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STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL	:	CHANCERY DIVISION -
PROTECTION; THE COMMISSIONER	:	MERCER COUNTY
OF NEW JERSEY DEPARTMENT OF	:	DOCKET NO.
ENVIRONMENTAL PROTECTION;	:	
and THE ADMINISTRATOR OF THE	:	<u>CIVIL ACTION</u>
NEW JERSEY SPILL	:	
COMPENSATION FUND,	:	COMPLAINT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
SAINTE MARIE CLEANERS, INC.;	:	
WALTER ZOLADZ; MACWCP IV	:	
CORP; CHM PROPERTIES, LLC;	:	
"XYZ CORPORATIONS" 1-10	:	
(Names Fictitious);and "JOHN	:	
AND/OR JANE DOES" (Names	:	
Fictitious)	:	
	:	
Defendants.	:	

Plaintiffs State Of New Jersey, Department of Environmental Protection ("DEP" or "Department"), 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, "Plaintiffs"), having their

principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against Defendants Sainte Marie Cleaners, Inc.; Walter Zoladz; MACWCP IV Corp.; CHM Properties, LLC; "XYZ Corporations" 1-10 (Names Fictitious); and "John and/or Jane Does" (Names Fictitious) (collectively "Defendants") 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 Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29 ("SRRA").
2. The Site held a former dry cleaning business at 723 - 725 Chestnut Street in Trenton that has been contaminated with tetrachloroethylene (PCE), a solvent that is widely used in the dry cleaning industry to clean fabrics. The contaminated property is situated in a residential area. PCE has migrated from the site for decades and PCE vapor has been measured at levels exceeding DEP remediation standards inside several homes occupied by residents neighboring the site of the former dry cleaner. Mumford Cert. ¶¶ 2, 6, 8, 9, 10, 23. Exposure to PCE has been linked to kidney dysfunction, respiratory tract irritation, and cognitive and neurological effects.

3. In order to protect human health and the environment, the Department investigated and mitigated, at significant expense to the public, PCE vapors that entered residences near the former dry cleaning business. In particular, the Department funded installation of vapor intrusion mitigation systems to prevent PCE vapors from entering five homes around the contaminated site. The Department continues to maintain the mitigation systems to this day.
4. The Department now brings this suit (1) to compel Defendants to remediate hazardous substances in the soil and groundwater at 723 - 725 Chestnut Avenue and the land and groundwater of surrounding properties that have been contaminated with hazardous substances discharged at that Site; (2) to recover from Defendants the costs Plaintiffs have incurred and will incur to remediate the Contaminated Site; (3) to impose civil administrative penalties and civil statutory penalties on Defendants; and (4) for other related relief.
5. Plaintiffs are entitled to this relief against Defendant(s) pursuant to the Spill Act, WPCA, SRRA, the Penalty Enforcement Law, N.J.S.A. 2A:58-10 to -12, or R. 4:67-6 and R. 4:70.

THE PARTIES

6. DEP is a principal department in the State of New Jersey's executive branch of government. The Department maintains its principal offices at 401 East State Street, Trenton, Mercer

County, New Jersey. Pursuant to the authority vested in the DEP by the aforementioned statutes to protect human health and the environment, the Department is empowered to compel parties liable for the discharge of hazardous substances to remediate the contamination, recover costs incurred to remediate hazardous waste discharges using public funds, institute legal proceedings to enforce final agency orders, and to recover penalties in summary proceedings in Superior Court.

7. The Commissioner is authorized by law to commence a civil action in Superior Court for appropriate relief for any violation of the WPCA. N.J.S.A. 58:10A-10.c.
8. 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.-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.
9. Defendant Sainte Marie Cleaners, Inc. ("Sainte Marie Cleaners") is a New Jersey corporation. Its principal address was 723 Chestnut Avenue, Trenton, NJ 08611, between 1986 and 2000.

