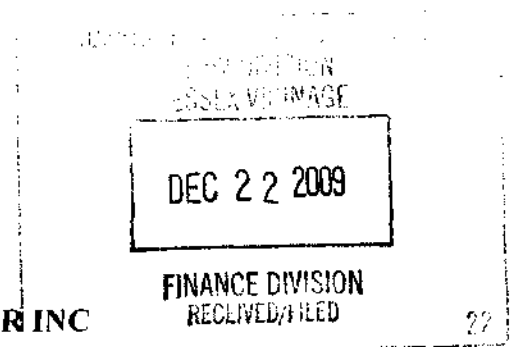


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**ATTORNEY FOR THIRD-PARTY DEFENDANT PFIZER INC**



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

**PFIZER INC'S ANSWER AND  
AFFIRMATIVE DEFENSES 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.,

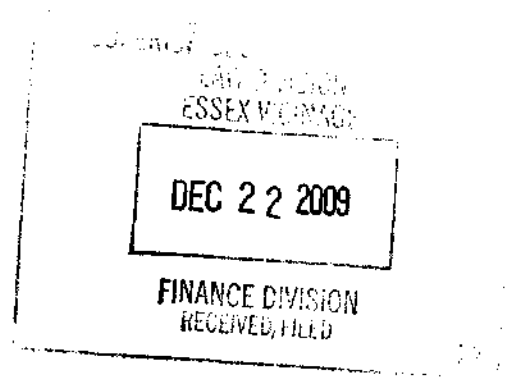
DELEET MERCHANDISING CORPORATION,  
DELVAL INK AND COLOR,  
INCORPORATED,DILORENZO PROPERTIES  
COMPANY, L.P.,  
E.I. DU PONT DE NEMOURS AND COMPANY,  
EASTMAN KODAK COMPANY,  
EDEN WOOD CORPORATION,  
ELAN CHEMICAL COMPANY, INC.,  
EM SERGEANT PULP & CHEMICAL CO.,  
EMERALD HILTON DAVIS, LLC,  
ESSEX 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 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 CORPORATION,  
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.



**PFIZER INC'S ANSWER TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Pfizer Inc ("Pfizer"), 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. Pfizer 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**

**(Paragraphs 1 through 15)**

2. Pfizer 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 the allegations in Paragraphs 19 through 144 relate to other parties, no response is required pursuant to CMO V.
5. Pfizer admits the allegations in Paragraph 145.
6. To the extent that the allegations in Paragraphs 146 through 209 relate to other parties, no response is required pursuant to CMO V.
7. The allegations in Paragraph 210 state a legal conclusion as to which no response is required.

**AS TO DEFINITIONS**

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

**AS TO FACTUAL ALLEGATIONS**

**(Paragraphs 237 through 3445)**

9. As to Paragraphs 237 to 2131, such Factual Allegations relate to other parties to which no response is required pursuant to CMO V. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.
10. Pfizer admits in part and denies in part the allegations in Paragraph 2132 of Third-Party Complaint "B." Pfizer admits that between approximately 1957 and 1999 Pfizer operated a distribution facility/warehouse at 230 Brighton Road in Clifton, Passaic County, New Jersey. Pfizer denies any and all of the remaining allegations in Paragraph 2132.
11. Pfizer admits the allegations set forth in Paragraph 2133.
12. Pfizer admits in part and denies in part the allegations in Paragraph 2134. Pfizer admits that it has been the lessee/operator or owner/operator of 230 Brighton Road in Clifton.

Passaic County, New Jersey from 1957 to approximately 1999/2000. Pfizer admits that at times prior to 1980 the facility conducted mechanical grinding of expired pharmaceutical products. Pfizer denies any and all remaining allegations in Paragraph 2134.

13. Pfizer admits in part and denies in part the allegations set forth in Paragraph 2135. Pfizer admits that it had been the lessee/operator or owner/operator of 230 Brighton Road in Clifton, Passaic County, New Jersey from 1957 to approximately 1999/2000. Upon information and belief, Pfizer admits that in approximately 2000, Global Fulfillment, Inc. purchased 230 Brighton Road in Clifton, New Jersey. Pfizer denies any and all remaining allegations in Paragraph 2135.

14. Paragraph 2136 states a conclusion of law for which no response is required. To the extent a response is required as to factual allegations, Pfizer admits that chemicals and petroleum compounds in de minimis quantities were stored and used at the site for maintenance purposes, but Pfizer denies that any chemicals or petroleum compounds were released or discharged to Newark Bay Complex. Pfizer denies any and all remaining allegations in Paragraph 2136.

15. As to Paragraph 2137, Pfizer admits that the document speaks for itself, but denies that the document creates any liability, and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 2137, and therefore denies the same.

16. As to Paragraph 2138, Pfizer admits that on or about September 15, 2003, EPA sent a General Notice Letter to Pfizer. Pfizer denies that the receipt of a General Notice Letter creates any liability and denies the remaining allegations in Paragraph 2138.



