

**MORGAN, LEWIS & BOCKIUS LLP**  
(A Pennsylvania Limited Liability Partnership)  
502 Carnegie Center  
Princeton, New Jersey 08540  
609.919.6600  
Fax: 609.919.6639  
*Attorneys for Third-Party Defendant*  
*Houghton International Inc.*

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

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, *et al.*

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY

DOCKET NO: L-009868-05

CIVIL ACTION

**HOUGHTON INTERNATIONAL INC.'S  
ANSWER TO THIRD-PARTY COMPLAINT  
"B"**

**HOUGHTON INTERNATIONAL INC.'S ANSWER TO THIRD PARTY  
COMPLAINT "B"**

Third-Party Defendant Houghton International Inc. ("Houghton"), by and through its undersigned counsel, and in accordance with this Court's April 16, 2009 Case Management Order V, Section 9 ("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**

Houghton denies each and every allegation contained in the Third-Party Complaint "B" that is not otherwise addressed herein.

**AS TO PROCEDURAL BACKGROUND**

1.-15. No response is required pursuant to CMO V.

**AS TO THE THIRD PARTY DEFENDANTS**

16.-109. To the extent the allegations in Paragraphs 16 through 109 relate to other parties, no response is required pursuant to CMO V.

110. Houghton admits the allegations contained in Paragraph 110 of the Third-Party Complaint "B."

111.-210. To the extent the allegations in Paragraphs 111 through 210 relate to other parties, no response is required pursuant to CMO V.

**AS TO DEFINITIONS**

211.-236. No response is required pursuant to CMO V.

**AS TO FACTUAL ALLEGATIONS**

237.-3372. To the extent the allegations in Paragraphs 237 through 3372 relate to other parties, no response is required pursuant to CMO V.

3373. It is admitted only that Houghton owned and operated a facility located at 6681 Snowdrift Road, Fogelsville, Pennsylvania from 1979 to 2009, and that the operations at the facility, at times, involved the generation of hazardous substances and solid and hazardous wastes. Houghton is without knowledge or information sufficient to form a belief as to the remainder of the allegations in Paragraph 3373.

3374. The “letter to EPA dated December 23, 1997” referred to in Paragraph 3374 is a document that speaks for itself and any characterization thereof is denied. Houghton is without knowledge or information sufficient to form a belief as to the allegations in the second sentence of Paragraph 3374.

3375 The allegations in Paragraph 3375 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

3376.-3445. To the extent the allegations in Paragraphs 3376 through 3445 relate to other parties, no response is required pursuant to CMO V.

**AS TO THE FIRST COUNT**

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

3446. Houghton incorporates by reference its responses and denials to Paragraphs 1 through 3445.

3447. The allegations in Paragraph 3447 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

3448. The allegations in Paragraph 3448 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

3449. The allegations in Paragraph 3449 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

3450. The allegations in Paragraph 3450 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

3451. The allegations in Paragraph 3451 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

**WHEREFORE**, Houghton respectfully requests that the Court enter judgment in its favor and against Third-Party Plaintiffs on Count I, and award Houghton its costs, attorneys' fees, interest and such other relief as the Court deems just and proper.

**AS TO THE SECOND COUNT**  
**Statutory Contribution**

3452. Houghton incorporates by reference its responses and denials to Paragraphs 1 through 3451.

3453. The allegations in Paragraph 3453 are conclusions of law to which no response is required and, therefore, are denied. To the extent the allegations are deemed factual, they are denied.

**WHEREFORE**, Houghton respectfully requests that the Court enter judgment in its favor and against Third-Party Plaintiffs on Count II, and award Houghton its costs, attorneys' fees, interest and such other relief as the Court deems just and proper.

### **AFFIRMATIVE DEFENSES**

Pursuant to Rule 4:5-4, Houghton hereby sets forth the following Affirmative Defenses to the claims in the Third-Party Complaint "B."

#### **FIRST AFFIRMATIVE DEFENSE**

The Third-Party Complaint "B" fails, in whole or in part, to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

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

#### **THIRD AFFIRMATIVE DEFENSE**

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

#### **FOURTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are barred from recovering damages under the Spill Act because they have not performed any clean up or remediation of hazardous substances with the meaning of the Spill Act.

#### **FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are barred from recovering damages against Houghton because the conduct alleged to give rise to liability was undertaken pursuant to approvals and permits issued by relevant government agencies.

#### **SIXTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the applicable statute of limitations.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the doctrine of preemption.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the doctrine of unclean hands.