10. Defendant, Walter Zoladz ("Zoladz" or "Defendant Zoladz"), is an individual. His last known address is 325 Greenway Avenue, Darby, Pennsylvania 19023.
11. Defendant Zoladz purchased the Property in 1985, continuing to operate the Sainte Marie Cleaners dry cleaners, which was a family-owned business.
12. Defendant, MACWCP IV CORP. ("MACWCP"), is a Delaware corporation. MACWCP's principal address is 8895 N. Military Trail, Suite 203D, Palm Beach Gardens, FL 33410.
13. MACWCP owned the Property from November 25, 2014 until July 29, 2015.
14. Defendant CHM Properties LLC ("CHM") is a New Jersey limited liability company. CHM's principal address is 428 Clifton Avenue, #138, Lakewood, NJ 08701. CHM acquired the property on July 29, 2015, and as of the date of the filing of this complaint, CHM remains the owner.
15. "XYZ Corporations" 1-10, these names being fictitious, are entities with identities that cannot be ascertained as of the filing of this Complaint, certain of which are corporate successors to, predecessors of, insurers of, or are otherwise related to, Defendants Sainte Marie Cleaners Inc., Walter Zoladz, MACWCP IV Corp., and CHM Properties, LLC. and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the site.

16. "John and/or Jane Does" 1-10, these names being fictitious, are natural individuals whose identities cannot be ascertained as of the filing of this Complaint, certain of whom are partners, officers, directors, and/or responsible corporate officials of, or are otherwise related to, Defendants Sainte Marie Cleaners, Inc., Walter Zoladz, MACWCP IV Corp., CHM Properties, LLC. and/or one or more of the XYZ Corporation defendants, and/or are other dischargers and/or persons "in any way responsible" for the hazardous substances discharged at the Property.

SITE BACKGROUND

17. The Property or Site, 723-725 Chestnut Avenue, Trenton, NJ, is designated as Block 16404, Lot 1, on the City of Trenton tax map.
18. The Site has been assigned Site Remediation Program Interest Number 010100 by DEP.
19. Walter Zoladz acquired the Site in 1985 and operated it as a dry cleaning business, Sainte Marie Cleaners, Inc. ("Sainte Marie Cleaners"). Mumford Cert. ¶ 6, 7.
20. The Site operated as a dry cleaning business until 2000, and upon information and belief, during the five decades prior. Mumford Cert. ¶ 6.

21. On or around January 20-21, 2000, Walter Zoladz, the owner of the Site, closed the underground storage tank (UST) system at the Site. Mumford Cert. ¶ 8.
22. Zoladz abandoned four (4) USTs in place: one (1) 1,500-gallon fuel tank and three (3) 550-gallon solvent tanks, which were used to hold the chlorinated solvent, PCE (also known as Tetrachloroethylene, Perchloroethylene and Perc, among other names). Mumford Cert. ¶ 8-10.
23. PCE is a hazardous substance under the Spill Act. See N.J.S.A. 58:10-23.11b.
24. On or around January 21, 2000, an individual at the Property called DEP's environmental hotline to report contamination at the Site because of a suspected discharge of heating oil following the closure of the UST system at the Site. Mumford Cert. ¶ 11.
25. On and/or after January 20 and 21, 2000, Zoladz sampled the soil on the property and detected PCE contamination in amounts as high as 41.2 ppm (parts per million), well above DEP action levels. Mumford Cert. ¶ 9-10.
26. DEP's Impact to Ground Water Soil Screening level (IGW-SSL) for PCE is 0.0005 ppm.
27. DEP's Non-Residential Direct Contact Soil Remediation Standard (NRDC-SRS) is 5 ppm.

28. On or about November 30, 2012, MACWCP filed foreclosure proceedings following its acquisition of a tax lien through its purchase of a tax sale certificate for the property. Mumford Cert. ¶ 12.
29. On or about November 25, 2014, MACWCP obtained a final judgment of foreclosure and acquired ownership of the Site. Mumford Cert. ¶ 12.
30. On or around July 29, 2015, CHM Properties bought the Site via quitclaim deed. Mumford Cert. ¶ 13.
31. CHM remains the current owner of the Site. Mumford Cert. ¶ 14.

