

## California Federal Jury Says Gas Station Owner Violated RCRA And CERCLA

SANTA ANA, Calif. — A California federal jury returned a verdict in favor of a property owner that brought claims under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act (RCRA) against a neighboring gas station where hazardous substances were released that migrated to the plaintiff's property (12909 Cordary, LLC v. Hussein M. Berri, et al., No. 22-1748, C.D. Calif.).

**(Redacted jury verdict in Section E. Document #08-240614-037V.)**

The U.S. District Court for the Central District of California jury returned its verdict on May 8. In a press release regarding the case, Jad Davis, counsel for the plaintiff, said, "The trial is believed to be the first private citizen RCRA/CERCLA civil jury trial in the country."

### Pollution Migration

12909 Cordary LLC owns a multiunit residential apartment building in Westminster, Calif., adjacent to a gas station owned and operated by Excaliber Fuels. Hussein M. Berri is the president and CEO of Excaliber.

In September 2022, Cordary sued Excaliber and Berri in the Central District of California, arguing that Excaliber violated the RCRA, 42 U.S.C. § 6901 *et seq.*, and CERCLA, 42 U.S.C. § 9601 *et seq.*, by contaminating its property with petroleum hydrocarbons and volatile organic compounds (VOCs) such as benzene, toluene, xylenes and more.

According to Cordary, the hazardous compounds leaked from the underground storage tank system located at the gas station before migrating. Groundwater tests performed in September 2018 and April 2019 revealed gasoline contamination at Cordary's property.

In the complaint, Cordary said, "Defendants failed to sufficiently investigate, remediate or abate the petroleum hydrocarbons and VOCs disposed of at the Excaliber Property and allowed the petroleum hydrocarbons and VOCs to migrate and damage the Newland Property. Defendants' failure to timely investigate and remediate the petroleum hydrocarbon and VOC contamination has damaged, and continues to damage, Cordary."

Cordary brought claims for private nuisance, trespass, negligence. The plaintiff also sought declaratory and injunctive relief under the RCRA, as well as response costs, contribution and declaratory relief under CERCLA.

### Jury Verdict

After several years of litigation, the case advanced to a jury trial before Judge John W. Holcomb in May 2024. On May 8, the jury returned a verdict, finding that Berri and Excaliber contributed to the past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste that presented an imminent and substantial endangerment to human health or the environment at Cordary's property.

The jury also found that there was a release or threatened release of hazardous substances from Excaliber's property that caused Cordary to incur costs in response. Excaliber and Berri also committed a

nuisance, but this nuisance did not substantially interfere with Cordary's use and enjoyment of its land, the jury said.

Next, the jury said Berri and Excaliber recklessly or negligently caused contamination to enter Cordary's property without the plaintiff's permission. The two defendants were also negligent, the jury said, but neither's negligence was a substantial factor in causing harm to Cordary.

The jury also rejected Berri and Excaliber's statute of limitations, third-party liability and laches defenses.

Ultimately, the jury found that Cordary was entitled to \$3,000 in compensatory damages and no punitive damages.

### **Counsel**

Cordary is represented by Jad T. Davis, Brandon S. Gilligan and Thomas Victor Wynsma of Shook Hardy and Bacon LLP in Irvine, Calif.

Berri and Excaliber are represented by Artes Jeanne Grove in San Francisco and Stratton Peter Constantinides in Los Angeles, both of Nixon Peabody LLP, and Marc A. Collins of Collins and Khan LLP in Los Angeles.

(Additional documents available: **Final pretrial conference order.** Document #08-240614-038R. **Complaint.** Document #08-240614-039C.)