11b and N.J.A.C. 7:1E, Appendix A. The last of the USTs was removed on January 1, 2010.

SITE INVESTIGATION AND DEFENDANT'S NONCOMPLIANCE

16. On November 15, 2004, the Department conducted an inspection of the Site and discovered evidence of a discharge of gasoline in the soils near the location of the five USTs.

17. On January 22, 2008, Defendant collected ground water samples at the Site that revealed elevated concentrations of various chemical constituents of gasoline, including benzene, ethyl benzene, xylenes, and methyl tertiary butyl ether, along with 1,2-dichloroethane, at concentrations of up to 3,450 parts per billion ("ppb"), 2,050 ppb, 6,130 ppb, 324,000 ppb, and 18,100 ppb, which are above the Department's Class I-PL Ground Water Quality Standards of 1.0 ppb, 2.0 ppb, 2.0 ppb, 1.0 ppb, and 2.0 ppb, respectively.

18. Defendant conducted additional ground water sampling at the Property in 2010 and 2011 and detected benzene, ethyl benzene, xylenes, methyl tertiary butyl ether, tertiary-butyl alcohol,

toluene, and lead in the ground water at concentrations exceeding the Class I-PL Ground Water Quality Standards.

19. Chronic exposure to benzene can lead to neurological symptoms, blood disorders, and structural and numerical chromosomal aberrations. Benzene is a known human carcinogen. Human exposure to toluene has been clinically linked to liver and kidney damage. Human exposure to xylene has been clinically linked to thoracic pain, irregular electrocardiograms and heart damage, impaired lung functioning, faltering memory, and impaired liver and kidney functions. Human exposure to lead can cause anemia, weakness, and kidney and brain damage. Lead can damage a developing baby's nervous system.

20. Defendant also identified a residential property within 30 feet of the ground water contamination. The proximity of the building to the contamination from the Property triggered Defendant's requirement to conduct a vapor-intrusion investigation pursuant to N.J.A.C. 7:26E-1.15(b-c). The investigation was necessary to ensure that harmful gasoline vapors were not contaminating the residence.

21. From February 1, 2012 to July 17, 2013, the Department placed compliance assistance calls to Defendant informing him of his obligation to remediate the discharges at the Site and perform a vapor-intrusion investigation.

22. Defendant failed to satisfy his obligations to remediate the contamination and to perform the required vapor-intrusion investigation.

23. On August 8, 2013, the Department issued to Defendant an AONOCAPA (attached hereto as Exhibit A), wherein the Department ordered Defendant to:

(a) Remediate the Property in accordance with N.J.A.C. 7:26C-1.2(a);

(b) Conduct the vapor-intrusion investigation, in accordance with N.J.A.C. 7:26E-1.15(b) and (c), and provide notice of its completion to the Department; and

(c) Submit to the Department a site investigation report for the five USTs, in accordance with N.J.A.C. 7:26E-3.14(a)2.

24. Based upon the findings in the AONOCAPA, the Department also assessed against Defendant a civil administrative penalty of \$55,000.

25. The Department sent the AONOCAPA to Defendant's residence address: 1434 Windsor Drive, West Deptford, New Jersey 08086.

26. On or about September 23, 2013, Defendant timely requested an administrative hearing on the AONOCAPA. N.J.A.C. 7:26c-9.10.

27. On or about October 31, 2013, the Department granted the hearing request, and on July 10, 2014, the matter was transmitted to the Office of Administrative Law ("OAL").

28. On October 11, 2014, Defendant completed a vapor-intrusion investigation.

29. On December 30, 2016, Defendant submitted the results of the vapor-intrusion investigation to the Department.

30. On January 10, 2017, the Department submitted to the OAL a Notice of Motion for Summary Decision and Brief, in which the Department requested that the violation in the AONOCAPA for failure to submit a site investigation report be deemed resolved, as well as the associated \$15,000 penalty; the Department requested summary decision on all other aspects of the AONOCAPA.

31. On September 26, 2017, Administrative Law Judge ("ALJ") John S. Kennedy issued his initial decision, granting the Department's Motion and directing Defendant to conduct the remediation and affirming a civil penalty of \$40,000.

32. On February 12, 2018, the Commissioner of the Department adopted the ALJ's initial decision requiring compliance with the AONOCAPA, in the Final Agency Order.

33. Defendant did not appeal the February 12, 2018 Final Agency Order.

34. The Final Agency Order required Defendant to:

- (a) Conduct the remediation in accordance with N.J.A.C. 7:26C-1.2(a); and
- (b) Pay the administrative penalty of \$40,000.

