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SUPERIOR COURT OF N.J.
MERCER COUNTY
REC'D

DEC 2 / 2004

Bruce J. Hillman Sr.
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DEPUTY CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. *MERL-3286-04*

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

JAI CHOI;
YOUNG CHOI;
CHO K. SHIN;
JOON HO SHIN;
MYUNG SHIN;
SAMUEL K. SHIN;
HOWARD VEGOTSKY;
JEANETTE VEGOTSKY; and
PHILLIP VEGOTSKY,

Defendants.

Civil Action

COMPLAINT

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), and the Administrator of the New Jersey Spill Compensation Fund ("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 way of Complaint against the above-named defendants (collectively, "the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("the Spill Act"), and the common law, for reimbursement of the cleanup and removal costs they have incurred, and will incur, as a result of the discharge of hazardous substances at the Kenny's Cleaners site located at 1680 Pennington Road in Ewing Township, Mercer County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Kenny's Cleaners site, and to compel the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Kenny's Cleaners site.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government vested with the authority to conserve natural resources, protect the environment, prevent

pollution, and protect the public health and safety. N.J.S.A.
13:1D-9.

3. In addition, with the State being the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

4. Plaintiff 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 chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay cleanup and removal costs plaintiff DEP 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.

5. Defendant Young Choi is an individual whose last known address is c/o Kenny's Cleaners, 1680 Pennington Road, Ewing, New Jersey.

6. Defendant Jai Choi is an individual whose last known address is c/o Kenny's Cleaners, 1680 Pennington Road, Ewing, New Jersey.

7. Defendant Howard Vegotsky is an individual whose dwelling or usual place of abode is 191 Wertsville Road, Ringoes, New Jersey.

8. Defendant Jeanette Vegotsky is an individual whose dwelling or usual place of abode is 513 Eagles Chase Drive, Lawrenceville, New Jersey.

9. Defendant Phillip Vegotsky is an individual whose dwelling or usual place of abode is 513 Eagles Chase Drive, Lawrenceville, New Jersey.

10. Defendant Cho K. Shin is an individual whose dwelling or usual place of abode is 28 Upland Road, Levittown, Pennsylvania.

11. Defendant Joon Ho Shin is an individual whose dwelling or usual place of abode is 243 Brinley Drive, Pennington, New Jersey.

12. Defendant Myung Shin is an individual whose dwelling or usual place of abode is 243 Brinley Drive, Pennington, New Jersey.

13. Defendant Samuel K. Shin is an individual whose dwelling or usual place of abode is 28 Upland Road, Levittown, Pennsylvania.

AFFECTED NATURAL RESOURCE

Ground Water

14. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

15. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

16. Ground water provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

17. Ground water also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

18. Ground water and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

19. There are more than 6,000 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

GENERAL ALLEGATIONS

20. The Kenny's Cleaners site consists of approximately .1 acres of real property located at 1680 Pennington Road, Ewing Township, Mercer County, New Jersey, this property being also known and designated as Block 154, Lot 2, on the Tax Map of Ewing Township ("the Kenny's Cleaners Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Kenny's Cleaners Site").

21. From 1960 through July 1, 1982, Paul Vegotsky, now deceased, and defendant Jeanette Vegotsky owned the Kenny's Cleaners Property.

22. On July 1, 1982 defendants Philip Vegotsky and Howard Vegotsky purchased the Kenny's Cleaners Property, which they continued to own through April 1984, when they sold the Kenny's Cleaners Property to defendants Joon Ho Shin and Myung Shin.

23. Defendants Joon Ho Shin and Myung Shin owned the Kenny's Cleaners Property until June 1999, when they sold the property to defendants Cho K. Shin and Samuel K. Shin, who were the owners of record as of the filing of this Complaint.

24. During the time that defendants Jeanette Vegotsky, Philip Vegotsky, Howard Vegotsky, Joon Ho Shin and Myung Shin, owned the Kenny's Cleaners Property, "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").

25. From 1980 to June 1999, defendants Joon Ho Shin and Myung Shin also did business as Kenny's Dry Cleaners, a dry cleaning establishment, at the Kenny's Cleaners Property, which from May 1994 through June 1999, they operated with defendants Young Choi and Jai Choi.

26. From June 1999 to the present, defendants Cho K. Shin and Samuel K. Shin also have done business as Kenny's Dry Cleaners, a dry cleaning establishment, at the Kenny's Dry Cleaners Property.

27. During the time Cho K. Shin, Joon Ho Shin, Myung Shin, Samuel K. Shin, Jai Choi and Young Choi operated a dry cleaning

establishment at the Kenny's Cleaners Property, they stored and handled hazardous substances, including PCE, certain of which were discharged there.

28. During March and April 1988, the Ewing Township Health Department sampled a private potable well located near the Kenny's Cleaners Property after the property owner detected an odor in the water from the well.

29. The Ewing Township Health Department's sampling results revealed the presence of hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria, including PCE, in the water from the residential well.

