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		SUPERIOR COURT OF NEW JERSEY
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; THE COMMISSIONER OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	LAW DIVISION - HUNTERDON COUNTY
	:	DOCKET NO.
	:	
	:	<u>Civil Action</u>
Plaintiffs,	:	COMPLAINT
	:	
v.	:	
	:	
TIRPOK GROUP, INC.; TIRPOK'S CLEANERS & DYERS, INC.; ANDREW G. TIRPOK, Jr. and ANDREW G. TIRPOK, III,	:	
	:	
Defendants,	:	

Plaintiffs, the New Jersey Department of Environmental Protection (the "Department" or "DEP"), the Commissioner of the New Jersey Department of Environmental Protection (the "Commissioner") and the Administrator of the New Jersey Spill Compensation Fund (the "Administrator") (collectively, the

"Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorney, file this Complaint against the above-named Defendants, and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the New Jersey Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 to 23.24, the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 to -35, and the common law, for reimbursement of the costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Tirpok Cleaners property located at 22-24 Reaville Avenue, in the Borough of Flemington, Hunterdon County, New Jersey (the "Property").
2. From the 1940s until 2017, when the facility building on the Property was destroyed by fire, several owners operated retail dry cleaning facilities on the Property. In or around 2002, it was discovered that tetrachloroethene, also called perchloroethylene ("PCE"), had leaked from wastewater holding pits on the Property and contaminated the soil and groundwater on the Property. In addition to the subsurface soil and groundwater contamination on the Property, a series of

monitoring wells and pump test results confirmed that groundwater contamination from the Property migrated to Flemington Water Company Well #6, located at or about the intersection of Elmwood Avenue and Williams Streets, in the Borough of Flemington, Hunterdon County, New Jersey (the "Flemington Well #6".) Ground water was pumped from Flemington Well #6 and used by Flemington residents from March 1977 until the well was closed in February 1989, when the PCE contamination was discovered. Approximately 860 Flemington residents used groundwater from Flemington Well #6 during this period of time.

THE PARTIES

3. The Department is a principal department within the Executive Branch of the New Jersey State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.
4. The Commissioner is the Commissioner of the DEP, N.J.S.A. 58:10A-3, and is vested by law with various powers and authority, including those conferred by the DEP's enabling legislation, N.J.S.A. 13:1D to -19.

5. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund (the "Spill Fund"). N.J.S.A. 58:10-23.11j. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.
6. Tirpok Group, Inc. ("Tirpok Group") is a corporation organized under the laws of the State of New Jersey with a principal place of business at 87 Park Avenue, Flemington, New Jersey 08822.
7. Tirpok's Cleaners & Dyers, Inc. ("Tirpok's Cleaners") is a now defunct corporation that was organized under the laws of the State of New Jersey, with a principal place of business at 22-24 Reaville Avenue, Flemington, New Jersey 08822.
8. Andrew G. Tirpok, Jr. ("Tirpok Jr.") was the President of Tirpok Group, Inc. from 1994 to 2002, whose last known residence was 159 Leigh Street, Clinton, New Jersey 08809.
9. Andrew G. Tirpok, III ("Tirpok III") is the President of Tirpok Group, Inc. since 2002, whose last known residence was 46 Hardscrabble Hill, Flemington, New Jersey 08822.

GENERAL ALLEGATIONS

10. The Property consists of .44 acres located at 22-24 Reaville Avenue in the Borough of Flemington, Hunterdon County, New Jersey, also known as Block 48, Lot 4 on the Tax Map of the Borough of Flemington, Hunterdon County, and all other areas where any hazardous substances discharged there have come to be located (collectively, the "Site"), including, but not limited to, Flemington Well #6, which the Department has also designated as Site Remediation Program Interest Nos. 000273 and 234257.
11. The Property is the former location of a Tirpok Cleaners-branded dry cleaning facility, where three wastewater holding pits were used to handle wastewater discharged from the facility.
12. On April 30, 1975, defendant Tirpok's Cleaners, acquired the Property from Andrew G. Tirpok and his wife, Ann E. Tirpok.
13. On August 15, 1988, Tirpok's Cleaners conveyed the Property to Tirpok, Jr.
14. Tirpok, Jr. remains the title owner of the Property.
15. Tirpok Group operated the Property from 1994 to 2017.

