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Attorneys for Third-Party Defendant AGC Chemicals Americas, 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

**ANSWER OF AGC CHEMICALS
AMERICAS, INC. 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 CORPRATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,

VULCAN MATERIALS COMPANY,
W.A.S. TERMINALS CORPORATION,
W.A.S. TERMINALS, INC.,
W.C. INDUSTRIES,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
ZENECA INC.,

Third-Party Defendants.

ANSWER OF AGC CHEMICALS AMERICAS, INC., TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant AGC Chemicals Americas, Inc. ("AGCCA" or "Third-Party Defendant"), 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" of Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

1. AGCCA 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 against AGCCA in the First Count and the Second Count.

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

2. AGCCA responds that the referenced pleadings speak for themselves. Pursuant to CMO V, no response is required.

AS TO THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. Pursuant to CMO V, no response is required.

AS TO THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 210)

4. Pursuant to CMO V, to the extent that the allegations in Paragraphs 19 through 209 relate to parties other than AGCCA, no response is required.

5. As to the allegations of Paragraph 24, AGCCA admits that it is a corporation organized under the laws of the State of Delaware. AGCCA denies the remaining allegations of Paragraph 24.

6. The allegations in Paragraph 210 state a legal conclusion as to which no response is required.

AS TO DEFINITIONS

(Paragraphs 211 through 236)

7. Paragraphs 211 through 236 contain definitions. Pursuant to CMO V, no response is required.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

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

9. AGCCA admits that it is the owner of certain real property located in Bayonne, New Jersey, with a street address of 229 E. 22nd Street, Bayonne, New Jersey (the "Bayonne Property"), but denies the remaining allegations of Paragraph 1601.

10. Answering the allegations of Paragraph 1602, AGCCA states that this allegation is vague and ambiguous in its use of the phrase “finger of land” and therefore denies the same. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1602, and therefore denies the same.

11. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1603, and therefore denies the same.

12. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1604, and therefore denies the same.

13. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1605, and therefore denies the same.

14. AGCCA admits that certain assets, including the Bayonne Property, were acquired in November 1999 pursuant to a certain Master Transaction Deed dated 29 September 1999 by and between Imperial Chemical Industries PLC and Asahi Glass Co., Ltd. Except as admitted, AGCCA denies the allegations of Paragraph 1606.

15. AGCCA admits that, on January 1, 2004, AGA Chemicals, Inc., was merged with and into Asahi Glass Fluoropolymers USA, Inc. (“AGFUSA”), with the surviving entity of the merger being AGFUSA, and effective upon the consummation of the merger, the corporate name of AGFUSA was changed to AGCCA. Except as admitted, AGCCA denies the allegations of Paragraph 1607.

16. AGCCA admits that it manufactured Fluon® PTFE fluoropolymer resins and AK-225 fluorinated solvent at the Bayonne Property. Except as admitted, AGCCA denies the allegations of Paragraph 1608.

17. AGCCA denies the allegations of Paragraph 1609 insofar as they relate to AGCCA. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1609 insofar as they relate to any other person or party, and therefore denies the same.

18. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1610, and therefore denies the same.

19. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1611, and therefore denies the same.

20. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1612, and therefore denies the same.

21. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1613, and therefore denies the same.

22. AGCCA denies the allegations of Paragraph 1614.

AS TO FIRST COUNT

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

23. AGCCA incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 22 herein.

24. AGCCA denies the allegations in Paragraph 3447 to the extent such allegations are directed to AGCCA. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 3447 to the extent directed to other parties, and therefore denies the same.

25. Paragraph 3448 states a legal conclusion as to which no response is required.

26. AGCCA denies the allegations in Paragraph 3449 to the extent such allegations are directed to AGCCA. AGCCA is without knowledge or information sufficient to form a

belief as to the truth of the remaining allegations stated in Paragraph 3449 to the extent directed to other parties, and therefore denies the same.

27. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3450, and therefore denies the same.

28. AGCCA denies the allegations in Paragraph 3451 to the extent such allegations are directed to AGCCA. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 3451 to the extent directed to other parties, and therefore denies the same.

AS TO SECOND COUNT

Statutory Contribution

29. AGCCA incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 28 herein.

30. AGCCA denies the allegations in Paragraph 3453 to the extent such allegations are directed to AGCCA. AGCCA is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 3453 to the extent directed to other parties, and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Third-Party Defendant is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23.11 *et seq.* ("Spill Act") with respect to the Newark Bay Complex and Passaic River.

THIRD AFFIRMATIVE DEFENSE

Claims of Third-Party Plaintiffs are barred, in whole or in part, by the statutory defenses to liability set forth in 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 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

Third-Party Plaintiffs’ claims are barred by the entire controversy doctrine.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

The damages sought by Third-Party Plaintiffs are wholly speculative, conjectural, unreasonable and excessive.

EIGHTH AFFIRMATIVE DEFENSE

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 federal, state and local government entities (“Environmental Laws”).

NINTH AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability.

TENTH AFFIRMATIVE DEFENSE

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

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

TWELFTH AFFIRMATIVE DEFENSE

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 Bayonne Property.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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/or estoppel.

SIXTEENTH 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

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.

EIGHTEENTH AFFIRMATIVE DEFENSE

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, Third-Party Plaintiffs have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs have failed to perform cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

NINETEENTH 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.

TWENTIETH 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 can not be afforded the existing parties pursuant to R. 4:28-1, in particular, State of New Jersey agencies and instrumentalities, Trustees for tidelands, and United States agencies and instrumentalities with liability under the Spill Act.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

The claims asserted against Third-Party Defendant in the Complaint are barred because any release or threat of release of any hazardous substances, if any, and any costs, injuries or damages resulting therefrom, were caused by the intervening or supervening negligence, acts or omissions of persons over whom Third-Party Defendant had no control, whether by, in whole or part, contract or otherwise, or any duty to control.

TWENTY-THIRD 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 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 their respective agents or employees.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The amount of damages, if any, should be reduced by any amounts recovered from any other source.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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 practices and technology, and the then prevailing legal requirements.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Any discharge that allegedly originated from property of the Third-Party Defendant, was investigated and remediated or is currently being investigated and remediated under the oversight of State and/or federal agencies in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

Third-Party Defendant's liability to Third-Party Plaintiffs, if any, is limited to Spill Act contribution claims by Third Parties and excludes any such claims which may properly be

apportioned to other 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-FIRST AFFIRMATIVE DEFENSE

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 and the harm associated with such discharges is divisible from the harm caused by the discharges for which Plaintiffs are seeking relief.

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

The claims asserted against Third-Party Defendant in the Complaint are barred because all conditions, injuries, costs, damages and expenses for which Third Party Plaintiffs seek to hold Third-Party Defendant liable were caused solely by the acts or omissions of third parties and, at

all relevant times, Third-Party Defendant took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

The claims alleged in the Third Party Complaint are barred, in whole or in part, by Third Party Plaintiffs' failure to mitigate damages.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

If Third Party Plaintiffs sustained any damages, which Third-Party Defendant denies, the same were caused by acts or omissions of one or more persons for whose conduct Third-Party Defendant is not responsible and with whom Third-Party Defendant has no legal connection.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Third Party Plaintiffs are not entitled to recover from Third-Party Defendant more than Third-Party Defendant's fair, equitable, and proportionate share, if any, of the costs and damages sought by Third Party Plaintiffs or to otherwise recover from Third-Party Defendant more than the amount of such relief, if any, for which Third-Party Defendant is liable.

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

Pursuant to CMO V, no such claims are required to be asserted at this time and are expressly reserved.

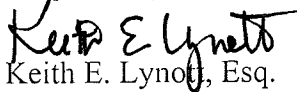
DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, Keith E. Lynott, Esq., is designated to try this case on behalf of AGCCA.

WHEREFORE, Third-Party Defendant AGC Chemicals Americas, Inc., respectfully requests that the Court enter an Order dismissing the Third-Party Complaint "B" with prejudice, and awarding to AGCCA its costs, attorney fees and any other relief the Court deems just and proper.

Dated: November 23, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Keith E. Lynott".

Keith E. Lynott, Esq.

MCCARTER & ENGLISH, LLP

Four Gateway Center

100 Mulberry Street

Newark, NJ 07102

*Attorneys for Third-Party Defendant AGC
Chemicals Americas, Inc.*

RULE 4:5-1 CERTIFICATION

I hereby certify, in accordance with Rule 4:5-1(b)(2), that (i) this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding and no such action or arbitration proceeding is contemplated, and (ii) some or all of the non-parties listed on the attachments to the letter dated October 7, 2009 from Eric Rothenberg, Esq., of O'Melveny & Myers to the Honorable Marina Corodemus (Ret.), may be 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.

McCarter & English, LLP
Attorneys for Third-Party Defendant
AGC Chemicals Americas, Inc.

By: Keith E. Lynott
Keith E. Lynott

Dated: November 23, 2009

CERTIFICATION OF SERVICE PURSUANT TO RULE 4:6-1 AND RULE 1:5-3

Paul C. Dritsas, of full age, hereby certifies as follows:


1. I am an attorney-at-law admitted to practice in the State of New Jersey and a member of the firm of McCarter & English, LLP, attorneys for Third-Party Defendant AGC Chemicals Americas, Inc.

2. On the date set forth below, which is within the time period allowed for service under CMO V, ¶9(c)(ii) and in accordance with CMO V and CMO VI, I caused to be filed, via hand delivery, with the Clerk of the Superior Court, Essex County Courthouse, 50 West Market Street, Newark, NJ 07102, an original and two copies of the Answer of Third-Party Defendant AGC Chemicals Americas, Inc. to Third-Party Complaint "B", Affirmative Defenses, Designation Of Trial Counsel, Certification and Case Information Statement.

3. On the date set forth below, in accordance with CMO V and CMO VI, I caused to be electronically served, by posting on www.sfile.com/njdepvocc, a true and accurate copy of the Answer of Third-Party Defendant AGC Chemicals Americas, Inc. to Third-Party Complaint "B", Affirmative Defenses, Designation Of Trial Counsel, Certification and Case Information Statement upon all parties that have consented to electronic service.

4. On the date set forth below, in accordance with CMO V and CMO VI, I caused to be served, via regular mail, a true and accurate copy of the Answer of Third-Party Defendant AGC Chemicals Americas, Inc. to Third-Party Complaint "B", Affirmative Defenses, Designation Of Trial Counsel, Certification and Case Information Statement upon

Counsel of Record for parties that have not consented to electronic service, listed on the attached
“Third-Party Defendants for Regular Service.”


Paul C. Dritsas

Dated: November 23, 2009