

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiff

By: Matthew D. Knoblauch
Attorney ID: 201692016
Deputy Attorney General
(609) 292-1557

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

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

TONY NOVAK, individually;
LORI NOVAK, individually;
WILLIAM NOVAK, individually;
BAYSAVE CORPORATION; MONEY
ISLAND MARINA LLC; NANTUXENT
SEAFOOD CORPORATION; JOHN DOE;
JANE DOE; and ABC CORPORATION,

Defendants.

Civil Action

VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINTS AND
OTHER APPROPRIATE RELIEF

Plaintiff, State of New Jersey, Department of Environmental
Protection ("DEP" or "Department"), by way of Verified Complaint
against Tony Novak, individually; Lori Novak, individually; William
Novak, individually; Baysave Corporation; Money Island Marina, LLC;

the unpermitted filling and disturbance of mapped coastal wetlands.

4. This action is also brought pursuant to the Air Pollution Control Act ("APCA"), N.J.S.A. 26:2C-1 et seq., as well as the regulations promulgated thereto, particularly regarding the operation of an above ground fuel storage tank that lacks both an Air Preconstruction Permit and an Operating Certificate, which it is required to have pursuant to N.J.A.C. 7:27-8.3.
5. This action is also brought pursuant to the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 et seq., as well as the regulations promulgated thereto, for temporary restraints, damages, and civil penalties, against Defendants to enjoin continued violations of the WPCA, particularly regarding unpermitted sewage holding tanks that are not water tight and have no records of being pumped out and an unpermitted above ground fuel storage tank that generates stormwater runoff.
6. Additionally, although the Department is seeking compensatory and actual damages as well as civil penalties pursuant to each respective statute, the Department notes that compliance is its primary concern and is amicable to a stay on damages and penalties until compliance can be resolved.
7. This action is also brought pursuant to the Tidelands Act, N.J.S.A. 12:3-1 et seq., specifically N.J.S.A. 12:3-8, for

trespass and unlawful occupation of lands of the State that are currently or were formerly under water.

PARTIES

8. The Department of Environmental Protection ("the Department") is a principal department of the State of New Jersey and the agency charged with enforcement of the WFD, CAFRA, the Coastal Wetlands Act, APCA, WPCA, and the Tidelands Act, with offices as 401 East State Street in Trenton, New Jersey.
9. Defendant Tony Novak is a principal and registered agent of Baysave Corporation, Money Island Marina, LLC, and Nantuxent Seafood Corporation. Defendant Tony Novak is the owner and operator of the realty development that is known as the Money Island Marina. Defendant Tony Novak resides at 183 Bayview Road, Newport, New Jersey 08345 and has a mailing address of P.O. Box 333, Newport, New Jersey 08345.
10. Defendant Lori Novak is Tony Novak's wife, and co-owner with the right of survivorship of Block 5, Lot 1; Block 6, Lot 11; and well rights on Block 4, Lot 5. Defendant Lori Novak resides at 183 Bayview Road, Newport, New Jersey 08345 and has a mailing address of P.O. Box 333, Newport, New Jersey 08345.
11. Defendant William Novak is Tony Novak's son, and the co-owner of Block 6, Lot 11 along with Tony Novak. Defendant William Novak's mailing address is P.O. Box 333, Newport, New Jersey 08345.

12. Defendant Baysave Corporation ("Baysave") is a nonprofit corporation that participates in the operation of the Money Island Marina, which is located on several parcels in the Money Island neighborhood of Downe Township, Cumberland County, New Jersey and has a mailing address of P.O. Box 333, Newport, New Jersey 08345.
13. Defendant Money Island Marina, LLC ("Money Island") is a corporation that participates in the operation of the Money Island Marina, which is located on several parcels in the Money Island neighborhood of Downe Township, Cumberland County, New Jersey and has a mailing address of P.O. Box 333, Newport, New Jersey 08345.
14. Defendant Nantuxent Seafood Corporation ("Nantuxent") is a Delaware corporation that, upon information and belief, participates in the operation of the Money Island Marina, located on several parcels in the Money Island neighborhood of Downe Township, Cumberland County, New Jersey and has a mailing address of 8 The Green, Suite R, Kent, Delaware 19901.

