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January 21, 2010

VIA HAND DELIVERY

Clerk, Superior Court of New Jersey
Essex County Court House
Room 131
50 West Market Street
Newark, NJ 07102

Re: NJ Department of Environmental Protection, et al. v.
Occidental Chemical Corporation et al. ESX-L-9868-05 (PASR)
McKesson Corporation's First Amended Answer to Third-Party
Complaint "D"

Dear Clerk:

This firm represents Third-Party Defendant McKesson Corporation ("McKesson"). Please file the attached First Amended Answer to Third-Party Complaint "D" on behalf of McKesson Corporation, McKesson Corporation on behalf of former McKesson Corporation subsidiary McKesson EnviroSystems Company, McKesson Corporation on behalf of Safety-Kleen EnviroSystems Company, and McKesson Corporation on behalf of misnamed party Safety-Kleen Systems, Inc., f/k/a Safety-Kleen Corporation.

As background, Third Party Complaint D names McKesson Corporation, McKesson EnviroSystems Company ("MEC"), and Safety-Kleen Corporation in connection with property owned by McKesson and identified at paragraph 82 of Third Party Complaint D as the "McKesson Corporation Site."

McKesson previously consented to service and filed a joint answer on behalf of McKesson, MEC and Safety-Kleen EnviroSystems Company ("SKEC"), a subsidiary of Safety Kleen Systems, Inc., f/k/a/ Safety-Kleen Corporation. McKesson indemnifies SKEC in regard to environmental liabilities at the McKesson Corporation Site.

¹ Licensed in New York, New Jersey, Texas and West Virginia

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Safety-Kleen Envirosystems Company, and not Safety-Kleen Corporation, is the proper party in relation to the allegations in the Complaint related to the McKesson Corporation Site. The clearest evidence of this is in Third Party Plaintiffs' own nexus documents that were posted on Sfile in connection with the McKesson Corporation Site. Those documents name Safety-Kleen Envirosystems Company, not Safety-Kleen Corporation. Nevertheless, Third-Party Plaintiffs served "Safety-Kleen Systems, Inc., formerly known as Safety-Kleen Corporation" by mail on September 25, 2009.


Case Management Order VII, Section 2.2, provides that "no motions may be filed by or against the Third-Party Defendants until May 3, 2010," with limited exceptions. As a result, neither Safety-Kleen Systems, Inc. nor McKesson can currently move for dismissal of Safety-Kleen Systems, Inc., f/k/a Safety-Kleen Corporation, as an improper party to this litigation. Due the stay on motions set forth in CMO VII, Section 2.1, and CMO V, Section 7, Defendants are similarly unable, without leave of Court, to amend their complaint to correct the improper naming of an erroneous party.

In light of the January 22, 2010 deadline for Safety-Kleen Systems, Inc. to file an answer, McKesson is amending its prior answer to respond on behalf of misnamed party Safety-Kleen Systems, Inc., f/k/a Safety-Kleen Corporation.

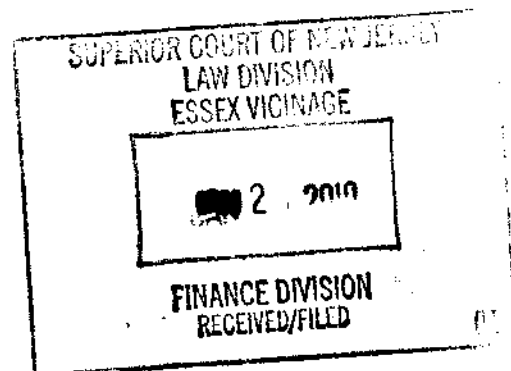
Please contact me with any questions or concerns.

Kind regards,

MICHAEL P MCTHOMAS PLLC


Michael P McThomas
Counsel

c: Hon. Sebastian P. Lombardi J.S.C. (via email)
Hon. Marina Corodemus (Ret.) (via email)
Simi Junior (via email)
Shannon Fagan, Esq. (via email)
Counsel of Record via regular mail and Sfile



Enclosures

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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,

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

MCKESSON CORPORATION'S
FIRST AMENDED ANSWER TO
THIRD-PARTY COMPLAINT "D"

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,
vs.

