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

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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,	:	
	:	<u>Civil Action</u>
	:	COMPLAINT
Plaintiffs,	:	
v.	:	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY; THE FLINTKOTE COMPANY; and G-P GYPSUM CORPORATION,	:	
Defendants.	:	

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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 costs and damages they have incurred, and will incur, as a result of the discharge of pollutants and hazardous substances at the Genstar Gypsum site in Camden City, Camden County.

2. 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 Genstar Gypsum 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 at the Genstar Gypsum site, 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

3. 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.

4. 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.

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

6. 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.

7. Defendant Public Service Electric and Gas Company ("PSE&G") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 80 Park Plaza, Newark, New Jersey 07101.

8. Defendant The Flintkote Company ("Flintkote") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 3 Embarcadero Center, Suite 1190, San Francisco, California 94111-4047.

9. Defendant G-P Gypsum Corporation is a corporation organized and existing under the laws of Georgia, with a principal place of business located at 133 Peachtree Street, NE, Atlanta Georgia 30303.

10. In or around 1987, defendant Flintkote sold the outstanding shares of common stock of its wholly-owned subsidiary Genstar Gypsum Products Company ("Genstar") to Domtar, Inc., a Canadian corporation, with the surviving entity being Domtar Gypsum, Inc., a Delaware corporation ("Domtar").

11. In 1996, Georgia Pacific Corporation acquired Domtar through a stock purchase, and then changed Domtar's name to G-P Gypsum Corporation, the defendant herein.

12. Defendant G-P Gypsum is the successor-in-interest to Genstar Gypsum and Domtar.

#### NATURAL RESOURCES

13. 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.

14. 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.

15. 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 Genstar Gypsum site.

#### AFFECTED NATURAL RESOURCES

##### Ground Water

16. 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.

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

18. 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.

19. 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.

20. 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.

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

#### Surface Water

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

23. 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.

24. 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.

#### Sediments

25. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

26. Sediments are a critical example of New Jersey's ecological resources.

27. These sediments can sustain a wide diversity of plants and animals that are essential in a healthy food chain. Sediments, particularly in New Jersey's coastal areas, are part of the State's ecosystems that provide a living substrate for submerged and emergent flora, and support diverse invertebrate species, wading birds, and fish and shellfish populations.

#### Biota

28. New Jersey's ecosystems—forests, lakes, rivers, wetlands, agricultural lands, coastal estuaries, pinelands, and grasslands—are among the most complex and diverse in the nation.

29. New Jersey is home to 2,117 plant species, including entire communities of rare flora that can be found nowhere else in the world. Approximately 15 percent of the native plant species in New Jersey, however, are now at risk of extinction, with a total of 331 vascular plant species listed as endangered and an additional 32 that have already been extirpated.

30. New Jersey wildlife includes close to 900 species, including 90 mammal species, 79 reptile and amphibian species, more than 400 fish species, and approximately 325 species of birds.

10. Approximately 1.5 million shorebirds and as many as 80,000 raptors make migratory stopovers here each year. At least 17 percent of New Jersey's native vertebrate species and 24 percent of its native invertebrate species are at risk of extinction. Several threatened and endangered raptor species have difficulty breeding because of the bioaccumulation of toxic compounds.

31. New Jersey's biodiversity provides a wealth of ecological, social, and economic goods and services that are an integral part of the ecological infrastructure for all cultural and economic activity in the state.

32. New Jersey's ecosystems, however, are vulnerable to pollution, degradation and destruction from the discharge of hazardous substances. Contamination from the discharge of hazardous substances and pollutants is one of the major causes of biodiversity loss.

33. Natural resource injuries to biota in New Jersey negatively impact not only the individual species directly involved, but the capacity of the injured ecosystems to regenerate and sustain such life into the future.

#### GENERAL ALLEGATIONS



34. The Genstar Gypsum site consists of approximately 25 acres of real property located in Camden City, Camden County, which property is designated as Block 213, Lot 29 (formerly Lots 13 and 29), on the Tax Map of the City of Camden ("Genstar Property"), and all other areas where any hazardous substance or pollutant discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. G000005604.

35. The Genstar Property, which is located in a mixed-use industrial and commercial area of Camden, is bordered on the west by the Delaware River, the South Jersey Port Corporation to the north, a warehouse and residential properties to the east, and the Camden Refrigerator Corporation facility to the south.

36. The Site is situated on an outcrop area of the Potamac-Raritan-Magothy Aquifer System, which, in the area of the Site, is separated into upper, middle, and lower aquifers by two confining layers, which are continuous over a 3-mile radius from the Genstar Property.

37. The middle aquifer is the aquifer of concern at this Site, as the Genstar Property is underlain by five to twenty-five feet of fill, which consists of a layer of gypsum rock and waste wallboard, underlain by coal and petroleum coke fill.

38. The Potamac-Raritan-Magothy Aquifer system is a part of the Coastal Plain Aquifer, a sole source aquifer system. There are

numerous wells providing water for drinking and industrial uses to thousands within a 3-mile radius of the Genstar Property.

39. From as early as 1882 through in or around December 1961, defendant PSE&G and its predecessors-in-interest, owned some or all of the Genstar Property, certain of which was conveyed and re-conveyed to various parties, including the City of Camden.

40. In or around December 1961, defendant PSE&G sold the Genstar Property to defendant Flintkote, which in or about September 1986, conveyed the Genstar Property to its then wholly-owned subsidiary, defendant G-P Genstar.

41. In July 1993, Genstar, then Domtar, entered into a settlement with the South Jersey Port Corporation as part of an inverse condemnation action the South Jersey Port Corporation had filed, wherein Domtar conveyed approximately 3.1 acres of what was then part of the Genstar Property to the South Jersey Port Corporation.

42. In or around December 1998, defendant G-P Gypsum filed a deed of consolidation, memorializing the consolidation of the Genstar Property previously identified as Block 380, Lots 13 and 29, on the Tax Map of the City of Camden, into Block 380, Lot 29, on the Tax Map of the City of Camden.

43. In or about October 2000, defendant G-P Gypsum reconveyed the Genstar Property to itself for a nominal amount, and, as of the

filing of this Complaint, was the owner of record of the Genstar Property.

44. During the time that defendant PSE&G, its predecessors-in-interest, defendant Flintkote, and defendant G-P Gypsum and its predecessors-in-interest, have owned the Genstar Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included benzene, cyanide, arsenic, cadmium, naphthalene, lead, and 1,2-dichloroethane.

45. Defendant PSE&G's predecessors-in-interest operated a coke and coke oven gas manufacturing plant at the Genstar Property from in or around 1848 through 1924, which defendant PSE&G then operated the through May 1959 before ceasing all operations at the Genstar Property in 1961.

46. The coke and coke oven gas manufacturing processes PSE&G and its predecessors-in-interest employed involved coal carbonization, which generated various byproducts and wastes, including tars, light oils, spent lime, spent oxide and carbon.

47. The majority of structures associated with the coke plant were demolished in 1961, and a gypsum processing plant was constructed, which defendant Flintkote began operating in or around December 1963.

48. Defendant Flintkote and defendant G-P Gypsum and its predecessors-in-interest have manufactured gypsum wall board at the

Genstar Property, which involves use of asphalt emulsion and No. 2 fuel oil.

49. During the time that defendant PSE&G and its predecessors-in-interest, defendant Flintkote, and defendant G-P Gypsum and its predecessors-in-interest, have manufactured coke, coke oven gas and gypsum board at the Genstar Property, hazardous substances have been discharged there, which substances include benzene, cyanide, arsenic, cadmium, naphthalene, lead, and 1,2-Dichloroethane.

50. Further, during the time that defendant PSE&G and its predecessors-in-interest, defendant Flintkote, and defendant G-P Gypsum and its predecessors-in-interest, have manufactured coke, coke oven gas, and gypsum board at the Genstar Property, they generated, stored and handled "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 include benzene, cyanide, arsenic, cadmium, naphthalene, lead, and 1,2-dichloroethane.

51. Coke, coke oven gas, and wall board manufacturing involve the use, storage and handling of hazardous substances and pollutants consistent with those found in the affected media at the Site.

52. In 1974, while defendant Flintkote was operating at the Genstar Property, a spill of up to 20,000 gallons of fuel oil

occurred when a buried pipeline located between the standby tank and the plant ruptured.

53. Reportedly, contaminated soils were removed from this area, though it is not known where the contaminated soils were disposed of, and there is a possibility they were spread throughout the Genstar Property.

54. In July 1986, the Camden County Municipal Utilities Authority ("CCMUA") issued Genstar a permit to discharge manufacturing wastewater to the Authority's system, which covered the period from July 1, 1986 through May 31, 1989.

55. Samples of the discharges from Genstar's facility to the CCMUA system revealed traces of chloroform, naphthalene, bis(2-ethylhexyl)phthalate, anthracene, and N-nitrosodiphenylamine; however, the facility was not in violation of the CCMUA's standards for total toxic organics.

56. On February 26, 1987, Genstar and plaintiff DEP entered into an Administrative Consent Order ("February 1987 ACO"), pursuant to which plaintiff DEP allowed a transfer in control of Genstar to take place before Genstar satisfied its obligations under the Environmental Cleanup Responsibility Act ("ECRA"), now known as the Industrial Site Recovery Act, N.J.S.A. 13:1E-6 to -14.

57. During 1989 and 1990, Domtar performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C.

7:26E-5.2, to determine the nature and extent of the contamination at the Site.

58. In October 1991, defendant PSE&G and Domtar entered into an agreement pursuant to which defendant PSE&G assumed responsibility for remediating the Site.

59. PSE&G submitted a Remedial Investigation Report to plaintiff DEP on or about December 12, 1996, which report confirmed that sampling results revealed the presence of various hazardous substances and pollutants in the soils and ground water at the Site, which included polyaromatic hydrocarbons ("PAHs"), and metals (i.e., arsenic, antimony, cadmium, chromium, copper, lead, mercury, silver and zinc) in the soils, and PAHs, cyanide and VOCs in the groundwater.

60. On June 17, 2002, plaintiff DEP approved a 28-acre Classification Exception Area ("CEA") and Well Restriction Area ("WRA") for the Site, which restricts groundwater usage and the installation of potable wells within its boundaries for an indeterminate period beginning in 2002.

61. The CEA was established for hazardous substances and pollutants in the ground water above plaintiff DEP's drinking water quality standards, which substances and pollutants include benzene, cyanide, arsenic, cadmium, naphthalene, lead and 1,2-dichlorethane.

62. In July 2005, defendant PSE&G submitted a groundwater monitoring report to plaintiff DEP, the results of which revealed

the presence of a variety of hazardous substances and pollutants in the ground water from shallow and deep wells at concentrations exceeding plaintiff DEP's cleanup criteria, which include hazardous substances and pollutants include iron, manganese, cyanide and arsenic.

63. In December 2006, defendant PSE&G submitted a biennial certification monitoring report for the CEA, in which defendant PSE&G maintained that the remediation for which the CEA was established remains protective of the public health and safety and the environment.

64. Plaintiff DEP has concluded that contaminants of ecological concern exist (i.e. PAHs), environmentally sensitive natural resources (i.e., surface water, sediments and biota) exist, and potential contaminant pathways to environmentally sensitive natural resources exist, or that an impact to these resources is indicated based on visual observation.

65. Plaintiff DEP has further determined that an Ecological Investigation and Risk Assessment ("ERA") performed in accordance with N.J.A.C. 7:26E-4.7(a) is necessary to characterize the extent of contamination along contaminant migration pathways and within environmentally sensitive natural resources at the Site, which resources include sediments, surface water and biota.

66. As of the filing of this Complaint, defendant PSE&G has not performed the ERA, which would provide the data upon which

plaintiff DEP can characterize the extent to which the surface water, sediments and biota have been contaminated.

67. Although certain of the Defendants have initiated the remediation of the Site, the ground water, soils, surface water, sediments and biota remain contaminated.

#### FIRST COUNT

##### Spill Act

68. The Plaintiffs repeat each allegation of paragraph nos. 1 through 67 above as though fully set forth in its entirety herein.

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

70. Except as otherwise provided in N.J.S.A. 58:10-23.11g.12, 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).

71. Except as otherwise exempted under N.J.S.A. 58:10-23.11g.12, the discharge of hazardous substances is a violation of the Spill Act, for which any person who is the discharger of, or is in any way responsible for, any hazardous substance that is discharged, is strictly liable, jointly and severally, without regard to fault. N.J.S.A. 58:10-23.11g.c.(1).



72. Plaintiff DEP may incur costs as a result of the discharge of hazardous substances at the Genstar Property.

73. Plaintiff Administrator may certify, for payment, valid claims made against the Spill Fund concerning the Site, and, further, may approve other appropriations for the Site.

74. The Plaintiffs 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 Genstar Property.

75. 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.

76. Defendants PSE&G, Flintkote and G-P Gypsum are, or are the successors-in-interest to, the dischargers of hazardous substances at the Genstar 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 Genstar Property. N.J.S.A. 58:10-23.11g.c.(1).

77. Defendants PSE&G, Flintkote and G-P Gypsum, as the owners, or as the successors-in-interest to the owners, of the Genstar Property at the time hazardous substances were discharged there 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 Genstar Property. N.J.S.A. 58:10-23.11g.c.(1).

78. 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).

79. 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 plaintiffs DEP and Administrator, jointly and severally, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Genstar 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 plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Genstar Property;
- c. Enter judgment against defendant PSE&G, compelling defendant PSE&G to perform any further cleanup of hazardous substances discharged at the Genstar Property, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at

the Genstar Property to its pre-discharge condition, under plaintiff DEP's oversight;

- d. Enter judgment against the Defendants, jointly and severally, without regard to fault, 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 hazardous substances at the Genstar Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award the plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

#### SECOND COUNT

##### Water Pollution Control Act

80. The Plaintiffs repeat each allegation of paragraph nos. 1 through 79 above as though fully set forth in its entirety herein.

