SUPREME COURT OF NEW JERSEY

In re Appeal of the New Jersey Department of Environmental Protection's September 6, 2022 Denial of Request for Adjudicatory Hearing under N.J.A.C. 7:26C-9.10, Dated May 12, 2022, Concerning the Department's April 20, 2022 Notice of Remediation in Progress Waiver Rescission	Docket No.: 089182 Civil Action On Petition for Certification from the Opinion of the Superior Court of New Jersey, Appellate Division, in Docket No. A-000511-22 Sat Below: Hon. Mary Gibbons Whipple, P.J.A.D. Hon. Jessica R. Mayer, J.A.D. Hon. Catherine I. Enright, J.A.D.

BRIEF OF INTERVENOR 760 NEW BRUNSWICK URBAN RENEWAL LIMITED LIABILITY COMPANY IN OPPOSITION TO THE PETITION FOR CERTIFICATION

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PRELIMINARY STATEMENT

Petitioner Clarios, LLC ("Clarios") seeks certification of the published decision affirming the denial of its adjudicatory hearing request by the New Jersey Department of Environmental Protection ("DEP" or the "Department").

In 2007, Clarios ceased operations of an industrial establishment, thus triggering the environmental investigation and remediation requirements of the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq. However, DEP issued to Clarios a remediation in progress ("RIP") waiver (the "RIP Waiver") because another party already had begun remediating the site; the RIP Waiver temporarily suspended Clarios' obligations under ISRA. DEP later rescinded the RIP Waiver when the first remediation case that formed the basis of the RIP Waiver fell out of compliance. DEP subsequently denied Clarios' request for an adjudicatory hearing to challenge the rescission of the RIP Waiver.

The Appellate Division correctly affirmed DEP's hearing denial. Applying well-established constitutional principles, the court found that Clarios lacked a "legitimate claim of entitlement" to the continued validity of the RIP Waiver when the first remediation is no longer in progress. DEP's regulations reserve the Department's ability to enforce ISRA against recipients of RIP waivers, and, in the RIP Waiver itself, DEP similarly notified Clarios that it could become liable under ISRA. Under these circumstances, Clarios merely

had a "unilateral expectation" that its RIP Waiver could remain in place perpetually even if a prerequisite for the waiver—the ongoing remediation of the site under the prior remediation case—was no longer satisfied. Thus, Clarios did not have a property interest protected by due process that required DEP to grant the hearing request.

Further, Clarios has not established special reasons why certification would be in the general public interest. The Appellate Division's decision on a narrow procedural issue under these unusual facts will have little to no impact on the real estate market, and certainly not the drastic impacts Clarios predicts. At bottom, Clarios' hearing request, its appeal, and now this Petition are procedural pretexts to postpone its inevitable ISRA remediation obligation, supported by flimsy legal arguments. The Petition should be denied.

PROCEDURAL HISTORY

DEP issued the RIP Waiver to Clarios on March 12, 2007. 1a. By the "Notice of Remediation in Progress Waiver Rescission" dated April 20, 2022 (the "Rescission Letter"), DEP rescinded the RIP Waiver. 2a-4a.

Clarios requested an adjudicatory hearing in a letter to DEP dated May 12, 2022 (the "Hearing Request"). 5a-24a. The Department denied the Hearing Request by letter dated September 6, 2022 (the "Hearing Denial"). 33a-34a.

Clarios appealed the Hearing Denial to the Appellate Division on October 14, 2022. 35a-42a. The Appellate Division granted the motion to intervene of 760 New Brunswick Urban Renewal Limited Liability Company ("Urban Renewal") on December 22, 2022.

On February 5, 2024, in a published decision by Judge Whipple (the "Decision"), the Appellate Division affirmed the Hearing Denial. Pa1-Pa14.

