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ATTORNEYS FOR THIRD-PARTY DEFENDANT FRANKLIN-BURLINGTON PLASTICS, INC.

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

**FRANKLIN-BURLINGTON PLASTICS, INC.'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-BRIGHT STAR, INC.,
LINDE, INC.,
LUCENT TECHNOLOGIES, 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.,
PHARMACIA 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.

FRANKLING-BURLINGTON PLASTICS, INC.'S ANSWER TO
THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Franklin-Burlington Plastics, Inc., 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:

GENERALLY

1. Franklin-Burlington Plastics, Inc. denies each and every allegation contained in the 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

(Paragraphs 1 through 15)

2. Franklin-Burlington Plastics, Inc. responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

4. To the extent that Paragraphs 19 through 209 of the Third-Party Complaint "B" relate to other parties, no response is required pursuant to CMO V.

5. Franklin-Burlington Plastics, Inc. admits the allegation of Paragraph 93 of the Third-Party Complaint "B" that it is incorporated in the State of Delaware. As for the remainder of the allegations of Paragraph 93 of the Third-Party Complaint "B", Franklin-Burlington Plastics, Inc. admits that its principal place of business is located in Clayton, Missouri, but further states that its street address is 120 S. Central Avenue, Suite 1700, not 7733 Forsyth, Suite 1450.

6. Paragraph 210 of the Third-Party Complaint "B" states a legal conclusion as to which no response is required.

AS TO DEFINITIONS

7. Paragraphs 211 through 236 of the Third-Party Complaint "B" contain definitions. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

8. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

9. Franklin-Burlington Plastics, Inc. admits the allegations of Paragraph 1299 of the Third-Party Complaint "B", except with respect to the allegation that its site in Kearny is located approximately six miles upstream of the Passaic River's confluence with Newark Bay, for which allegation Franklin-Burlington Plastics, Inc. is without sufficient knowledge or information sufficient to form a belief as to the truth and therefore denies this allegation.

10. Franklin-Burlington Plastics, Inc. denies the allegation of Paragraph 1300 of the Third-Party Complaint "B" that Franklin Plastics Corporation was incorporated in the State of New Jersey in 1962, but admits that Franklin Plastics Corp. was incorporated in New Jersey in that year. Franklin-Burlington Plastics, Inc. does not know to whom "Franklin Plastics" refers and therefore is without knowledge or information sufficient to form a belief as to the truth of the allegation in the second sentence of Paragraph 1300 of the Third-Party Complaint "B", and therefore denies same.

11. Franklin-Burlington Plastics, Inc. denies the allegations of Paragraph 1301 of the Third-Party Complaint "B" insofar as they pertain to Franklin Plastics Corporation, but admits that Franklin Plastics Corp. merged with Franklin-Burlington Plastics, Inc. in 1990 at which time Franklin-Burlington Plastics, Inc. assumed all of Franklin Plastics Corp.'s liabilities and obligations. Franklin-Burlington Plastics, Inc. denies the remaining allegations of Paragraph 1301 of the Third-Party Complaint "B".

12. Franklin-Burlington Plastics, Inc. denies the allegations of Paragraph 1302 of the Third-Party Complaint "B" as they pertain to Franklin Plastics Corporation, but admits that they are true with respect to Franklin Plastics Corp.

13. With respect to the first sentence of Paragraph 1303 of the Third-Party Complaint "B", Franklin-Burlington Plastics, Inc. refers to NJPDES Permit No. NJ 0002194, the terms of

which speak for itself. Franklin-Burlington Plastics, Inc. admits the allegations of the second sentence, but denies the allegations of the third sentence, of Paragraph 1303 of the Third-Party Complaint "B".

14. Franklin-Burlington Plastics, Inc. is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1304 through 1306 of the Third-Party Complaint "B", and therefore denies the same.

15. Franklin-Burlington Plastics, Inc. admits the allegations of Paragraph 1307 of the Third-Party Complaint "B", but further states that it is without knowledge or information as to the source of such contamination or the manner by which such contamination became located at the Franklin Plastics Site.

16. In response to Paragraph 1308 of the Third-Party Complaint "B", Franklin-Burlington Plastics, Inc. refers to NJDEP's Directive No. 1, the terms of which speak for itself.