DEP'S ISSUANCE OF AONOCAPAs

32. On August 5, 2016, via certified mail, DEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Defendants MACWCP and CHM as current and former owners of the contaminated Site.
33. CHM and MACWCP had failed to conduct preliminary assessments or site investigations of the Site as required by N.J.A.C. 7:26E-3, and failed to retain a licensed site remediation professional (LSRP) for the remediation of the Site and notify DEP of the name and license number of the LSRP.
34. Both CHM and MACWCP also failed to meet their mandatory timeframes for completing a receptor evaluation pursuant to N.J.A.C. 7:26E-1.12 through 1.16 and subsequently failing to

meet the direct oversight requirements pursuant to N.J.A.C. 7:26C-14.2(b)9 (including submitting a public participation plan and schedule, submitting an initial remediation cost review, and establishing a remediation trust fund).

35. Both CHM and MACWCP also failed to conduct a remedial investigation as required by N.J.A.C. 7:26C-2.3(a) and N.J.A.C. 7:26E-4.10(a).
36. Lastly, the AONOCAPA was issued for CHM and MACWCP's failure to complete the remediation of the discharges at the Site (see N.J.A.C. 7:26C-2.3(a) 1 through 9) within the required timeframe pursuant to N.J.A.C. 7:26C-4.3(a)4 and their failure to pay the annual remediation fees pursuant to N.J.A.C. 7:26C-2.3(a)4.
37. Pursuant to the August 5, 2016 AONOCAPA, DEP ordered CHM and MACWCP to comply with the following provisions:
 - a. Conduct remediation of the Site with Department oversight and approval;
 - b. Proceed as the Department directs to remediate all discharges at the Site, including meeting regulatory timeframes for the following:
 - i. Retaining and providing to DEP the name and license information of an LSRP, and identifying any known areas of contamination on the Site,
 - ii. Submitting a proposed public participation plan,

- iii. Submitting an initial remediation cost review,
 - iv. Establishing and maintaining a direct oversight remediation trust fund,
 - v. Paying an annual remediation funding surcharge,
 - vi. Submitting a Case Inventory Document as well as a case status summary and a detailed schedule for the completion of the remediation, and
 - vii. Submitting the initial receptor evaluation report to the Department;
- c. Paying \$5,240.00 in fees and submitting the Annual Remediation Fee Reporting Form;
 - d. Submitting to the Department the remedial investigation report along with the appropriate form.
38. The August 5, 2016 AONOCAPA also assessed a civil administrative penalty against CHM and MACWCP in the amount of \$90,000.00.
39. On or about August 24, 2016, MACWCP responded to the AONOCAPA via certified mail and requested an adjudicatory hearing. Mumford Cert. ¶ 18.
40. On or about August 25, 2016, CHM responded to the AONOCAPA via certified mail and requested an adjudicatory hearing. Mumford Cert. ¶ 19.
41. On June 20, 2017, DEP issued an AONOCAPA to Defendant Walter Zoladz. Mumford Cert. ¶ 17.

42. The June 20, 2017 AONOCAPA was issued because Walter Zoladz, as a former owner of the Site, abandoned in place four (4) underground storage tanks and discharged hazardous substances that could be detected in the soil above the Department's remediation standards.
43. Defendant Zoladz failed to retain a licensed site remediation professional (LSRP) for the remediation of the Site and notify DEP of the name and license number of that LSRP.
44. Zoladz also failed to meet mandatory timeframes for completing a receptor evaluation pursuant to N.J.A.C. 7:26E-1.12 through 1.16, failing to conduct a remedial investigation pursuant to N.J.A.C. 7:26C-2.3(a) 3 and 8 and N.J.A.C. 7:26E-4.10(a), and subsequently failed to meet the direct oversight requirements pursuant to N.J.A.C. 7:26C-14.2(b) (including submitting a public participation plan and schedule, submitting an initial remediation cost review, and establishing a remediation trust fund).
45. Zoladz also failed to conduct a remedial investigation as required by N.J.A.C. 7:26C-2.3(a) and N.J.A.C. 7:26E-4.10(a).
46. Zoladz also failed to complete the remediation of the discharges at the Site (see N.J.A.C. 7:26C-2.3(a)) within the required timeframe pursuant to N.J.A.C. 7:26C-4.3(a)4 and failed to pay the annual remediation fees pursuant to N.J.A.C. 7:26C-2.3(a)4.