STATEMENT OF FACTS

Before 2006, Delphi Automotive Systems, LLC ("Delphi") operated an industrial establishment at property located at 760 Jersey Avenue, New Brunswick, New Jersey (the "Site"). 3a. Delphi sold the Site to Clarios in July 2006. 3a. This transaction triggered ISRA for the first time for the Site; Delphi became the "responsible party" for this case (ISRA case no. E20060211). 2a-3a. At this time, Delphi established a "remediation funding source" ("RFS")[1] in the form of a $535,000.00 remediation trust fund. 3a.

Clarios ceased its operations at the Site in 2007, which triggered a new ISRA case for which Clarios was responsible (ISRA case no. E20070027, referred to herein as the "Clarios ISRA Case"). 2a-3a. On March 12, 2007, DEP

[1] The responsible party for an ISRA case must establish an RFS in an amount equal to the estimated cost of remediation. N.J.S.A. 58:10B-3; N.J.A.C. 7:26C-5.2(a)(1); N.J.A.C. 7:26C-5.3(a).

granted Clarios the RIP Waiver for the Clarios ISRA Case because Delphi already was remediating the Site and had established the RFS. 2a-3a.

Clarios conveyed the Site to DeNovo New Brunswick, LLC ("DeNovo") in 2011. 3a. At this time, DeNovo provided an indemnity to Clarios, and, in the Federal Litigation, discussed infra at 5, Clarios has asserted a claim against DeNovo for the cost of remediating the Site. 6a; URa138-URa142.

DeNovo subsequently conveyed the Site to Urban Renewal. 3a. At this time, DeNovo owned 60% of Urban Renewal and Wick Companies, LLC ("Wick") owned the remaining 40% of Urban Renewal. URa3.

On January 11, 2013, DeNovo assumed the responsibility for the first ISRA case, i.e., ISRA case no. E20060211 (the "DeNovo ISRA Case"). 3a. An RFS for the DeNovo ISRA Case in the form of a $1,825,000.00 remediation trust fund was in place. 3a. DeNovo utilized these funds to investigate and remediate environmental contamination at the Property. 3a.

In 2015, DeNovo sold its 60% interest in Urban Renewal to 760 Jersey Avenue New Brunswick, LLC. URa3. Wick also previously had assigned its 40% interest in Urban Renewal to 760 Jersey Avenue New Brunswick, LLC. URa3. After this 2015 transaction, DeNovo did not have any ownership interest in Urban Renewal or the Site. URa145. DeNovo nevertheless remained the responsible party for the DeNovo ISRA Case.

On July 25, 2019, the licensed site remediation professional ("LSRP") supervising the performance of the DeNovo ISRA Case informed DEP that the estimated cost to complete the remediation had increased such that the estimated cost of completion exceeded the balance of the RFS by approximately $250,000.00. URa13-URa14. Wick informed Clarios in August 2019 about this shortfall in funding of the RFS for the DeNovo ISRA Case. URa72; URa125. In subsequent submittals in 2020 and 2021, after DeNovo had performed further work, the LSRP certified that $0 remained in the RFS but further remediation is required. URa22-URa23; URa34-URa35.

In April 2020, Urban Renewal and DeNovo filed suit against Clarios and Navigators Specialty Insurance Co. seeking relief regarding the environmental remediation of the Site; in that case, Urban Renewal asserted a claim against Clarios under ISRA.[2] URa83-URa84; URa95. In moving to dismiss this claim, Clarios argued that the RIP Waiver relieved it of any ISRA obligations. URa109. In December 2021, the federal court granted the motion, holding that "unless further action is taken by NJDEP, [Clarios] has no obligations to remediate the [Site] under the ISRA."[3] URa113, URa115-URa116.

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[2] That action is styled as 760 New Brunswick Urban Renewal Limited Liability Co. et al. v. Navigators Specialty Insurance Co., No. 3:20-cv-05877 (D.N.J.) (the "Federal Litigation").

[3] In light of DEP's rescission of the RIP Waiver, and after briefing in the Appellate Division was completed, the federal district court granted Urban

In November 2021, DEP directed the LSRP for the DeNovo ISRA Case to withdraw the Remedial Investigation ("RI") Report that had been submitted to the Department in March 2019. URa42-URa50. DEP had determined that the "ecological evaluation" included in the RI Report was incomplete, so "the RI for the [S]ite is also incomplete." URa44. The LSRP's withdrawal of the RI Report caused the Site and the DeNovo ISRA Case to be out of compliance with both the RI and Remedial Action deadlines. URa51; URa62; 3a.

