

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF OLMTED

THIRD JUDICIAL DISTRICT

Minnesota Pollution Control Agency,

Case Type: Other Civil

Plaintiff,

Court File No. \_\_\_\_\_

v.

**COMPLAINT**

Gurek Inc. and Tejinder Singh,

Defendants.

The Minnesota Pollution Control Agency, alleges the following:

**INTRODUCTION**

1. This case is a civil action brought by the Minnesota Pollution Control Agency (“MPCA”) pursuant to Minn. Stat. § 115.071, subds. 3-5, Minn. Stat. § 115.072, and Minn. Stat. § 115C.04, subd. 1. It arises from Defendants’ violation of State statutes and rules governing petroleum, underground storage tanks, and water quality.

2. Defendants are the owners and operators of a Cenex gas station in Elgin, Minnesota where several violations of MPCA rules and State statutes regulating the storage of petroleum in underground tanks were documented. Defendants’ violations have resulted in the release of pollutants which have posed significant risk to both the environment and health and safety of nearby residents.

3. The MPCA requests that the Court order Defendants to comply with the requirements of the Administrative Order and the MPCA statutes and rules cited herein, pay an appropriate civil penalty for Defendants’ failure to comply with the Administrative Order and

statutes and rules, reimburse the MPCA for its reasonable and necessary response costs, and pay for the MPCA's litigation costs and expenses in this action.

### **PARTIES**

4. The MPCA is a statutory agency of the State of Minnesota responsible for administering and enforcing statutes and rules related to air, water, and land pollution, which statutes and rules have general application throughout the State. Statutes governing hazardous waste, water quality, and tanks are contained in Minn. Stat. chs. 115 and 116. MPCA rules governing hazardous waste, water quality, and underground storage tanks are codified in Minn. Rules chs. 7001 (permits), 7045 (hazardous waste), 7060 (water quality), and 7150 (underground storage tanks).

5. Gurek, Inc. is a Minnesota corporation with its registered office located at 30 3<sup>rd</sup> Street SE STE 400, Rochester, MN 55903.

6. Tejinder Singh is an owner and the chief executive officer of Gurek Inc.

### **JURISDICTION AND VENUE**

7. The Court has personal jurisdiction over Defendants because Defendants are registered and do business in Minnesota. The Court has subject matter jurisdiction of this action pursuant to Minn. Stat. § 484.01.

8. Venue in Wabasha is proper under Minn. Stat. § 542.09 because the cause of action arose in Wabasha County.

### **FACTUAL BACKGROUND**

9. Defendants own and operate a Cenex gas station and convenient store located at 15 2<sup>nd</sup> Ave NE, Elgin, MN 55932.

10. On March 28, 2022, the City of Elgin, Minnesota (hereinafter referred to as the “City”) received a complaint from an individual concerned of the odor of gasoline coming from a storm sewer in the city near Defendants’ property.

11. Investigation by the City tracked the odor and discovered gasoline entering an underground storm sewer which then discharged to Dry Creek and continued to a nearby trout stream.

12. On March 28 and 29, 2022, MPCA staff conducted a complaint investigation which traced the leak to the Defendants’ Cenex gas station (hereinafter referred to as the “Facility”).

13. At the onset of the investigation, March 28, the MPCA Emergency Response program issued an emergency declaration and dispatched West Central Environmental Consultants (“WCEC”), a state contractor, to investigate, contain, and recover gasoline in the storm sewer and to install a ventilation fan on the storm sewer to prevent the possibility of an explosion.

14. Upon arrival at the Facility, MPCA staff requested records to determine compliance with leak detection requirements. Tank leak detection records were in compliance with the annual electronic line leak detectors, spill buckets, and automatic tank gauge tests having last been conducted on June 29, 2021.

15. Electric line leak detectors are used to detect leaks, ensure the integrity of pressurized pump lines, and perform shutdowns if leaks are detected. The type of electronic line leak detectors at the Facility are Incon TS-LLD. A digital display on each Incon TS-LLD shows how many days it has been since the last passing 0.2 gallon per hour (“gph”) line leak test.

Facilities such as those owned by Defendants are required to have at least a monthly passing leak test for each line.

16. During the MPCA's inspection, an error code of "83" was showing on the Incon TS-LLD panel of the Facility's regular unleaded fuel line, indicating that the line leak detector had lost communication with the control panel.

17. MPCA staff requested to review daily log sheets which were kept by Defendants at the Facility. According to the daily log sheets, starting on December 17, 2021, the Incon TS-LLD showed that it had been 1 day since the last passing 0.2 gph test on the regular unleaded line. Each day thereafter, the number of days since its last passing 0.2 gph test increased by one. On January 15, 2022, the Incon TS-LLD shut down the regular unleaded submersible pump because the pipe failed to get a passing 0.2 gph leak result in 30 days.

18. Upon information and belief, Defendants and their employees, agents, and/or representatives working at the Facility started pressing the reset button on the regular unleaded Incon TS-LLD control panel so that the regular unleaded fuel line could still be used, and fuel could be sold.

19. In total, there were 41 days of not getting a passing 0.2 gph leak test result. On January 28, 2022, the Incon TS-LLD began reporting the "83" error code, which resulted in the leak test no longer being performed because of malfunctioning equipment until the complaint inspection on March 29, 2022.

20. On March 30, 2022, MPCA staff and a certified underground storage tank contractor met on the site to further investigate the fuel release. They found that the submersible pump controller contact was stuck in the "on" position meaning the submersible pump was constantly pumping gasoline without interruption.

