SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1214-20

DORINE INDUSTRIAL PARK PARTNERSHIP,

Plaintiff-Appellant/
Cross-Respondent,

v.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendant-Respondent/
Cross-Appellant,

and

ROBERT MARTIN, COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendant-Respondent.

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Submitted January 11, 2023 – Decided March 16, 2023

Before Judges Accurso, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-0327-17.

Coffey & Associates, attorneys for appellant/cross-respondent (Gregory J. Coffey and Richard J. Dewland, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent and respondent/cross-appellant (Sookie Bae-Park, Assistant Attorney General, of counsel; Matthew D. Orsini and Richard F. Engel, Deputy Attorneys General, on the briefs).

PER CURIAM

Plaintiff Dorine Industrial Park Partnership (Dorine) appeals from a Law Division order dismissing its declaratory judgment action against defendants New Jersey Department of Environmental Protection and its former commissioner, Robert Martin (collectively DEP). Dorine sought to clarify the scope of its investigation and remediation obligations to eliminate soil and groundwater contamination on its six-acre industrial park (the site) in East Hanover. DEP cross-appeals contending the court erred by not imposing civil penalties on Dorine and seeks a remand for reassessment of a penalty. For the reasons that follow, we affirm.

I.

In 1979, Dorine purchased the site, which consists of two commercial buildings, from the original builder. Initially, Dorine leased condominium units in the buildings to industrial and commercial tenants and did not conduct any business operations at the site. Four years later, Dorine converted the site from leasehold to condominium ownership. In 1984, Dorine attempted to sell the last four units, which triggered the investigation and remediation requirements of the Environmental Cleanup Responsibility Act of 1983 (ECRA), N.J.S.A. 13:1K-6 to -13.[1] The sales fell through.

Dorine hired Envirosciences to evaluate the site and handle ECRA compliance. In 1987, Dorine submitted a cleanup plan to the DEP, which was approved. Shortly thereafter, Dorine hired an environmental services company to provide ongoing groundwater investigation. During this time, township

[1] ECRA was replaced by the Industrial Site Recovery Act (ISRA) in 1993. N.J.S.A. 13:1K-6. ISRA requires responsible parties to file remediation documents with DEP for its approval, including remedial action investigation reports (RIR), remedial action workplans (RAW), and remedial action outcome (RAO) reports. N.J.S.A. 13:1K-8; N.J.S.A. 13:1K-9(b)(3). At each stage, the responsible party's consultant and DEP engage in negotiations with respect to acceptability of the workplans and outcomes. N.J.S.A. 13:1K-9. Persons remediating an industrial establishment under ISRA were required to post and maintain a remediation funding source (RFS), which is a financial instrument similar to a trust, until the remediation is completed. N.J.A.C. 7:26C-5.2.

officials discovered widespread groundwater contamination throughout the township, which was traced to the site and other industrial landowners. The township decided to use a regional approach to remedy the contamination instead of requiring each landowner to be individually responsible for its own cleanup.

In 1989 and 1990, DEP addressed deficiencies with Dorine by letters documenting its specific failures to comply with the 1987 cleanup plan. In response, Dorine and its consultant met with DEP to discuss ECRA compliance. Three years later, DEP determined that the regional contamination was not as severe as first thought, which obviated the need for a township treatment system. Instead, in April 1993, DEP issued a Spill Act Directive (the Directive) requiring Dorine and other responsible entities to address their own contamination.[2]

In 1998, Dorine retained TRC Environmental Corporates (TRC) to manage its ISRA compliance. Dawn Pompeo was appointed senior project manager. Sampling of the soil and groundwater revealed that the site's primary source of contamination came from septic systems located in the site's two buildings. TRC recommended to DEP that the site be designated as a

[2] N.J.S.A. 58:10-23.11 to -23.24.