In light of these instances of non-compliance, DEP contacted the LSRP for the DeNovo ISRA Case and requested that DeNovo enter into an Administrative Consent Order ("ACO"). 20a-21a. Having been informed of these developments by the LSRP, counsel for Urban Renewal wrote to the DEP staffer who had requested the ACO and advised that "[t]he remediation costs and funding are the subject of [the Federal Litigation]" and noted "the inability of the person responsible for conducting remediation [i.e., DeNovo] to replenish the [RFS]." 19a-20a. In a follow up email on February 16, 2022, Urban Renewal provided a copy of the opinion dismissing Urban Renewal's ISRA claim in the Federal Litigation. 19a. In response to this information, DEP advised Urban Renewal on March 21, 2022, that it was considering rescinding the RIP Waiver.

Renewal's motion to file a Supplemental Second Amended Complaint reasserting its ISRA claim against Clarios.

17a-18a. Urban Renewal wrote in response, "The validity of the [RIP] Waiver has been a key issue in the [Federal Litigation]." 17a.

DEP issued the Rescission Letter rescinding the RIP Waiver on April 20, 2022. 2a-4a. The Rescission Letter noted that the DeNovo ISRA Case was out of compliance because of the missed deadlines and the failure to maintain an RFS, and stated that the RIP Waiver "was conditioned on [the DeNovo ISRA Case] remaining in compliance with applicable laws and regulations…." 2a-4a.

Clarios submitted the Hearing Request on May 12, 2022. 5a. Clarios raised two factual disputes in the Hearing Request relating to "DeNovo's financial ability to fund the [RFS]" and the existence of "proof that DeNovo is unable to fund completion of remediation at the Site." 12a.

On September 6, 2022, the Department issued the Hearing Denial and denied Clarios' request for an adjudicatory hearing because issuance of the Rescission Letter is not a "contested case" under the Administrative Procedure Act. 2a-4a. This appeal followed.

ARGUMENT

I. THE APPELLATE DIVISION CORRECTLY HELD THAT CLARIOS DID NOT HAVE A PROPERTY RIGHT PROTECTED BY DUE PROCESS IN THE CONTINUED VALIDITY OF THE RIP WAIVER.

The Appellate Division affirmed DEP's Hearing Denial based on well-settled constitutional principles. The court held that due process protections "are

not implicated" by DEP's rescission of the RIP Waiver "if neither a liberty nor a property interest is threatened." Pa8. A person may have a protected property interest in a government-conferred benefit, like a RIP waiver. Pa9. However, such a benefit becomes a constitutionally-protected property interest only if the recipient of the benefit has a "legitimate claim of entitlement" to it. Pa9. A party's "unilateral expectation" of receiving or maintaining a benefit is insufficient. Pa9 (quoting Thomas Makuch, LLC v. Twp. of Jackson, 476 N.J. Super. 169, 185 (App. Div. 2023), certif. denied, 2024 N.J. LEXIS 180 (Mar. 5, 2024)). Rather, the property interest must come from "existing rules and understandings that stem from an independent source such as state law," i.e., "the statutes, regulations, and case law" concerning the benefit. Pa9-Pa10.

After examining the ISRA statute, DEP's implementing regulations regarding RIP waivers, and the RIP Waiver granted to Clarios, the court correctly determined that Clarios did not have a legitimate claim of entitlement to the continued validity of its RIP Waiver.

The court observed that the benefit conferred by a RIP waiver under the statute is the ability of the ISRA-triggering party (i.e., Clarios) to close operations or transfer ownership "prior to 'obtaining [DEP] approval of a remedial action workplan or a negative declaration or without the approval of a remediation agreement.'" Pa11 (citing N.J.S.A. 13:1K-11.5(a)); accord N.J.S.A.