21. When a pump is constantly running, there is no communication between the control panel and the line leak detector because the normal operation of the pump cycling on/off during customer demand is not occurring and a 3 gallon gph leak test cannot occur. Furthermore the 0.2 gph monthly tightness test cannot occur because the line leak detector runs its test when the system is not running.

22. Upon information and belief, the pump contact likely first became stuck in the “on” position on January 28, 2022, when the electronic line leak detector showed an error code of “83”.

23. On March 30, the certified underground storage tank contractor installed a new submersible pump controller contact and mechanical line leak detector. The certified underground storage tank contractor then attempted to perform a 0.1 gph line tightness test, which failed immediately. The mechanical line leak detector then restricted the flow of product because it detected a release of more than 3 gallons per hour, verifying the leak. The regular unleaded product line at the Facility was then shut down.

24. Subsequent visits by WCEC resulted in the removal of product from the storm sewer and installation of trenches to intercept gasoline prior to the product entering the storm sewer. Additionally, WCEC identified approximately 2.5 feet of petroleum free product in observation wells.

25. Defendants agreed to hire WCEC and they proposed an extensive emergency response action to protect human health and safety. This response action included receptor surveys to identify private wells, sewer lines, and municipal water supply lines and vapor intrusion surveys to identify potential commercial buildings and homes impacted by the leak.

26. MPCA staff sent a letter to Defendants on April 6, 2022, directing that they submit a leak site ownership form. Defendants submitted a leak site ownership form on May 24 indicating they were the owner of the property and they intended to proceed with the necessary investigation and corrective actions.

27. On June 16, 2022, Defendant Tejinder Singh, sent an email stating he had a financial hardship and was unable to pay WCEC. As a result, MPCA Emergency Response took over management of the leak site beginning on June 17, 2022.

28. On August 25, 2022, the Department of Commerce sent a letter to Mr. Singh notifying him that he and Defendant did not qualify for financial hardship assistance for the site cleanup. Mr. Singh continued to claim that no money was available for the emergency work.

29. On October 17, 2022, Defendants hired a certified underground storage tank contractor to remove and replace the piping for all three underground storage tanks at the Facility. Upon removal of the pipes, a dime-sized hole was observed in the regular unleaded piping which had been taken out of service. Also observed was a one-eighth of an inch hole in the premium gasoline line that was active at the time of replacement.

30. Petroleum saturated soil was observed during the pipe removal and soil excavation took place to a depth ranging between eight and fourteen feet.

31. Not all the petroleum saturated soils could be removed due to the depth of contamination, placement of the storage tanks, and other structures and utilities prohibiting soil excavation in certain areas of the Facility.

32. In October 2022, the MPCA received a complaint from a resident of the apartment complex located at 35 2<sup>nd</sup> Ave NE, Elgin, MN, directly north of the Facility. The resident indicated they smelled gas in the water coming from their faucet.

33. In consultation with the Minnesota Department of Health (“MDH”), the MPCA Emergency Response program began supplying the residents of the apartment complex bottled water on October 18, 2022. In addition, the MPCA directed contractors to investigate the potential for petroleum contaminated ground water to enter the underground service drinking water lines and main drinking water line; and if so, determine the source area for the ground water and soil contamination. The MPCA initiated the above emergency response actions to reduce the threat from the high levels of light non-aqueous phase liquid (“LNAPL”) or floating petroleum on the ground water at the site. The state’s contractor encountered the LNAPL during the fuel line removal and product recovery activities were performed at the Facility.

34. MDH and MPCA further provided residents with recommendations to limit showers/bathes and open windows or use ventilation while showering or bathing due to the expected presence of high levels of petroleum contaminants in the water.

35. On October 31, 2022, MPCA received results of the water sampling from the apartment building which revealed the presence of petroleum contaminants in the drinking water, including benzene and toluene, which exceeded acceptable MDH health-based limits.

36. On November 02, 2022, the MPCA received the results of the water sampling from the Facility and one residence which revealed the presence of petroleum contaminants in the drinking water.

37. On November 10, 2022, MPCA installed a granular activated carbon (“GAC”) filtration system to remove the petroleum contaminants from the drinking water at the apartment building.

38. On November 15, MPCA installed a granular activated carbon (“GAC”) filtration system to remove the petroleum contaminants from the drinking water at the Facility and residence.

39. On November 15, 2022, MPCA issued an Administrative Order (a true and correct copy is attached hereto as Exhibit A) to Defendants requiring the removal of all three underground storage tanks at the Facility to recover all petroleum saturated soils and LNAPL possible due to the drinking water contamination.

40. Defendants failed to comply with any and all parts of the Administrative Order. Defendants did not remove the underground storage tanks at the Facility and did not recover any petroleum saturated soils and LNAPL.

41. Under the emergency declaration, MPCA Emergency Response directed the removal of the tanks on November 21, 2022, to protect human health and the environment.

42. The MPCA directed clean up and investigatory work resulting in approximately 2,233 cubic yards (3127 Tons) of petroleum contaminated soils to be removed, and more than 4,500 gallons of gasoline has been recovered to date.

43. The emergency declaration remains in effect due to the ongoing threat to public health and safety related to the instability associated with the LNAPL (petroleum) plume.

44. The large release from the Facility resulted in a petroleum plume that has known and ongoing effects on ground water, surface waters, and drinking water sources.

45. Risks associated with a release of this magnitude include vapor intrusion into buildings on adjacent properties. The MPCA’s contractor confirmed vapor intrusion impacts to the apartment complex and the Facility’s station store. Monitoring and assessment is ongoing for other habitable structures.



46. Because the petroleum plume is not yet stable, ground and surface waters are at risk as the plume moves or expands with varying seasonal groundwater levels. Contaminated groundwater that leaches in the storm sewer will discharge to surface waters as the ground water fluctuates.

