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

Plaintiffs,

v.

PENICK CORPORATION; PENICK  
REALTY, LLC; UNILEVER UNITED  
STATES, INC.; CPC  
INTERNATIONAL, INC.; AMB  
PROPERTY L.P.; AMB LIBERTY  
LOGISTICS CENTER, LLC and "ABC  
CORPORATIONS" 1-10 (Names  
Fictitious),

Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY  
DOCKET NO.

Civil Action

COMPLAINT

Jury Trial Demand

Plaintiffs New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, the "Plaintiffs" or the "Department"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, file this Complaint against the above-named defendants (the "Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action seeking reimbursement of the costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances and pollutants at the Penick Corporation site in the City of Newark, Essex County (the "Penick Corporation Site" or "Site"). The action arises from the Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 through -23.24, the Water Pollution Control Act (the "WPCA"), N.J.S.A. 58:10A-1 through -20, and the common law, and includes claims for natural resource damages ("NRD") the State brings as trustee of the natural resources of New Jersey on behalf of its residents.

2. The Penick Corporation Site is located at the intersection of Runiak Avenue and Mount Olivet Avenue in the City of Newark, New Jersey. Newark, New Jersey's most populous city, and one of the most densely populated cities in the nation, is home to many low-income and minority residents. The median household income is \$35,181 and 90% of the city's residents are racial minorities.

3. Historically, low-income communities and communities of color across the country have been exposed to disproportionately high and unacceptably dangerous levels of air, water and soil pollution, with the accompanying potential for increased public health impacts. But residents of all communities should receive fair and equitable treatment in matters affecting their environment, community, homes and health. See, e.g., Exec. Order No. 23 (April 20, 2018), 50 N.J.R. 1241(b) (May 21, 2018). As such, Plaintiffs bring this as an Environmental Justice action pursuant to the Spill Act and the WPCA.

4. Over the years, hazardous substances, including trichloroethene ("TCE"), have been discharged at the Penick Corporation Site and have not been remediated by the defendants. Exposure to those substances has been linked to kidney dysfunction,

respiratory tract irritation, and cognitive and neurological effects.

5. In furtherance of environmental justice principles, Plaintiffs bring this civil action to: compel defendants to remediate the discharges of hazardous substances at the Penick Corporation Site; reimburse Plaintiffs for the costs that they have incurred, and will incur, related to those discharges; pay 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 and pollutants at the Site. Further, the Plaintiffs seek an order compelling the Defendants to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances and pollutants, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

#### THE PARTIES

6. The DEP, having its principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, 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.

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

8. The Commissioner is the Commissioner of DEP. N.J.S.A. 58:10-23.11b and N.J.S.A. 58:10A-3. In this capacity, the Commissioner is vested by law with various powers and authority, including those conferred by DEP's enabling legislation, N.J.S.A. 13:1D-1 through -19.

9. 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 chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs 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.

10. Defendant Penick Corporation, Inc. ("Penick") is a corporation organized and existing under the laws of the State of

Delaware, with a principal place of business located at 33 Industrial Park, Pennsville, New Jersey.

11. Defendant Penick Realty, LLC, ("Penick Realty") is a limited liability company organized and existing under the laws of the State of Delaware, with an address c/o Palladium Equity Partners, 1370 Avenue of the Americas, New York, New York.

12. Defendant Unilever United States, Inc. ("Unilever") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 800 Sylvan Avenue, Englewood Cliffs, New Jersey.

13. Defendant CPC International, Inc. ("CPC") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at International Plaza, Englewood Cliffs, New Jersey.

14. Defendant, AMB Property, L.P. ("AMB Property") is a limited partnership organized and existing under the laws of the State of Delaware, with an address c/o AMB Property Corporation, Pier One, Bay One, San Francisco, California.

15. Defendant, AMB Liberty Logistics Center, LLC ("AMB Logistics") is a limited partnership organized and existing under the laws of the State of Delaware, with an address c/o AMB Property Corporation, Pier One, Bay One, San Francisco, California.