13:1K-11.5(b) (if DEP finds that the prerequisites for a RIP waiver are met and grants the waiver, "the applicant may close operations or transfer ownership or operations…"). The statute is silent as to what DEP may or may not do where, as here, the underlying remediation underpinning the RIP waiver falls out of compliance after the RIP waiver recipient closed or transferred its operations.

DEP's regulations make clear, however, that DEP reserves the right to require the RIP waiver recipient to comply with ISRA and, thus, rescind the RIP Waiver. Under the regulations, receipt of a RIP waiver "may not relieve the owner or operator … of the obligations to remediate the industrial establishment pursuant to ISRA." N.J.A.C. 7:26B-1.8(b) (cited at Pa11). Indeed, the court below observed that the RIP Waiver itself stated, "By issuing this [RIP Waiver], [DEP] continues to reserve all rights to pursue appropriate enforcement actions allowable under the law for violations of ISRA as associated with this transaction." Pa12; 1a. Under these circumstances, the Appellate Division held that Clarios' reliance "upon the suspension of [its] remediation obligation" was only based on its "unilateral expectation that the prior remediation … would remain compliant." Pa12. Clarios lacked a legitimate claim of entitlement and so lacked a property interest requiring DEP to grant the Hearing Request.

Clarios' criticisms of the Appellate Division's reasoning miss the mark.

A. The Appellate Division's reasoning is not internally contradictory.

Clarios argues that reversal is warranted because of a claimed contradiction in the Decision. As the argument goes, the Decision at one point states that "the RIP waiver recipient's ISRA obligation to remediate … is suspended," see Pa4, but the Decision later states, "the RIP waiver does not suspend the need to remediate the industrial establishment," see Pa12. Pet. 13.

It is clear from the context that the later statement ("the RIP waiver does not suspend") refers to the "need" in general for the industrial establishment to be remediated; someone responsible under ISRA must remediate, whether it is the party responsible for the first ISRA case or, failing that, the recipient of the RIP waiver. The court stated later on the same page that Clarios relied "upon the suspension of [its] remediation obligation" based on its understanding that "the prior remediation … would remain compliant." Pa12. The court plainly acknowledged that a RIP waiver suspends the recipient's ISRA obligation as long as the prior remediation is compliant.

B. The Appellate Division correctly held that an RIP waiver remains effective only so long as the first ISRA case remains in compliance.

In its Petition, Clarios argues for the first time that "ISRA does *not* state that the waiver stays in place only 'so long as' the first ISRA case remains in compliance." Pet. 18 (emphasis in original); accord Pet. 15. The implication is that the Hearing Denial and the Decision are erroneous because the RIP Waiver

could not have been rescinded even if the DeNovo ISRA Case was out of compliance. This argument is procedurally improper and substantively wrong.

Clarios improperly raised this new argument in its Petition. See Zaman v. Felton, 219 N.J. 199, 226 (2014) (claim not raised below "was properly dismissed by the Appellate Division"). Further, even if Clarios had raised this legal argument in its Hearing Request or before the Appellate Division, it would have been inappropriate to hear this purely legal issue in an adjudicatory hearing. "Due process never requires a trial on non-factual issues…." Bally Mfg. Corp. v. N.J. Casino Control Comm'n, 85 N.J. 325, 334 (1981).[4]

Clarios also is wrong that ISRA prevents DEP from rescinding a RIP waiver when the underlying remediation is out of compliance. "In the absence of a legislative restriction, administrative agencies generally have the inherent power to reopen or to modify and rehear prior decisions" subject to "limitations relating to fairness and reasonableness." Application of Trantino, 89 N.J. 347, 364 (1982). Thus, because the statute does not prohibit DEP from rescinding a RIP waiver, DEP has inherent power to reconsider its grant of a RIP waiver. See

[4] If Clarios wished to raise this legal argument, the proper course would have been to file a notice of appeal from the Rescission Letter itself, rather than from the Hearing Denial, within 45 days of the Hearing Denial. See Musconetcong Watershed Ass'n v. N.J. Dep't of Envtl. Prot., 476 N.J. Super. 465, 479 (App. Div. 2023) (underlying DEP decision became final and appealable when the Department denied adjudicatory hearing request). Clarios failed to do so.

