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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
ENVIRONMENTAL PROTECTION AGENCY,
and THE ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

vs.

OCCIDENTAL CHEMICAL CORPORATION,
TIERRA SOLUTIONS, INC., MAXUS ENERGY
CORPORATION, REPSOL YPF, S.A., YPF, S.A.,
YPF HOLDINGS, INC. and CLH HOLDINGS,

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY,
A.C.C., INC.,
ACH FOOD COMPANIES, INC.,
ACTIVE OIL SERVICE,
ADCO CHEMICAL COMPANY,
AGC CHEMICALS AMERICAS, INC.,
ALDEN-LEEDS, INC.,
ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERICAN INKS AND COATINGS CORPORATION,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**ANSWER TO THIRD-PARTY
COMPLAINT "B", AFFIRMATIVE
DEFENSES AND R. 4:5-1
CERTIFICATION OF
BEROL CORPORATION**

APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS, INC.,
ASSOCIATED AUTO BODY & TRUCKS, INC.,
ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AKZO NOBEL COATINGS, INC.,
BASF CATALYSTS LLC,
BASF CONSTRUCTION CHEMICALS INC.,
BASF CORPORATION,
BAYER CORPORATION,
BEAZER EAST, INC.,
BELLEVILLE INDUSTRIAL CENTER,
BENJAMIN MOORE & COMPANY,
BEROL CORPORATION,
B-LINE TRUCKING, INC.,
BORDEN & REMINGTON CORP.,
C.S. OSBORNE & CO.,
CAMPBELL FOUNDRY COMPANY,
CASCHEM, INC.,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMTURA CORPORATION,
CLEAN EARTH OF NORTH JERSEY, INC.,
COSMOPOLITAN GRAPHICS CORPORATION,
CIBA CORPORATION,
COLTEC INDUSTRIES INC.,
COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC.,
CONAGRA PANAMA, INC.,
CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COSAN CHEMICAL CORPORATION,
COVANTA ESSEX COMPANY,
CRODA, INC.,
CRUCIBLE MATERIALS CORPORATION,
CURTISS-WRIGHT CORPORATION,
CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,
DAVANNE REALTY CO.,

DELEET MERCHANDISING CORPORATION,
DELVAL INK AND COLOR.
INCORPORATED,DILORENZO PROPERTIES
COMPANY, L.P.,
E.I. DU PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY,
EDEN WOOD CORPORATION,
ELAN CHEMICAL COMPANY, INC.,
EM SERGEANT PULP & CHEMICAL CO.,
EMERALD HILTON DAVIS, LLC,
ESSEX CHEMICAL CORPORATION,
EXXON MOBIL
F.E.R. PLATING, INC.,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORPORATION,
FLINT GROUP INCORPORATED,
FORT JAMES CORPORATION,
FOUNDRY STREET CORPORATION,
FRANKLIN-BURLINGTON PLASTICS, INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY,
GENTEK HOLDING LLC,
GIVAUDAN FRAGRANCES CORPORATION,
G. J. CHEMICAL CO.,
GOODY PRODUCTS, INC.,
GORDON TERMINAL SERVICE CO. OF N.J., INC.,
HARRISON SUPPLY COMPANY,
HARTZ MOUNTAIN CORPORATION,
HAVENICK ASSOCIATES L.P.,
HEXCEL CORPORATION,
HEXION SPECIALTY CHEMICALS, INC.,
HOFFMANN-LA ROCHE INC.,
HONEYWELL INTERNATIONAL INC.,
HOUGHTON INTERNATIONAL INC.,
HUDSON TOOL & DIE COMPANY, INC.,
HY-GRADE ELECTROPLATING CO.,
ICI AMERICAS INC.,
INNOSPEC ACTIVE CHEMICALS LLC,
INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC.,
ITT CORPORATION,

