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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,

vs.

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,

vs.

3M COMPANY,
A.C.C., INC.,
ACH FOOD COMPANIES, INC.,
ACTIVE OIL SERVICE,
ADCO CHEMICAL COMPANY,
AGC CHEMICALS AMERICAS, INC.,
ALDEN-LEEDS, INC.,
ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERICAN INKS AND COATINGS CORPORATION,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**CONSOLIDATED RAIL
CORPORATION'S
ANSWER TO THIRD-PARTY
COMPLAINT "B"**

APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS, INC.,
ASSOCIATED AUTO BODY & TRUCKS, INC.,
ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AKZO NOBEL COATINGS, INC.,
BASF CATALYSTS LLC,
BASF CONSTRUCTION CHEMICALS INC.,
BASF CORPORATION,
BAYER CORPORATION,
BEAZER EAST, INC.,
BELLEVILLE INDUSTRIAL CENTER,
BENJAMIN MOORE & COMPANY,
BEROL CORPORATION,
B-LINE TRUCKING, INC.,
BORDEN & REMINGTON CORP.,
C.S. OSBORNE & CO.,
CAMPBELL FOUNDRY COMPANY,
CASCHEM, INC.,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMTURA CORPORATION,
CLEAN EARTH OF NORTH JERSEY, INC.,
COSMOPOLITAN GRAPHICS CORPORATION,
CIBA CORPORATION,
COLTEC INDUSTRIES INC.,
COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC.,
CONAGRA PANAMA, INC.;
CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COSAN CHEMICAL CORPORATION,
COVANTA ESSEX COMPANY,
CRODA, INC.,
CRUCIBLE MATERIALS CORPORATION,
CURTISS-WRIGHT CORPORATION,
CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,
DAVANNE REALTY CO.,

DELEET MERCHANDISING CORPORATION,
DELVAL INK AND COLOR,
INCORPORATED,DILORENZO PROPERTIES
COMPANY, L.P.,
E.I. DU PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY,
EDEN WOOD CORPORATION,
ELAN CHEMICAL COMPANY, INC.,
EM SERGEANT PULP & CHEMICAL CO.,
EMERALD HILTON DAVIS, LLC,
ESSEX CHEMICAL CORPORATION,
EXXON MOBIL
F.E.R. PLATING, INC.,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORPORATION,
FLINT GROUP INCORPORATED,
FORT JAMES CORPORATION,
FOUNDRY STREET CORPORATION,
FRANKLIN-BURLINGTON PLASTICS, INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY,
GENTEK HOLDING LLC,
GIVAUDAN FRAGRANCES CORPORATION,
G. J. CHEMICAL CO.,
GOODY PRODUCTS, INC.,
GORDON TERMINAL SERVICE CO. OF N.J., INC.,
HARRISON SUPPLY COMPANY,
HARTZ MOUNTAIN CORPORATION,
HAVENICK ASSOCIATES L.P.,
HEXCEL CORPORATION,
HEXION SPECIALTY CHEMICALS, INC.,
HOFFMANN-LA ROCHE INC.,
HONEYWELL INTERNATIONAL INC.,
HOUGHTON INTERNATIONAL INC.,
HUDSON TOOL & DIE COMPANY, INC,
HY-GRADE ELECTROPLATING CO.,
ICI AMERICAS INC.,
INNOSPEC ACTIVE CHEMICALS LLC,
INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC.,
ITT CORPORATION,

KEARNY SMELTING & REFINING CORP.,
KAO BRANDS COMPANY,
KOEHLER-BRIGITT STAR, INC.,
LINDE, INC.,
LUCENT TECIINOLOGIES, INC.,
MACE ADHESIVES & COATINGS COMPANY, INC.,
MALLINCKRODT INC.,
MERCK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC.,
NAPPWOOD LAND CORPORATION,
NATIONAL FUEL OIL, INC.,
NATIONAL-STANDARD, LLC,
NELL-JOY INDUSTRIES, INC.,
NESTLE U.S.A., INC.,
NEW JERSEY TRANSIT CORPORATION,
NEWS AMERICA, INC.,
NEWS PUBLISHING AUSTRALIA LIMITED,
NORPAK CORPORATION,
NOVELIS CORPORATION,
ORANGE AND ROCKLAND UTILITIES, INC.,
OTIS ELEVATOR COMPANY,
PRC-DESOTO INTERNATIONAL, INC.,
PASSAIC PIONEERS PROPERTIES COMPANY,
PFIZER INC.,
CONRAIL CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING COMPANY,
PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,

QUALA SYSTEMS, INC.,
QUALITY CARRIERS, INC.,
RECKITT BENCKISER, INC.,
REICHHOLD, INC.,
REVERE SMELTING & REFINING CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.
SINGER SEWING COMPANY
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS, INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VALSPAR CORPRATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,

VULCAN MATERIALS COMPANY,
W.A.S. TERMINALS CORPORATION,
W.A.S. TERMINALS, INC.,
W.C. INDUSTRIES,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
ZENECA INC.,

Third-Party Defendants.

**CONSOLIDATED RAIL CORPORATION'S ANSWER TO
THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Consolidated Rail Corporation ("Conrail"), by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:¹

GENERALLY

Conrail 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".

AS TO PROCEDURAL BACKGROUND

1-15. Pursuant to CMO V, no response is required to the factual allegations of paragraphs 1 through 15, which do not relate specifically to Conrail. To the extent an answer is required, Conrail responds that the pleadings, documents and agreement referenced in paragraphs 1 through 15 are writings and any mischaracterizations thereof are denied. To the

¹ The paragraph numbers used herein respond to the paragraph numbers used in the Third-Party Complaint B.

extent that these paragraphs contain legal conclusions, no response is required and the conclusions are denied.

AS TO THE THIRD-PARTY PLAINTIFFS

16-18. Pursuant to CMO V, no response is required to the allegations of paragraphs 16 through 18 which identify Third-Party Plaintiffs and do not relate specifically to Conrail.

AS TO THE THIRD-PARTY DEFENDANTS

19-64. Denied. The allegations in paragraphs 19 through 64 relate to other Third-Party Defendants, do not specifically relate to Conrail, and pursuant to CMO V do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is required and Conrail denies said legal conclusions.