STATEMENT OF FACTS

15. Defendants own and/or operate and/or play a role in the operation of the Money Island Marina ("the marina") in the Money Island neighborhood of Downe Township, Cumberland County, New Jersey. The marina is located on a campus that has several street address locations that correspond to parcels in

the tax map: 188 Bayview Road (Block 4, Lot 5); 192 Bayview Road (Block 4, Lot 6); 183 Bayview Road (Block 5, Lot 1); 228 Nantuxent Drive (Block 6, Lot 11); 206-212 Nantuxent Drive (Block 6, Lot 19); 204 Nantuxent Drive (Block 6, Lot 20); 202 Nantuxent Drive (Block 6, Lot 21); E. Nantuxent Drive (Block 6, Lot 22); 295 E. Nantuxent Drive (Block 7, Lot 1); 289 E. Nantuxent Drive (Block 7, Lot 2); 258 Nantuxent Drive (Block 7, Lot 15); 320-326 Nantuxent Drive (Block 7, Lot 32); and 334 Nantuxent Drive (Block 7, Lot 33). (Certification of Joseph Traum, hereinafter "Traum Cert." Ex. 1.)

16. Tony Novak is the principal of Money Island, Baysave, and Nantuxent, which are the three corporations that operate or play a role in the operation the marina. (Certification of Ginger Benckert, hereinafter "Benckert Cert.," ¶ 5.)
17. The marina, including Block 4, Lot 6; Block 6, Lots 19-22; and Block 7, Lots 1 and 2, was formerly owned by Joe Acosta and during that period it was the subject of an October 7, 2010 Notice of Violation ("NOV") for violations of the WFD, Coastal Wetlands Act, and Tidelands Act that Department Environmental Specialist Ginger Benckert ("Ms. Benckert") had observed during a site inspection on or about September 23, 2010. (Benckert Cert. ¶¶ 7, 13.)
18. During the September 23, 2010 inspection, Ms. Benckert observed three unpermitted boardwalk/walkway structures over

approximately 1,112 sq. ft. of mapped coastal wetlands as well as a series of unpermitted piers and docks over approximately 6,754 sq. ft. of waterfront development area below the mean high water line. (Benckert Cert. ¶ 11.) Some portions of these structures occupy tidelands, and no valid tidelands grant, lease, or license exists for such use. Ibid.

19. One of Tony Novak's corporations, Money Island, acquired the marina from Joe Acosta sometime in late 2012. (Benckert Cert. ¶ 5.) After the Department learned of the transfer, it issued an NOV against Money Island on April 24, 2013 that was identical to the October 7, 2010 NOV. (Benckert Cert. ¶ 14.)
20. Tony Novak and William Novak acquired Block 6, Lot 11 prior to, and independently from, the lots they acquired from Joe Acosta. On or about June 9, 2010, Ms. Benckert engaged in a site inspection of that property where she observed an unpermitted 3' x 78' bulkhead that disturbed 234 sq. ft. of waterfront development area below the mean high water line that lacked a valid tidelands grant, lease, or license. (Benckert Cert. ¶ 15.) The Department issued an NOV against Tony Novak and William Novak for these unpermitted activities on September 15, 2010. (Benckert Cert. ¶ 16.)
21. Between July 22, 2013 and July 26, 2013, Ms. Benckert along with other representatives of the Department and the Cumberland County Health Department ("Health Department")

engaged in a neighborhood-wide door-to-door inspection of the sewage disposal and water supply systems of structures located in the Money Island neighborhood. (Benckert Cert. ¶ 19.) The Health Department found that a "majority of sewage disposal systems [are]... an immediate public health risk [and] [m]any of the water supply systems pose an immediate risk." (Benckert Cert. Ex. 14.)

22. During the July 2013 inspection, Ms. Benckert observed a 2,000 gallon above ground fuel storage tank on Block 4, Lot 6 that lacked a New Jersey Pollution Discharge Elimination System ("NJPDES") permit in violation of N.J.S.A. 58:10A-6b. (Benckert Cert. ¶¶ 21, 22.) A NJPDES permit is required because the fuel storage tank is part of a transportation facility, which makes it an industrial activity, and any stormwater runoff becomes "stormwater discharge associated with an industrial activity" pursuant to N.J.A.C. 7:14A-1.2. (Benckert Cert. ¶¶ 21, 22.)

