

SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK, :
 BASIL SEGGOS, Commissioner of the New York :
 State Department of Environmental Conservation, :
 and THE NEW YORK STATE DEPARTMENT OF :
 ENVIRONMENTAL CONSERVATION, : Index No. _____

Plaintiffs, :

-against- :

LSM AUTO PARTS & RECYCLING INC.; :
 LIBERTY SCRAP METAL INC.; BGN REAL :
 ESTATE LLC; and THREE SONS REAL ESTATE :
 GROUP LLC, :

Defendants. :

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SUMMONS
(with attached Verified
Complaint)

**TO: LSM AUTO PARTS & RECYCLING INC.
LIBERTY SCRAP METAL INC.
BGN REAL ESTATE LLC
THREE SONS REAL ESTATE GROUP LLC**

YOU ARE HEREBY SUMMONED to answer the attached verified complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to New York CPLR §§ 503(a) and (c), the venue for this action is Queens County, New York, because defendants LSM Auto Parts & Recycling Inc., Liberty Scrap Metal Inc., and BGN Real Estate LLC are residents of Queens County, and a substantial part of the events or omissions giving rise to plaintiffs' claims occurred in Queens County.

Dated: New York, New York
August 12, 2022

LETITIA JAMES
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State of New York
Attorney for Plaintiffs

By: 

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Plaintiffs,

-against-

LSM AUTO PARTS & RECYCLING INC.;
LIBERTY SCRAP METAL INC.; BGN REAL
ESTATE LLC; and THREE SONS REAL ESTATE
GROUP LLC,

Defendants.

VERIFIED COMPLAINT

Index No. _____

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Plaintiffs State of New York, New York State Department of Environmental
Conservation (DEC) and its Commissioner Basil Seggos (collectively, “the State”),
by their attorney, Letitia James, Attorney General of the State of New York, allege
as follows against Defendants LSM Auto Parts & Recycling Inc., Liberty Scrap
Metal Inc., BGN Real Estate LLC, and Three Sons Real Estate LLC (together,
“Salvage Yard Defendants”), on information and belief.

PRELIMINARY STATEMENT

1. Vehicle dismantling involves taking apart automobiles to recover and
sell used auto parts and sell remaining metal to scrap dealers. Automobiles contain
many hazardous and toxic fluids, including engine oil, transmission fluid, transaxle
fluid, front and rear axle fluid, brake fluid, power steering fluid, antifreeze/coolant,
and fuel, most commonly gasoline (“Automobile Fluids”).

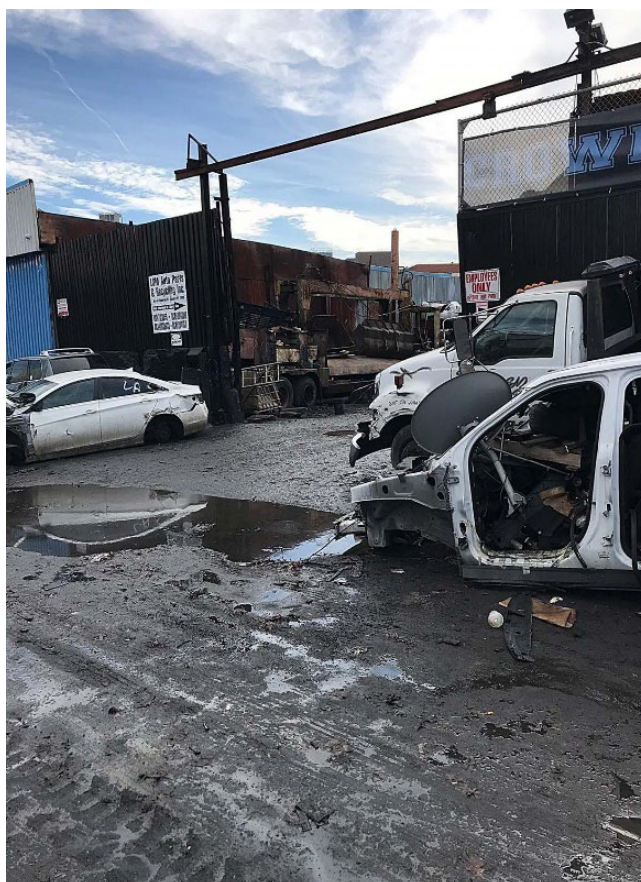
2. Given the dangers posed by these fluids, Article 27, Title 23 of the New York State Environmental Conservation Law (ECL) regulates commercial vehicle dismantling. The law requires dismantlers to recover and reuse or properly dispose of those fluids to avoid contaminating surface and ground waters, soil, and the air, and to prevent adverse impacts on human health and the environment. ECL Article 27, Title 23 (the “Vehicle Dismantling Law”) empowers the DEC Commissioner and Attorney General are authorized to seek injunctive relief to cure violations of, and to recover civil penalties from violators.

3. Relatedly, petroleum spills have caused and can cause serious harm to human health and safety and to New York’s water and other natural resources. Article 12 of the New York State Navigation Law, the “Oil Spill Law,” addresses that harm. The Oil Spill Law imposes strict liability on persons responsible for oil spills, including owners of unremediated spill sites; requires immediate reporting and containment of all spills; empowers the DEC Commissioner to order the cleanup of spills; and empowers the Attorney General to bring actions for injunctive relief and civil penalties. Spills of various petroleum products typically occur at poorly managed dismantling operations that are run in violation of applicable laws and regulations.