81. Defendants Flintkote and G-P Gypsum are "persons" within the meaning of N.J.S.A. 58:10A-31.

82. 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 DEP 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.

83. 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.

84. Plaintiff DEP may incur costs as a result of the discharge of pollutants at the Genstar Property.

85. 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 Genstar Property.

86. 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).

87. Defendants Flintkote and G-P Gypsum are, or are the successors-in-interest to, persons that discharged pollutants at

the Genstar 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, 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 Genstar Property. N.J.S.A. 58:10A-6a.

88. 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 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 Genstar 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. Enjoin defendants Flintkote and G-P Gypsum by requiring these Defendants to remove, correct, or terminate the adverse effects upon water quality resulting from any unauthorized discharge of pollutants, including performing any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of pollutants at the Genstar Property, including restoring any injured resource to its pre-discharge condition, under plaintiff DEP's oversight;
- b. Enter an order assessing defendants Flintkote and G-P Gypsum, 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 defendants Flintkote and G-P Gypsum, without regard to fault, assessing all reasonable costs that will be incurred for any

- investigation, inspection, or monitoring survey, which led, or will lead, to establishment of the violation, including the costs of preparing and litigating the case;
- d. Enter an order assessing defendants Flintkote and G-P Gypsum, 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 Genstar Property;
  - e. Enter declaratory judgment against defendants Flintkote and G-P Gypsum, 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 Genstar Property;
  - f. Enter an order assessing defendants Flintkote and G-P Gypsum, 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 Genstar Property;
  - g. Enter declaratory judgment against defendants Flintkote and G-P Gypsum, 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 Genstar Property;

- h. Enter an order assessing defendants Flintkote and G-P Gypsum, 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 these 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 defendants Flintkote and G-P Gypsum, without regard to fault, assessing these 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 they 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

89. The Plaintiffs repeat each allegation of paragraph nos. 1 through 88 above as though fully set forth in its entirety herein.

90. Ground water, surface water, sediments and biota are natural resource of the State held in trust by the State for the benefit of the public.

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

92. The groundwater, surface water, sediments and biota 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.

93. As long as the ground water, surface water, sediments and biota remains contaminated due to the Defendants' conduct, or the conduct of their predecessors-in-interest, the public nuisance continues.

94. Until the ground water, surface water, sediments and biota 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, surface water, sediments and biota.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendants to reimburse plaintiffs DEP and Administrator for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that these Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Genstar 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 plaintiffs DEP and Administrator will incur for any natural resource of this State injured as a result of the discharge of pollutants and hazardous substances at the Genstar Property;
- c. Enter judgment against defendant PSE&G, compelling defendant PSE&G to abate the nuisance by performing any further cleanup of pollutants and hazardous substances discharged at the Genstar Property, including performing

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 at the Genstar Property to its pre-discharge condition, under plaintiff DEP's oversight;

- d. Enter judgment against the Defendants, 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 at the Genstar Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and
- f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

#### FOURTH COUNT

##### Trespass

95. The Plaintiffs repeat each allegation of paragraph nos. 1 through 94 above as though fully set forth in its entirety herein.

96. Ground water, surface water, sediments and biota are natural resources of the State held in trust by the State for the benefit of the public.

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

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

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

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

State injured as a result of the discharge of pollutants and hazardous substances at the Genstar Property;

- c. Enter judgment against defendant PSE&G, compelling defendant PSE&G to cease the trespass by performing any further cleanup of pollutants and hazardous substances discharged at the Genstar Property, including performing 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 at the Genstar Property to its pre-discharge condition, under plaintiff DEP's oversight;
- d. Enter judgment against the Defendants, 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 at the Genstar Property, including restoring any injured resource to its pre-discharge condition, and compelling the Defendants to compensate the citizens of New Jersey for the lost value of any injured natural resource;
- e. Award plaintiffs DEP and Administrator their costs and fees in this action; and

f. Award plaintiffs DEP and Administrator such other relief as this Court deems appropriate.

ANNE MILGRAM  
FIRST ASSISTANT ATTORNEY  
GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: *Rachel Jeanne Lehr*  
Rachel Jeanne Lehr  
Deputy Attorney General

Dated: June 26, 2007

DESIGNATION OF TRIAL COUNSEL


Pursuant to R. 4:25-4, the Court is advised that Rachel Jeanne Lehr, 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).

ANNE MILGRAM  
FIRST ASSISTANT ATTORNEY  
GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Rachel Jeanne Lehr  
Deputy Attorney General

Dated: June 26, 2007