23. During the July 2013 inspection, Ms. Benckert also observed that the 2,000 gallon above ground fuel storage tank on Block 4, Lot 6 lacked both an Air Preconstruction Permit, as required by N.J.A.C. 7:27-8.3a, and an Operating Certificate, as required by N.J.A.C. 7:27-8.3b. (Benckert Cert. ¶ 26.)

24. During the July 2013 inspection, Ms. Benckert observed two underground sewage holding tanks on Block 4, Lot 5, one of

which appeared to be serving a pull-behind trailer while the other did not appear to be in use; neither tank was water tight as required by N.J.A.C. 7:9A-2.1 and thus the tanks were non-compliant pursuant to N.J.A.C. 7:9A-3.4. (Benckert Cert. ¶ 28.) Additionally, there are no records that either tank has been pumped out as required by N.J.A.C. 7:9A-3.49(i)5. (Benckert Cert. ¶ 30.) The Department issued an NOV on January 26, 2017 that addressed these WPCA violations on Block 4, Lot 5. (Benckert Cert. Ex. 26.)

25. On September 16, 2013, Money Island transferred Block 4, Lots 3, 4, 5, 6, and 6.01; Block 5, Lot 1; Block 6, Lots 11, 19, 19.01, 20, 21, and 22; and Block 7, Lots 1, 2, 13, 15, 31, and 33 to Baysave via quitclaim deed for one dollar. (Benckert Cert. Ex. 3.)
26. On October 9, 2013 the State recorded a Notice of Action (lien) of the Tidelands Resource Council on Block 4, Lot 6; Block 6, Lot 19, 20, 21, and 22; and Block 7, Lots 1 and 2 for use and occupation of tidelands without a valid grant, lease, or license. (Benckert Cert. Ex. 25.)
27. On April 2, 2014, Baysave transferred Block 5, Lot 1; Block 6, Lot 11; and water well rights on Block 4, Lot 5 to Tony Novak and Lori Novak as husband and wife with the right of survivorship. (Benckert Cert. Exs. 4, 5, 6.)

28. On October 31, 2014, Ms. Benckert engaged in an in-house inspection of Block 4, Lot 5 that found an unpermitted mobile home and shed that resulted in 380 sq. ft. of CAFRA violations. (Benckert Cert. ¶ 37.) The Department issued an NOV on or about May 23, 2016 based on the violations Ms. Benckert observed during this inspection.
29. An in-house inspection is one where the inspector does not visit the site, but rather uses Geographic Information Systems ("GIS"), which is a computer program used to analyze geographical data, aerial photography, and other data to remotely assess a given property. (Benckert Cert. ¶ 44.)
30. On November 3, 2014, Ms. Benckert engaged in an in-house inspection of Block 5, Lot 1 and observed 4,837 sq. ft. of unpermitted disturbed mapped coastal wetlands in violation of the Coastal Wetlands Act. (Benckert Cert. ¶¶ 41-42.)
31. On March 11, 2015, Ms. Benckert engaged in an in-house inspection of Block 7, Lot 15 and observed an unpermitted 57' x 5' pier and an unpermitted 177' x 8' floating dock below the mean high water line in a waterfront development area in violation of the WFD. (Benckert Cert. ¶ 44.) Ms. Benckert also observed approximately 1,742 sq. ft. of unpermitted filled coastal wetlands in violation of the Coastal Wetlands Act.

Ibid.

32. On April 9, 2015, Ms. Benckert engaged in an in-house inspection of Block 7, Lot 32 and observed an unpermitted 95' x 4' boardwalk over mapped coastal wetlands in violation of the Coastal Wetlands Act as well as an unpermitted dock structure below the mean high water line covering approximately 1,920 sq. ft. of waterfront development area in violation of the WFD. (Benckert Cert. ¶ 48.)
33. On April 10, 2015, Ms. Benckert engaged in an in-house inspection of Block 7, Lot 33 and observed the unpermitted placement of fill, unpermitted construction of a trailer, and unpermitted construction of a dock structure below the mean high water line, all covering approximately 2,603 sq. ft. of waterfront development area in violation of the WFD. (Benckert Cert. ¶ 49.) Additionally, Ms. Benckert observed an unpermitted retaining wall that disturbed 8,501 sq. ft. of mapped coastal wetlands in violation of the Coastal Wetlands Act. Ibid.
34. None of the structures on Block 7, Lots 15, 32, and 33 had a tidelands grant, lease, or license. (Benckert Cert. ¶¶ 43, 47.)
35. On or about June 3, 2015, the Department sent Tony Novak, on behalf of Baysave, a notice to inform him of Defendants' continued violations. (Benckert Cert. Ex. 24.) Tony Novak requested to have a meeting with the Department and the Health

Department to discuss the violations as well as compliance, which took place on July 18, 2016. (Traum Cert. ¶ 8.) At this meeting, Tony Novak indicated that he was reluctant to comply with the violations and believed that "Baysave was holding the properties in trust for the State until such time that they become inundated by sea level rise." (Traum Cert. ¶ 8.)

36. On or about February 24, 2017, Baysave filed for Chapter 12 bankruptcy. The United States Bankruptcy Court dismissed Baysave's petition on May 23, 2017 and reasoned that Baysave did not qualify as a Chapter 12 debtor because it did not generate income. (Certification of Kevin Fleming ¶ 3.)

37. On April 11, 2017, the Department issued an Administrative Order ("AO") against Baysave that incorporated all of the above violations, except those against Block 5, Lot 1 and Block 6, Lot 11. (Traum Cert. ¶ 9.)

38. On June 30, 2017, Department Investigator Joseph Traum ("Mr. Traum") engaged in a sight inspection of Block 4, Lot 6; Block 6, Lots 19-22; and Block 7, Lots 1 and 2 and observed that Defendants had continued to engage in unpermitted construction of additional structures and unpermitted disturbance of coastal wetlands. (Traum Cert. ¶¶ 11-25.) On Block 4, Lot 5, Mr. Traum observed that Defendants removed a shed but added another larger unpermitted structure, thus increasing the total area of CAFRA violations to 560 sq. ft. (Traum Cert. ¶

25.) On Block 6, Lots 19 - 22, Mr. Traum observed that two unpermitted floating docks had been added since 2015 that covered 120 sq. ft. of mapped coastal wetlands in violation of the Coastal Wetlands Act and covered 900 sq. ft. of waterfront development area in violation of the WFD. (Traum Cert. ¶ 20.)

On Block 7, Lot 32, Mr. Traum observed two unpermitted piers that covered 380 sq. ft. of mapped coastal wetlands in violation of the Coastal Wetlands Act and covered 1,950 sq. ft. of waterfront development area in violation of the WFD. (Traum Cert. ¶ 23.)

39. Defendants have admitted their current unpermitted activities via the internet. On baysave.org, Defendants indicate that they launched a new "family fishing facility" in 2015, which consists of several structures. (Traum Cert. ¶ 31.) The new structures associated with this facility are not permitted. Ibid.

40. Defendants have publicly made representations regarding their ambitious plans for future development of the marina. Tony Novak has blogged about his proposed "dock-to-table seafood venture" that will include the construction of "eco-tourism based housing, transient docking, retail and restaurant" facilities at the marina. (Traum Cert. ¶ 32.) Tony Novak has noted that he has spent "well over a million dollars in

focused infrastructure spending" and "more is planned." (Traum Cert. ¶ 33.)

COUNT 1

CONTINUED UNPERMITTED CONSTRUCTION IN VIOLATION OF THE
WATERFRONT DEVELOPMENT ACT

41. Plaintiff incorporates paragraphs 1 - 40 of this Verified Complaint as if fully set forth, herein.
42. The WFD prohibits any development along a navigable waterway below the mean high water line without a permit, subject to limited exceptions. N.J.S.A. 12:5-3.
43. Defendants, without having first obtained a WFD permit, engaged in the construction of thousands of square feet along a navigable waterway below the mean high water line on Block 4, Lot 6; Block 6, Lot 11; Block 6, Lot 19; Block 6, Lot 20; Block 6, Lot 21; Block 6, Lot 22; Block 7, Lot 1; Block 7, Lot 2; Block 7, Lot 15; Block 7, Lot 32; and Block 7, Lot 33.
44. Some of the unpermitted construction predated Defendants' ownership of the marina, but Defendants have continued the unpermitted construction for the duration of their ownership.
45. Therefore, pursuant to N.J.S.A. 12:5-6(d), Plaintiff respectfully requests the following relief from all Defendants:

