

Attorneys for defendant  
B-Line Trucking, Inc.

SUPERIOR COURT OF  
NEW JERSEY  
ESSEX COUNTY

DOCKET NO. L-9868-05  
(PASR)

CIVIL ACTION

**B-LINE TRUCKING, INC.'S  
ANSWER AND  
AFFIRMATIVE DEFENSES  
TO THIRD-PARTY  
COMPLAINT "B"**

Third-Party Defendant B-Line Trucking, Inc. (“B-Line Trucking”) by and through its undersigned counsel, Billet & Associates, and in accordance with this Court’s Case Management Order V, Section 9, dated 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. B-Line Trucking denies each and every allegation contained in Third-Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and Second Count and all headings and titles used in Third-Party Complaint "B.

## **AS TO PROCEDURAL BACKGROUND**

**(Paragraphs 1-15)**

2. B-Line Trucking responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

## **AS TO THE THIRD-PARTY PLAINTIFFS**

**(Paragraphs 16-18)**

3. No response is required pursuant to CMO V.

## **AS TO THIRD-PARTY DEFENDANTS**

**(Paragraphs 19-210)**

4. To the extent that paragraphs 19 through 46 relate to parties other than answering third-party defendant, no response is required pursuant to CMO V.

5. As to the allegations set forth in paragraph 47, they are admitted in part and denied in part. It is admitted that B-Line Trucking is a corporation organized under the laws of the state of New Jersey. However, it is denied that its principal place of business is located at 67 Esther Street, Newark, New Jersey. Its principal place of business is located at 68-70 Joseph Street, Newark, New Jersey.

6. To the extent that paragraphs 48 through 209 relate to parties other than answering third-party defendant, no response is required pursuant to CMO V.

7. The allegations in paragraph 210 state a legal conclusion to which no response is required.

**AS TO DEFINITIONS**  
**(Paragraphs 211-236)**

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

**AS TO FACTUAL ALLEGATIONS**  
**(Paragraphs 237 – 3445)**

9. As to paragraphs 237 through 541, such factual allegations relate to parties other than answering third-party defendant and accordingly, no response is required pursuant to CMO V. To the extent a response is required, answering third-party defendant is without knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraphs 237 through 541, and they are therefore denied. Moreover, to the extent the allegations set forth in paragraphs 237 through 541 contain conclusions, no response is required and they are denied as a matter of law.

10. As to the allegations set forth in paragraph 542, they are admitted in part and denied in part. It is admitted that B-Line Trucking owns and operates a property located at 67 Esther Street, Newark, New Jersey. Moreover, it is admitted that B-Line Trucking is a commercial truck tank hauling company. However, it is denied that it a commercial truck tank cleaning company.

11. B-Line Trucking denies the allegations set forth in paragraph 543 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. Moreover, the allegations contained in paragraph 543 of Third-Party Complaint "B" refer to a document in writing that speaks for itself. It is denied that the document referred to in paragraph 543 creates liability.

12. B-Line Trucking denies the allegations set forth in paragraph 544 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of the allegations.

13. B-Line Trucking denies the allegations set forth in paragraph 545 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. Moreover, the allegations contained in paragraph 545 of Third-Party Complaint "B" refer to a document in writing that speaks for itself. It is denied that the document referred to in paragraph 545 creates liability. To the extent that the allegations set forth in paragraph 545 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

14. B-Line Trucking denies the allegations set forth in paragraph 546 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. Moreover, the allegations contained in paragraph 546 of Third-Party Complaint "B" refer to a document in writing that speaks for itself. It is denied that the document referred to in paragraph 546 creates liability. To the extent that the allegations set forth in paragraph 546 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

15. B-Line Trucking denies the allegations set forth in paragraph 547 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. Moreover, the allegations contained in paragraph 547 of Third-Party Complaint "B" refer to a document in writing that speaks

for itself. It is denied that the document referred to in paragraph 547 creates liability. To the extent that the allegations set forth in paragraph 547 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

16. B-Line Trucking denies the allegations set forth in paragraph 548 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 548 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

17. B-Line Trucking denies the allegations set forth in paragraph 549 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. Moreover, the allegations contained in paragraph 549 of Third-Party Complaint "B" refer to a document in writing that speaks for itself. It is denied that the document referred to in paragraph 549 creates liability. To the extent that the allegations set forth in paragraph 549 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

18. B-Line Trucking denies the allegations set forth in paragraph 550 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 550 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

19. B-Line Trucking denies the allegations set forth in paragraph 551 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 551 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

20. As to paragraphs 552 through 3,445, such factual allegations relate to parties other than answering third-party defendant and accordingly, no response is required pursuant to CMO V. To the extent a response is required, answering third-party defendant is without knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraphs 552 through 3,445, and they are therefore denied. Moreover, to the extent the allegations set forth in paragraphs 552 through 3,445 contain conclusions, no response is required and they are denied as a matter of law.

#### **AS TO FIRST COUNT**

21. Answering third-party defendant incorporates by reference its answers to the Third-Party Complaint "B" as fully as though herein set forth at length.

22. B-Line Trucking denies the allegations set forth in paragraph 3,447 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 3,447 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

23. B-Line Trucking denies the allegations set forth in paragraph 3,448 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in

paragraph 3,448 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

24. B-Line Trucking denies the allegations set forth in paragraph 3,449 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 3,449 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

25. B-Line Trucking denies the allegations set forth in paragraph 3,450 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 3,450 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

26. B-Line Trucking denies the allegations set forth in paragraph 3,451 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 3,451 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

WHEREFORE, answering third-party defendant demands judgment in its favor.

### **AS TO SECOND COUNT**

27. Answering third-party defendant incorporates by reference its answers to the Third-Party Complaint "B" as fully as though herein set forth at length.

28. B-Line Trucking denies the allegations set forth in paragraph 3,453 of the Third-Party Complaint "B" as it is without knowledge or information sufficient to form a belief as to the truth of said allegations. To the extent that the allegations set forth in paragraph 3,453 of the Third-Party Complaint "B" are conclusions of law, no response is required, and they are denied as a matter of law.

WHEREFORE, answering third-party defendant demands judgment in its favor.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

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

#### **SECOND AFFIRMATIVE DEFENSE**

B-Line Trucking 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 B-Line Trucking 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, in whole or in part, by the entire controversy doctrine.

#### **SIXTH AFFIRMATIVE DEFENSE**

To the extent the Third-Party Complaint "B" 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 B-Line Trucking under statute.

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **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 "B", 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 are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from B-Line Trucking. Consequently, the claims in the Third-Party Complaint "B" are barred, in whole or in part. Moreover, as a result, the third-party plaintiffs are not entitled to contribution under the Spill Act, the WPCA or any other environmental statute.

#### **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**

B-Line Trucking cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by B-Line Trucking 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").

#### **TWELFTH AFFIRMATIVE DEFENSE**

At common law, B-Line Trucking 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. B-Line Trucking 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 B-Line Trucking directly. As a result, the claims set forth in the Third-Party Complain "B" are barred, in whole or in part.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

The State of New Jersey is legally barred from asserting direct claims against B-Line Trucking 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 B-Line Trucking as well, including the claims set forth in the Third-Party Complaint "B."

#### **FOURTEENTH 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.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' Complaint "B" is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

At all relevant times, B-Line Trucking complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonable, prudently, in good faith, and with due care for the rights, safety and property of others.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

The claims asserted against B-Line Trucking in the Third-Party Complaint “B” are barred because at all relevant times B-Line Trucking 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 B-Line Trucking 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.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by B-Line Trucking.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs’ claims against B-Line Trucking 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-FIRST 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-SECOND AFFIRMATIVE DEFENSE**

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

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

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

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

The claims for equitable contribution under the Spill Act in the Third-Party Complaint "B" 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-FIFTH 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-SIXTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

B-Line Trucking did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

#### **TWENTY-NINTH 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.

#### **THIRTIETH 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-FIRST 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-SECOND 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 liability.

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

B-Line Trucking denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer from 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 B-Line Trucking exercised no control and for whose conduct B-Line Trucking was not responsible including, without limitation, unpermitted and storm even discharges from publicly owned treatment works.

### **THIRTY-FOURTH 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 B-Line Trucking, 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-FIFTH AFFIRMATIVE DEFENSE**

Although B-Line Trucking denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, B-Line Trucking 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-SIXTH 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-SEVENTH 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 "B" 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.

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

The disposal of waste, if any, which allegedly originated from B-Line Trucking, 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 B-Line Trucking cannot be found retroactively liable.

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

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

#### **FORTIETH 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-FIRST AFFIRMATIVE DEFENSE**

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

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

B-Line Truckings' 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-THIRD 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-FOURTH 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-FIFTH AFFIRMATIVE DEFENSE**

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

#### **FORTY-SIXTH AFFIRMATIVE DEFENSE**

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

#### **FORTY-SEVENTH 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 B-Line Trucking are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against B-Line Trucking 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 B-Line Trucking. Examples of legal extinguishments that are or may be applicable to B-Line Trucking include, with respect to each such site:

Any release or covenant not to sue granted by Plaintiffs and B-Line Trucking;

Any settlement or other compromise between Plaintiffs and B-Line Trucking;

Any expiration of the statute of limitations or statute of repose governing

Plaintiffs' right to maintain a claim against B-Line Trucking;

Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint "B") in a prior litigation between Plaintiffs and B-Line Trucking, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or

Any issuance by Plaintiffs to B-Line Trucking, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

#### **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred because the relief sought against B-Line Trucking, were it claimed directly by Plaintiffs, would amount to a "taking" of B-Line Trucking's property in violation of its rights under the Eminent Domain Act of 1971, *N.J.S.A 20:3-1 et seq.*

#### **FORTY-NINTH 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 B-Line Trucking'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 B-

Line Trucking, thereby exposing B-Line Trucking to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (*i.e.*, double recovery).

#### **FIFTIETH AFFIRMATIVE DEFENSE**

To the extent B-Line Trucking 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 B-Line Trucking, the claims for equitable contribution under the Spill Act in the Third-Party Complaint "B" are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

#### **FIFTY-FIRST AFFIRMATIVE DEFENSE**

Without admitting liability, B-Line Trucking alleges that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint "B," such activities were *de minimis* and not that cause of any damages or other claims by Third-Party Plaintiffs.

#### **FIFTY-SECOND AFFIRMATIVE DEFENSE**

Certain of the costs incurred or to be incurred by the Plaintiffs and/or Third-Party Plaintiffs in connection with the site are not "response costs" recoverable from B-Line Trucking within the meaning of Sections 101(23), (24) and (25) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601, et seq., as applied to the Spill Act.

#### **FIFTY-THIRD AFFIRMATIVE DEFENSE**

Plaintiffs and Third-Party Plaintiffs failed to provide notice to B-Line Trucking that it was considered a potentially responsible party prior to undertaking any response actions.

#### **FIFTY-FOURTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' Complaint "B" is barred because they failed to exhaust all administrative remedies.

#### **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have no right to contribution against B-Line Trucking under the WPCA.

#### **FIFTY-SIXTH 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.

#### **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint "B," 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 4:21-1 of the New Jersey Court Rules.

#### **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

Without admitting liability, if B-Line Trucking is found to be liable under the Spill Act, its liability is several and not joint because a non-public party suing under the Spill Act's contribution provision is not entitled to joint and several liability.

#### **FIFTY-NINTH AFFIRMATIVE DEFENSE**

The Spill Act does not authorize Plaintiffs and/or Third-Party Plaintiffs to recover future costs and thus all claims against B-Line Trucking relating to the Spill Act are premature and not ripe for adjudication.

#### **SIXTIETH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have no right of contribution against B-Line Trucking under the WPCA.

#### **SIXTY-FIRST AFFIRMATIVE DEFENSE**

B-Line Trucking 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 B-Line Trucking.

#### **SIXTY-SECOND AFFIRMATIVE DEFENSE**

B-Line Trucking reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

#### **SIXTY-THIRD AFFIRMATIVE DEFENSE**

B-Line Trucking reserves the right to amend this answer and to assert additional defenses and/or to supplement, alter, or change this answer upon ascertaining more definite facts during and upon completion of discovery and investigation

WHEREFORE, answering third-party defendant demands judgment in its favor.

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

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

**CERTIFICATION PURSUANT TO R. 4:5-1**

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 a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned;

(b) Because 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 "B" 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 "B" is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 positing 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 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.

### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:5-1(c), Russell S. Massey, Esquire is hereby designated as trial counsel in this action.

### **CERTIFICATION OF FILING AND SERVICE**

1. I am an attorney-at-law in the State of New Jersey with the law firm of Billet & Associates, LLC, attorneys for B-Line Trucking, Inc. in the above-captioned matter.
2. On the date listed below, I caused an original and two copies of the B-Line Trucking Inc.'s Answer and Affirmative Defenses to Third-Party Complaint "B" to be filed with the Clerk of the Superior Court of New Jersey, Essex County, via Hand Delivery.
3. On the date listed below, I caused a copy of same to be served on counsel for all parties which have consented to electronic service by positing to <http://njdepvoce.sfile.com> and upon the attached list of counsel of record by first-class mail.

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.

BILLET & ASSOCIATES, LLC

Dated: January 4, 2010

BY:

  
ROBERT DOUGLAS BILLET, ESQ.  
RUSSELL S. MASSEY, ESQ.