KEARNY SMELTING & REFINING CORP.,
KAO BRANDS COMPANY,
KOEHLER-BRIGITT STAR, INC.,
LINDE, INC.,
LUCENT TECHNOLOGIES, INC.,
MACE ADHESIVES & COATINGS COMPANY, INC.,
MALLINCKRODT INC.,
MERCK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC.,
NAPPWOOD LAND CORPORATION,
NATIONAL FUEL OIL, INC.,
NATIONAL-STANDARD, LLC,
NELL-JOY INDUSTRIES, INC.,
NESTLE U.S.A., INC.,
NEW JERSEY TRANSIT CORPORATION,
NEWS AMERICA, INC.,
NEWS PUBLISHING AUSTRALIA LIMITED,
NORPAK CORPORATION,
NOVELIS CORPORATION,
ORANGE AND ROCKLAND UTILITIES, INC.,
OTIS ELEVATOR COMPANY,
PRC-DESOTO INTERNATIONAL, INC.,
PASSAIC PIONEERS PROPERTIES COMPANY,
PFIZER INC.,
PHARMACIA CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING COMPANY,
PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,

QUALA SYSTEMS, INC.,
QUALITY CARRIERS, INC.,
RECKITT BENCKISER, INC.,
REICHHOLD, INC.,
REVERE SMELTING & REFINING CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.
SINGER SEWING COMPANY
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS, INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VALSPAR CORPRATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,

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

Third-Party Defendants.

**BEROL CORPORATION'S ANSWER AND
AFFIRMATIVE DEFENSES TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Berol Corporation ("Berol"), by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

Berol 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. Berol responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD-PARTY PLAINTIFFS

16-18. Berol responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

19-45. The allegations of Paragraphs 19 through 45 relate to other parties; accordingly, no response is required pursuant to CMO V.

46. Berol admits that it is a corporation organized under the laws of the State of Delaware with its principal place of business at Three Glenlake Pkwy., Atlanta, Georgia 30328. Berol denies the remaining allegations of Paragraph 46.

47-209. The allegations of Paragraphs 47 through 209 relate to other parties; accordingly, no response is required pursuant to CMO V.

210. The allegations of Paragraph 210 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

237-1263. The allegations of Paragraphs 237 through 1263 relate to other parties; accordingly, no response is required pursuant to CMO V.

1264. Berol admits that Paragraph 1264 sets forth the Third-Party Plaintiffs' definition of the term "Faber-Castell Site" for purposes of Third-Party Complaint "B." The "tax records" referenced in Paragraph 1264 speak for themselves, and Berol denies the allegations of Paragraph 1264 to the extent they are inconsistent with or unsupported by such "tax records." Berol denies the remaining allegations of Paragraph 1264.

1265. Berol admits the allegations contained in Paragraph 1265.

1266. Berol admits Faber-Castell Corporation merged with and into Berol Corporation, a Delaware corporation, and that Berol Corporation was the survivor. Berol admits

that a Certificate of Merger of Faber-Castell Corporation and Berol Corporation was executed on December 22, 1997, and filed with the Delaware Secretary of State on January 7, 1998. The remaining allegations of Paragraph 1266 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

1267. Berol admits that Faber-Castell operated a business at the Faber-Castell Site from 1919 until 1996. Berol denies that Faber-Castell existed prior to 1919. Berol lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies them.

1268. On information and belief, Berol admits that: (a) from approximately 1919 to 1954, Faber-Castell manufactured erasers and rubber bands utilizing rubber materials; and (b) raw materials used in the production process within Building 1 included rubber, calcium carbonate and polyvinyl chloride. Berol denies that Faber-Castell existed prior to 1919. Berol lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies them.

1269. Berol lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and, therefore, denies them.

1270. The allegations of Paragraph 1270 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

1271. The allegations of Paragraph 1271 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

1272. Berol lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies them.

1273. Berol lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies them.

1274. The allegations of Paragraph 1274 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

1275. The allegations of the first and second sentences of Paragraph 1275 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them. Berol denies the remaining allegations of this paragraph.

1276. The allegations of Paragraph 1276 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

1277. The allegations of the first and third sentences of Paragraph 1276 consist of legal conclusions which require no response; to the extent these allegations require a response, Berol denies them. Berol lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence and, therefore, denies them.

1278. The allegations of Paragraph 1278 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

1279-3445. The allegations of Paragraphs 1279 through 3445 relate to other parties; accordingly, no response is required pursuant to CMO V.

AS TO FIRST COUNT

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

3446. Berol incorporates by reference its responses to Paragraphs 1 through 3445 as if fully set forth herein.

3447. The allegations of Paragraph 3447 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol responds as follows. Berol denies the allegations to the extent they apply to Berol. Berol lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3447 and, therefore, denies them.

3448. The cited statutory provision speaks for itself. Berol denies the allegations to the extent they are inconsistent with or unsupported by that statutory provision.

3449. The allegations of Paragraph 3449 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol responds as follows. Berol denies the allegations to the extent they apply to Berol. Berol lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3449 and, therefore, denies them.

3450. The allegations of Paragraph 3450 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol denies them.

3451. The allegations of Paragraph 3451 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol responds as follows. Berol denies the allegations to the extent they apply to Berol. Berol lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3451 and, therefore, denies them.

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

AS TO SECOND COUNT

Statutory Contribution

3452. Berol incorporates by reference its responses to Paragraphs 1 through 3451 as if fully set forth herein.

3453. The allegations of Paragraph 3447 consist of legal conclusions which require no response. To the extent these allegations require a response, Berol responds as follows. Berol denies the allegations to the extent they apply to Berol. Berol lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3453 and, therefore, denies them.

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

AFFIRMATIVE DEFENSES

Without altering the burden of proof, Berol will rely on the following defenses and any and all further defenses that become available or appear during discovery proceedings in this action and specifically reserves its right to amend this Answer for purposes of asserting additional defenses.

FIRST AFFIMATIVE DEFENSE

3454. Third-Party Complaint "B" fails to state a cause of action against Berol upon which relief can be granted.

SECOND AFFIMATIVE DEFENSE

3455. The claims asserted against and relief sought from Berol are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.* ("WPCA").

THIRD AFFIMATIVE DEFENSE

3456. The claims asserted against Berol are barred, in whole or in part, by the entire controversy doctrine.

FOURTH AFFIMATIVE DEFENSE

3457. Third-Party Plaintiffs, or one of them, do not have standing to sue.

FIFTH AFFIMATIVE DEFENSE

3458. The claims asserted against and relief sought from Berol are barred, in whole or in part, because they are wholly speculative, conjectural, unreasonable, excessive, and arbitrary and capricious.

SIXTH AFFIMATIVE DEFENSE

3459. The claims asserted against and relief sought from Berol are barred, in whole or in part, because Berol cannot be liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Berol that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities ("applicable Environmental Laws").

SEVENTH AFFIMATIVE DEFENSE

3460. The claims asserted against Berol are barred and constitutionally impermissible, in whole or in part, to the extent they seek to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

EIGHTH AFFIMATIVE DEFENSE

3461. The claims asserted against Berol are barred, in whole or in part, to the extent they seek relief for damages incurred prior to the effective date of the Spill Act.

NINTH AFFIMATIVE DEFENSE

3462. The claims asserted against Berol fail, in whole or in part, because at all relevant times, Berol complied with all applicable Environmental Laws and industry standards, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

TENTH AFFIMATIVE DEFENSE

3463. The claims asserted against and relief sought from Berol are barred, in whole or in part, because, at all relevant times, Berol exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because each release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, was caused solely by the negligence, acts or omissions of third-parties over whom Berol had no control and no duty to control, including without limitation: (a) the State of New Jersey and its agencies, instrumentalities and officials, including, without limitation, Trustees for tidelands; and (b) the United States and its agencies, instrumentalities and officials.

ELEVENTH AFFIMATIVE DEFENSE

3464. The claims asserted against Berol are barred, in whole or in part, by the doctrine of preemption.

TWELFTH AFFIMATIVE DEFENSE

3465. The claims asserted against Berol fail, in whole or in part, because the actions or omissions of Berol were not the actual, legal, or proximate cause of Third-Party Plaintiffs' alleged damages.

THIRTEENTH AFFIMATIVE DEFENSE

3466. The claims asserted against and relief sought from Berol are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and the equitable doctrines of laches and estoppel.

FOURTEENTH AFFIMATIVE DEFENSE

3467. The claims asserted against and relief sought from Berol are barred, in whole or in part, by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and assumption of risk.

FIFTEENTH AFFIMATIVE DEFENSE

3468. The claims asserted against and relief sought from Berol are barred, in whole or in part, by the doctrine of "coming to the nuisance."

SIXTEENTH AFFIMATIVE DEFENSE

3469. The claims asserted against and relief sought from Berol for equitable contribution under the Spill Act in the Third-Party Complaint "B" are barred, in whole or in part, because: (a) equity will not compel action that is impossible to perform; (b) equity will not exceed the rights of parties existing at law; (c) equity will not consciously become an instrument of injustice; and (d) equity will not permit double satisfaction.