47. Petroleum surrounding the municipal watermain and/or service lines has already entered the water lines affecting the water supply to the apartment complex and two other residences. Further monitoring is in place to assess for the potential expansion of drinking water impacts in and around the City.

### **COUNT I**

#### **FAILURE TO COMPLY WITH MPCA'S ADMINISTRATIVE ORDER AND THE STATE'S ENVIRONMENTAL PROTECTION STATUTES.**

48. The MPCA re-alleges paragraphs 1-47 of this Complaint.

49. Minn. Stat. § 115.071, subd. 3 provides in relevant part:

Subd. 3. Civil penalties. Any person who violates any provision of this chapter or chapter 114C or 116, ... (1) any effluent standards and limitations of water quality standards, ...(4) any duty to permit or carry out inspection, entry, or monitoring activities, or (5) any rules, stipulation agreements, variances, schedules of compliance, or orders issued by the agency, shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$10,000 per day of violation except that if the violation relates to hazardous waste the person shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$25,000 per day of violation...

In addition, in the discretion of the court, the defendants may be required to:

- (a) forfeit and pay to the state a sum which will adequately compensate the state for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accidental;
- (b) forfeit and pay to the state an additional sum to constitute just compensation for any loss or destruction to wildlife, fish, or other

aquatic life and for other actual damages to the state caused by an unauthorized discharge of pollutants...

The civil penalties and damages provided for in this subdivision may be recovered by a civil action brought by the attorney general in the name of the state.

50. Minn. Stat. § 115.071, subd. 5 provides in relevant part:

Subd. 5. Actions to compel performance. In any action to compel performance of an order of the agency for any purpose related to the prevention, control or abatement of pollution under this chapter and chapters 114C and 116, the court may require any defendant adjudged responsible to do and perform any and all acts and things within the defendant's power which are reasonably necessary to accomplish the purposes of the order....

51. Defendants did not seek judicial review of the MPCA's Administrative Order to the Minnesota Court of Appeals as provided under Minn. Stat. § 115.05, subd. 11 and, thus, the Administrative Order is a final order not subject to further review.

52. Defendants have not complied with the requirements of Minnesota Statutes Chapters 115, 115C or 115E. Pursuant to Minn. Stat. § 115.071, subds. 3 and 5, the State is entitled to an order compelling Defendants to comply with its remediation efforts and an award of civil penalties up to \$25,000 per day of violation of State rules and Statute, and awards to reasonably compensate for the value of the cleanup, and compensate for the loss and/or destruction of wildlife, fish, or other aquatic life.

## **COUNT II**

### **OIL AND HAZARDOUS SUBSTANCE VIOLATIONS**

53. The MPCA re-alleges paragraphs 1-47 of this Complaint.

54. Minn. Stat. § 115E.02 provides:

A person who owns or operates a vessel or facility transporting, storing, or otherwise handling hazardous substances or oil or who is otherwise in control of hazardous substances or oil shall take reasonable steps to

prevent the discharge of those materials in a place or manner that might cause pollution of the land, waters, or air of the state or that might threaten the public's safety or health.

55. Defendants are in violation of Minn. Stat. § 115E.02 because of the failure to take reasonable steps to prevent the discharge of oil and hazardous substances by continuously resetting the Facility leak line detector for the unleaded gasoline tank system and not investigating a potential leak in the line. Defendants disregarded the alarm, reset it multiple times until it was no longer operational and failed to perform investigative actions into a potential release.

56. Defendants' violations of Minn. Stat. § 115E.02 have resulted in the release of a substantial volume of petroleum into the environment, contaminating soil, groundwater, the City's water supply line, storm sewers, and surface waters.

57. Pursuant to Minn. Stat. § 115.071, subd. 3, Defendants should pay a civil penalty to the State of Minnesota of up to \$25,000 per day of violation for violation of the above referenced State statute.

### **COUNT III**

#### **UNDERGROUND STORAGE TANK VIOLATIONS**

58. The MPCA re-alleges paragraphs 1-47 of this Complaint.

59. Minn. R. 7150.0030, subp. 34 defines owner of a tank as:

Subp. 34. Owner. "Owner" means a person who holds title to, controls, or possesses an interest in an underground storage tank; and a person who held title to, controlled, or possessed an interest in the tank immediately before discontinuation of its use...

60. Minn. R. 7150.0030, subp. 35 defines "person" to include "an individual, partnership, association, public or private corporation, or other legal entity..."

61. Minn. R. 7150.0030, subp. 32 defines operator of a tank in relevant part as:

Subp. 32. Operator. “Operator” means a person who: (1) has control of or responsibility for the daily operation of the UST system; (2) had control of or responsibility for the daily operation of the tank immediately before discontinuation of the tank’s use...

62. Defendants were operators of the UST systems at the Facility because they were in control of the daily operation of the tanks.

63. Minn. R. 7150.0250, subp. 1A provides:

Subp. 1A. Owners and operators must immediately investigate and remedy all unusual operating conditions in a UST system. The owner or operator must take the UST system out of service unless: 1) the unusual operating condition is investigated and resolved... 2) any defective components are isolated from the UST system to prevent a leak; or 3) any defective components or equipment are repaired by a person certified under chapter 7105.

64. Defendants are in violation of Minn. R. 7150.0250, subp. 1A because Defendants failed to investigate unusual operating conditions and take the UST component suspected of leaking out of service.

65. Minn. R. 7150.0340, subp. 2A provides:

Subp. 2A. An automatic line-leak detector must be able to detect leaks of three gallons per hour at ten-pounds-per-square-inch line pressure within one hour.