N.J.S.A. 13:1K-11.5. Further, it is well within the bounds of fairness and reasonableness for DEP to rescind a RIP waiver when the underlying remediation is not in compliance, as a statutory prerequisite for the RIP waiver—"the industrial establishment is already in the process of a remediation"—is no longer satisfied. Id. DEP acted within the bounds of its statutory authority when it rescinded the RIP Waiver.

C. The fact that DEP should have a reason for rescinding a RIP waiver—the non-compliance of the underlying remediation case—did not entitle Clarios to an adjudicatory hearing.

Clarios argues that an adjudicatory hearing is required for any rescission of a RIP waiver because DEP cannot arbitrarily rescind a waiver.

> But assuming that the RIP waiver can be rescinded when the primary remediation falls out of compliance, that precondition is necessary for the rescission, a point that even the … [D]ecision seems to concede. So the waiver cannot be suspended without cause, a fact establishing the existence of a property interest.

Pet. 18-19. This argument fails.

The fact that the state must have "cause" for removing a benefit does not always create a constitutionally-protected property right. Where, as here, the benefit is revoked for cause due to the actions of another party over whom the party seeking a hearing has no control, there is no property right and no right to a hearing for that party. O'Bannon v. Town Court Nursing Ctr., 447 U.S. 773 (1980) (nursing home residents who received Medicaid did not have protected

property interest, and thus had no hearing rights, where the government terminated the nursing home's eligibility to participate in Medicaid through no fault of nursing home residents); see also Forrest Hill Cmty. Ass'n v. Pub. Serv. Elec. & Gas Co., Civil Action No. 19-16692 (ES) (MAH), 2022 U.S. Dist. LEXIS 150036, at *32-33 (D.N.J. Aug. 21, 2022) (refusing to find a property interest "simply because local officials do not have unfettered discretion").

Further, Clarios in particular does not have a right to an adjudicatory hearing based on this rationale. That is, even if it is true that DEP must have cause before rescinding a RIP waiver, Clarios never argued that the requisite cause—the non-compliance of the DeNovo ISRA Case—was absent. "An agency must grant a plenary hearing only if material disputed adjudicative facts exist." J.D. *ex rel.* D.D.H. v. N.J. Div. of Developmental Disabilities, 329 N.J. Super. 516, 525 (App. Div. 2000). Here, the only material fact—whether or not the underlying remediation case is in compliance—is undisputed. See 11a-12a (only disputed facts Clarios identified related to the financial condition of DeNovo, not the status of the remediation). This Court should not intervene where granting Clarios' requested hearing would be futile.

II. CLARIOS HAS NOT MET THE HIGH BAR FOR CERTIFICATION.

Rule 2:12-4 sets out the standard for the Court's discretionary grant of certification in the limited circumstances where:

- "the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court;"
- the question presented is "similar to a question presented on another appeal to the Supreme Court;"
- "the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision;" or
- "the interest of justice requires."

Certification is not permitted "except for special reasons." Id. The Petition falls well short of this high bar.

A. There is no conflict that the Court must settle between the published decision below and the unpublished Gumm decision.

Clarios criticizes the court below for not relying on or distinguishing the unpublished Appellate Division opinion in Frederick Gumm Chemical Co. v. NJDEP, No. A-1056-05, 2007 N.J. Super. Unpub. LEXIS 1399 (App. Div. June 1, 2007). Pet. 7, 10. That unpublished decision does not create a split of authority with the published Decision in this matter that this Court must step in to resolve.

