

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

LARRY MORRIS and
BARBARA ANN MORRIS

PLAINTIFFS

v.

Case No. 60-CV-24-_____

JMT ONE STOP INC.;
JOO BONG PARK; and
YB INVESTMENTS, LLC

DEFENDANTS

COMPLAINT

Plaintiffs state the following for their Complaint against Defendants:

1. This is a groundwater contamination case pertaining to fuel escaping from a gas station which results in harm to real property owned by the Morrisises at 4720 MacArthur Dr., North Little Rock, Arkansas (the "Property" or "Morris Property").
2. Defendants are present and past owners and operators of the facility at 4800 MacArthur Drive (the "Gas Station") from which the groundwater contamination emanates from underground fuel storage tanks.

PARTIES

3. Plaintiffs, Larry and Barbara Ann Morris are Arkansas citizens and residents of Pulaski County. They acquired the Property by Quitclaim Deed in January of 2016, via Instrument Number 2016001459.
4. Defendant JMT One Stop Inc. is an Arkansas for profit corporation in good standing with Arkansas Secretary of State. JMT One Stop began operating the Gas Station in early 2020. JMT One Stop acquired the real property the Gas Station sits on by Warranty Deed in November of 2022, via Instrument Number 2022075478.

5. Defendant Joo Bong Park is an Arkansas citizen and resident of Pulaski County, Arkansas. Defendant Park is the President of JMT One Stop Inc. Arkansas Department of Environment Quality (“DEQ”) records list his name, personally, as the owner of the facility and the party providing payment for financial assurance obligations (imposed by state and federal law on underground storage tank owners and operators) from April of 2020, to the present.

6. Defendant YB Investments, LLC is an Arkansas company in good standing with the Arkansas Secretary of State. DEQ records list Defendant YB Investments, LLC as the owner of the facility and the party providing payment for financial assurance obligations (imposed by state and federal law on underground storage tank owners and operators) from July of 2016 to April of 2020. YB Investments also owned the real property upon which the Gas Station sits from November of 2020 until November of 2022, having acquired the real property via Warranty Deeds recorded as Instruments 2020078642 and 2020078643.

JURISDICTION AND VENUE

7. All acts and events alleged herein occurred in Pulaski County, Arkansas.

8. This Court enjoys jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. § 16-13-201.

9. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-112, and because the real property which is the subject of this action is in Pulaski County, Arkansas.

FACTS

10. On August 25, 2021, Jason Bolenbaugh of DEQ reported a discovery of fuel in the storm drain at the Gas Station to the regulated storage tank division of his agency.

11. DEQ directed Defendant Park to conduct a tank tightness test to determine if the Gas Station’s underground storage tanks are “tight,” or fit for service.

12. On August 26, 2021, the premium fuel tank at the Gas Station failed the tightness test, resulting in DEQ red tagging, or removing from service, that particular tank.

13. At the time of the discovery of the free product in the storm drain, and the failed tank tightness test, the Gas Station was not in compliance with state and federal rules, including requirements for line and tank release detection records, line and tank tightness testing, corrosion protection certification, and a designated licensed underground storage tank operator.

14. At the time of the time of this non-compliance, Defendant Park was the responsible corporate officer for compliance matters.

15. Mr. Park is personally liable for his failure to responsibly maintain the corporate assets under his control.

16. At the time of the discovery of the free product in the storm drain, and the failed tank tightness testing, Defendant JMT One Stop Inc. operated the Gas Station.

17. At the time of the discovery of the free product in the storm drain, and the failed tank tightness testing, Defendant YB Investments, LLC owned the real property upon which the Gas Station sits.

18. In September of 2021, DEQ began short term response and recovery efforts, including involving SPATCO Energy Solutions to remediate readily accessible free product, install monitoring wells onsite at the Gas Station, and develop long-term remediation plans.

19. SPATCO receives payment for its response and remediation efforts from the Arkansas Petroleum Storage Tank Trust Fund, which provides reimbursement to eligible owners or operators of storage tanks for response and remediation costs resulting from release of gas and diesel products. The Trust Fund is a form of financial assurance for underground storage tank facilities, as required by 40 C.F.R. § 280.90 *et seq.* While several options, such as private insurance

and bonds, are available, Arkansas chooses to operate the Trust Fund. A fee at the wholesale level on each gallon of fuel purchased or imported into the state sustains the fund. These funds are also available to compensate 3rd parties, like the Morris, harmed by releases.