65. Admitted in part and denied in part. It is admitted only that Conrail is a corporation organized under the laws of Pennsylvania. By way of further answer, Conrail's corporate offices are located at 1717 Arch Street, Philadelphia Pennsylvania.

66-209. Denied. The allegations in paragraphs 66 through 209 relate to other Third-Party Defendants, do not specifically relate to Conrail, and pursuant to CMO V do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is required and Conrail denies said legal conclusions.

210. Denied. The allegation in paragraph 210 states a legal conclusion as to which no response is required and therefore is denied. To the extent that a response is required, Conrail denies the allegation in paragraph 210.

AS TO DEFINITIONS

211-236. Paragraphs 211 through 236 contain definitions. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

237-808. The allegations in paragraphs 237 through 808 relate to other Third-Party Defendants, do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is required and Conrail denies said legal conclusions. To the extent a response is required to paragraphs 237 through 808, Conrail is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. To the extent paragraphs 237 through 808 reference documents, any mischaracterizations thereof are denied.

Elizabeth Site

809. Admitted in part and denied in part. It is admitted only that Conrail is the current owner of a certain parcel of land located at 123 Dowd Avenue in Elizabeth, Union County, New Jersey (“Conrail Elizabeth Site”). The description of the property in the Complaint is vague, and Conrail denies any allegations in paragraph 809 to the extent they relate to property or improvements not owned by Conrail.

810. Admitted in part and denied in part. It is admitted only that the Conrail Elizabeth Site was utilized for the servicing and cleaning of passenger and freight train engines and cars between April 1976 and April 1982. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 810 purporting to characterize the operations, facilities, and materials used at the Conrail Elizabeth Site for the entire period running from 1901 until 1988, or the specific operations, facilities and materials utilized from 1976 to 1982, and therefore denies the remaining allegations in the paragraph. By way of further answer, the Conrail Elizabeth Site was conveyed in 1976 to Conrail by the former owner, Central Rail of New Jersey, free and clear of any liability pursuant to the “Fresh Start”

policy of the Regional Rail Reorganization Act of 1973 (“Rail Act”) and the deeds of conveyance. Conrail operated the site from April 1976 until April 1982 and is without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 810 related to the operations at the site outside of this time period. From January 1983 until November 1987, the Conrail Elizabeth Site was leased and operated by New Jersey Transit. Additional lessees at the Conrail Elizabeth Site have included BGB Transport Company, National Distribution Services, Armin Poly Film Corporation, American Plywood Corporation, Matlack, Inc. and Rail Bridge Terminals.

811. Admitted in part and denied in part. It is admitted only that Central Railroad of New Jersey (“CNJ”) owned the Conrail Elizabeth Site in 1976 and conveyed the property to Conrail. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in paragraph 811 related to CNJ’s operation of the Conrail Elizabeth Site from 1901 until 1976, and therefore denies the same.

812. Admitted in part and denied in part. It is admitted that Conrail was incorporated on or about February 10, 1976 pursuant to the Rail Act. It is further admitted that Conrail acquired certain rail assets of CNJ free and clear of any liability pursuant to the Rail Act’s “Fresh Start” policy and the deeds of conveyance on or about April 1, 1976. It is denied that Conrail took over all business, operations and assets of CNJ, and it is further denied that all the railroads affected by the Rail Act, including CNJ, were dissolved. It is specifically denied that all of the assets of CNJ were conveyed to Conrail. It is further denied that Conrail was the sole surviving entity of the railroad reorganization resulting from the Rail Act. By way of further answer, CNJ emerged from bankruptcy in 1979 with substantial assets as Central Jersey Industries, Inc. (“CJI”). CJI was the recognized successor to CNJ. Conrail specifically denies any allegation in

paragraph 812 that Conrail is the successor to CNJ or any CNJ liability at the Conrail Elizabeth Site. To the extent paragraph 812 pleads legal conclusions, no response is required and Conrail denies said legal conclusions.

813. Denied. Conrail specifically denies that it is the successor of CNJ. To the extent paragraph 813 pleads legal conclusions, no response is required and Conrail denies said legal conclusions.

814. Admitted in part and denied in part. It is admitted only that Conrail owned and operated the Conrail Elizabeth Site from April 1976 until April of 1982. Any allegation in paragraph 814 that Conrail's operation at the site extended beyond this time frame is specifically denied.

815. Admitted.

816. Denied as stated. To the extent paragraph 816 pleads legal conclusions, no responsive pleading is required and same are therefore denied. To the extent the 1999 transaction and subsequent transactions referenced in paragraph 816 are writings, any mischaracterizations thereof are denied. To the extent an answer is required, Conrail admits that it became an indirect subsidiary of both CSX Corporation ("CSX") and Norfolk Southern Corporation ("NSC") in 1999. Conrail further admits that, subsequent to the 1999 transaction, most of its rail assets were transferred to Norfolk Southern Railway Company or CSX Transportation Company, but that Conrail continues to conduct operations on the so-called shared assets. It is specifically denied that most of Conrail's assets were split between CSX and NSC in 1999 or that Conrail was restructured into a switching and terminal railroad in 1999. The remaining mischaracterizations of the 1999 transaction and subsequent transactions are denied.

817. Admitted in part and denied in part. It is admitted only that a limited portion of the Conrail Elizabeth Site abuts the Newark Bay. It is specifically denied that the Newark Bay received direct discharges, overland flow, and sheet storm runoff directly from the Conrail Elizabeth Site during the period of Conrail's ownership and/or operation of the site. To the extent that the allegations in paragraph 817 relate to time periods other than the period of Conrail's ownership and/or operation of the site, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of such allegations, and therefore they are denied.

818. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 818 and therefore they are denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 818 plead factual allegations regarding the alleged observations of third parties approximately thirty years ago, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

819. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 819 and therefore they are denied. To the extent that the allegations contained in this paragraph refer to written documents, any mischaracterizations thereof are denied. To the extent that the allegations in paragraph 819 plead factual allegations regarding the alleged observations of third parties almost thirty years ago, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

820. Denied. To the extent the allegations in paragraph 820 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 820 plead factual allegations regarding the alleged observations of a third party almost thirty years ago, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

821. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 821 and therefore they are denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 821 plead factual allegations regarding the alleged observations of a third party in 1986 concerning the operations of someone other than Conrail, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

822. Admitted in part and denied in part. To the extent the allegations in paragraph 822 refer to a written document, any mischaracterization thereof is denied. Conrail admits only that a report was apparently drafted by NUS Corporation for the United States Environmental Protection Agency dated May 24, 1989 related to the Conrail Elizabeth Site. To the extent that the allegations contained in paragraph 822 plead factual allegations, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail further denies the allegations in paragraph 822 to the extent that they suggest that any operations at the Conrail Elizabeth Site impacted the Newark Bay. Conrail is currently without knowledge or information sufficient to form a belief

as to the truth or accuracy of the purported observations made by a third party concerning the operations of someone other than Conrail, and therefore said allegations are denied.

823. Admitted in part and denied in part. Conrail admits only that a report apparently prepared by Geraghty & Miller, Inc. dated April 1996 references an alleged site inspection by Conrail representatives at the Conrail Elizabeth Site in May 1987, which inspection is characterized as having noted areas of potential environmental concern at the site including batteries and drums as well as oil-stained soil in certain areas. Conrail has not verified the statements in the Geraghty & Miller report, and therefore is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 823 related to any site inspection conducted in May of 1987 at the Conrail Elizabeth Site, and said allegations are accordingly denied. Conrail specifically denies the allegations in paragraph 823 to the extent that they suggest that the noted areas of potential concern resulted from Conrail operations at the Conrail Elizabeth Site as the site was leased and operated at that time by New Jersey Transit, and the Geraghty & Miller report states that New Jersey Transit took steps to address these areas of potential concern. Conrail specifically denies that any of the allegedly observed conditions impacted the Newark Bay Complex.

824. Denied. To the extent the allegations in paragraph 824 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 824 plead factual allegations regarding the alleged observations of a third party in 1987, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail specifically denies any allegations in paragraph 824 concerning alleged poor housekeeping by Conrail at the Conrail Elizabeth Site or any suggestion that Conrail was involved in any way in illegal dumping at the

site. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the purported observations made by a third party concerning the operations of someone other than Conrail, and therefore said allegations are denied.

825. Denied. To the extent the allegations in paragraph 825 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 825 plead factual allegations regarding the alleged observations of a third party in 1987, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail specifically denies any allegations in paragraph 825 that allege poor housekeeping by Conrail at the Conrail Elizabeth Site, the improper storage of drums of unspecified Hazardous Substances at the site, and the discharge of oil saturated water from the site into surrounding wetlands. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the purported observations made by a third party concerning the operations of someone other than Conrail, and therefore said allegations are denied.

826. Admitted in part and denied in part. Conrail admits only that a report apparently prepared by O.H. Materials Corp. dated December 26, 1989 made reference to conditions at the Conrail Elizabeth Site. That report is a writing and any mischaracterization thereof is denied. To the extent that the allegations contained in paragraph 826 plead factual allegations, Conrail has not verified the December 1989 O.H. Materials Corp. report, and is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the purported observations made by a third party concerning the operations of someone other than Conrail, and therefore said allegations are denied.

827. Admitted in part and denied in part. Conrail admits only that NUS Corporation drafted a report for the United States Environmental Protection Agency dated May 24, 1989 related to the Conrail Elizabeth Site purportedly containing soil and groundwater sampling results. The 1989 NUS Report is a document and any mischaracterizations thereof are denied. To the extent that the allegations contained in paragraph 827 plead factual allegations, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail further denies the allegations in paragraph 827 to the extent that they suggest that the listed contaminants were all present in both soil and groundwater at the Conrail Elizabeth Site, or that the listed contaminants were all detected at levels exceeding applicable environmental standards. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the purported observations made by a third party concerning the operations of someone other than Conrail, and therefore said allegations are denied.

828. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 828 regarding the flow of groundwater at the Conrail Elizabeth Site and therefore they are denied. Conrail further denies that Hazardous Substances were discharged to the Newark Bay Complex from the Conrail Elizabeth Site.

829. Admitted in part and denied in part. Conrail admits only that NUS Corporation drafted a report for the United States Environmental Protection Agency dated May 24, 1989 which contained statements related to security at the Conrail Elizabeth Site. The 1989 NUS Report is a document and any mischaracterizations thereof are denied. To the extent that the allegations contained in paragraph 829 plead factual allegations, Conrail is currently without

knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the purported observations made by a third party concerning the operations of someone other than Conrail, and therefore said allegations are denied.

830. Admitted in part and denied in part. Conrail admits only that a report apparently prepared by Geraghty & Miller, Inc. dated April 1996 references correspondence purportedly authored by OHM Remediation Services Corporation (OHM) of Trenton, New Jersey in July 1992, which correspondence is, in turn, characterized as stating that approximately 1,500 gallons of floating separate-phase product was recovered from an excavation at the Conrail Elizabeth Site in August 1992. Conrail has not verified the statements in the Geraghty & Miller report and referenced OHM correspondence, and therefore is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 830 related to an August 1992 product recovery at the Conrail Elizabeth Site, and said allegations are accordingly denied. Conrail further specifically denies the allegations in paragraph 830 to the extent they suggest that Conrail was in any way responsible for any contamination necessitating product recovery at the site in August 1992 as the alleged event took place approximately a decade after Conrail ceased operations at the Conrail Elizabeth Site, and the Geraghty & Miller report states that “[t]he source of the oil was investigated, but could not be identified.”

831. Denied. Conrail specifically denies the allegations in paragraph 831 related to poor housekeeping practices by Conrail, and further denies that Hazardous Substances were discharged from the Conrail Elizabeth Site to the Newark Bay Complex during Conrail’s ownership and/or operation of the site. Conrail is currently without knowledge or information

sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 831 pertaining to other time periods and events and therefore they are denied.

832. Denied. The allegations in paragraph 832 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in paragraph 832 plead factual allegations, they are denied. Conrail further denies the allegations in paragraph 832 to the extent that they suggest that there were any discharges of Hazardous Substances at the Conrail Elizabeth Site that impacted the Newark Bay Complex.

833-2000. The allegations in paragraphs 833 through 2000 relate to other Third-Party defendants, do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is required and Conrail denies said legal conclusions. To the extent a response is required to paragraphs 833 through 2000, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Any documents referenced in paragraphs 833 through 2000 speak for themselves, and any mischaracterizations thereof are denied.