66. Defendants are in violation of Minn. R. 7150.0340, subp. 2A because Defendants’ electronic line leak detector on the regular unleaded piping ran an error code indicating it was not communicating with the control panel and was not functioning properly. Defendants continued use of the malfunctioning the line-leak detector for approximately two-months despite having knowledge of the error code being displayed.

67. Minn. R. 7150.0340, subp. 3 provides:

Subp. 3. A periodic test of piping must be conducted: A) annually by an agency-approved tester, if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; or B) monthly if it can detect a 0.2 gallon per hour leak rate at standard operating pressure.

68. Defendants are in violation of Minn. R. 7150.0340, subp. 3 because Defendants' electronic line leak detector did not pass the required 0.2 gph monthly tightness test since December 16, 2021. On January 28, 2022, the line leak detector lost communication with the control panel, and an error code was observed by Defendants. The error code was caused by the pump box contacts malfunctioning which created the submersible turbine pump to run continuously. This condition caused the leak detector to not function properly, and no line leak detection being conducted from January 28, 2022, until the MPCA complaint inspection on March 29, 2022.

69. Minn. R. 7150.0345, subp. 1 A, B, C provides:

Subp. 1(A) Owners and operators must immediately investigate, confirm, and remedy all suspected releases.

Subp. 1(B). Within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition by:

- (1) conducting a visual inspection of aboveground and exposed below-grade components of a UST system for leaks and deficiencies; and
- (2) if applicable, repeating any leak test that indicated an unusual operating condition, conducted according to part 7150.0330, subpart 5, 6, or 6a, or 7150.0340, subpart 2, item A; 3, item B; or 4, item A.

Subp. 1(C). Upon discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), owners and operators must initiate within 24 hours and complete within seven days... tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking...

70. Defendants are in violation of Minn. R. 7150.0345, subp. 1 because Defendants failed to investigate and remedy suspected releases. Defendants' regular unleaded gasoline electronic line leak detector was indicating the line did not pass a 0.2 gph leak test beginning on December 17, 2021, and daily after that until January 27, 2022. On January 28, 2022, an error

code on the electronic line leak detector indicated it was not functioning properly because of no communication with the control panel. The failed tests and error codes were not investigated, and a line tightness test was not conducted to confirm a suspected release until the MPCA conducted the complaint inspection on March 29, 2022.

71. Minn. R. 7150.0345, subp. 2, A, B, C provides:

Subp. 2. A person who has knowledge of a release from a UST system under that person's control must immediately notify the Minnesota duty officer upon discovering the release by calling 1-800-422-0798 and must begin recovering the substance according to Minnesota Statutes section 115.061. Notice under this subpart is also required if:

Subp. 2(A). the owners and operators discover a release of a regulated substance at the underground tank site or in the surrounding area;

Subp. 2(B). an unusual condition exists, unless:

- (1) the system component is immediately repaired or replaces; and
- (2) for secondarily contained systems, any liquid in the interstitial space not used for monitoring is immediately removed; or

Subp. 2(C). monitoring results from a release- detection method or alarm indicates a release may have occurred, unless:

- (1) the monitoring device or alarm is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial results;
- (2) the leak is contained in a secondary-containment space:
  - a. any liquid in the secondary-containment space not used for monitoring is immediately removed; and
  - b. any defective system equipment or component is immediately repaired or replaced; or
- (3) the alarm is investigated and determined to be a non-release event.

72. Defendants are in violation of Minn. R. 7150.0345, subp. 2 because Defendants failed to immediately report the release, unusual operating condition, and monitoring results

from the release detection system indicating that one may be occurring to the Minnesota duty officer as required. Defendants further failed to recover the substance according to Minn. Stat. § 115.061.

73. Pursuant to Minn. Stat. § 115.071, subd. 3, Defendants should pay a civil penalty to the State of Minnesota of up to \$10,000 per day of violation for violation of MPCA underground storage tank rules and statutes in the foregoing paragraphs.

**COUNT IV  
WATER QUALITY VIOLATIONS**

74. The MPCA re-alleges paragraphs 1-47 of this Complaint.

75. Minn. Stat. § 115.061 provides:

(a) Except as provided in paragraph (b), it is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

(b) Notification is not required under paragraph (a) for a discharge of five gallons or less of petroleum, as defined in section 115C.02, subdivision 10. This paragraph does not affect the other requirements of paragraph (a).

76. Defendants are in violation of Minn. Stat. § 115.061 because their activities at the Facility have resulted in the discharge of substances or materials that may cause pollution of waters of the State.

77. Defendants are in violation of Minn. Stat. § 115.061 because they have failed to notify the State of all discharges at the Facility.

78. Defendants are in violation of Minn. Stat. § 115.061 because they have failed to take action to investigate and recover all discharges of substances or materials at the Facility.



Specifically, Defendants failed to recover as rapidly and thoroughly as possible substances or materials under their control and to immediately minimize or abate pollution of waters of the State.

79. Minn. R. 7060.0600, subp. 2 and 3 provide:

Subp. 2. Prohibition against discharge into unsaturated zone. No sewage, industrial waste, other waste, or other pollutants shall be allowed to be discharged to the unsaturated zone or deposited in such place, manner, or quantity that the effluent or residue therefrom, upon reaching the water table, may actually or potentially preclude or limit the use of the underground waters as a potable water supply, nor shall any such discharge or deposit be allowed which may pollute the underground waters. All such possible sources of pollutants shall be monitored at the discharger's expense as directed by the agency.

Subp. 3. Control measures. Treatment, safeguards, or other control measures shall be provided by the person responsible for any sewage, industrial waste, other waste, or other pollutants which are to be or have been discharged to the unsaturated zone or deposited there, or which have been discharged to the zone of saturation, to the extent necessary to ensure that the same will not constitute or continue to be a source of pollution of the underground waters or impair the natural quality thereof.