OPERATION OF THE TIRPOK CLEANERS SITE AND CONTAMINATION

16. From approximately 1948 through 2017, retail dry cleaning facilities were operated on the Property.

17. Hazardous waste manifests from 1984 to 2000 indicate that degreasing solvent (F002) (tetrachloroethene, also called perchloroethylene (PCE)) was the primary hazardous waste stream generated at the Property.
18. During site visits to the Property in 2002 by the DEP, Bureau of Site Assessment (now Bureau of Environmental Measurements and Site Assessment), it was discovered that one of three existing wastewater drainage pits was unlined and had a visible four-inch sewer line running through it
19. The subject sewer line had been broken along the top side of the pipe at some time prior to the DEP site visit, to allow boiler blowdown, which was discharged directly into the pit, to flow into the sanitary sewer.
20. Soil samples collected during the site investigation revealed that concentrations of up to 5,100 parts per million (ppm) of PCE were present in the soil of the holding pit.
21. Based upon these findings, the DEP determined that the high concentration of PCE in the soil of the holding pit was an indication that the pit had received discharges of PCE from the dry cleaning operations on the Property.
22. During the time that defendants Tirpok's Cleaners and Tirpok, Jr. owned the Property and Tirpok's Cleaners and Tirpok Group, Inc. operated there, "hazardous substances," as defined in

N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included tetrachloroethene (PCE).

23. In July 2003, the DEP's Bureau of Environmental Measurements and Site Assessment supervised the installation of six subsurface monitoring wells on and/or near the Property. Three of the monitoring wells were sited on the Property and three were placed on property occupied by a Wendy's fast-food restaurant, which was located between the Property and Flemington Well #6.
24. The monitoring wells were installed for the purpose of assessing ground water in discrete zones, to confirm the vertical connectivity between the ground water in the area, with the groundwater present on the Property, and to establish the hydraulic connectivity between the Property and Flemington Well #6.
25. Based upon the hazardous waste manifests from 1984 to 2000, the history of dry cleaning operations on the Property, and the analytical results collected from the six monitoring wells, the DEP concluded that PCE from the Property had impacted the ground water in the vicinity of the Property.
26. The DEP's Bureau of Environmental Measurements and Site Assessment next designed and performed a pump test to verify

the hydraulic connectivity between the Property and Flemington Well #6.

27. To demonstrate the hydraulic connectivity between the two sites, the Department activated the pump at Flemington Well #6, while closely monitoring the water levels at the six monitoring wells at the Property and the Wendy's restaurant.
28. When the pump at Flemington Well #6 was activated, declining water levels ("draw-down") were observed at five of the six monitoring wells.
29. The observed draw-down on the water levels in the monitoring wells confirmed that under pumping conditions, Flemington Well #6 draws water from the Property to the well.
30. The analytical results collected from the monitoring wells and from the Flemington Well #6 pump test presents compelling evidence that the PCE contamination from the Property adversely impacted the groundwater at Flemington Well #6.
31. Defendant Tirpok, Jr. is an individual who was a corporate officer and/or agent of defendant Tirpok Group and was responsible for the conduct of Tirpok Group that led to the discharges and violations alleged in this Complaint and/or exercised sufficient authority and control over Tirpok Group to prevent or correct the occurrence of the discharges and violations, but failed to do so.

