

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
PO BOX 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiff

By: Robert G. Lamilla
Deputy Attorney General
Attorney ID: 0156582015
(609) 376-2740
Robert.lamilla@law.njoag.gov

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - HUDSON COUNTY DOCKET NO.
Plaintiff,	:	<u>CIVIL ACTION</u>
v.	:	
125 MONITOR STREET JC, LLC;	:	VERIFIED COMPLAINT TO ENFORCE FINAL AGENCY ORDER AND TO COLLECT ADDITIONAL CIVIL PENALTIES IN A SUMMARY PROCEEDING PURSUANT TO
Defendant.	:	<u>R. 4:67-6 AND R. 4:70</u>
	:	

Plaintiff State of New Jersey, Department of Environmental Protection ("DEP" or "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 defendant 125 Monitor Street JC, LLC ("Defendant"), alleges as follows:

STATEMENT OF THE CASE

1. This is an action to enforce the terms of an Administrative Consent Order ("ACO") between the Department and company that has failed to remediate hazardous substances at the property

located at 125 Monitor St., Jersey City, Hudson County, previously known as 130 Pine St., and also known as Block 17503, Lot 1, formerly Block 2094, Lot 1 on the tax map of Jersey City, Hudson County ("Property"). Remediating the Property in full compliance with the ACO is imperative to protect human health and the environment because the soil and groundwater at the Property are contaminated and may be affecting nearby properties by the migration of volatile chemicals from the subsurface and into the overlying buildings.

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. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018).
3. In early 2019, when Defendant negotiated a Contract of Sale of Real Property with the previous owner, Defendant also negotiated an ACO with the Department.
4. After taking title to the Property, Defendant failed to fulfill its obligations under the ACO.

5. The Department brings this civil action for enforcement of the ACO, which is now a final agency order, pursuant to the authority vested in the Department by 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 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 pursuant thereto. The Department also seeks the imposition of additional civil penalties for the Defendant's violation of a 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 ACO, and to proceed for additional civil penalties, in a summary manner.

THE PARTIES

6. The Department is a principal agency in the executive branch of the State. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey. Pursuant to the authority vested in the Department of Environmental Protection by the aforementioned statutes, the Department is empowered to institute legal proceedings to

enforce final agency orders and to recover penalties in summary proceedings in Superior Court.

7. Defendant is a limited liability company registered in the State of New Jersey in February 2019, with an address of 775 Bloomfield Ave., Suite 2A, Clifton, New Jersey 07012.
8. Defendant is the current owner of the Property, having acquired it on or about March 14, 2019.

PROPERTY AND PROCEDURAL HISTORY

9. The Property has a long history of industrial uses beginning in approximately 1919, and, as a result of those various operations, the soils and groundwater at the Property are contaminated with hazardous substances.
10. The hazardous substances that are or have been present in the soils at the Property include, but are not limited to, arsenic, copper, lead, petroleum hydrocarbons, tetrachloroethene (PCE), and trichloroethene (TCE). These hazardous substances in the soil threaten human health and the environment in several ways, for example, persons handling the soil can come into contact the hazardous substances and suffer adverse health effects. The soils at the Property remain contaminated with hazardous substances above the applicable standards.
11. The hazardous substances that are or have been present at the groundwater at the Property include, but are not limited to,

dichloroethylene, PCE, TCE, xylenes, and vinyl chloride. The groundwater at the Property remains contaminated with hazardous substances above the applicable standards. The levels of hazardous substances present in the groundwater are high enough to potentially cause indoor air concerns at and near the Property since the hazardous substances can evaporate through soil, and the resulting vapor can intrude into human-occupied spaces that are either currently on the Property, or might be constructed at the Property in the future, and that are located wherever contaminated groundwater has migrated, posing an inhalation threat, accordingly, a vapor intrusion investigation must be completed.

12. Additionally, light non-aqueous phase liquid, meaning accumulations of free product in the subsurface, like hydrocarbons, has also been detected at the Property.
13. The Property has had multiple owners through the years, with each owner since 1993 failing to completely remediate the contamination at the Property.
14. The Property was owned by Yosef Brikman from February 2018 to March 2019.
15. In early 2019, as Defendant negotiated a contract of sale of real property with Yosef Brikman, Defendant also negotiated an ACO with the Department.

16. Defendant took title to the Property on or about March 14, 2019.
17. On April 29, 2019, the Defendant and the Department executed the ACO and it became effective.
18. In the ACO, Defendant agreed to perform all remaining remediation associated with the hazardous substances that were discharged into the soils and groundwater at the Property, including addressing vapor intrusion, pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C et seq., and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E et seq.
19. The Defendant met certain requirements of the ACO. Specifically, the Defendant:
 - a. Provided the Department with written confirmation of the date which Defendant took title to the Property;
 - b. Submitted a Site and Contact Information Update Form to the Department;
 - c. Retained a licensed site remediation professional ("LSRP") and submitted an LSRP Retention Form to the Department pursuant to N.J.A.C. 7:26C-2.3(a)2;
 - d. Submitted an Annual Remediation Fee Reporting Form to the Department;
 - e. Submitted payment to the Department for past annual remediation fees in the amount of \$22,085.00;

f. Submitted payment to the Department in the amount of \$50,000.00 for past cleanup and removal costs incurred by the Department in connection with the Property; and

g. Submitted an initial receptor evaluation to the Department.

20. But Defendant violated the ACO by failing to comply with several of the ACO's core requirements, including:

a. Within 30 days of the effective date of the ACO, May 29, 2019, submit a Remediation Cost Review and Remediation Funding Source/Financial Assurance Form ("RFS/FA"), certified by the LSRP of record to the Department;

b. Within 30 days of the effective date of the ACO, May 29, 2019, establish and maintain a remediation funding source, in the form of a letter of credit, line of credit, or a remediation trust fund for the estimated cost of future remediation according to the annual detailed cost estimate;

c. Within 90 days of the effective date of the ACO, July 28, 2019, submit a Light Non-aqueous Phase Liquid Remedial Investigation Report to the Department;

d. Within 90 days of the effective date of the ACO, July 28, 2019, apply for a soil remedial action permit and post financial assurance for the permit pursuant to N.J.A.C. 7:26C-7.6(a); and

e. Within 150 days of the effective date of the ACO, September 26, 2019, conduct a vapor intrusion investigation and

submit to the Department all analytical results from the investigation pursuant to N.J.A.C. 7:26E-1.15.

21. On November 22, 2019, the LSRP emailed DEP an unsigned remediation cost review and RFS/FA form.
22. To date, Defendant has failed to establish a remediation funding source.
23. To date, Defendant has failed to submit a Light Non-aqueous Phase Liquid Remedial Investigation Report to the Department.
24. To date, Defendant has failed to apply for a soil remedial action permit and post financial assurance for the permit pursuant to N.J.A.C. 7:26C-7.6(a).
25. To date, Defendant has failed to conduct a vapor intrusion investigation and submit to the Department all analytical results from the investigation pursuant to N.J.A.C. 7:26E-1.15.
26. As of the filing of this action, the Defendant remains in violation of the ACO.
27. Each day the Defendants fail to comply with the core requirements of the ACO and perform the remediation at the Property, a public health and safety hazard will remain unabated, subjecting the public and the environment to an ongoing risk of harm.
28. Paragraph 25 of the ACO provides that, "This Administrative Consent Order shall be fully enforceable in the Superior Court

of New Jersey as a final order upon the filing of a summary action for compliance pursuant to R. 4:67-1, et seq. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act."

29. The Defendant is obligated to comply with the ACO.
30. DEP has designated the Property as Site Remediation Program Interest Number G000015580.

FIRST COUNT

Compliance with Administrative Consent Order

31. DEP repeats each allegation of paragraphs 1 through 30, above, as if fully set forth in their entirety herein.
32. To date, the Defendant has not complied with the requirements of the ACO, which by its terms and by law is fully enforceable in Superior Court as a final agency order.
33. Pursuant to R. 4:67-6 and the ACO, the Department is entitled to summary enforcement of the ACO requiring the Defendant to:
 - a. Submit a Remediation Cost Review and RFS/FA Form, certified by the LSRP of record to the Department;
 - b. Establish and maintain a Remediation Funding Source, in the form of a letter of credit, line of credit, or a remediation trust fund for the estimated cost of future remediation according to the annual detailed cost estimate;

