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Attorneys for Third-Party Defendant,  
Pivotal Utility Holdings, 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, RESPOL YPF, S.A., YPF, S.A.,  
YPF HOLDINGS, INC. and CLH HOLDINGS,

Defendants.

MAXUS ENGERGY 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,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, ESSEX COUNTY  
DOCKET NO. L-9869-05 (PASR)

CIVIL ACTION

**ANSWER OF PIVOTAL UTILITY  
HOLDINGS, INC. TO THIRD-PARTY  
COMPLAINT "B"**

AGC CHEMICALS AMERICANS, INC.,  
ALDEN-LEEDS, INC.,  
ALLIANCE CHEMICAL, INC.,  
ALUMAX MILL PRODUCTS, INC.,  
AMCOL REALTY CO.,  
AMERICAN INKS AND COATINGS  
CORPORATION,  
APEXICAL, INC.,  
APLOCAN INTERNATIONAL, INC.,  
ARKEMA, INC.,  
ASHLAND INCE,  
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 & REMINTON 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,  
GLINT 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 GRAGRANCES 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,  
KEOHLER-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.,  
PRECESSION MANUFACTURING GROUP, INC.,  
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,  
T.T. VANDERBILT COMPANY, INC.,  
RUTHERFORD CHEMICALS LLC,  
S&A REALTY ASSOCIATES, INC.,  
SCHERING CORPORATION,  
SEQUA CORPORATION,  
SETON COMPANY,  
SIEMENS WATER TECHNOLOGIES CORP.,  
SINGER SWEING COMPANY,  
SPECTRASERV, INC.,  
STWB, INC.,  
SUN CHEMICAL CORPORATION,  
SVP WORLDWIDE, LLC,  
TATE & LYSLE INGREDIENTS AMERICA, 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.

**PIVOTAL UTILITY HOLDINGS, INC.'S ANSWER TO  
THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Pivotal Utility Holdings, Inc. ("Pivotal"), 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. Pivotal is without knowledge or information sufficient to form a belief as to the truth of 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".

**PROCEDURAL BACKGROUND**  
**(Paragraphs 1 through 15)**

1-15. Pivotal responds that no answer is required pursuant to CMO V.

**THE PARTIES**

**Third-Party Plaintiffs**  
**(Paragraphs 16 through 18)**

16-18. Pivotal responds that no answer is required pursuant to CMO V.

**Third-Party Defendants**  
**(Paragraphs 19 through 210)**

19-149. To the extent that the allegations in Paragraphs 19 through 149 relate to other parties, Pivotal responds that no answer is required pursuant to CMO V. To the extent these allegations allege facts against Pivotal, such factual allegations are denied.

150. Pivotal admits the allegations contained in paragraph 150 of Third-Party Complaint "B."

151-209. To the extent that the allegations in Paragraphs 151 through 209 relate to other parties, Pivotal responds that no answer is required pursuant to CMO V. To the extent these allegations allege facts against Pivotal, such factual allegations are denied.

210. Paragraph 210 states conclusions of law to which no response is required. To the extent this paragraph alleges facts against Pivotal, such factual allegations are denied.

**DEFINITIONS**  
**(Paragraphs 211 through 236)**

211-236. Paragraphs 211 through 236 state definitions to which no response is required pursuant to CMO V. To the extent these allegations allege facts against Pivotal, such factual allegations are denied.

**FACTUAL ALLEGATIONS**  
**(Paragraphs 237 through 3445)**

237- 1112. To the extent that the allegations in Paragraphs 237 through 1112 relate to other parties, no answer by Pivotal is required pursuant to CMO V. To the extent these allegations allege facts against Pivotal, such factual allegations are denied.

**Elizabethtown Gas Sites**

1113. To the extent the allegations in paragraph 1113 refer to an act of the state legislature, such act speaks for itself. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1113 of Third-Party Complaint B.

1114. Pivotal states that in 1969 NUI Utilities and Industries Corp. was formed and that Elizabethtown Gas Company ("ETG") was a wholly-owned subsidiary of NUI Utilities and Industries Corp. Pivotal denies the remaining allegations in Paragraph 1114 of Third-Party Complaint B.

1115. Pivotal admits the allegations in Paragraph 1115 of Third-Party Complaint B.



1116. Pivotal admits the allegations in Paragraph 1116 of Third-Party Complaint B.

1117. Pivotal admits the allegations in Paragraph 1117 of Third-Party Complaint B.

1118. Pivotal admits the allegations in Paragraph 1118 of Third-Party Complaint B.

1119. Pivotal denies the allegations in Paragraph 1119 of Third-Party Complaint B.

ETG South Street Site

1120. Pivotal states that the South Street property consists of approximately 3.1 acres of real property located at 400-426 South Street, Elizabeth, Union County, New Jersey (the "South Street Site") and denies the remaining allegations asserted in Paragraph 1120 of Third-Party Complaint B.