#### **NINTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the doctrines of laches and estoppel.

#### **TENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the doctrine of waiver.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

At all relevant times Houghton exercised due care with respect to hazardous substances, if any, that Houghton may have generated, handled, stored or shipped for disposal.

#### **TWELFTH AFFIRMATIVE DEFENSE**

The injuries alleged by Third-Party Plaintiffs are the result of acts and omissions of parties other than Houghton.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

The injuries alleged by Third-Party Plaintiffs were not proximately caused by any acts or omissions of Houghton.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the doctrines of res judicata, collateral estoppel and/or judicial estoppel to the extent that the conduct of Houghton alleged to give rise to liability has been addressed in other contexts, including judicial and administrative proceedings.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have not satisfied the prerequisites to recover damages or costs under the Spill Act.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

Although Houghton denies that it is liable for any alleged contamination, in the event it is found liable, Houghton 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 that would be liable to Third-Party Plaintiffs.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' damages, if any, were caused by its own acts, omissions, negligence and lack of due care.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

One or both of the Third-Party Plaintiffs have no standing to sue.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred due to its own conduct that resulted in the commingling of formerly divisible areas of contamination.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are barred from seeking contribution to the extent that the discharges that Plaintiffs assert give rise to liability against Third-Party Plaintiffs are different from the discharges Third-Party Plaintiffs allege give rise to liability against Houghton.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred, in whole or in part, to the extent that they were mere volunteers for remediation of the contamination for which they assert claims for contribution and other relief.

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims reflect damages that are wholly speculative, conjectural, unreasonable, arbitrary and/or capricious.

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

At all relevant times, Houghton's conduct complied with industry custom, standards and state of the art with respect to the handling, storage and disposal of hazardous substances.

#### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred because they have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action.

#### **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are not ripe for adjudication because they have a joint liability to Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.



#### **TWENTY-NINTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Houghton alleged to give rise to liability in this action is the subject of a release, covenant not to sue, settlement, consent decree, or no further action letter, or has otherwise been excused by Plaintiffs.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are not entitled to recover costs for cleanup actions not undertaken in conjunction with federal authorities.

#### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

The damages sought by Third-Party Plaintiffs, if allowed, would result in unjust enrichment to Third-Party Plaintiffs.

#### **THIRTY-SECOND AFFIRMATIVE DEFENSE**

The relief sought by Third-Party Plaintiffs cannot be granted because liability is several and/or the harm alleged is divisible.

#### **THIRTY-THIRD AFFIRMATIVE DEFENSE**

Although Houghton denies it is liable for any alleged contamination, Houghton asserts that if it is found to have engaged in any activities alleged in Third-Party Complaint "B," such activities are de minimis and not the cause of any damages or other claims by Third-Party Plaintiffs.

#### **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

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

### **RESERVATION AND NON-WAIVER**

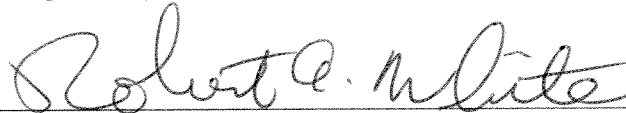
Houghton expressly reserves and does not waive any additional and further defenses as may be revealed during discovery or upon receipt of additional information.

### **RULE 4:5-1 CERTIFICATION**

I hereby certify that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding and I know of no other parties who should be joined in this action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b). However, should the Court determine that the potential liability of a third-party defendant, if any, is joint and several for the claims set forth in Third-Party Complaint "B," then Houghton states that there are other parties that may have discharged Hazardous Substances into the Newark Bay Complex contributing to the damages alleged by Third-Party Plaintiffs. The identity of all known parties believed to have discharged Hazardous Substances will be identified in accordance with the procedures set forth in CMO V. Likewise, additional discovery or investigation may identify additional parties to be joined in the litigation.

DATED: November 9, 2009

Respectfully submitted,



Robert A. White

William S. Pufko

**MORGAN, LEWIS & BOCKIUS LLP**

(A Pennsylvania Limited Liability Partnership)

502 Carnegie Center

Princeton, New Jersey 08540

609.919.6600

Fax: 609.919.6639

*Attorneys for Third-Party Defendant Houghton  
International Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that Houghton International, Inc.'s Answer and Affirmative Defenses to Third-Party Complaint "B" have been sent for filing via hand delivery to the Clerk of the Superior Court of New Jersey, Law Division, Essex County, 50 W. Market Street, Newark, New Jersey 07102, and served upon all parties who have consented to electronic service by posting to <http://njdepvocc.sfile.com>. All other Counsel were served via first class, regular mail.

Dated: November 9, 2009

  
Robert A. White