47. For these violations and any others enumerated in the August 5, 2016 AONOCAPA, DEP ordered Zoladz to comply with the following provisions:
- a. Conduct remediation of the Site with Department oversight and approval;
 - b. Proceed as the Department directs to remediate all discharges at the Site, including meeting regulatory timeframes for the following:
 - i. Retaining and providing to DEP the name and license information of an LSRP, and identifying any known areas of contamination on the Site,
 - ii. Submitting a proposed public participation plan,
 - iii. Submitting an initial remediation cost review,
 - iv. Establishing and maintaining a direct oversight remediation trust fund,
 - v. Paying an annual remediation funding surcharge,
 - vi. Submitting a Case Inventory Document as well as a case status summary and a detailed schedule for the completion of the remediation, and
 - vii. Submitting the initial receptor evaluation report to the Department;
 - c. Paying \$7,000.00 in past due annual remediation fees and submitting the Annual Remediation Fee Reporting Form.

48. The June 20, 2017 AONOCAPA also assessed a civil administrative penalty of \$95,000.00. Mumford Cert. ¶ 17.
49. Zoladz did not respond to the AONOCAPA, within 20 days or any time thereafter. Mumford Cert. ¶ 20.
50. Pursuant to N.J.S.A. 13:1E-9(c) and N.J.A.C. 7:26C-9.10, a person has 20 calendar days after his receipt of an AONOCAPA to request a hearing to contest the Department's issuance of the AONOCAPA.
51. After 21 days, the June 20, 2017 AONOCAPA sent to Walter Zoladz became a Final Agency Order. N.J.S.A. 58:10-23.11u.

**DEP's Discovery of PCE Vapor Intrusion in Nearby Residences and
Installation of Vapor Mitigation Systems**

52. On or about February 28-29, 2018, DEP conducted vapor intrusion sampling at eight (8) properties at and around the Site: 801 Chestnut Avenue, 28 Morris Avenue, 30 Morris Avenue, 32 Morris Avenue, 721 Chestnut Avenue (at the front), 721 Chestnut Avenue (at the back), 331 Emory Avenue (Washington School), and 723 Chestnut Avenue. Mumford Cert. ¶ 23.
53. A litany of harmful effects is associated with the inhalation of PCE vapor, including irritation of the upper respiratory tract and eyes, kidney dysfunction, and neurological effects such as mood changes, impairment of coordination, dizziness, headache, sleepiness, and unconsciousness. The main effects from chronic inhalation of PCE vapor are neurological,

impairing neurobehavioral abilities, such as cognition and motor function. The federal Environmental Protection Agency ("EPA") has found it likely that PCE exposure causes cancer, and studies have found associations between PCE exposure and bladder cancer, non-Hodgkins lymphoma and multiple myeloma.

<https://www.epa.gov/sites/production/files/2016-09/documents/tetrachloroethylene.pdf>.

54. PCE is a type of chlorinated solvent, which is a class of volatile chemicals. Like other volatile chemicals, when PCE is discharged into the soil or ground water, it can migrate vertically and horizontally in its liquid form. However, PCE in the ground can also volatilize, i.e., turn into vapor. This vapor rises through subsurface soils and/or preferential pathways (such as underground utilities). PCE's chemical properties allow it to permeate concrete foundations, and other porous materials. Thus, when PCE contaminates the soil and groundwater, some of it vaporizes and intrudes into structures and homes in its path. This PCE vapor degrades the indoor air quality, and results in the continuous respiration of carcinogenic PCE vapors by occupants of these buildings. This migration of volatile chemicals is known as Vapor Intrusion.