Classification Exception Area (CEA)[3] with remediation in the form of monitored natural attenuation (MNA). In November 1999, TRC submitted a groundwater remedial investigation report (RIR)/remedial action report/(RAR) to DEP asserting the contamination on the site was investigated and fully delineated. The RIR/RAW recommended that DEP issue a No Further Action (NFA) letter, establish a CEA/MNA on the site, and to cease further groundwater sampling.

In response, DEP requested Dorine update its consultant's reports and findings. Dorine responded by submitting a preliminary assessment report and a site investigation report in March 2001 and July 2001, respectively. Three years later, Dorine entered into two agreements: (1) an administrative consent order (ACO) with DEP on May 21, 2002; and (2) the East Hanover regional groundwater settlement agreement (settlement agreement). On September 27, 2002, the settlement agreement incorporated portions of the ACO. In pertinent part, the ACO provided that Dorine agrees to remediate the site, including "all contaminates which are emanating from or which have emanated from the site."

The ACO also stated Dorine "acknowledges that the [DEP] may require additional remediation at the site," and shall maintain a remediation funding

[3] The CEA is a document filed with the DEP that provides notice there is groundwater pollution in a localized area caused by a discharge at a contaminated site.

source. The settlement agreement provides that DEP determined extension of municipal waterlines and hooking up private residences with private wells to these waterlines, together with investigation and removal of all sources of groundwater contamination, was the "best way" to remediate the groundwater contamination.

Between 2001 and 2004, Dorine's consultant TRC advised DEP by letter that the site was remediated or near completion of remediation. DEP rejected Dorine's representation and addressed the deficiencies by letter, instructing Dorine to properly remediate the site. On July 15, 2008, Dorine's representatives and its counsel met with DEP personnel, including Mark Pedersen, about the deficiency notices sent in response to Dorine's investigation workplans. The meeting resulted in a revised workplan being submitted to DEP for completion of groundwater remediation at the site, which DEP approved.

In May 2009, following the Legislature's enactment of the Site Remediation and Reform Act (SRRA), N.J.S.A. 58:10C-1 to -29, remediation oversight was transferred from the DEP to licensed site remediation professionals (LSRP). Under SRRA, the DEP sets mandatory timeframes for completion of key phases of remediation. N.J.S.A. 58:10C-14; N.J.S.A. 58:10C-28. After remediation is completed, the LSRP's certified findings are embodied

in a RAO report (similar to a No Further Action (NFA) letter), which is filed with the DEP.

In October 2009, TRC conducted its groundwater remedial investigation at the site. Dorine's LSRP, Andrew Drotleff, submitted a letter to DEP again recommending MNA as the remedy for groundwater contamination along with the appropriate CEA. However, in a November 2009 letter, Dorine's counsel sent DEP a letter claiming Dorine had resolved all groundwater issues in the settlement agreement, and therefore, Dorine only needed to eliminate groundwater contamination sources and was not responsible for contamination caused by prior discharges.

It was not until August 2010 that DEP responded with a notice of deficiency, finding no proof that a complete groundwater investigation had been conducted by Dorine. In 2014, Dorine hired another LSRP, Eric Raes of Engineering and Land Planning, and began drawing down its RFS trust. Dorine failed to submit its annual cost reviews, and ceased paying its annual one percent RFS surcharges, as required in N.J.A.C. 7:26C-5.9(b).

In October 2015, Raes completed a RIR/RAR for the site stating, "long term groundwater monitoring and funding mechanisms are not required based on the settlement agreement." However, Raes testified that the 2015 RIR/RAR

did not comply with DEP's regulations because it did not fully delineate groundwater. Raes also acknowledged the ACO required Dorine to comply with ISRA, which extended beyond mere investigation and removal and remediation of contamination sources. DEP rejected Raes's request to audit the RIR/RAR instead of waiting for Raes to submit an RAO. Consequently, Raes withdrew the RIR/RAR, and he resigned as LSRP in 2016.