17. Paragraph 2139 states a conclusion of law for which no response is required. To the extent a response is required, Pfizer denies each and every allegation as set forth in Paragraph 2139. Pfizer specifically denies that it discharged hazardous substances to the Passaic River.

18. As to Paragraphs 2140 to 3445, such Factual Allegations relate to other parties to which no response is required pursuant to CMO V. The referenced pleadings speak for themselves.

### **AS TO FIRST COUNT**

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

19. Pfizer incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 19 herein.

20. The allegation in Paragraph 3447 states a conclusion of law for which no response is required. To the extent a response is required, Pfizer denies the allegations in Paragraph 3447. To the extent there are any factual allegations in Paragraph 3447, Pfizer is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447, and therefore denies the same.

21. The allegation in Paragraph 3448 states a conclusion of law for which no response is required. To the extent a response is required, Pfizer denies the allegations in Paragraph 3448. To the extent there are any factual allegations in Paragraph 3448, Pfizer is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3448, and therefore denies the same. To the extent a response is required, Pfizer submits that the New Jersey Spill Compensation and Control Act, NJSA 58:10-23.11 et seq. speaks for itself.

22. Paragraphs 3449 through 3451 state legal conclusions for which no response is required. Pfizer denies that it is liable to Third-Party Plaintiffs for contribution. Pfizer is

without knowledge or information sufficient to form a belief as to the truth of the remaining matters alleged in Paragraphs 3449 through 3451, and therefore denies the same.

### **AS TO SECOND COUNT**

#### **Statutory Contribution**

23. Pfizer incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 21 herein.

24. Pfizer denies that it is liable to Third-Party Plaintiffs for contribution. Pfizer is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore denies the same.

### **FIRST AFFIRMATIVE DEFENSE**

25. The Third-Party Complaint is barred in whole or in part as it fails to state a cause of action against Third-Party Defendant ("Pfizer") upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

26. Third-Party Defendant 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") with respect to Newark Bay Complex and Passaic River.

### **THIRD AFFIRMATIVE DEFENSE**

27. Claims of Third-Party Plaintiffs, their agents, employees, successors and assigns ("Third-Party Plaintiffs") are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act ("WPCA"). Third-Party Plaintiffs have no right or entitlement to contribution against Third-Party Defendant under WPCA.

#### **FOURTH AFFIRMATIVE DEFENSE**

28. Third-Party Plaintiffs have no Spill Act claim against Third-Party Defendant 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' claims are barred by the entire controversy doctrine.

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTH AFFIRMATIVE DEFENSE**

32. Third-Party Defendant cannot be liable for or be required to pay Third-Party Plaintiffs' damages that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State 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 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.

#### **TENTH AFFIRMATIVE DEFENSE**

34. 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.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

35. At all relevant times, Third-Party Defendant complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted themselves reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

#### **TWELFTH AFFIRMATIVE DEFENSE**

36. The claims asserted against Third-Party Defendant in the Complaint are barred because at all relevant times Third-Party Defendant 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 Third-Party Defendant 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.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

37. The Third-Party claims are barred in whole or in part by the doctrine of preemption.

#### **FOURTEENTH THIRD AFFIRMATIVE DEFENSE**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

39. Third-Party Plaintiffs' claims against Third-Party Defendant 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.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

40. 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.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

42. 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.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

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

#### **TWENTIETH AFFIRMATIVE DEFENSE**

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

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

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

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

46. Third-Party Defendant did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA, N.J.S.A.

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

47. 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.

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

48. 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.

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

49. 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* including, without limit,

State of New Jersey agencies and instrumentalities, including without limit Trustees for tidelands, and United States agencies and instrumentalities with liability under the Spill Act.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

50. 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 more than their equitable share of the liability.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

51. Third-Party Defendant 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 Third-Party Defendant exercised no control and for whose conduct Third-Party Defendant was not responsible including, without limit, unpermitted and storm event discharges from publicly owned treatment works.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

52. 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 Third-Party Defendant, 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-NINTH AFFIRMATIVE DEFENSE**

53. Although Third-Party Defendant denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Third-Party Defendant 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.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

54. 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-FIRST AFFIRMATIVE DEFENSE**

55. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Complaint is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs, including, without limit, through issuance of a no further action letter, consent order, settlement agreement or other applicable document.

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

56. The disposal of waste, if any, which allegedly originated from Third-Party Defendant, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements.

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

57. Any discharge that allegedly originated from Third-Party Defendant, 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.



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

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

#### **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

59. The damages Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

#### **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

61. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties 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.

#### **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-NINTH AFFIRMATIVE DEFENSE**

63. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) are not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State.