A. Immediately cease the construction, installation, reinstallation, development, and/or building of any

dock, pier, ramp, and/or other like structure in any of the above listed properties in Count 1;

B. Recovery of compensatory and actual damages for any loss or destruction of natural resources;

C. Within 30 calendar days, Defendants shall submit a restoration plan to restore the site to its pre-disturbance condition to the Department;

D. Within 30 calendar days, Defendants shall submit complete Waterfront Development permit applications for unauthorized activities to the Department.

COUNT 2

CONTINUED UNPERMITTED CONSTRUCTION IN VIOLATION OF THE COASTAL AREA FACILITY REVIEW ACT

46. Plaintiff incorporates paragraphs 1 - 45 of this Verified Complaint as if fully set forth, herein.

47. CAFRA prohibits the construction of any structure within 150 feet of the mean high water line of any tidal waters or the landward limit of any beach or dune, whichever is more landward, without a permit subject to certain exceptions. N.J.S.A. 13:19-5; N.J.A.C. 7:7-2.2(c).

48. Defendants, without having first acquired a permit for their construction, engaged in the construction of approximately 560 sq. ft. of non-exempt development within 150 feet of the mean

high water line on Block 4, Lot 5, since at the latest October 2014.

49. Therefore, pursuant to N.J.S.A. 13:19-18(c), Plaintiff respectfully requests the following relief from Defendants Tony Novak, Lori Novak, Baysave, Money Island, and Nantuxent:

- A. Immediately cease the construction, installation, reinstallation, development, or building of any home, shed, or other structure in any of the above listed properties in Count 2;
- B. Recovery of compensatory and actual damages for any loss or destruction of natural resources;
- C. Within 30 calendar days, Defendants shall submit a restoration plan to restore the site to its pre-disturbance condition to the Department;
- D. Within 30 calendar days, Defendants shall submit complete CAFRA development permit applications for unauthorized activities to the Department.

COUNT 3

CONTINUED UNPERMITTED DISTURBANCE OF MAPPED COASTAL WETLANDS IN VIOLATION OF THE WETLANDS ACT OF 1970

50. Plaintiff incorporates paragraphs 1 - 49 of this Verified Complaint as if fully set forth, herein.

51. The Coastal Wetlands Act prohibits engaging in any "regulated activity" without a permit; such an activity is defined as

"draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow." N.J.S.A. 13:9A-4.

52. Defendants, without having first obtained a permit, engaged in deposited material, erected structures, and engaged in other regulated activities over thousands of square feet of mapped coastal wetlands on Block 4, Lot 6; Block 5, Lot 1; Block 6, Lot 19; Block 6, Lot 20; Block 6, Lot 21; Block 6, Lot 22; Block 7, Lot 1; Block 7, Lot 2; Block 7, Lot 15; Block 7, Lot 32; and Block 7, Lot 33 for the duration of their ownership of the parcels.

53. Therefore, pursuant to N.J.S.A. 13:9A-9(c), Plaintiff respectfully requests the following relief from Defendants Tony Novak, Lori Novak, Baysave, Money Island, and Nantuxent:

- A. Immediately cease the disturbance, filling, and/or removal of any fill material from any of the above listed properties listed in Count 3;
- B. Recovery of compensatory and actual damages for any loss or destruction of natural resources;

C. Within 30 calendar days, Defendants shall submit a restoration plan to restore the site to its pre-disturbance condition to the Department;

D. Within 30 calendar days, Defendants shall submit complete Wetlands development permit applications for unauthorized activities to the Department.

COUNT 4

CONTINUED UNPERMITTED INSTALLATION AND OPERATION OF A MAJOR SOURCE IN VIOLATION OF THE AIR POLLUTION CONTROL ACT

54. Plaintiff incorporates paragraphs 1 - 53 of this Verified Complaint as if fully set forth, herein.

55. The APCA prohibits the construction or installation of a significant source of air emissions without a preconstruction permit. N.J.A.C. 7:27-8.3(a).

