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THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and the COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - HUDSON COUNTY
	:	
Plaintiffs,	:	
	:	<u>Civil Action</u>
v.	:	
	:	COMPLAINT
FATHI HASSANIEN and ALIA HASSANIEN	:	
	:	
Defendants.	:	
	:	

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The 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, and the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), having her principal office at 401 East State Street in the City of Trenton, County of

Mercer, State of New Jersey, by way of Complaint against defendants Fathi Hassanien and Alia Hassanien, allege as follows:

**STATEMENT OF THE CASE**

1. The Heba Auto Repair site is located at 111-113 Tonnelle Avenue, Jersey City (the "Site"). A school and childcare center is located about 130 feet west of the Site. The surrounding area is densely populated with residences directly adjacent to the Site. An apartment building with sub-ground level rooms is just one house away from the Site. Jersey City is New Jersey's second most populous city. The Jersey City community is 79% non-white.

2. Historically, communities of color across the country have been exposed to disproportionately high and unacceptably dangerous levels of air, water and soil pollution, with accompanying potential for increased adverse public health impacts. But residents of all communities deserve 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. The defendants named in this action are individuals, who are believed to be related to one another by blood or marriage, responsible for investigating whether discharges of hazardous substances may have occurred in the area where a UST was removed from the Site in or about May 1992, and for remediating any resulting contamination.

4. Despite defendant Fathi Hassanien being notified by the Department on multiple occasions of the responsibility to investigate whether discharges of hazardous substances may have occurred on the Site as well as comply with other obligations, the Department has no records or other information indicating that the defendants complied with those obligations.

5. Despite defendant Fathi Hassanien being requested by the Department on several occasions to notify it as to whether they have complied with their obligations to conduct a site investigation, complete a remedial investigation for the Site, pay required remediation fees, and comply with other obligations, defendants have failed to provide the Department with any such notice.

6. Despite defendant Fathi Hassanien being sent a Notice of Violation and Offer of Settlement by the Department in November 2019, defendants never even responded to that communication.

**THE PARTIES**

7. The Department is a principal department in the State of New Jersey's executive branch of government. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer County, New Jersey.

8. The Commissioner is the commissioner of the New Jersey Department of Environmental Protection ("DEP"). The Commissioner maintains her principal office at 401 East State Street, Trenton,

Mercer County, New Jersey. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of the UST Act. N.J.S.A. 58:10A-32; N.J.S.A. 58:10A-10.c.

9. Fathi Hassanien and Alia Hassanien are individuals, and the former joint owners of the Site. Upon information and belief, Fathi Hassanien and Alia Hassanien are believed to be related by blood or marriage. The last known address of Fathi Hassanien and Alia Hassanien is 260 Gilbert Avenue, Elmwood Park, New Jersey. Upon information and belief, Fathi Hassanien and Alia Hassanien owned the Site from approximately December 23, 1987 to December 27, 2006.

#### **GENERAL ALLEGATIONS**

10. The Site is located at 111-113 Tonnelle Avenue, Jersey City, also known as Block 9303, Lot 2 on the Tax Map of the City of Jersey City, New Jersey.

11. The Site is located in a densely populated area, with residences and businesses in the immediate vicinity.

12. For example, a school and child care center known as the Mahatma K. Ghandi School and Valerie Morris C.A.S.P.E.R. Program is located about 130 feet west of the Site, at 143 Romaine Avenue. Saint Elizabeth's School and Child Care Center is located about 500 to 600 feet southwest of the Site. While these facilities are in close proximity to the Site, the Department does

not assert in this Complaint that the facilities are presently at risk due to conditions at the Site.

13. Residences are located directly adjacent to the Site, and an apartment building with sub-ground level rooms is one house away from the Site. While these residences are in close proximity to the Site, the Department in this Complaint does not assert that the residences are presently at risk due to conditions at the Site.

14. On May 23, 1992, a vehicle repair business known as "Heba Auto Repair" was operating on the Site. A UST being utilized (or formerly being utilized) to store gasoline or other hazardous substance(s), was also located on the Site. Upon information and belief, Fathi Hassanien and/or Alia Hassanien were the owners of Heba Auto Repair at that time, as well as being owners of the Site, and the UST(s) located on the Site.

15. On or about May 23, 1992, the UST was excavated and then removed from the Site. Soils excavated during the UST removal process were then used to backfill the excavation.

16. On or about May 23, 1992, an anonymous caller to the DEP's Spill Hotline reported that an UST had recently been removed from the Site without an UST Closure Permit issued by the Department, and further reported that the void left by the UST excavation had been backfilled with what appeared to be soils soaked in gasoline. The report was assigned incident number 92-05-23-1641-25.

17. On May 26, 1992, an anonymous caller to the DEP's Spill Hotline reported that an UST that was leaking gasoline had been excavated and removed from the Site without a proper UST Closure Permit. The caller also reported that gasoline-soaked soils were used to backfill the excavation. The report was assigned incident number 92-05-26-1022-17.

18. On or about May 3, 1994, Fathi Hassanien submitted a response to DEP's Underground Storage Tank Registration Questionnaire ("May 1994 Certification"). The May 1994 Certification stated that an auto repair facility named "Heba Auto Repair" was operating on the Site, and that one UST was registered as being located at the Site - a 500 gallon UST that was removed in August 1990. Fathi Hassanien signed the May 1994 Certification as the owner of Heba Auto Repair.

19. On May 10, 2013, by way of letter, the DEP notified Heba Hassanien - who was by then the owner of the Site - and Fathi Hassanien, the former owner of the Site, that an updated Underground Storage Tank Registration Questionnaire was required by DEP with respect to any former UST systems on the Site.

20. The DEP's May 10, 2013 letter also advised Fathi Hassanien and Heba Hassanien that a site investigation report was required for the Site, and a remedial investigation and remediation actions should be completed as necessary. These actions are required pursuant to the Site Remediation and Reform Act, N.J.S.A.

58:10C-1 to -29, UST regulations set forth in N.J.A.C. 7:14B-9.5(a) and (b), and Administrative Requirements for the Remediation of Contaminated Sites, specifically N.J.A.C. 7:26C-2.2(a).

21. Neither Fathi Hassanien nor Heba Hassanien submitted a site investigation report or remedial investigation report to the DEP.

22. On June 17, 2013, the DEP advised Fathi Hassanien and Heba Hassanien that the SRRA required that they complete a remedial investigation for the Site and any areas to which contamination from the Site may have migrated by the May 7, 2014, and that the failure to timely complete the investigation would subject the Site to DEP Direct Oversight.

23. Neither Fathi Hassanien nor Heba Hassanien submitted the required remedial investigation report.

24. On or about June 26, 2013, Fathi Hassanien submitted to the DEP a certification in response to a UST Facility Certification Questionnaire ("June 2013 Certification"). The June 2013 Certification stated that Fathi Hassanien was the previous owner of the Heba Auto Repair facility located on the Site, and that a UST that was formerly located on the Site was removed on or about May 25, 1992.

25. On January 22, 2014, the DEP notified Fathi Hassanien and Heba Hassanien that they were obligated, as persons responsible

for the Site's remediation, to pay annual remediation fees pursuant to N.J.A.C. 7:26C-4. DEP requested full payment of the outstanding fees, and advised that failure to make payment would result in the placement of a lien on real or personal property and/or civil litigation in Superior Court to recover costs and statutory penalties. DEP received no payment or communication in response to its letter.

26. The DEP sent subsequent letters to Heba Hassanien and Fathi Hassanien on or about September 7, 2017, September 6, 2018, and September 6, 2019, similarly requesting full payment of outstanding remediation fees and warning of enforcement actions available to the DEP in the event of non-compliance. The DEP received no responses to those letters.

27. On November 14, 2019, the DEP sent a Notice of Violation and Offer of Settlement ("November 2019 Notice") to Heba Hassanien and Fathi Hassanien. DEP advised that, as persons responsible for conducting remediation at the Site, Heba Hassanien and Fathi Hassanien had failed to comply with the applicable timeframes in N.J.A.C. 7:26C-3.3(a)4, which required that they complete a remedial investigation of the Site and submit a remedial investigation report by May 7, 2014.

28. The November 2019 Notice further notified Heba Hassanien and Fathi Hassanien that the DEP was willing to enter into an Administrative Consent Order (ACO) with Heba Hassanien and Fathi



Hassanien requiring that they pay certain penalties, complete required remedial investigation at the Site, implement necessary remedial actions, obtain required permits, submit a final remediation action plan, establish a remediation funding source, and address all outstanding violations at the Site.

29. Neither Fathi Hassanien nor Heba Hassanien even responded to the November 2019 Notice.

30. To date, no site investigation report has been submitted to the DEP with respect to the UST removed from the Site.

31. To date, no remedial investigation report has been submitted to the DEP.

32. To date, the extent to which gasoline or other hazardous substances may have been discharged at the Site, either at the time of a UST excavation and removal or otherwise, has not been properly investigated by either defendant.

33. Gasoline and its constituent components are "hazardous substances" covered under the UST Act.

34. Gasoline discharged to soil and groundwater from USTs threatens human health and the environment in a number of ways.

35. Gasoline discharged to soil from USTs can be contacted by persons handling contaminated soil.

36. Gasoline discharged to soil from USTs can evaporate through soil, and its vapor can intrude into human-occupied spaces that are either currently on the Site or nearby areas, or might be

constructed on the Site or nearby areas, posing inhalation hazards. Gasoline discharged from USTs to soil and then groundwater can be drawn into nearby potable wells and ingested by persons using the wells. It can also spread beneath buildings on nearby properties, evaporate through soil, and intrude into human-occupied areas, posing an inhalation hazard.

37. Typically, gasoline contains more than 150 chemical constituents, including benzene, toluene, xylene, and, sometimes, lead. Exposure to these constituent components of gasoline can pose significant hazards to humans.

38. For example, exposure to benzene can lead to neurological symptoms, including, for example, drowsiness, dizziness, headaches, and unconsciousness in humans. Ingestion of large amounts of benzene may result in vomiting, dizziness, and convulsions in humans. Chronic exposure to benzene can cause blood disorders, as well as structural and numerical chromosomal aberrations in humans. Benzene is also a known human carcinogen, and is associated with an increased risk of leukemia.

39. Human exposure to toluene has been clinically linked to liver and kidney damage.

40. 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.

41. Human exposure to lead can cause anemia, weakness, and kidney and brain damage. Lead can cross the placental barrier, meaning that pregnant women exposed to lead also expose their unborn child. Lead can damage a developing baby's nervous system.

42. Fathi Hassanien and Alia Hassanien, removed one or more USTs from the Site, and filled in the pits from where the USTs were excavated, without ever submitting a site investigation as required by N.J.A.C. 7:14B-9.2 to the DEP. Without a site investigation, there is no reliable way to know whether gasoline, or its constituent components, have discharged from the Site's USTs to soil and/or groundwater, and impacted the Site or nearby areas.

43. Sometime after Fathi Hassanien and Alia Hassanien removed one or more USTs from the Site, ownership of the Site was transferred by way of sale or otherwise to Heba Hassanien.

44. The Site is not an Industrial Establishment within the meaning of the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 to -14, and accordingly, the transfer of the Site's ownership from Fathi Hassanien and Alia Hassanien to Heba Hassanien could not be voided for failure to conduct a site investigation.

45. The DEP has no records of the defendants retaining a Licensed Site Remediation Professional ("LSRP"), conducting any site investigations, remedial investigation, conducting any necessary remediation work, or submitting a Response Action

Outcome.

**COUNT I**

**UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES ACT**

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

47. An "owner or operator who intends to close [an] underground storage tank system shall implement a closure plan which consists of a site investigation set forth in N.J.A.C. 7:26E-3.3 and a tank decommissioning plan . . . ." N.J.A.C. 7:14B-9.2.

48. Fathi Hassanien and Alia Hassanien were the owners of one or more USTs that were removed from the Site.

49. In May 1992, Fathi Hassanien and Alia Hassanien closed and removed an UST located on the Site without implementing a closure plan that consists, among other things, of a site investigation set forth at N.J.A.C. 7:26E-3.3 and a tank decommissioning plan.

50. Fathi Hassanien and Alia Hassanien failed to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.14.

51. Defendants failed to conduct a site investigation pursuant to N.J.A.C. 7:26E-3.14 and failed to investigate the reported discharge on the site by conducting a remedial investigation.

**WHEREFORE,** Plaintiffs demand judgment in their favor:

- a) Declaring the defendants to be in violation of the UST Act and its implementing regulations;
- b) Ordering the defendants to immediately hire and maintain an LSRP;
- c) Ordering the defendants to conduct a site investigation in accordance with all applicable laws and regulations;
- d) Ordering the defendants, to the extent discharges from the USTs are discovered, to fully investigate and remediate all discharges at and from the Site in accordance with all applicable laws and regulations;;
- e) Ordering the defendants to pay a civil penalty pursuant to N.J.S.A. 58:10A-10e;
- f) Ordering the Defendants to compensate 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 the establishment of a violation, including the costs of preparing and litigating the case;
- g) Ordering the defendants to pay Plaintiffs the actual amount of any economic benefits they have accrued or will accrue, including any savings realized from avoided capital or noncapital costs, the returns they have earned or will earn on the amount of avoided capital or noncapital costs, any benefits they have enjoyed or will enjoy as a result of a

competitive market advantage, or any other benefit they have received or will receive as a result of having violated the UST Act;

- h) Awarding Plaintiffs their costs and fees in this action;
- i) Reserving the right to bring a claim against defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Site; and
- j) Awarding Plaintiffs any other relief that this Court deems just and proper.

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

By:           /s/ Thomas Lihan            
Thomas Lihan  
Deputy Attorney General

Dated: August 27, 2020

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the Court is advised that Thomas Lihan, Deputy Attorney General, is hereby designated as trial counsel for the plaintiff, the Commissioner of the New Jersey Department of Environmental Protection, in this action.

**R. 4:5-1 CERTIFICATION**

I 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. If, however, any such matter or non-party later becomes known to me, 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).

\_\_\_\_\_  
/s/ Thomas Lihan

Thomas Lihan  
Deputy Attorney General

Dated: August 27, 2020

**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).

/s/ Thomas Lihan

Thomas Lihan

Deputy Attorney General

Dated: August 27, 2020



# Civil Case Information Statement

## Case Details: HUDSON | Civil Part Docket# L-003102-20

**Case Caption:** NJ DEPT. OF ENV. PROTECTION VS  
HASSANIEN FATHI

**Case Initiation Date:** 08/27/2020

**Attorney Name:** THOMAS P LIHAN

**Firm Name:** ATTORNEY GENERAL LAW

**Address:** 25 MARKET STREET PO BOX 93

TRENTON NJ 08625

**Phone:**

**Name of Party:** PLAINTIFF : NJ Dept. of Env. Protection

**Name of Defendant's Primary Insurance Company**

(if known): Unknown

**Case Type:** ENVIRONMENTAL/ENVIRONMENTAL COVERAGE  
LITIGATION

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same  
transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: NJ Dept. of Env. Protection?**  
NO

**Are sexual abuse claims alleged by: Commissioner of the NJDEP?**  
NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:**

Environmental enforcement action brought by the State of New Jersey, NJDEP, et al pursuant to the New Jersey Underground Storage of Hazardous Substances Act.

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

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 *Rule 1:38-7(b)*

08/27/2020  
Dated

/s/ THOMAS P LIHAN  
Signed