30. In August 1988, the Ewing Township Health Department sampled the water from another private potable well near the Kenny's Dry Cleaners Property, the results of which revealed the presence of hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria, including PCE, in the water from the well.

31. During a February 1989 inspection, plaintiff DEP found that the Kenny's Cleaners facility was being serviced by a sanitary sewer, and that the septic system on the Kenny's Cleaners Property was no longer being used.

32. In February and September 1989, plaintiff DEP sampled the soils and ground water at and underlying the Kenny's Cleaners Property, the results of which revealed the presence of various

hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria, including PCE, in the soils and ground water.

33. In June 1997, plaintiff DEP performed a pre-sampling assessment of the Site in preparation for a comprehensive soils and groundwater sampling event to evaluate whether the discharge of hazardous substances at the Kenny's Cleaners Property contributed to the area's potable well contamination.

34. In September 1997, plaintiff DEP sampled the soils at the Kenny's Cleaners Property, the results of which revealed the presence of various hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the soils and ground water at the Site, which substances included PCE.

35. On April 30, 1998, plaintiff DEP released its Preliminary Assessment and Site Investigation ("PA/SI") report, in which plaintiff DEP found that the dry cleaning facility at the Kenny's Cleaners Property used PCE as the cleaning solvent, that PCE was stored in 55-gallon drums on the premises, and that PCE was improperly discharged at the Kenny's Cleaners Property.

36. Based upon the findings from the PA/SI, plaintiff DEP concluded that the Kenny's Cleaners Property was a source of the potable well contamination in the Pennington Road area of Ewing Township, and that 19 private potable wells were contaminated with PCE.

37. Ewing Township subsequently contracted with Trenton Water Works to install municipal water mains in the Pennington Road area.

38. Plaintiffs DEP and the Administrator financed Ewing Township's extension of the municipal water system, paid for connecting the affected residences to the public water supply system, and financed the sealing of 19 contaminated potable wells.

39. Although plaintiff DEP has undertaken certain of the remediation for the Site, the groundwater contamination continues.

FIRST COUNT

Spill Act

40. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 39 above as though fully set forth in its entirety herein.

41. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

42. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Kenny's Cleaners Property.

43. Plaintiff Administrator has certified, and may continue to certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, and may continue to approve, other appropriations for the Site. The Plaintiffs have incurred, and will continue to incur, costs and damages, including lost use and reasonable assessment costs, for any natural resource

of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property.

44. The costs and damages the Plaintiffs have incurred, and will incur, for the Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

45. Defendants Jai Choi, Young Choi, Cho K. Shin, Joon Ho Shin, Myung Shin, and Samuel K. Shin, are the dischargers of hazardous substances at the Kenny's Cleaners Property, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property. N.J.S.A. 58:10-23.11g.c.(1).

46. Defendants Cho K. Shin, Joon Ho Shin, Myung Shin, Samuel K. Shin, Jeanette Vegotsky, Howard Vegotsky, and Phillip Vegotsky, as the owners of the Kenny's Cleaners Property at the time hazardous substances were discharged there, are persons otherwise responsible for the discharged hazardous substances, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural

resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property. N.J.S.A. 58:10-23.11g.c.(1).

47. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP 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); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured

- as a result of the discharge of hazardous substances at the Kenny's Cleaners Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property;
 - c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Kenny's Cleaners Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property;
 - d. Award the Plaintiffs their costs and fees in this action;
and
 - e. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

49. Plaintiffs repeat each allegation of Paragraphs 1 through 48 above as though fully set forth in its entirety herein.

50. Ground water is a natural resources of the State held in trust by the State.

51. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

52. The groundwater contamination at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

53. As long as the ground water remains contaminated due to the Defendants' conduct, the public nuisance continues.

54. Until the ground water is restored to its pre-injury quality, the Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean ground water.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured

- as a result of the discharge of hazardous substances at the Kenny's Cleaners Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property;
 - c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Kenny's Cleaners Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property;
 - d. Award the Plaintiffs their costs and fees in this action;
and
 - e. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

55. Plaintiffs repeat each allegation of Paragraphs 1, through 54 above as though fully set forth in its entirety herein.

56. Ground water is a natural resource of the State held in trust by the State for the benefit of the public.

57. The Defendants are liable for trespass, and continued trespass, since hazardous substances were discharged at the Kenny's Cleaners Property.

58. As long as the ground water remains contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as

a result of the discharge of hazardous substances at the Kenny's Cleaners Property;

- c. Enter judgment against the Defendants, compelling the Defendants to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Kenny's Cleaners Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Kenny's Cleaners Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Jeffrey K. Gladden
Deputy Attorney General

Dated: 12/27/04

DESIGNATION OF TRIAL COUNSEL

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

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, et al., Docket No. A-6537-03 T3. Otherwise, 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 the Plaintiffs at this time, nor is any non-party known to the 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 the 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).

PETER C. HARVEY
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Attorney for Plaintiffs

By: 

Jeffrey K. Gladden
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Dated: 11/17/04