The unpublished decision in Gumm does not "constitute precedent" and is not "binding upon any court." R. 1:36-3; accord Trinity Cemetery v. Wall Twp., 170 N.J. 39, 48 (Verniero, J., concurring) (an unreported decision "cannot reliably be considered part of our common law"). Indeed, the court rules prohibited the Appellate Division from citing Gumm in the decision below. R. 1:36-3 (subject to exceptions not relevant here, "no unpublished opinion shall

be cited by any court"). The fact that the Appellate Division did not cite or distinguish an unpublished opinion cannot be reversible error. The bases that Clarios asserts for according Gumm special weight—the opinion is available on Lexis and Westlaw, it reversed DEP, and it is long—do not overcome the plain language of the Court Rules. Pet. 10-11 n.7.

In addition, Gumm is distinguishable. The court in that case held that the recipient of the revoked ISRA underground storage tank waiver[5] had a property interest "to the extent their stake in the continuing viability of the sales transaction between FGCC and Canning is concerned." Frederick Gumm Chem. Co., 2007 N.J. Super. Unpub. LEXIS 1399, at *12-13. (The ISRA obligation in Gumm arose from a transfer of operations resulting from a stock sale, see id. at *7; that stock sale transaction could have been voided under ISRA, see N.J.S.A. 13:1K-13.) Here, in contrast, Clarios' ISRA trigger was a cessation of operations, which cannot be voided, and the court below specifically observed that "the RIP [W]aiver's rescission … does not pose any apparent threat to the continued viability of the sales transaction [to DeNovo] from 2011." Pa14. As the Appellate Division below correctly observed, the fact that Clarios may be compelled to spend money as a result of the rescission of the RIP Waiver does

[5] The decision below applies only to RIP waivers, and it does not address the ISRA underground storage tank waiver that was at issue in Gumm. Pa2.

not create a property interest. Pa9 ("the economic advantage an entity receives from a benefit does not translate to a property interest"). In Gumm, but not here, more than the incurrence of remediation costs was at stake.

B. The negative impacts on real estate transactions that Clarios speculates will result from the decision will not occur; there is no question of general public importance.

The sky will not fall in the real estate market if the Appellate Division's correct Decision stands. Clarios' predictions of doom are fanciful. Pet. 7-9.

The Decision holds that a party who received an RIP waiver is not entitled to an adjudicatory hearing if DEP revokes the waiver because the prior remediation case is out of compliance. Contrary to Clarios' overwrought rhetoric, this result does not render an RIP waiver "nearly meaningless" or preclude "any notice or opportunity for hearing or challenge." Pet. 8; accord Pet. 9 n.6 (the "rescission of an RIP waiver is essentially immune from challenge" following the decision below). Judicial review would be available in the Appellate Division even if there is no adjudicatory hearing right. In re Amico/Tunnel Carwash, 371 N.J. Super. 199, 208 (App. Div. 2004).

A party considering entering into a real estate transaction who is entitled to an RIP waiver likely would not be dissuaded from entering the transaction or motivated to change its behavior in any material way based on the forum in which a potential challenge to a potential future rescission of the RIP waiver

would be litigated. Put another way, the future risk that a property seller would perceive when it receives an RIP waiver is the risk that the party conducting the underlying remediation stops performing. That risk existed before the Decision, it will continue to exist after Decision, and it should dwarf in the mind of a rational seller any risk arising from the narrow procedural issue in this case.[6]

Clarios' misguided policy argument also fails to consider that there are two sides in every real estate transaction; Clarios ignores the buyer's perspective. If Clarios prevails, a seller who received an RIP waiver may throw up unnecessary procedural hurdles to delay its inevitable obligation to remediate when the remediation underlying the RIP waiver is no longer in progress, to the detriment of its buyer. It is just as likely that Clarios' position, if adopted, would chill the real estate market because of its discouraging effect on buyers.

Finally, Clarios suggests that, "if NJDEP may rescind an RIP waiver without notice to the holder[7], it would encourage primarily responsible parties to abandon their remediation responsibilities…." Pet. 9. This hypothetical strategic non-compliance won't happen. If the underlying remediation case arises from ISRA, for example, the party that chooses not to comply would face

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[6] Clarios was aware of this risk and wisely protected itself when, as part of the 2011 transaction with DeNovo, it obtained a $10 million insurance policy covering claims for remediation of the Site. URa145.

[7] As demonstrated infra at 18-19, Clarios received ample notice that DEP was considering rescinding the RIP Waiver, so this underlying premise is false.

daily penalties of up to $25,000 for as long as the non-compliance continues. N.J.A.C. 7:26B-1.11. It is not reasonable to expect that the party responsible for the underlying remediation case who had the wherewithal to comply would risk such significant penalties on the off-chance that DEP eventually might rescind the RIP waiver and seek compliance from the waiver recipient. The parade of horribles that Clarios speculates could arise from the Decision will not materialize; thus, certification should be denied.

C. DEP did not perpetrate an injustice against Clarios requiring extraordinary Supreme Court intervention.

Clarios complains throughout its Petition that DEP treated it unfairly. E.g., Pet. 11-12. These complaints are irrelevant, misleading, or even false. They certainly do not provide grounds for this Court to intervene.

Clarios repeatedly claims that DEP rescinded the RIP Waiver without notice. E.g., Pet. 2, 4, & 11. This claim is false. Following ex parte communication from Clarios' counsel[8], DEP informed Clarios in January 2021 that "the RIP Waiver may no longer be considered in effect and Clarios[] would also be obligated to post RFS and/or remediate the site pursuant to ISRA" if DeNovo did not maintain an adequate RFS. 13a. Clarios knew at that time that

[8] According to Clarios, ex parte communications between Urban Renewal and DEP about the property Urban Renewal owns are a grave injustice warranting Supreme Court intervention. Pet. 4, 12. Curiously, Clarios never mentions its own ex parte communications with DEP and presumably considers them proper.

the DeNovo RFS was insufficient, so it had been on notice for more than a year that DEP was considering rescinding the RIP Waiver when the Department did so in April 2022. Clarios should not have been surprised by DEP's action.

Clarios' identification of Urban Renewal as a "former subsidiary" of DeNovo misleadingly suggests that Urban Renewal conspired with DeNovo to "siphon" funds that could have been used for remediation and stick Clarios with the bill. Pet. 1, 3, 9 n.6. These insinuations are unwarranted. After February 2015, DeNovo had no interest in Urban Renewal. When the facts giving rise to the Federal Litigation and ultimately Clarios' appeal here arose in 2019, Urban Renewal was not a "subsidiary" of DeNovo. Neither Urban Renewal nor its current principal ever had a controlling ownership interest in DeNovo, so they had no control over DeNovo's disposition of funds it received from Clarios in 2011. URa144-URa145. To the extent that Clarios wishes to pursue a claim that DeNovo "siphoned" funds that it should have retained, the appropriate forum is the Federal Litigation in which Clarios has asserted an indemnification claim against DeNovo, not a collateral administrative proceeding before DEP.

Clarios also insinuates darkly that DEP should have granted the Hearing Request because of "very serious questions about the motivations and interests of the party that requested that NJDEP rescind Clarios' RIP waiver." Pet. 12. As Clarios knows, Urban Renewal communicated with DEP about the dismissal of

its ISRA claim in the Federal Litigation and the Department's decision to rescind the RIP Waiver. 15a-20a. Urban Renewal's motivation and interest in the matter is no mystery. Urban Renewal owns the Site, believes Clarios is responsible under ISRA for completing remediation of the Site, and has an obvious interest in ensuring that Clarios fulfills that obligation. An adjudicatory hearing is not needed to answer these questions. Further, Urban Renewal's "motivations and interests" are irrelevant to the question presented in this litigation. Regardless of Clarios' innuendos about Urban Renewal, the Decision upholding DEP's Hearing Denial is correct as long as Clarios has no protected property interest in the continued validity of the RIP Waiver. As demonstrated herein, it does not.

CONCLUSION

For the foregoing reasons, Urban Renewal requests that the Petition for Certification be denied.

Respectfully submitted,

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Date: March 22, 2024

4892-4267-5118, v. 3