1121. Pivotal denies the allegations asserted in Paragraph 1121 of Third-Party Complaint B.

1122. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1122 of Third-Party Complaint B.

1123. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1123 of Third-Party Complaint B.

1124. Pivotal admits that the New Jersey Department of Transportation has a right of way over a portion of the South Street Site and is without knowledge or

information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1124 of Third-Party Complaint B.

1125. Pivotal admits that the City of Elizabeth obtained a portion of the South Street Site for construction of flood control basins and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1125 of Third-Party Complaint B.

1126. Pivotal admits that it leased portions of the South Street Site to Vignola Salvage Corp. and Harvester Chemical Co. and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1126 of Third-Party Complaint B.

1127. Pivotal admits that the Elizabeth River flows approximately two miles eastward from the South Street Site and empties into to the Arthur Kill and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1127 of Third-Party Complaint B.

1128. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1128 of Third-Party Complaint B.

1129. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1129 of Third-Party Complaint B.

1130. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1130 of Third-Party Complaint B.

1131. Pivotal denies the allegations in Paragraph 1131 of Third-Party Complaint B.

1132. Pivotal admits that certain Hazardous Substances have been detected in the soil at the South Street Site and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1132 of Third-Party Complaint B.

1133. Pivotal admits that certain Hazardous Substances have been detected in the ground water at the South Street Site and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1133 of Third-Party Complaint B.

1134. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1134 of Third-Party Complaint B.

1135. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1135 of Third-Party Complaint B

1136. Pivotal denies the allegations in Paragraph 1136 of Third-Party Complaint B.

1137. Pivotal denies the allegations in Paragraph 1137 of Third-Party Complaint B.

ETG Erie Street Property

1138. Pivotal states that the Erie Street property consists of 24.5 acres of real property located at 200-234 Third Avenue, Elizabeth, Union County, New Jersey (the "Erie Street Site") and denies the remaining allegations asserted in Paragraph 1138 of Third-Party Complaint B.

1139. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1139 of Third-Party Complaint B.

1140. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1140 of Third-Party Complaint B.

1141. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1141 of Third-Party Complaint B.

1142. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1142 of Third-Party Complaint B.

1143. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1143 of Third-Party Complaint B.

1144. Pivotal admits the allegations in Paragraph 1144 of Third-Party Complaint B.

1145. Pivotal admits the allegations asserted in Paragraph 1145 of Third-Party Complaint B.

1146. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1146 of Third Party Complaint B.

1147. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1147 of Third-Party Complaint B.

1148. Pivotal admits that the Elizabeth River flows approximately 0.7 miles eastward from the Erie Street Site and empties into the Arthur Kill and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1148 of Third-Party Complaint B.

1149. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1149 of Third-Party Complaint B.

1150. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1150 of Third-Party Complaint B.

1151. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1151 of Third-Party Complaint B.

1152. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1152 of Third-Party Complaint B.

1153. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1153 of Third-Party Complaint B.

1154. Pivotal denies the allegations asserted in Paragraph 1154 of Third-Party Complaint B.

1155. Pivotal denies the allegations in Paragraph 1155 of Third-Party Complaint B.

1156. Pivotal admits that certain Hazardous Substances have been detected in soil at the Erie Street Site and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1156 of Third-Party Complaint B.

1157. Pivotal admits that certain Hazardous Substances have been detected in the ground water at the Erie Street Site and is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in Paragraph 1157 of Third-Party Complaint B.

1158. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1158 of Third-Party Complaint B.

1159. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1159 of Third-Party Complaint B.

1160. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1160 of Third-Party Complaint B.

1161. Pivotal denies the allegations in Paragraph 1161 of Third-Party Complaint B.

1162. Pivotal denies the allegations in Paragraph 1162 of Third-Party Complaint B.

1163. Pivotal denies the allegations in Paragraph 1163 of Third-Party Complaint B.

1164-3445. To the extent that the allegations in Paragraphs 1164 through 3445 relate to other parties, Pivotal responds that no answer is required pursuant to CMO V. To the extent these allegations allege facts against Pivotal, such factual allegations are denied.

### **FIRST COUNT**

#### **New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a)** **(Paragraphs 3446 through 3451)**

3446. Pivotal incorporates by reference as if fully set forth herein its responses in Paragraphs 1 through 3445 above.

3447. Paragraph 3447 states conclusions of law to which no response is required. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3447 concerning the Third-Party

Defendants. Finally, to the extent Paragraph 3447 alleges facts against Pivotal, such factual allegations are denied.

