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*Attorneys for Third-Party Defendant*

*Chemical Compounds, Inc.*

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**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, TIERA SOLUTIONS,  
INC., MAXUS ENERGY CORPORATION,  
REPSOL YPF, S.A., YPF, S.A. YPF  
HOLDINGS, INC. and CLH HOLDINGS,  
INC.,**

*Defendants,*

*and*

**MAXUS ENERGY CORPORATION and  
TIERA SOLUTIONS, INC.**

*Third-Party Plaintiffs,*

v.

**3M COMPANY, et al.,**

*Third -Party Defendants.*

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**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY**

**DOCKET NO. ESX L-9868-05 (PASR)**

**CIVIL ACTION**

**ANSWER, AFFIRMATIVE DEFENSES,  
CERTIFICATION AND DESIGNATION  
OF TRIAL ATTORNEY**

**CHEMICAL COMPOUNDS, INC.'S ANSWER  
TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant, Chemical Compounds, Inc. ("Chemical Compounds"), a New Jersey Corporation, by way of Answer to the Third-Party Complaint "B" asserted by

Defendants/Third-Party Plaintiffs, Maxus Energy Corporation and Tiera Solutions, Inc., says as follows:

**GENERALLY**

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

**PROCEDURAL BACKGROUND**  
**(Paragraphs 1 through 15)**

2. Third-Party Defendant, Chemical Compounds, responds that the allegations of these paragraphs relate to parties or sites other than those which relate to this Third-Party Defendant and pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated and therefore denies the allegations in said paragraph.

**THIRD-PARTY PLAINTIFFS**  
**(Paragraphs 16 through 18)**

3. Third-Party Defendant, Chemical Compounds, responds that the allegations of these paragraphs relate to parties or sites other than those which relate to this Third-Party Defendant and pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, states that it is

without sufficient knowledge or information to form a belief as to the truth of the matter stated and therefore denies the allegations in said paragraph.

**THIRD-PARTY DEFENDANTS**  
**(Paragraphs 19 through 210)**

4. To the extent that the allegations in paragraphs 19 through 210 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated and therefore denies the allegations in said paragraph.
5. In response to Paragraph 54, Third-Party Defendant, Chemical Compounds, admits the allegations contained in paragraph 54.
6. The allegations of paragraph 210 state a legal conclusion to which no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, denies the allegations in said paragraph.

**DEFINITIONS**  
**(Paragraphs 211 through 236)**

7. Paragraphs 211 through 236 contain definitions which speak for themselves. Pursuant to Case Management Order V, no response is required.

**FACTUAL ALLEGATIONS**  
**(Paragraphs 237 through 3445)**

8. To the extent that the allegations in paragraphs 237 through 3445 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, denies the allegations in said paragraph.
9. Paragraph 2084 contains a definition which speaks for itself. If a response is required, Third-Party Defendant, Chemical Compounds, denies the allegations in said paragraph.
10. Third-Party Defendant, Chemical Compounds admits that the “PPG Site” is adjacent to the Passaic River; however, Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the remaining allegations contained in Paragraph 2085 and therefore denies the allegations in remainder of said paragraph.
11. Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated and therefore denies the allegations in paragraph 2086.
12. Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated and therefore denies the allegations in paragraph 2087.
13. To the extent that the allegations in paragraphs 2088 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant,

Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated in paragraph 2088.

14. To the extent that the allegations in paragraphs 2089 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required. To the extent that the allegations in Paragraph 2089 relate to it, Third-Party Defendant, Chemical Compounds denies the allegations contained therein
15. In response to Paragraph 2106, Third-Party Defendant, Chemical Compounds, admits the allegations contained in paragraph 2106.
16. In response to Paragraph 2107, Third-Party Defendant, Chemical Compounds, admits that on or about July 1, 1986, it acquired and became the owner and operator of real property and associated improvements located on a portion of the PPG Site located at 29-75 Riverside Avenue in Newark, New Jersey, also designated as Block 614, lot 66 on the Tax Map of the City of Newark. Third-Party Defendant, Chemical Compounds denies that it acquired and became the owner and operator acquired and became the owner and operator of Block 614, lot 1. Third-Party Defendant, Chemical Compounds further admits that its operations primarily occur in Building 17, which is adjacent to the Passaic River. Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the location of the Herbert Street sewer lines.
17. In response to Paragraph 2108, Third-Party Defendant, Chemical Compounds, admits the allegations contained in paragraph 2108.

18. In response to Paragraph 2109, Third-Party Defendant, Chemical Compounds, admits that at various times it utilized some or all of the following substances on, to, and from the Block 614, Lot 66: acetic acid, adipic acid, aniline, benzene, benzoic acid, chlorobenzene, chloroform, ethyl benzene, methanol, methylene chloride, naphthalene, 2-nitrophenol, tetrachloroethylene, toluene, xylene, lead, zinc, and cyanide (hereinafter referred to as the "substances"). Third-Party Defendant, Chemical Compounds denies that it manufactured and/or discharged the substances on, to, and from the Block 614, Lot 66. To the extent that the allegations in paragraphs 2109 relate to Block 614, Lot 1, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated regarding any allegations relating to Block 614, Lot 1.
19. In response to Paragraph 2110, Third-Party Defendant, Chemical Compounds, admits that on January 7, 1992 the Newark Fire Department and NJDEP responded to a complaint of discharge, however Chemical Compounds denies that the materials discharged were hazardous materials. Third-Party Defendant, Chemical Compounds, further admits that after obtaining a PVSC permit, Chemical Compounds was cited by the PVSC and that the document speaks for itself.
20. In response to Paragraph 2111, Third-Party Defendant, Chemical Compounds, admits that on October 5, 1993 a fire occurred at the PPG site and that shortly thereafter the Bureau of Emergency Response responded to the fire. Third-Party Defendant, Chemical

Compounds denies there were any discharges as a result of the fire and further denies the remaining allegations of paragraph 2111.

21. In response to Paragraph 2112, Third-Party Defendant, Chemical Compounds, admits that it received a General Notice Letter from the EPA. Third-Party Defendant, Chemical Compounds further admits that the document speaks for itself; however, it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
22. In response to Paragraph 2113, Third-Party Defendant, Chemical Compounds, denies the allegations in said paragraph.

**FIRST COUNT**

**New Jersey Spill Compensation and Control Act, NJSA 58:10-23.11f.a.(2)(a)  
(Paragraphs 3446 through 3451)**

23. Third-Party Defendant, Chemical Compounds, repeats and incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 22 herein.
24. To the extent that the allegations in Paragraph 3447 relate to it, Third-Party Defendant, Chemical Compounds, denies the allegations contained therein. To the extent that the allegations in Paragraph 3447 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required.

25. The allegations of paragraph 3448 state a legal conclusion to which no response is required and/or recite a statute which speaks for itself. If a response is required, Third-Party Defendant, Chemical Compounds, denies the allegations in said paragraph.
26. To the extent that the allegations in Paragraph 3449 relate to it, Third-Party Defendant, Chemical Compounds denies the allegations contained therein and further denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations in Paragraph 3449 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required.
27. To the extent that the allegations in paragraphs 3450 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required. If a response is required, Third-Party Defendant, Chemical Compounds, states that it is without sufficient knowledge or information to form a belief as to the truth of the matter stated in said paragraph.
28. To the extent that the allegations in Paragraph 3451 relate to it, Third-Party Defendant, Chemical Compounds denies the allegations contained therein and further denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations in Paragraph 3451 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required.



**WHEREFORE**, Third-Party Defendant, Chemical Compounds, demands judgment dismissing the Third-Party Complaint “B”, with prejudice and awarding costs, attorneys’ fees and any further relief the Court deems equitable and just.

**SECOND COUNT**  
**Statutory Contribution**  
**(Paragraphs 3452 through 3453)**

29. Third-Party Defendant, Chemical Compounds, repeats and incorporates by reference, as if fully set forth herein, its responses and denials as asserted in Paragraphs 1 through 28 herein.
30. To the extent that the allegations in Paragraph 3453 relate to it, Third-Party Defendant, Chemical Compounds denies the allegations contained therein and further denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations in Paragraph 3453 relate to other parties or sites, Third-Party Defendant, Chemical Compounds, responds that pursuant to Case Management Order V, no response is required.

**WHEREFORE**, Third-Party Defendant, Chemical Compounds, demands judgment dismissing the Third-Party Complaint “B”, with prejudice and awarding costs, attorneys’ fees and any further relief the Court deems equitable and just.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

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

### **SECOND AFFIRMATIVE DEFENSE**

Third-Party Defendant, Chemical Compounds, 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**

Claims of Third-Party Plaintiffs, their agents, employees, successors and assigns (“Third-Party Plaintiffs”) 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”).

### **FOURTH AFFIRMATIVE DEFENSE**

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

### **FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs’ claims are barred by the entire controversy doctrine.

#### **SIXTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have no right of contribution against Third-Party Defendant, Chemical Compounds under the WPCA.

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTH AFFIRMATIVE DEFENSE**

Third-Party Defendant, Chemical Compounds cannot be liable for or be required to pay Third-Party Plaintiffs' damages 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").

#### **NINTH 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.

#### **TENTH 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.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

The claims asserted against Third-Party Defendant, Chemical Compounds in the Complaint are barred because at all relevant times Third-Party Defendant exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendant had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

The Third-Party Plaintiffs' claims are barred in whole or in part by the doctrine of preemption.