20. SPATCO continued its remediation planning and response after September of 2021, by developing a series of cost estimates, site assessments, and free product removal and abatement plans. At each stage of the implementation of these work and assessment plans throughout 2022, SPATCO further defined and develop a model of the groundwater contamination plume emanating from the Gas Station.

21. SPATCO installed Monitoring Well six, or MW6, on the northeast corner of the Morris Property, first testing it in October of 2021. That testing confirmed, for the first time on the Morris Property, the presence of contamination, including total petroleum hydrocarbons in both the gasoline range (12.1 mg/L) and diesel range (1.740 mg/L), as well as elevated levels of benzene (293 ug/L), toluene (1,690 ug/L), ethylbenzene (317 ug/L), total xylenes (1,790 ug/L), naphthalene (.0063 ug/L), and MTBE (32 ug/L).

22. mg/L represents milligrams per liter, while ug/L is micrograms per liter. These are common measurements for the concentration of a contaminant in both air and water.

23. After finding groundwater contamination in October of 2021, SPATCO expanded its monitoring well network, including installing monitoring wells eleven through nineteen on the Morris Property.

24. SPATCO also, at the direction and agreement of DEQ, installed vapor monitoring points at properties surrounding the Gas Station. This included three points, designated 4720 (the Morris Property street number) one through three.

25. Vapor monitoring is conducted inside buildings to determine if vapors from free product is entering a property. Vapor can intrude inside a building even if the building sits on a concrete slab due to the fact the slab may have cracks in it, or intentionally created holes for plumbing or other utilities, which create vapor pathways.

26. The initial vapor monitoring event for points 4720 1-3 occurred on April 22, 2022. These tests indicated the presence of seven contaminants above detectable levels:

Table 4. Q2 Vapor Analytical Data
JMT One Stop
North Little Rock, Arkansas

Sample ID	Date Collected	Benzene	Toluene	Ethylbenzene	M&P-Xylene	O-Xylene	Total Xylenes	Naphthalene	Helium (%)
Previous Sampling									
2004-1	4/22/2022	0.664	17.6	1.70	6.89	2.92	9.81	<3.30	1.16
2004-2	4/22/2022	0.866	16.9	1.56	6.20	2.50	8.70	<3.30	<0.100
2004-3	4/22/2022	0.751	25.5	1.86	5.94	2.90	8.84	<3.30	0.65
2004-4	4/22/2022	1.03	67.1	3.69	13.0	5.20	18.20	<3.30	<0.100
4720-1	4/22/2022	1.89	9.87	1.08	4.47	5.12	9.59	<3.30	<0.100
4720-2	4/22/2022	1.70	11.4	0.880	3.91	3.58	7.49	<3.30	<0.100
4720-3	4/22/2022	<0.639	2.30	<0.867	2.17	1.04	3.21	<3.30	0.88
4720-4	4/22/2022	2.02	13.4	1.14	5.12	5.03	10.2	<3.30	0.82
2500-1	5/6/2022	4.38	38.4	10.4	52.0	22.0	74.0	<3.30	0.28
2500-2	5/6/2022	1.53	9.23	2.71	12.10	6.46	18.6	<3.30	0.42

* All values ug/L

Table 4, SPATCO Energy Solutions, Second Quarter Sampling Report for JMT One Stop, Revised 2nd Additional Site Assessment, April 9, 2024.

27. The May 25, 2022, groundwater monitoring event documented increased contamination levels in MW6. For example, SPATCO found benzene, measured at 293 ug/L in October of 2021, at 1,290 ug/L in May of 2022.

28. MW11-19 also, in addition to the vapor monitoring points, indicate contamination exists beyond the northeast corner of the property where MW6 is. In May of 2022, each of the

wells MW11-19, except for MW19, indicated the presence of some level of gasoline or diesel range organics, benzene, toluene, or ethylbenzene (but not necessarily the presence of each contaminant at a detectable level).

29. SPATCO continues to monitor both groundwater and vapor at the Gas Station site, including offsite at the Morris Property. November 2023, groundwater monitoring indicated the continued presence of contamination, including benzene at 290 ug/L, as well as testing, and finding additional contaminants for the first time, including 1, 2, 4 TMB, 1-methylnaphthlene, and 2-methylnaphthlene in MW 6 and elsewhere. February of 2024, groundwater monitoring confirmed the same, finding benzene at 630 mg/L in MW 6.