<https://www.nj.gov/dep/srp/guidance/vaporintrusion/>

55. DEP's screening level for soil gas is 470 micro grams per cubic meter ("ug/m³") for residential and 2400 ug/m³ for nonresidential.
56. DEP's screening level for indoor air screening is 9 ug/m³ for residential and 47 ug/m³ for nonresidential.
57. At 801 Chestnut Avenue, DEP detected PCE in the sub-slab soil gas samples at levels ranging from 34,000 ug/m³ to 110,000 ug/m³. Mumford Cert. ¶ 25.
58. DEP also detected PCE in the indoor air samples at levels of approximately 78 ug/m³ and 290 ug/m³ at 801 Chestnut Avenue. Mumford Cert. ¶ 25.
59. DEP's findings triggered an Immediate Environmental Concern ("IEC") condition, see N.J.A.C. 7:26E-1.8, for 801 Chestnut Avenue. Mumford Cert. ¶ 25.
60. At 28 Morris Avenue, PCE was found at a level of 120,000 ug/m³ in the sub slab soil gas sample and in the indoor air sample at 20 ug/m³, triggering a Vapor Concern condition, see N.J.A.C. 7:26E-1.8, for the property. Mumford Cert. ¶ 26.
61. At 30 Morris Avenue, PCE in the sub-slab soil gas samples was detected at a level of 250,000 ug/m³ and in the indoor air samples at 20 ug/m³, triggering a Vapor Concern condition for the property. Mumford Cert. ¶ 26.
62. At 32 Morris Avenue, PCE in the sub-slab soil gas samples was measured at 64,000 ug/m³ and in the indoor air samples at 460

ug/m³, triggering an IEC condition for the property. Mumford Cert. ¶ 25.

63. At 721 Chestnut Avenue, DEP found high levels of PCE in the sub slab soil gas sample at a level of 77,000 ug/m³ and indoor air sample at a level of 44 ug/m³ at the front of the property, triggering a Vapor Concern condition. Mumford Cert. ¶26.

64. DEP also detected a concentration of 35,000 ug/m³ of PCE in a near-slab soil gas sample at the Site, though no access was obtained for a sub-slab or indoor air sample. Mumford Cert. ¶ 27.

65. As a result, DEP - at substantial cost - installed and continues to maintain sub-slab depressurization systems (a/k/a vapor mitigation systems) at five of the properties to which it acquired access: 801 Chestnut Avenue, 28 Morris Avenue, 30 Morris Avenue, 32 Morris Avenue, and 721 Chestnut Avenue. Mumford Cert. ¶ 28.

Issuance of DEP Directive and Notice to Insurers

66. On or about May 3, 2018, DEP issued a Directive and Notice to Insurers ("Directive") to Defendants Zoladz, MACWCP and CHM. Mumford Cert. ¶ 29.

67. Defendant CHM responded to the Directive on May 9, 2018. Mumford Cert. ¶ 31.

68. Defendant MACWCP responded to the Directive on May 10, 2018. Mumford Cert. ¶ 32.

69. Defendant Zoladz did not respond to the Directive. Mumford Cert. ¶ 33.
70. All of the timeframes established in the Directive have lapsed without compliance by any of the Defendants. Mumford Cert. ¶ 34.
71. To date, no Defendant has retained an LSRP, submitted remediation cost review forms, established a remediation funding source, conducted vapor intrusion investigations and site investigations, conducted remediation at the site, paid specified fees and costs, or fulfilled the other various requirements enumerated in the Directive.

FIRST COUNT

**Spill Act Liability and
Enforcement of DEP Directive and AONOCAPAs**

72. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 71 above as though fully set forth in their entirety herein.
73. 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), except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here.

74. Under the Spill Act, 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).
75. The Administrator is authorized under the Spill Act to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund pursuant to N.J.S.A. 58:10-23.11q.
76. 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).
77. PCE is a "hazardous substance" as defined by 58:10-23.11b.
78. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.
79. Defendant Sainte Marie Cleaners, Inc. is liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of its discharge of PCE at the Property in the course

of conducting the dry cleaning operations. N.J.S.A. 58:10-23.11g.c.(1).

80. Defendant Zoladz is liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of his discharge of PCE at the Property in the course of conducting the dry cleaning operations and as a result of his ownership of the Property where the discharge occurred. N.J.S.A. 58:10-23.11g.c.(1).
81. Defendant MACWCP IV Corp. is liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of its acquisition of the PCE-contaminated Property in 2014. N.J.S.A. 58:10-23.11g.c.(1).
82. Defendant CHM Properties, LLC, is liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of its purchase of the PCE-contaminated Property in 2015. N.J.S.A. 58:10-23.11g.c.(1).
83. XYZ Corporations 1-10, are dischargers and/or persons in any way responsible for discharged hazardous substances and are 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).