Two months later, Dorine filed a two count complaint in the Law Division against defendants seeking an order declaring that: (1) the settlement agreement obligated Dorine only to investigate and remove onsite sources contributing to groundwater contamination, and it was not required to remediate any groundwater contamination on the site or contamination emanating therefrom; (2) Dorine had fully discharged its site investigation and remediation obligations under all applicable environmental laws and regulations; and (3) Dorine is entitled to costs of suit. Dorine also sought an order declaring DEP breached the settlement agreement by failing and/or refusing to endorse and accept its proposed RAO requiring DEP to issue an NFA letter.

In its amended answer and counterclaim,[4] DEP alleged Dorine had breached both the ACO and settlement agreement by failing to investigate and remediate the site, and violated DEP's site remediation regulations. DEP contended that the ACO and settlement agreement were never amended to release Dorine from its obligations to remediate groundwater contamination. In its counterclaim, DEP sought the following relief: (1) ordering Dorine to investigate and remediate the contaminants or pay DEP to do so; (2) declaring the site and contaminated areas to be in direct oversight by the DEP pursuant to N.J.S.A. 58:10C-27 and that any remediation was compulsory pursuant to N.J.A.C. 7:26C-14.2(b); (3) ordering Dorine to enter into a new ACO with DEP dictating the terms of direct oversight, here an LSRP, pay DEP back fees and oversight costs, and be liable for future fees and oversight costs, complete an RIR/RAR for the site, and pay a civil penalty pursuant to N.J.S.A. 58:10-23.11u.

[4] In 2019, the parties filed dispositive cross-motions. The court granted, in part, DEP's motion to dismiss the complaint and denied Dorine's cross-motion for judgment against DEP. The court made no dispositive findings of fact and found the "existence of a material dispute of fact" as to whether the settlement agreement was modified and what Dorine's remediation obligations were following the July 15, 2008 meeting, precluding the grant of declaratory judgment at that time. In 2020, DEP was granted permission to file and serve an amended answer and counterclaim.

The trial court conducted a five-day bench trial. Gilbert Jacobs, Dorine's principal, and three of its consultants, Pompeo, Drotleff, and Raes, testified at the trial. Of significance, Jacobs testified Dorine was not required to remediate groundwater at the site. He also testified that all required groundwater remediation was "completed." Unable to obtain a NFA letter, Jacobs testified Dorine entered into the ACO and "continued to perform additional remediation work at the site" as directed by DEP.

DEP presented six witnesses employed by DEP to testify, including Pedersen, who testified Dorine's position that it did not need to remediate groundwater at the site was "bogus." The court reserved decision at the close of the evidence. On November 23, 2020, the court issued a forty-three-page statement of reasons in favor of DEP, finding Dorine failed to complete the full delineation of the groundwater contamination at the site as required by ISRA and failed to remediate that contamination as required by the ACO. The court determined the settlement agreement and ACO were not in any way modified following the July 15, 2008 meeting. The court found "all witnesses credible with the exception of . . . Jacobs."

Specifically, the court highlighted it was "incredible" Jacobs believed the July 15, 2008 meeting had eliminated Dorine's obligation to remediate

groundwater under the ACO and settlement agreement because prior to that meeting, DEP expressly rejected Dorine's position it did not need to remediate groundwater. The court also found Jacobs was "disingenuous" when he "did not recall whether the $400,000 remediation funding source had been posted, as required by the ACO." The evidence showed in 2007, Jacobs was advised that he did not post the funds with the escrow agent, Bank of New York, to secure Dorine's remedial obligations.

In addition, the court found Jacobs's testimony lacked truthfulness and his position to be "inconsistent" with the "clear terms" of the ACO and settlement agreement. The court emphasized the settlement agreement "plainly requires" Dorine to "remediate discharges of hazardous substances" at the site and mandates compliance with ISRA. The court ordered Dorine to pay DEP direct damages of $13,720 within sixty days and to "specifically perform its obligations under the settlement agreement," which included ISRA compliance and remediation of groundwater contamination at the site. The court also ordered Dorine to hire an LSRP within sixty days "to effectuate immediate compliance with the settlement agreement" and "remediate all groundwater at the site and emanating therefrom." The court denied DEP's request to impose civil penalties on Dorine. A memorializing order was entered.