AMERICAN CYANAMIC,
BAYER CORPORATION,
BAYONNE INDUSTRIES, INC.,
BP MARINE AMERICAS, INC.,
CHEMICAL WASTE MANAGEMENT INC.,
DOW CHEMICAL COMPANY,
DURAPORT REALTY ONE LLC,

DURAPORT REALTY TWO LLC,
EPEC POLYMERS, INC.,
GAESS ENVIRONMENTAL SERVICES, INC.,
GATX TERMINALS CORPORATION,
GOODRICH CORPORATION,
HESS CORPORATION,
IMTT-BAYONNE,
KINDER MORGAN ENERGY PARTNERS, L.P.,
McKESSON CORPORATION,
McKESSON ENVIROSYSTEMS CO.,
SAFETY-KLEEN CORPORATION,
SHULTON INCORPORATED, USA,
SUN PIPELINE CO.,
SUN REFINING AND MARKETING CO.,
SUN OIL CO.,
SUPERIOR MPM LLC,
THOMAS & BETTS CORP.,
WASTE MANAGEMENT, INC.
WYETH,

Third-Party Defendants.

MCKESSON CORPORATION'S FIRST AMENDED ANSWER TO

THIRD-PARTY COMPLAINT "D"

Third-Party Defendant McKesson Corporation ("McKesson") hereby amends its answer
to Third-Party Complaint "D" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation

and Tierra Solutions, Inc. ("Third-Party Plaintiffs") to answer on behalf of mis-named party Safety-Kleen Systems, Inc., f/k/a Safety-Kleen Corporation ("SKSI"). McKesson previously answered on behalf of itself, McKesson Envirosystems Company ("MEC"), and Safety-Kleen Envirosystems Company ("SKEC"). SKEC is a proper party to this litigation in regard to the property owned by McKesson and described in paragraphs 82 to 85 of Third Party Complaint "D" and in paragraph 7 of McKesson's Answer and this First Amended Answer. McKesson answered on behalf of SKEC, despite the absence of proper service on the latter, because McKesson has an indemnity obligation to SKEC in regard to said property. Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs") served SKSI on September 25, 2009. SKSI is not a proper party to this litigation in regard to the property owned by McKesson and described in paragraphs 82 to 85 of Third Party Complaint "D" and in paragraph 7 of the McKesson Answer and this First Amended Answer, and McKesson has no indemnification obligation to SKSI. Nevertheless, in light of the stay on motions by Third Party Defendants and until substitution of the parties can be effected, McKesson amends its Answer to include mis-named party SKSI solely in regard to the property owned by McKesson and described in paragraphs 82 to 85 of Third Party Complaint "D" and in paragraph 7 of the McKesson Answer and this First Amended Answer.

GENERALLY

1. McKesson denies each and every allegation contained in Third Party Complaint "D" 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 "D".

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 7)

2. McKesson responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO FIRST COUNT

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

3. McKesson incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 2 herein.

4. McKesson is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 9 through 12, and therefore denies the same.

5. McKesson denies that it is liable to Third-Party Plaintiffs for contribution.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 14 through 89)

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

7. McKesson admits in part and denies in part the allegations in paragraph 82 of Third Party Complaint "D." McKesson admits that it is a Delaware corporation with its principal place of business in San Francisco, California. McKesson denies that it owns property located at 600 Doremus Avenue, but admits that it owns property located at 504-508 Doremus Avenue in Newark, New Jersey, designated as Block 5070, Lots 25 and 25A on the tax map of the City of Newark, consisting of approximately 8.5 acres. McKesson denies that an explosion and fire occurred at the property on October 12, 1982, but admits that an explosion and fire occurred at the property on October 10, 1982 that was the subject of a closure order by the New Jersey Department of Environmental Protection.

8. McKesson admits in part and denies in part the allegations in paragraph 83 of Third Party Complaint "D." McKesson denies that McKesson Envirosystems Company

occupied the property located at 504-508 Doremus Avenue from 1981 to 1987, and denies that McKesson EnviroSystems Company operated a hazardous waste treatment facility during that time period. McKesson admits that Safety-Kleen EnviroSystems Company acquired McKesson EnviroSystems Company in 1987, but denies that Safety-Kleen EnviroSystems Company operated hazardous a waste treatment facility at 504-508 Doremus Avenue. McKesson denies that either Safety-Kleen EnviroSystems Company or “Safety-Kleen Corporation” currently occupies the property located at 504-508 Doremus Avenue. McKesson admits that Safety-Kleen EnviroSystems Company is a Delaware corporation with its principal place of business in Plano, Texas.