84. John and/or Jane Does 1-10 are dischargers and/or persons in any way responsible for discharged hazardous substances and are 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 Site. N.J.S.A. 58:10-23.11g.c.(1).

85. By failing to comply with the Department's Directive and Notice to Insurer, Defendants are liable 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).

WHEREFORE, Plaintiffs demand judgment in their favor:

- a. Finding that Defendants discharged a hazardous substance at the Property, or are otherwise in any way responsible for the discharged PCE;
- b. Declaring Defendants 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);
- c. Ordering the Defendants 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 interest as applicable, and for Defendants Zoladz, MACWCP, and CHM to jointly and severally reimburse Plaintiffs DEP and the Administrator in an amount equal to three times the cleanup and removal costs the Plaintiffs have incurred for the Site;

- d. Compelling Defendants to comply with the Directive and respective AONOCAPAs, and to otherwise remediate the Contaminated Site in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;
- e. Awarding Plaintiffs any other relief this Court deems appropriate.
- f. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

SECOND COUNT

**WPCA Liability as to
Defendants Sainte Marie Cleaners and Zoladz**

- 86. The Plaintiffs repeat each allegation of paragraph numbers 1 through 85 above as though fully set forth in its entirety herein.

87. Defendants Sainte Marie Cleaners and Zoladz are "persons" within the meaning of N.J.S.A. 58:10A-3.
88. 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.
89. The Commissioner has incurred, and will incur, costs and damages because of the discharge of pollutants at the Property.
90. 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).
91. 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 demands judgment in her favor ordering Defendants Sainte Marie Cleaners and Zoladz:

- a. To remove, correct, or terminate the adverse effect upon water quality resulting from any unauthorized discharge of pollutants;
- b. To reimburse 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. To reimburse 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. To reimburse 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. To reimburse 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. To pay 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 have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the WPCA;
- g. To pay 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 enjoyed, or any other benefit that will accrue as a result of having violated the WPCA; and
- h. Awarding the Commissioner her costs and fees in this action;
- i. Awarding the Commissioner such other relief as this Court deems appropriate; and

- j. Reserving 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

**Enforce Final Agency Order and Payment of
Civil Administrative Penalty against Defendant Zoladz**

92. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 91 above as though fully set forth in their entirety herein.
93. Pursuant to the Spill Act, 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 a civil action to compel compliance with an agency order.
94. The Department may also assess a civil administrative penalty (not to exceed \$50,000 per day, for each day the violation continues) against a person in violation of a provision of the Spill Act or "any rule, regulation plan, information request, access request, order or directive promulgated or issued pursuant to the Spill Act." N.J.S.A. 58:10-23.11u.a(1)(b) and N.J.S.A. 58:10-23.11u.c
95. The AONOCAPA issued to Defendant Zoladz is an agency order.

96. The AONOCAPA issued to Defendant Zoladz became a Final Agency Order because Defendant Zoladz did not request a hearing or otherwise respond to the AONOCAPA within the 20-day timeframe, as required by N.J.S.A. 58:10-23.11u.c(1), N.J.A.C. 7:26c-9.10 and the AONOCAPA issued to Defendant Zoladz.
97. To date, the Defendant has not complied with the requirement to pay the \$95,000.00 civil administrative penalty assessed in the Final Agency Order.
98. To date, the Defendant Zoladz has not complied with the remediation requirements of the Final Agency Order.
99. To date, the Defendant Zoladz has not complied with the requirement in the Final Agency Order to reimburse the Department for cleanup and removal costs.
100. Pursuant to R. 4:67-6, the Department is entitled to summary enforcement of the Final Agency Order.