16. Defendants "ABC 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, or are otherwise related to, the identified defendants in this matter and/or are also dischargers and/or persons in any way responsible for discharges of hazardous substances that caused contamination at the site.

#### NATURAL RESOURCES

17. The "natural resources" of this State are all land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State. N.J.S.A. 58:10-23.11b.

18. The natural resources of this State include the "waters of the State," which are the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction. N.J.S.A. 58:10A-3t.

19. The natural resources of this State, including the waters of the State, have been injured as a result of the discharge of hazardous substances and pollutants at the Site.

AFFECTED NATURAL RESOURCE

Ground Water

20. 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.

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

22. Ground water provides base flow to streams and other surface water bodies, and influences surface water quality and wetland ecology and the health of aquatic ecosystems.

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

24. Ground water is a unique resource that supports the State's tourism industry, and is also used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

25. There are thousands of sites in New Jersey confirmed as having ground water contaminated with hazardous substances and pollutants.



GENERAL ALLEGATIONS

26. The former Penick Corporation property ("Property"), located at 158 Mount Olivet Avenue, City of Newark, Essex County, New Jersey, consists of approximately 9.35 acres of land located at the intersection of Runiak Avenue and Mount Olivet Avenue.

27. Upon its acquisition of the Property in 1978, Penick's industrial operations at the Property included the manufacturing of active ingredients related to the pharmaceutical industry.

28. The Site consists of approximately 38 acres of contaminated groundwater in Essex County, located in the municipality of the City of Newark, which Plaintiff DEP has designated as Site Remediation Program Interest Number 001154 and Industrial Site Recovery Act Case ("ISRA") Number E88129. Defendant Unilever is the responsible conducting remediation under the ISRA case.

29. On January 1, 1978, ownership of the Property was conveyed by CPC International, Inc. to Penick Corporation.

30. On May 17, 2005, ownership of the Property was transferred from Penick Corporation to Penick Realty, LLC.

31. On February 7, 2006, ownership of the Property was transferred from Penick Realty, LLC to AMB Property, L.P.

32. On November 1, 2007, ownership of the Property was transferred from AMB Property, L.P. to AMB Liberty Logistics Center, LLC.

33. The Site exists within a physiogeologic area of Essex County known as the Raritan Watershed. The Passaic River and several of its smaller tributaries run into the Raritan Watershed.

34. The groundwater that lies in the Raritan Watershed is the primary source of potable water for residents, who obtain their water through public and private wells.

35. The groundwater that lies in the Raritan Watershed is also utilized for commercial and industrial purposes.

36. The soil contamination at the Property includes elevated concentrations of volatile organic compounds ("VOCs"), semi-volatile organic compounds ("SVOCs"), polychlorinated biphenyls ("PCBs"), and various metals.

37. The groundwater at the Property is impacted with chlorinated volatile organic compounds ("CVOCs"), including, but not limited to, trichloroethylene ("TCE").

38. DEP investigations have discovered that TCE was stored in underground storage tanks on the Property during Penick's operations and that known groundwater contamination was found in the vicinity of these storage tanks.

39. Under the direction of the DEP, Unilever and Penick conducted initial environmental remediation of contaminated soil at the Property, and the Property was redeveloped in 2008.

40. In August of 2010, Unilever and Penick submitted a Remedial Investigation Report/Remedial Investigation Workplan ("2010 RI/RAW Report"), which detailed the hazardous substances that were used by Unilever and Penick at the Property and that have been detected in the soil and ground water at the Property.

41. In March of 2011, DEP determined that the 2010 RI/RAW did not adequately delineate the extent of the groundwater contamination at the Property. To date, Unilever and Penick remain out of compliance for their failure to adequately delineate the groundwater contamination and obtain DEP approval of their 2010 RI/RAW.

