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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
THE COMMISSIONER OF THE NEW  
JERSEY ENVIRONMENTAL  
PROTECTION AGENCY AND THE  
ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION  
FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA SOLUTIONS,  
INC., MAXUS ENERGY  
CORPORATION, REPSOL YPF, s.a.,  
YPF, S.A. YPF HOLDINGS, INC. AND  
CLH HOLDINGS,

Defendants,

MAXUS ENERGY CORPORATION  
AND TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

3M COMPANY, et. al.

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**X**

: **SUPERIOR COURT OF NEW JERSEY**  
: **LAW DIVISION: ESSEX COUNTY**

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: **Docket No.: L-009868-05 (PASR)**

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**X**

Third-Party Defendant, CasChem, Inc., (hereinafter “CasChem” or  
“Defendant”), a Delaware corporation with its principal place of business at One

Meadowlands Plaza, East Rutherford, County of Bergen, State of New Jersey by way of Answer to Third-Party Plaintiffs' Complaint "B" (the "Complaint"), states as follows:

### **GENERALLY**

CasChem denies each and every allegation contained in Third-Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third Party Complaint "B."

### **PROCEDURAL BACKGROUND**

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1-11 of the Third-Party Plaintiffs' Complaint "B".

2. The allegations in ¶12 of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required. To the extent a response is deemed required, Defendant admits that the Third-Party Defendants purport to bring an action pursuant to the New Jersey Spill Compensation and Control Act and the New Jersey statutory provisions for contribution arising from the environmental contamination of the Newark Bay Complex.

3. The allegations in ¶13 of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required. To the extent a response is deemed required, Defendant admits that the Third-Party Plaintiffs purport to seek recovery of all or a proportionate share of

cleanup and removal costs for which Third-Party Plaintiffs may be held liable in this action.

4. The allegations in ¶14 of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required. To the extent a response is deemed required, Defendant admits that the Third-Party Plaintiffs purport to seek recovery of all or a proportionate share of cleanup and removal costs which Third-Party Plaintiffs incurred or will incur relating to the Newark Bay Complex.

5. The allegations in ¶15 of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required. To the extent a response is deemed required, Defendant admits that the Third-Party Plaintiffs claim they have agreed not to pursue claims against CPG members for costs incurred under the 1994 AOC, the CPG AOCs or the Newark Bay AOC to the extent the costs are attributable to the facilities identified in Exhibit B of the Third-Party Complaint.

## **THE PARTIES**

### **Third-Party Plaintiffs**

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Third-Party Plaintiffs' Complaint "B".

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Third-Party Plaintiffs' Complaint "B".

8. The allegations in ¶18 of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required.

### **Third Party Defendants**

9. The allegations in Paragraphs 19 through 48 of the Third-Party Plaintiffs' Complaint "B" are directed at parties other than Defendant and therefore no response is required.

10. Defendant admits the allegations of ¶49.

11. The allegations in Paragraphs 50 through 210 of the Third-Party Plaintiffs' Complaint "B" are directed at parties other than Defendant and therefore no response is required.

### **DEFINITIONS**

12. The allegations in Paragraphs 211 through 236 are accessories to the characterizations of the Third-Party Plaintiffs own claims, to which no response is required.

### **FACTUAL ALLEGATIONS**

#### **COMMERCIAL SITES**

13. The allegations in Paragraphs 237 through 729 of the Third-Party Plaintiffs' Complaint "B" are directed at parties other than Defendant and therefore no response is required.

#### **CasChem Site**

14. Defendant admits the allegations of ¶730.

15. In response to the allegations in ¶731, Defendant admits that since on or about December 7, 1981, and until approximately November 10, 2003, it utilized portions of the CasChem Site for production of castor oil derivatives and specialty chemicals. Upon information and belief, since in or around the 1920s, a portion of the CasChem Site was utilized by others for the manufacture, refining, purification, storage and distribution of castor beans, castor oil and related derivatives, and in later years, was also utilized for the manufacture of specialty chemicals, including urethane systems and additives, personal care intermediates, and painting and coating intermediates. Upon information and belief, in the earlier years, certain portions of the sited were used for a variety of other industrial purposes. Defendant has insufficient information to admit or deny the remaining allegations of ¶731.

16. Defendant did not operate the site until the 1980s. Accordingly, Defendant has insufficient information to admit or deny the allegations of ¶732.

