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Celanese LTD

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION; THE COMMISSIONER OF THE NEW
JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND THE ADMINISTRATOR OF THE
NEW JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

v.

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

Defendants,

v.

MAXUS ENERGY CORPORATION and TIERRA
SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

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

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ESSEX COUNTY

DOCKET NO.: ESX-L9868-05

Civil Action

**CELANESE LTD'S ANSWER TO
THIRD-PARTY COMPLAINT "B"**

AMERICAN CYANAMID COMPANY (N/K/A Wyeth Holdings Corporation);
AMERICAN INKS AND COATINGS CORPORATION;
APEXICAL, INC.;
APOLAN INTERNATIONAL, INC.;
ARKEMA, INC.;
ASHLAND, INC.;
ASHLAND INTERNATIONAL HOLDINGS, INC.;
ASSOCIATED AUTOBODY & TRUCKS;
ATLAS REFINERY, INC.;
AUTOMATIC ELECTRO-PLATING CORP.;
BASF CATALYSTS, LLC.;
BASF CONSTRUCTION CHEMICALS, INC.;
BASF CORPORATION;
BAYER CORPORATION;
BAYONNE MUNICIPAL UTILITIES AUTHORITY;
BEAZER EAST, INC.;
BELLEVILLE INDUSTRIAL CENTER;
BENJAMIN MOORE & COMPANY;
BEROL CORPORATION;
B-LINE TRUCKING, INC.;
BORDEN & REMINGTON CORP.;
BOROUGH OF CARTERET;
BOROUGH OF EAST NEWARK;
BOROUGH OF EAST RUTHERFORD;
BOROUGH OF ELMWOOD PARK;
BOROUGH OF FAIR LAWN;
BOROUGH OF FANWOOD;
BOROUGH OF FRANKLIN LAKES;
BOROUGH OF GARWOOD;
BOROUGH OF GLEN ROCK;
BOROUGH OF HALEDON;
BOROUGH OF HAWTHORNE;
BOROUGH OF KENILWORTH;
BOROUGH OF LODI;
BOROUGH OF LYNDHURST;
BOROUGH OF MOUNTAINSIDE;;
BOROUGH OF NEW PROVIDENCE;
BOROUGH OF NORTH ARLINGTON;
BOROUGH OF NORTH CALDWELL;
BOROUGH OF PROSPECT PARK;
BOROUGH OF ROSELLE;
BOROUGH OF ROSELLE PARK;
BOROUGH OF RUTHERFORD;
BOROUGH OF TOTOWA;
BOROUGH OF WALLINGTON;

BOROUGH OF WALLINGTON;
BOROUGH OF WEST PATERSON;
BOROUGH OF WOOD-RIDGE;
BP MARINE AMERICAS, INC.;
C.S. OSBORNE & CO.;
CAMPBELL FOUNDRY COMPANY;
CASCHEM, INC.;
CBS CORPORATION;
CELANESE LTD;
CHEMICAL COMPOUNDS.;
CHEMICAL WASTE MANAGEMENT, INC. and
WASTE MANAGEMENT, INC.;
CHEMTURA CORPORATION;
CIBA CORPORATION;
CITY OF CLIFTON;
CITY OF EAST ORANGE;
CITY OF ELIZABETH;
CITY OF GARFIELD;
CITY OF HACKENSACK;
CITY OF JERSEY CITY;
CITY OF LINDEN;
CITY OF NEWARK;
CITY OF ORANGE TOWNSHIP;
CITY OF PASSAIC;
CITY OF PATERSON;
CITY OF RAHWAY;
CITY OF SUMMIT;
CITY OF UNION CITY;
CLEAN EARTH OF NORTH JERSEY, INC.;
COLTEC INDUSTRIES INC.;
COLUMBIA TERMINALS, INC.;
COMO TEXTILE PRINTS, INC.;
CONAGRA PANAMA, INC.;
COPOPCO, INC.;
CONSOLIDATED RAIL CORPORATION;
COOK & DUNN PAINT CORPORATION;
COSAN CHEMICAL CORPORATION;
COSMOPOLITAN GRAPHICS CORPORATION;
COVANTA ESSEX COMPANY;
CRODA, INC.;
CRUCIBLE MATERIALS CORPORATION;
CURTISS-WRIGHT CORPORATION;
CWC INDUSTRIES, INC.;
CYTEC INDUSTRIES;
CARLING INTERNATIONAL, INC.;
DAVANNE REALTY CO.;