New Jersey Transit Site

2001. Admitted in part and denied in part. It is admitted that the 76 acre property comprised of Block 284, Lots 21AE and 35B on the tax records of Kearny, Hudson County, New Jersey has been referred to at times as the “Meadowlands Maintenance Complex Site” (“NJ Transit Site”). The tax records of Kearny are documents, and any mischaracterization thereof is denied.

2002. Admitted in part and denied in part. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2002 related to the current use, size or description of the NJ Transit Site and therefore denies the

same. By way of further answer, Conrail sold the property comprised of Block 284, Lots 21AE and 35B on the tax records of Kearny, Hudson County, New Jersey to NJ Transit in 1984, and currently lacks knowledge or information sufficient to admit the accuracy of the allegations in paragraph 2002 describing the current site.

2003. Admitted in part and denied in part. It is admitted that Conrail is a Pennsylvania corporation incorporated on or about February 10, 1976 pursuant to the Regional Rail Reorganization Act of 1973 (“Rail Act”). It is further admitted that certain rail assets of railroads subject to the Rail Act were conveyed to Conrail on or about April 1, 1976, free and clear of any liability pursuant to the Rail Act’s “Fresh Start” policy and the deeds of conveyance. The remaining allegations of paragraph 2003 are denied. Conrail specifically denies that the railroads subject to the Rail Act were acquired by Conrail and dissolved, and that the sole surviving entity of the reorganization was Conrail. By way of further answer, railroads subject to the Rail Act such as Central Railroad of New Jersey and Penn Central Transportation Company (“Penn Central”) emerged from bankruptcy with substantial assets not acquired by Conrail. These viable corporate entities retained any environmental liability incurred by the railroads subject to the Rail Act prior to April 1, 1976, and Conrail is specifically exempted from any such “pre-conveyance” liability by the Rail Act and deeds of conveyance. To the extent paragraph 2003 pleads legal conclusions, no response is required and Conrail denies said legal conclusions.

2004. Admitted in part and denied in part. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2004 related to the historic use, development and operations of the NJ Transit Site and therefore

they are denied. Conrail admits only that the New Jersey Transit Site has a long history of railroad operations wholly unrelated to Conrail.

2005. Admitted in part and denied in part. It is admitted that Conrail used the NJ Transit Site until 1984 and that operations by Conrail at the site included freight classification and intermodal storage. It is further admitted that facilities at the NJ Transit Site during the period in which Conrail operated at the site included a car repair shop. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 2005 describing the particular alleged operations of the classification yard and service operations at the site at least twenty-five years ago, and therefore denies the same.

2006. Denied. The allegations in paragraph 2006 relate to the New Jersey Transit Corporation (“NJ Transit”), do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required to paragraph 2006, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in that paragraph and therefore denies the same.

2007. Admitted in part and denied in part. It is admitted that Conrail conveyed the approximately 76.609 acres comprising the NJ Transit Site to NJ Transit on or about January 19, 1984. It is further admitted that temporary easement rights were given to Conrail as alleged in paragraph 2007 and that Conrail’s New Jersey Discharge Pollution Elimination System (NJDPES) permit was transferred to NJ Transit. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations stated in paragraph 2007 and therefore denies the same.

2008. Denied. The allegations in paragraph 2008 relate to NJ Transit, do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required to paragraph 2008, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in paragraph 2008 and therefore denies the same.

2009. Admitted in part and denied in part. It is admitted only that Conrail utilized, handled, consumed and stored certain Hazardous Substances at the NJ Transit Site. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2009 including the alleged discharge of unspecified Hazardous Substances at an unspecified time in an unspecified area of the NJ Transit Site and therefore denies the same.

2010. Denied. The allegations in paragraph 2010 relate to NJ Transit, do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in paragraph 2010 and therefore denies the same.

2011. Admitted in part and denied in part. It is admitted only that the Hackensack River and Passaic River merge into the Newark Bay approximately two miles south of the NJ Transit Site. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations stated in paragraph 2011 and therefore denies the same. By way of further answer, Conrail has not owned the NJ Transit Site for approximately twenty-six years and lacks sufficient knowledge to admit or deny the allegations in paragraph 2011 related to the current stormwater and wastewater management at the NJ Transit Site and the

associated outfalls. Conrail is also currently without knowledge or information sufficient to form a belief as to the truth of any allegations in paragraph 2011 that relate to the operations, practices and structures of other railroads that operated at the site before Conrail came into existence in 1976, and therefore denies the same.

2012. Admitted in part and denied in part. It is admitted only that the NJ Transit Site contained certain drainage lines during the period when the NJ Transit Site was operated by Conrail. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 2012 related to alleged flooding events, that the drainage system was purportedly “undersized,” or that it pumped towards the Hackensack River or New Jersey State Highway Tributary, and therefore denies the same. Conrail specifically denies the allegation in paragraph 2012 that any discharges from the NJ Transit Site into the New Jersey State Highway Tributary caused oil pollution as late as 1978.

2013. Denied. Conrail has not owned the NJ Transit Site for approximately twenty-six years and currently lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 2013 related to the purported discharge of light non-aqueous phase liquids from outfalls at the site up until September 1997, and therefore denies the same.

2014. Denied.

2015. Denied. To the extent that the allegations in paragraph 2015 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2015 plead factual allegations requiring a response, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail specifically denies the allegations in paragraph

2015 that Conrail failed to appropriately remediate any discharges on the NJ Transit Site, or that such discharges continued through at least February 1978.

2016. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2016 related to the purported observations of a New Jersey Department of Environmental Protection (“NJDEP”) inspector in 1978 or the alleged removal of approximately 12,000 gallons of oil from a marsh and sewer line at the NJ Transit Site at that time, and therefore they are denied. To the extent that the allegations in paragraph 2016 refer to a written document, any mischaracterization thereof is denied.

2017. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2017 regarding the observations of a third party in 1978 and therefore they are denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied.

2018. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2018 regarding the observations of a third party in 1980 and therefore they are denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied.

2019. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2019 regarding an alleged rail car derailment and spill of methyl methacrylate on April 4, 1980 and therefore they are denied.