17. In response to the allegations in ¶733, upon information and belief, the Baker Castor Oil Company owned and operated a portion of the CasChem Site for several decades beginning in or around the 1920s. Defendant has insufficient information to admit or deny the remaining allegations of ¶733.

18. Defendant has insufficient information to admit or deny the allegations of ¶734.

19. Defendant has insufficient information to admit or deny the allegations of ¶735.

20. In response to the allegations in ¶737, upon information and belief, NL Industries owned and operated a business on the CasChem Site from at least 1975

through 1981. Defendant has insufficient information to admit or deny the remaining allegations of ¶736.

21. In response to the allegations in ¶737, Defendant admits that on or about December 7, 1981, CasChem Inc. purchased the assets and business of the castor oil and derivatives and specialty urethane businesses, along with the CasChem Site, from NL Industries.

22. In response to the allegations in ¶738, Defendant admits that from December 7, 1981 until November 10, 2003, it owned and operated the CasChem Site.

23. Defendant admits the allegations of ¶739.

24. In response to the allegations in ¶740, Defendant admits that in on or about January 1, 2002, CasChem became a subsidiary of Rutherford Chemicals, Inc., a subsidiary of Cambrex Corporation.

25. In response to the allegations in ¶741, Defendant admits that the CasChem business and assets, including the CasChem Site, were sold to Rutherford Acquisition Corp. and that the seller retained certain environmental liabilities related to the CasChem Site. Defendant denies the remaining allegations of ¶741.

26. In response to the allegations in ¶742, Defendant has insufficient information to admit or deny the allegation directed to it. The remaining allegations in ¶742 are directed to parties other than Defendant and therefore no response is required.

27. In response to the allegations in ¶743, Defendant admits that during its ownership and operation of the CasChem Site, certain compounds listed in ¶743 may have been utilized, processed, handled, consumed or stored. Defendant denies that the above compounds or Hazardous Substances were Discharged from the CasChem Site

during its ownership and operation. Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶743.

28. In response to the allegations in ¶744, Defendant admits that the CasChem Site abuts Newark Bay and that during a portion of Defendant's ownership and operation of the CasChem Site, Newark Bay received non-contact cooling water discharges from the CasChem Site, and overland flow and sheet storm water runoff from a portion of the CasChem Site, all in accordance with local, state and federal regulations and pursuant to authorized permits issued by local and state agencies. Defendant denies the remaining allegations in ¶744.

29. In response to the allegations in ¶745, Defendant admits that during its operations at the CasChem Site, it generated and, following pretreatment by Defendant's wastewater pretreatment system, discharged wastewater to the Bayonne Combined Sewer System in accordance with authorized permits. Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in ¶745.

30. In response to the allegations in ¶746, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations directed to it. To the extent that the allegations in ¶746 are directed to parties other than Defendant, no response is required.

31. In response to the allegations in ¶747, Defendant admits that process wastewater generated at the CasChem Site during the years of its ownership and operation may have contained Hazardous Substances and other compounds, but that

Defendant's discharges of treated wastewater were in accordance with federal, state and local regulations and authorized permits.

32. In response to the allegations in ¶748, Defendant states that upon information and belief, the wastewater pretreatment system at the CasChem Site was operational as early as 1973 and included, but was not limited to, oil separation and pH adjustment. Process wastewater was directed to the onsite wastewater pretreatment system prior to wastewater discharge to the Bayonne Combined Sewer System and later, to the Passaic Valley Sewerage System. Defendant denies the remaining allegations in ¶748.

33. In response to the allegations in ¶749, Defendant states that upon information and belief, the wastewater pretreatment system at the CasChem Site was operational as early as 1973 and included, but was not limited to, oil separation and pH adjustment. Process wastewater was directed to the onsite wastewater pretreatment system prior to wastewater discharge to the Bayonne Combined Sewer System and later, to the Passaic Valley Sewerage System. Defendant denies the remaining allegations in ¶749.

34. Defendant has insufficient information to form a belief as to the truth of the allegations contained in paragraph ¶750.

35. Defendant has insufficient information to form a belief as to the truth of the allegations contained in paragraph ¶751.

36. Defendant has insufficient information to form a belief as to the truth of the allegations contained in paragraph ¶752.



37. In response to Paragraph ¶753, Defendant admits that non-contact cooling water and vacuum system water were generated at the CasChem Site. Defendant admits that non-contact cooling water was discharged into Newark Bay under authorized NJPDES permits until the early 1990s when re-circulating cooling towers were built on-site. Defendant admits that vacuum system cooling water was discharged into Newark Bay under authorized NJPDES permits until the early 1990s when the wet vacuum system was eliminated. Defendant admits that a portion of the storm water runoff from the CasChem Site flows into Newark Bay. Defendant denies the remaining allegations in ¶753.

38. Defendant has insufficient information to form a belief as to the truth of the allegations in ¶754.

39. In response to the allegations in ¶755, Defendant admits that Third-Party Plaintiffs have produced a document that describes a loss of Flex P-1 inventory on or about October 7, 1982 and the subsequent steps were taken by Defendant to recover all Flex P-1 that may have reached soil or groundwater. Defendant denies the remaining allegations contained in ¶755, and in particular, denies any implication that such report was indicative of a Discharge by Defendant of Hazardous Substances.

40. Defendant admits that Third-Party Plaintiffs have produced a document that purports to be an incident notification report of November 27, 1985, which describes an inadvertent discharge of approximately 200 gallons of castor oil and caustic soap that was subsequently collected. Defendant denies the remaining the allegations contained in ¶756, and in particular, denies any implication that such report was indicative of a Discharge by Defendant of Hazardous Substances.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶757.

42. In response to the allegations in ¶758, Defendant admits Third-Party Plaintiffs have produced a document dated June 29, 1988 from the NJDEP, describing an “unacceptable” rating in connection with a January 6, 1988 Compliance Evaluation Inspection. Defendant denies the remaining allegations of ¶758, and in particular, denies any implication that such rating was indicative of a Discharge by Defendant of Hazardous Substances.

43. In response to the allegations in ¶759, Defendant admits Third-Party Plaintiffs have produced a document that purports to be an Administrative Order dated May 18, 1990, in which the findings state that during the period from May 1, 1987 through January 31, 1990, effluent permit limits were exceeded on occasion. Defendant denies the remaining allegations of ¶759, and in particular, denies any implication that such findings were indicative of a Discharge by Defendant of Hazardous Substances.

44. In response to the allegations in ¶760, Defendant admits Third-Party Plaintiffs have produced a document describing a Notice of Violation dated July 25, 1989, issued by NJDEP for a single excursion of a permit parameter, which references that the excursion was covered by the Administrative Order dated May 18, 1990, described in the preceding paragraph. Defendant denies the remaining allegations of ¶760, and in particular, denies any implication that such finding was indicative of a Discharge by Defendant of Hazardous Substances.

45. Defendant admits that Third-Party Plaintiffs have produced a document that purports to name Defendant as one of several companies that had reported “non

compliance” for a single parameter in the PVSC’s Annual Pretreatment Report for the period August 1, 1991 through July 31, 1992, but in which report the PVSC had yet to determine compliance status for any of the companies due to a lack of EPA guidance. Defendant denies the remaining allegations of ¶761, and in particular, denies any implication that such reporting was indicative of a Discharge by Defendant of Hazardous Substances.

46. In response to the allegations in ¶762, Defendant admits that Third-Party Plaintiffs have produced a document that purports to be a monitoring report for the period between May 1 and July 30, 2000, showing an elevated level of total suspended solids. Defendant denies the remaining allegations of ¶762, and in particular, denies any implication that such reporting was indicative of a Discharge by Defendant of Hazardous Substances.

47. In response to the allegations in ¶763, Defendant admits that Third-Party Plaintiffs have produced an article describing a search of the CasChem Site on or about April 10, 1990, by employees of the EPA, the U.S. Customs Service and the FBI. Defendant denies the remaining allegations of ¶763, and in particular, denies any implication that such purported activities were indicative of a Discharge by Defendant of Hazardous Substances. Defendant further denies that any fines paid to governmental agencies constitute an admission of liability.

48. In response to the allegations in ¶765, Defendant admits that Third-Party Plaintiff has produced a document dated September 11, 1991, in which NJDEP notified Defendant that its facility received a rating of “conditionally acceptable” due to poor housekeeping practices that could lead to contamination of the “State’s waters.”

Defendant denies the remaining allegations in ¶765, and in particular, denies any implication that such rating was indicative a Discharge by Defendant of Hazardous Substances.

49. Defendant denies the allegations contained in ¶765.

50. Defendant has insufficient information to form a belief as to the truth of the allegations contained in ¶766 insofar as any of the allegations are directed to it. The remaining allegations are directed at parties other than Defendant and therefore no response is required.

51. In response to the allegations in ¶767, Defendant admits that Third-Party Plaintiffs have produced a document that purports to be a Preliminary Assessment Report dated June 2004, which document speaks for itself. Defendant denies any characterization of the document and further states that during the course of its operations at the site, improvements regarding operations and disposal practices included but were not limited to rerouting of piping from underground to overhead, removal and decommissioning of underground storage tanks, implementation of waste minimization and product recovery programs, improvements, controls and other enhancements to the wastewater pretreatment system, implementation of detailed self-monitoring and safety programs, and changes to discharge streams. Defendant denies the remaining allegations contained in ¶767.

52. In response to the allegations in ¶768, Defendant admits that Third-Party Plaintiffs have produced a document that purports to describe three samples taken on or about February 3, 1987, showing levels of a contaminant slightly exceeding the stringent NJDEP ECRA action levels but that on or about September 3, 1992, the

NJDEP issued a “no further action” letter pertaining to these soil samples. Defendant denies the remaining allegations in ¶768, and in particular, denies any implication Defendant Discharged Hazardous Substances.

53. Defendant denies the allegations in ¶769.

54. The allegations contained in ¶770 are directed at parties other than Defendant and therefore no response is required.

55. Defendant denies those allegations in ¶771 directed to it. The remaining allegations contained in ¶771 are directed at parties other than Defendant and therefore no response is required.

#### **Other Commercial Sites**

56. The allegations in Paragraphs 772 through 3032 of the Third-Party Complaint are directed at parties other than Defendant and therefore no response is required.

#### **LANDFILL AND DRUM SITES**

57. The allegations in Paragraphs 3033 through 3445 of the Third-Party Complaint are directed at parties other than Defendant and therefore no response is required.

#### **FIRST COUNT**

58. CasChem incorporates by reference its responses and denials as asserted in paragraphs 1 through 57 of this Third-Party Answer by reference herein.

59. The allegations in ¶3447 of the First Count of the Third-Party Complaint contain general and conclusory statements that do not require a response. To the extent that the statements contain facts, CasChem denies the allegations contained in ¶3447 as

they pertain to it. The remaining allegations are directed at parties other than CasChem and therefore no response is required.

60. The allegations in ¶3448 of the First Count of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required.

61. The allegations in ¶3449 of the First Count of the Third-Party Complaint constitute conclusions of law or are a characterization of the Third-Party Plaintiffs' own claims, to which no response is required. To the extent that the allegations are deemed statements of facts, CasChem denies the allegations as they pertain to it. The remaining allegations are directed at parties other than CasChem and therefore no response is required.

62. CasChem denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶3450. To the extent a response is required, CasChem denies the allegations contained in paragraph 3450.

63. CasChem denies the allegations contained in paragraph 3451 of the First Count of the Third-Party Complaint as they pertain to it. The remaining allegations are directed at parties other than CasChem and therefore no response is required.

**WHEREFORE**, CasChem demands entry of judgment in its favor and against Third-Party Plaintiffs dismissing with prejudice all claims for relief set forth in the First Count of the Third-Party Complaint with an award in favor of CasChem and against Third-Party Plaintiffs for attorney's fees, interest, costs of suit and such further relief as this Court deems just and appropriate.

## **SECOND COUNT**

1. CasChem incorporates by reference its responses and denials as asserted in CasChem's Answer to the First Count as if fully set forth herein.

2. CasChem denies the allegations contained in ¶3453 of the First Count of the Third-Party Complaint as they pertain to it. The remaining allegations are directed at parties other than CasChem and therefore no response is required.

**WHEREFORE**, CasChem demands entry of judgment in its favor and against Third-Party Plaintiffs dismissing with prejudice all claims for relief set forth in the Second Count of the Third-Party Complaint with an award in favor of CasChem and against Plaintiffs for attorney's fees, interest, costs of suit and such further relief as this Court deems just and appropriate.