DELEET MERCHANDISING CORPORATION;
DELVAL INK AND COLOR, INCORPORATED;
DILORENZO PROPERTIES COMPANY, L.P.;
THE DOW CHEMICAL CORPORATION;
DURAPORT REALTY ONE LLC;
DURAPORT REALTY TWO LLC;
DUNDEE WATER POWER AND LAND COMPANY;
EASTMAN KODAK COMPANY;
EDEN WOOD CORPORATION;
E.I. DU PONT DE NEMOURS AND COMPANY;
ELAN CHEMICAL COMPANY, INC.;
ELECTRIC BOAT CORPORATION (improperly
identified as GENERAL DYNAMICS CORPORATION);
EM SERGEANT PULP & CHEMICAL CO.;
EPEC POLYMERS, INC.;
ESSEX CHEMICAL CORPORATION;
EXXON MOBIL;
FER 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.;
G.J. CHEMICAL CO.;
GARFIELD MOLDING COMPANY, INC.;
GATX TERMINALS CORP.;
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS;
GENERAL ELECTRIC COMPANY;
GENTEK HOLDING LLC;
GETTY PROPERTIES CORP.; GOODRICH
CORPORATION (on behalf of KALAMA SPECIALTY
CHEMICALS INC.);
GIVAUDAN FRAGRANCES CORPORATION;
GOODY PRODUCTS, INC.;
GORDON TERMINAL SERVICE CO. OF NJ, INC.;
HARRISON SUPPLY COMPANY;
HARTZ MOUNTAIN CORPORATION;
HAVENICK ASSOCIATES L.P.;
HESS CORPORATION;
HEXCEL CORPORATION;
HEXION SPECIALTY CHEMICALS, INC.;
HOFFMAN-LA ROCHE INC.;
HONEYWELL INTERNATIONAL INC.;

HOUGHTON INTERNATIONAL INC.;
HOUSING AUTHORITY OF NEWARK;
HUDSON TOOL & DIE COMPANY, INC.;
HY-GRADE ELECTROPLATING CO.;
ICI AMERICAS INC.;
IMTT-BAYONNE;
INNOSPEC ACTIVE CHEMICALS LLC;
INX INTERNATIONAL INK CO.;
ISP CHEMICALS INC.;
ITT CORPORATION;
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY;
JOINT DEFENSE GROUP (JDG); A Group of Non-Municipal Third Party Defendants,
JOINT MEETING OF ESSEX & UNION COUNTIES;
KAO BRANDS COMPANY;
KEARNY SMELTING & REFINING CORP.;
KINDER MORGAN ENERGY PARTNERS, L.P.;
KOEHLER-BRIGITT STAR, INC.;
LEGACY VULCAN CORPORATION;
LINDE, INC.;
LINDEN ROSELLE SEWERAGE AUTHORITY;
LUCENT TECHNOLOGIES, INC.;
MACE ADHESIVES & COATINGS COMPANY, INC.;
MALLINCKRODT INC.;
McKESSON CORPORATION (on behalf of itself and SAFETY-KLEEN ENVIROSYSTEMS COMPANY);
McKESSON ENVIROSYSTEMS;
MERCK & CO., INC.;
METALS MANAGEMENT NORTHEAST, INC.;
MI HOLDINGS, INN.;
MILLER ENVIRONMENTAL GROUP, INC.;
MORTON INTERNATIONAL, 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;
N L INDUSTRIES, INC.;
NORPAK CORPORATION;
NOVELIS CORPORATION;
NPEC, INC.;
ORANGE AND ROCKLAND UTILITIES, INC.;
OTIS ELEVATOR COMPANY;