56. Additionally, no person may operate a significant source of air emissions, nor cause to be operated, without a valid operating certificate. N.J.A.C. 7:27-8.3(b).

57. A significant source of air emissions includes a "transfer operation involving gasoline or other VOCs that is regulated under N.J.A.C. 7:27-16.3," which regulates gasoline transfer operations. N.J.A.C. 7:27-8.2(c)7.

58. Additionally, a significant source of air emissions includes a stationary storage tank with a capacity of 2,000 gallons or more that holds VOCs. N.J.A.C. 7:27-8.2(c)9.

59. Defendants failed to acquire a preconstruction permit for their 2,000 gallon stationary gasoline storage tank on Block 4, Lot 6 that is used for fueling marine vessels, yet Defendants installed or constructed their tank despite their failure.
60. Defendants have also failed to acquire an operating certificate for their 2,000 gallon stationary gasoline fuel storage tank, yet continue to operate their tank despite their failure.
61. Therefore, pursuant to N.J.S.A. 26:2C-8.52, 26:2C-19(a), Plaintiff respectfully requests that Defendants Tony Novak, Lori Novak, Baysave, Money Island, and Nantuxent comply with the APCA as follows:

A. Within 30 calendar days, Defendants shall electronically submit a complete application to the Department for an Air Preconstruction Permit and Operating Certificate for the 2,000 gallon above ground fuel storage tank on Block 4, Lot 6.

COUNT 5

CONTINUED UNPERMITTED USE OF NON-COMPLIANT SEWAGE HOLDING TANKS AND A FUEL STORAGE TANK IN VIOLATION OF THE WATER POLLUTION CONTROL ACT

62. Plaintiff incorporates paragraphs 1 - 61 of this Verified Complaint as if fully set forth, herein.

63. The WPCA provides that no one may discharge any pollutant in the absence of a New Jersey Pollution Discharge Elimination System ("NJPDES") permit, subject to other limited exceptions. N.J.S.A. 58:10A-6.
64. A marina is a transportation facility that engages in fueling, so it is classified as an industrial facility. See N.J.A.C. 7:14A-1.2 (definition of "stormwater" at lvii). Consequently, stormwater runoff is "stormwater discharge associated with an industrial activity," which requires a NJPDES permit. N.J.A.C. 7:14A-1.2.
65. Defendants failed to obtain a NJPDES permit for the stormwater runoff generated by their 2,000 gallon above ground fuel storage tank, which is used for fueling marine vessels, on Block 4, Lot 6.
66. Despite their failure, Defendants have continued to operate their fuel storage tank.
67. An underground sewage holding tank that is not water tight, is subject to tidal flooding, and has no record of being pumped out, is in jeopardy of discharging a pollutant and requires a NJPDES permit.
68. Defendants failed to obtain a NJPDES permit for the two underground sewage holding tanks on Block 4, Lot 5, both of which are not water tight, subject to tidal flooding, and have no record of being pumped out.

69. Holding tanks are defined as "closed water-tight structure[s]" designed to receive and store sewage. N.J.A.C. 7:9A-2.1. If an underground sewage holding tank is not water-tight, it is non-compliant. N.J.A.C. 7:9A-3.4; see also N.J.A.C. 7:9A-8.2(e)1.

70. Therefore, pursuant to N.J.S.A. 58:10A-10(c), Plaintiff respectfully requests the following relief from Defendants Tony Novak, Lori Novak, Baysave, Money Island, and Nantuxent:

- A. Immediately ensure that there are no unpermitted sewage discharges from any holding tanks in the above listed properties;
- B. Immediately cease the use of any facility with unpermitted sewage discharges;
- C. Recovery of compensatory and actual damages for any loss or destruction of natural resources;
- D. Within 30 calendar days, Defendants shall provide to the Department documentation demonstrating that the sewage holding tanks comply with N.J.A.C. 7:9A-3.4(i)
- E. Within 30 calendar days, Defendants shall submit complete wastewater permit applications for their 2,000 gallon fuel storage pump and sewage holding tanks;

