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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,

TIERRA SOLUTIONS, INC. and MAXUS
ENERGY CORPORATION,

Third-Party Plaintiffs,

vs.

3M COMPANY, ET AL.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**E. I. DU PONT DE NEMOURS AND
COMPANY'S ANSWER TO THIRD-
PARTY COMPLAINT "B"**

Third-Party Defendant E. I. du Pont de Nemours and Company ("DuPont"), incorrectly identified in the Complaint as "E.I. du Pont de Nemours and Company", 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

1. DuPont 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

(Paragraphs 1 through 15)

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

AS TO THE PARTIES

(Paragraphs 16 through 210)

16-77. To the extent that the allegations in Paragraphs 16 through 77 relate to other parties, no response is required pursuant to CMO V.

78. DuPont admits that it is a corporation organized under the laws of the State of Delaware with its principal place of business at 1007 Market Street in Wilmington, Delaware. The remaining allegations of this paragraph are denied.

79-210. To the extent that the allegations in Paragraphs 79 through 210 relate to other parties, no response is required pursuant to CMO V.

AS TO DEFINITIONS

(Paragraphs 211 through 236)

211-236. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

237-1034. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

DuPont Grasselli Site

1035. DuPont admits that the Grasselli Plant consists of approximately 206 acres of real property and associated improvements located at South Wood Avenue, Linden, New Jersey. The remaining allegations of this paragraph are denied.

1036. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

1037. DuPont admits that Grasselli Chemical Company acquired the Grasselli Plant in 1885, and that it operated a chemical manufacturing facility thereon thereafter. The remaining allegations of this paragraph are denied.

1038. DuPont admits that at certain times after 1928 the Grasselli Plant manufactured each of the named compounds. The remaining allegations of this paragraph are denied.

1039. DuPont admits that it acquired the Grasselli Plant in approximately 1928, and that it thereafter operated a chemical manufacturing facility at the Grasselli Plant until the fall of 1990. The remaining allegations of this paragraph are denied.

1040. The allegations of this paragraph state legal conclusions to which no response is required.

1041. DuPont admits that each of the named compounds was manufactured at a certain time after 1928 at the Grasselli Plant. The remaining allegations of this paragraph are denied.

1042. DuPont admits that during World War II it manufactured DDT at the Grasselli Plant and was a supplier of DDT to the United States government. The remaining allegations of this paragraph are denied.

1043. DuPont admits that a portion of the Grasselli Plant area was leased to Wade Brothers. DuPont is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

1044. DuPont admits that portions of the Grasselli Plant are adjacent to the Arthur Kill and to Piles Creek, that Piles Creek is a tributary of the Arthur Kill, that the Arthur Kill is a tidal strait separating the western side of Staten Island from New Jersey, and that the Arthur Kill runs between Raritan Bay and Newark Bay. The remaining allegations of this paragraph are denied.

1045. Denied.

1046. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

1047. Denied. The March 30, 1990 document speaks for itself and was not authored by DuPont.

1048. DuPont admits that as of 1928 phosphate plaster, silicate mud, Hypo mud, and sodium sulfate salt cake were disposed of at the Grasselli Plant by pumping those aqueous materials directly onto the ground in a marshy area west of the Plant. The remaining allegations of this paragraph are denied.

1049. DuPont admits that at certain times each of the following was disposed of in two disposal areas at the Grasselli Plant: phosphate plaster; hypo muds; sodium sulfate salt cake;

silicate muds; strontium nitrate mud; and silicate muds. The remaining allegations of this paragraph are denied.

1050. DuPont admits that between 1940 and 1949 a small pond was constructed on the Grasselli Plant for the disposal of aqueous wastes from the chloroneb and methoxychlor processes, and that these wastes were pumped into the pond and allowed to evaporate and/or seep into the ground. DuPont also admits that this practice ceased in 1977 when settled residuals were dismantled and de-inventoried. The remaining allegations of this paragraph are denied.

1051. DuPont admits that in 1964 aluminum chloride and hydrochloric acid were discharged to a diked area in the southern portion of the Grasselli Plant. The remaining allegations of this paragraph are denied.