9. McKesson is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 85, and therefore denies the same.

AS TO SECOND COUNT

Statutory Contribution

10. McKesson incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 9 herein.

11. McKesson denies that it is liable to Third-Party Plaintiffs for contribution.

FIRST AFFIRMATIVE DEFENSE

12. McKesson denies that Safety-Kleen Systems, Inc., f/k/a/ Safety-Kleen Corporation is a proper party to the litigation in regard to the property owned by McKesson described at paragraphs 82 through 85 of Third Party Complaint “D” and in paragraph 7 of this First Amended Answer.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

14. McKesson 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").

FOURTH AFFIRMATIVE DEFENSE

15. 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").

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

19. 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 McKesson under that statute.

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

21. 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.

ELEVENTH AFFIRMATIVE DEFENSE

22. 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.

TWELVTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

25. McKesson cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by McKesson 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”).

FIFTEENTH AFFIRMATIVE DEFENSE

26. At common law, McKesson held, and still holds, 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. McKesson 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 McKesson directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

SIXTEENTH AFFIRMATIVE DEFENSE

27. The State of New Jersey is legally barred from asserting direct claims against McKesson for the damages sought in its Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey’s claims are barred as to the McKesson as well, including the claims set forth in the Third-Party Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

28. 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

29. 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.

NINETEENTH AFFIRMATIVE DEFENSE

30. At all relevant times, McKesson complied with all 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.

TWENTIETH AFFIRMATIVE DEFENSE

31. The claims asserted against McKesson in the Third-Party Complaint are barred because at all relevant times McKesson exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, 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 McKesson 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.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

34. Third-Party Plaintiffs' claims against McKesson 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-FOURTH AFFIRMATIVE DEFENSE

35. 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-FIFTH AFFIRMATIVE DEFENSE

36. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrine of "coming to the nuisance."

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

38. 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 of performance; (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-EIGHTH AFFIRMATIVE DEFENSE

39. 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-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

42. McKesson did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-SECOND 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 to, 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.

THIRTY-THIRD AFFIRMATIVE DEFENSE

44. Third-Party Plaintiffs' claims are barred 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-FOURTH AFFIRMATIVE DEFENSE

45. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New

Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the "Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

47. McKesson 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 Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom McKesson exercised no control and for whose conduct McKesson was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

48. 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 McKesson, 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.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

49. Although McKesson denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, McKesson 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-NINTH AFFIRMATIVE DEFENSE

50. 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.

FORTIETH AFFIRMATIVE DEFENSE

51. Third-Party Plaintiffs' claims are barred to the extent that the conduct of McKesson 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.

FORTY-FIRST AFFIRMATIVE DEFENSE

52. The disposal of waste, if any, which allegedly originated from McKesson, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which McKesson cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

54. Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

FORTY-FOURTH AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

57. Third-Party Defendants' 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 parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

58. Third-Party Plaintiffs cannot assert contribution claims against McKesson because the discharges for which the Plaintiffs are seeking relief are different from McKesson's alleged discharges.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

59. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because McKesson 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-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

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

FIFTY-FIRST AFFIRMATIVE DEFENSE

62. 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 McKesson are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against McKesson pertaining to the alleged environmental contamination (including natural resource damage) of any site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against McKesson. Examples of legal

extinguishments that are or may be applicable to McKesson include, with respect to each such site:

1. Any release or covenant not to sue granted by Plaintiffs to McKesson;
2. Any settlement or other compromise between Plaintiffs and McKesson;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against McKesson;
4. 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 McKesson, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
5. Any issuance by Plaintiffs to McKesson, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY-SECOND AFFIRMATIVE DEFENSE

63. Third-Party Plaintiffs' claims are barred because the relief sought against McKesson, were it claimed directly by Plaintiffs, would amount to a "taking" of McKesson'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.