#### **FOURTEENTH THIRD AFFIRMATIVE DEFENSE**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims against Third-Party Defendant are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

#### **SIXTEENTH 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.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of unclean hands, collateral estoppel, resjudicata, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' misconduct.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

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

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

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

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

#### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1 including, without limit, State of New Jersey agencies and instrumentalities, including without limit Trustees for tidelands, and United States agencies and instrumentalities with liability under the Spill Act.

#### **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SEVENTH AFFIRMATIVE DEEENSE**

Third-Party Defendant denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendant exercised no control and for whose

conduct Third-Party Defendant was not responsible including, without limitation, unpermitted and storm event discharges from publicly owned treatment works.

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

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

#### **TWENTY-NINTH AFFIRMATIVE DEFENSE**

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

#### **THIRTIETH 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-FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Complaint is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs, including, without limit, through issuance of a no further action letter, consent order, settlement agreement or other applicable document.

### **THIRTY-SECOND AFFIRMATIVE DEFENSE**

The disposal of waste, if any, which allegedly originated from Third-Party Defendant, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements.

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

Any discharge that allegedly originated from Third-Party Defendant, was investigated and remediated by a licensed professional and under the direct oversight of State and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements.

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

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

#### **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties 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.

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

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

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

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) are not liable for “the same injury” caused by Third-Party Plaintiffs’ discharges and do not share a common liability to the State.

### **FORTIETH AFFIRMATIVE DEFENSE**

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

### **FORTY-FIRST AFFIRMATIVE DEFENSE**

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

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

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

### **FORTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **FORTY-FOURTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs do not have standing to bring this action.

#### **FORTY-FIFTH 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 Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant. Examples of legal extinguishments that are or maybe applicable to Third-Party Defendant include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- 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 Third-Party Defendant, 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 Third-Party Defendant, directly or indirectly, of any “No Further Action” (a/k/a “NFA”) determination, “Negative Declaration,” or similar determination.

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

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

#### **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

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

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

To the extent Third-Party Defendant is acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, the claims for equitable contribution under the Spill Act in the Third-

Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

#### **FORTY-NINETH AFFIRMATIVE DEFENSE**

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

**WHEREFORE**, Third-Party Defendant, Chemical Compounds 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.

**HIMELMAN, WERTHEIM & GELLER, LLC**  
Attorneys for Third-Party Defendant  
Chemical Compounds, Inc.

By: \_\_\_\_\_

Stephen R. Geller

Dated December 22, 2009

#### **COUNTERCLAIMS, CROSS-CLAIMS AND THIRD/FOURTH-PARTY CLAIMS**

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

**DESIGNATION OF TRIAL ATTORNEY**

Pursuant to Rule 4:25-4, plaintiff hereby designates Stephen R. Geller, Esq. as trial counsel.

**HIMELMAN, WERTHEIM & GELLER, LLC**  
Attorneys for Third-Party Defendant  
Chemical Compounds, Inc.

By: \_\_\_\_\_

Stephen R. Geller

Dated December 22, 2009

**CERTIFICATION PURSUANT  
TO RULE 4:5-1**

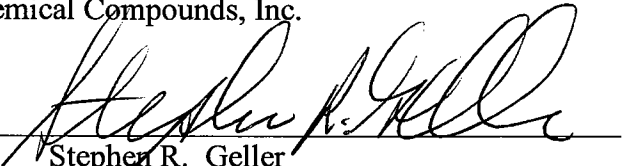
Pursuant to R. 4:5-1 (b)(2), the undersigned hereby certifies that:

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that
- (c) In the event the Court shall determine that the potential liability of a Third-Party Defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the

October 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 are subject to joinder pursuant to R 4:29-1 because of potential liability to any party on the basis of the same transactional facts.

**HIMELMAN, WERTHEIM & GELLER, LLC**  
Attorneys for Third-Party Defendant  
Chemical Compounds, Inc.

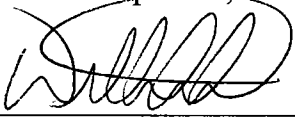
By:   
Stephen R. Geller

Dated December 22, 2009

**CERTIFICATION REGARDING FILING AND SERVICE**

The undersigned hereby certifies that a copy of the within pleading was filed with the Court and served upon Defendant's counsel, within the time required by the Rules of Court and the Case Management Orders entered by this Court via sfile email or regular mail pursuant to the December 16, 2009 service list.

**HIMELMAN, WERTHEIM & GELLER, LLC**  
Attorneys for Third-Party Defendant  
Chemical Compounds, Inc.

By:   
William A. Aitken, Jr.

Dated December 22, 2009