4. To prevent petroleum spills, New York regulates tanks that store petroleum under Article 17, Title 10 of the ECL. Pursuant to this statute, DEC has issued comprehensive regulations to prevent the harm that leaks and spills from petroleum storage tanks have historically caused to New York’s surface and

groundwater. Those regulations include requirement regarding design and material composition, and secondary containment in case they leak.

5. Salvage Yard Defendants own and/or operate an automobile salvage yard on Liberty Avenue in Jamaica, Queens (the “Salvage Yard”). For years they have operated the salvage yard in violation of New York’s Vehicle Dismantling Law, DEC petroleum bulk storage regulations, and the Oil Spill Law. The Salvage Yard has been a neighborhood eyesore and a source of contaminated runoff. The subsurface is likely saturated with Automobile Fluids, although Salvage Yard Defendants’ lack of cooperation with DEC has hindered the agency’s ability to ascertain just how contaminated the Salvage Yard is. Below is a photograph of the Salvage Yard in June 2021:



6. The Salvage Yard is located in an area that DEC has identified as “a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, or commercial operations.”

7. DEC staff attempted to stop this illegal conduct and the environmental damage by issuing notices of violation and tickets and then meeting with Salvage Yard Defendants’ representatives to propose an administrative consent order with a cleanup plan and civil penalty. Salvage Yard Defendants never responded to that proposal and in late 2021 began paving over the yard without DEC’s consent or evaluation and without remediating the contamination, ignoring DEC’s specific admonition that they not pave it over before a proper subsurface evaluation and appropriate remediation.

8. The State therefore brings this action for a judgment: (a) finding Salvage Yard Defendants liable for violating the ECL, Navigation Law and related DEC regulations; (b) enjoining Salvage Yard Defendants to (i) investigate and remediate, under DEC oversight, contamination from the spilled oil and improperly released Automobile Fluids at the Salvage Yard, (ii) stop discharging or otherwise releasing Automobile Fluids into the environment and cease dismantling vehicles without capturing and containing all Automobile Fluids, (iii) remove all illegal petroleum bulk storage tanks at the Salvage Yard and properly register any future tanks with DEC, and (iv) file annual vehicle dismantling reports for 2019-2021 that all vehicle dismantlers are required to file with DEC describing their activities and

disposition of waste fluids; and (c) awarding statutory civil penalties for Salvage Yard Defendants' violations of the ECL, Navigation Law, and DEC regulations.¹

PARTIES

9. Claims to recover penalties for violation of the Oil Spill Law are to be brought in the name of plaintiff People of the State of New York.

10. Plaintiff State of New York is a sovereign State, with offices and a principal place of business located at the Capitol, Albany, New York 12224.

11. Plaintiff DEC is an executive agency of the State and is authorized to administer and enforce the Environmental Conservation Law and the Navigation Law.

12. Plaintiff Basil Seggos is the Commissioner of DEC.

13. Defendant LSM Auto Parts & Recycling Inc. ("LSM") is an active domestic business corporation registered in Queens County in March 2016.

14. Defendant Liberty Scrap Metal Inc. ("Liberty Scrap") is an active domestic business corporation registered in Queens County in September 2012.

15. LSM, and Liberty Scrap before it, have operated the Salvage Yard at all relevant times. LSM currently operates the Salvage Yard.

¹ Plaintiff DEC Commissioner recently issued an administrative order finding that defendant LSM violated State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-17-004) by failing to file annual certification reports and semiannual discharge monitoring reports. Neither that order nor the violations upon which that order are based are at issue in this action.

16. Defendant BGN Real Estate LLC (“BGN”) is an active New York State-registered limited liability company that was registered in Queens County in September 2016 with a registered service address c/o Victoria Gotti, 6 Birch Hill Court, Old Westbury, New York.

17. Defendant Three Sons Real Estate Group LLC (“Three Sons”) is an active New York State-registered limited liability company that was registered in Nassau County in April 2010 with a registered service address c/o Victoria Gotti, 6 Birch Hill Court, Old Westbury, New York.

18. BGN is a wholly-owned subsidiary of Three Sons.

19. In September 2016, Three Sons transferred title to the Salvage Yard by deed to BGN, which currently owns the Salvage Yard.

JURISDICTION AND VENUE

20. This Court has jurisdiction over this case pursuant to Navigation Law §§ 173, 176, 192, 193, and 200(1); ECL §§ 71-1929(3), 71-1931, and 71-2727(2); and Judiciary Law § 140-b.

21. Venue is proper in Queens County pursuant to Civil Practice Law and Rules § 503(c) because LSM, Liberty Scrap, and BGN are residents of Queens County, and a substantial part of the events or omissions giving rise to the claim occurred in Queens County.

STATUTORY AND REGULATORY FRAMEWORK

1. The Oil Spill Law and Regulations

22. The Oil Spill Law protects New York's residents and natural resources from the dangers posed by petroleum product spills, which include pollution of the state's surface and ground waters with toxic and carcinogenic chemicals, exposure to harmful fumes, fire, and other hazards.