On appeal, Dorine contends the court erred by failing to decide, under the Uniform Declaratory Judgments Law, N.J.S.A. 2A:16-50 to -62 (the Act), what remedial action was appropriate for the site, and refusing to adopt the remedial action of a CEA/MNA as proposed by its environmental experts, despite the absence of an expert opinion proffered by DEP. Dorine also asserts the court erred by misconstruing the effect and impact of the ACO because the ACO is a "contract of adhesion" that lacked adequate consideration, warranting reversal with a remand ordering DEP to create a CEA/MNA at the site. Dorine claims the court erred by ignoring the novation to the ACO and settlement agreement ostensibly presented at the July 15, 2008 meeting. Dorine contends DEP refused to approve its request for a CEA/MNA at the site but approved the same requests for a CEA/MNA from other settling parties. Dorine further argues the court erred by not determining it could have reasonably relied upon DEP's representations at the July 15, 2008 meeting to modify its obligations under the settlement agreement and ACO and by imposing $12,400 in oversight costs from 2010 without conducting a hearing pursuant to the ACO. Dorine seeks reversal and remand so the court can order DEP to create a CEA/MNA at the site. In its cross-appeal, DEP challenges the court's refusal to impose civil penalties on

Dorine and seeks a remand for a determination of an appropriate remedy based on the Lewis[5] factors.

II.

A. Dorine's Appeal

Dorine contends the court erred by failing to decide what remedial action was appropriate for the site under the Act, requiring a reversal and remand so the court can order DEP to create a CEA/MNA at the site, as proposed by Dorine's consultants. We disagree.

The Act is a "remedial" statute and "shall be liberally construed and administered." N.J.S.A. 2A:16-51. "Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." Ibid. The decision to grant a declaratory judgment under the Act rests in the sound discretion of the trial court. State v. Eatontown Borough, 366 N.J. Super. 626, 637 (App. Div. 2004) (citing Passaic Valley Sewerage Comm'n v. City of Paterson, 113 N.J. Super. 148, 151 (App. Div. 1971)).

The court did not abuse its discretion in declining to dictate what remedial action was appropriate for the site. We agree with the court that Dorine's former LSRP, Raes, withdrew his report and recommendations. Therefore, there was

[5] N.J. Dep't of Env't Prot. v. Lewis, 215 N.J. Super. 564, 575 (App. Div. 1987).

no actual formal plan in place to allow DEP to issue an RAO. The court aptly declined to "define the precise actions to be taken by Dorine" to comply with its remedial obligations and to obtain site closure. Instead, the court granted DEP's request for a declaratory judgment ordering Dorine to complete a full delineation of groundwater contamination at the site, hire an LSRP, and pay the required fees.

Although the Act confers upon trial courts the authority to "declare rights, status and other legal relations," N.J.S.A. 2A:16-52, "[i]t is not the place of a court to weigh the propriety of the remedial path chosen from among several nominally authorized by the same statute or cognate legislation, but rather only to determine whether the agency . . . has met whatever burdens of proof are assigned to it under law." Dep't of Env't Prot. v. Kafil, 395 N.J. Super. 597, 603 (App. Div. 2007). And, courts defer to an agency in cases involving technical matters within the agency's special expertise, like DEP. In re Authorization for Freshwater Wetlands Gen. Permits, 372 N.J. Super. 578, 593 (App. Div. 2004). As such, Dorine was responsible to remediate in accordance with DEP's directives and regulations, and having failed to do so, was not entitled to declaratory relief.