42. As part of the redevelopment activities, the former building on the Property was demolished, contaminated soils were removed, and a new 191,204 square foot warehouse and groundwater remediation building were constructed on the Property. The redevelopment also included a concrete paved loading/unloading area, asphalt parking lot and new landscaping.

43. The redevelopment included various engineering controls, which consisted of concrete flooring in the new warehouse building,

asphalt pavement over almost all the exterior, and a vegetative cap in the landscape areas. A vapor barrier and sub-slab depressurization system were installed during the construction of the warehouse building to mitigate the potential infiltration of VOC vapors from the subsurface into the warehouse building.

44. Unilever/Penick continue to conduct environmental remediation of the groundwater at the Property under the direction of the DEP with a groundwater injection system to treat the CVOCs.

45. This remedial action is designed to address the shallow and deep dense non-aqueous phase liquid (DNAPL) plume consisting of TCE and other VOCs that have impacted the saturated soils and groundwater beneath the site, and beneath the adjacent Mount Olivet Cemetery and Anheuser-Busch facility.

46. The groundwater remediation included the installation of four, deep off-site delineation monitoring wells and numerous shallow and deep groundwater monitoring wells located on the Penick, Mount Olivet Cemetery and Anheuser-Busch facility properties.

47. Sampling from numerous on-site and off-site monitoring wells continue to indicate unacceptable high levels of TCE contamination.

48. In the most recent site wide sampling event conducted in May 2013, results for shallow wells on the Penick Property revealed TCE levels as high as 15,000 ug/L, above the MCL of 1.0 ug/L for TCE.

49. In the deep aquifer wells on the Penick Property, screenings revealed TCE concentrations as high as 130,000 ug/L.

50. At the Penick Property boundary, in a shallow well screening groundwater at 16-36 feet, TCE was detected at concentrations reaching 48,000 ug/L.

51. Further, while TCE was not detected in shallow monitoring wells within the Mount Olivet Cemetery and Anheuser-Busch facility property, TCE concentrations in the deep monitoring wells on the Mount Olivet Cemetery property were as high as 290,000 ug/L and as high as 84,000 ug/L in the deep monitoring wells on the Anheuser Busch facility property.

52. At present, soil and groundwater on the Site remain contaminated with TCE and other hazardous substances, as defined in N.J.S.A. 58:10-23.11b.

53. Despite ongoing remediation of the soils and groundwater on the Site, the TCE remaining in the soil is an ongoing source of groundwater contamination and vapor emissions at the Property.

54. The "natural resources" of this State, as defined in N.J.S.A. 58:10-23.11b, including the waters of the State, have been injured by the discharges of hazardous substances at the Penick Corporation Site.

55. DEP has incurred, and will likely continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Penick Corporation Site.

FIRST COUNT

Spill Act

56. DEP and the Administrator repeat each allegation of paragraph nos. 1 through 55 above as though fully set forth in its entirety herein.

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

58. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance that is discharged, 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).

59. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, which exemptions are not applicable here, the discharge of hazardous substances is a violation of the Spill Act, for which the discharger or person in any way responsible for the discharged hazardous substance, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).

60. DEP has incurred, and may continue to incur, costs from the discharge of hazardous substances at the Penick Corporation Site.

61. The 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.

62. DEP and the Administrator also have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Penick Corporation Site.

63. The costs and damages DEP and the Administrator 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.

64. The Defendants are dischargers, and/or are the successors to dischargers, of hazardous substances at the Penick Corporation Site, and are liable, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that DEP and the Administrator 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 Penick Corporation Site. N.J.S.A. 58:10-23.11g.c.(1).

65. The Defendants, as the owners of the Penick Corporation Site at the time hazardous substances were discharged there, and/or as successors to the owners of the Penick Corporation Site at the time hazardous substances were discharged there, also are persons "in any way 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 value and reasonable assessment costs, that DEP and the Administrator have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Penick Corporation Site. N.J.S.A. 58:10-23.11g.c.(1).



66. Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics as the knowing purchasers, and/or as successors to the knowing purchasers of the Penick Corporation Site, a property at which hazardous substances were previously discharged, are also persons "in any way 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 value and reasonable assessment costs, that DEP and the Administrator have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances at the Penick Corporation Site. N.J.S.A. 58:10-23.11g.c.(3).

67. 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 DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

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

PRAYER FOR RELIEF

**WHEREFORE,** DEP and the Administrator pray that this Court:

- a. Order the Defendants to reimburse DEP and the Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs and damages they have incurred, including lost value and reasonable assessment costs for any natural resource of this State injured as a result of the discharge of hazardous substances at the Penick Corporation Site, with applicable interest;
- b. Enter declaratory judgment against each Defendant, jointly and severally, without regard to fault, for all cleanup and removal costs and damages DEP and the Administrator will incur, including lost value and reasonable assessment costs, for any natural resource of this State injured as a result of the discharge of hazardous substances at the Penick Corporation Site;

- c. Enter judgment against the Defendants, jointly and severally, without regard to fault, compelling each Defendant to perform, under DEP's oversight, or to fund DEP's performance of, any further assessment of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Penick Corporation Site, and compelling each Defendant to compensate the citizens of New Jersey for the lost value of any injured natural resource.
- d. Award DEP and the Administrator their costs and fees in this action; and
- e. Award DEP and the Administrator such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

69. The Commissioner repeats each allegation of paragraph nos. 1 through 68 above as though fully set forth in its entirety herein.

70. Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics are each a "person" within the meaning of N.J.S.A. 58:10A-3.

71. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., which are not applicable here, it is unlawful for any person to discharge any pollutant except to the extent the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System ("NJPDDES") permit issued by the Commissioner pursuant to the WPCA, or pursuant to a valid National Pollutant Discharge Elimination System permit issued pursuant to the federal Water Pollution Control Act, 33 U.S.C.A. §§1251 to - 1387. N.J.S.A. 58:10A-6a.

72. 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.

73. DEP has incurred, and will continue to incur, costs from the discharge of pollutants at the Penick Corporation Site.

74. DEP also has incurred, and will continue to incur, costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed by the discharge of pollutants at the Penick Corporation Site.

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

76. Defendants Penick, Penick Realty, Unilever, CPC, AMB Property, AMB Logistics, and/or their respective predecessors at the Penick Corporation Site, discharged pollutants at the Penick Corporation Site, which discharges were neither permitted pursuant to N.J.S.A. 58:10A-6a., nor exempted pursuant to N.J.S.A. 58:10A-6d. or N.J.S.A. 58:10A-6p., and are liable, without regard to fault, for all costs and damages, including compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or destroyed as a result of the discharge of pollutants at the Penick Corporation Site. N.J.S.A. 58:10A-6a.

77. 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 establishment of the violation, including the costs of preparing and litigating the case, N.J.S.A. 58:10c.(2); any 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); compensatory damages and any other actual damages for any natural resource of this State that has been, or may be, lost or

destroyed as a result of the unauthorized discharge of pollutants at the Penick Corporation Site, N.J.S.A. 58:10A-10c.(4); 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).

PRAYER FOR RELIEF

**WHEREFORE,** the Commissioner prays that this court:

- a. Enter an order assessing the Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics, without regard to fault, for 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;
- b. Enter declaratory judgment against Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics, 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;
- c. Enter an order assessing Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics, without regard to fault, for all compensatory damages and other actual damages incurred for any natural resource of this State that has been, or may be, lost or destroyed by the unauthorized discharge of pollutants at the Penick Corporation Site;
- d. Enter declaratory judgment against Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics, without regard to fault, assessing all compensatory damages and other actual damages for any natural resource of this State that has been, or may be, lost or destroyed by of the unauthorized discharge of pollutants at the Penick Corporation Site;
- e. Enter an order assessing Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics 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

- that Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics have enjoyed as a result of a competitive market advantage, or any other benefit they have received from violation of the WPCA;
- f. Enter declaratory judgment against Defendants Penick, Penick Realty, Unilever, CPC, AMB Property and AMB Logistics, without regard to fault, assessing those Defendants 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 those Defendants have enjoyed, or any other benefit that will accrue to them from violation of the WPCA;
- g. Award plaintiff Commissioner her costs and fees in this action; and
- h. Award plaintiff Commissioner such other relief as this Court deems appropriate.