COUNT 6

CONTINUED UNPERMITTED OCCUPATION AND TRESPASS ON TIDELANDS
WITHOUT A GRANT, LEASE, OR LICENSE

71. Plaintiff incorporates paragraphs 1 - 70 of this Verified Complaint as if fully set forth, herein.
72. The collection of statutes referred to as the Tidelands Act prohibits a person from filling in, building upon, or reclaiming "any of the lands under the tidewaters of this State" in the absence of a grant, lease, or license to do so. N.J.S.A. 12:3-4.
73. Defendants have filled, built upon, and/or reclaimed lands under the tidewaters on Block 4, Lot 6; Block 6, Lot 19; Block 6, Lot 20; Block 6, Lot 21; Block 6, Lot 22; Block 7, Lot 1; and Block 7, lot 2 without a grant, lease, or license.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Tony Novak, Money Island, Baysave, and Nantuxent jointly and severally liable for violations of the WFD, N.J.S.A. 12:5-3 and 12:5-6 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 6; Block 6, Lot 11; Block 6, Lot 19; Block 6, Lot 20; Block 6, Lot 21; Block 6, Lot 22; Block 7, Lot 1; Block 7, Lot 2; Block 7, Lot 15; Block 7, Lot 32; and Block 7, Lot 33 as described in Count 1 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Lori Novak and William Novak jointly and severally

liable for violations of the WFD, N.J.S.A. 12:5-3 and 12:5-6 et seq., as well as the regulations promulgated thereto, on Block 6, Lot 11 as described in Count 1 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendant Lori Novak jointly and severally liable for violations of the WFD, N.J.S.A. 12:5-3 and 12:5-6 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 5 and Block 6, Lot 11 as described in Count 1 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Tony Novak, Lori Novak, Money Island, Baysave, and Nantuxent jointly and severally liable for violations of CAFRA, N.J.S.A. 13:19-1 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 5 as described in Count 2 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Tony Novak, Money Island, Baysave, and Nantuxent jointly and severally liable for violations of the Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 6; Block 5, Lot 1; Block 6, Lot 19; Block 6, Lot 20; Block 6, Lot 21; Block 6, Lot 22; Block 7, Lot 1; Block 7, Lot 2; Block 7, Lot 15; Block 7, Lot 32; and Block 7, Lot 33 as described in Count 3 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendant Lori Novak jointly and severally liable for violations of

the Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., as well as the regulations promulgated thereto, on Block 5, Lot 1 as described in Count 3 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Tony Novak, Money Island, Baysave, and Nantuxent jointly and severally liable for violations of the APCA, N.J.S.A. 26:2C-1 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 5 and Block 4, Lot 6 as described in Count 4 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendant Lori Novak jointly and severally liable for violations of the APCA, N.J.S.A. 26:2C-1 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 5 as described in Count 4 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Tony Novak, Money Island, Baysave, and Nantuxent jointly and severally liable for violations of the WPCA, N.J.S.A. 58:10A-1 et seq., as well as the regulations promulgated thereto, on Block 4, Lot 5 and Block 4, Lot 6 as described in Count 5 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendant Lori Novak jointly and severally liable for violations of the WPCA, N.J.S.A. 58:10A-1 et seq., as well as the regulations

promulgated thereto, on Block 4, Lot 5 as described in Count 5 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendants Tony Novak, Money Island, Baysave, and Nantuxent jointly and severally liable for violations of the Tidelands Act, N.J.S.A. 12:3-1 et seq., on Block 4, Lot 5; Block 4, Lot 6; Block 6, Lot 11; Block 6, Lot 19; Block 6, Lot 20; Block 6, Lot 21; Block 6, Lot 22; Block 7, Lot 1; Block 7, Lot 2; Block 7, Lot 15; Block 7, Lot 32; and Block 7, Lot 22 as described in Count 6 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendant Lori Novak jointly and severally liable for violations of the Tidelands Act, N.J.S.A. 12:3-1 et seq., on Block 4, Lot 5 and Block 6, Lot 11 as described in Count 6 of the Verified Complaint.

WHEREFORE, Plaintiff respectfully requests an Order finding Defendant William Novak jointly and severally liable for violations of the Tidelands Act, N.J.S.A. 12:3-1 et seq., on Block 6, Lot 11 as described in Count 6 of the Verified Complaint.