80. Defendants are in violation of Minn. R. 7060.0600, subp. 2 because Defendants' activities at the Facility have resulted in the discharge of waste or pollutants to the unsaturated zone (soil) that have the potential to pollute underground waters.

81. Defendants are in violation of Minn. R. 7060.0600, subp. 3 because Defendants have failed to clean-up the waste and other pollutants discharged at the Facility.

82. Pursuant to Minn. Stat. § 115.071, subd. 3, Defendants should pay a civil penalty to the State of Minnesota of up to \$10,000 per day of violation for violation of MPCA water quality statutes and rules for violation of the foregoing paragraphs.

## **COUNT V PUBLIC NUISANCE**

83. The MPCA re-alleges paragraphs 1-47 of this Complaint.



84. Minn. Stat. § 115.071, subd. 4, provides:

Subd. 4. Injunctions. Any violation of the provisions, rules, standards, orders, stipulation agreements, variances, schedules of compliance, or permits specified in this chapter and chapters 114C and 116 shall constitute a public nuisance and may be enjoined as provided by law in an action, in the name of the state, brought by the attorney general.

85. Defendants violated the Administrative Order issued by the MPCA on November 15, 2022.

86. Defendants have violated provisions of Minn. Stat. chs. 115 and 116 and the rules adopted thereunder by failing to properly store and manage hazardous waste, failing to properly operate and maintain its underground storage tanks, and failing to report and cleanup discharges at the Site, as more fully described in Counts I, II, III, and IV.

87. Defendants' violations of the Administrative Order and of statutes and rules governing hazardous waste, underground storage tanks, and water quality constitute a public nuisance and should be enjoined.

## COUNT VI

### REIMBURSEMENT OF MPCA'S RESPONSE COSTS

88. The MPCA re-alleges all prior paragraphs of this Complaint.

89. Minn. Stat. § 115C.04, subd. 1 provides:

Subd. 1. Corrective action liability. A responsible person is liable for the cost of the corrective action taken by the agency under section 115C.03, subdivisions 2 and 3, including the cost of investigating the release and administrative and legal expenses, if:

- (1) the responsible person has failed to take a corrective action ordered by the commissioner and the agency has taken the action;
- (2) the agency has taken corrective action in an emergency under section 115C.03, subdivision 3; or
- (3) the agency has taken corrective action because a responsible person could not be identified.

90. Pursuant to Minn. Stat. § 115C.03, subd. 3, the MPCA has incurred significant, reasonable, and necessary expenses in taking corrective action, emergency corrective action, and for the investigating of a release at Defendants' facility, and the administrative and legal costs and expenses which followed. These costs have included, but are not limited to, the costs and expenses to investigate the Facility, to sample and analyze the petroleum contamination at the Facility, to identify the release and extent of release at the Facility and in surrounding areas, the physical removal of tanks, and to remediate the contaminated soils at the Facility.

91. Defendants should be ordered to reasonably compensate the State to for its response action costs and expenses.

#### **COUNT VII LITIGATION EXPENSES**

92. The MPCA re-alleges paragraphs 1-47 of this Complaint.

93. Minn. Stat. § 115.072 provides:

In any action brought by the attorney general, in the name of the state, pursuant to the provisions of this chapter and chapters 114C, 114E, and 116, for civil penalties, injunctive relief, or in an action to compel compliance, if the state shall finally prevail, and if the proven violation was willful, the state, in addition to other penalties provided in this chapter, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant....

94. Defendants' violations of statutes and rules governing hazardous waste, underground tanks and water quality is willful because Defendants have known since at least March 29, 2022, of the violations of MPCA rules at the Facility and the corrective actions required to correct the violations, including but not limited to the requirement to evaluate and properly manage all petroleum contamination at the Site and to sample, excavate, and properly dispose of all contaminated soil at the Facility.

95. Defendants are familiar with MPCA tank requirements because they own or operate or have operated multiple businesses that have tanks regulated by the MPCA as part of the operation of its business.

96. Despite knowledge of the MPCA's rules and orders, Defendants have failed to comply.

97. Defendants' failure to comply with the Administrative Order and with MPCA statutes and rules governing underground tanks, and water quality is willful, and the State is entitled to the reasonable value of its litigation expenses.

### **RELIEF**

WHEREFORE, Plaintiff prays that the Court issue its order and judgment as follows:

I. Declare that Defendants actions and failure to act are in violation of the Administrative Order issued by the MPCA on November 15, 2022, and order that Defendants comply with the Administrative Order.

II. Declare that Defendants actions and failure to act are in violation of MPCA statutes and rules related to hazardous waste, underground storage tanks and water quality at the Site.

III. Enjoin Defendants from continuing to violate the Administrative Order and MPCA statutes and rules related to hazardous waste, underground storage tanks and water quality at the Site.

IV. Require Defendants to evaluate and properly manage all hazardous waste and other petroleum contamination at the Site in accordance with MPCA rules and statutes.

V. Require Defendants to report, cleanup and properly manage all releases of hazardous substances, hazardous waste, pollutants or contaminants, and petroleum, or any constituents thereof, in accordance with MPCA requirements.

VI. Assess against Defendants a civil penalty, pursuant to Minn. Stat. § 115.071, in an amount to be determined by the Court, for their failure to comply with the Administrative Order and for their failure to comply with MPCA statutes and rules related to hazardous waste, underground storage tanks, and water quality.

VII. Direct that Defendants reimburse the MPCA for its costs and expenses pursuant to Minn. Stat. § 115C.04, subd. 1 and Minn. Stat. § 115C.03, subd. 3.