1052. Denied. The referenced document speaks for itself.

1053. Admitted.

1054. DuPont admits that a ship, the Harold H. Jaquet, spilled 12-25 tons of sulfur into the Arthur Kill on December 19, 1984. The remaining allegations of this paragraph are denied.

1055. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

1056. Denied.

1057. Denied. The referenced document speaks for itself.

1058. Denied. The referenced document speaks for itself.

1059. Denied. The referenced document speaks for itself.

1060. Denied. The referenced document speaks for itself.

1061. Denied. The referenced document speaks for itself.

1062. Denied. The referenced document speaks for itself.

1063. Denied. The referenced document speaks for itself.

1064. Denied. The referenced document speaks for itself.

1065. Denied. The referenced document speaks for itself.

1066. Denied. The referenced document speaks for itself.

1067. Denied.

1068. DuPont admits that its closing of the Grasselli Plant required compliance with ECRA, and that the ECRA Remedial Investigation was conducted through 1999. The remaining allegations of this paragraph are denied.

1069. DuPont admits that the New Jersey Turnpike Authority stated that it observed two seeps at the Piles Creek Wetlands Mitigation Project Area, and that samples of the seeps indicated, according to the New Jersey Turnpike Authority, the presence of hydrogen sulfide vapors, copper, arsenic, mercury, DDD, and DDE. The remaining allegations of this paragraph are denied.

1070. The allegations of this paragraph state legal conclusions to which no response is required. To the extent those allegations state allegations of fact, DuPont is without knowledge or information sufficient to form a belief as to the truth of those allegations.

1071. DuPont admits that at certain times the named compounds have been detected in certain portions of the Grasselli Plant. The remaining allegations of this paragraph are denied.

1072. DuPont admits that the eastern portion of the Grasselli Plant is prone to flooding. The remaining allegations of this paragraph are denied.

1073. DuPont admits that at certain times the named compounds have been detected in certain portions of groundwater at the Grasselli Plant. The remaining allegations of this paragraph are denied.

1074. DuPont admits that groundwater at the Grasselli Plant generally flows easterly toward the Arthur Kill and tributaries of the Kill. The remaining allegations of this paragraph are denied.

1075. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

1076. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

1077. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

1078. Denied. The referenced document speaks for itself.

1079. The allegations of this paragraph state legal conclusions to which no response is required.

1080-3086. The referenced pleadings speak for themselves. No response is required pursuant to CMO V.

The Bayonne Barrel and Drum Site

3087-3110. The referenced pleadings speak for themselves. No response is required pursuant to CMO V. If a response is required, DuPont is without knowledge or information to form a belief as to the truth of the allegations in these paragraphs.

3111. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

3112. Denied. The subject document speaks for itself.

3113. Denied. The subject documents speak for themselves.

3114. Denied. The subject documents speak for themselves.

3115. Denied. The subject document speaks for itself.

3116. Denied. The subject document speaks for itself.

3117. Denied. The subject document speaks for itself.

3118. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

3119-3161. The referenced pleadings speak for themselves. No response is required pursuant to CMO V.

3162. Admitted.

3163. Denied. The subject document speaks for itself.

3164. Denied. The subject document speaks for itself.

3165. Denied. The subject document speaks for itself.

3166. Denied. The subject document speaks for itself.

3167. Denied. The subject document speaks for itself.

3168. The allegations of this paragraph state legal conclusions to which no response is required.

3169-3229. The referenced pleadings speak for themselves. No response is required pursuant to CMO V.

Borne Chemical Site

3230-3284. The referenced pleadings speak for themselves. No response is required pursuant to CMO V.

3285. Denied.

3286. DuPont is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

3287. The allegations of this paragraph state legal conclusions to which no response is required.

3288- 3445. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

AS TO FIRST COUNT

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

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

3447-3448. DuPont is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447 through 3448, and therefore denies the same.

3449-3451. DuPont denies that it is liable to Third-Party Plaintiffs for contribution. DuPont is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451, and therefore denies the same.

AS TO SECOND COUNT

Statutory Contribution

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

3453. DuPont denies that it is liable to Third-Party Plaintiffs for contribution. DuPont is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in this paragraph, and therefore denies the same.

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 upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred

because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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 Third-Party Defendant 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 THIRD AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendant as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

At all relevant times, Third-Party Defendant 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

The claims asserted against Third-Party Defendant in the Third-Party 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 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 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.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND 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.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH 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.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH 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-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST 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.

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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 publically owned treatment works.

THIRTY-SIXTH 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.

THIRTY-SEVENTH 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.

THIRTY-EIGHTH 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-NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Third-Party Complaint 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

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 for which Third-Party Defendant cannot be found retroactively liable.

FORTY-FIRST 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 for which Third-Party Defendant cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

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

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

FORTY-FOURTH THIRD 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.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Defendants' 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

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH 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-NINTH 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.

FIFTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against 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 may be applicable to Third-Party Defendant include, with respect to each such site:

1. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
2. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
4. 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
5. 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.

FIFTY-FIRST 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.*

FIFTY-SECOND 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).

FIFTY-THIRD 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.

FIFTY-FOURTH 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.

FIFTY-FIFTH 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.

FIFTY-SIXTH 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.

WHEREFORE, Third-Party Defendant DuPont Inc. 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.

Dated: March 4, 2010

BALLARD SPAHR LLP
A Pennsylvania Limited Liability Company

By: 

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant E. I. du Pont de Nemours and Company

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

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

Dated: March 4, 2010

BALLARD SPAHR LLP
A Pennsylvania Limited Liability Company

By: 

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant E. I. du Pont de Nemours and Company

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4 you are hereby notified that Glenn A. Harris is assigned to try this case.

Dated: March 4, 2010

BALLARD SPAHR LLP
A Pennsylvania Limited Liability Company

By: _____

Glenn A. Harris, Esquire

Attorney for Third-Party Defendant E. I. du Pont de Nemours and Company

CERTIFICATION PURSUANT TO RULE 4:5-1(B)(2)

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

- (a) The matter in controversy is not the subject of any other action pending in any court or 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, 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(b) because of potential liability to any party on the basis of the same transactional facts.

Dated: March 4, 2010

BALLARD SPAHR LLP
A Pennsylvania Limited Liability Company

By: _____

Glenn A. Harris, Esquire

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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,

TIERRA SOLUTIONS, INC. and MAXUS
ENERGY CORPORATION,

Third-Party Plaintiffs,

vs.

3M COMPANY, ET AL.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**CERTIFICATION OF SERVICE OF E.
I. DU PONT DE NEMOURS AND
COMPANY'S ANSWER TO THIRD-
PARTY COMPLAINT "B"**

Dawn M. Neukirch, of full age, certifies as follows:

1. I am employed by the law firm of Ballard Spahr LLP, as a legal administrative assistant.

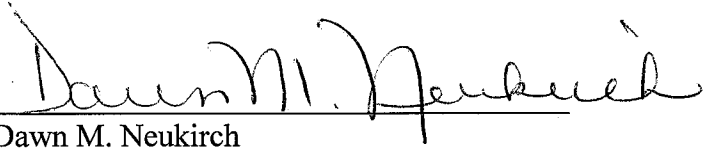
2. On this date, I caused one copy of DuPont's Answer to Third-Party Complaint "B", Civil Case Information Statement and Certificate of Service in the above-captioned matter to be served upon the following as stated:

ALL PARTIES ON ATTACHED SERVICE LIST
Via Regular Service

ALL PARTIES ON ATTACHED SERVICE LIST
Via Electronic Service

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

Dated: March 4, 2010


Dawn M. Neukirch

Third Party Defendant for Regular Service

Named Third-Party Defendant	Counsel of Record:
City of Clifton	Thomas M. Egan, Esquire Assistant Municipal Attorney City of Clifton Law Department 900 Clifton Avenue Clifton, New Jersey 07013
City of Orange	John P. McGovern, Esquire Assistant City Attorney City of Orange Township 29 North Day Street Orange, New Jersey 07050
Clean Earth of North Jersey, Inc.	Eric S. Aronson, Esquire Greenberg Traurig, LLP 200 Park Avenue Florham Park, New Jersey 07932
Passaic Pioneers Properties Company	John A. Daniels, Esquire Daniels & Daniels LLC 6812 Park Avenue Guttenberg, New Jersey 07093
Roman Asphalt Corporation	Michael V. Calabro Law Offices of Michael V. Calabro 466 Bloomfield Avenue, Suite 200 Newark, New Jersey 07107
Township of Irvington	Gustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civil Square Irvington, New Jersey 07111

Third-Party Defendants for Electronic Service as of October 23, 2009

NAMED THIRD PARTY DEFENDANT	THIRD PARTY COMPLAINT
3M Company	B
ACH Food Companies, Inc.	B
AGC Chemicals Americas, Inc.	B
Akzo Nobel Coatings, Inc.	B
Alden-Leeds, Inc.	B
Alliance Chemical, Inc.	B
Alumax Mill Products, Inc.	B
American Cyanamid	D
Apexical, Inc.	B
APOLAN International, Inc.	B
Arkema, Inc.	B
Ashland Inc.	B
Ashland International Holdings, Inc.	B
Associated Auto Body & Trucks, Inc.	B
Atlas Refinery, Inc.	B
BASF Catalysts LLC	B
BASF Construction Chemicals Inc.	B
BASF Corporation	B
Bayer Corporation	B

Third-Party Defendants for Electronic Service as of October 23, 2009

Bayonne Industries, Inc.	D
Bayonne Municipal Utilities Authority	A
Beazer East, Inc.	B
Belleville Industrial Center	B
Benjamin Moore & Company	B
Berol Corporation	B
B-Line Trucking, Inc.	B
Borden & Remington Corp.	B
Borough of Carteret	A
Borough of East Rutherford	A
Borough of Elmwood Park	A
Borough of Fair Lawn	A
Borough of Fanwood	A
Borough of Franklin Lakes	A
Borough of Garwood	A
Borough of Glen Rock	A
Borough of Haledon	A
Borough of Hawthorne	A
Borough of Lodi	A
Borough of Mountainside	A

Third-Party Defendants for Electronic Service as of October 23, 2009

Borough of North Arlington	A
Borough of North Caldwell	A
Borough of Prospect Park	A
Borough of Rutherford	A
Borough of Wallington	A
Borough of West Paterson	A
Borough of Wood-Ridge	A
BP Marine Americas, Inc.	D
C.S. Osborne & Co.	B
CasChem, Inc.	B
CBS Corporation	B
Chemical Compounds Inc.	B
Chemical Waste Management, Inc.	D
Ciba Corporation	B
City of East Orange	A
City of Elizabeth	A
City of Garfield	A
City of Hackensack	A
City of Jersey City	A
City of Linden	A

Third-Party Defendants for Electronic Service as of October 23, 2009

City of Newark	A
City of Passaic	A
City of Rahway	A
City of Summit	A
Coltec Industries Inc.	B
Como Textile Prints, Inc.	B
ConAgra Panama, Inc.	B
Conopco, Inc.	B
Consolidated Rail Corporation	B
Cosan Chemical Corporation	B
Covanta Essex Company	B
Croda, Inc.	B
Curtiss-Wright Corporation	B
CWC Industries, Inc.	B
Cytec Industries, Inc.	C
Darling International, Inc.	B
Davanne Realty Co.	B
Deleat Merchandising Corporation	B
Dow Chemical Co.	D
Duraport Realty One LLC	D

Third-Party Defendants for Electronic Service as of October 23, 2009

Duraport Realty Two LLC	D
E.I. du Pont de Nemours and Company	B
Eastman Kodak Company	B
Eden Wood Corporation	B
Elan Chemical Company, Inc.	B
EM Sergeant Pulp & Chemical Co.	B
Emerald Hilton Davis, LLC	B
EPEC Polymers, Inc.	D
Essex Chemical Corporation	B
Exxon Mobil	B
F.E.R. Plating, Inc.	B
Fine Organics Corporation	B
Fiske Brothers Refining Company	B
Flint Group Incorporated	B
Fort James Corporation	B
Franklin-Burlington Plastics, Inc.	B
G. J. Chemical Co.	B
Garfield Molding Company, Inc.	B
General Cable Industries, Inc.	B
General Dynamics Corporation	B