23. The Oil Spill Law prohibits "the discharge of petroleum" without a permit. Navigation Law § 173. The statute defines "discharge" as "any intentional or unintentional action resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum into the waters of the state or onto lands from which it might flow or drain into said waters." *Id.* § 172(8). The term "waters" includes all bodies of groundwater, whether natural or artificial. *See id.* § 172(16).

24. The Oil Spill Law and the regulations that implement it require any person responsible for causing a petroleum spill to notify DEC of that spill. *Id.* § 175; 17 NYCRR §§ 32.3.

25. The Oil Spill Law also requires any person responsible for causing a petroleum spill "to undertake to contain such discharge." *Id.* § 176(1). It also authorizes DEC to "direct the discharger to promptly cleanup and remove the discharge." *Id.* § 176 (2)(A). The implementing regulations provide that the person "responsible for causing a discharge which is prohibited by section 173 of the Navigation Law shall take immediate steps to stop any continuation of the

discharge and shall take all reasonable containment measures to the extent he [or she] is capable of doing so” and “shall also take those measures or actions necessary for the cleanup and removal of the discharge.” 17 NYCRR § 32.5(a), (b).

26. The owner of property with discharged petroleum is strictly liable for its cleanup and failure to contain the discharge under Navigation Law §§ 173 and 176(1). A current owner is liable for unremediated spills that occurred before the current owner owned the property.

27. The Oil Spill Law provides that anyone who “fails to comply with any duty created by” Article 12 shall be liable for a \$25,000 civil penalty per offense, and that each day of a continuing violation “shall constitute an additional, separate and distinct offense.” Navigation Law § 192. An action to recover civil penalties under Navigation Law § 192 may be brought “on order of the [DEC] commissioner and in the name of the people of the state of New York.” *Id.* § 200(1).

2. DEC Petroleum Bulk Storage Law and Regulations

28. Because of the damage that has been or can be caused by petroleum leaks or spills from petroleum storage facilities, the Legislature has promulgated ECL Article 17, Title 10, “Control of the Bulk Storage of Petroleum.” See ECL § 17-1001 (“Legislative findings and declarations”). Title 10 regulates PBS facilities. A PBS facility is defined as “a single property or contiguous or adjacent properties used for a common purpose which are owned and operated by the same person on or in which are located: (a) one or more stationary tanks which are used singularly or in combination for the storage or containment of more than one thousand one

hundred gallons of petroleum; or (b) any tank whose capacity is greater than one hundred ten gallons that is used for the storage or containment of petroleum, the volume of which is ten percent or more beneath the surface of the ground.” *Id.* § 17-1003(1).

29. ECL § 17-1005 directed DEC to promulgate regulations to provide for the early detection of leaks and potential leaks from petroleum bulk storage facilities and the proper closure of such facilities after they are removed from service.

30. 6 NYCRR § 613-1.9(a) requires PBS facility owners to maintain a current and accurate facility registration with DEC.

31. 6 NYCRR § 613-4.1(b)(1)(i) requires that post-1986 aboveground storage tanks with design capacity of 60 gallons or greater be constructed of steel.

32. 6 NYCRR § 613-4.1(b)(1)(v) (b)(6) requires that aboveground storage tanks within 500 horizontal feet of a storm drain have secondary containment or utilize a design/technology such that a product release is not reasonably expected to occur.

33. 6 NYCRR § 613-4.2(a)(3) requires that aboveground storage tanks be labeled with the design capacity, working capacity, and tank identification number.

34. 6 NYCRR § 613-4.2(a)(4) requires that aboveground storage tank systems be color-coded in accordance with American Petroleum Institute Recommended Practice 1637 at or near the fill port to identify the product inside the system(s).

35. 6 NYCRR § 613-4.3(a)(1)(i) requires that aboveground storage tanks be inspected monthly.

36. 6 NYCRR § 613-4.4(d)(1) requires PBS facilities to report every spill to DEC within two hours after discovery, contain the spill, and begin corrective action.

37. Each violation of ECL Article 17, Title 10, including the PBS regulations promulgated thereunder, is subject to a civil penalty of up to \$37,500 per day. ECL § 71-1929(1). DEC can pursue such civil penalties through administrative enforcement proceedings or judicial litigation. *Id.* §§ 71-1929(1), 71-1929(3).

3. The Vehicle Dismantling Law and Regulations

38. ECL Article 27, Title 23 governs vehicle dismantling facilities.

39. ECL § 27-2303(1) requires that all vehicle dismantlers submit an annual report to DEC detailing: (a) the number of end of life vehicles received at the facility; (b) the number of end of life vehicles crushed and removed from the facility; (c) the number of end of life vehicles stored at the facility at the end of the reporting year; (d) the approximate area at the facility used for storage of end of life vehicles; (e) the quantities of waste vehicle fluids extracted from end of life vehicles received and their disposition, including the quantity sold, used on-site, stored on-site, and disposed; and (f) the number and nature of any violations of all applicable rules and regulations of the state.

40. Additionally, DEC regulations at 6 NYCRR §§ 360.19(k), 361-7.5(b) require that vehicle dismantling facility owners or operators must annually, by

March 1, submit certified reports detailing the facility's compliance with 6 NYCRR Parts 360 and 361 (and other parts not relevant here) and the terms of any permit issued pursuant to part 360.