SEVENTEENTH AFFIMATIVE DEFENSE

3470. The claims asserted against and relief sought from Berol 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.

EIGHTEENTH AFFIMATIVE DEFENSE

3471. The relief sought against Berol is barred, in whole or in part, because if the relief sought was claimed directly by Plaintiffs it would amount to unlawful taxation.

NINETEENTH AFFIMATIVE DEFENSE

3472. The relief sought against Berol is subject to setoff and recoupment and, therefore, must be reduced accordingly.

TWENTIETH AFFIMATIVE DEFENSE

3473. The claims asserted against and relief sought from Berol are barred, in whole or in part, because 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 more than their equitable share of the liability.

TWENTY-FIRST AFFIMATIVE DEFENSE

3474. Berol denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, the claims asserted against and relief sought from Berol are barred, in whole or in part, because such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Berol exercised no control and for whose conduct Berol was not responsible including, without limitation, unpermitted and storm event discharges from publicly owned treatment works.

TWENTY-SECOND AFFIMATIVE DEFENSE

3475. The claims asserted against and relief sought from Berol are barred, in whole or in part, because if Third-Party Plaintiffs sustained any injury, such injury was caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault, 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 Berol, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs, its agents or employees.

TWENTY-THIRD AFFIMATIVE DEFENSE

3476. Although Berol denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Berol is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

TWENTY-FOURTH AFFIMATIVE DEFENSE

3477. 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.

TWENTY-FIFTH AFFIMATIVE DEFENSE

3478. The claims asserted against and relief sought from Berol are barred to the extent that the conduct of Berol alleged to give rise to liability in the Third-Party Complaint "B" is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

TWENTY-SIXTH AFFIMATIVE DEFENSE

3479. The claims asserted against Berol fail, in whole or in part, because the disposal of waste, if any, which allegedly originated from Berol, was undertaken in accordance with the then accepted and state of the art industrial practice and technology, and the then prevailing legal requirements, for which Berol cannot be found retroactively liable.

TWENTY-SEVENTH AFFIMATIVE DEFENSE

3480. The claims asserted against Berol fail, in whole or in part, because any discharge that allegedly originated from Berol, was investigated and remediated by a licensed professional under the direct oversight of State and/or federal agencies with the then accepted

and state of the art industrial practice and technology, and the then prevailing requirements, for which Berol cannot be found retroactively liable.

TWENTY-EIGHTH AFFIMATIVE DEFENSE

3481. The claims asserted against and relief sought from Berol 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 federal agencies.

TWENTY-NINTH AFFIMATIVE DEFENSE

3482. The claims asserted against and relief sought from Berol are barred, in whole or in part, because the damages Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

THIRTIETH AFFIMATIVE DEFENSE

3483. The claims asserted against and relief sought from Berol are barred, in whole or in part, to the extent that, through Third-Party Plaintiffs' own conduct, Third-Party Plaintiffs have taken actions that resulted in commingling of formerly divisible areas of environmental harm.

THIRTY-FIRST AFFIMATIVE DEFENSE

3484. Berol's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims, and excludes any such claim 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.

THIRTY-SECOND AFFIMATIVE DEFENSE

3485. The claims asserted against Berol fail, in whole or in part, because the discharges for which the Plaintiffs are seeking relief are different from Berol's alleged discharges.

THIRTY-THIRD AFFIRMATIVE DEFENSE

3486. The claims asserted against and relief sought from Berol are barred, in whole or in part, because Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law since Berol is not liable for “the same injury” caused by Third-Party Plaintiffs’ discharges and does not share a common liability to the State.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

3487. The claims asserted against and relief sought from Berol are barred, in whole or part, by Third-Party Plaintiffs’ failure to mitigate their claimed damages.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

3488. The claims asserted against Berol are barred, in whole or in part, because each release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, was caused solely by natural causes and/or the negligence, acts or omissions of third parties over whom Berol had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including, without limitation: (a) the State of New Jersey and its agencies, instrumentalities and officials, including, without limitation, Trustees for tidelands; and (b) the United States and its agencies, instrumentalities and officials.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

3489. The claims asserted against and relief sought from Berol are barred, in whole or in part, to the extent they seek to hold Berol liable, in contribution, for any claims for which it would be a violation of public policy to hold Berol liable, including but not limited to punitive damages and penalties.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