32. Defendant Tirpok III, as an officer of Tirpok Group, was responsible for the conduct that directly led to the discharges of hazardous substances at the Property and violations of, among other statutes and regulations, the Spill Act and WPCA, and exercised sufficient authority over Tirpok Group to prevent or correct the occurrence of discharges and violations, but failed to do so; as such Tirpok III is a responsible corporate official of Tirpok Group and is responsible for the discharges and violations alleged in this Complaint.
33. The Department has incurred past cleanup and removal costs for the Site.
34. By letter dated March 28, 2018, the Department issued a demand to defendants Tirpok Group, Tirpok, Jr. and Tirpok, III, to reimburse the Department for the cleanup, removal and remediation costs incurred as of March 19, 2018. The demand further set forth that the Department would continue to incur costs for the remediation of the discharged hazardous substances at the sites.

FIRST COUNT

SPILL ACT

35. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 34 above as though fully set forth in their entirety herein.
36. Except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1).
37. The costs that Plaintiffs have incurred, and will incur, for the remediation of the Property are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable pursuant to N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).
38. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.
39. Defendant Tirpok, Jr. is a "discharger" or a "person in any way responsible" as the operator of the Property at which hazardous substances were discharged, and a person "in any way responsible" as the owner of the Property at the time hazardous substances were discharged there, and is therefore

liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

40. Defendant Tirpok's Cleaners is a "discharger" as the operator of the Property at which hazardous substances were discharged, and is a person "in any way responsible" as the owner of the Property at the time hazardous substances were discharged there, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

41. Defendant Tirpok Group is a "discharger" as the operator of the Property at which hazardous substances were discharged, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

42. Defendant Tirpok, III is a "discharger" or a person "in any way responsible" as the operator of the Property at which hazardous substances were discharged, and is therefore

liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

43. By failing to comply with the Department's Directives and Notice to Insurer, defendants Tirpok, Jr., Tirpok, III and Tirpok Group are strictly liable, without regard to fault, in an amount up to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur in the future, to remediate the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11f.a.(1).

44. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

45. Pursuant to N.J.S.A. 58:10-23.11q., the Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund.

WHEREFORE, Plaintiffs request judgment in their favor:

- a) Ordering the Defendants, jointly and severally, without regard to fault, to reimburse Plaintiffs for all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;
- b) Ordering defendants Tirpok, Jr., Tirpok, III and Tirpok Group to reimburse Plaintiffs, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;
- c) Entering declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at and from the Property;
- d) Entering declaratory judgment against defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs will incur

as a result of the discharge of hazardous substances at the Property;

- e) Entering declaratory judgment against the Defendants, compelling them to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- f) Awarding Plaintiffs their costs and fees incurred in this action; and
- g) Awarding Plaintiffs any other relief this Court deems appropriate.
- h) Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

SECOND COUNT

Water Pollution Control Act

46. The Plaintiffs repeat each allegation of paragraph numbers 1 through 45 above as though fully set forth in its entirety herein.

47. Defendants are "persons" within the meaning of N.J.S.A. 58:10A-3.

48. The unauthorized discharge of pollutants is a violation of the WPCA for which any person who is the discharger is strictly liable, without regard to fault. N.J.S.A. 58:10A-6a.

49. The Commissioner has incurred, and will incur, costs and damages because of the discharge of pollutants at the Property.

50. The costs and damages the Commissioner has incurred, and will incur, for the Site are recoverable within the meaning of N.J.S.A. 58:10A-10c. (2) to (4).

51. Pursuant to N.J.S.A. 58:10A-10c., the Commissioner may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10A-10c.(2); and reasonable cost incurred by the State in removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which action under this subsection may have been brought, N.J.S.A. 58:10A-10c.(3); and the actual amount of any economic benefits accruing to the violator from any violation, including savings realized from avoided capital or noncapital costs resulting from the violation, the

return earned or that may be earned on the amount of avoided costs, any benefits accruing as a result of a competitive market advantage enjoyed by reason of the violation, or any other benefit resulting from the violation, N.J.S.A. 58:10A-10c.(5).

