



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**Secretary's Order No. 2013-WH-0033**

**IN RE: DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL, DIVISION OF WASTE AND  
HAZARDOUS SUBSTANCES, SITE INVESTIGATION AND  
RESTORATION SECTION, COMPLAINANT v. CRISTINO CRUZ AND  
JUNIOR'S AUTO REPAIR CO. RESPONDENTS (JUNIOR'S AUTO  
PARTS SITE SIRS-DE-1176)**

Via Certified Mail/Return Receipt

To the Respondents, Cristino Cruz and Junior's Auto Repair Co. (Respondents):

This 27th day of August, 2013, the Department of Natural Resources and Environmental Control (Department) enters this Order in the above-referenced enforcement proceeding commenced by the Department's Division of Waste and Hazardous Substances, Site Investigation and Restoration Section (SIRS).

The Department held a hearing on May 29, 2013 before the Department's presiding hearing officer, who prepared the attached Hearing Officer's Report (Report). The Report reviews the record developed at the hearing, and recommends entry of an Order directing Respondents to undertake certain actions at the Junior's Auto Parts Site (DE-1176) (Site) to comply with the Hazardous Substances Cleanup Act, 7 Del. C. Chapter 91 (HSCA), based upon evidence submitted at the hearing. I adopt the Report's findings and conclusions and the record developed at the hearing. Accordingly, The Department directs that the Respondents shall:

- 1) Hire a qualified consultant, subject to SIRS' approval, to perform a Remedial Investigation and Feasibility Study (RI/FS) of the Site, subject to SIRS' review and approval;
- 2) Within 90 days of Respondents' receipt of this Order, submit a work plan to SIRS, for its review and approval, for the performance of a RI/FS at the Site within one (1) year of the date of Respondents' receipt of this Order;
- 3) Within one (1) year of Respondents' receipt of this Order, conduct a RI/FS of the Site and submit to SIRS a completed RI/FS Report, in a form approvable by SIRS in accordance with HSCA;
- 4) Within thirty (30) days of Respondents' receipt of any invoice;

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along with supporting documentation, from SIRS for the remedial costs incurred by SIRS at the Site, pay to SIRS the outstanding remedial costs for the Site incurred by SIRS, in accordance with HSCA, prior to and through the hearing, and subsequent to the hearing; and

5) Upon issuance of the Final Plan of Remedial Action (Final Plan) for the Site by SIRS, and after the expiration of any civil or administrative appeals by Respondents, implement the approved Final Plan in accordance with a schedule approved by SIRS.

**IT IS SO ORDERED:**

Date: 8/27/13

  
Collin P. O'Mara, Secretary



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### Hearing Officer's Report

**IN RE: DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, SITE INVESTIGATION AND RESTORATION SECTION, COMPLAINANT v. CRISTINO CRUZ, JR. AND JUNIOR'S AUTO REPAIR CO., RESPONDENTS (SIRS-DE-1176)**

This hearing officer was assigned to preside over a May 29, 2013 hearing, which was held on the Department of Natural Resources and Environmental Control (Department), Division of Waste and Hazardous Substances, Site Investigation and Restoration Section (SIRS) enforcement action against Cristino Cruz and Junior's Auto Repair Co. for alleged violations of the Hazardous Substance Cleanup Act, 7 Del. C. Chap. 91 (HSCA) and the Department regulations thereunder.

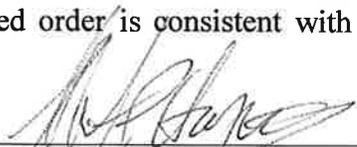
The following is a summary of the record developed at the hearing and recommended findings of fact and conclusions of law:

1. The Department is responsible for administering HSCA, and the Secretary of the Department delegated HSCA administration to SIRS, including the commencement of enforcement actions for alleged violations of HSCA.
2. SIRS and Cristino Cruz on behalf of Junior Auto Parts executed a Voluntary Cleanup Program (VCP) agreement dated November 10, 2000 for the voluntary investigation and remediation of any hazardous substances on an approximate 1.04 acre property located at 621 Garasches Lane (Site), within the City of Wilmington, New Castle County and identified as New Castle County Tax Parcel number 26-057.00-014. SIRS Ex. 3.
3. Respondent Cristino Cruz, Jr. is the owner and operator of Respondent Junior Auto Repair Co, a Delaware corporation dba Junior's Auto Parts, which operated an auto parts and repair business at the Site.
4. In a May 29, 2008 deed, Mr. Cruz purchased the Site from Curtis L. Burnett. SIRS Ex. 2.
5. The Site is within the area that was the subject of an investigation by the Department's South Wilmington Environmental Assessment of Quadrants 1,2,3 and 4 dated April 1996. That showed levels of hazardous substances in excess of allowed levels. SIRS. Ex.1.\
6. In response to the VCP, Respondents, along with other salvage yard operators

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- identified in the EA, retained as a group Environmental Alliance, which was a Department approved consultant. Environmental Alliance was to perform a Remedial Investigation (RI), as required by HSCA regulations.
7. Environmental Alliance submitted to SIRS a draft RI dated June 13, 2002 that included a segment of the investigation of Respondents' Site. SIRS Ex.4.
  8. In a May 10, 2002 letter, SIRS provided comments that required to Respondents' environmental consultants which required revisions to the draft RI in order before it would be approved by SIRS. SIRS Ex. 5. SIRS required the revised RI within 45 days and also a Feasibility Study (FS) was to be submitted at the same time.
  9. Respondents did not provide SIRS with a revised RI within the requested time period.
  10. SIRS again requested Respondents provide a revised RI in a May 10, 2002 letter (SIRS Ex. 6), and an October 4, 2002 letter. SIRS Ex. 6.
  11. Respondents did not provide a revised RI as requested.
  12. On May 4, 2012, SIRS' Environmental Program Administrator Timothy Ratsep wrote to Respondent Cruz to inform him that the Department had terminated the 2000 VCP agreement for his failure to abide by its terms by not submitting a revised RI for the Site. SIRS Ex. 8.
  13. The May 4, 2012 letter also formally notified Respondents that they were potentially responsible parties, as defined in Section 9103(19) of HSCA, and that the letter commenced the 90 day negotiation period to agree to a Consent Decree, which is a procedure required by HSCA's Regulations. The letter informed Respondents that Respondents were to provide the Department with the name of a qualified consultant and laboratory within 30 days in order to obtain SIRS approval of them to perform the work on the RI, and that Respondents were to submit comments on the draft consent decree within 45 days.
  14. SIRS did not receive any response to the May 4, 2012 letter, but Respondent Cruz did meet with SIRS on September 25, 2012 and indicated a willingness to work to negotiate. SIRS Ex. 10.
  15. On October 1, 2012, SIRS wrote to Respondents and warned that absent an agreement from negotiations that an enforcement action would be commenced. SIRS Ex. 10 .
  16. In a letter dated May 2, 2013, SIRS notified Respondent Cruz via certified mail that a public hearing would be held on May 29, 2013 at SIRS' New Castle offices. SIRS Ex. 11.
  17. On May 5, 2013, SIRS had published a legal notice of the public hearing. SIRS Ex. 12
  18. On May 29, 2013 a public hearing was held and Respondent Cruz appeared without counsel. .
  19. SIRS, through its counsel Deputy Attorney General Robert Kuehl, developed the record at the May 29, 2013 through the direct testimony of the following witnesses: Mr. Ratsep, Karissa Hendershot, Project Manager, Quazi Salahuddin, Program Manager. Larry Jones, Environmental Scientist, and Paralegal Elizabeth Lasorte.
  20. The record includes substantial evidence produced by SIRS that Respondents were potentially responsible parties within the meaning of HSCA and that they were in violation of HSCA and HSCA regulations based upon the failure to provide the

- revised RI and to otherwise clean up the hazardous substances determined in the EA to be on the Site.
21. Respondent Cruz did not produce any evidence in response to SIRS' case in chief.
  22. The hearing afforded Respondents due process as this hearing officer was an impartial fact finder. .
  23. The SIRB witnesses provided testimony to support carrying SIRS's burden to proof by establishing the elements of the case-in-chief, namely, that hazardous substances lead, PAHs and PCBs were present on the Site, that Respondents were the owner/operators of the Site, and that the Department is entitled to direct Respondents to conduct a Remedial Investigations under the Department's approval and oversight and to recover all reasonable response costs incurred by the Department. The testimony was supported by documents introduced as SIRS exhibits 1-14.
  24. The transcript of the hearing is available upon request which along with the documents in the hearing record shall be the record of decision for this Report.
  25. I find and conclude that the preponderance of the evidence submitted into the record that SIRS established the following facts: 1) that hazardous substances, as defined by HSCA and the Department, are present on the Site at levels that require remediation in order to protect the environment and public safety, and 2) Respondents have joint and several liability, as owner/operators of the Site, to remediate the HSCA liability on the Site; and 3) that Respondents have not remediated or reimbursed SIRB's response costs incurred to date and the response costs were that has been performed to date despite numerous reasonable efforts to gain voluntary compliance, including the VCP Agreement, which SIRS properly terminated based upon Respondents' noncompliance. I find that SIRS exhausted all reasonable efforts over an approximate ten year time period from the last progress by the Respondents to comply with the Department's voluntary efforts to reach a settlement before bringing the enforcement action that resulted in this hearing.
  26. HSCA imposes strict liability and a duty to remediate based upon the ownership of the land or the operation of a business on the Site. The record is uncontested on the material facts and supports a finding that Respondents own the land and operated a business on the land on which hazardous substances have been found and that Respondents are PRPs under HSCA and are responsible for the remediation of the hazardous substances on the Site.
  27. At the hearing I requested that SIRS provide a draft letter order consistent with the relief that SIRS requests and the attached order is consistent with the draft order provided.



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Robert P. Haynes, Esquire  
Senior Hearing Officer  
DATED: August 20, 2013