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Attorneys for Third-Party Defendant Arkema 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,

TIERRA SOLUTIONS, INC. and MAXUS
ENERGY CORPORATION,

Third-Party Plaintiffs,

vs.

3M COMPANY, ET AL.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

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

Third-Party Defendant Arkema Inc. ("Arkema"), incorrectly identified in the Complaint as "Arkema, Inc.", 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. Arkema denies each and every allegation contained in Third Party Complaint “C” 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)

1-15. Arkema responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE PARTIES

(Paragraphs 16 through 210)

16-31. To the extent that the allegations in Paragraphs 16 through 31 relate to other parties, no response is required pursuant to CMO V.

32. Arkema admits that it a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal place of business at 2000 Market Street in Philadelphia, Pennsylvania. The remaining allegations of this paragraph are denied.

33-210. To the extent that the allegations in Paragraphs 33 through 210 relate to other parties, no response is required pursuant to CMO V.

AS TO DEFINITIONS

(Paragraphs 211 through 236)

211-236. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

237-2947. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

2948. Arkema admits that the “Wallace & Tiernan Site,” as defined in the Complaint, consists of real property and associated improvements located at 25 Main Street in Belleville, Essex County, New Jersey. The remaining allegations of this paragraph are denied.

2949. Arkema admits that the eastern boundary of the Wallace & Tiernan Site is separated from the banks of the Passaic River by Route 21 and that the western boundary of the Wallace & Tiernan Site abuts Mill Street. The remaining allegations of this paragraph are denied.

2950. Admitted.

2951. Admitted.

2952. Arkema admits that certain soil samples taken at certain times on the Wallace & Tiernan Site have reflected the presence of Hazardous Substances and other compounds including but not limited to, certain petroleum hydrocarbons, certain metals, certain volatile organic compounds, and certain PAHs. The remaining allegations of this paragraph are denied.

2953. Arkema admits that certain samples taken at certain times from certain on-site storm water basins on the Wallace & Tiernan Site have reflected the presence of Hazardous Substances and other compounds including but not limited to, cadmium, chromium, copper, mercury, nickel, silver, zinc, toluene, certain base neutral compounds, certain petroleum hydrocarbons, and certain volatile organic compounds. The remaining allegations of this paragraph are denied.

2954. Arkema admits that certain samples of on-site groundwater taken at certain times at the Wallace & Tiernan Site have reflected the presence of Hazardous Substances and other compounds including, but not limited to, certain chlorinated volatile organic compounds and certain petroleum hydrocarbons. The remaining allegations of this paragraph are denied.

2955. Denied.

2956. Arkema admits that there have been certain discharges of Hazardous Substances and other compounds at certain times at the Wallace & Tiernan Site. The remaining allegations of this paragraph are denied.

2957. Arkema admits that Wallace & Tiernan, Inc. was incorporated in the State of Delaware in 1913, and that Wallace & Tiernan, Inc. commenced operations at the Wallace & Tiernan Site in 1921. The remaining allegations of this paragraph are denied.

2958. Arkema admits that Wallace & Tiernan, Inc. was merged into Pennsalt Chemicals Corporation in 1969, which then changed its name to Pennwalt Corporation, and that Wallace & Tiernan, Inc.'s business operations thereafter functioned as a division of Pennwalt. The remaining allegations of this paragraph are denied.

2959. Arkema admits that in approximately 1989 M&T Chemicals, Inc. and Atochem Inc. merged into Pennwalt Corporation with the surviving corporation known as Atochem North America, Inc. The remaining allegations of this paragraph are denied.

2960. Admitted.

2961. Arkema admits that in 2004 ATOFINA Chemicals, Inc. was renamed Arkema Inc. The remaining allegations of this paragraph are denied.

2962. The allegations of this paragraph state a legal conclusion to which no response is required.

2963. Arkema admits that in approximately 1989 a certain portion of the Wallace & Tiernan business, which included the Wallace & Tiernan Site, was sold to W&T Acquisition Corp., a Delaware corporation. The remaining allegations of this paragraph are denied.

2964- 3445. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

AS TO FIRST COUNT

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

3446. Arkema incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3445 herein.

3447-3448. Arkema is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447 through 3448, and therefore denies the same.