- c. Submit a Light Non-aqueous Phase Liquid Remedial Investigation Report to the Department;
- d. Apply for a soil remedial action permit and post financial assurance for the permit pursuant to N.J.A.C. 7:26C-7.6(a);
- e. Conduct a vapor intrusion investigation and submit to the Department all analytical results from the investigation pursuant to N.J.A.C. 7:26E-1.15; and
- f. Comply with future deadlines for the submission of a remedial investigation report for the entire contaminated site, pursuant to N.J.A.C. 7:26E-4.9, and submission of a final Remedial Action Report and Response Action Outcome to the Department for the entire contaminated site, as well as payment of any invoice for annual remediation fees and/or oversight costs by its due date.

WHEREFORE, the Plaintiff demands entry of an order against the Defendant:

- a. Finding the Defendant in violation of the ACO;
- b. Requiring the Defendant to comply with the terms of the ACO including fully remediating the hazardous substances at the Property;
- c. Requiring the Defendant to Submit a Remediation Cost Review and RFS/FA Form, certified by the LSRP of record to the Department;

- d. Requiring the Defendant to establish and maintain a Remediation Funding Source, in the form of a letter of credit, line of credit, or a remediation trust fund for the estimated cost of future remediation according to the annual detailed cost estimate;
- e. Requiring the Defendant to submit a Light Non-aqueous Phase Liquid Remedial Investigation Report to the Department;
- f. Requiring the Defendant to apply for a soil remedial action permit and post financial assurance for the permit pursuant to N.J.A.C. 7:26C-7.6(a);
- g. Requiring Defendant to conduct a vapor intrusion investigation and submit to the Department all analytical results from the investigation pursuant to N.J.A.C. 7:26E-1.15.
- h. Granting such other relief as the Court deems just and proper; and
- g. Reserving the right to bring a claim against Defendant in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

SECOND COUNT

Additional Civil Penalties Pursuant to the Spill Act

- 34. DEP repeats each allegation of paragraphs 1 through 33, above, as if fully set forth in their entirety herein.

35. To date, the Defendant has not complied with the requirements of the ACO.

36. Pursuant to N.J.S.A. 58:10-23.11u.a and N.J.S.A. 58:10-23.11u.d, the Defendant is subject to a civil penalty of up to \$50,000.00 per day of the Defendant's violation of the ACO, which is enforceable as a final agency order, and each day's continuance of the violation constitutes a separate violation.

WHEREFORE, plaintiff demands judgment against the Defendant:

- a. Finding the Defendant in violation of the ACO;
- b. Imposing upon the Defendant, pursuant to R. 4:70, a civil penalty for the Defendant's violation of the ACO;
- c. For such other relief as the Court may deem just and proper;
and
- d. Reserving the right to bring a claim against Defendant in the future for 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: /s/Robert G. Lamilla
Robert G. Lamilla
Deputy Attorney General

DATED: August 26, 2020

VERIFICATION

I, Jacqueline Bobko, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection within the Site Remediation and Waste Management Program.
2. I am the enforcement manager assigned to the Site.
3. I have read the Verified Complaint.
4. I certify that the factual allegations contained in the Verified Complaint are true and correct to the best of my knowledge.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.

Jacqueline Bobko
Jacqueline Bobko

DATED: 8/10/2020

DESIGNATION OF TRIAL COUNSEL

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

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 Plaintiff

By: /s/ Robert G. Lamilla
Robert G. Lamilla
Deputy Attorney General

DATED: August 26, 2020

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies that the property forming the subject of this Verified complaint is the subject of ongoing litigation between the current and former owners of the property, Botanical Realty Assoc. Urban Renewal LLC v. 125 Monitor Street, J.C. et al., HUD-C-92-19; and Lieb Puretz, et al. v. Yosef Brikman, HUD-C-107-18.

Undersigned counsel further 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 plaintiff DEP at this time, nor is any non-party known to plaintiff DEP 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 plaintiff DEP, 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
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Attorney for Plaintiff

By: /s/Robert G. Lamilla
Robert G. Lamilla
Deputy Attorney General

DATED: August 26, 2020