41. ECL § 27-2303(2) requires that all fluid draining, removal, and collection activities shall be conducted on an asphalt or concrete surface or other surface that allows equivalent protections to surface and groundwater. Such surfaces shall be cleaned daily, or more frequently when spillage has occurred, using absorbent materials that are collected and properly disposed of.

42. ECL § 27-2303(3) requires that all fluids shall be completely drained, removed, collected, and stored for appropriate use, treatment or disposal.

43. ECL § 27-2303(5) requires that, prior to vehicle crushing or shredding, environmental contaminants including Automotive Fluids shall be drained, removed, deployed, collected, and/or stored as appropriate and in accordance with best management practices.

44. ECL § 27-2303(6) requires that fluids be contained in an appropriate container for the specific waste vehicle fluid, and that fluids shall be placed in closed containers that are in good condition and clearly and legibly marked as to contents and stored on a bermed asphalt or concrete surface or other surface that allows equivalent protections to groundwater.

45. ECL § 27-2303.7 requires that all lead-acid batteries be covered by a tarp or other means that severely restricts water from coming into contact with the lead-acid battery.

46. ECL § 27-2303.9 and 6 NYCRR § 360-13.1(b) prohibit the storage of 1,000 or more waste tires at a time without first having obtained a permit to do so pursuant to 6 NYCRR § Part 360.

47. ECL § 27-2303.10 requires that fluids not be intentionally released on the ground or to surface water.

STATEMENT OF FACTS

1. The Salvage Yard

48. LSM and its predecessor-in-interest Liberty Scrap have at all relevant times operated the Salvage Yard, 155-11 Liberty Avenue, Jamaica, New York, also known as 95-49 Tuckerton Street, Queens County block 10108, lots 312, 314, and 319.

49. The Salvage Yard is located in an area that DEC has identified as a “potential environmental justice area.” Under DEC Commissioner Policy 29, DEC defines such an area as “a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, or commercial operations or the execution of federal, state, local, and tribal programs and policies.”

50. Three Sons purchased the Salvage Yard by deed dated April 9, 2010, and transferred it by deed dated September 21, 2016, to its wholly owned successor-in-interest BGN, which currently owns the Salvage Yard.

51. Although the Salvage Yard is registered with DEC as petroleum bulk storage facility number 2-610668, it closed its only registered tank, a 275-gallon

aboveground storage tank for waste oil, in December 2015. Since then it has utilized unregistered and otherwise non-compliant storage tanks, as described below.

2. Petroleum Spills and Other Violations at the Salvage Yard

52. On February 24, 2014, New York City Department of Environmental Protection Hazardous Materials personnel reported petroleum spills at the Salvage Yard to the DEC-operated New York State Spill Hotline. DEC added this to its database of open petroleum spills and assigned it DEC spill number 1311084. A petroleum spill remains open in DEC's spills database until the spill is remediated and required paperwork demonstrating a completed cleanup is submitted to DEC.

53. On January 19, 2017, DEC staff inspected the Salvage Yard and observed petroleum and other Automobile Fluids pooled in several areas and workers draining vehicles of fluids directly onto the ground. Based on those observations, DEC staff opened DEC spill number 1609668, which was later consolidated with still unremediated spill number 1311084. The photo below shows a portion of the Salvage Yard on January 19, 2017.



54. In addition to the spill, DEC staff observed numerous Vehicle Dismantling Law violations, including spills of antifreeze, oil, gasoline, diesel fuel and transmission fluid on the ground, improperly stored lead-acid batteries, and a large pile of waste tires.

55. On May 8, 2017, DEC staff again inspected the Salvage Yard and observed new unreported and not-yet-remediated spills of petroleum and other Automobile Fluids in pools on the soil in numerous areas at the Salvage Yard. DEC staff opened DEC spill number 1701220, also subsequently consolidated with still unremediated spill number 1311084 in DEC's database.

56. DEC staff also observed two unregistered, plastic 250-gallon totes being used as aboveground storage tanks. Such totes, typically used for non-potable water or landscaping chemicals, are not suitable for petroleum storage due to their

structural integrity and inadequate heat resistance and violate DEC's regulations requiring that they be composed of steel, meet secondary containment or leak requirements, and be labeled and color-coded. *See* 6 NYCRR §§ 613-4.1(b)(1), 613-4.2(a).

57. On April 6, 2018, the New York City Department of Environmental Protection ("NYC DEP") received a complaint of petroleum spreading from the Salvage Yard onto the street. NYC DEP reported this to DEC, and DEC staff opened DEC spill number 1800198, also subsequently consolidated into still unremediated spill number 1311084.

58. On July 18, 2018, DEC Environmental Conservation Officers and the New York City Police Department executed a warrant at the Salvage Yard for operating an unregistered scrapyard business, and observed, among other things, discharge of waste oil and antifreeze on the ground around the Salvage Yard, which spilled down the curb line and into a storm drain. DEC staff opened DEC spill number 1804173, also subsequently consolidated with still unremediated spill number 1311084.

59. Additionally, the Environmental Conservation Officers observed lead-acid batteries stored in the open, without the covering required under ECL § 27-2303.7 and over 1,000 used tires stored at the Salvage Yard without a permit, in violation of ECL § 27-2303.9 and 6 NYCRR § 360-13.1(b).

60. On October 2, 2019, in an attempt to reach a comprehensive resolution of outstanding spills and other violations at the Salvage Yard, a DEC Region 2

Assistant Regional Attorney sent Salvage Yard Defendants a letter by certified mail detailing the observed violations, accompanied by a proposed administrative Order on Consent setting forth a proposed Corrective Action Plan and proposed civil penalty amount.

61. The proposed Corrective Action Plan directed Salvage Yard Defendants to submit a plan to determine the nature and extent of the contamination at the Salvage Yard by Automobile Fluids. Once that occurred, it directed that Salvage Yard Defendants submit and, upon DEC approval, implement a remediation plan to fully remediate the contamination, as well as eliminate other identified violations such as illegal, unregistered storage tanks and storage of lead acid batteries in the open.

62. Salvage Yard Defendants did not respond to the October 2, 2019 letter.

63. On November 18, 2020, NYC DEP inspected the conditions on the street surrounding the Salvage Yard and observed a waste oil spill at the Salvage Yard, with spillage into the street spanning half a block. DEC staff opened spill number 2007449, also subsequently consolidated with still unremediated spill number 1311084.

64. On April 19, 2021, the New York City Fire Department (FDNY) and NYC DEP inspected the Salvage Yard and observed numerous pools of oil and other Automobile Fluids all over the property. FDNY reported the oil spill to DEC, and DEC staff opened spill number 2100550. DEC spill number 2100550 was subsequently consolidated with still unremediated spill number 1311084.

65. On May 11, 2021, FDNY, NYC DEP and DEC law enforcement personnel observed a petroleum spill at the Salvage Yard and reported it to DEC. DEC staff opened spill number 2101264, which was subsequently consolidated with still unremediated spill number 1311084.

66. NYC DEP and DEC law enforcement additionally observed pooled Automobile Fluids around the site, drums of gasoline and open pails of waste oil.

67. On June 9, 2021, DEC staff visited the Salvage Yard and observed oily water with a heavy sheen, indicative of mixed petroleum contamination, flowing off the lot, across the sidewalk, and into the gutter. DEC staff also observed that the surface of the Salvage Yard was a combination of broken concrete, dirt, and vehicle parts, with brown and black oil in nearly every depression of the property. Staff observed oily water in the center of the Salvage Yard flowing from one area to another, and varying amounts of antifreeze in the puddles. Along the Tuckerton Avenue side of the property, vehicles were stacked in the street with oils flowing from underneath. The photos below show the Salvage Yard on June 9, 2021.



68. The Salvage Yard Defendants failed to conduct all fluid-draining, removal, and collection activities on an asphalt or concrete surface, or other surface that allows equivalent protections to surface and groundwater.

69. The Salvage Yard Defendants failed to clean the Salvage Yard's surfaces daily (or more frequently when spillage has occurred) using absorbent materials that are collected and properly disposed of.

70. The Salvage Yard Defendants failed to completely drain, remove, collect, and store all Automobile Fluids for appropriate use, treatment, or disposal.

71. The Salvage Yard Defendants failed to (i) contain Automobile Fluids in appropriate containers for the specific waste vehicle fluid, and (ii) place Automobile Fluids in closed containers in good condition that are clearly and legibly marked as to contents and stored on a bermed asphalt or concrete surface or other surface that allows equivalent protections to groundwater.

72. By draining or otherwise releasing Automobile Fluids directly onto the ground at the Salvage Yard without appropriate capture and containment, LSM (and/or Liberty Scrap before it) intentionally released Automobile Fluids in violation of ECL § 27-2303(10).

73. By draining Automobile Fluids directly onto the porous concrete ground of the Salvage Yard in proximity to storm drains, the Salvage Yard Defendants discharged substantial quantities of Automobile Fluids into the waters of the State, either into groundwater or to surface water via storm drain.

74. During the June 9, 2021 visit to the Salvage Yard, DEC staff also observed approximately a dozen 55-gallon drums that NYC DEP had reported during its recent inspections and determined to be to be filled with gasoline. DEC staff also observed two 250-gallon plastic containers full of waste oil in the back of a pickup truck. As discussed in Paragraph 56 above, these plastic containers are illegal and are not suitable for petroleum storage due to their lack of structural integrity and insufficient heat resistance.

75. During the June 9, 2021 visit to the Salvage Yard, DEC staff also observed an unregistered 12-foot by four-foot-diameter, approximately 1,500-gallon aboveground storage tank in the northeast corner of the Salvage Yard. This tank violated DEC's regulations requiring that it meet secondary containment or leak requirements, be labeled and color-coded, and be kept in good working order. *See* 6 NYCRR §§ 613-4.1(b)(1), 613-4.2(a)

76. The Salvage Yard Defendants failed to inspect the 1,500-gallon aboveground storage tank on a monthly basis, and failed to keep any records demonstrating compliance with the inspection requirement. *See* 6 NYCRR §§ 613-4.3(a)(1)(i), 613-4.3(e).

77. Later that day, DEC staff received a telephone call from Victoria Gotti, the owner of Three Sons and BGN.² She conceded that the Salvage Yard was in poor shape and stated that it might need to be covered with concrete. DEC staff told

² Victoria Gotti is the mother of the individual(s) who operate LSM and Liberty Scrap. Her husband was also on the June 9, 2021 telephone call with DEC staff.

her that covering the Salvage Yard may ultimately be desirable but should not be done until after the Salvage Yard had been properly investigated for contamination and remediated.

78. In addition to the spills and other violations described above, after its inspection DEC noted that for the years 2018, 2019 and 2020 the Salvage Yard Defendants failed to submit annual reports to DEC as required by the Vehicle Dismantling Law and related DEC regulations at 6 NYCRR §§ 360.19(k) and 361-7.5(b).

79. On December 2, 2021, a DEC attorney spoke with a representative of Salvage Yard Defendants and learned that Salvage Yard Defendants' contractor had poured concrete over a substantial part of the Salvage Yard. The DEC attorney conveyed that concrete should not be poured to cover the Salvage Yard without DEC oversight, as this would impede necessary subsurface investigation and subsequent remediation.

80. In an e-mail to Salvage Yard Defendants' representative the next day, the DEC attorney urged Salvage Yard Defendants not to proceed with any more concrete work except in coordination with DEC and under an approved plan.

81. On December 7, 2021, DEC staff visited the Salvage Yard and witnessed individuals pouring cement over the Salvage Yard.

82. The concrete that Salvage Yard Defendants poured over the Salvage Yard in 2021 will almost certainly need to be removed to investigate contamination of the subsurface and remediate any contamination that is found.

83. In late April 2022, a consultant for the Salvage Yard Defendants contacted DEC staff. Staff informed the consultant that due to conditions at the Salvage Yard as observed during many prior inspections, the subsurface of the Salvage Yard was likely contaminated by petroleum and Automobile Fluids, and that on-site and off-site contamination needed to be thoroughly investigated and remediated, under DEC oversight. The consultant indicated to DEC that it would be preparing a proposed work plan for investigating the contamination for DEC's review.

84. Since then, DEC has not heard directly from that consultant for the Salvage Yard Defendants. On July 19, 2022, a representative of the Salvage Yard Defendants contacted DEC about reducing the scope of the required sampling needed to investigate the extent of subsurface contamination at the Salvage Yard. DEC stated that it must review and approve a proposed work plan for investigating the contamination before any sampling should proceed. As of the date of this Verified Complaint, DEC has not received a proposed work plan or heard back from the Salvage Yard Defendants.

3. Human Health and Environmental Harms Attributed to Released Automobile Fluids

85. Automobile Fluids and their component parts that are typically released through improper dismantling potentially have adverse effects on human health and the environment, including the effects described below.

a. Gasoline

86. Gasoline is a complex manufactured mixture of more than 150 chemicals, including hydrocarbons (e.g., benzene, ethylbenzene, toluene, and xylene), additives and blending agents. The actual composition varies with the source of the crude petroleum, the manufacturer, and the time of year. Gasoline spilled or improperly stored can evaporate into the air, infiltrate groundwater, or flow into surface water or storm sewers.

87. The toxic effects of gasoline can generally be ascribed to individual components or groups of components. Benzene, for example, has been identified as a carcinogen by the United States Environmental Protection Agency, the United States Department of Health and Human Services, and the International Agency for Research on Cancer.

88. Benzene, ethylbenzene, toluene, and xylene, along with other hydrocarbons in gasoline, are toxic to the nervous system.

89. Gasoline, as a mixture, is irritating to the lungs, skin, and eyes.

b. Ethylene Glycol (Antifreeze/Coolant)

90. Ethylene glycol is the primary constituent in most automobile antifreeze products. It is also a component of hydraulic brake fluids.

91. Ethylene glycol mixes completely with water, so if released it can move with surface water as surface runoff or infiltrate to ground water.

92. Antifreeze containing ethylene glycol can cause severe eye and skin irritation, and may aggravate pre-existing eye, skin and respiratory problems.

93. Ethylene glycol can be absorbed through the skin, inhaled as a vapor or ingested with contaminated water or other materials. Ethylene glycol behaves similarly in the bodies of humans and animals. It rapidly breaks down into chemicals that crystallize and chemicals that are acidic. The crystals collect in the body and adversely affect kidney function, while the acidic chemicals change the bodies acid/base balance. The results can be fatal.

c. Motor Oil

94. Although there are some synthetic products on the market, most motor oil is a petroleum product formulated with detergents, dispersants and other additives.

95. Long term inhalation exposure to motor oils can cause breathing difficulties.

96. Oil released to the environment can run off to sewers, streams, and other bodies of water, and oil will infiltrate the ground to contaminate groundwater.

FIRST CAUSE OF ACTION

Violations of the Navigation Law for Discharging Petroleum and Failing to Report and Remediate Petroleum Discharges

97. The State repeats and realleges the allegations in the foregoing paragraphs.

98. With respect to each of the petroleum spills at the Salvage Yard, Salvage Yard Defendants discharged petroleum and failed to notify DEC of the

discharges and contain and remediate the discharges, in violation of the Oil Spill Law, Navigation Law §§ 173, 175 and 176(1) and 17 NYCRR §§ 32.3 and 32.5.

99. Salvage Yard Defendants' violations of Navigation Law §§ 173, and 176(1), and 17 NYCRR § 32.5 for failure to remediate are continuing as of the date of this Verified Complaint.

100. Pursuant to Navigation Law §§ 173, 176(1) and 17 NYCRR § 32.5 , DEC is entitled to an injunction ordering Salvage Yard Defendants to remediate the petroleum discharges at the Salvage Yard by fully investigating the spills and cleaning up the petroleum contamination at the Salvage Yard under DEC oversight.

101. Pursuant to Navigation Law § 192, DEC is entitled to a civil penalty of up to \$25,000 per day against Salvage Yard Defendants for their prior and ongoing violations of Navigation Law §§ 173, 175, 176(1) and 17 NYCRR § 32.3 and 32.5 with respect to each of the Spills.

SECOND CAUSE OF ACTION

Violations of the Vehicle Dismantling Law and Regulations

102. The State repeats and realleges the allegations in the foregoing paragraphs.

103. The Salvage Yard Defendants failed to conduct all fluid-draining, removal, and collection activities on an asphalt or concrete surface, or other surface that allows equivalent protections to surface and groundwater, and failed to clean such surfaces daily, or more frequently when spillage has occurred, using absorbent

materials that are collected and properly disposed of. Salvage Yard Defendants thus violated ECL § 27-2303(2).

104. The Salvage Yard Defendants failed to completely drain, remove, collect, and store all Automobile Fluids for appropriate use, treatment, or disposal. Salvage Yard Defendants thus violated ECL § 27-2303(3).

105. The Salvage Yard Defendants failed to drain, remove, deploy, collect, and/or store environmental contaminants including Automobile Fluids prior to vehicle crushing or shredding as appropriate and in accordance with best management practices. Salvage Yard Defendants thus violated ECL § 27-2303(5).

106. The Salvage Yard Defendants failed to contain fluids in appropriate containers for the specific waste vehicle fluid, place fluids in closed containers in good condition that are clearly and legibly marked as to contents and stored on a bermed asphalt or concrete surface or other surface that allows equivalent protections to groundwater. Salvage Yard Defendants thus violated ECL § 27-2303(6).

107. By intentionally releasing Automobile Fluids onto the ground at the Salvage Yard, LSM and/or Liberty Scrap violated ECL § 27-2303(10).

108. By failing to file the annual reports required of all owners or operators of registered vehicle dismantling facilities with DEC for the calendar years 2019, 2020 and 2021, Salvage Yard Defendants violated ECL § 27-2303(1) and 6 NYCRR §§ 360.19(k) and 361-7.5(b).

109. Salvage Yard Defendants' violations of ECL article 27 and the implementing DEC regulations are continuing as of the date of this Verified Complaint.

110. Pursuant to ECL § 71-2727(2), the State is entitled to an injunction ordering Salvage Yard Defendants to: (1) cease discharging or otherwise releasing (including spilling, pouring or dumping, or allowing the spilling, pouring or dumping) Automobile Fluids onto the ground or into the waters of the State (i.e., groundwater), or into a drain or storm sewer; (2) cease dismantling automobiles or other motor vehicles without employing measures to capture and contain all Automobile Fluids removed or discharged from all components of the vehicle; and (3) submit to DEC annual reports for the calendar years 2019, 2020, and 2021 on the appropriate DEC form, as required under ECL § 27-2303(1) and 6 NYCRR §§ 360.19(k) and 361-7.5(b).

111. Pursuant to ECL § 71-4003, the State is entitled to a civil penalty of up to \$1,000 for each violation of the Vehicle Dismantling Law and regulations, plus an additional \$1,000 for each day during which such violation continued or continues.

THIRD CAUSE OF ACTION

Violations of the DEC Petroleum Bulk Storage Regulations

112. The State repeats and realleges the allegations in the foregoing paragraphs.

113. By utilizing post-1986 plastic totes, which lack the required steel construction, as aboveground storage tanks, Salvage Yard Defendants violated 6 NYCRR § 613-4.1(b)(1)(i).

114. By failing to register the 1,500-gallon aboveground storage tank at the Salvage Yard, Salvage Yard Defendants violated 6 NYCRR § 613-1.9(a).

115. By utilizing the 1,500-gallon aboveground storage tank without secondary containment and within 500 horizontal feet of a storm drain, Salvage Yard Defendants violated 6 NYCRR § 613-4.1(b)(1)(v)(b).

116. By utilizing the 1,500-gallon aboveground storage tank without color coding at or near the fill port, Salvage Yard Defendants violated 6 NYCRR § 613-4.2(a)(4).

117. By utilizing the 1,500-gallon aboveground storage tank without the tank design and working capacities marked with stenciled letters, Salvage Yard Defendants violated 6 NYCRR § 613-4.2(a)(3).

118. By failing to keep the 1,500-gallon aboveground storage tank in good working order, Salvage Yard Defendants violated 6 NYCRR § 613-4.2(a)(6).

119. By utilizing the 1,500-gallon aboveground storage tank without secondary containment, Salvage Yard Defendants violated 6 NYCRR § 613-4.1(b)(1)(v).

120. By failing to inspect the 1,500-gallon aboveground storage tank monthly, Salvage Yard Defendants violated 6 NYCRR § 613-4.3(a)(1)(i).

121. By failing to keep records demonstrating compliance with the inspection requirement in 6 NYCRR § 613-4.3(a)(1)(i), Salvage Yard Defendants violated 6 NYCRR § 613-4.3(e).

122. Salvage Yard Defendants' violations of 6 NYCRR Part 613 are continuing as of the date of this Verified Complaint.

123. Pursuant to ECL § 71-1929, the State is entitled to penalties of up to \$37,500 per day, per violation against Salvage Yard Defendants for their ongoing violations of DEC petroleum bulk storage regulations.

124. Pursuant to ECL § 71-1931, the State is entitled to an injunction ordering Salvage Yard Defendants to remove all illegal petroleum bulk storage tanks at the Salvage Yard, properly register any new tanks with DEC, and submit evidence of corrective action to DEC.

WHEREFORE, the State respectfully requests that the Court enter judgment:

A. On the First Cause of Action: (1) finding Salvage Yard Defendants liable for violating Navigation Law §§ 173, 175 and 176(1), and 17 NYCRR §§ 32.3 and 32.5; (2) enjoining Salvage Yard Defendants, jointly and severally, to (a) submit to DEC, within 60 days of service of the judgment, a work plan that (i) details the methodologies for investigating and remediating the Spills, (ii) includes a schedule of compliance with milestone dates for completing the investigatory phase and then Salvage Yard remediation, and (iii) includes a requirement for a final report on the activities taken to remediate the Spills in accordance with the approved work plan,

and (b) after approval of the work plan by DEC, implement the work plan in accordance with the schedule in the approved plan; and (3) entering judgment against them, jointly and severally in the amount of up to \$25,000 per day for prior and ongoing violations of the Navigation Law and DEC regulations associated with each of the Spills, plus interest and other charges under applicable law;

B. On the Second Cause of Action: (1) finding the Salvage Yard Defendants liable for violating ECL § 27-2303 and 6 NYCRR §§ 360-13.1, 360.19(k)(3), 361-7.5(b), 371.1, and 372-2; (2) enjoining Salvage Yard Defendants, jointly and severally to (a) immediately cease discharging or otherwise releasing (including spilling, pouring or dumping, or allowing the spilling, pouring or dumping) of Automobile Fluids onto the ground or into the waters of the State (i.e., groundwater), or into a drain or storm sewer; (b) immediately cease dismantling automobiles or other motor vehicles without employing measures to capture and contain all Automobile Fluids removed or discharged from all components of the vehicle; and (c) within 60 days of service, submit to DEC the required annual reports under ECL § 27-2303(1) and 6 NYCRR §§ 360.19(k)(3), 361-7.5(b) for calendar years 2019, 2020 and 2021 on the appropriate DEC form; and (3) assessing a civil penalty of up to \$1,000 and an additional penalty of up to \$1,000 per day for each violation of the Vehicle Dismantling Law and regulations, plus an additional \$1,000 for each day during which such violation continues or continued.

C. On the Third Cause of Action: (1) finding Salvage Yard Defendants liable, jointly and severally, for violating 6 NYCRR §§ 613-1.9, 613.3, 613-4.1, 613-

4.2, and 613-4.3; (2) enjoining Salvage Yard Defendants, jointly and severally, within 60 days, to (a) remove or register all petroleum bulk storage tanks at the Salvage Yard, (b) properly register any new tanks with DEC, and (c) submit evidence of corrective action to DEC Region 2's Bulk Storage Unit; and (3) assessing civil penalties for these violations of the DEC petroleum bulk storage regulations of up to \$37,500 per day, per violation;

D. Awarding such additional relief as may be just and proper.

Dated: New York, New York
August 12, 2022

LETITIA JAMES
Attorney General of the State
of New York
Attorney for Plaintiffs

By: 

Max Shterngel

Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
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New York, NY 10005
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VERIFICATION

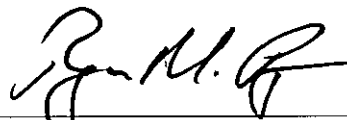
STATE OF NEW YORK)

: ss.:

COUNTY OF QUEENS)

RYAN M. PIPER, P.G., being duly sworn, deposes and says:

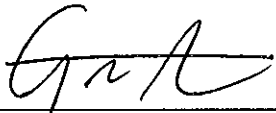
I am a Professional Geologist and am employed as an Assistant Geologist with the Bureau of Spill Response and Prevention in the New York State Department of Environmental Conservation (DEC) Region 2, which covers New York City. I have read the foregoing verified complaint and assert, that it is true to my knowledge, information, and belief. The sources of my knowledge, information and belief are my personal involvement in the matters at issue in this action, information contained in DEC's files, and relevant provisions of the Environmental Conservation Law, the Navigation Law and related regulations.



Ryan M. Piper, P.G.

Sworn to before me this

12th day of August, 2022



Notary Public

GRACE NAM
NOTARY PUBLIC-STATE OF NEW YORK
No. 02NA6333704
Qualified in Queens County ²³
My Commission Expires November 30, 20~~22~~²³ GN