WHEREFORE, Plaintiffs demand judgment in their favor:

- a. Finding Defendant Zoladz in violation of the Final Agency Order;
- b. Compelling Defendant Zoladz to comply with the Final Agency Order.
- c. Ordering Defendant Zoladz, within thirty (30) days after the Court's Order, to reimburse the Department for cleanup

and removal costs it has incurred, or will incur to remediate the Contaminated Site, including any related or oversight costs;

- d. Ordering Defendant Zoladz, within thirty (30) days after the Court's Order to pay the civil administrative penalty in the amount of \$95,000.00, plus interest on the unpaid penalty at the judgment rate commencing on December 20, 2017, in accordance with N.J.S.A. 58:10-23.11u.c(3) and R. 4:42-11(a).
- e. Awarding Plaintiffs any other relief this Court deems appropriate.
- f. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

FOURTH COUNT

**Assessment of Civil Penalty Against Defendant Zoladz for
Violating the Spill Act and Failing to Pay the Civil
Administrative Penalty**

- 101. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 100 above as though fully set forth in their entirety herein.
- 102. Pursuant to N.J.S.A. 58:10-23.11u.a (1), "[a]ny person who violates a provision of [the Spill Act] or a court order issued pursuant thereto, or who fails to pay a civil

administrative penalty in full or to agree to a schedule of payments therefor, shall be subject to a civil penalty not to exceed \$50,000.00 per day for each violation, and each day's continuance of the violation shall constitute a separate violation."

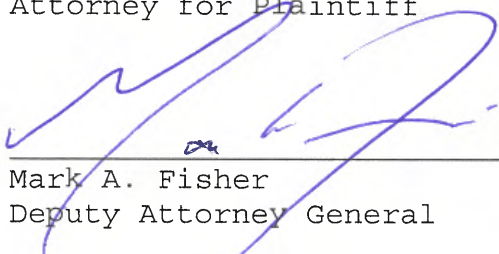
103. The Department may bring an action in Superior Court seeking the imposition of these penalties, N.J.S.A. 58:10-23.11u.a(1)(c), which, along with costs, may be recovered by the Department in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.). N.J.S.A. 58:10-23.11u.d.
104. Defendant Zoladz violated the Spill Act provision that prohibits the discharge of hazardous substances, N.J.S.A. 58:10-23.11c, and is therefore subject to the civil penalties under N.J.S.A. 58:10-23.11u.d.
105. In addition, Defendant Zoladz has not paid the \$95,000 civil administrative penalty assessed in the Final Agency Order, and is therefore subject to the civil penalties under N.J.S.A. 58:10-23.11u.d.
106. Pursuant to N.J.S.A. 58:10-23.11u.d. and R. 4:70-1, Plaintiffs may proceed summarily, in accordance with the procedure of R. 4:67-1, to enforce this statutory penalty provision and collect the penalties imposed.

WHEREFORE, Plaintiffs demand judgment against the Defendant Zoladz:

- a. Finding the Defendant violated the Spill Act;
- b. Finding that Defendant Zoladz failed to pay the \$95,000 civil administrative penalty assessed in the Final Agency Order
- c. Imposing civil penalties, in accordance with N.J.S.A. 58:10-23.11u.d, as a result of his violation of the Spill Act and failure to pay the \$95,000.00 civil administrative penalty.
- d. Awarding Plaintiffs any other relief this Court deems appropriate.
- e. Reserving the right to bring a claim against Defendants in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By:



Mark A. Fisher
Deputy Attorney General

DATED:

VERIFICATION

I, Mindy Mumford, by way of certification, state that:

1. I am employed by the New Jersey Department of Environmental Protection within the Site Remediation Program.
2. I am the enforcement manager for the Sainte Marie Cleaners Site.
3. I have read this Complaint.
4. To the extent a factual allegation contained in this Complaint relies on (by way of citation to) a statement in my accompanying Certification, I certify that such factual allegation is true and correct.
5. I am aware that if the foregoing statements made by me are willfully false, I may be subject to punishment.


Mindy Mumford

DATED: *October 24, 2019*

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b) (2), that, apart from Alternative Dispute Resolution proceedings between MACWCP and CHM and the Department, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Plaintiffs at this time, nor is any non-party known to Plaintiffs 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 non-party later becomes known to Plaintiffs, 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
Attorney for Plaintiffs

By: _____

Mark A. Fisher
Deputy Attorney General

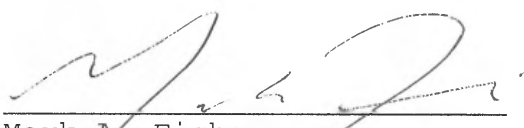
DATED:

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(C)

Undersigned counsel further certifies 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 R. 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff

By:



Mark A. Fisher
Deputy Attorney General

DATED: