

## Plaintiff wins first federal jury verdict under RCRA private right of action

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In what is believed to be a first, a federal jury sided with the owner of an Orange County apartment complex who sued under the Resource Conservation and Recovery Act over toxic leaks from nearby underground gasoline tanks.

“It’s a novel case for the entire country,” said Jad T. Davis, a Shook, Hardy & Bacon LLP partner who represents the apartment owner. “This is the first verdict where a jury has found an imminent and substantial endangerment under a private RCRA civil cause of action.”

Defendants Hussein Berri and Excaliber Fuels are represented by A. Jeanne Grove, a partner at Nixon Peabody LLP, and Marc A. Collins, a partner at Collins & Khan LLP. Neither attorney responded to requests for comment.

Previous cases under this act have been tried by a judge but Berri insisted on a jury trial, which U.S. District Judge John W. Holcomb of the Central District of California granted. The jury returned its verdict on May 8. Post-trial proceedings to determine remedies and proposed judgements are scheduled to begin June 14.



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The Resource Conservation and Recovery Act created a private right of action for citizens to sue over environmental harms. Remedies and penalties can run to millions

of dollars. The plaintiff also sued under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as the Superfund law. *12909 Cordary, LLC v. Hussein M. Berri et al.*, 8:22-cv-01748, (C.D. Calif., file Sept. 22, 2022)

According to the lawsuit, petroleum and solvents from the gas station seeped into the groundwater and migrated across the street, causing soil vapor at the apartment complex. Davis said the problem had dragged on for decades.

“Unfortunately, my client’s apartments are downgradient or downstream, so the contamination moved onto my client’s property,” Davis said. “It’s not just that. We found out through the defendant’s own consultants that the groundwater right underneath the apartments had raw gas 3 feet deep. The defendant’s own consultant said that the gas in the groundwater was an imminent and substantial endangerment to human health and the environment.”

“Over the years, there have been multiple leaks and Mr. Berri’s own consultants that were working on the leaks admitted there’s an ongoing leak as we sit here today,” he said. “After my client told him to fix this, Mr. Berri refused.”

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