PASSAIC PIONEERS PROPERTIES COMPANY;
PASSAIC VALLEY SEWERAGE COMMISSIONERS
(PVCS);
PFIZER INC.;
PHARMACIA CORPORATION;
PHELPS DODGE INDUSTRIES, INC.;
PHILBRO, INC.;
PITT-CONSOL CHEMICAL COMPANY;
PIVOTAL UTILITY HOLDINGS, INC.;
POWER TEST REALTY COMPANY, L.P.;
PPG INDUSTRIES, INC.;
PRC-DESOTO INTERNATIONAL, INC.;
PRAXAIR, INC.;
PRECISION MANUFACTURING GROUP, LLC;
PRENTISS INCORPORATED;
PROCTOR & 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.;
RAHWAY VALLEY SEWERAGE AUTHORITY
(RVSA);
RECKITT BENSKISER, INC.;
REICHHOLD, INC.;
REVERE SMELTING & REFINING CORPORATION;
REXAM BEVERAGE CAN COMPANY;
ROMAN ASPHALA CORPORATION;
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP;
RUTHERFORD CHEMICALS, LLC;
R.T. VANDERBILT COMPANY, INC.;
RUTHERFORD CHEMICALS LLC;
S&A REALTY ASSOCIATES, INC.;
SCHERING CORPORATION;
SEQUA CORPORATION;
SETON COMPANY;
SHULTON, INC.;
SIEMENS WATER TECHNOLOGIES CORP.;
SINGER SEWING COMPANY;
SPECTRASERV, INC.;
STWB, INC.;
SUN CHEMICAL CORPORATION;
SUN PIPELINE CO.;

SUNOCO, INC. (R&M) f/k/a SUN REFINING &
MARKETING CO.;
SUNOCO, INC. f/k/a SUN OIL CO.;
SUPERIOR MPM LLC;
SVP WORLDWIDE, LLC;
TATE & LYLE INGREDIENTS AMERICAS, INC.;
TEVA PHARMACEUTICALS USA, INC.;
TEVAL CORP.;
TEXTRON INC.;
THE DIAL CORPORATION;
THE NEW JERSEY DEPARTMENT OF
AGRICULTURE;
THE NEW JERSEY DEPARTMENT OF
TRANSPORTATION;
THE NEWARK GROUP, INC.;
THE OKONITE COMPANY, INC.;
THE PORT AUTHORITY OF NY & NJ;
THE SHERWIN-WILLIAMS COMPANY;
THE STANLEY WORK;
THE STATE OF NEW JERSEY;
THIRTY-THREE QUEEN REALTY INC.;
THOMAS & BETTS CORPORATION;
THREE COUNTY VOLKSWAGON CORPORATION;
TIDEWATER BALING CORP.;
TIFFANY & CO.;
TIMCO, INC.;
TOWN OF BELLEVILLE;
TOWN OF KEARNY;
TOWN OF NUTLEY;
TOWN OF WESTFIELD;
TOWN OF WOODBRIDGE;
TOWNSHIP OF BLOOMFIELD;
TOWNSHIP OF CEDAR GROVE;
TOWNSHIP OF CLARK;
TOWNSHIP OF CRANFORD;
TOWNSHIP OF IRVINGTON;
TOWNSHIP OF LITTLE FALLS;
TOWNSHIP OF LIVINGSTON;
TOWNSHIP OF LYNDHURST;
TOWNSHIP OF MAPLEWOOD;
TOWNSHIP OF MILLBURN;
TOWNSHIP OF MONTCLAIR;
TOWNSHIP OF SADDLE BROOK;
TOWNSHIP OF SCOTCH PLAINS;
TOWNSHIP OF SOUTH HACKENSACK;
TOWNSHIP OF SOUTH ORANGE VILLAGE;

TOWNSHIP OF SPRINGFIELD;
TOWNSHIP OF WEST ORANGE;
TOWNSHIP OF WCKOFF;
TRMI-H LLC;
TRIMAX BUILDING PRODUCTS, INC.;
TROY CHEMICAL CORPORATION, INC.;
UNIVERSAL OIL PRODUCTS COMPANY;
V. OTTILIO & SONS, INC.;
VALSPAR CORPORATION;
VELSICOL CHEMICAL CORPORATION;
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.;
VERTELLUS SPECIALTIES, INC.;
VILLAGE OF RIDGEWOOD;
VITUSA CORP.;
VOLCAN MATERIALS COMPANY;
W.A.S. TERMINALS CORPORATION;
W.A.S. TERMINALS, INC.;
WASTE MANAGEMENT, INC.;
W.C. INDUSTRIES;
WHITTAKER CORPORATION;
WIGGINS PLASTICS, INC.;
WYETH and WYETH HOLDINGS CORPORATION;
ZENECA INC.;

Third-Party Defendants.

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

GENERALLY

Celanese 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.”

PROCEDURAL BACKGROUND

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

AS TO THIRD-PARTY PLAINTIFFS

16-18. No response is required pursuant to CMO V.