3448. Paragraph 3448 states conclusions of law to which no response is required. To the extent Paragraph 3448 alleges facts against Pivotal, such factual allegations are denied.

3449. Paragraph 3449 states conclusions of law to which no response is required. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3449 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3449 alleges facts against Pivotal, such factual allegations are denied.

3450. Paragraph 3450 states conclusions of law to which no response is required. To the extent that a response is required, Pivotal is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3450.

3451. Paragraph 3451 states conclusions of law to which no response is required. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3451 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3451 alleges facts against Pivotal, such factual allegations are denied.

**SECOND COUNT**  
**Statutory Contribution**

3452. Pivotal incorporates by reference as if fully set forth herein its responses in Paragraphs 1 through 3451 above as fully set forth above.



3453. Paragraph 3453 states conclusions of law to which no response is required. Pivotal is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3453 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3453 alleges facts against Pivotal, such factual allegations are denied.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

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

### **Second Affirmative Defense**

Pivotal is not a “discharger” nor a person “in any way responsible” for a discharge under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the “Spill Act”).

### **Third Affirmative Defense**

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

### **Fourth Affirmative Defense**

Third-Party Plaintiffs do not have a viable Spill Act claim against Pivotal because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act nor have they incurred cleanup and removal costs that have been approved by the New Jersey Department of Environmental Protection.

### **Fifth Affirmative Defense**

Third-Party Plaintiffs’ claims against Pivotal are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrine of laches.

#### **Sixth Affirmative Defense**

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

#### **Seventh Affirmative Defense**

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

#### **Eighth Affirmative Defense**

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

#### **Ninth Affirmative Defense**

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

#### **Tenth Affirmative Defense**

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

#### **Eleventh Affirmative Defense**

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

#### **Twelfth Affirmative Defense**

At all relevant times, Pivotal 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.

#### **Thirteenth Affirmative Defense**

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

#### **Fourteenth Affirmative Defense**

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

#### **Fifteenth Affirmative Defense**

Pivotal cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based upon actions or inactions of Pivotal that arise

out of conduct lawfully undertaken in compliance with permits and 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, rules, regulations, orders, ordinances, directives and common law, and other requirements of foreign, federal, state, and local government entities.

**Sixteenth Affirmative Defense**

The Plaintiffs have released Pivotal for all or a portion of the damages sought in its Amended Complaint. Consequently, Third-Party Plaintiffs are barred from pursuing claims that are derivative to the released claims, including the claims asserted in the Third-Party Complaint.

**Seventeenth Affirmative Defense**

The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible 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.

**Eighteenth Affirmative Defense**

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

**Nineteenth Affirmative Defense**

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

#### **Twentieth Affirmative Defense**

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third Party Plaintiffs' failure to comply with 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-First Affirmative Defense**

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-Second Affirmative Defense**

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 cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules.

#### **Twenty-Third Affirmative Defense**

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.

#### **Twenty-Fourth Affirmative Defense**

Pivotal 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 law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Pivotal exercised no control and for whose conduct Pivotal was not responsible including, without limitation, unpermitted discharges, storm events and other discharges from publicly owned treatment works or sewer systems.

#### **Twenty-Fifth Affirmative Defense**

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 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 Pivotal, 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-Sixth Affirmative Defense**

Although Pivotal denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Pivotal 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 also be liable to Third-Party Plaintiffs.

#### **Twenty-Seventh Affirmative Defense**

The amount of damages awarded to Third-Party Defendants, if any, should be reduced by any amounts recovered from any other source. See N.J.S.A. 2A:15-97.

#### **Twenty-Eighth Affirmative Defense**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Pivotal alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, and/or contribution protection in a settlement agreement with the State of New Jersey.

#### **Twenty-Ninth Affirmative Defense**

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

#### **Thirtieth Affirmative Defense**

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

#### **Thirty-First Affirmative Defense**

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

#### **Thirty-Second Affirmative Defense**

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



### **Thirty-Third Affirmative Defense**

Third-Party Plaintiffs cannot assert contribution claims against Pivotal because the discharges for which the Plaintiffs are seeking relief are different from the discharges for which Pivotal is alleged to be responsible for in the Third-Party Complaint.

### **Thirty-Fourth Affirmative Defense**

Third-Party Plaintiff cannot seek contribution under the Joint Tortfeasors Contribution Law because Pivotal is not liable for “the same injury” caused by Third-Party Plaintiffs’ discharges and do not share a common liability to the State of New Jersey. N.J.A.C. 2A:53A-1 et seq.