3490. 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, the claims asserted against and relief sought from Berol are barred, in whole or in part, to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Berol 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 Berol.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

3491. The claims asserted against and relief sought from Berol are barred, in whole or in part, because the relief sought against Berol, were it claimed directly by Plaintiffs, would amount to a "taking" of Berol's property in violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

THIRTY-NINTH AFFIRMATIVE DEFENSE

3492. The claims for equitable contribution under the Spill Act asserted against Berol are barred, in whole or in part, to the extent Berol has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Berol, because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTIETH AFFIRMATIVE DEFENSE

3493. Without admitting liability, Berol 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 the cause of any damages or other claims by Third-Party Plaintiffs.

FORTY-FIRST AFFIRMATIVE DEFENSE

3494. The claims asserted against Berol fail, in whole or in part, to the extent 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.*, because Third-Party Plaintiffs have failed to meet one or more procedural or substantive requirement that is a prerequisite to filing suit against Berol under that statute.

FORTY-SECOND AFFIRMATIVE DEFENSE

3495. The claims asserted against and relief sought from Berol are barred, in whole or in part, because (a) at common law, Berol 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) Berol has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets; and (c) 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 Berol directly.

FORTY-THIRD AFFIRMATIVE DEFENSE

3496. The claims asserted against Berol are barred, in whole or in part, because the State of New Jersey is legally barred from asserting direct claims against Berol 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 Berol as well, including the claims set forth in the Third-Party Complaint "B."

FORTY-FOURTH AFFIRMATIVE DEFENSE

3497. The claims asserted against and relief sought from Berol are barred, in whole or in part, by the "unclean hands" doctrine.

FORTY-FIFTH AFFIRMATIVE DEFENSE

3498. Third-Party Defendant 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 Berol.

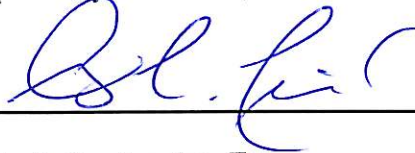
COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

3499. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

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

Dated: December 14, 2009

Respectfully submitted,




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SCHIFF HARDIN, LLP
Attorneys *Pro Hac* for Third-Party Defendant,
Berol Corporation
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Suite 6600
Chicago, Illinois 60606
Tel: (312) 258-5500; Fax: (312) 258-5600

CERTIFICATION PURSUANT TO R. 4:5-1(b) (2)

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that:

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of a third-party defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that
- (c) In the event the Court shall determine that the potential liability of a third-party defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then, upon further investigation, all or some of the following non-parties may constitute non-parties who should be joined in the action pursuant to R. 4:28
 - (i) Pics Manufacturing (including any of its successors); and
 - (ii) the non-parties listed on the October 7, 2009, posting by O'Melveny and Myers; and
- (d) In either event, some or all of such non-parties are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.



Craig L. Levinson, Esq.

Dated: December 14, 2009

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Aronsohn Weiner & Salerno, P.C.

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Tel: (201) 487-4747

Fax: (201) 487-7601

SCHIFF HARDIN, LLP

Attorneys for Third-Party Defendant Berol Corporation

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

CERTIFICATION OF SERVICE

APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS, INC.,
ASSOCIATED AUTO BODY & TRUCKS, INC.,
ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AKZO NOBEL COATINGS, INC.,
BASF CATALYSTS LLC,
BASF CONSTRUCTION CHEMICALS INC.,
BASF CORPORATION,
BAYER CORPORATION,
BEAZER EAST, INC.,
BELLEVILLE INDUSTRIAL CENTER,
BENJAMIN MOORE & COMPANY,
BEROL CORPORATION,
B-LINE TRUCKING, INC.,
BORDEN & REMINGTON CORP.,
C.S. OSBORNE & CO.,
CAMPBELL FOUNDRY COMPANY,
CASCHEM, INC.,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMTURA CORPORATION,
CLEAN EARTH OF NORTH JERSEY, INC.,
COSMOPOLITAN GRAPHICS CORPORATION,
CIBA CORPORATION,
COLTEC INDUSTRIES INC.,
COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC.,
CONAGRA PANAMA, INC.,
CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COSAN CHEMICAL CORPORATION,
COVANTA ESSEX COMPANY,
CRODA, INC.,
CRUCIBLE MATERIALS CORPORATION,
CURTISS-WRIGHT CORPORATION,
CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,
DAVANNE REALTY CO.,

