

NATURE OF THE ACTION

1. This action is brought pursuant to the Solid Waste Management Act ("SWMA") N.J.S.A. 13:1E-1 to -48 as well as the regulations promulgated thereto, for temporary and permanent restraints, damages, and civil penalties against Defendants to enjoin continued violations of the SWMA, particularly the ongoing importation of contaminated fill material.
2. This action is also brought pursuant to the Highlands Water Protection and Planning Act ("Highlands Act") N.J.S.A. 13:20-1 to -35 as well as the regulations promulgated thereto, for temporary restraints, damages, and civil penalties against Defendants to enjoin continued violations of the Highlands Act, particularly regarding the unpermitted clearing, grading, and excavation.
3. This action is also brought pursuant to the Stormwater Management Rules N.J.A.C. 7:8 and New Jersey Pollutant Discharge Elimination System Rules N.J.A.C. 7:14A, promulgated pursuant to Water Pollution Control Act ("WPCA") N.J.S.A. 58:10A-1 to -48, for temporary restraints, damages, and civil penalties, against Defendants to enjoin continued violations of the WPCA, particularly regarding unpermitted land use disturbance.

PARTIES

4. The Department of Environmental Protection ("the Department" or "DEP") is a principal department of the State of New Jersey and the agency charged with enforcement of the SWMA, the Highlands Act, and the WPCA, with offices at 401 East State Street in Trenton, New Jersey.
5. Defendant Joseph Wallace ("Wallace") is the owner and resident of Block 130, Lot 1.05, 3 Silver Spruce Drive, Vernon Township, Sussex County, New Jersey ("Wallace property").
6. Defendant Laura Wallace is the wife of Joseph Wallace and the owner of the Wallace property (collectively, "Defendants").

STATEMENT OF FACTS

Initial Discovery of Solid Waste

7. On February 15, 2019, DEP received test results from a certified laboratory that concluded that one of two soil samples taken from fill material that was dumped on the Wallace property had levels of polycyclic aromatic hydrocarbons ("PAHs") and lead that exceeded residential standards. (Certification of David Ongaro ¶ 10, hereinafter "Ongaro Cert.") DEP then determined that Wallace was operating an unlicensed solid waste facility in violation of N.J.A.C. 7:26-2.8(f) and issued two Notices of Violation ("NOV") on February 20, 2019 (one for operating the unlicensed solid waste facility and the other for failure to permit entry

to DEP inspectors on that day). Id. ¶ 13. Soil contamination by PAH and lead has the potential to erode and deposit in off-site areas and potentially harm the environment. Id. ¶ 11.

8. These soil samples were taken on or about January 31, 2019, when DEP was able to access some of the fill material that had rolled to a neighboring property in groups of frozen chunks of soil. (Ongaro Cert. ¶ 5.) The neighboring property owner called DEP to report that some of the fill material had rolled onto his property. Ibid. DEP inspectors observed that the frozen chunks of soil were of the same color, consistency, and composition as the fill material deposited on the Wallace property. Id. at 7. Using dedicated equipment, DEP inspectors took samples of the frozen chunks of soil and sent two of those samples to a certified laboratory for testing. Id. ¶¶ 8-9.

Additional DEP Investigative and Enforcement Actions

9. DEP's first substantial involvement with the Wallace property came in response to a DEP hotline tip made on July 23, 2014, DEP inspectors along with a representative from the Sussex County Soil Conservation District ("District") engaged in a site inspection on August 6, 2014. (Certification of Rajendra Gandhi ¶ 4, hereinafter "Gandhi Cert.") There, inspectors discovered a large quantity of fill material, approximately

100 feet long by 150 feet wide and up to 50 feet deep, in a semi-circular pattern. Id.; (Certification of Richard T. Paull ¶ 14, hereinafter "Paull Cert.") The fill material consisted of soil mixed with concrete, stone, brick, wood, plastic, and asphalt pieces. Wallace claimed to have documentation showing that the fill was clean but he failed to produce it to the Department upon request. (Gandhi Cert. ¶ 6.)

10. After the August 6, 2014 site inspection, DEP inspectors were concerned that Wallace was operating an unlicensed solid waste facility in violation of N.J.A.C. 7:26-2.8(f) but had no determinative evidence to conclude so. (Gandhi Cert. ¶ 6.) DEP then issued a Warning Letter to Wallace that advised him that he might be violating the SWMA and advised him to document the origin and composition of the fill material. Ibid.

11. Thereafter, DEP continued to receive tips and complaints about ongoing violations of the SWMA on the Wallace property from private citizens, Vernon Township officials, and other entities. (Farrell Cert. ¶¶ 5-8.) Included in these complaints was an advertisement purportedly offering to hire truckers to take fill material from New York City to a dump facility at "3 silver spruce drive sussex nj." (Farrell Cert.

Exhibit E.) Indeed, Wallace has been convicted of illegally dumping solid waste elsewhere. Id.

12. DEP inspectors engaged in approximately ten site inspections between September 2015 and September 2018. (Farrell Cert. ¶ 5.) Consistently, Wallace stated that he had documentation verifying the cleanliness of the fill material but continually failed to produce it at DEP's request. (Gandhi Cert. ¶¶ 6-7.) Based solely on visual assessments, DEP inspectors could not determine if the fill material was solid waste. Id. ¶ 4. DEP inspectors were unable to determine that the material was solid waste until they collected a sample for laboratory analysis. (Ongaro Cert, ¶¶ 5-13.)
13. On or about January 19, 2019, Wallace advised DEP inspectors that he would not permit any access to the Wallace property without a search warrant. (Farrell Cert. ¶ 10.)
14. After the January 19, 2019 denial of entry, DEP suspected that Wallace had violated the Stormwater Management Rules and the Highlands Act by exceeding one acre of land disturbance. (Paull Cert. ¶¶ 7, 12.) Regarding stormwater discharge under the WPCA, a 5G3 general "permit is required for any stormwater discharge associated with a small construction activity, which is any 'clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres.'" (Paull

Cert. ¶ 5 (citing N.J.A.C. 7:14A-1.2, -6.13, -24.2).) This permit simply requires that for any land disturbance exceeding one acre, but less than five acres, one must obtain a permit to ensure that the stormwater runoff is managed.

15. The Wallace property is situated in the Preservation Area of the Highlands, and DEP approval is necessary for any "major Highlands development" as defined in N.J.S.A. 13:20-3. This definition includes "any non-residential development in the preservation area" and "any residential development in the preservation area that... results in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more...." N.J.S.A. 13:20-3. A site inspection is necessary to confirm the existence of this violation with specificity. N.J.S.A. 13:20-28.

District and Municipal Enforcement Actions

16. After the initial site inspection on August 14, 2014, the District determined that Wallace had violated the Soil Erosion and Sediment Control Act ("SESCA") N.J.S.A. 4:24-39 to -55 by disturbing an area in excess of 5,000 square feet without a soil erosion and sediment control plan. Accordingly, the District issued a Stop Work Order on August 14, 2014 that prohibited Wallace from "importing any additional fill material" onto his property "until such time

as a Soil Erosion and Sediment Control (SESC) Plan has been submitted to and certified by the District.” (Paull Cert. ¶ 14.) Nonetheless, Wallace continued to dump fill material and Vernon Township sought injunctive relief in Superior Court, as the municipality is empowered to enforce the SESCO. N.J.S.A. 4:24-53.

17. The Superior Court denied the temporary restraining order on July 11, 2018 and denied the preliminary injunction on August 10, 2018, reasoning that the Stop Work Order only applied to a particular 5,000 square foot area rather than the whole parcel. (Certification of Matthew D. Knoblauch Exhibit B, 37-39, hereinafter “Knoblauch Cert.”) Vernon Township sought interlocutory review in the Appellate Division, which was denied. The permanent injunction hearing is scheduled for May 6, 2019.

18. As a consequence of the court’s decision, the District issued a second Stop Work Order on August 23, 2018 with more explicit language indicating what actions Wallace was prohibited from taking. (Paull Cert. ¶ 15.) Specifically, the Order required Wallace to (1) immediately stop construction and (2) immediately stop importing fill material on the entire property. (Paull Cert. Exhibit B.) This Order removed any ambiguity regarding what Wallace was prohibited from doing pursuant to the determination of the District.

COUNT 1

CONTINUED OPERATION OF AN UNPERMITTED SOLID WASTE FACILITY IN
VIOLATION OF THE SOLID WASTE MANAGEMENT ACT

19. Plaintiff incorporates paragraphs 1 - 18 of this Verified Complaint as if fully set forth, herein.
20. The Solid Waste Management Act ("SWMA") N.J.S.A. 13:1E-1 to -48 provides that "[n]o person shall begin construction or operation of a solid waste facility without obtaining a SWF [solid waste facility] Permit" subject to certain exceptions not present here. N.J.A.C. 7:26-2.8(f).
21. Defendants, without having first obtained a SWF permit, are continuing to operate a solid waste facility by importing and dumping potentially contaminated fill material on the Wallace property, based on DEP inspectors' visual observations of soil mixed with plastic, asphalt, concrete, and other materials.
22. Defendants denied DEP access to the Wallace property on January 19, 2019.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Joseph Wallace and Laura Wallace jointly and severally liable for violations of the SWMA N.J.S.A. 13:1E-1 to -48 as well as the regulations promulgated thereto, on Block 130, Lot 1.05, 3 Silver Spruce Drive, Vernon Township, Sussex County, New Jersey as described in Count 1 of the Verified Complaint.

Wherefore, pursuant to N.J.S.A. 13:1E-9, Plaintiff respectfully requests the following relief from all Defendants:

a. Immediately cease receiving any and all fill material and/or solid waste onto the property at Block 130, Lot 1.05, also known as 3 Silver Spruce Drive, Vernon, New Jersey (the "site");

b. Immediately provide access by NJDEP and/or individuals on behalf of the Department to delineate the area of disturbance and extent of the fill material brought onto the site, to perform any sampling of the material on site, and/or perform any other inspections of the property as the Department deems necessary to determine compliance with the SWMA, the WPCA, and the Highlands Act;

c. Within thirty days, characterize all fill material to determine if it meets the definition of solid waste as

defined at N.J.A.C. 7:26-1.6 and provide NJDEP an estimate for the cost of removal of the solid waste;

d. Within ninety days, remove and properly dispose (in accordance with applicable New Jersey laws) of all fill material which meets the definition of solid waste on the site;

e. Within 10 days, provide NJDEP with full and complete documentation setting forth the source and nature of the material brought onto the site since 2009, including but not limited to all analytical results, receipts, bills of lading, and identification of all transporting haulers;

f. Within 45 days, place sufficient funds into escrow or an attorney trust account, to be identified by this Court, to guarantee adequate funds for removal of the solid waste on-site.

WHEREFORE, Plaintiff respectfully requests that the Court grant penalties as the Court deems just and proper pursuant to N.J.S.A. 13:1E-9, N.J.S.A. 13:20-28, and N.J.S.A.58:10A-10.

WHEREFORE, Plaintiff respectfully requests that the Court order any additional relief that the Court may deem just and equitable.

CERTIFICATION PURSUANT TO R.4:5-1

I am designated trial counsel. This matter is not the subject of any other litigation. I am not aware that any further litigation is contemplated. I am not aware of any other parties that should be joined. 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).



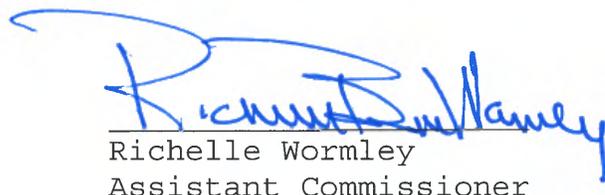
Matthew D. Knoblauch
Deputy Attorney General

Dated: 2/22/2019

VERIFICATION

Richelle Wormley, by way of certification, states that:

1. I am Assistant Commissioner, Compliance and Enforcement, New Jersey Department of Environmental Protection in the above captioned matter.
2. I have read the Verified Complaint.
3. I certify that all factual allegations contained herein are true and correct.
4. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.


Richelle Wormley
Assistant Commissioner

Dated: 2/22/2019