WHEREFORE, the Commissioner prays that this Court:

- A. Permanently enjoin defendants Tirpok, Jr., Tirpok, III and Tirpok Group by requiring defendants Tirpok, Jr., Tirpok, III and Tirpok Group to remove, correct, or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants;
- B. Enter an order assessing defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, the reasonable costs for any investigation, inspection, or monitoring survey, which led to establishment of the violation, including the costs of preparing and litigating the case;
- C. Enter declaratory judgment against defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection, or monitoring survey, which led, or will lead, to

establishment of the violation, including the costs of preparing and litigating the case;

- D. Enter an order assessing defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, for all reasonable costs incurred for removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Property;
- E. Enter declaratory judgment against defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Property;
- F. Enter an order assessing defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, for the actual amount of any economic benefits they have accrued, including any savings realized from avoided capital or noncapital costs, the return they have earned on the amount of avoided costs, any benefits defendants Tirpok, Jr., Tirpok, III and Tirpok Group defendants have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a

result of having violated the Water Pollution Control Act;

- G. Enter declaratory judgment against defendants Tirpok, Jr., Tirpok, III and Tirpok Group, without regard to fault, assessing defendants Tirpok, Jr., Tirpok, III and Tirpok Group for the actual amount of any economic benefits that will accrue to them, including any savings to be realized from avoided capital or noncapital costs, the return to be earned on the amount of avoided costs, any benefits that will accrue as a result of a competitive market advantage defendants Tirpok, Jr., Tirpok, III and Tirpok Group have enjoyed, or any other benefit that will accrue as a result of having violated the Water Pollution Control Act;
- H. Award the Commissioner her costs and fees in this action;
and
- I. Award the Commissioner such other relief as this Court deems appropriate.
- J. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right to bring a claim in the future for natural resource damages

arising out of the discharge of hazardous substances at the Property.

THIRD COUNT

Unjust Enrichment

52. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 51 above as though fully set forth in their entirety herein.
53. Defendants have failed to perform or fund the remediation required to address the contamination at the Site.
54. Plaintiffs have used and will continue to use public funds to remediate the contamination at the Site.
55. Plaintiffs' expenditure of public funds for the remediation at the Site, which otherwise would be Defendants' obligation to fully fund and/or perform, has unjustly enriched Defendants.
56. Defendants have not reimbursed Plaintiffs for the funds Plaintiffs have spent to conduct the remediation at the Site.

WHEREFORE, Plaintiffs pray that this Court:

- A. Declare that Defendants have been unjustly enriched by Plaintiffs' expenditure of public funds to perform the remediation at the Site;

- B. Order Defendants to reimburse Plaintiffs for the costs Plaintiffs have incurred, and will incur, to perform the remediation at the Site, with applicable interest;
- C. Enter judgment against Defendants for all other compensatory and consequential damages; and
- D. Award the Plaintiffs such other relief as this Court deems appropriate.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

Dated: December 6, 2018 By: /s/ Kevin A. Terhune
Kevin A. Terhune
Deputy Attorney General

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Kevin A. Terhune, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

The undersigned counsel further certifies that the matters in controversy in this action are not currently the subject of any other pending action in any court or arbitration proceeding known

to the State at this time, nor is any non-party known to the State at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such matter or non-party later becomes known, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

Dated: December 6, 2018

By: /s/ Kevin A. Terhune
Kevin A. Terhune
Deputy Attorney General

Civil Case Information Statement

Case Details: HUNTERDON | Civil Part Docket# L-000465-18

Case Caption: ATTORNEY GENERAL OF NEW JERSE
VS TIRPOK'S CLEAN

Case Initiation Date: 12/06/2018

Attorney Name: KEVIN ALBERT TERHUNE

Firm Name: ATTORNEY GENERAL LAW

Address: 25 MARKET ST PO BOX 112

TRENTON NJ 086250106

Phone:

Name of Party: PLAINTIFF : Attorney General of New
Jersey

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE
LITIGATION

Document Type: Complaint

Jury Demand: NONE

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

12/06/2018
Dated

/s/ KEVIN ALBERT TERHUNE
Signed