FIFTY-THIRD AFFIRMATIVE DEFENSE

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

FIFTY-FOURTH AFFIRMATIVE DEFENSE

65. To the extent McKesson is acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against McKesson, 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-FIFTH AFFIRMATIVE DEFENSE

66. Without admitting liability, McKesson alleges that if it is found to have been engaged in any of the activities alleged 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-SIXTH AFFIRMATIVE DEFENSE

67. McKesson 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 McKesson.

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

68. McKesson reserves the right to assert and hereby invoke each and every Environmental Law defense that may be available during the course of this action.

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

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

DESIGNATION OF TRIAL COUNSEL

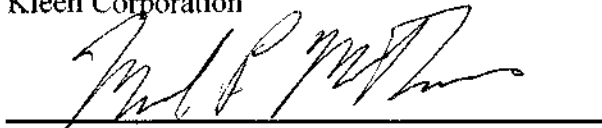
70. In accordance with Rule 4:25-4 you are hereby notified that Michael McThomas is assigned to try this case.

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

Dated: January 21, 2010

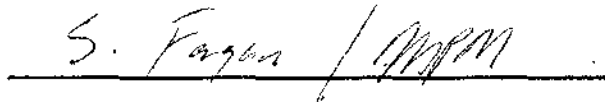
Respectfully submitted,

MICHAEL P. MCTHOMAS, PLLC
Attorney for Third-Party Defendant(s) McKesson Corporation, McKesson Corporation on Behalf of former McKesson subsidiary McKesson Envirosystems Company, McKesson Corporation on behalf of Safety-Kleen Envirosystems Company, and McKesson Corporation on behalf of misnamed party Safety-Kleen Systems, Inc., f/k/a/ Safety-Kleen Corporation

A handwritten signature in black ink, appearing to read "Michael P. McThomas", is written over a horizontal line.

Michael P. McThomas, Esq.

EDGCOMB LAW GROUP
Pro Hac Vice Attorneys for Third-Party Defendant(s) McKesson Corporation, McKesson Corporation on Behalf of former McKesson subsidiary McKesson Envirosystems Company, McKesson Corporation on behalf of Safety-Kleen Envirosystems Company, and McKesson Corporation on behalf of misnamed party Safety-Kleen Systems, Inc., f/k/a/ Safety-Kleen Corporation

A handwritten signature in black ink, appearing to read "S. Fagan / [illegible]", is written over a horizontal line.

Shannon L. Fagan, Esq.

CERTIFICATION OF SERVICE

I, Michael P. McThomas, an attorney-at-law of the State of New Jersey, do hereby state upon my oath that I have served McKesson Corporation's First Amended Answer to Third-Party Complaint "D" on behalf of on behalf of McKesson Corporation, McKesson Corporation on behalf of former McKesson Corporation subsidiary McKesson Envirosystems Company, McKesson Corporation on behalf of Safety-Kleen Envirosystems Company, and McKesson Corporation on behalf of misnamed party Safety-Kleen Systems, Inc., f/k/a Safety-Kleen Corporation electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via Hand Delivery.

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.

MICHAEL P MCTHOMAS PLLC

By: 

Michael P McThomas, Esq.
Attorneys for Third-Party Defendants
McKesson Corporation,
McKesson Corporation on behalf of former
McKesson Corporation subsidiary
McKesson Envirosystems Company,
McKesson Corporation on behalf of Safety-
Kleen Envirosystems Company, and
McKesson Corporation on behalf of
misnamed party Safety-Kleen Systems, Inc.,
f/k/a Safety-Kleen Corporation.

Dated: January 21, 2010

Third-Party Defendants for Regular Service as of January 5, 2010

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
City of Clifton	A	Thomas M. Egan, Esq. Assistant Municipal Attorney City of Clifton Law Department 900 Clifton Avenue Clifton, NJ 07013 973.470.5817 973.470.5254 - fax tegan@cliftonnj.org
City of Orange	A	John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 - fax jmccgovern@ci.orange.nj.us
Clean Earth of North Jersey, Inc.	B	Eric S. Aronson Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932 973.360.7900 973.301.8410 - fax aronson@gtlaw.com
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com
Roman Asphalt Corporation	B	Michael V. Calabro Law Offices of Michael V. Calabro 466 Bloomfield Ave., Suite 200 Newark, NJ 07107 973.482.1085 973.482.7930 - fax michaelvcalabro@verizon.net
Township of Irvington	A	Gustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 - fax