DEFENDANT'S CONTINUED NON-COMPLIANCE AND THE TRIGGER OF DIRECT  
OVERSIGHT

35. N.J.A.C. 7:26C-1.2(a) requires the Defendant to conduct the remediation in accordance with N.J.A.C. 7:26C.

36. N.J.A.C. 7:26C-14.2(a) requires the party responsible for remediating a site to comply with the statutory requirements for Direct Oversight if they fail to meet a mandatory remediation timeline established by the Department.

37. To date, Defendant has failed to comply with the Final Agency Order.

38. To date, Defendant has failed to complete the required Remedial Investigation Report pursuant to N.J.A.C. 7.26E-4.9 and 4.10, which was due March 1, 2017. The Defendant has also violated the subsequent March 1, 2019 mandatory timeframe for failing to submit a Remedial Investigation Report by this date triggering the requirements of Direct Oversight (see N.J.S.A. 58:10C-27(a)2 and N.J.A.C. 7:26C-14.2(a)).

**FIRST COUNT**

**Enforcement of Final Agency Order**

39. The Department repeats each allegation of paragraphs 1 through 38 as if fully set forth in their entirety herein.

40. The Department entered a Final Agency Order on February 12, 2018, following Defendant's unsuccessful challenge to the AONOCAPA in the OAL.

41. To date, Defendant has not complied with the Final Agency Order's requirement that Defendant conduct the remediation in accordance with N.J.A.C. 7:26C-1.2(a).

42. Nor has Defendant paid the \$40,000 civil administrative penalty imposed by the Final Agency Order.

43. Pursuant to the Spill Act, the Brownfield Act, SRRA, the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12, and R. 4:67-6 and R. 4:70, the Department is entitled to summary enforcement of the Final Agency Order.

**WHEREFORE**, the Department demands entry of an order against Defendant:

- a. Finding Defendant in violation of the Final Agency Order;
- b. Enforcing the Final Agency Order's requirements that Defendant (i) conduct the remediation and (ii) pay the

civil administrative penalty in the Final Agency Order of \$40,000; and

**SECOND COUNT**

**Imposition of Civil Penalties for Failure to Comply With a Final Agency Order**

44. The Department repeats each allegation of paragraphs 1 through 43 as if fully set forth in their entirety herein.

45. The Spill Act, specifically N.J.S.A. 58:10-23.11u, provides that the Department may seek a civil penalty not to exceed \$50,000 per day against any person who violates an administrative order. The Department may recover this civil penalty against a defendant in an action pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 to -12.

46. On February 12, 2018, the Department entered a Final Agency Order, following Defendant's unsuccessful challenge to the AONOCAPA in the OAL.

47. As set forth above, Defendant has failed to comply with the Final Agency Order, including failing to pay the assessed civil administrative penalty.

**WHEREFORE**, the Department demands entry of an order against Defendant:

- a. Imposing civil penalties against Defendant Gulf Gas for the period of time during which it failed to comply with

the Final Agency Order, in accordance with the Spill Act, N.J.S.A. 58:10-23.11u; and

b. Granting such other relief as the Court deems just and proper.

**THIRD COUNT**

**Enforcement Under the Spill Act  
Brought on a Non-Summary Basis**

48. The Department repeats each allegation of paragraphs 1 through 47 as if fully set forth in their entirety herein.

49. The Department is authorized by the Spill Act, N.J.S.A. 58:10-23.11 to 58:10-50 and SRRA, 58:10C-1 to 58:10C-29, to promulgate the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C) and the Technical Requirements for Site Remediation (N.J.A.C. 7:26E).

50. Pursuant to the Final Agency Order, Defendant was required to remediate the Site in accordance with N.J.A.C. 7:26C-1.2.

51. To date, Defendant has not completed the remediation, triggering the Direct Oversight requirements of N.J.A.C. 7:26C-14.2(a).

**WHEREFORE**, the Department demands entry of an order against Defendant:

a. Finding Defendant in violation of the Final Agency Order;

- b. Ordering Defendant to enter into an Administrative Consent Order with the Department to define the Defendant's Direct Oversight obligations pursuant to N.J.A.C. 7:26C-14.2(b) that are consistent with applicable law and regulations including, but not limited to setting a timeline for remediation, posting of a remediation funding source, and establishing requirements to obtain a Response Action Outcome;
- c. Granting any additional relief the court deems appropriate; and
- 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.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_  
James M. Novak  
Deputy Attorney General

DATED: \_\_\_\_\_, 2021

**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).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: *James Matthew Novak*  
James Matthew Novak  
Deputy Attorney General

DATED: May 7, 2021