

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and on behalf of all other persons similarly situated (“the Class”). Plaintiff proposes the following Class definitions, subject to amendment as appropriate:

All persons owning property or residing on property adjoining any waterway that was impacted by the R&L diesel spill. (“the Class”).

All persons or entities owning property adjoining any waterway that was impacted by the R&L diesel spill and resulted in a diminution of property value (the “Property value sub-class”).

35. Excluded from the Class are Defendants’ officers, directors, and employees; any entity in which Defendants have a controlling interest; and the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendants. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and Members of their staff.

36. Plaintiff reserves the right to amend or modify the Class or Subclass definitions as this case progresses.

37. Numerosity. The Members of the Class are so numerous that joinder of all of them is impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, based on information and belief, the Class consists of more than 100 residents of Clinton County who were impacted by the R&L diesel spill.

38. Commonality. There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants unlawfully designed, maintained, or operated its fuel storage tanks;

- b. Whether Defendants failed to implement and maintain reasonable procedures and practices for training and inspecting its fuel storage tanks;
- c. Whether Defendant R&L's fuel storage tanks systems complied with applicable laws and regulations;
- d. Whether Defendant R&L's fuel storage tanks and practices prior to and during the spill were consistent with industry standards;
- e. Whether Defendants breached their duties to Class Members to design, maintain, and operate the R&L fuel storage tanks in a reasonable manner and consistent with industry standards;
- f. Whether Defendants knew or should have known that the R&L fuel storage operations were deficient;
- g. Whether Defendants discovered or should have discovered the release sooner;
- h. Whether Plaintiff and Class Members suffered legally cognizable damages as a result of Defendants' misconduct;
- i. Whether Defendants' conduct was negligent;
- j. Whether Defendants' conduct caused a public nuisance;
- k. Whether Defendants' conduct constitutes a trespass;
- l. Whether Defendants are strictly liable for their misconduct in permitting the release of the diesel fuel; and,
- m. Whether Plaintiff and Class Members are entitled to damages, civil penalties, punitive damages, and/or injunctive relief.

39. Typicality. Plaintiff's claims are typical of those of other Class Members because the Adams Property was contaminated, and he has been and continues to be harmed in the same manner as every other Class Member.

40. Adequacy of Representation. Plaintiff will fairly and adequately represent and protect the interests of the Members of the Class. Plaintiff's Counsel are competent and experienced in litigating Class actions.

41. Predominance. Defendants have engaged in a common course of conduct toward Plaintiff and Class Members, in that there was a common source and common release of the same hazardous material that has damaged Plaintiff's and class member's property and caused harm in the same manner. Plaintiff and Class Members' damages are all related to the common contaminant that was released by Defendants. The common issues arising from Defendants' conduct affecting Class Members set out above predominate over any individualized issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

42. Superiority. A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy. Class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation. Absent a Class Action, most Class Members would likely find that the cost of litigating their individual claims is prohibitively high and would therefore have no effective remedy. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendant. In contrast, the conduct of this action as a Class Action presents far fewer management

difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class Member.

43. Defendants have acted on grounds that apply generally to the Class as a whole, so that Class certification, damages, injunctive relief, and corresponding declaratory relief are appropriate on a Class-wide basis.

CAUSES OF ACTION

COUNT I

NEGLIGENCE (On Behalf of Plaintiff and the Class)

44. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

45. Each Defendant owed Plaintiff and the Class, as an adjacent landowner, a duty of care to manage the R&L operations, and otherwise take reasonable steps, to prevent the release of hazardous materials from the R&L gas storage units that could foreseeably damage the local waterways, soil, sediment, and nearby properties.

46. This type of contamination and harm to Plaintiff and Class Members' properties was or should have been reasonably foreseeable to Defendants.

47. Each Defendant breached this duty by:

a. Failing to design, monitor, maintain, and clean R&L's storage tanks in a manner that adequately guarded and protected against the release of hazardous materials onto adjacent waterways and land;

b. Failing to inspect, investigate and discover whether the Defendant's operations were sound, safe and effective;

c. Failing to revise or eliminate the Defendant's operations that created an unreasonable risk to local properties including the Adams Property;

d. Failing to adequately construct a containment well;

- e. Failing to adequately test and monitor the efficacy and safety of the containment well;
- f. Failure to install, repair or replace necessary equipment;
- g. Failing to implement sufficient safety policies, training, or take reasonable precautions to prevent the release of hazardous materials into the local waterways that could foreseeably damage local properties such as Plaintiff's and class members; and,
- h. Were otherwise negligent.

48. Each Defendant knew or should have known that such failures would increase the risk of the release of hazardous materials that could cause substantial property damage to the Adams Property and other land and waterways.

49. As a direct and proximate result of each Defendants' failures, hazardous material was released from the R&L Property and facility that travelled to the Adams Property and Class Member's properties and indeed caused contamination and property damage.

50. As a direct and proximate result of the contamination, Plaintiff and Class Members have suffered damages, including but not limited to, past and continued loss of use and enjoyment of their properties, as well as temporary and potentially permanent property damage, resulting in restoration costs, loss of time, and loss of value of the property. Plaintiff and Class Members further suffered emotional distress related to the contamination. Plaintiff and Class Members have suffered compensatory damages and are entitled to punitive damages due to Defendants' willful, wanton, and/or reckless conduct in creating a scenario where diesel fuel was permitted to spill onto Plaintiff's and Class Members' properties.

51. Moreover, the actions of Defendants have caused an unreasonable interference with the health, wealth, welfare, and use of the private property for which Defendants are subject to injunctive relief fully remediating the damage and prohibiting the continuance of the damaging effects of the hazardous materials.

COUNT II

NEGLIGENCE PER SE (On Behalf of Plaintiff and the Class)

52. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

53. Defendants owed a duty to Plaintiff to comply with all Ohio Revised Code and Administrative Code requirements addressing the safe handling of fuel during its business operations, including but not limited to the following: Ohio's Water Pollution Act, Ohio Rev. Code § 6111 *et seq.*, Ohio's Public Nuisance Statute, Ohio Rev. Code § 3767 *et seq.* and Ohio's Air Nuisance Rule, Ohio Admin. Code § 3745-15-07.

54. Defendants breached these statutory duties that were established to protect against the exact type of harm that occurred on the Adams Property and Class Members' properties.

55. As a result, Defendants are each negligent per se.

56. As a direct and proximate result of the breach of the statutory duties, hazardous material was released from the R&L facility that travelled to the Adams Property and Class Members' properties and indeed caused contamination and property damage.

57. As a direct and proximate result of the contamination, Plaintiff and Class Members have suffered damages, including but not limited to, past and continued loss of use and enjoyment of their properties, as well as temporary and potentially permanent property damage, resulting in restoration costs, loss of time, and loss of value of the property. Plaintiff and Class Members

further suffered emotional distress related to the contamination. Plaintiff and Class Members have suffered compensatory damages and are entitled to punitive damages due to Defendants' willful, wanton, and/or reckless conduct in creating a scenario where diesel fuel was permitted to spill onto Plaintiff's and Class Members' properties.

58. Moreover, the actions of Defendants have caused an unreasonable interference with the health, wealth, welfare, and use of the private property for which Defendants are subject to injunctive relief fully remediating the damage and prohibiting the continuance of the damaging effects of the hazardous materials.

COUNT III

NEGLIGENT REMEDIATION (On Behalf of Plaintiff and the Class)

59. Plaintiff hereby incorporates each and every allegation in the foregoing paragraphs as if fully rewritten herein.

60. Defendants owed Plaintiff and Class Members a duty to restore the land to its original condition. Defendants further owed Plaintiff and Class Members a duty to conduct the restoration efforts reasonably and prudently and to remove all residual contamination.

61. Defendants breached this duty to Plaintiff and Class Members by:

- a. Failing to remove all contamination caused by Defendants;
- b. Failing to remove all equipment used during the restoration efforts;
- c. Otherwise negligently performing the restoration efforts.

62. As a direct and proximate result of the contamination, Plaintiff and Class Members have suffered damages, including but not limited to, past and continued loss of use and enjoyment of their properties, as well as temporary and potentially permanent property damage, resulting in restoration costs, loss of time, and loss of value of the property. Plaintiff and Class Members