

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

**SUPERIOR COURT BERGEN COUNTY
FILED**

MAY 16 2007


DEPUTY CLERK

By: Michael E. McMahon
Deputy Attorney General
(609) 984-0214

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L3675-07

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,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
Plaintiffs,	:	
v.	:	
PENETONE CORPORATION and "ABC CORPORATIONS" 1-10 (Names Fictitious),	:	
Defendants.	:	

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") ("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 ("the Defendants"), say:

STATEMENT OF THE CASE

1. The Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act ("the Spill Act"), N.J.S.A. 58:10-23.11 to -23.24, the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -20, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of the discharge of hazardous substances at the Penetone site in Tenafly, Bergen 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 pollutants and hazardous substances at the Penetone 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 and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants and hazardous substances, including restoring any injured resource to its pre-discharge condition, and to compensate the citizens of New Jersey for the lost value of any injured natural resource.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the 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.

3. 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.

4. Plaintiff Commissioner is the Commissioner of plaintiff DEP. N.J.S.A. 58:10-23.11b. In this capacity, plaintiff 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 to -19.

5. 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 any 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.

6. Defendant Penetone Corporation is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 700 Gotham Parkway, Carlstadt, New Jersey.

7. 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 predecessors or successors to, or are otherwise related to, defendant Penetone Corporation.

AFFECTED NATURAL RESOURCES

8. 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.

9. 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.

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

Ground Water

11. 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.

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

13. 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.

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

15. 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.

16. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

Surface Water

17. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

18. Surface water, like ground water, is a unique resource that is used for other commercial and industrial purposes, such as cooling water and electrical generation, commercial fishing, and transportation of goods and services.

19. The tourist and recreation industries, including boating, fishing and swimming, which are vital to the economy of this State, depend on clean waters and beaches.

GENERAL ALLEGATIONS

20. The Penetone site consists of approximately 9.8 acres of real property located at 74 Hudson Avenue, Tenafly, Bergen County, New Jersey, this property being also known and designated as Block 1309, Lots 1.01, 2.01 and 9.01, on the Tax Map of Tenafly ("the Penetone Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 009704.

21. From 1981 through 1997, defendant Penetone owned the Penetone Property, during which time "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 chlorinated volatile organic compounds ("VOCs") including 1,1,1-TCA; PCE; 1,1-dichloroethane (1,1-DCA); chloroethane, 1,1-dichloroethene (1,1-DCE) and vinyl chloride.

22. From 1981 through 1997, defendant Penetone operated an industrial cleaning products manufacturing facility at the Penetone Property, the operation of which involved the generation, storage and handling of "pollutants," as defined in N.J.S.A. 58:10A-3n., certain of which were "discharged" to the waters of the State within the meaning of N.J.S.A. 58:10A-3e., which pollutants included chlorinated volatile organic compounds ("VOCs") including 1,1,1-TCA; PCE; 1,1-dichloroethane (1,1-DCA); chloroethane, 1,1-dichloroethene (1,1-DCE) and vinyl chloride.

23. On December 18, 1985, personnel from plaintiff DEP inspected the Penetone Property and observed visible evidence of spills and material mishandling, which spills were the "discharge" of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b.

24. On November 11, 1987, a Notice of Violation ("NOV") was issued to defendant Penetone by plaintiff DEP's Division of Water Resources ("DWR") for discharges of contaminants to the surface and/or ground waters of New Jersey.

25. On November 12, 1987, personnel of defendant Penetone reported a discharge of approximately 100 gallons of catalytically reformed isoparaffinic hydrocarbons (IHC) to plaintiff DEP's DWR inspectors who were on site conducting scheduled ground water and surface water sampling as part of an ongoing water pollution control investigation. A Notice of Violation ("NOV") was issued to defendant Penetone by inspectors on this date for discharge to

surface water, which discharge was a "discharge" of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b.

26. On January 24 and 25, 1991, personnel from plaintiff DEP inspected the Penetone Property and noted numerous violations including the "discharge" of "hazardous substances" to the environment as defined in N.J.S.A. 58:10-23.11b.

27. On January 28, 1991, a Notice of Violation was issued to defendant Penetone by plaintiff DEP's Division of Hazardous Waste Management ("DHWM").

28. In 1992, defendant Penetone initiated a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, at which time defendant Penetone began investigating the nature and extent of the contamination at the Site.

29. Sampling results from the remedial investigation revealed the presence of various pollutants and hazardous substances at concentrations exceeding plaintiff DEP's cleanup criteria in the ground water, surface water and soils at the Site, which substances include chlorinated volatile organic compounds ("VOCs") including 1,1,1-TCA; PCE; 1,1-dichloroethane (1,1-DCA); chloroethane, 1,1-dichloroethene (1,1-DCE) and vinyl chloride.

