

IN THE COURT OF COMMONS PLEAS  
CLINTON COUNTY, OHIO

**ZACKORY ADAMS**, individually  
and on behalf of those similarly situated  
1565 Gurneyville Rd.  
Wilmington, OH 44177

Plaintiff,

v.

**R&L CARRIERS, INC.**  
Serve: CT Corporation System  
4400 Easton Commons Way, Suite 125  
Columbus, OH 43219

and

**JOHN DOES 1-2**  
Serve: CT Corporation System  
4400 Easton Commons Way, Suite 125  
Columbus, OH 43219

Defendants.

CASE NO.: CVG 20220085

JUDGE: John W. Rudduck

CLASS ACTION COMPLAINT

(JURY TRIAL DEMANDED)

CLASS ACTION COMPLAINT

Now comes Plaintiff Zackory Adams ("Plaintiff Adams"), by and through Counsel, and brings this Class Action Complaint against Defendant R&L Carriers, Inc. ("R&L") and John Doe Defendants (collectively "Defendants") on behalf of himself and all others similarly situated, and alleges based on his personal knowledge, investigation of counsel, and upon information and belief, and facts of public record, that at all relevant times:

## NATURE OF THE ACTION

1. This action arises from R&L's failure to properly design, operate and secure its storage fuel tanks allowing the release of thousands of gallons of diesel fuel into the surrounding environment.

2. The negligent and reckless release of the fuel has caused significant harm to the surrounding environment and the properties adjoining Dutch Creek and other connected waterways. As a result of the contamination, Plaintiff and the other similarly situated property owners impacted by the diesel contamination ("Class Members") have sustained damages due to the contamination of their property with diesel fuel. Diesel fuel contains numerous hazardous chemical organic compounds, including Benzene, a highly flammable and well recognized carcinogen. The diesel fuel and its organic compounds will be collectively referred to as "hazardous material."

3. The damage to the properties from the contamination has directly caused Plaintiff and Class Members a loss of use and enjoyment of their property, loss of time, likely future remediation costs, diminution of value of the property, and emotional distress.

4. Plaintiff brings this Class Action against Defendants to seek compensatory and punitive damages for Plaintiff and the class of property owners and residents impacted by the contamination, as well as equitable and injunctive relief.

## **PARTIES**

5. Plaintiff Adams is a resident and citizen of Clinton County, Ohio. He is the owner of real estate consisting of a home residence and approximately 7 acres, located at 1565 Gurneyville Rd., Clinton County, Ohio ("the Adams Property"). The Adams Property is Plaintiff's permanent family residence and adjoins the Dutch Creek waterway. The Adams Property extends

along the waterway and is located on both sides of the waterway. Plaintiff and his family utilize the property for various activities including fishing, hunting, wading, camping, swimming, and other family events. Due to the contamination, the Adams Property has been visibly damaged with the ongoing presence of hazardous materials flowing in Dutch Creek. Moreover, there is a persistent odor of fuel that permeates the Adams Property. Plaintiff has found dead fish and noticed a depletion of wildlife that once frequented the Adams Property.

6. Plaintiff Adams is suing individually and on behalf of all property owners and residents impacted by the environmental contamination in the Dutch Creek waterway. Plaintiff and each of the Class Members had a legal right or interest as an owner and/or resident of the property that was invaded and contaminated.

7. Defendant R&L is a privately owned freight shipping Ohio company with its principal place of business located in Wilmington, Ohio (Clinton, County). Service of process is proper upon its statutory agent CT Corporation System, 4400 Easton Commons Way, Suite 125, Columbus, Ohio 43219.

8. Defendant John Does 1-2 are subsidiary companies, agents, employees, independent contractors, consultants or vendors who were responsible for the safe design, maintenance, and operation of the gas containers that failed and contributed to the environmental contamination. The names and addresses of these defendants are undiscoverable at this time.

#### **JURISDICTION & VENUE**

9. This Court has jurisdiction over the Defendants as they are citizens and residents of the State of Ohio and transact business within the state pursuant to Ohio Rev. Code § 2307.382.

10. Venue is proper in Clinton County pursuant to Civ. R. 3(C)(2) and (3), as the Defendant R&L has its principal place of business in Clinton County and Defendant were

conducting the activity that gave rise to this claim for relief in Clinton County. Furthermore, Defendant R&L's release of diesel fuel into the environment and subsequent contamination of Plaintiff's and many Class Members' properties occurred in Clinton County.

### FACTUAL ALLEGATIONS

11. To help refuel its diesel trucks for their shipping routes, R&L maintains one or more large diesel oil fuel tanks on its property.

12. As part of R&L's maintenance of these diesel oil fuel tanks, R&L employees occasionally need to clean the tanks.

13. On or before March 3, 2022, R&L employees drained one such fuel tank for the purposes of cleaning the tank.<sup>1</sup>

14. However, following the cleaning, one or more R&L employees failed to properly secure the bolts that are required to fully shut the tank.<sup>2</sup>

15. R&L employees then refilled the fuel tank with diesel fuel despite the bolts not being fully secured.<sup>3</sup>

16. As a direct result of the R&L employees' failure to secure the bolts, on or about March 3, 2022, at least 23,000 gallons of the 188,000 gallons of diesel fuel contained in the tank leaked out into the surrounding area, including the Dutch Creek waterway.<sup>4</sup>

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<sup>1</sup> "The tank was emptied for cleaning last week," said Tom Breckel with Clinton County Emergency Management Agency ("Clinton County EMA"). Underwood, Brad. "Clinton County residents feel left in dark by EPA after oil spill in Dutch Creek." 9 March 2022, <https://local12.com/news/local/wilmington-residents-feel-left-in-dark-by-epa-after-oil-spill-in-dutch-creek-environmental-protection-agency-rl-carriers-fuel-tanker-23000-gallons-spilled-health-community-concern-ema-clinton-county-cincinnati-ohio>. Accessed 11 March 2022.

<sup>2</sup> "all the bolts were not fully secured when that tank was put back into operation." *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> WXIX, et al. "Officials identify cause, severity of Wilmington fuel spill." WXIX, 8 March 2022, <https://www.fox19.com/2022/03/08/watch-clinton-county-officials-provide-update-fuel-spill/>. Accessed 11 March 2022.

17. Two days passed before the fuel leak was first discovered on March 5, 2022, when, “[a]t least one resident living on the [Dutch] creek called 911 Saturday to report a possible spill.”<sup>5</sup>

18. On the evening of March 5, 2022, R&L reported the leak through a mandatory reporting system, which triggered a “small army” consisting of multiple emergency agencies to respond, including Clinton County EMA, Ohio Department of Natural Resources (“ODNR”), the Ohio Environmental Protection Agency (“OEPA”), the United States Environmental Protection Agency (“U.S. EPA”), the United States Coast Guard, local fire departments, and R&L.<sup>6</sup>

19. Upon arriving at the scene, the emergency crew discovered the ongoing leak and put the bolts back into the fuel tank to mitigate the release of diesel oil.<sup>7</sup>

20. According to a representative from the U.S. EPA, while a “large percentage” of the leaked fuel was “caught up” in the area around the tank, some fuel released into Dutch Creek a quarter mile away.<sup>8</sup>

21. U.S. EPA Regulations require a containment pond to have room to hold the same amount as the tank, plus room for rainwater.<sup>9</sup>

22. Nonetheless, at least 23,000 gallons of diesel fuel escaped the containment pond and spilled into the surrounding area, including Dutch Creek.<sup>10</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> WKRC, and David Winter. “Trucking company could face criminal, civil liability after spill pollutes local creek.” 9 March 2022, <https://local12.com/news/local/rl-carriers-trucking-company-could-face-criminal-civil-liability-after-diesel-spill-pollutes-local-creek-clinton-county-wilmington-dutch-creek-cincinnati-local-12-wkrc-tristate-ohio-kentucky-indiana>. Accessed 11 March 2022.

<sup>10</sup> Underwood, Brad. “Clinton County residents feel left in dark by EPA after oil spill in Dutch Creek.” 9 March 2022, <https://local12.com/news/local/wilmington-residents-feel-left-in-dark-by-epa-after-oil-spill-in-dutch-creek-environmental-protection-agency-rl-carriers-fuel-tanker-23000-gallons-spilled-health-community-concern-ema-clinton-county-cincinnati-ohio>. Accessed 11 March 2022.

23. At the time of filing this Complaint, it is unknown exactly how much fuel spilled into Dutch Creek.<sup>11</sup>

24. A sheen of diesel oil was seen as far away as Morrow, which is around 18 miles downstream from the spill location.<sup>12</sup> That sheen remains on waterway that extends along the Adams Property indicating an ongoing presence of contamination in the waterway and the adjoining properties.

25. Other property owners have observed rainbow slicks on top of the water in Dutch Creek on their properties located downstream from the spill.<sup>13</sup> And there remains a strong odor of gasoline along the waterway that extends up to Plaintiff's residence that sits approximately 50 yards from the creek bed.

26. The fuel spill has residents near the Dutch Creek reporting overwhelming noxious fumes strong enough to cause nausea.<sup>14</sup>

27. Residents impacted by the oil spill are concerned that the diesel fuel potentially permanently contaminated the land surrounding the waterways, their water wells, and surrounding land, impacting vegetable growth and property values.<sup>15</sup>

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<sup>11</sup> WXIX, et al. "Officials identify cause, severity of Wilmington fuel spill." WXIX, 8 March 2022, <https://www.fox19.com/2022/03/08/watch-clinton-county-officials-provide-update-fuel-spill/>. Accessed 11 March 2022.

<sup>12</sup> *Id.*

<sup>13</sup> WKRC, and David Winter. "Trucking company could face criminal, civil liability after spill pollutes local creek." 9 March 2022, <https://local12.com/news/local/ri-carriers-trucking-company-could-face-criminal-civil-liability-after-diesel-spill-pollutes-local-creek-clinton-county-wilmington-dutch-creek-cincinnati-local-12-wkrc-tristate-ohio-kentucky-indiana>. Accessed 11 March 2022.

<sup>14</sup> Underwood, Brad. "Clinton County residents feel left in dark by EPA after oil spill in Dutch Creek." 9 March 2022, <https://local12.com/news/local/wilmington-residents-feel-left-in-dark-by-epa-after-oil-spill-in-dutch-creek-environmental-protection-agency-ri-carriers-fuel-tanker-23000-gallons-spilled-health-community-concern-ema-clinton-county-cincinnati-ohio>. Accessed 11 March 2022.

<sup>15</sup> *Id.*

28. As of the filing of this Complaint, it is estimated that the oil spill killed at least 2,000 aquatic animals.<sup>16</sup>

29. Local officials have warned people to avoid being in or near the water of Dutch Creek for the time being as a result of the fuel spill.<sup>17</sup>

30. Furthermore, Dutch Creek connects to the Todd Fork stream, which flows into the Little Miami River, which flows into the Ohio River.<sup>18</sup>

31. The escaped diesel fuel did enter the Little Miami River near Morrow, Ohio.<sup>19</sup>

32. As a result, on March 9, 2022, the Ohio River Valley Water Sanitation Commission (ORSANCO) tested water downstream where the Little Miami River meets the Ohio River as ORSANCO considered it possible that some of the diesel oil had migrated that far.<sup>20</sup>

33. ORSANCO is concerned that if the diesel fuel makes it into the Ohio River, the diesel fuel could be sucked into water treatment facilities that are used to supply drinking water.<sup>21</sup>

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<sup>16</sup> WXIX, et al. "Officials identify cause, severity of Wilmington fuel spill." WXIX, 8 March 2022, <https://www.fox19.com/2022/03/08/watch-clinton-county-officials-provide-update-fuel-spill/>. Accessed 11 March 2022.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Underwood, Brad. "Clinton County residents feel left in dark by EPA after oil spill in Dutch Creek." 9 March 2022, <https://local12.com/news/local/wilmington-residents-feel-left-in-dark-by-epa-after-oil-spill-in-dutch-creek-environmental-protection-agency-rl-carriers-fuel-tanker-23000-gallons-spilled-health-community-concern-ema-clinton-county-cincinnati-ohio>. Accessed 11 March 2022.

<sup>20</sup> WKRC, and David Winter. "Trucking company could face criminal, civil liability after spill pollutes local creek." 9 March 2022, <https://local12.com/news/local/rl-carriers-trucking-company-could-face-criminal-civil-liability-after-diesel-spill-pollutes-local-creek-clinton-county-wilmington-dutch-creek-cincinnati-local-12-wkrc-tristate-ohio-kentucky-indiana>. Accessed 11 March 2022.

<sup>21</sup> *Id.*