VIII. Direct that costs and disbursements of this action, including attorney fees, be awarded to the State, pursuant to Minn. Stat. § 115.072.

MINNESOTA  
JUDICIAL  
BRANCH

IX. Grant such further and other relief as the Court deems just and proper.

Dated: May 3, 2023

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

s/ Oliver J. Larson  
OLIVER J. LARSON  
Assistant Attorney General  
Attorney Reg. No. 0392946

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1265 (Voice)  
(651) 297-4139 (Fax)  
oliver.larson@ag.state.mn.us

ATTORNEY FOR MINNESOTA POLLUTION  
CONTROL AGENCY

MINNESOTA  
JUDICIAL  
BRANCH

**MINN. STAT. § 549.211  
ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2020).

OFFICE OF THE ATTORNEY GENERAL  
STATE OF MINNESOTA



Dated: May 3, 2023

Oliver J. Larson  
Assistant Attorney General  
Atty. Reg. No. 0392946

445 Minnesota Street, Suite 900  
St. Paul, Minnesota 55101-2127  
(651) 757-1265 (Voice)  
oliver.larson@ag.state.mn.us

ATTORNEY FOR MINNESOTA  
POLLUTION CONTROL AGENCY

MINNESOTA  
JUDICIAL  
BRANCH

Exhibit A  
Administrative Order



MINNESOTA  
JUDICIAL  
BRANCH

**STATE OF MINNESOTA**  
Minnesota Pollution Control Agency

In the Matter of  
Gurek, Inc.

**ADMINISTRATIVE ORDER**

This Administrative Order (Order) is issued by the Minnesota Pollution Control Agency (MPCA) to GUREK INC. (Regulated Party) pursuant to Minn. Stat. § 116.07, subd. 9, Minn. Stat. § 115.03(e) and Minn. Stat. § 115.071.

**BACKGROUND**

1. The Regulated Party is a domestic business corporation and operates a gas station facility located at 15 2<sup>nd</sup> Ave NE, Elgin, Minnesota 55932 hereinafter referred to as the “Facility.”

2. The Regulated Party is an owner of underground storage tanks which hold hazardous substances as defined by Minn. R. 7150.0030.

3. Minnesota Statutes § 116.07 authorizes the MPCA to adopt rules for hazardous waste management, and §§ 115.03, 115.071, 115C.03 authorizes the MPCA to enforce chapter 116 and rules adopted under it.

4. On March 28, 2022, the City of Elgin received a complaint from an individual concerned of the odor of gasoline coming from a storm sewer in Elgin, Minnesota. Investigation tracked the odor and discovered gasoline entering an underground sewer which then discharged to a nearby trout stream.

5. On March 29, 2022, MPCA staff identified a Cenex gas station (the Facility) that had multiple leak alarms for the underground piping of the underground storage tanks. MPCA’s investigation would later reveal two holes in separate pipes that had likely been leaking for many years, requiring both replaced piping and remediation of the contamination. Use of the pipes were discontinued, and work was completed to prevent vapors and liquid petroleum from entering the storm sewer line at the storm drain.

6. On June 22, 2022, the Regulated Party and MPCA entered into an access agreement authorizing MPCA, its employees, and agents to enter the Facility to investigate and/or take such response actions as the MPCA deems necessary to respond to the full scope of the release of hazardous substances and pollutants or contaminants at the facility.

7. Since then, the MPCA has learned that the Facility experienced a significant release of petroleum from its fuel distribution piping. Response actions included interim product containment with booms, ventilation of the storm sewer network, the collection of approximately 3,000 gallons of free-floating petroleum i.e. light non-aqueous phase liquid (“LNAPL”) from observation wells in the underground storage tanks basin of the Facility, an initial subsurface investigation including (a) soil borings (b) monitoring and recovery wells, and (c) soil vapor



probes, and the installation of a corrective action system to stabilize the movement of LNAPL in the subsurface.

8. While some of the LNAPL has been removed from the underground storage tank basin, approximately .8 foot remains sitting below the tanks, in addition to contaminants which seeped into the soil below.

9. During remediation efforts MPCA recently discovered a water main constructed of polyethylene ("HDPE") aligned North-South in 2<sup>nd</sup> Avenue NE traveling parallel to the facility and crossing below the impacted storm sewer line. Soil boring data suggests that the potential exists for the HDPE main to be in contact with the remaining LNAPL in one or more areas, raising concern for possible water line permeation.

10. In early October 2022, MPCA directed contractors to begin a water line permeation risk assessment and investigatory procedures to determine whether water main permeation exists, and if so the potential area of contamination.

11. As a part of this work, on October 18, 2022, MPCA and the Minnesota Department of Health ("MDH") began supplying residents of an apartment building located at 35 2<sup>nd</sup> Avenue NE in Elgin, Minnesota with bottled water. Staff determined this precaution necessary due to the apartment buildings proximity to the facility and unknown extent of the petroleum release. Residents were also provided with recommendations to limit showers/bathes and open windows or use ventilation while showering or bathing.

12. On October 31, 2022, MPCA received results of the water sampling from the apartment building which revealed the presence of petroleum contaminants in the drinking water, including benzene and toluene, which exceeded acceptable MDH health-based limits.

13. On November 9, 2022, MPCA staff met with the Regulated Party to provide an overview of the current situation at the Facility. During this conversation, staff informed the Regulated Party that MPCA believed it would be necessary to remove the Facility's underground storage tanks in order to remove the impacted soil and free product.

14. On November 10, 2022, MPCA installed a granular activated carbon (GAC) filtration system at the apartment building located at 35 2<sup>nd</sup> Avenue NE in Elgin, Minnesota. The MPCA also identified two other affected properties with water samples indicating petroleum contamination.