#### **AFFIRMATIVE DEFENSES**

1. Third-Party Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted.

2. Third-Party Plaintiffs' claims are barred by reason of applicable statutes of limitations.

3. Some or all of the Third-Party Plaintiffs lack standing.

4. The losses and/or injuries alleged suffered by Third-Party Plaintiffs resulted from and were proximately caused by the conduct of persons other than CasChem or was the conduct of persons or entities over whom and which CasChem had no control.

5. Third-Party Plaintiffs' claims are barred by the doctrines of waiver, estoppel, "unclean hands" and/or laches.

6. Third-Party Plaintiffs' claims should be reduced in the proportion that such parties' acts or omissions bear to the acts or omissions that caused the alleged injuries or damages.

7. Third-Party Plaintiffs' claims are barred, in whole or in part, by the entire controversy doctrine.

8. Recovery for Third-Party Plaintiffs' claims would result in unjust enrichment to the Third-Party Plaintiffs.

9. Third-Party Plaintiffs are barred under the collateral source doctrine.

10. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for adjudication of the claims in accordance with R. 4:28-1.

11. To the extent that CasChem is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harms suffered.

12. Without admitting any liability, in the event CasChem is found liable, CasChem is entitled to offset such liability by the equitable share of the liability of any person or entity not joined as a third-party defendant in this action that would be liable to Third-Party Plaintiffs.

13. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

14. CasChem is not liable for Third-Party Plaintiffs' claims under the Joint Tortfeasors Contribution Law because CasChem is not liable for the "same injury" caused by Plaintiffs' discharges for which Plaintiffs seek recovery and/or remedy.



15. Upon information and belief, the Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in Third-Party Complaint “B.”

16. Third-Party Plaintiffs have failed to present a justiciable controversy in that the operative facts in connection with any alleged remediation are future, contingent and uncertain.

17. Third-Party Plaintiffs’ claims are subject to recoupment and/or offset by settlements with other parties and must be reduced accordingly.

18. Third-Party Plaintiffs’ claims are barred, in whole or in part, by the doctrines of accord and satisfaction and waiver.

19. Third-Party Plaintiffs’ claims are barred, in whole or in part, by Third-Party Plaintiffs’ failure to properly mitigate damages.

20. Third-Party Plaintiffs’ claims are barred by the doctrine of *res judicata*.

21. CasChem complied with all applicable laws, regulations, codes and acted with governmental approval.

22. CasChem cannot be held liable for damages or claims based on actions or inactions by CasChem that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by governmental agencies including but not limited to the State of New Jersey or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law and other requirements of all foreign, federal, state and local government entities.

23. Third-Party Plaintiffs’ claims are barred to the extent that they seek to impose retroactive liability for acts that were previously authorized or condoned by law.

24. Third-Party Plaintiffs' claims are barred because at all relevant times CasChem exercised due care with respect to hazardous substances, if any that may have been handled at the site, took precautions against foreseeable acts or omissions of others.

25. Third-Party Plaintiffs' claims are barred to the extent that CasChem's conduct alleged to give rise to the liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs or any other governmental agency, including without limitation, through issuance of a no further action letter, a negative declaration, consent order, settlement agreement or other similar document.

26. Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs conflicts with CasChem's responsibilities to conduct ongoing environmental investigations or cleanups by state or federal governmental agencies.

27. Any discharge that allegedly originated from CasChem was investigated and remediated by a licensed professional under the direct oversight of state and/or federal agencies within the confines of accepted industrial practices and technology.

28. Any acts or omissions relating to any hazardous substance conformed to industry custom and practice.

29. To the extent that the Third-Party Complaint purports to seek any relief under the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue CasChem under that statute.

30. Without admitting any liability, if it is determined that CasChem engaged in any of the conduct alleged by the Third-Party Plaintiffs, such activities were *de minimus*.

31. Plaintiffs' and Third-Party Plaintiffs' cost incurred or to be incurred at the site are unreasonable, duplicative, not cost effective, and not consistent with the National Contingency Plan.

32. CasChem is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. (the "Spill Act").

33. Third-Party Plaintiffs' claims are barred to the extent that they seek relief for damages incurred prior to the effective date of the Spill Act.

34. Without admitting liability, if CasChem should be found to be liable under the Spill Act, its liability is several and not joint because a non-public party suing under the Spill Act's contribution provision is not entitled to joint and several liability.

35. The Spill Act does not authorize Plaintiffs and/or Third-Party Plaintiffs to recover future costs and thus all claims against CasChem relating to the Spill Act are premature and not ripe for adjudication.

36. Third-Party Plaintiffs' claims are barred in whole or in part by the statutory defenses to liability provided by the Spill Act.

37. CasChem did not own or operate a "Major Facility" as defined in the Spill Act.

38. CasChem's liability, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties

pursuant to Burlington Northern and Santa Fe Railway Co., et al. v. United States et al., 556 U.S. \_\_; 129 S.Ct. 1870 (2009) and other comparable decisional law.

39. To the extent that CasChem is acting or has acted to conduct a cleanup at the site, claims for equitable contribution under the Spill Act are barred because equity will not compel action that is already being undertaken or is unnecessary.

40. Third-Party Plaintiffs have not incurred any costs authorized by the Spill Act and have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

41. Third-Party Plaintiffs' claims are barred in whole or in part by the statutory defenses to liability provided by the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA").

42. Third-Party Plaintiffs have no right of contribution against CasChem under the WPCA.

43. Third-Party Plaintiffs are volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from CasChem and thus not entitled to contribution under the Spill Act, the WCPA or any other environmental statute.

44. Certain of the costs incurred or to be incurred by the Plaintiffs and/or Third-Party Plaintiffs in connection with the site are not "response costs" recoverable from CasChem within the meaning of Sections 101(23), (24) and (25) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601, et seq., as applied to the Spill Act.

45. Plaintiffs and Third-Party Plaintiffs failed to provide notice to CasChem that it was considered a potentially responsible party prior to undertaking any response actions.

46. Third-Party Plaintiffs' claims are barred, in whole or in part, because they are preempted by federal law, including, without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601, et seq.

47. Third-Party Plaintiffs' claims are barred, in whole or in part, because no actions or inactions by CasChem have resulted in any permanent impairment or damage to a natural resource.

48. CasChem hereby incorporates by reference any affirmative defense asserted by any other parties in this action to the extent such defenses respond to Third-Party Plaintiffs' claims and do not impose liability on CasChem.

### **COUNTERCLAIMS AND CROSSCLAIMS**

In accordance with Case Management Order V, CasChem is not asserting any counterclaims or cross claims at this time and reserves its rights to do so as specified by the Court's Order. All counterclaims and cross claims asserted by other parties against CasChem, whether filed in the past or future, are deemed denied by CasChem, without the need for responsive pleadings.

### **DESIGNATION OF TRIAL COUNSEL**

In accordance with R. 4:25-4, Coleen J. McCaffery is designated as trial counsel.

Respectfully submitted,

COLEEN J MCCAFFERY LLC  
Attorneys for Defendant CasChem, Inc.



By: \_\_\_\_\_  
Coleen J. McCaffery, Esq.

Dated: March 20, 2010

**CERTIFICATION PURSUANT TO R. 4:5-1**

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that:

(a) The matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and

(b) Because it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint is several only, there are no non-parties which should be joined in the action pursuant to R. 4:28, but that

(c) In the event the Court shall determine that the potential liability of a Third-Party Defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R.4:28; and

(d) In either event, some or all of such non-parties may be subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

COLEEN J MCCAFFERY LLC  
Attorneys for Defendant CasChem, Inc.



By: \_\_\_\_\_  
Coleen J. McCaffery, Esq.

Dated: March 20, 2010

### **CERTIFICATION OF SERVICE**

1. I am an attorney-at-law in the State of New Jersey with the law firm of Coleen J. McCaffery LLC, attorneys for CasChem, Inc., in the above-captioned matter.

2. On the date listed below, I caused an original and one copy of CasChem Inc.'s Answer to Third-Party Complaint "B," Affirmative Defenses and Certification pursuant to R. 4:5-1(b)(2) to be filed with the Clerk of the Superior Court of New Jersey, Essex County, via Federal Express.

3. On the date listed below, I caused a copy of same to be served on counsel for all parties which have consented to electronic service by posting to <http://njdepvoce.sfile.com> and upon the attached list of counsel of record by first-class mail.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



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Coleen J. McCaffery, Esq.

Dated: March 23, 2010



**Third-Party Defendants for Regular Service as of February 21, 2010**

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