17. In response to Paragraph 1309 of the Third-Party Complaint "B", Franklin-Burlington Plastics, Inc. refers to EPA's September 15, 2003 General Notice Letter, the terms of which speak for itself.

18. The allegations of Paragraph 1310 of the Third-Party Complaint "B" state a legal conclusion as to which no response is required.

AS TO FIRST COUNT

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

19. With respect to Paragraph 3446 of the Third-Party Complaint "B", Franklin-Burlington Plastics, Inc. incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 18 herein.

20. To the extent the allegations of Paragraph 3447 of the Third-Party Complaint "B" are directed at Franklin-Burlington Plastics, Inc., Franklin-Burlington Plastics, Inc. denies that

it is a discharger an/or "a person in any way responsible" for the discharge of hazardous substances into the Greater Newark Bay Complex as set forth in the Third-Party Complaint "B".

21. Paragraph 3448 of the Third-Party Complaint "B" quotes from the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a(2)(a) and as such, Franklin-Burlington Plastics, Inc. refers to the statute for specificity as to its terms.

22. To the extent the allegations of Paragraphs 3449 through 3451 of the Third-Party Complaint "B" are directed at Franklin-Burlington Plastics, Inc., Franklin-Burlington Plastics, Inc. denies that it is liable to Third-Party Plaintiffs for contribution.

AS TO SECOND COUNT

Statutory Contribution

23. With respect to Paragraph 3452 of the Third-Party Complaint "B", Franklin-Burlington Plastics, Inc. incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 21 herein.

24. To the extent the allegations of Paragraph 3453 of the Third-Party Complaint "B" are directed at Franklin-Burlington Plastics, Inc., Franklin-Burlington Plastics, Inc. denies that it is liable to Third-Party Plaintiffs for contribution.

FIRST AFFIRMATIVE DEFENSE

25. The Third-Party Complaint "B" is barred in whole or in part as it fails to state a cause of action against Franklin-Burlington Plastics, Inc. upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

26. Franklin-Burlington Plastics, Inc. is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. ("Spill Act").

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

29. Third-Party Plaintiffs have no right of contribution against Franklin-Burlington Plastics, Inc. under the Spill Act.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

32. Franklin-Burlington Plastics, Inc. cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Franklin-Burlington Plastics, Inc. 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").

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

34. At all relevant times, Franklin-Burlington Plastics, Inc. complied with all Applicable Environmental Laws and industry standards, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

ELEVENTH AFFIRMATIVE DEFENSE

35. The claims asserted against Franklin-Burlington Plastics, Inc. in the Third-Party Complaint are barred because at all relevant times Franklin-Burlington Plastics, Inc. exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any 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 Franklin-Burlington Plastics, Inc. had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

37. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Franklin-Burlington Plastics, Inc.

FOURTEENTH AFFIRMATIVE DEFENSE

38. Third-Party Plaintiffs' claims against Franklin-Burlington Plastics, Inc. are barred, in whole or in part, by the equitable doctrines of laches and estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

40. 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

41. Third-Party Plaintiffs' claims against Franklin-Burlington Plastics, Inc. are subject to setoff and recoupment and therefore must be reduced accordingly.

EIGHTEENTH AFFIRMATIVE DEFENSE

42. Franklin-Burlington Plastics, Inc. did not own or operate a "Major Facility" as defined in the Spill Act.

NINETEENTH AFFIRMATIVE DEFENSE

43. 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, that Third-Party Plaintiffs' have not incurred costs authorized by the Spill

Act and Third-Party Plaintiffs' have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

TWENTIETH AFFIRMATIVE DEFENSE

44. Franklin-Burlington Plastics, Inc. denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under Applicable Environmental Laws, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Franklin-Burlington Plastics, Inc. exercised no control and for whose conduct Franklin-Burlington Plastics, Inc. was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

TWENTY-FIRST AFFIRMATIVE DEFENSE

45. If Third-Party Plaintiffs sustained any injury or are entitled to any 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 and are entitled to damages, Third-Party Plaintiffs' recovery against Franklin-Burlington Plastics, Inc., if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

TWENTY-SECOND AFFIRMATIVE DEFENSE

46. Although Franklin-Burlington Plastics, Inc. denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Franklin-Burlington Plastics, Inc. 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.

TWENTY-THIRD AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Franklin-Burlington Plastics, Inc. alleged to give rise to liability in the Third-Party Complaint "B" 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 determination, 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.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

49. Third-Party Plaintiffs' claims are barred due to its own conduct in implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

50. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Franklin-Burlington Plastics, Inc. liable, in contribution, for punitive damages and penalties.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

51. Third-Party Plaintiffs cannot assert contribution claims against Franklin-Burlington Plastics, Inc. because the discharges for which the Plaintiffs are seeking relief are different from Franklin-Burlington Plastics, Inc.'s alleged discharges.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

52. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Franklin-Burlington Plastics, Inc. 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.

TWENTY-NINETH AFFIRMATIVE DEFENSE

53. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs’ claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs’ claims against Franklin-Burlington Plastics, Inc. are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Franklin-Burlington Plastics, Inc. 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 Franklin-Burlington Plastics, Inc. . Examples of legal extinguishments that are or may be applicable to Franklin-Burlington Plastics, Inc. include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Franklin-Burlington Plastics, Inc. ;
- B. Any settlement or other compromise between Plaintiffs and Franklin-Burlington Plastics, Inc. ;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs’ right to maintain a claim against Franklin-Burlington Plastics, Inc. ;
- D. Any failure to join a claim relating to the “Newark Bay Complex” (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and Franklin-Burlington Plastics, Inc. , which would result in relinquishment of such a claim by virtue of New Jersey’s Entire Controversy Doctrine; and/or

- E. Any issuance by Plaintiffs to Franklin-Burlington Plastics, Inc. , directly or indirectly, of any “No Further Action” (a/k/a “NFA”) determination, “Negative Declaration,” or similar determination.

THIRTIETH AFFIRMATIVE DEFENSE

54. Without admitting liability, Franklin-Burlington Plastics, Inc. alleges that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint "B", such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

THIRTY-FIRST AFFIRMATIVE DEFENSE

55. Franklin-Burlington Plastics, Inc. incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmation defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on Franklin-Burlington Plastics, Inc.

THIRTY-SECOND AFFIRMATIVE DEFENSE

56. Franklin-Burlington Plastics, Inc. reserves the right to assert and hereby invokes any and all defenses under Applicable Environmental Laws that may be available during the course of this action.

COUNTER-CLAIMS, CROSS CLAIMS AND FOURTH PARTY CLAIMS

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

DESIGNATION OF TRIAL COUNSEL

58. In accordance with Rule 4:25-4 you are hereby notified that Norman W. Spindel, Esq. is assigned to try this case.

CERTIFICATION PURSUANT TO R. 4:5-1(b) (2)

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

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of Franklin-Burlington Plastics, Inc. for the claims set forth in the Third Party Complaint "B" 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 "B" is in any respect joint and several (which is denied), then all or some of the non-parties listed on the attachments to the letter dated October 7, 2009 from Eric Rothenberg, Esq. of O'Melveny and Myers to the Honorable Marina Corodemus 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 are 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.

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

Dated: October 20, 2009

Respectfully submitted,

LOWENSTEIN SANDLER PC
Attorneys for Third-Party Defendant
Franklin-Burlington Plastics, Inc.

65 Livingston Avenue
Roseland, NJ 07039
Tel: 973.597.2500
Fax: 973.597.2515

Signed 

CERTIFICATION OF SERVICE

Annetta Benedict hereby certifies as follows:

1. I am the legal secretary to Norman W. Spindel, Esq. of the law firm of Lowenstein Sandler PC, which law firm represents Third-Party Defendant Franklin-Burlington Plastics, Inc. in this matter.

2. I hereby certify that Franklin-Burlington Plastics, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served upon the Clerk of the Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey, 07102, by regular mail, postage pre-paid, on October 20, 2009.

3. I hereby certify that Franklin-Burlington Plastics, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served electronically on all parties who have consented to service by electronic posting on the following website, <http://njdepvocc.sfile.com> on October 20, 2009.

4. I hereby certify that Franklin-Burlington Plastics, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served by regular mail, postage pre-paid, on counsel for all parties who have not consented to service by electronic posting.

Dated: October 20, 2009



Annetta Benedict