3449-3451. Arkema denies that it is liable to Third-Party Plaintiffs for contribution. Arkema is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451, and therefore denies the same.

AS TO SECOND COUNT

Statutory Contribution

3452. Arkema incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3451 herein.

3453. Arkema denies that it is liable to Third-Party Plaintiffs for contribution. Arkema is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in this paragraph, 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 et seq. (“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 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 have no right of contribution against Third-Party Defendant under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH 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.

TENTH 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.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Third-Party Defendant that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or

in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities (“applicable Environmental Laws”).

FOURTEENTH THIRD AFFIRMATIVE DEFENSE

At common law, Third-Party Defendant held, and still holds, a usufructuary interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Third-Party Defendant has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and cannot be any greater than, the claims that the State of New Jersey has or would have against Third-Party Defendant directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH 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 or condoned by law including applicable Environmental Laws.

SEVENTEENTH 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

At all relevant times, Third-Party Defendant 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.

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted against Third-Party Defendant in the Third-Party 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 or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom 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.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND 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 estoppel.

TWENTY-THIRD 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.

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH 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.

TWENTY-SEVENTH 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.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

Third-Party Defendant did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

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

THIRTY-SECOND 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.

THIRTY-THIRD 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 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and

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

THIRTY-FOURTH 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.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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 limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH 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 its agents or employees.

THIRTY-SEVENTH 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.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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-NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

FORTIETH 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 practice and technology, and the then prevailing legal requirements for which Third-Party Defendant cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

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 for which Third-Party Defendant cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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 of New Jersey.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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-NINTH 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.

FIFTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against 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:

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

FIFTY-FIRST AFFIRMATIVE DEFENSE

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.

FIFTY-SECOND 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 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).

FIFTY-THIRD AFFIRMATIVE DEFENSE

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.

FIFTY-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.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

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

FIFTY-SIXTH AFFIRMATIVE DEFENSE

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.

WHEREFORE, Third-Party Defendant Arkema Inc. 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 11, 2009

BALLARD SPAHR, LLP
A Pennsylvania Limited Liability Company

By: _____

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant Arkema Inc.

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

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

Dated: December 11, 2009

BALLARD SPAHR, LLP
A Pennsylvania Limited Liability Company

By: 

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant Arkema Inc.

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4 you are hereby notified that Glenn A. Harris is assigned to try this case.

Dated: December 11, 2009

BALLARD SPAHR, LLP
A Pennsylvania Limited Liability Company

By: 

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant Arkema Inc.

CERTIFICATION PURSUANT TO RULE 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, 2009 posting by O'Melveny and Myers 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.

Dated: December 11, 2009

BALLARD SPAHR, LLP
A Pennsylvania Limited Liability Company

By: 

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant Arkema Inc.

Glenn A. Harris, Esquire
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Attorneys for Third Party Defendant BP Products North America 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,

TIERRA SOLUTIONS, INC. and MAXUS
ENERGY CORPORATION,

Third-Party Plaintiffs,

vs.

3M COMPANY, ET AL.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**CERTIFICATION OF SERVICE OF
ARKEMA INC.'S ANSWER TO
THIRD-PARTY COMPLAINT "B"**

Dawn M. Neukirch, of full age, certifies as follows:

1. I am employed by the law firm of Ballard Spahr Andrews & Ingersoll, LLP, as a legal administrative assistant.

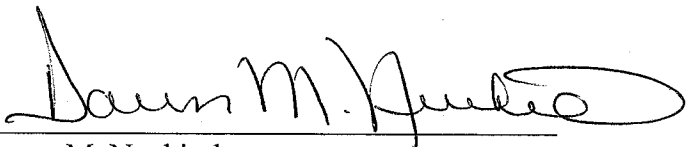
2. On this date, I caused one copy of Arkema Inc.'s Answer to Third-Party Complaint "B", Civil Case Information Statement and Certificate of Service in the above-captioned matter to be served upon the following as stated:

ALL PARTIES ON ATTACHED SERVICE LIST
Via Regular Service

ALL PARTIES ON ATTACHED SERVICE LIST
Via Electronic Service

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

Dated: December 11, 2009


Dawn M. Neukirch

Third-Party Defendants for Regular Service as of October 13, 2009

| NAMED THIRD-PARTY DEFENDANT | THIRD-PARTY COMPLAINT | NOTICE OF APPEARANCE COUNSEL OF RECORD |
|-----------------------------------|--------------------------|--|
| 3M Company | B | Donald J. Camerson, II Bressler, Amery & Ross, P.C. 325 Columbia Turnpike Florham Park, NJ 07932 973.660.4433 973.514.1660 - fax dcamerson@bressler.com |
| Alden-Leeds, Inc. | B | Joseph B. Fiorenzo Sokol, Behot & Fiorenzo 433 Hackensack, NJ 07601 201.488.1300 jbfioenzo@sbflawfirm.com |
| Celanese Ltd. | B | Anthony J. Reitano Herold Law, PA 25 Independence Blvd. Warren, NJ 07059-6747 908.647.1022 908.647.7721 - fax areitano@heroldlaw.com |
| City of Clifton | A | Thomas M. Egan, Esq. Assistant Municipal Attorney City of Clifton Law Department 900 Clifton Avenue Clifton, NJ 07013 973.470.5817 973.470.5254 - fax tegan@cliftonnj.org |
| City of Orange | A | John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 - fax jmcgovern@ci.orange.nj.us |
| Clean Earth of North Jersey, Inc. | B | Eric S. Aronson Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932 973.360.7900 973.301.8410 - fax aronson@gtlaw.com |

Third-Party Defendants for Regular Service as of October 13, 2009

| | | |
|------------------------------------|---|---|
| DiLorenzo Properties Company, L.P. | B | Steven R. Gray Water, McPherson, McNeill, P.C. 300 Lighting Way P.O. Box 1560 Secaucus, NJ 07096 201.863.4400 201.863.2866 - fax sgray@lawwmm.com |
| Dow Chemical Co. | D | Kenneth H. Mack Fox Rothschild LLP 997 Lenox Drive, Building Three Lawrenceville, NJ 08648 609.895.6631 609.896.1469 - fax kmack@foxrothschild.com |
| Fine Organics Corporation | B | Joe R. Caldwell Baker Botts L.L.P. 1299 Pennsylvania Ave. N.W. Washington, D.C. 20004-2400 202.639.7788 202.585.1074 - fax joe.caldwell@bakerbotts.com |
| Flexon Industries Corporation | B | Thomas Spiesman Porzio Bromberg & Newman, P.C. 100 Southgate Parkway Morristown, NJ 07962 973.889.4208 973.538.5146 – fax tspiesman@pbnlaw.com |
| Flint Group Incorporated | B | Donald J. Camerson, II Bressler, Amery & Ross, P.C. 325 Columbia Turnpike Florham Park, NJ 07932 973.660.4433 973.514.1660 - fax dcamerson@bressler.com |
| Houghton International Inc. | B | Robert A. White Morgan, Lewis & Bockius LLP 502 Carnegie Center Princeton, NJ 08540-6241 609.919.6600 |
| Hudson Tool & Die Company, Inc. | B | Keith E. Lynott McCarter & English, LLP 100 Mulberry Street 4 Gateway Center Newark, NJ 07102 973.622.4444 973.624.7070 - fax klynott@mccarter.com |

Third-Party Defendants for Regular Service as of October 13, 2009

| | | |
|-------------------------------------|---|--|
| Koehler-Bright Star, Inc. | B | Norman W. Spindel Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973.597.2500 973.597.2515 - fax nspindel@lowenstein.com |
| Legacy Vulcan Corp. | C | Corinne A. Goldstein, Esq. Covington & Burling, LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004 cgoldstein@cov.com 202.662.5534 202.778.5534 - fax cgoldstein@cov.com |
| Metal Management Northeast, Inc. | B | Norman W. Spindel Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973.597.2500 973.597.2515 - fax nspindel@lowenstein.com |
| New Jersey Transit Corporation | B | Kenneth M. Worton Deputy Attorney General State of New Jersey One Penn Plaza East Newark, NJ 07105-2246 973.491.7034 973.491.7044 - fax kworton@njtransit.com |
| Novelis Corporation | B | Paul Casteleiro, Esq. 200 Washington St., 5th Floor Hoboken, NJ 07030 201.656.1696 201.656.4688 - fax paul@casteleirolaw.com |
| Passaic Pioneers Properties Company | B | John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com |
| Precision Manufacturing Group, LLC | B | Bradley L. Mitchell Stevens & Lee 600 College Road East Suite 4400 Princeton, NJ 08540 609.987.6680 610.371.7928 - fax blm@stevenslee.com |

Third-Party Defendants for Regular Service as of October 13, 2009

| | | |
|--|---|---|
| R.T. Vanderbilt Company, Inc. | B | Howard A. Neuman Satterlee Stephens Burke & Burke LLP 33 Wood Avenue South Iselin, NJ 08830 732.603.4966 hneuman@ssbb.com |
| Revere Smelting & Refining Corporation [Has provided consent; however, counsel of record needs to register at website for service of notifications] | B | Nicholaus M. Kouletis, Esq. Pepper Hamilton, LLP Suite 400 301 Carnegie Center Princeton, NJ 08543-5276 609.452.0808 609.452.1147 - fax kouletisn@pepperlaw.com |
| The Stanley Works [Has provided consent; however, counsel of record needs to register at website for service of notifications] | B | Robert T. Barnard Thompson Hine LLP 335 Madison Ave., 12th Floor New York, NY 10017 212.344.5680 212.344.6101 - fax Robert.Barnard@ThompsonHine.com |
| Thirty-Three Queen Realty Inc. | B | Thomas Spiesman Porzio Bromberg & Newman, P.C. 100 Southgate Parkway Morristown, NJ 07962 973.889.4208 973.538.5146 – fax tspiesman@pbnlaw.com |
| Township of Cranford | A | Carl R. Woodward, III, Esq. cwoodward@carellabyrne.com Brian H. Fenlon, Esq. bfenlon@carellabyrne.com Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein 5 Becker Farm Road Roseland, NJ 07068 973.994.1700 |
| Vitusa Corp. | B | Gerald Poss Gerald Poss, P.A. & Associates 58 Vose Avenue South Orange, NJ 07079-2026 973.762.6400 gpossinc@aol.com |
| Wiggins Plastics, Inc. | B | Russell S. Burnside Greenberg Dauber Epstein & Tucker, P.C. One Gateway Center, Suite 600 Newark, NJ 07201 973.643.3700 973.643.1218 - fax rburnside@greenbergdauber.com |

Third-Party Defendants for Electronic Service as of October 23, 2009

| NAMED THIRD-PARTY DEFENDANT | THIRD-PARTY COMPLAINT |
|--------------------------------------|-----------------------|
| 3M Company | B |
| ACH Food Companies, Inc. | B |
| AGC Chemicals Americas, Inc. | B |
| Akzo Nobel Coatings, Inc. | B |
| Alden-Leeds, Inc. | B |
| Alliance Chemical, Inc. | B |
| Alumax Mill Products, Inc. | B |
| American Cyanamid | D |
| Apexical, Inc. | B |
| APOLAN International, Inc. | B |
| Arkema, Inc. | B |
| Ashland Inc. | B |
| Ashland International Holdings, Inc. | B |
| Associated Auto Body & Trucks, Inc. | B |
| Atlas Refinery, Inc. | B |
| BASF Catalysts LLC | B |
| BASF Construction Chemicals Inc. | B |
| BASF Corporation | B |
| Bayer Corporation | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---------------------------------------|---|
| Bayonne Industries, Inc. | D |
| Bayonne Municipal Utilities Authority | A |
| Beazer East, Inc. | B |
| Belleville Industrial Center | B |
| Benjamin Moore & Company | B |
| Berol Corporation | B |
| B-Line Trucking, Inc. | B |
| Borden & Remington Corp. | B |
| Borough of Carteret | A |
| Borough of East Rutherford | A |
| Borough of Elmwood Park | A |
| Borough of Fair Lawn | A |
| Borough of Fanwood | A |
| Borough of Franklin Lakes | A |
| Borough of Garwood | A |
| Borough of Glen Rock | A |
| Borough of Haledon | A |
| Borough of Hawthorne | A |
| Borough of Lodi | A |
| Borough of Mountainside | A |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---------------------------------|---|
| Borough of North Arlington | A |
| Borough of North Caldwell | A |
| Borough of Prospect Park | A |
| Borough of Rutherford | A |
| Borough of Wallington | A |
| Borough of West Paterson | A |
| Borough of Wood-Ridge | A |
| BP Marine Americas, Inc. | D |
| C.S. Osborne & Co. | B |
| CasChem, Inc. | B |
| CBS Corporation | B |
| Chemical Compounds Inc. | B |
| Chemical Waste Management, Inc. | D |
| Ciba Corporation | B |
| City of East Orange | A |
| City of Elizabeth | A |
| City of Garfield | A |
| City of Hackensack | A |
| City of Jersey City | A |
| City of Linden | A |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|----------------------------------|---|
| City of Newark | A |
| City of Passaic | A |
| City of Rahway | A |
| City of Summit | A |
| Coltec Industries Inc. | B |
| Como Textile Prints, Inc. | B |
| ConAgra Panama, Inc. | B |
| Conopco, Inc. | B |
| Consolidated Rail Corporation | B |
| Cosan Chemical Corporation | B |
| Covanta Essex Company | B |
| Croda, Inc. | B |
| Curtiss-Wright Corporation | B |
| CWC Industries, Inc. | B |
| Cytec Industries, Inc. | C |
| Darling International, Inc. | B |
| Davanne Realty Co. | B |
| Deleet Merchandising Corporation | B |
| Dow Chemical Co. | D |
| Duraport Realty One LLC | D |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|-------------------------------------|---|
| Duraport Realty Two LLC | D |
| E.I. du Pont de Nemours and Company | B |
| Eastman Kodak Company | B |
| Eden Wood Corporation | B |
| Elan Chemical Company, Inc. | B |
| EM Sergeant Pulp & Chemical Co. | B |
| Emerald Hilton Davis, LLC | B |
| EPEC Polymers, Inc. | D |
| Essex Chemical Corporation | B |
| Exxon Mobil | B |
| F.E.R. Plating, Inc. | B |
| Fine Organics Corporation | B |
| Fiske Brothers Refining Company | B |
| Flint Group Incorporated | B |
| Fort James Corporation | B |
| Franklin-Burlington Plastics, Inc. | B |
| G. J. Chemical Co. | B |
| Garfield Molding Company, Inc. | B |
| General Cable Industries, Inc. | B |
| General Dynamics Corporation | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---|---|
| General Electric Company | B |
| Gentek Holding LLC | B |
| Getty Properties Corp. | C |
| Givaudan Fragrances Corporation | B |
| Goodrich Corporation | D |
| Goody Products, Inc. | B |
| Gordon Terminal Service Co. of N.J., Inc. | B |
| Hartz Mountain Corporation | B |
| Hess Corporation | D |
| Hexcel Corporation | B |
| Hexion Specialty Chemicals, Inc. | B |
| Hoffmann-La Roche Inc. | B |
| Honeywell International Inc. | B |
| Houghton International Inc. | B |
| Hudson Tool & Die Company, Inc. | B |
| ICI Americas Inc. | B |
| IMTT-Bayonne | D |
| Innospec Active Chemicals LLC | B |
| ISP Chemicals Inc. | B |
| ITT Corporation | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---|---|
| Jersey City Municipal Utilities Authority | A |
| Joint Meeting of Essex and Union Counties | A |
| Kao Brands Company | B |
| Kinder Morgan Energy Partners, L.P. | D |
| Koehler-Bright Star, Inc. | B |
| Linde, Inc. | B |
| Linden Roselle Sewerage Authority | A |
| Lucent Technologies, Inc. | B |
| Mace Adhesives & Coatings Company, Inc. | B |
| Mallinckrodt Inc. | B |
| McKesson Corporation | D |
| Merck & Co., Inc. | B |
| Metal Management Northeast, Inc. | B |
| MI Holdings, Inc. | B |
| Miller Environmental Group, Inc. | B |
| Morton International, Inc. | B |
| Nappwood Land Corporation | B |
| National Fuel Oil, Inc. | B |
| National-Standard, LLC | B |
| Nestle U.S.A., Inc. | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---|---|
| New Jersey Transit Corporation | B |
| News America, Inc. | B |
| News Publishing Australia Limited | B |
| NL Industries, Inc. | B |
| Norpak Corporation | B |
| Orange and Rockland Utilities, Inc. | B |
| Otis Elevator Company | B |
| Passaic Valley Sewerage Commissioners | A |
| Pfizer Inc. | B |
| Pharmacia Corporation | B |
| Phelps Dodge Industries, Inc. | B |
| Pitt-Consol Chemical Company | B |
| Pivotal Utility Holdings, Inc. | B |
| Port Authority of New York and New Jersey | A |
| Power Test Realty Co., L.P. | C |
| PPG Industries, Inc. | B |
| Praxair, Inc. | B |
| Precision Manufacturing Group, LLC | B |
| Prentiss Incorporated | B |
| Procter & Gamble Manufacturing Company | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|--|---|
| Prysmian Communications Cables and Systems USA LLC | B |
| Purdue Pharma Technologies, Inc. | B |
| Quala Systems, Inc. | B |
| Quality Carriers, Inc. | B |
| R.T. Vanderbilt Company, Inc. | B |
| Rahway Valley Sewerage Authority | A |
| Reckitt Benckiser, Inc. | B |
| Reichhold, Inc. | B |
| Revere Smelting & Refining Corporation | B |
| Rexam Beverage Can Company | B |
| Royce Associates, A Limited Partnership | B |
| Rutherford Chemicals LLC | B |
| S&A Realty Associates, Inc. | B |
| Schering Corporation | B |
| Sequa Corporation | B |
| Seton Company | B |
| Shulton, Incorporated, USA | D |
| Siemens Water Technologies Corp. | B |
| Spectraserv, Inc. | B |
| STWB, Inc. | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---|---|
| Sun Chemical Corporation | B |
| Sun Oil Co. | D |
| Sun Pipeline Co. | D |
| Sun Refining and Marketing Co. | D |
| Superior MPM LLC | D |
| Tate & Lyle Ingredients Americas, Inc. | B |
| Teva Pharmaceuticals USA, Inc. | B |
| Teval Corp. | B |
| Textron Inc. | B |
| The Dial Corporation | B |
| The Dundee Water Power and Land Company | B |
| The New Jersey Department of Agriculture | A |
| The New Jersey Department of Transportation | A |
| The Newark Group, Inc. | B |
| The Okonite Company, Inc. | B |
| The Sherwin-Williams Company | B |
| The Stanley Works | B |
| The State of New Jersey | A |
| Thomas & Betts Corp. | D |
| Three County Volkswagen Corporation | B |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|----------------------------------|---|
| Tiffany & Co. | B |
| Town of Belleville | A |
| Town of Kearny | A |
| Town of Nutley | A |
| Town of Westfield | A |
| Town of Woodbridge | A |
| Township of Bloomfield | A |
| Township of Cedar Grove | A |
| Township of Clark | A |
| Township of Little Falls | A |
| Township of Livingston | A |
| Township of Lyndhurst | A |
| Township of Maplewood | A |
| Township of Millburn | A |
| Township of Montclair | A |
| Township of Saddle Brook | A |
| Township of Scotch Plains | A |
| Township of South Hackensack | A |
| Township of South Orange Village | A |
| Township of West Orange | A |

Third-Party Defendants for Electronic Service as of October 23, 2009

| | |
|---------------------------------------|---|
| Township of Wyckoff | A |
| TRMI-H LLC | C |
| Troy Chemical Corporation, Inc. | B |
| Universal Oil Products Company | B |
| Velsicol Chemical Corporation | B |
| Veolia ES Technical Solutions, L.L.C. | B |
| Vertellus Specialties Inc. | B |
| Village of Ridgewood | A |
| W.A.S. Terminals Corporation | B |
| W.A.S. Terminals, Inc. | B |
| Waste Management, Inc. | D |
| Whittaker Corporation | B |
| Wiggins Plastics, Inc. | B |
| Wyeth | D |
| Zeneca Inc. | B |