AS TO THIRD-PARTY DEFENDANTS

19-52. The allegations in Paragraphs 19-52 relate to other parties, therefore pursuant to CMO V no response is required.

53. Celanese admits to the allegation in Paragraph 53.

54-209. The allegations in Paragraphs 19-209 relate to other parties, therefore pursuant to CMO V no response is required.

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

DEFINITIONS

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

FACTUAL ALLEGATIONS

COMMERCIAL SITES

237-689. The allegations in Paragraphs 237-689 relate to other parties, therefore pursuant to CMO V no response is required.

690. Celanese admits to the allegation set forth in Paragraph 690.

691. Celanese admits to the allegation set forth in Paragraph 691.

692. Celanese admits to the allegation set forth in Paragraph 692.

693. Celanese admits to the allegation set forth in Paragraph 693.

694. Celanese admits to the allegation set forth in Paragraph 694.

695. Celanese admits to the allegation set forth in Paragraph 695.

696. Celanese neither admits nor denies the allegations set forth in Paragraph 699.

Celanese is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 696.

697. Celanese neither admits nor denies the allegations set forth in Paragraph 699.

Celanese is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 697.

698. Celanese neither admits nor denies the allegations set forth in Paragraph 699.

Celanese is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 698.

699. Celanese neither admits nor denies the allegations set forth in Paragraph 699.

Celanese is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 699. To the extent the allegations are based upon an Order allegedly issued by NJDOH, the document speaks for itself.

700. Celanese neither admits nor denies the allegations set forth in Paragraph 700. To

the extent the allegations are based upon an August 10, 1976 NJDEP memorandum and May 1976 spill report, the documents speak for itself.

701. Celanese neither admits nor denies the allegations set forth in Paragraph 701. To

the extent the allegations are based upon a June 8, 1979 NJDEP stream contamination report, the document speaks for itself.

702. Celanese neither admits nor denies the allegations set forth in Paragraph 702. To the extent the allegations are based upon the Celanese January 21, 1980 letter to NJDEP, the document speaks for itself.

703. Celanese neither admits nor denies the allegations set forth in Paragraph 703. To the extent the allegations are based upon the Celanese January 20, 1981 letter to the Office of Hazardous Substance Control, the document speaks for itself.

704. Celanese neither admits nor denies the allegations set forth in Paragraph 704. To the extent the allegations are based upon an August 16, 1987 investigation report from NJDEP, the document speaks for itself.

705. Celanese neither admits nor denies the allegations set forth in Paragraph 705. To the extent the allegations are based upon a June 1987 report prepared by Environ Corporation, the document speaks for itself.

706. Celanese neither admits nor denies the allegations set forth in Paragraph 706. To the extent the allegations are based upon an April 6, 1992 report from the New Jersey State Police, the document speaks for itself.

707. Celanese neither admits nor denies the allegations set forth in Paragraph 707. To the extent the allegations are based upon the Celanese January 11, 1994 letter to NJDEPE, the document speaks for itself.

708. Celanese neither admits nor denies the allegations set forth in Paragraph 708, and refers to the NJDEP Site Remediation file for a description and location of contaminants found at the Celanese site.

709. Celanese denies the allegation set forth in Paragraph 709.

710. Celanese denies the allegation set forth in Paragraph 710.

711. Celanese neither admits nor denies the allegations set forth in Paragraph 711 in that the September 15, 2003 letter from EPA to Celanese speaks for itself.

712. The allegations in Paragraph 201 state a legal conclusion as to which no response is required.

713-3445. The allegations in Paragraphs 713-3445 relate to other parties, therefore pursuant to CMO V no response is required.

FIRST COUNT

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

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

3447-3448. The allegations in Paragraphs 3447-3448 state a legal conclusion as to which no response is required.

3449. To the extent the allegations in Paragraph 3449 relate to Celanese, Celanese denies such allegations.

3450. Celanese is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3450. To the extent an answer is required, Celanese denies the allegations in Paragraph 3450.

3451. The allegations in Paragraph 3451 state a legal conclusion as to which no response is required. To the extent an answer is required, Celanese denies the allegations in Paragraph 3451.