30. On September 2, 1998, plaintiff DEP conditionally approved a Remedial Action Work Plan for the Site, which Work Plan called for delineating ground water contamination, mitigating

discharges to an adjacent stream and upgrading an existing pump and treat system.

31. In 2001 and 2003, defendant Penetone pilot tested, and Plaintiff DEP approved, respectively, dual phase vapor extraction and a hydrogen releasing compound as part of the remedial strategy at the Site.

32. Although defendant Penetone has initiated the remedial action for the Site, the groundwater and surface water contamination continues.

FIRST COUNT

Spill Act

33. Plaintiffs DEP and Administrator repeat each allegation of paragraph nos. 1 through 32 above as though fully set forth in its entirety herein.

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

35. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Penetone Property.

36. Plaintiff Administrator has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, has approved, or may approve, other appropriations for the Site.

37. The Plaintiffs 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 as a result of the discharge of hazardous substances at the Penetone Property.

38. 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.

39. Defendant Penetone, and one or more of the ABC Corporation defendants, are dischargers, or are otherwise related to the dischargers, of hazardous substances at the Penetone Property, 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 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 Penetone Property. N.J.S.A. 58:10-23.11g.c.(1).

40. Defendant Penetone, and one or more of the ABC Corporation defendants, have owned, or are otherwise related to the owners of, the Penetone Property at the time hazardous substances were discharged there, and, thus, 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 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 Penetone Property. N.J.S.A. 58:10-23.11g.c.(1).

41. 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).

42. 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 value 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 Penetone 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 value 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 Penetone Property;
- c. Award the Plaintiffs their costs and fees in this action; and
- d. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Water Pollution Control Act

43. The Plaintiffs repeat each allegation of paragraph nos. 1 through 42 above as though fully set forth in its entirety herein.

44. Each Defendant is a "person" within the meaning of N.J.S.A. 58:10A-31.

45. Except as otherwise exempted pursuant to N.J.S.A. 58:10A-6d. and p., 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 permit issued by plaintiff Commissioner pursuant to the Water Pollution Control Act, 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.

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

47. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of pollutants at the Penetone Property.

48. Plaintiff 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 as a result of the discharge of pollutants at the Penetone Property.

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

50. Defendant Penetone and one or more of the ABC Corporation defendants discharged pollutants at the Penetone Property, 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, jointly and severally, 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 Penetone Property. N.J.S.A. 58:10A-6a.

51. Pursuant to N.J.S.A. 58:10A-10c., plaintiff 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 that 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 Penetone Property, 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, plaintiff Commissioner prays that this Court:

- a. Temporarily and permanently enjoin the Defendants by requiring the Defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants;
- b. Enter an order assessing the Defendants, 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;
- c. Enter declaratory judgment against the Defendants, without regard to fault, assessing all reasonable costs that will be incurred for any investigation, inspection,

or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;

- d. Enter an order assessing the Defendants, without regard to fault, for all reasonable costs incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Penetone Property;
- e. Enter declaratory judgment against the Defendants, without regard to fault, assessing all reasonable costs that will be incurred for removing, correcting, or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants at the Penetone Property;
- f. Enter an order assessing the Defendants, 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 as a result of the unauthorized discharge of pollutants at the Penetone Property;
- g. Enter declaratory judgment against the Defendants, 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

as a result of the unauthorized discharge of pollutants at the Penetone Property;

- h. Enter an order assessing the Defendants, 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 the Defendants have enjoyed as a result of a competitive market advantage, or any other benefit they have received as a result of having violated the Water Pollution Control Act;
- i. Enter declaratory judgment against the Defendants, without regard to fault, assessing the 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 the Defendants have enjoyed, or any other benefit that will accrue to them as a result of having violated the Water Pollution Control Act;
- j. Award plaintiff Commissioner her costs and fees in this action; and

- k. Award plaintiff Commissioner such other relief as this Court deems appropriate.

THIRD COUNT

Public Nuisance

52. Plaintiffs repeat each allegation of paragraph nos. 1 through 51 above as though fully set forth in its entirety herein.

53. Ground water and surface water are natural resources of the State held in trust by the State for the benefit of the public.

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

55. The groundwater and surface water 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 these natural resources.

56. As long as the ground water and surface water remain contaminated due to the Defendants' conduct, the public nuisance continues.

57. Until the ground water and surface water are restored to their 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 and surface 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 value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Penetone 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Penetone Property;
- c. Award the Plaintiffs their costs and fees in this action;
and
- d. Award the Plaintiffs such other relief as this Court deems appropriate.

FOURTH COUNT

Trespass

58. Plaintiffs repeat each allegation of paragraph nos. 1 through 57 above as though fully set forth in its entirety herein.

59. Ground water and surface water are natural resources of the State held in trust by the State for the benefit of the public.