### **Thirty-Fifth Affirmative Defense**

Third-Party Plaintiffs fail to assert a claim against Pivotal to the extent Pivotal cannot be held legally responsible as a successor for acts of preceding companies.

### **Thirty-Sixth Affirmative Defense**

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

### **Thirty-Seventh Affirmative Defense**

Third-Party Plaintiffs’ claims are barred, in whole or in part, because Pivotal has resolved its liability to Plaintiffs for any impairment or damage to natural resources as a result of discharges alleged in the Third-Party Complaint.

### **Thirty-Eighth Affirmative Defense**

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

### **Thirty-Ninth Affirmative Defense**

To the extent Pivotal 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 Pivotal, 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.

### **Fortieth Affirmative Defense**

Without admitting liability, Pivotal alleges that if it is found to be responsible for discharges or activities alleged in the Third-Party Complaint, such discharges or activities were *de minimis* and not the cause of any damages sought by Plaintiffs.

### **Forty-First Affirmative Defense**

Pivotal reserves the right to assert such other affirmative defenses as may become known to it.

**COUNTERCLAIMS, CROSS-CLAIMS AND THIRD/FOURTH PARTY CLAIMS**

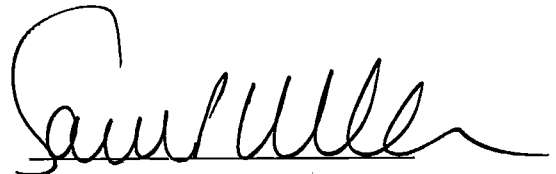
No such claims are permitted to be asserted at this time and are expressly reserved pursuant to CMO V.

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

Respectfully submitted,

RIKER, DANZIG, SCHERER  
HYLAND & PERRETTI LLP  
Attorneys for Third-Party Defendant  
Pivotal Utility Holdings, Inc.

By:



Samuel P. Moulthrop  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07962  
(973) 538-0800

Dated: April 22, 2010

**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 the undersigned states that there are other parties that may have discharged hazardous substances into the Newark Bay Complex contributing to the harm alleged by the Third-Party Plaintiffs. O'Melveny and Myers has filed with the Special Master, a list of over 1,000 parties who, according to the New Jersey Department of Environmental Protection, discharged hazardous substances into the Newark Bay Complex. Subsequent investigation/discovery will determine which, if any of those parties or others not yet identified, should be joined in this case.

**RULE 4:6 CERTIFICATION**

The undersigned hereby certifies that this Answer to the Third-Party Complaint is being served within the time permitted by Case Management Order V.

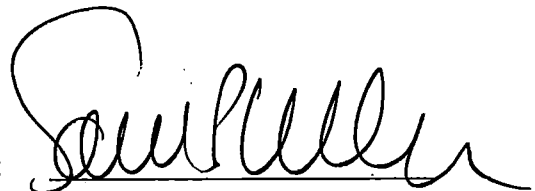
**JURY DEMAND**

Third-Party Defendant Pivotal Utility Holdings, Inc. hereby demands a trial by jury on all issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Samuel P. Moulthrop is hereby designated as trial counsel for Third-Party Defendant Pivotal Utility Holdings, Inc. in this matter.

By:

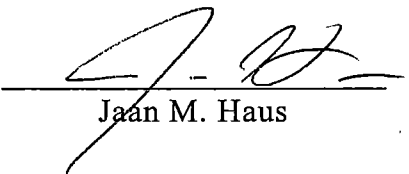


Samuel P. Moulthrop  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07962  
(973) 538-0800

Dated: April 22, 2010

**CERTIFICATE OF SERVICE**

I certify that Pivotal Utility Holdings, Inc.'s Answer to Third-Party Complaint "B" was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by hand delivery on April 22, 2010. In addition, counsel for Third-Party Plaintiffs were served via e-mail along with Communication Counsel designated by the Special Master pending reinstatement of [www.sfile.com/njdepvocc](http://www.sfile.com/njdepvocc). All counsel of record for parties that have not consented to electronic service, as set forth on the attached counsel list, were served on April 22, 2010 via first class, regular mail.

  
Jaan M. Haus

Dated: April 22, 2010

### Third-Party Defendants for Regular Service as of March 21, 2010

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE, COUNSEL OF RECORD
Borough of Hasbrouck Heights	A	Richard J. Dewland Coffey & Associates 465 South Steet Morristown, NJ 07960 973.539.4500 rjd@coffeylaw.com
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 jmcgovern@ci.orange.nj.us
Township of Hillside	A	Christine M. Burgess Township Attorney Hillside Township Municipal Bldg. 1409 Liberty Ave. Hillside, NJ 07205 973.926.3000 973.926.9232 - fax