THIRD COUNT

Public Nuisance

78. The Plaintiffs repeat each allegation of paragraph nos. 1 through 77 above as though fully set forth in its entirety herein.

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

80. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

81. The groundwater contamination at the Penick Corporation 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.

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

83. 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,** the Plaintiffs pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages that the Plaintiffs have incurred, including the lost value and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Penick Corporation Site, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages, the lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Penick Corporation Site;
- c. Enter declaratory judgment against each Defendant, compelling each Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment of any natural resource that has been, or may be, injured by the discharge of hazardous substances and pollutants at the Penick Corporation Site, including compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;

- d. Award the Plaintiffs their costs and fees in this action;  
and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

84. The Plaintiffs repeat each allegation of paragraph nos. 1 through 83 above as though fully set forth in its entirety herein.

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

86. The hazardous substances in the groundwater constitute a physical invasion of public property without permission or license.

87. Each Defendant is liable for trespass, and continued trespass, because the hazardous substances and pollutants in the ground water at the Site resulted from discharges of hazardous substances and pollutants at the Penick Corporation Site.

88. As long as the ground water remains contaminated due to the Defendants' conduct, each Defendants' trespass continues.

89. Until the ground water is restored to its pre-discharge condition, the Defendants are liable for trespass, and continued trespass, upon public property.

PRAYER FOR RELIEF

**WHEREFORE**, the Plaintiffs pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages that the Plaintiffs have incurred, including the lost value and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Penick Corporation Site, with applicable interest;
- b. Enter declaratory judgment against the Defendants for all cleanup and removal costs and damages that the Plaintiffs may incur, including the lost value and reasonable assessment costs for any natural resource of this State injured by the discharge of hazardous substances and pollutants at the Penick Corporation Site;
- c. Enter judgment against the Defendants, compelling the Defendants to perform, under the DEP's oversight, or to fund the DEP's performance of, any further assessment of any natural resource that has been, or may be, injured by

- the discharge of hazardous substances and pollutants at the Penick Corporation Site, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- d. Award the Plaintiffs their costs and fees in this action;
  - e. Award the Plaintiffs such other relief as this Court deems appropriate.

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

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

Dated: August 27, 2020

DESIGNATION OF TRIAL COUNSEL

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

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

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 R. 1:38-7(b).

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 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).

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

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

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

Dated: August 27, 2020

# Civil Case Information Statement

## Case Details: ESSEX | Civil Part Docket# L-005696-20

**Case Caption:** NJ DEP OF ENVIRONMEN TAL PROTE VS  
PENICK CORPORA

**Case Initiation Date:** 08/27/2020

**Attorney Name:** KEVIN ALBERT TERHUNE

**Firm Name:** ATTORNEY GENERAL LAW

**Address:** 25 MARKET ST PO BOX 112

TRENTON NJ 08625

**Phone:** 6099843900

**Name of Party:** PLAINTIFF : NJ Dep of Environmental  
Protec

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

**Case Type:** ENVIRONMENTAL/ENVIRONMENTAL COVERAGE  
LITIGATION

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**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

**Are sexual abuse claims alleged by: NJ Dep of Environmental  
Protec?** NO

**Are sexual abuse claims alleged by: Commissioner of the NJ  
DEP?** NO

**Are sexual abuse claims alleged by: Abministrator of NJ Spill  
Fund?** 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:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** NO

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)

08/27/2020  
Dated

/s/ KEVIN ALBERT TERHUNE  
Signed