Dorine also contends the court erred by refusing to adopt the remedial action of a CEA/MNA as proposed by its consultants in the absence of any expert opinion offered by DEP. Dorine argues it complied with all of its ISRA investigation and remediation obligations, and therefore, DEP's failure to issue an RAO letter in conjunction with the establishment of a CEA/MNA at the site was arbitrary, capricious, and unreasonable.

We disagree with Dorine because none of its witnesses were admitted or qualified as experts by the court: Jacobs, Pompeo, and Drotleff testified as fact witnesses. Their testimony was in fact rebutted by Raes, who testified he withdrew his October 2015 RIR/RAR because the groundwater contamination at the site had not been fully delineated. Thus, as DEP concluded, if the groundwater contamination was not delineated in 2015, it could not have been delineated in 2009. Moreover, the court found Pompeo and Drotleff's testimony was misleading and a "subterfuge" to draw "attention away from Dorine's failure to comply with the requirement to fully delineate groundwater contamination" for ISRA compliance and a proposed CEA. The record supports the court's determination.

The court's refusal to direct DEP to accept Dorine's proposal for an NFA letter or establishment of a CEA/MNA at the site was not an abuse of discretion.

Dorine relies on the November 1999 groundwater RIR/RAW TRC submitted to DEP that had fully delineated the site obviating the need for additional groundwater sampling and requesting DEP issue an NFA letter establishing a CEA/MNA. However, based on the clear terms of the ACO and settlement agreement—which established Dorine's remedial obligations and responsibilities in 2002—the court properly gave no weight to the 1999 documents.

Dorine also asserts the court erred by misconstruing the effect and impact of the ACO because the ACO is a "contract of adhesion" that lacked adequate consideration, warranting reversal with a remand ordering DEP to create a CEA/MNA at the site. Again, we disagree.

In State v. Bernardi, we held, "the ACO is an agreement between [parties] and the DEP which, by its express terms, may be enforced by the parties. In other words, under the common meaning of the term, the ACO is a contract as a matter of fact." 456 N.J. Super. 176, 189 (App. Div. 2018).

Here, the ACO executed by Dorine plainly stated that it "represented the complete and integrated agreement between the [DEP] and Dorine concerning the site" and that Dorine agreed to "remediate the site." The remediation included "all contaminants" emanating from or "which have emanated from the

site." Dorine was contractually bound to comply with the ACO, which it could have refused to sign. See E.I. Du Pont de Nemours & Co. v. State Dep't of Env't Prot. & Energy, 283 N.J. Super. 331, 352 (App. Div. 1995) (affirming DEP's authority to enter into an ACO and observing that if a private party "chooses not to enter into such an agreement, it may do so").

Dorine next asserts the court erred by ignoring the novation to the ACO and settlement agreement ostensibly presented at the July 15, 2008 meeting. The court found Dorine's novation argument was undermined by: (1) "the clear terms" in the ACO and settlement agreement that required complete remediation and stated that no modifications would be effective unless in writing and executed by both parties; (2) the ACO's provision that Dorine shall not construe any informal advice, guidance, suggestions or comments by DEP or its representatives as relieving Dorine of its obligations; (3) the lack of any written confirmation of a modification of the documents after the meeting; and (4) TRC's October 2009 groundwater RIR that recommended MNA along with creation of a CEA.

A novation occurs when the parties agree to substitute a new contract or obligation for an old one, which is thereby extinguished. GMAC Mortg., LLC v. Willoughby, 230 N.J. 172, 188 (2017). "Unlike a modification, which leaves

the original contract in place, a novation substitutes a new contract and extinguishes the old one." Wells Reit II – 80 Park Plaza, LLC v. Dir. Div. of Tax'n, 414 N.J. Super. 453, 466 (App. Div. 2010). Dorine has failed to demonstrate any of these conditions in the present appeal. The court correctly found there is no evidence in the record showing that DEP mutually agreed to and intended a novation to execute a new ACO after the July 15, 2008 meeting.