#### **FORTIETH AFFIRMATIVE DEFENSE**

64. Third-Party Defendant 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 Third-Party Defendant.

#### **FORTY-FIRST AFFIRMATIVE DEFENSE**

65. Third-Party Defendant reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

#### **FORTY-SECOND AFFIRMATIVE DEFENSE**

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

#### **FORTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE**

68. 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 Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant 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 Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- 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 Third-Party Defendant, 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 Third-Party Defendant, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

#### **FORTY-FIFTH AFFIRMATIVE DEFENSE**

69. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to a "taking" of Third-Party Defendant'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-SIXTH AFFIRMATIVE DEFENSE**

70. Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Third-Party Complaint is at odds with Third-Party Defendant'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 Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

#### **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

71. To the extent Third-Party Defendant 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 Third-Party Defendant, 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**

72. Without admitting liability, Third-Party Defendant 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.

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

73. Pfizer repeats and reiterates its Answers and Affirmative Defenses in their entirety contained in the preceding paragraphs as though fully set forth herein.

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

75. Pursuant to Rule 4:7-5(b), all counter-claims or cross-claims for statutory or common-law contribution and indemnification asserted by the other parties against Pfizer whether filed in the past or in the future, are deemed denied by Pfizer without the need for responsive pleadings.

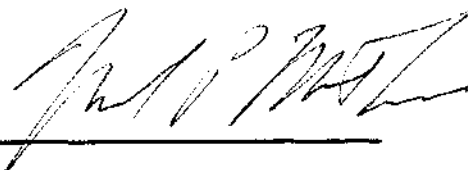
#### **DESIGNATION OF TRIAL COUNSEL**

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

**WHEREFORE**, Third-Party Defendant Pfizer 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.

Dated: December 22, 2009

Respectfully submitted,

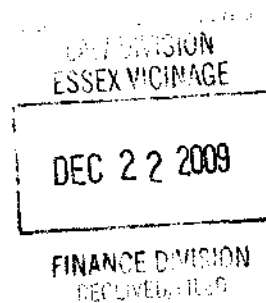
A handwritten signature in black ink, appearing to read "Michael P. McThomas", is written over a horizontal line.

**Michael P McThomas PLLC**  
**NJ Attorney for Third-Party Defendant**  
**Pfizer Inc**  
**One Lee Hill Road**  
**Andover, New Jersey 07821**  
Tel: 973-691-4711  
Fax: 973-368-1022

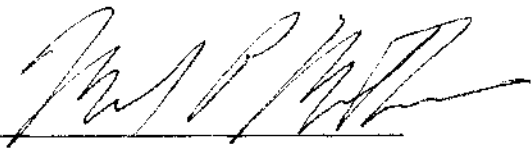
**CERTIFICATION PURSUANT TO R. 4:5-1(b) (2)**

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 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 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 20, 2009 posting by O'Melveny and Myers, as may be amended from time to time, 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.



Respectfully submitted,



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**Michael P McThomas PLLC**  
**NJ Attorney for Third-Party Defendant**  
**Pfizer Inc**  
**One Lee Hill Road**  
**Andover, New Jersey 07821**  
Tel: 973-691-4711  
Fax: 973-368-1022

## CERTIFICATE OF SERVICE

I, Michael P McThomas, hereby certify that on this date a copy of the foregoing documents were served upon all counsel of record as posted on Sfile as of December 5, 2009, by timely posting the above-referenced pleadings on the Electronic Case Management Platform website, SFile, ~~AND BY FIRST CLASS MAIL~~ upon those counsel who have consented to service via Sfile. And, upon the following counsel identified as requiring regular service as posted on Sfile as of December 16, 2009 as those counsel of record who have not consented to electronic service, the following counsel were served by regular mail.

Thomas M. Egan, Esq.  
Assistant Municipal Attorney  
City of Clinton Law Department  
900 Clifton Avenue  
Clifton, NJ  
Attorneys for City of Clifton

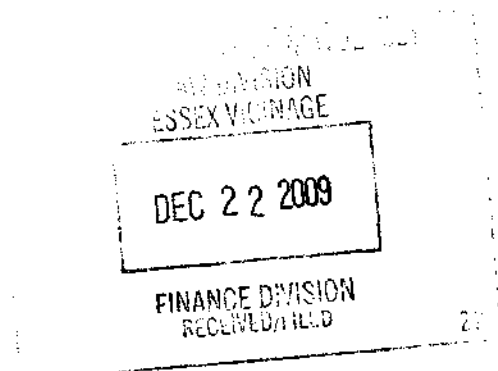
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Properties Company

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Attorneys for Township of Orange

Michael V. Calabro  
Low Offices of Michael V. Calabro  
466 Bloomfield Ave., Suite 200  
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Attorney for Roman Asphalt Corporation

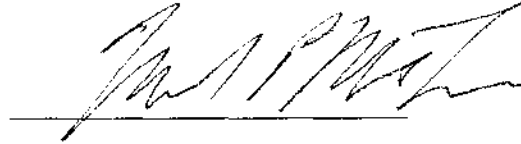
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Attorneys for Clean Earth of North New  
Jersey

Gustavo Garcia  
Municipal Attorney  
Township of Irvington  
Irvington Municipal Building  
Civic Square  
Irvington, NJ 07111  
Attorney for Township of Irvington





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

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

Michael P McThomas

Dated: December 22, 2009