15. The MPCA is currently examining the City of Elgin's drinking water distribution system to determine the extent of contamination. Simultaneously, MPCA is investigating to determine the extent of underground contamination from the Facility.

16. As of November 14, 2022, the underground storage tanks remain in place with MPCA unable to remediate the soil in a timely manner and minimize the threat to human health and spread of the plume.

## FINDINGS OF FACT AND CONCLUSIONS

1. The Petroleum Release Cleanup Act directs MPCA to oversee the prompt investigation, cleanup, and closure of petroleum releases from storage tanks or storage tank systems. Minn. Stat. Ch. 115C.

2. Minnesota Statute section 115C.03, subdivision 1 authorizes the commissioner to order a responsible party to take reasonable and necessary corrective actions to address petroleum releases. In doing so, the commissioner shall notify the owner of real property where corrective action is ordered to be taken that the responsible party has been ordered to take corrective actions.

3. Minnesota Statute section 15C.03, subdivision 3 authorizes the commissioner to take emergency corrective actions to assure adequate response to a release if the commissioner determines that the release “constitutes a clear and immediate danger requiring immediate action to prevent, minimize, or mitigate damage to the public health and welfare or the environment.”

4. Minnesota Statute section 115B.17 specifies that whenever there is a release or substantial threat of release from a facility of any pollutant or contaminant which presents and imminent and substantial danger to the public health or welfare or the environment, the agency may take removal or remedial action relating to the hazardous substance, or pollutant, or contaminant, which the agency deems necessary to protect the public health or welfare.

5. Minnesota Statute section 115E.05 further authorizes the commissioner to, by order, require a person to comply with the prevention and response requirements outlined where oil or a hazardous substance is discharged and land, water, or air of the state is polluted or threatened; or human life, safety, health, natural resources, or property is damages or threatened.

6. Pursuant to Minnesota Statute Chapter 115C, MPCA has established the Petroleum Remediation Program. Under this program, incidents at sites require an assessment of the potential risks to human health, safety, and the environment. The assessment must consider both direct and indirect effects from spills of chemicals, petroleum, and hazardous substances; fires or explosions; soil and sediment contamination; and threats to receptors. Exposure to any toxic, irritating, or asphyxiating gas and the effects of surface water runoff from chemicals and firefighting agents are a primary concern in all responses.

7. Under the remediation program, emergencies within the Petroleum Remediation Program can occur during any phase of the cleanup process and often are commonly associated with investigations and remedial or corrective actions. MPCA holds that an emergency exists if any of the following universal thresholds are confirmed:

- a. The incident exceeds the local response capability;
- b. The incident exceeds the MPCA Program response capability;
- c. A pool of free product on land;
- d. Ongoing discharge to surface water, a sewer, utility conduit or drain time;

- e. Any petroleum or hazardous substance release with a presence of explosive vapor (>10% lower explosive limit);
  - f. Detection of contamination in a drinking water well above the U.S. EPA Maximum Contaminant Level, MDH drinking water health risk limits (“HRLs”) or MDH staff recommendation.
  - g. Immediate threat to a receptor, including but not limited to:
    - i. An existing drinking water well;
    - ii. Industrial water intakes;
    - iii. Surface water;
    - iv. Building or utility conduits; and/or
  - h. Impacts to sensitive environments;
  - i. Vapor intrusion with contaminant concentrations exceeding 33 times the MPCA Expedited Intrusion Screening Values with the exception of trichloroethylene;
  - j. Operating remediation system malfunction from equipment failure or natural disaster:
    - i. Potential or actual release of petroleum or another hazardous substance;
    - ii. Immediately Dangerous To Life or Health (IDLH) atmosphere or vapors;
    - iii. Hazardous substance incompatible with ambient conditions; and
    - iv. Containment exposure to the public.
8. Additionally, the MPCA has established specific guidelines for petroleum release emergencies including:
- a. Sudden catastrophic release or substantial missing petroleum or hazardous substance from a tank or tank system;
  - b. Potential or actual release of a hazardous substance resulting in one or more of the following conditions:
    - i. Explosions;
    - ii. Fire and smoke;
    - iii. Incompatible with ambient conditions;

- iv. Oxygen enrichment or deficiency;
- v. Immediately dangerous to life or health levels of any substance;
- vi. Indications of an unstable container such as leaking, bulging, hissing, fuming, discolored or white residue crystals on container, and/or stained soils or dead wildlife near container or waste;
- vii. Unexploded ordinance, munitions, or containers of unknown waste with potential to contain a hazardous substance that is reactive, corrosive and toxic, or stored or released in a confined space.

9. MPCA issues this emergency administrative order in consideration of the forgoing requirements, guidelines, and authority outlined for emergency petroleum responses.

10. MPCA determined the petroleum contamination at the basin of the underground storage tanks located at the facility to be an ongoing source of petroleum contamination. The recovery well where the tanks sit show evidence of free product and saturated soil being a source of continued area petroleum contamination. This plume will continue to contaminate and grow without immediate remediation.

11. Presently, MPCA is aware of several immediate threats to human health which necessitate emergent response caused by the existence of the contaminated storage tank basin. On October 31, 2022, MPCA detected contamination in the drinking water of nearby residences exceeding MDH's health risk limits.

12. Since that time, MPCA determined the existence of several service lines which are currently being impacted by the contamination plume, including but not limited to, a water main traveling from the facility to the affected apartment building. The failure to act could result in substantial widespread impact to the main water line and degradation of the City of Elgin's drinking water.