SECOND COUNT

Statutory Contribution

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

3453. The allegations in Paragraph 3453 state a legal conclusion as to which no response is required. To the extent an answer is required, Celanese denies the allegations in Paragraph 3453.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

2. Celanese is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. (“Spill Act”).

THIRD AFFIRMATIVE DEFENSE

3. 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

4. Third-Party Plaintiffs have no Spill Act claim against Celanese because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

5. Third-Party Plaintiffs have no right of contribution against Celanese under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

7. 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 Celanese under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

9. 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

10. 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

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

13. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Celanese 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

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

16. 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

17. 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

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

NINETEENTH AFFIRMATIVE DEFENSE

19. The claims asserted against Celanese in the Third-Party Complaint are barred because at all relevant times Celanese exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any

hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Celanese had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWENTIETH AFFIRMATIVE DEFENSE

20. 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

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Third-Party Plaintiffs' claims against Celanese 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

23. 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

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

30. Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs' have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs' have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Celanese did not discharge indirectly via combined sewer overflow into the Passaic River from the Doremus Avenue facility.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement ... of any natural resources damaged or destroyed by a discharge" under the Spill Act.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the "Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. Celanese denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Celanese exercised no control and for whose conduct Celanese was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

36. If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs' recovery against Celanese, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

40. The disposal of waste, if any, which allegedly originated from Celanese, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which Celanese cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

45. Celanese'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 parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

50. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Celanese are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Celanese 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 Celanese. Examples of legal extinguishments that are or may be applicable to Celanese include, with respect to each such site:

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

FIFTY-FIRST AFFIRMATIVE DEFENSE

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

FIFTY-SECOND AFFIRMATIVE DEFENSE

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

FIFTY-THIRD AFFIRMATIVE DEFENSE

53. To the extent Celanese or others are acting or have acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Celanese, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

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

FIFTY-FIFTH AFFIRMATIVE DEFENSE

55. Neither the Spill Act nor WPCA provide for a private cause of action for natural resource damages, therefore Third-Party Plaintiffs' claims are barred.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

56. The WPCA does not provide for a private cause of action, therefore to the extent the allegations are based on the WPCA the Third-Party Plaintiffs' claims are barred.

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

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

FIFTY-EIGHTH AFFIRMATIVE DEFENSE

58. Celanese reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

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

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

DESIGNATION OF TRIAL COUNSEL

60. In accordance with Rule 4:25-4 you are hereby notified that Craig S. Provorny, Esq. is assigned to try this case.

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

Respectfully submitted,
HEROLD LAW, P.A.
Attorney for Third-Party Defendant
Celanese LTD.
25 Independence Blvd.
Warren, New Jersey 07059
908-647-1022
908-647-7721



Anthony J. Reitano

Dated: March 19, 2010

CERTIFICATE OF SERVICE


ANTHONY J. REITANO, of full age, hereby certifies as follows:

1. I am an attorney-at-law admitted to practice in the State of New Jersey and a member of the firm of Herold Law, P.A., attorneys for Third-Party Defendant Celanese LTD (“Celanese”).

2. On the date set forth below, I caused to be submitted for filing, via regular mail, with the Clerk of the Superior Court, Essex County Courthouse, 50 West Market Street, Newark, New Jersey 07102, an original and one copy of the Answer of Third-Party Defendant Complaint “B” and Civil Case Information Statement (“CIS”).

3. On the date set forth below, I caused to be electronically served, by posting on www.sfile.com/njdepvocc, a true and accurate copy of the Answer of Third-Party Defendant Celanese LTD to Third-Party Complaint “B” and Case Information Statement upon all parties that have consented to electronic service.

4. On the date set forth below, I caused to be served, via regular mail, a true and accurate copy of the Answer of Third-Party Defendant Celanese LTD to Third-Party Complaint “B” and Case Information Statement upon Counsel of Record for parties that have not consented to electronic service, listed on the attached “Third-Party Defendants for Regular Service.”



Anthony J. Reitano, Esq.

DATED: March 19, 2010

Third-Party Defendants for Regular Service as of March 19, 2010

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE COUNSEL OF RECORD
Borough of Hasbrouck Heights	A	Richard J. Dewland Coffey & Associates 465 South Street Morristown, NJ 07960 973.539.4500 rjd@coffeylaw.com
City of Orange	A	Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 -fax jmcgovern@ci.orange.nj.us
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com
Township of Hillside	A	Christine M. Burgess Township Attorney Hillside Township Municipal Bldg. 1409 Liberty Ave. Hillside, NJ 07205 973.926.3000 973.926.9232 – fax
Township of Irvington	A	(Ilustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 - fax