30. Vapor point monitoring likewise continues to document the presence of contaminants in 4720 1-3 in both November of 2023, and February of 2024 (with the exception of 4720-3 in February of 2024):

Table 4. Q2 Vapor Analytical Data
JMT One Stop
North Little Rock, Arkansas

Sample ID	Date Collected	Benzene	Toluene	Ethylbenzene	M&P-Xylene	O-Xylene	Total Xylenes	Naphthalene	Helium (%)
2004-1	2/7/2024	< 0.42	2.60	6.60	44.0	6.90	50.9	< 3.30	<0.100
2004-2	2/7/2024	5.20	91.0	270	990	210	1,200	< 3.30	<0.100
2004-3	2/7/2024	1.50	7.10	32.0	180	32.0	212	< 3.30	<0.100
2004-4	2/7/2024	0.460	< 0.87	< 0.56	< 1.3	< 0.65	< 1.95	< 3.30	<0.100
2004-5 (dup)	2/7/2024	0.420	2.60	6.60	44.0	6.90	50.9	< 3.30	<0.100
2500-1	2/8/2024	< 0.42	3.1	17.0	110	16.0	126	< 3.30	<0.100
2500-2	2/8/2024	0.420	3.1	23.0	140	22.0	162	< 3.30	<0.100
4720-1	2/9/2024	0.58	4.7	35.0	200	33.0	233	< 3.30	<0.100
4720-2	2/9/2024	0.470	4.3	33.0	190	32.0	222	< 3.30	<0.100
4720-3	2/9/2024	< 0.42	< 0.87	< 0.56	< 1.3	< 0.65	< 1.95	< 3.30	<0.100
Target Sub-Slab Concentration (THQ=0.1)		52.4	73,000	164			1,460	12.0	

* All values ug/L

Duplicate Samples & RPD									
2004-1	2/7/2024	0.420	2.60	6.60	44.0	6.90	50.9	< 3.30	<0.100
2004-5 (dup)	2/7/2024	0.420	2.60	6.60	44.0	6.90	50.9	< 3.30	<0.100
Relative % Difference:		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	n/a	n/a

MDL used

Previous Sampling									
2004-1	11/1/2023	0.730	13.0	63.0	270	60.0	330	< 3.30	<0.100
2004-2	11/1/2023	0.630	6.60	30.0	130	27.0	157	< 3.30	<0.100
2004-3	11/1/2023	0.770	12.0	50.0	220	47.0	267	< 3.30	<0.100
2004-4	11/1/2023	0.690	13.0	59.0	250	54.0	304	< 3.30	<0.100
2500-1	11/3/2023	0.630	8.40	55.0	240	50.0	290	< 3.30	<0.100
2500-2	11/3/2023	0.850	12.0	65.0	290	64.0	354	< 3.30	<0.100
4720-1	11/3/2023	1.10	14.0	61.0	260	61.0	321	< 3.30	0.23
4720-2	11/3/2023	0.760	29.0	100	480	110	590	< 3.30	<0.100
4720-3	11/2/2023	0.490	7.40	30.0	100	20.0	120	< 3.30	<0.100
4720-4 (dup)	11/2/2023	0.710	7.80	38.0	160	37.0	197	< 3.30	<0.100
Target Sub-Slab Concentration (THQ=0.1)		52.4	73,000	164			1,460	12.0	

* All values ug/L

31. Groundwater and vapor monitoring is ongoing. Additional information will develop during the pendency of this case.

32. The groundwater and air/vapor contamination are comprised of dangerous carcinogens which pose a risk to both human health and the environment.

33. For example, benzene exposure is a known cause of leukemia. While this is not a personal injury case, the fact contamination from petroleum products causes harm to humans and

the environment is relevant to the remediation of this site, the use of the Morris Property, and the value of that property.

34. The presence of contamination negatively impacts the use and enjoyment of the Morris Property.

35. The Morrisses lease the Property to a business, Morris-Cox Insurance which they own and operate. Vapor intrusion in their building and business cause an uninvited disruption, annoyance, and inconvenience at the Morris Property. The Morrisses have personally smelled vapors in their building on multiple occasions.

36. The presence of environmental contamination in the groundwater and soil impacts the uses and value of commercial property like the Morris Property, devaluing it as a result of actions taken by Defendants.

CAUSES OF ACTION

37. The Morrisses ratify, affirm, and reallege all previous allegations set forth above in support of their causes of action.

Negligence

38. Defendants owe the Morrisses a duty to operate the Gas Station in a manner which does not cause harm to neighboring property.

39. Defendants know, or ought to know, that the Gas Station poses a threat to human health, safety, and real property if not maintained and operated in a safe manner.

40. Defendants breach their duty to the Morrisses, and are thus negligent in failing to possess and apply with reasonable care the industry standards and degree of skill and learning ordinarily possessed and used by members in of their profession and industry.

41. Specifically, the ordinary negligence of Defendants includes failures to:

- a. Maintain and repair the underground storage tanks, spill buckets, dispensers and other associated equipment in a proper manner.
- b. Conduct tests and keep resulting records required by state and federal law for tank and line tightness testing, automatic tank gauging/release detection, corrosion protection, and line leak detection.
- c. Operate the Gas Station in a safe manner or condition.
- d. Employ, engage, or otherwise utilize a qualified underground storage tank operator associated with the facility.
- e. Choosing not to properly train its employees, staff, agents, licensees, invitees, and contractors and/or choosing not to implement or follow adequate policies and procedures to ensure adequate training of its employees, staff, agents, licensees, invitees, and contractors.
- f. Choosing not to properly supervise their employees, staff, agents, licensees, invitees, and contractors and/or choosing not to implement or follow adequate policies and procedures to ensure adequate supervision of their employees, staff, agents, licensees, invitees, and contractors.
- g. Take actions necessary to prevent a release of free product from the Gas Station in order to prevent harm to others.
- h. Take actions necessary to remediate contamination and prevent its spread before it reached the Morris Property.
- i. Warn and inform others of the contamination.

42. Defendants' negligence is evidenced by their violation of applicable laws and regulations, including, but not limited to:

- a. Arkansas Pollution Control and Ecology Commission Rule 12.
- b. 40 C.F.R. 280 *et seq.*
- c. Arkansas Solid Waste Management Act.
- d. The Arkansas Water and Air Pollution Control Act.

43. In addition to the specified acts of negligence stated herein, an inference of negligence also exists because Defendants were or are in control of the instrumentalities which caused contamination of the Morris property. If Defendants exercised the proper standard of care, the Morrises would not suffer damage. Defendants are liable pursuant to the doctrine of *res ipsa loquitor*.

44. Defendants' negligent conduct, as the owner and operators of the Gas Station, is the proximate cause of damage to the Morris Property.

45. The Morrises suffer damages as a result of the Defendants' conduct, as more specifically alleged below.

TRESPASS

46. Plaintiffs peaceably possess and own the Morris Property.

47. Defendants intentionally operated the Gas Station, intentionally stored gasoline in underground storage tanks at the Gas Station, and failed to maintain, test, and otherwise care for the Gas Station in a manner necessary to prevent free product from escaping to the Morris Property.

48. Defendants have no permission, license, right, or privilege to allow their free product to enter the Morris Property.

49. Defendants' free product, emanating from the gas station, enters and contaminates the Morris Property, creating a trespass.

50. The Morrises suffer damages as a result of those trespasses by Defendants.

PRIVATE NUISANCE

51. Plaintiffs own the Morris Property.

52. Defendants' intentional ownership and operation of the Gas Station result in contamination of the Morris property, including contamination of the soil, groundwater pollution, and vapor intrusion, each of which is an unreasonable interference with the use of their property.

53. Defendants' conduct, and the resulting contamination of the Morris Property, constitute a nuisance *per se*, as it is unreasonable as a matter of law to fail to conduct testing, maintenance, and employ a qualified operator at an underground storage tank facility.

54. Defendants' conduct and the contamination of the Morris property are also a nuisance in fact due to the unreasonable nature of contamination entering the property of another.

55. The Morrises suffer damages as a result of the nuisance caused by Defendants.

ARKANSAS SOLID WASTE MANAGEMENT ACT PRIVATE RIGHT OF ACTION

56. ASWMA prohibits the unlawful disposal of solid waste, and empowers private parties, harmed by the illegal disposal of waste to bring a private right of action for damages.

57. Ark. Code Ann. § 8-6-205(a) provides, in part:

(a) It shall be illegal for any person:

(1) To violate any provision of this subchapter or any rule or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Division of Environmental Quality;

(2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the division;

(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the division. However, no provision of this subchapter shall be construed so as to prevent an individual from disposing of solid wastes resulting from his or her own household activities on his or her own land if the disposal does not create a public or private nuisance or a hazard to health and does not violate a city ordinance or other law and does not

involve the open dumping of garbage;

(4) To dump, deposit, throw, or in any manner leave or abandon any solid wastes, including, but not limited to, garbage, tin cans, bottles, rubbish, refuse, or trash upon property owned by another person without the written permission of the owner or occupant of the property or upon any public highway, street, road, public park or recreation area, or any other public property except as designated for disposal of waste; or

(5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules or orders of the division or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 *et seq.*

58. Disposal is defined in rules promulgated pursuant to ASWMA as:

Disposal means abandoning, depositing, releasing, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

APCEC Rule 22.102.

59. APCEC Rule 22 and ASWMA do not define “any water” or “pollution,” despite utilizing those terms in the Ark. Code Ann. § 8-6-205(a)(5) provision quoted above. However, Ark. Code Ann. § 8-6-205(a)(5) does reference the Arkansas Water and Air Pollution Control Act which defines both pollution and “waters of the state” to mean:

“Pollution” means such contamination or other alteration of the physical, chemical, or biological properties of any *waters of the state*, or such discharge of any *liquid*, gaseous, or solid substance in any waters of the state as will, or is likely to, render the waters *harmful, detrimental, or injurious to public health, safety, or welfare*, to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life;...

“Waters of the state” means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and *all other bodies or accumulations of water*, surface and *underground*, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.

Ark. Code Ann. 8-4-102(7) and (11) (emphasis added). Thus, escaped petroleum products are pollution, and groundwater is a water of the state.

60. Ark. Code Ann. 8-6-206(a) of ASWMA creates a private right of action:

Except as provided under subsection (b) of this section, a person adversely affected by a violation of this subchapter or of any rules or orders issued pursuant to this subchapter shall have a private right of action for relief against the violation.

61. Defendants are each a “person” for purposes of ASWMA liability under Ark. Code Ann. § 8-6-203(13).

62. The petroleum products escaping the Gas Station constitute a “solid waste” under ASWMA. Ark. Code Ann. § 8-6-203(18)(A), the definition of which includes “liquid” materials “resulting from...commercial...activities.”

63. Defendants violate the original and all subsequent versions of ASWMA by disposing of a solid waste in such a manner as to cause pollution of the Morris Property. Defendants do so without consent of any of the Plaintiffs, and without legal right or privilege. These violations are continuing.

64. Defendants’ violations of ASWMA are the cause of damages Plaintiffs suffer, thus entitling them to relief under ASWMA.

DAMAGES

65. The Morrisses hereby incorporate all preceding paragraphs by reference as if set forth herein word for word in support of their damages claims.

66. Plaintiffs are entitled to one of the following:

- a. Damages for the reasonable expense of necessary repair, restoration, and remediation of the Morris Property to pre-release conditions, plus the difference

in the value of the Morris Property before the discovery of contamination and the value after remediation of the Morris Property; or

b. Damages for the difference in the fair market value of the Morris Property, and improvements thereto, before and immediately after discovery of contamination emanating from the Gas Station to the Morris Property.

67. Applicable rental values caused by the contamination.

68. Loss of use and enjoyment of the Property.

69. The Morrises are entitled to damages for the deprivation of the true worth and value of their properties, including, discomfort, annoyance, disruption, inconvenience, loss of peace of mind, fear and fright.

70. Defendants' conduct constitutes reckless disregard for the consequences of their actions, from which malice may be inferred, entitling the Morrises to punitive damages.

71. Plaintiffs request a trial by jury.

WHEREFORE, Plaintiffs pray for judgment against the Defendants named herein for compensatory damages in an amount in excess of that required for federal jurisdiction; for post judgment interest, court costs, attorney's fees, treble damages, punitive damages and for all other relief to which they may be entitled.

Respectfully submitted,

/s/ Ross Noland

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VERIFICATION

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

On this 21st day of August, 2024, I, Larry Morris appears and swears under oath that he or she has personal knowledge of the facts contained in the foregoing Complaint, and that said facts are true and correct.

Larry Morris
Signature

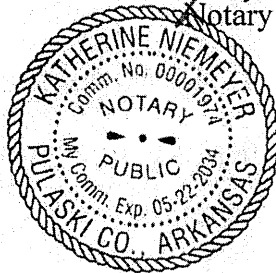
LARRY MORRIS
Print Name

Subscribed and sworn to before me, this 21st day of August, 2024, to certify which witness my hand and seal of office.

Katherine Niemeyer
Notary Public

My Commission Expires:

05/22/2034



VERIFICATION

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

On this 21st day of August, 2024, I, Barbara Ann Morris appears and swears under oath that he or she has personal knowledge of the facts contained in the foregoing Complaint, and that said facts are true and correct.

Barbara Ann Morris
Signature

Barbara Ann Morris
Print Name

Subscribed and sworn to before me, this 21st day of August, 2024, to certify which witness my hand and seal of office.

Katherine Niemeyer
Notary Public

My Commission Expires:

05/22/2034