13. MPCA determined that the contaminated area also rests in proximity with natural gas service lines. Changing temperatures present the risk of frozen soil which would trap vapors and presenting danger to nearby residents who operate furnaces and/or heaters that could pull the vapors into their homes causing injury and/or death.

14. MPCA determined that LNAPL beneath the tanks has contaminated the soil and is susceptible to transfer in the groundwater. As large recharge events occur the plume will continue to grow and spread. If the soil is not immediately remediated, there is a high probability that the contaminated soil and free product will spread throughout the surrounding areas causing harm to human health.

15. In coming to these findings, MPCA determined the Regulated Party violated several Minnesota Rules which may necessitate future Administrative Orders. In particular, Minnesota Rule 7150.0250, subpart 1A requires that owners and operated must immediately

investigate and remedy all unusual operating conditions in an underground storage tank (“UST”) system. The owner or operator must take the UST system out of service unless:

- a. The usual operating condition is investigated and resolved in accordance with this chapter;
- b. Any defective components are isolated from the UST system to prevent a leak; or
- c. Any defective components or equipment are repaired by a person certified under chapter 7105.

16. On March 29, 2022, MPCA staff observed and documented that the Regulated Party failed to immediately investigate the suspected release indicated by the UST system electronic line leak detector. The electronic line leak detector notified the Regulated Party of an unusual operating condition on December 17, 2021. The Regulated Party’s failure to immediately investigate the unusual operating conditions resulted in extensive contamination of the tank basin and surrounding areas.

17. Minnesota Rules require owners and operators must immediately investigate, confirm, and remedy all suspected releases. Within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition by:

- a. conducting a visual inspection of aboveground and exposed below-grade components of a UST system for leaks and deficiencies; and
- b. if applicable, repeating any leak test that indicated an unusual operating condition, conducted according to part 7150.0330, subpart 5, 6, or 6a, or 7150.0340, subpart 2, item A; 3, item B; or 4, item
- c. Upon discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), owners and operators must initiate within 24 hours and complete within seven days the following:
  - i. tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and...

18. On March 29, 2022, MPCA staff observed and documented the Regulated Party failed to investigate and remedy suspected releases. The regular unleaded gasoline electronic line leak detector was indicating the line did not pass a 0.2 gallons per hour (gph) leak test beginning on December 17, 2021, and daily after that until January 27, 2022. On January 28, 2022, an error code on the electronic line leak detector indicated it was not functioning properly because of no communication with controller. The failed tests and error codes were not investigated, or a line tightness test was not conducted to confirm a suspected release until MPCA conducted the complaint inspection on March 29, 2022.

19. Minnesota Rule 7550.0340 requires that a periodic test of piping be conducted:



- a. Annually by an agency-approved tester, if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; or
- b. Monthly, if it can detect a 0.2 gallon per hour leak rate at standard operating pressure.

20. On March 29, 2022, MPCA staff observed and documented the monthly electronic line leak detector did not pass the required 0.2 gph monthly tightness test since December 16, 2021.

21. Minnesota Rule 7150.0345, subpart 2A requires a person who has knowledge of a release from a UST system under that person's control must immediately notify the Minnesota duty officer upon discovering the release by calling 1-800-422-0798 and must begin recovering the substance according to Minnesota Statutes, section 115.061. Notice under this subpart is also required if:

- a. The owners and operators discover a release of a regulated substance at the underground tank site or in the surrounding area;
- b. An unusual operating condition exists, unless:
  - i. the system component is immediately repaired or replaced; and
  - ii. for secondarily contained systems, any liquid in the interstitial space not used for monitoring is immediately removed; or
- c. Monitoring results from a release-detection method or alarm indicates a release may have occurred, unless:
  - i. the monitoring device or alarm is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial results;
  - ii. the leak is contained in a secondary-containment space and:
  - iii. any liquid in the secondary-containment space not used for monitoring is immediately removed; and
  - iv. any defective system equipment or component is immediately repaired or replaced; or
  - v. the alarm is investigated and determined to be a non-release event.

22. On March 29, 2022, MPCA staff observed, and documented party did not immediately report the release or unusual operating condition to the Minnesota duty officer.

**ORDER**

NOW, THEREFORE, IT IS ORDERED:

1. The Regulated Party shall submit documentation to the MPCA by 12:00 p.m. on November 19, 2022, that a qualified contractor has been hired to remove all underground petroleum storage tanks located at the Facility and all free product and contaminated soil. The documentation shall also identify that this work will commence on November 21, 2022. These actions shall be completed in accordance with Minnesota Rule 7150, and Minnesota Statute Chapter 115C and section 115.061. The documentation shall be submitted to Nathan Blasing by email at [nathan.blasing@state.mn.us](mailto:nathan.blasing@state.mn.us).

MINNESOTA  
JUDICIAL  
BRANCH

**RESERVATION OF AUTHORITY**

Nothing in this Order shall prevent the MPCA from taking action to enforce the requirements of this Order, or from requiring additional action by the Regulated Party if necessary, to ensure compliance with MPCA rules and statutes. In addition, the issuance of this Order is not an exclusive action or remedy by the MPCA, and it does not limit in any way the MPCA's authority to bring an enforcement action against or to seek and collect penalties from the Regulated Party. This Order is issued to require immediate action to correct violations, and it does not limit or preclude any other action, including the issuance of further orders, pursuit of injunctive or other relief, or commencement of enforcement actions and collection of penalties.

This Order is effective upon the date that it is signed by the MPCA Commissioner or designee.

**IT IS SO ORDERED.**

**STATE OF MINNESOTA  
POLLUTION CONTROL AGENCY**

By: Ryan Ricci

Ryan Ricci  
Manager  
Emergency Readiness Section  
Operations Division

Date: 11/15/2022