DELEET MERCHANDISING CORPORATION,
DELVAL INK AND COLOR,
INCORPORATED, DILORENZO PROPERTIES
COMPANY, L.P.,
E.I. DU PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY,
EDEN WOOD CORPORATION,
ELAN CHEMICAL COMPANY, INC.,
EM SERGEANT PULP & CHEMICAL CO.,
EMERALD HILTON DAVIS, LLC,
ESSEX CHEMICAL CORPORATION,
EXXON MOBIL
F.E.R. PLATING, INC.,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORPORATION,
FLINT GROUP INCORPORATED,
FORT JAMES CORPORATION,
FOUNDRY STREET CORPORATION,
FRANKLIN-BURLINGTON PLASTICS, INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY,
GENTEK HOLDING LLC,
GIVAUDAN FRAGRANCES CORPORATION,
G. J. CHEMICAL CO.,
GOODY PRODUCTS, INC.,
GORDON TERMINAL SERVICE CO. OF N.J., INC.,
HARRISON SUPPLY COMPANY,
HARTZ MOUNTAIN CORPORATION,
HAVENICK ASSOCIATES L.P.,
HEXCEL CORPORATION,
HEXION SPECIALTY CHEMICALS, INC.,
HOFFMANN-LA ROCHE INC.,
HONEYWELL INTERNATIONAL INC.,
HOUGHTON INTERNATIONAL INC.,
HUDSON TOOL & DIE COMPANY, INC.,
HY-GRADE ELECTROPLATING CO.,
ICI AMERICAS INC.,
INNOSPEC ACTIVE CHEMICALS LLC,
INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC.,
ITT CORPORATION,

KEARNY SMELTING & REFINING CORP.,
KAO BRANDS COMPANY,
KOEHLER-BRIGITT STAR, INC.,
LINDE, INC.,
LUCENT TECHNOLOGIES, INC.,
MACE ADHESIVES & COATINGS COMPANY, INC.,
MALLINCKRODT INC.,
MERCK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC.,
NAPPWOOD LAND CORPORATION,
NATIONAL FUEL OIL, INC.,
NATIONAL-STANDARD, LLC,
NELL-JOY INDUSTRIES, INC.,
NESTLE U.S.A., INC.,
NEW JERSEY TRANSIT CORPORATION,
NEWS AMERICA, INC.,
NEWS PUBLISHING AUSTRALIA LIMITED,
NORPAK CORPORATION,
NOVELIS CORPORATION,
ORANGE AND ROCKLAND UTILITIES, INC.,
OTIS ELEVATOR COMPANY,
PRC-DESOTO INTERNATIONAL, INC.,
PASSAIC PIONEERS PROPERTIES COMPANY,
PFIZER INC.,
PHARMACIA CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING COMPANY,
PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,

QUALA SYSTEMS, INC.,
QUALITY CARRIERS, INC.,
RECKITT BENCKISER, INC.,
REICHHOLD, INC.,
REVERE SMELTING & REFINING CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.,
SINGER SEWING COMPANY
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS, INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VALSPAR CORPRATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,

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

Third-Party Defendants.

I, CRAIG L. LEVINSOHN, hereby certify as follows:

1. I am an associate with the law firm of Aronsohn Weiner & Salerno, PC, attorneys for Third Party Defendant, Berol Corporation ("Berol"), in connection with the above-captioned matter.

2. On December 14, 2009, I caused Berol's Answer to Third Party Complaint "B" and Civil Case Information Statement to be served electronically on all parties that have consented to service by posting on www.sfile.com/njdepvocc. The following counsel of record were served on that same date via regular mail.

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Guttenberg, NJ 07093
Attorneys for Passaic Pioneers Properties Company

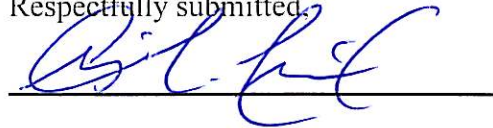
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Attorneys for Township of Cranford

Gerald Poss, Esq.
Gerald Poss, PA
58 Vost Avenue
So. Orange, NJ 07079
Attorneys for Vitusa Corp.

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

Dated: December 14, 2009

Respectfully submitted,



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