Jacob's testimony as to Dorine's alleged intentions following the meeting does not prove a novation. Moreover, Jacobs's testimony is contradicted by Dorine's actions after the meeting, including TRC's continued request for a CEA/MNA at the site, and Pompeo's continued sampling for groundwater pollution instead of focusing on eliminating the onsite contamination sources. Therefore, the court properly found Dorine did not sustain its burden of proving a novation.

Dorine also contends the court erred by not rejecting Pedersen's testimony regarding the July 15, 2008 meeting because it was unreliable and not credible. But the court "disregarded" Pedersen's testimony regarding details of the meeting because it was inconsistent with interrogatory answers. Therefore, Dorine's argument lacks merit.

Dorine's disparate treatment argument, that the court erred by failing to find DEP's settlement agreement, is also unavailing. Dorine contends the court erred by failing to find that DEP's actions in relation to other sites implicated in the settlement agreement represented a complete lack of consistency and an arbitrary and capricious approach to its action undertaken with respect to Dorine's site. Here, each of the other responsible parties executed both the 2002 settlement agreement and their own individual ACOs.

The other parties were treated differently based on the particular circumstances at their properties, such as the types of pollution found and how their delineation and remediation obligations were being addressed as set forth in their ACOs. See Worthington v. Fauver, 88 N.J. 183, 204-05 (1982) ("Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances.") (citation omitted). We conclude the court did not err by failing to find DEP's different treatment of Dorine's situation was neither arbitrary, capricious, or unreasonable. Indeed, Dorine admitted that any evidence relating to any other site is "wholly irrelevant" to the matter under review.

Dorine also maintains the court erred by imposing oversight costs of $12,400 from 2010 against it, even though it challenged those costs as arbitrary

and capricious and was not afforded an opportunity for a hearing under the ACO's terms. Our review of the record reveals the court did not impose any oversight costs on Dorine. Rather, the court ordered Dorine to pay "all required past and present [annual] remediation fees and surcharges," totaling $13,720. Annual remediation fees and oversight costs are distinguishable.

Oversight costs are paid to DEP annually for overseeing remediation, including the cost of having DEP staff review submissions by LSRPs and environmental consultants. N.J.A.C. 7:26C-4.7, -4.8, and -4.10. In contrast, annual remediation fees are paid to DEP when the potentially responsible person conducts the remediation. N.J.A.C. 7:26-4.2 and -4.3.

The section chief of DEP's Office of Direct Billing and Cost Recovery for the Site Remediation Program testified as to the calculation of annual fees charged by DEP and confirmed Dorine owed $13,720 for annual fees from 2016 onward. Moreover, Dorine depleted its remediation fund source in 2018 and failed to pay any annual fees since 2015 despite not completing its remedial obligations.

B. DEP's Cross-Appeal

In its cross-appeal, DEP contends the court erred by denying its request for civil penalties to be imposed on Dorine based on the Lewis factors, and the

evidence presented at trial. During closing arguments, DEP requested the imposition of civil penalties based on Dorine's long history of violations as described in its counterclaim as stated previously. In its post-trial submission, DEP sought civil penalties for nine regulations it alleged Dorine violated, totaling $828,720 to $2,968,720.

In its opinion, the court noted the imposition of penalties was discretionary and authority to do so is derived from the Spill Act, N.J.S.A. 58:10-23.11u. Although the court acknowledged Dorine committed "regulatory violations over the course of many years," it declined to impose civil penalties. The court reasoned that DEP failed to present "the amount or range of penalties" it sought during the trial and therefore, "deprived" Dorine of the ability to counter the request. And, the court highlighted that DEP did not issue any notice of violation or advise Dorine of its intent to impose civil penalties at any time from the execution of the ACO and settlement agreement in 2002. In addition, the court stated it "cannot ignore" that DEP did not seek civil penalties until it filed its amended counterclaim "shortly before trial," and DEP did not demonstrate it complied with the statutory notification requirements set forth in N.J.S.A. 58:10-23.11u(c). The court rejected DEP's argument that discretionary statutory penalties can constitute actual "damages" due to Dorine's breach. The

court declined to conduct a subsequent hearing related to the calculation of penalties because "the trial was not bifurcated."