WHEREFORE, pursuant to N.J.S.A. 12:5-6d, Plaintiff is authorized to file the following civil actions for each violation of the WFD, with each day being a separate and distinct violation. Plaintiff is authorized to seek the following civil actions, singly or jointly:

- a. A temporary or permanent injunction;

- b. Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- c. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;
- d. Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs under this subsection shall be paid to the State Treasurer;
- e. An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or

feasible, provide for off-site restoration alternatives as approved by the department.

WHEREFORE, pursuant to N.J.S.A. 13:9A-9(c), Plaintiff is authorized to file the following civil actions for each violation of the Coastal Wetlands Act, with each day being a separate and distinct violation. Plaintiff is authorized to seek the following civil actions, singly or jointly:

- a. A temporary or permanent injunction;
- b. Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- c. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon a coastal wetland resulting from any violation for which a civil action has been commenced and brought under this subsection;
- d. Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been

- commenced and brought under this subsection.
- Recovery of damages and costs ordered under this subsection shall be paid to the State Treasurer;
- e. An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

WHEREFORE, pursuant to N.J.S.A. 13:19-18c, Plaintiff is authorized to file the following civil actions for each violation of CAFRA, with each day being a separate and distinct violation. Plaintiff is authorized to seek the following civil actions, singly or jointly:

- a. A temporary or permanent injunction;
- b. Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- c. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon a coastal wetland resulting

- from any violation for which a civil action has been commenced and brought under this subsection;
- d. Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs ordered under this subsection shall be paid to the State Treasurer;
- e. An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

WHEREFORE, pursuant to N.J.S.A. 58:10A-10c, Plaintiff is authorized to file the following civil actions for each violation of the WPCA, with each day being a separate and distinct violation. Plaintiff is authorized to seek the following civil actions, singly or jointly:

- a. A temporary or permanent injunction;

- b. Assessment of the violator for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;
- c. Assessment of the violator for any reasonable cost incurred by the State in removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the action under this subsection may have been brought;
- d. Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge;
- e. Assessment against a violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits

accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

WHEREFORE, pursuant to N.J.S.A. 12:3-8, Plaintiff is authorized to file the following civil actions for each violation of the Tidelands Act. Plaintiff is authorized to seek the following civil action:

The department may commence a civil action in the name of the State of New Jersey against persons and corporations trespassing upon or occupying the lands of the State under water, or which were heretofore under water, and the Attorney-General of the State is hereby required to commence and prosecute such actions as may be instituted or directed by the department; and his expenses and disbursements, and the expenses and disbursements of such assistants as may be appointed by the Governor, and their reasonable charges and counsel fees shall be taxed by the court and paid by the State Treasurer, upon presentation of the bill so taxed.

WHEREFORE, Plaintiff is aware that it is authorized to assess the following civil penalties for each violation of every statute or rule promulgated pursuant to same, with each day being a separate and distinct violation; Plaintiff's priority is in seeking compliance and is amicable to staying Defendants' obligation to pay civil penalties for each violation, as well as damages, until a later date so that compliance can be accomplished. Plaintiff is authorized to assess the following civil penalties:

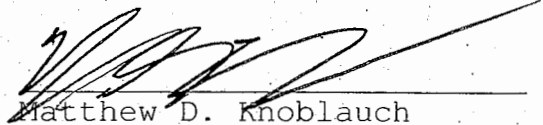
- a. Not more than \$25,000 for each violation of the WFD or any regulation promulgated thereto, pursuant to N.J.S.A. 12:5-6e;
- b. Not more than \$25,000 for each violation of the Coastal Wetlands Act or any regulation promulgated thereto, pursuant to N.J.S.A. 13:9A-9;
- c. Not more than \$25,000 for each violation of CAFRA or any regulation promulgated thereto, pursuant to N.J.S.A. 13:19-18d;
- d. Not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense for each violation of the APCA or any regulation promulgated thereto, pursuant to N.J.S.A. 26:2C-19b;
- e. Not more than \$50,000 for each violation of the WPCA or any regulation promulgated thereto, pursuant to N.J.S.A. 58:10A-10d(1)(a).

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

RESPECTFULLY SUBMITTED,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By:



Matthew D. Knoblauch
Deputy Attorney General

5/4/2018