60. The Defendants are liable for trespass, and continued trespass, since pollutants and hazardous substances were discharged at the Penetone Property.

61. As long as the ground water and surface water remain contaminated, the Defendants' trespass continues.

PRAYER FOR RELIEF

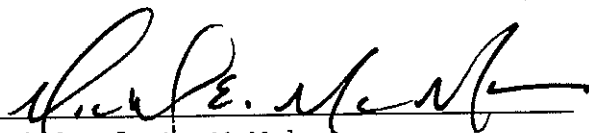
WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Penetone 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 value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Penetone Property;

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

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Michael E. McMahon
Deputy Attorney General

Dated: *May 11, 2007*

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Michael E. McMahon, 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 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).

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

Michael E. McMahon
Deputy Attorney General

Dated: *May 11, 2007*

CIVIL CASE INFORMATION STATEMENT

(CIS)

Use for initial pleadings (not motions) under R. 4:5-1.

Pleadings will be rejected for filing under R. 1:5-6(c) if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG/CK NO.:

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME: Michael E. McMahon	TELEPHONE NO.: (609) 984-0214	COUNTY OF VENUE: Bergen.
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FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL	DOCKET NUMBER (When Available): L3675-07
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OFFICE ADDRESS: Richard J. Hughes Justice Complex 25 Market Street P.O. Box 093 Trenton, NJ 08625-0093	DOCUMENT TYPE: Complaint
	JURY DEMAND: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

NAME OF PARTY (e.g., John Doe, Plaintiff): New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, Plaintiffs	CAPTION: NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, v. PENETONE CORPORATION and "ABC CORPORATIONS" 1-10 (Names Fictitious).
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CASE TYPE NUMBER (See reverse side for listing): 156	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If You Have Checked "Yes," See N.J.S.A. 2A:53A-27 and Applicable Case Law Regarding Your Obligation to File an Affidavit of Merit.
---	--

RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS:
--	------------------------------

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of the same transaction or occurrence)? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN
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THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

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

A. DO THE PARTIES HAVE IF YES, IS THAT EMPLOYER-EMPLOYEE FRIEND-NEIGHBOR OTHER
 A CURRENT, PAST OR RELATIONSHIP: RECURRENT RELATIONSHIP? regulatory
 YES NO FAMILIAL BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE YES NO
 FOR PAYMENT OF FEES BY THE LOSING PARTY?

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION. MAY 16 2007

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATIONS: <i>Jim Gardner</i> DEPUTY CLERK
--	---

WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE:
--	----------------------------

ATTORNEY SIGNATURE: *Michael E. McMahon* 5/11/07

SUPERIOR COURT BERGEN COUNTY
FILED

CASE TYPES (Choose one and enter the number of case type in appropriate space on the reverse side.)

TRACK I - 150 Days' Discovery

151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY
502 BOOK ACCOUNT
505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
506 PIP COVERAGE
510 UM OR UIM CLAIM
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
599 CONTRACT/COMMERCIAL TRANSACTION
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

TRACK II - 300 Days' Discovery

305 CONSTRUCTION
509 EMPLOYMENT (OTHER THAN CEPA OR LAD)
602 ASSAULT AND BATTERY
603 AUTO NEGLIGENCE - PERSONAL INJURY
605 PERSONAL INJURY
610 AUTO NEGLIGENCE - PROPERTY DAMAGE
699 TORT - OTHER

TRACK III - 450 Days' Discovery

005 CIVIL RIGHTS
301 CONDEMNATION
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLE BLOWER/CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES

TRACK IV - Active Case Management by Individual Judge/450 Days' Discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
303 MT. LAUREL
508 COMPLEX COMMERCIAL
613 REPETITIVE STRESS SYNDROME
701 ACTIONS IN LIEU OF PREROGATIVE WRIT

Mass Tort (Track IV)

240 REDUX/PHEN-FEN (formerly "DIET DRUG") 264 PPA
246 REZULIN 601 ASBESTOS
247 PROPULSID 619 VIOXX
248 CIBA GEIGY

999 OTHER (Briefly describe nature of action) _____

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

Verbal Threshold

Putative Class Action

Title 59

SUPERIOR COURT LAW DIV
BERGEN COUNTY JUSTICE CTR RM 415
HACKENSACK NJ 07601-7680

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (201) 527-2600
COURT HOURS :

DATE: MAY 16, 2007
RE: NJ DEPT OF ENVIRONMENTAL PROTEC VS PENETONE COR
DOCKET: BER L -003675 07

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON BRIAN R. MARTINOTTI

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003
AT: (201) 527-2600.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: MICHAEL E. MCMAHON
RICHARD J. HUGHES
25 MARKET STREET
PO BOX 961
TRENTON NJ 08625-0961

JUDMARI