2020. Denied. To the extent that the allegations in paragraph 2020 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2020 plead factual allegations related to the purported findings of EPA in 1981, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

2021. Denied. To the extent that the allegations in paragraph 2021 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2021 plead factual allegations related to the purported findings of an unspecified individual in 1983, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

2022-2033. The allegations in paragraphs 2022 through 2033 pertain to activities at the NJ Transit Site following Conrail's conveyance of the site to NJ Transit in 1984. The allegations in these paragraphs do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is required and Conrail denies said legal conclusions. To the extent a response is required to paragraphs 2022 through 2033, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Conrail denies any mischaracterization of any documents referenced in paragraphs 2022 through 2033.

2034. Denied. To the extent the allegations in paragraph 2034 state conclusions of law, no response is required and they are therefore denied. Conrail specifically denies poor housekeeping practices at the NJ Transit Site during its operations at the site, or that alleged spills, leaks, and/or mechanical failures during that period resulted in discharges of hazardous

substances from the NJ Transit Site to the Newark Bay Complex. Conrail further denies the allegations in paragraph 2034 to the extent that they suggest that any Conrail operations at the NJ Transit Site impacted the Newark Bay Complex. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent the allegations in paragraph 2034 pertain to periods other than 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than 1976 to 1984, and therefore any such allegations are denied.

2035. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2035 related to the purported contamination of an unidentified “area” as a result of unspecified “spills and leaks” and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site. To the extent the allegations in paragraph 2035 pertain to periods other than 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than 1976 to 1984, and therefore any such allegations are denied.

2036. Denied. To the extent that the allegations in paragraph 2036 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2036 plead factual allegations related to the purported findings of an NJDEP

investigation in 1978, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent the allegations in paragraph 2036 pertain to contamination that purportedly occurred during periods other than 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than 1976 to 1984, and therefore any such allegations are denied.

2037. Denied. To the extent that the allegations in paragraph 2037 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2037 plead factual allegations related to the purported findings of an NJDEP inspector in 1980, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

2038. Denied. To the extent that the allegations in paragraph 2038 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2038 plead factual allegations related to the purported findings of an NJDEP official in 1980, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent the allegations in paragraph 2038 pertain to contamination that purportedly occurred prior to April 1, 1976, such

allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods prior to April 1, 1976, and therefore any such allegations are denied.

2039. Denied. To the extent that the allegations in paragraph 2039 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2039 plead factual allegations related to the purported findings of an NJDEP inspector in 1980, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2039 pertain to alleged contamination resulting from operations prior to April 1, 1976, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods prior to April 1, 1976, and therefore any such allegations are denied.

2040. Denied. To the extent that the allegations in paragraph 2040 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2040 plead factual allegations related to the purported findings of an unidentified third party in 1980, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately

one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2040 pertain to alleged contamination resulting from operations prior to April 1, 1976, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods prior to April 1, 1976, and therefore any such allegations are denied.

2041. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 2041 related to an alleged lube oil spill at the NJ Transit Site in 1980 and therefore they are denied. To the extent that the allegations in paragraph 2041 refer to a written document, any mischaracterization thereof is denied.

2042. Denied. To the extent that the allegations in paragraph 2042 refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in paragraph 2042 plead factual allegations related to the purported findings of an unidentified inspector in 1981, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail specifically denies the allegations in paragraph 2042 to the extent they purport to reflect what Conrail would consider normal leakage at a railyard; no unlawful leakage was deemed normal by Conrail. Conrail further denies the allegations of careless fuel loading and unloading practices in paragraph 2042. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2039 pertain to alleged contamination

resulting from operations prior to April 1, 1976, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods prior to April 1, 1976, and therefore any such allegations are denied.

2043-2046. The allegations in paragraphs 2043 through 2046 pertain to activities at the NJ Transit Site following Conrail's conveyance of the site to NJ Transit in 1984. The allegations in these paragraphs do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required to paragraphs 2043 through 2046, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Conrail denies any mischaracterization of any documents referenced in paragraphs 2043 through 2046.

2047. Admitted in part and denied in part. It is admitted only that certain Hazardous Substances have been detected in the soil at the NJ Transit Site. Conrail specifically denies that any of the Hazardous Substances and other compounds listed in paragraph 2047 were present in the soil at the NJ Transit Site as a result of Conrail activities at the site. Conrail further denies the allegations in paragraph 2047 to the extent they suggest that the listed Hazardous Substances and compounds were all detected at levels exceeding applicable soil standards, or were in any way discharged to the Newark Bay Complex from the NJ Transit Site. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining factual allegations in paragraph 2047 and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the

allegations in paragraph 2047 pertain to alleged contamination present or resulting from operations at the site during time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2048. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 2048 and therefore denies the same. To the extent this paragraph pleads legal conclusions, no response is required and Conrail denies said legal conclusions. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2048 pertain to alleged contamination present or resulting from operations at the site during time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2049. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraph 2049 and therefore denies the same. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the

extent that the allegations in paragraph 2048 pertain to time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2050. Admitted in part and denied in part. To the extent this paragraph pleads legal conclusions, no response is required and Conrail denies said legal conclusions. It is admitted only that certain substances have been detected in the groundwater at the NJ Transit Site. Conrail specifically denies that any of the substances listed in paragraph 2050 were present in the groundwater at the NJ Transit Site as a result of Conrail activities at the site. Conrail further denies the allegations in paragraph 2050 to the extent they suggest that the listed substances were all detected at levels exceeding applicable soil standards, or were in any way discharged to the Newark Bay Complex from the NJ Transit Site. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining factual allegations of paragraph 2050 and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2050 pertain to alleged contamination present or resulting from operations at the site during time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a

belief as to the truth of the factual allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2051. Denied. Conrail denies the allegations of paragraph 2051 to the extent they assert that any use or spillage of diesel fuel at the NJ Transit Site during the period of Conrail's operations at the site resulted in the pollution of local groundwater. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of any allegations in paragraph 2051 related to alleged activities at the NJ Transit Site outside of the period of Conrail's operations at the site, or referring to the alleged current contamination of groundwater at the site, and therefore they are denied. Further, any such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail.

2052. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of any allegations in paragraph 2052 related to the flow of waters in the area of the NJ Transit Site and therefore they are denied. Conrail specifically denies the allegation in paragraph 2052 that any Hazardous Substances or other compounds released by Conrail at the NJ Transit Site were ultimately discharged into the Hackensack River and/or the Passaic River. To the extent this paragraph pleads legal conclusions, no response is required and Conrail denies said legal conclusions. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2052 pertain to alleged releases and/or discharges at and/or from the site during time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual

allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2053. Denied. Conrail specifically denies that Hazardous Substances and other compounds have been improperly released from the NJ Transit Site. To the extent that the remaining allegations in paragraph 2053 refer to a written document, any mischaracterization thereof is denied. To the extent this paragraph pleads legal conclusions, no response is required and Conrail denies said legal conclusions. To the extent that the remaining allegations in paragraph 2053 plead factual allegations related to unspecified sediment sampling results, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984; eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2053 pertain to alleged releases from the site and/or sediment core sampling taken from the Passaic River during time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2054. Denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of any allegations in paragraph 2054 related to the involvement of NJ Transit in a 1991 Administrative Consent Order with NJDEP and therefore they are denied. Conrail is only alleged to have operated at the site from April 1, 1976 to 1984;

eight years of the approximately one hundred and thirty year history of the site alleged in the Complaint. To the extent that the allegations in paragraph 2054 pertain to time periods other than April 1, 1976 to 1984, such allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent a response is required, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations pertaining to time periods other than Conrail's alleged period of operation at the site, and therefore any such allegations are denied.

2055. Denied. The allegations in paragraph 2055 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in paragraph 2055 plead factual allegations requiring a response, they are denied. Conrail further denies the allegations in paragraph 2055 to the extent they suggest that there were any discharges of Hazardous Substances at the NJ Transit Site that impacted the Newark Bay Complex.

2056. The allegations in paragraph 2056 do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent this paragraph pleads legal conclusions, no response is required and Conrail denies said legal conclusions. To the extent a response is required to paragraph 2056, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in that paragraph and therefore denies the same. Conrail further denies the allegations in paragraph 2056 to the extent they suggest there were any discharges of Hazardous Substances at the NJ Transit Site that impacted the Newark Bay Complex.

2057-3400. The allegations in paragraphs 2057 through 3400 relate to other Third-Party defendants, do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is

required and Conrail denies said legal conclusions. To the extent a response is required to paragraphs 2057 through 3400, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Conrail denies any mischaracterization of any documents referenced in paragraphs 2057 through 3400.

Otilio Landfill Site

3401. Admitted in part and denied in part. It is admitted on information and belief that the property located on Blanchard Street in Newark, New Jersey and designated on tax maps as Block 5001, Lots 12 and 16 is referred to as the Otilio Landfill Site. To the extent the allegations in paragraph 3401 reference documents including tax maps, any mischaracterizations thereof are denied. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining factual allegations in paragraph 3401 and therefore they are denied. Conrail never owned or operated on the Otilio Landfill Site and currently lacks any firsthand knowledge of the precise size, location, or current owners of the two lots in question. Accordingly, the allegations in this paragraph do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail.

3402. Denied. Conrail never owned or operated on the Otilio Landfill Site and did not exist prior to 1976. Accordingly, the allegations in this paragraph do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. The allegations in paragraph 3402 refer to written documents, and any mischaracterization thereof is denied. To the extent that the allegations in paragraph 3402 plead factual allegations related to the purported findings of NJDEP related to the Otilio Landfill, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

3403. Denied. Conrail never owned or operated on the Ottilio Landfill Site and did not exist prior to 1976. Accordingly, the allegations in this paragraph do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 3403 related to Deleet Merchandising Corporation's purchase of the site. Allegations in paragraph 3403 refer to NJDEP's Final Decision Document for the Ottilio Landfill Site, and any mischaracterization thereof is denied. To the extent that the allegations in paragraph 3403 plead factual allegations related to the purported findings of NJDEP, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

3404. Admitted in part and denied in part. It is admitted only, on information and belief, that Central Railroad of New Jersey ("CNJ") owned the property designated as Block 5001, Lot 16 in Newark, New Jersey ("Lot 16"). It is specifically denied that Conrail ever owned Lot 16. Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining factual allegations in paragraph 3404 and therefore they are denied. By way of further answer, while Conrail acquired certain property in the vicinity of Lot 16 from CNJ in or about 1976 in order to operate its railroad, Lot 16 was specifically excluded from this acquisition and was never owned by Conrail. Conrail never owned or operated on the Ottilio Landfill Site and did not exist prior to 1976. Accordingly, the allegations in this paragraph do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. Conrail is not the corporate successor of CNJ and is not in any way related to CNJ. CNJ is a separate and distinct corporate entity which continued to exist and own property and assets after it ceased railroad operations.

3405. Admitted in part and denied in part. It is admitted that Conrail was incorporated on or about February 10, 1976 pursuant to the Regional Rail Reorganization Act of 1973 ("Rail Act"). It is further admitted that Conrail acquired certain rail-related assets of CNJ free and clear of any liability pursuant to the Rail Act's "Fresh Start" policy and the deeds of conveyance on or about April 1, 1976. It is denied that Conrail took over all business, operations and assets of CNJ. It is further denied that CNJ or all other railroads affected by the Rail Act were dissolved. It is further denied that Conrail was the sole surviving entity of the railroad reorganization resulting from the Rail Act. It is specifically denied that all of the assets of CNJ were conveyed to Conrail. By way of further answer, CNJ emerged from bankruptcy in 1979 with substantial assets as Central Jersey Industries, Inc. ("CJI"). CJI was the recognized successor to CNJ and Conrail specifically denies any allegation in paragraph 3405 that Conrail is the successor to CNJ or any CNJ liability at the Ottilio Landfill. To the extent this paragraph pleads a legal conclusion, no response is required and Conrail denies said legal conclusion.

3406. Denied. To the extent this paragraph pleads a legal conclusion, no response is required and Conrail denies said legal conclusion. By way of further answer, CJI was the recognized corporate successor to CNJ.

3407. Denied as stated. To the extent paragraph 3407 pleads legal conclusions, no responsive pleading is required and same are therefore denied. To the extent the 1999 transaction and subsequent transactions referenced in paragraph 3407 are writings, any mischaracterizations thereof are denied. To the extent an answer is required, Conrail admits that it became an indirect subsidiary of both CSX Corporation ("CSX") and Norfolk Southern Corporation ("NSC") in 1999. Conrail further admits that, subsequent to the 1999 transaction, most of its rail assets were transferred to Norfolk Southern Railway Company or CSX

Transportation Company, but that Conrail continues to conduct operations on the so-called shared assets. It is specifically denied that most of Conrail's assets were split between CSX and NSC in 1999 or that Conrail was restructured into a switching and terminal railroad in 1999. The remaining mischaracterizations of the 1999 transaction and subsequent transactions are denied.

3408-3444. The allegations in paragraphs 3408 through 3444 relate to other Third-Party defendants and activities at a site which Conrail never owned or operated. These allegations do not specifically relate to Conrail, and, pursuant to CMO V, do not require an answer from Conrail. To the extent these paragraphs plead legal conclusions, no response is required and Conrail denies said legal conclusions. To the extent a response is required to paragraphs 3408 through 3444, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Conrail denies any mischaracterization of any documents referenced in paragraphs 3408 through 3444.

3445. Denied. The allegations in paragraph 3445 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in paragraph 3445 plead factual allegations requiring a response, they are denied. Conrail specifically denies the allegations in paragraph 3408 to the extent they allege that Conrail was a discharger and/or a Person in any way responsible for any discharges of Hazardous Substances from the Ottilio Landfill Site.

AS TO FIRST COUNT

New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.f.a.2(a)

3446. Conrail incorporates by reference as if fully set forth herein its responses and denials as asserted in paragraphs 1 through 3445 herein.

3447. Denied. The allegations in paragraph 3447 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in paragraph 3447 plead factual allegations requiring a response, Conrail denies the allegations that pertain to it. Pursuant to CMO V, allegations related to other Third-Party Defendants in paragraph 3447 require no further answer from Conrail.

3448. Admitted in part and denied in part. To the extent that the allegations in paragraph 3448 state conclusions of law to which no response is required, such allegations are denied. It is admitted only that the allegations in paragraph 3448 purport to quote a portion of N.J.S.A. 58:10-23.11f.a(2)(a), any mischaracterization of which is denied.

3449. Denied. The allegations in paragraph 3449 state conclusions of law to which no response is required and are therefore denied. To the extent that allegations in this paragraph relate to Third-Party Defendants other than Conrail, or purported cleanup and removal costs or damages unrelated to any alleged activities by Conrail, pursuant to CMO V no answer to such allegations from Conrail is required. To the extent that the allegations contained in paragraph 3449 require any response, Conrail denies that it is liable to Third-Party Plaintiffs for contribution under the Spill Act or otherwise. To the extent that the allegations contained in paragraph 3449 plead additional factual allegations requiring a response, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

3450. Denied. The allegations in paragraph 3450 state conclusions of law to which no response is required and are therefore denied. To the extent that allegations in this paragraph relate to Third-Party Defendants other than Conrail, or purported cleanup and removal costs or environmental contamination unrelated to any alleged activities by Conrail, pursuant to CMO V

no answer to such allegations from Conrail is required. To the extent that the allegations contained in paragraph 3450 require a response, Conrail is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. To the extent this paragraph references writings, any mischaracterization thereof are denied.

3451. Denied. The allegations in paragraph 3451 state conclusions of law to which no response is required and are therefore denied. To the extent that allegations in this paragraph relate to Third-Party Defendants other than Conrail, or purported cleanup and removal costs unrelated to any alleged activities by Conrail, pursuant to CMO V no answer to such allegations from Conrail is required. To the extent that the allegations contained in paragraph 3451 require any response, Conrail denies that it is liable to Third-Party Plaintiffs for contribution or that Third-Party Plaintiffs are entitled to recover a proportionate share of any alleged cleanup and removal costs from Conrail. To the extent that the allegations contained in paragraph 3451 plead additional factual allegations requiring a response, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

WHEREFORE, Third-Party Defendant Conrail respectfully requests that the Court enter an Order dismissing the Third-Party Complaint “B” as against Conrail with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

AS TO SECOND COUNT

Statutory Contribution

3452. Conrail incorporates by reference as if fully set forth herein its responses and denials as asserted in paragraphs 1 through 3451 herein.

3453. Denied. The allegations in paragraph 3453 state conclusions of law to which no response is required and are therefore denied. To the extent that allegations in this paragraph relate to Third-Party Defendants other than Conrail, or purported Response costs, cleanup and removal costs, damages, or other loss or harm unrelated to any alleged activities by Conrail, pursuant to CMO V no answer to such allegations from Conrail is required. To the extent that the allegations contained in paragraph 3453 require any response, Conrail denies that it is liable to Third-Party Plaintiffs for contribution or otherwise. To the extent that the allegations contained in paragraph 3453 plead additional factual allegations requiring a response, Conrail is currently without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

WHEREFORE, Third-Party Defendant Conrail respectfully requests that the Court enter an Order dismissing the Third-Party Complaint “B” as against Conrail with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

FIRST AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred, in whole or in part, as it fails to state a cause of action against Conrail upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Conrail is not a discharger or a person in any way responsible under N.J.S.A. 58:10-23 *et seq.* (“Spill Act”) for the discharges to the Passaic River and Newark Bay Complex alleged in the Third-Party Complaint.

THIRD AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.* (“WPCA”).

FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have no Spill Act claim against Conrail because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by the entire controversy doctrine.

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Third-Party Complaint purports to seek any relief under New Jersey's 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 Conrail under that statute.

EIGHTH AFFIRMATIVE DEFENSE

Some or all of Third-Party Plaintiffs do not have standing to sue.

NINTH AFFIRMATIVE DEFENSE

Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities, which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor,

administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from Conrail. Consequently, the claims in the Third-Party Complaint are barred, in whole or in part.

TWELFTH AFFIRMATIVE DEFENSE

The claims brought by Third-Party Plaintiffs include damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

THIRTEENTH AFFIRMATIVE DEFENSE

Conrail cannot be held liable for, or be required to pay, Third-Party Plaintiffs' damages or other claims based on actions or inactions by Conrail that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/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 ("applicable Environmental Laws").

FOURTEENTH AFFIRMATIVE DEFENSE

At common law, Conrail held a usufructuary interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Conrail has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and cannot be any greater than, the claims that the State of New Jersey

has or would have against Conrail directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part

FIFTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the State of New Jersey would be barred from asserting those claims directly against Conrail for the damages sought in its Amended Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims asserted against Conrail in the Third-Party Complaint are barred, in whole or in part, to the extent that Conrail complied with applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others during the relevant time period.

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted against Conrail in the Third-Party Complaint are barred, in whole or in part because the release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Conrail had no control, whether by contract or otherwise, and/or who Conrail

had no duty to control, including without limitation the State of New Jersey and its agencies and officials, the United States and its agencies and officials, and/or any publicly owned treatment works.

TWENTIETH AFFIRMATIVE DEFENSE

The claims set forth in the Third-Party Complaint are barred, in whole or in part, by the doctrine of preemption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Conrail.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Conrail are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the "unclean hands" doctrine.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible to perform; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred because the relief sought against Conrail, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Conrail are subject to setoff and recoupment and therefore must be reduced accordingly.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation, Third-Party Plaintiffs' failure to incur costs authorized by the Spill Act and Third-Party Plaintiffs' failure to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

THIRTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because neither they nor Plaintiffs have incurred "costs of restoration and replacement ... of any natural resources damaged or destroyed by a discharge" under the Spill Act.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because they have not paid more than their fair or equitable share of any damages, costs or other relief sought by the Plaintiffs, and are, therefore, not entitled to contribution from Conrail.

THIRTY-SECOND AFFIRMATIVE DEFENSE

If Third-Party Plaintiffs sustained any injury or damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury or damages, Third-Party Plaintiffs' recovery against Conrail, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or their agents or employees.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Although Conrail denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Conrail is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Conrail alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

To the extent that the actions of Conrail are determined to constitute disposal of waste, which Conrail denies, such disposal was undertaken in accordance with the state of the art, the accepted industrial practice and technology, and the prevailing legal requirements at the time, for which Conrail cannot be found retroactively liable.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Any discharge that allegedly originated from Conrail, was investigated and remediated by a licensed professional, and under the direct oversight of state and/or federal agencies, with the state of the art, the accepted industrial practice and technology, and the prevailing requirements at the time, for which Conrail cannot be found retroactively liable.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with applicable government agencies.

THIRTY-NINTH AFFIRMATIVE DEFENSE

The damages or other relief that Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

FORTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred due to their own conduct in unilaterally, and without notice to Conrail, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

FORTY-FIRST AFFIRMATIVE DEFENSE

Conrail's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to other parties

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

FORTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' contribution claims are barred, in whole or in part, because the discharges for which the Plaintiffs are seeking relief are different from the discharges for which Third-Party Plaintiffs allege Conrail is responsible.

FORTY-THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Conrail is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and does not share a common liability to the State of New Jersey.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent they seek to hold Conrail liable, in contribution, for any claims for which it would be a violation of public policy to hold Conrail liable, including but not limited to punitive damages and penalties.

FORTY-FIFTH AFFIRMATIVE DEFENSE

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Conrail are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Conrail pertaining

to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Conrail.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

To the extent that Conrail is participating or has participated in an environmental cleanup at the site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Conrail, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred because the relief sought against Conrail, were it claimed directly by Plaintiffs, would amount to a "taking" of Conrail's property in violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.*

FORTY-NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Conrail's participation in ongoing environmental cleanups under oversight of the Plaintiffs or the United States at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Conrail, thereby exposing Conrail to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FIFTIETH AFFIRMATIVE DEFENSE

To the extent that Conrail is participating or has participated in environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Conrail, the claims for equitable contribution under the Spill Act in the Third-Party Complaint

are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY-FIRST AFFIRMATIVE DEFENSE

Without admitting liability, Conrail asserts that if it is found liable for the activities alleged to have been conducted by Conrail in the Third-Party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FIFTY-SECOND AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred, in whole or in part, by the defenses to liability provided to Conrail by the Regional Rail Reorganization Act of 1973, including the “Fresh Start” policy.

FIFTY-THIRD AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred, in whole or in part, by the defenses to liability provided to Conrail through the deeds of conveyance for the site(s) alleged by Third-Party Plaintiffs to be the subject of their claims against Conrail.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred, in whole or in part, by the Passenger Service Contract between Conrail and the State of New Jersey for certain of the sites alleged by Third-Party Plaintiffs to be the subject of their claims against Conrail.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred, in whole or in part, to the extent that Conrail neither owned nor operated the site(s) alleged by Third-Party Plaintiffs to be the subject of their claims against Conrail.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred, in whole or in part, because Conrail did not exist as a corporate entity prior to 1976, and is not the successor to any railroad operations prior to April 1, 1976 at the site(s) alleged by Third-Party Plaintiffs to be the subject of their claims against Conrail.

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

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

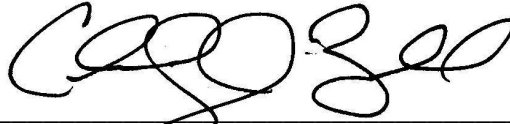
WHEREFORE, Third-Party Defendant Conrail respectfully requests that the Court enter an Order dismissing the Third-Party Complaint "B" with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

Dated: June 18, 2010

Respectfully submitted,



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Consolidated Rail Corporation

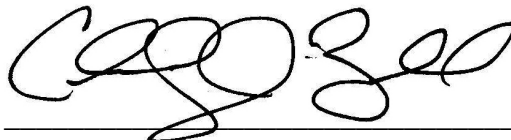
CERTIFICATION PURSUANT TO RULE 4:5-1(B)(2)

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.

Dated: June 18, 2010

Respectfully submitted,



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Attorney for Third-Party Defendant,
Consolidated Rail Corporation

CERTIFICATION OF SERVICE

I, Christopher Ball, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served Consolidated Rail Corporation's Answer to Third-Party Complaint "B" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the following counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via overnight mail:

Richard J. Dewland
Coffey & Associates
465 South Steet
Morristown, NJ 07960
Attorney for Third-Party Defendant, Borough of Hasbrouck Heights

John P. McGovern
Assistant City Attorney
City of Orange Township
29 North Day St.
Orange, NJ 07050
Attorney for Third-Party Defendant, City of Orange

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 willingly false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'C. Ball', written over a horizontal line.

Christopher Ball
Attorney for Third-Party Defendant,
Conrail Corporation

Dated: June 18, 2010