DEP asserts civil penalties are mandated under subsections (a) and (d) of the Spill Act against any person who violates its rules and regulations. DEP also contends the court should have used the factors in Lewis to assess Dorine's conduct. In Lewis, DEP brought a civil enforcement action to impose statutory penalties against the defendants who had illegally dumped large quantities of sewage onto properties they owned or controlled. The trial court refused to impose statutory penalties, finding the defendants had not intended to violate any laws. 215 N.J. Super. at 570-72.

We disagreed and held that the specific provisions giving rise to the imposition of civil penalties under the "strict liability" environmental statutes did not require a finding of either willfulness or intention to violate before a penalty was imposed. Id. at 572 (citing N.J. Dep't of Env't Prot. v. Harris, 214 N.J. Super. 140, 147-48 (App. Div. 1986)). We reversed and remanded the matter to the trial court for a plenary hearing with respect to the imposition of statutory penalties and the assessment of penalties.

Here, DEP's reliance on Lewis is misplaced because the factors that DEP cites control the amount of the penalty, not whether the court has the authority

to order the imposition of a penalty in the first place. Under N.J.S.A. 58:10-23.11u(a)(1)(c), DEP may "bring an action for a civil penalty in accordance with subsection d," which expressly states the Superior Court "shall have jurisdiction to impose a civil penalty for a violation of [the Spill Act] pursuant to this subsection and in accordance with the procedures set forth in the 'Penalty Enforcement Law (PEL)[6] of 1999.'" (emphasis added). See Dep't of Env't Prot. v. Alsol Corp., 461 N.J. Super. 354, 365 (App. Div. 2019) (noting DEP's option of seeking to enforce monetary penalties in a summary proceeding in either the Superior Court of Municipal Court).

The PEL provides an initial action for civil penalties actions to be instituted in a "court of competent jurisdiction to enforce a statute or regulation," and actions "brought by an agency to enforce an order already entered by it." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:67-6 (2023).

Rule 4:70-1(a) provides that actions "to enforce a civil penalty imposed by any statute . . . shall be brought as a summary action . . . unless the statute requires a plenary action." Pertinent to our analysis is Rule 4:70-2(a), which provides:

> (a) Complaint; Verification. The complaint, which shall be in writing and verified, shall specify (1) the

[6] N.J.S.A. 2A:58-10 to -12.

> person alleged to have violated the provision of statute for whose violation is imposed a penalty to be enforced in a summary manner; (2) the statute and provision thereof violated; and (3) the time, place and nature of such violation. If the proceeding is instituted by a governmental body or officer, the verification of the complaint may be made on information and belief by any person duly authorized to act on plaintiff's behalf.

A plain reading of the clear and unambiguous text in N.J.S.A. 58:10-23.11u(d), read in conjunction with PEL and Rule 4:70-2(a), reveals that the Legislature authorized DEP to initiate, commence or bring a penalty enforcement action against "[a]ny person who violates a provision of [the Spill Act], including any rule, regulation, . . . order or directive promulgated or issued pursuant thereto," N.J.S.A. 58:10-23.11u(a)(1), and a court can impose civil penalties only when the agency complies with the PEL's procedures. N.J.S.A. 58:10-23.11u(a)(1)(c).

Here, DEP's pleading, which requested a civil penalty, did not comply with the procedural requirements in Rule 4:70-2(a). DEP was required to specify all of the regulations that Dorine allegedly violated at the pleading stage, not in its post-trial submission. Thus, we conclude pursuant to N.J.S.A. 58:10-23.11u(d), the PEL, and Rule 4:70-2(a), the court properly denied DEP's request.

To the extent we have not specifically addressed any of the parties' remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION