

MANKO, GOLD, KATCHER & FOX, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004
Attorneys for Third-Party Defendant, Beazer East, 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

**BEAZER EAST, INC.'S ANSWER 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.,
BEAZER EAST 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.

BEAZER EAST, INC.'S ANSWER TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Beazer East, Inc. ("Beazer"), 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:¹

GENERALLY

Beazer denies each and every allegation contained in Third Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B".

AS TO PROCEDURAL BACKGROUND

1-15. Pursuant to CMO V, no response is required to the factual allegations of Paragraphs 1 through 15, which do not relate specifically to Beazer. To the extent an answer is required, Beazer responds that the pleadings, documents and agreement referenced in Paragraphs 1 through 15 are writings and speak for themselves and any mischaracterizations

¹ The paragraph numbers used herein respond to the paragraph numbers used in the Third-Party Complaint B.

thereof are denied. To the extent that these paragraphs contain legal conclusions, no response is required and the conclusions are denied.

AS TO THE THIRD PARTY PLAINTIFFS

16-18. Pursuant to CMO V, no response is required to the allegations of Paragraphs 16 through 18 which identify Third-Party Plaintiffs and do not relate specifically to Beazer.

AS TO THE THIRD PARTY DEFENDANTS

19-42. Denied. The allegations in Paragraphs 19 through 145 relate to other Third-Party Defendants, do not specifically relate to Beazer, and pursuant to CMO V do not require an answer from Beazer. To the extent these paragraphs plead legal conclusions, no response is required and Beazer denies said legal conclusions.

43. Admitted in part and denied in part. It is admitted only that Beazer is a corporation organized under the laws of the State of Delaware. By way of further answer, Beazer has a mailing address care of Three Rivers Management, Inc., One Oxford Centre, Suite 3000, Pittsburgh, Pennsylvania 15219.

44-209. Denied. The allegations in Paragraphs 44 through 209 relate to other Third-Party Defendants, do not specifically relate to Beazer, and pursuant to CMO V do not require an answer from Beazer. To the extent these paragraphs plead legal conclusions, no response is required and Beazer denies said legal conclusions.

210. Denied. The allegation in Paragraph 210 states a legal conclusion as to which no response is required and therefore is denied. To the extent that a response is required, Beazer denies the allegations in Paragraph 210.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

237-1729. The allegations in Paragraphs 237 through 1729 relate to other Third-Party defendants, do not specifically relate to Beazer, and, pursuant to CMO V, do not require an answer from Beazer. To the extent these paragraphs plead legal conclusions, no response is required and Beazer denies said legal conclusions. To the extent a response is required to Paragraphs 237 through 1729, Beazer is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Any documents referenced in Paragraphs 237 through 1729 speak for themselves, and any mischaracterizations thereof are denied.

Seaboard Site

1730. Admitted in part and denied in part. It is admitted only that certain property located at Fishhouse Road in Kearny, Hudson County, New Jersey is referred to as the "Seaboard Site" and consists of certain parcels of real property and associated improvements. Beazer denies the remaining allegations of paragraph 1730. Beazer specifically denies that the Seaboard Site is owned by Koppers Company, Inc. ("Koppers").

1731. Admitted.

1732. Denied. By way of further answer, BNS Acquisitions, Inc. ("BNS"), an indirect subsidiary of Beazer PLC, acquired certain stock of Koppers in June 1988 but did not complete its acquisition of Koppers' stock until November 1988.

1733. Admitted in part and denied in part. It is admitted that Koppers and BNS merged in January 1989. By way of further answer, BNS merged with and into Koppers in January 1989, and Koppers was the surviving company. Shortly thereafter, Koppers changed its name to Beazer Materials and Services, Inc.

1734. Admitted in part and denied in part. The correct name for the company that changed its name to Beazer, Inc. ("Beazer") in April 1990 is Beazer Materials and Services, Inc.

1735. Admitted in part and denied in part. Beazer admits that Koppers owned and operated a facility at the Seaboard Site from 1944 until approximately the late 1970s, but is currently without knowledge or information sufficient to form a belief as to whether that facility operated as a tar product, light oil and sulfuric acid manufacturing and processing facility for the entirety of the timeframe referenced in Paragraph 1735, or whether the processes listed in Paragraph 1735 were conducted at the Seaboard Site throughout the relevant timeframe, and therefore denies any such allegations. By way of further answer, Beazer admits that remedial activities at the Seaboard Site were initiated in the 1970s and continue to the present, and Beazer also admits that certain predecessors-in-interest of Koppers owned and operated the facility at the Seaboard Site during certain time periods prior to 1944.

1736. Admitted in part and denied in part. Beazer is currently without knowledge or information sufficient to form a belief as to what "Koppers' manufacturing process" is referred to in Paragraph 1736, and therefore denies all allegations in Paragraph 1736 related to the by-products of such unspecified process. By way of further answer, Beazer admits only that phenolics are generally associated with coke and coal tar chemicals. Beazer specifically denies that by-products of Koppers' unspecified manufacturing process referenced in Paragraph 1736 are associated with the formation of dioxin compounds.

1737. Admitted in part and denied in part. Beazer admits that the Seaboard Site abuts the Hackensack River. Beazer further admits that the New Jersey Pollutant Discharge Elimination System Permit for the Seaboard Site permitted discharges to the Hackensack River. Beazer is currently without knowledge or information sufficient to form a belief as to whether

the Hackensack River received overland flow and/or storm water runoff directly from the Seaboard Site during the relevant time periods and therefore those allegations are denied. It is further denied that the Hackensack River flows south from the Seaboard Site, as the Hackensack River is oriented to the northeast-southwest at the southeastern boundary of the Seaboard Site, is tidal in the area of the Seaboard Site, and its flow is dependent on the tides. It is further specifically denied that any of Beazer's operations at the Seaboard Site impacted the Hackensack River or Newark Bay.

1738. Denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1738 plead factual allegations regarding the alleged observations of a third party approximately thirty-four years ago, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that Koppers routinely spilled coal tar on to the Seaboard Site or unloaded tank cars of coal tar onto the ground of the Seaboard Site.

1739. Denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1739 plead factual allegations regarding the alleged observations of third parties approximately thirty-four years ago, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

1740. Admitted in part and denied in part. It is admitted only that certain wells drilled at the Seaboard Site in 1979 detected petroleum products. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce

such document in the “nexus package” for the Seaboard Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1740 plead specific factual allegations regarding unspecified test wells at the Seaboard Site, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

1741. Denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1741 plead factual allegations regarding the alleged observations of a third party approximately twenty years ago, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

1742. Denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1742 plead factual allegations regarding the alleged observations of an unidentified third party approximately nineteen years ago, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that any coal tar residues observed along the river bottom as alleged in Paragraph 1742 emanated from Beazer’s operations at the Seaboard Site.

1743. Denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1743 plead factual allegations regarding an unidentified 1982 report by the United States Environmental Protection Agency, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are

denied. Beazer specifically denies that the Seaboard Site was covered by ten feet of oils and tars, or that any oil or tar, if any, from Beazer's operations at the Seaboard Site was discharged into the Hackensack River as alleged in Paragraph 1743.

1744. Denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1744 plead factual allegations regarding the alleged conclusions of Coast Guard officials prior to 1982, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

1745. Denied. Beazer specifically denies that any spills, leaks, mechanical failures or poor housekeeping practices associated with Beazer's operations resulted in discharges of hazardous substances from the Seaboard Site. By way of further answer, the operation of the Seaboard Site complied with industry standards and discharged to the Hackensack River pursuant to a State-issued NJPDES permit.

1746. Denied. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the "nexus package" for the Seaboard Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1746 plead factual allegations regarding specific compounds detected at unspecified waste piles at the Seaboard Site, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, that the unspecified waste piles presently exist at the Seaboard Site, or that the listed compounds were each attributable to Beazer's operations at the Seaboard Site.

1747. Admitted in part and denied in part. It is admitted only that certain compounds have been detected in the soil at the Seaboard Site. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Seaboard Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1747 plead specific factual allegations regarding the results of unspecified soil sampling at the Seaboard Site, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer’s operations at the Seaboard Site.

1748. Denied. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Seaboard Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. Because the allegations in Paragraph 1748 could relate to any time period, and any location or property, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied.

1749. Admitted in part and denied in part. It is admitted only that certain compounds have been detected in the groundwater at the Seaboard Site. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Seaboard Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1749 plead specific factual allegations regarding the results of unspecified

groundwater analyses at the Seaboard Site, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer's operations at the Seaboard Site.

1750. Admitted in part, denied in part. It is admitted only that the Hackensack River empties into Newark Bay. Beazer specifically denies that groundwater at the Seaboard Site flows to the Hackensack River or that any compounds allegedly present in the groundwater at the Seaboard Site are discharged into the Newark Bay Complex. By way of further answer, a slurry wall is present at the Seaboard Site that prevents any discharge of groundwater from the Seaboard Site to the Hackensack River.

1751. Denied. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the "nexus package" for the Seaboard Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1751 plead factual allegations regarding unspecified sediment core samples taken from the Hackensack River by an unidentified third party, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer's operations at the Seaboard Site.

1752. Denied. The allegations in Paragraph 1752 plead legal conclusions to which no response is required and those conclusions are specifically denied. Beazer specifically denies that

it is a discharger or a person in any way responsible for the discharge of hazardous substances from the Seaboard Site to the Newark Bay Complex.

Port Newark Site

1753. Admitted in part, denied in part. It is admitted only that Koppers formerly subleased property and associated improvements located at Maritime and Tyler Streets in Port Newark, Essex County, New Jersey (the "Port Newark Site"). Beazer denies the allegations in Paragraph 1753 to the extent they incorrectly indicate that Koppers owns or ever owned the Port Newark Site by referring to that Site as the "Koppers property." Upon information and belief, the Port Newark Site is comprised of seven acres of land and is owned by the City of Newark.

1754. Admitted in part, denied in part. Beazer admits upon information and belief that the Port Newark Site is owned by the City of Newark. Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of the allegations in Paragraph 1754 regarding the alleged current lease of the Port Newark Site to the Port Authority of New York and New Jersey and therefore they are denied.

1755. Admitted in part, denied in part. Beazer admits that Koppers previously subleased the Port Newark Site and operated a wood treatment facility on the subleased parcel for certain periods of time, but denies the timeline for that sublease and facility operation set forth in Paragraph 1755. Koppers' sublease of the Port Newark Site ended on December 29, 1988. Beazer further admits that Koppers' operations at the Port Newark Site included the preservation of wood products via pressure treatment that utilized creosote, but is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of factual allegations in Paragraph 1755 regarding other specific compounds allegedly employed by Koppers in the wood preservation process at the Port Newark Site throughout the referenced time period, and therefore denies any such allegations.

1756. Admitted in part, denied in part. Beazer admits, upon information and belief, that Weyerhaeuser Company subleased the Port Newark Site to American Lumber & Treating Company prior to Koppers' sublease of the Port Newark Site, and that American Lumber & Treating Company operated a wood treatment facility at the Port Newark Site. Beazer currently lacks knowledge or information sufficient to form a belief as to the basis, truth or accuracy of alleged timeline for American Lumber & Treating Company's involvement at the Port Newark Site and therefore denies the same.

1757. Admitted in part, denied in part. Beazer admits the factual allegations in Paragraph 1757 regarding the general location of the Port Newark Site as between the Port Newark and Elizabeth Channels, and Beazer admits that both of said channels are connected to the Newark Bay. Beazer further admits that certain storm water runoff from the Port Newark Site flowed into area storm drains during the period of Koppers' sublease, but Beazer is without knowledge or information sufficient to form a belief as to storm water runoff flow during periods prior to and after Koppers' tenure at the Site. Beazer also currently lacks knowledge or information sufficient to form a belief as to the basis, truth or accuracy of allegations in Paragraph 1757 regarding the locations of any storm sewer pipes or the discharge point of any such pipes, and therefore denies such allegations. Beazer further denies any allegation in Paragraph 1757 that sanitary or industrial wastewater from the Port Newark Site was discharged directly into the Port Newark Channel. By way of further answer, upon information and belief, wastewater discharges from the Port Newark Site during the tenure of the Koppers' sublease were directed to and treated by public treatment works operated by the Passaic Valley Sewerage Commission and/or its predecessor.

1758. Denied. By way of further answer, upon information and belief, discharges of sanitary and/or industrial wastewater from the Port Newark Site during the tenure of the Koppers' sublease were discharged to the Passaic Valley Sewerage Commission public treatment works for treatment. Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of the remaining allegations in Paragraph 1758 and therefore denies such allegations.

1759. Denied. Beazer specifically denies that any spills, leaks, mechanical failures or poor housekeeping practices by Beazer resulted in discharges of hazardous substances from the Port Newark Site. By way of further answer, the operation of the Port Newark Site complied with applicable industry standards.

1760. Admitted in part and denied in part. It is admitted only that certain compounds have been detected in the soil at the Port Newark Site. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the "nexus package" for the Port Newark Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1760 plead factual allegations regarding the results of unspecified soil sampling at the Port Newark Site conducted by an unnamed third party, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer's operations at the Port Newark Site.

1761. Denied. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Port Newark Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1761 plead factual allegations regarding the results of unspecified sampling of the storm drains and catch basins at the Port Newark Site by an unnamed third party, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer’s operations at the Port Newark Site.

1762. Denied. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Port Newark Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. Because the allegations in Paragraph 1762 could relate to any time, location, or property, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. To the extent that the allegations in Paragraph 1762 relate to the Port Newark Site during time periods before 1954 or after December 29, 1988, Beazer lacks knowledge regarding such allegations and therefore they are denied. To the extent that the allegations in Paragraph 1762 plead factual allegations regarding the alleged release of compounds from Beazer’s operations at various portions of the Port Newark Site into the Newark Bay Complex between 1954 and December 29, 1988, Beazer specifically denies such allegations.

1763. Admitted in part, denied in part. It is admitted only that certain compounds have been detected in the groundwater at the Port Newark Site. To the extent that the allegations regarding the specific compounds detected in the groundwater contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Port Newark Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1763 plead factual allegations regarding the results of unspecified sampling of groundwater at the Port Newark Site by an unnamed third party, Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of such allegations and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer’s operations at the Port Newark Site.

1764. Denied. Beazer is currently without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of the allegations in Paragraph 1764 regarding the “regional” flow of groundwater at the Port Newark Site, or whether any “compounds” in the groundwater at the Port Newark Site discharged into the Newark Bay Complex, and such allegations are therefore denied.

1765. Denied. To the extent that the allegations contained in this paragraph refer to a written document, Third-Party Plaintiffs failed to produce such document in the “nexus package” for the Port Newark Site in contravention of CMO V, paragraph 8(e), and any mischaracterization thereof is denied. Beazer is without knowledge or information sufficient to form a belief as to the basis, truth or accuracy of the remaining allegations of Paragraph 1765, including the allegations regarding unspecified sampling of the Port Newark Channel by an

unidentified third party, and therefore they are denied. Beazer specifically denies that each of the compounds listed in the paragraph were detected at levels exceeding background or applicable State standards, or that the listed compounds were each attributable to Beazer's operations at the Port Newark Site.

1766. Denied. The allegations in Paragraph 1766 plead legal conclusions to which no response is required. Beazer specifically denies that it is a successor to Koppers, or a discharger or person in any way responsible for the discharge of hazardous substances from the Port Newark Site to the Newark Bay Complex.

1767-3445. The allegations in Paragraphs 1767 through 3445 relate to other Third-Party defendants, do not specifically relate to Beazer, and, pursuant to CMO V, do not require an answer from Beazer. To the extent these paragraphs plead legal conclusions, no response is required and Beazer denies said legal conclusions. To the extent a response is required to Paragraphs 1767 through 3445, Beazer is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. To the extent that the allegations in Paragraphs 1767 through 3445 refer to written documents, any mischaracterization thereof is denied.

AS TO FIRST COUNT

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

3446. Beazer incorporates by reference, as if fully set forth herein, its answers to Paragraphs 1 through 3445 herein.

3447. Denied. The allegations in Paragraph 3447 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3447 plead factual allegations requiring a response, Beazer denies the allegations that

pertain to it. Pursuant to CMO V, allegations related to other Third-Party Defendants in Paragraph 3447 require no further answer from Beazer.

3448. Denied. To the extent that the allegations in Paragraph 3448 state conclusions of law, no response is required and such allegations are denied. To the extent that Paragraph 3448 purports to quote an incomplete portion of a statute out of context, any mischaracterization thereof is denied.

3449. Denied. The allegations in Paragraph 3449 state conclusions of law to which no response is required and are therefore denied. Beazer specifically denies that it is liable to Third-Party Plaintiffs for contribution or that Third-Party Plaintiffs have suffered damages. Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of Third-Party Plaintiffs' claims that they have incurred cleanup and removal costs, and such allegations are therefore denied.

3450. Denied. The allegations in Paragraph 3450 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3450 require a response, Beazer is currently without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

3451. Denied. The allegations in Paragraph 3451 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3451 require any response, Beazer denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations contained in Paragraph 3451 plead additional factual allegations requiring a response, Beazer is without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

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

AS TO SECOND COUNT

Statutory Contribution

3452. Beazer incorporates by reference, as if fully set forth herein, its answers as asserted in Paragraphs 1 through 3451 herein.

3453. Denied. The allegations in Paragraph 3453 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3453 require any response, Beazer denies that it is liable to Third-Party Plaintiffs for contribution or that Third-Party Plaintiffs have suffered damages. To the extent that the allegations contained in Paragraph 3453 plead additional factual allegations requiring a response, Beazer is without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Beazer is not a discharger or a person in any way responsible under N.J.S.A. 58:10-23 *et seq.* ("Spill Act") for the discharges to the Newark Bay Complex alleged in the Third-Party Complaint.

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 Beazer 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 Beazer under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred 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 Beazer 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 Beazer. 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 include damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

THIRTEENTH AFFIRMATIVE DEFENSE

Beazer cannot be held liable for, or be required to pay, Third-Party Plaintiffs' damages or other claims based on actions or inactions by Beazer 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 AFFIRMATIVE DEFENSE

At common law, Beazer held 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. Beazer 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 Beazer directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part

FIFTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs’ claims are barred to the extent that the State of New Jersey would be barred from asserting those claims directly against Beazer for the damages sought in its Amended 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

The claims asserted against Beazer in the Third-Party Complaint are barred, in whole or in part, to the extent that Beazer complied with 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 during the relevant time period.

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted against Beazer in the Third-Party Complaint are barred, in whole or in part because the release or threat of release of 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 Beazer had no control, whether by contract or otherwise, and/or who Beazer had no duty to control, including without limitation the State of New Jersey and its agencies and officials, the United States and its agencies and officials, and/or any publicly owned treatment works.

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 Beazer.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Beazer 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 AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH 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 to perform; (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-SIXTH 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-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

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' failure to incur costs authorized by the Spill Act and Third-Party Plaintiffs' failure 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, in whole or in part, 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' claims are barred, in whole or in part, because they have not paid more than their fair or equitable share of any damages, costs or other relief sought by the Plaintiffs, and are, therefore, not entitled to contribution from Beazer.

THIRTY-SECOND AFFIRMATIVE DEFENSE

If Third-Party Plaintiffs sustained any injury or 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 or damages, Third-Party Plaintiffs' recovery against Beazer, 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-THIRD AFFIRMATIVE DEFENSE

Although Beazer denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Beazer 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-FOURTH 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-FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Beazer 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.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

To the extent that the actions of Beazer are determined to constitute disposal of waste, which Beazer denies, such disposal was undertaken in accordance with the state of the art, the accepted industrial practice and technology, and the prevailing legal requirements at the time, for which Beazer cannot be found retroactively liable.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Any discharge that allegedly originated from Beazer, was investigated and remediated by a licensed professional, and under the direct oversight of state and/or federal agencies, with the state of the art, the accepted industrial practice and technology, and the prevailing requirements at the time, for which Beazer cannot be found retroactively liable.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with applicable government agencies.

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

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

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs contribution claims are barred, in whole or in part, because the discharges for which the Plaintiffs are seeking relief are different from the discharges for which Third-Party Plaintiffs allege Beazer is responsible.

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Beazer are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Beazer 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 Beazer.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

To the extent that Beazer is participating or has participated in an environmental cleanup at the sites alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Beazer, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Beazer's participation in ongoing environmental cleanups under oversight of the Plaintiffs or the United States at any sites alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Beazer, thereby exposing Beazer to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-NINTH AFFIRMATIVE DEFENSE

To the extent that Beazer is participating or has participated in environmental cleanup at any sites alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Beazer, 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.

FIFTIETH AFFIRMATIVE DEFENSE

Without admitting liability, Beazer asserts that if it is found liable for the activities alleged to have been conducted by Beazer 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-FIRST AFFIRMATIVE DEFENSE

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

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

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: April 21, 2010

Respectfully submitted,

A handwritten signature in purple ink, appearing to read 'C. D. Ball', written over a horizontal line.

Christopher D. Ball
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004
(484) 430-5700
cball@mgkflaw.com
Attorney for Third-Party Defendant,
Beazer East, 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 a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and

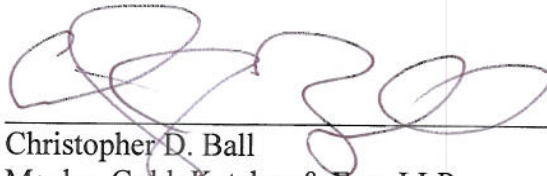
(b) Because it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint is several only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that

(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 7, 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 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.

Dated: April 21, 2010

Respectfully submitted,



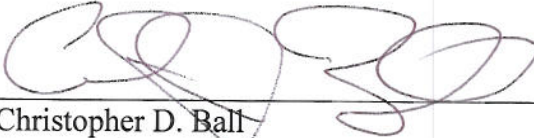
Christopher D. Ball
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004
(484) 430-5700
cball@mgkflaw.com
Attorney for Third-Party Defendant,
Beazer East, Inc.

CERTIFICATION OF SERVICE

I, Christopher D. Ball, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served Beazer East, Inc.'s Answer to Third-Party Complaint "B" upon the Clerk of Court via overnight mail and upon all counsel of record by either electronic mail or regular mail for those representatives who have not provided an electronic mail address.

Courtesy copies of Beazer East, Inc.'s Answer to Third-Party Complaint "B" were also served via overnight mail on designated counsel for Third-Party Plaintiffs, Maxus Energy Corporation and Tierra Solutions, and counsel for Plaintiffs in this matter.

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 willingly false, I am subject to punishment.

A handwritten signature in purple ink, appearing to read 'C. D. Ball', is written over a horizontal line.

Christopher D. Ball
Attorney for Third-Party Defendant,
Beazer East, Inc.

Dated: April 21, 2010