Third-Party Defendants for Electronic Service as of October 23, 2009

General Electric Company	B
Gentek Holding LLC	B
Getty Properties Corp.	C
Givaudan Fragrances Corporation	B
Goodrich Corporation	D
Goody Products, Inc.	B
Gordon Terminal Service Co. of N.J., Inc.	B
Hartz Mountain Corporation	B
Hess Corporation	D
Hexcel Corporation	B
Hexion Specialty Chemicals, Inc.	B
Hoffmann-La Roche Inc.	B
Honeywell International Inc.	B
Houghton International Inc.	B
Hudson Tool & Die Company, Inc.	B
ICI Americas Inc.	B
IMTT-Bayonne	D
Innospec Active Chemicals LLC	B
ISP Chemicals Inc.	B
ITT Corporation	B

Third-Party Defendants for Electronic Service as of October 23, 2009

Jersey City Municipal Utilities Authority	A
Joint Meeting of Essex and Union Counties	A
Kao Brands Company	B
Kinder Morgan Energy Partners, L.P.	D
Koehler-Bright Star, Inc.	B
Linde, Inc.	B
Linden Roselle Sewerage Authority	A
Lucent Technologies, Inc.	B
Mace Adhesives & Coatings Company, Inc.	B
Mallinckrodt Inc.	B
McKesson Corporation	D
Merck & Co., Inc.	B
Metal Management Northeast, Inc.	B
MI Holdings, Inc.	B
Miller Environmental Group, Inc.	B
Morton International, Inc.	B
Nappwood Land Corporation	B
National Fuel Oil, Inc.	B
National-Standard, LLC	B
Nestle U.S.A., Inc.	B

Third-Party Defendants for Electronic Service as of October 23, 2009

New Jersey Transit Corporation	B
News America, Inc.	B
News Publishing Australia Limited	B
NL Industries, Inc.	B
Norpak Corporation	B
Orange and Rockland Utilities, Inc.	B
Otis Elevator Company	B
Passaic Valley Sewerage Commissioners	A
Pfizer Inc.	B
Pharmacia Corporation	B
Phelps Dodge Industries, Inc.	B
Pitt-Consol Chemical Company	B
Pivotal Utility Holdings, Inc.	B
Port Authority of New York and New Jersey	A
Power Test Realty Co., L.P.	C
PPG Industries, Inc.	B
Praxair, Inc.	B
Precision Manufacturing Group, LLC	B
Prentiss Incorporated	B
Procter & Gamble Manufacturing Company	B

Third-Party Defendants for Electronic Service as of October 23, 2009

Prysmian Communications Cables and Systems USA LLC	B
Purdue Pharma Technologies, Inc.	B
Quala Systems, Inc.	B
Quality Carriers, Inc.	B
R.T. Vanderbilt Company, Inc.	B
Rahway Valley Sewerage Authority	A
Reckitt Benckiser, Inc.	B
Reichhold, Inc.	B
Revere Smelting & Refining Corporation	B
Rexam Beverage Can Company	B
Royce Associates, A Limited Partnership	B
Rutherford Chemicals LLC	B
S&A Realty Associates, Inc.	B
Schering Corporation	B
Sequa Corporation	B
Seton Company	B
Shulton, Incorporated, USA	D
Siemens Water Technologies Corp.	B
Spectraserv, Inc.	B
STWB, Inc.	B

Third-Party Defendants for Electronic Service as of October 23, 2009

Sun Chemical Corporation	B
Sun Oil Co.	D
Sun Pipeline Co.	D
Sun Refining and Marketing Co.	D
Superior MPM LLC	D
Tate & Lyle Ingredients Americas, Inc.	B
Teva Pharmaceuticals USA, Inc.	B
Teval Corp.	B
Textron Inc.	B
The Dial Corporation	B
The Dundee Water Power and Land Company	B
The New Jersey Department of Agriculture	A
The New Jersey Department of Transportation	A
The Newark Group, Inc.	B
The Okonite Company, Inc.	B
The Sherwin-Williams Company	B
The Stanley Works	B
The State of New Jersey	A
Thomas & Betts Corp.	D
Three County Volkswagen Corporation	B

Third-Party Defendants for Electronic Service as of October 23, 2009

Tiffany & Co.	B
Town of Belleville	A
Town of Kearny	A
Town of Nutley	A
Town of Westfield	A
Town of Woodbridge	A
Township of Bloomfield	A
Township of Cedar Grove	A
Township of Clark	A
Township of Little Falls	A
Township of Livingston	A
Township of Lyndhurst	A
Township of Maplewood	A
Township of Millburn	A
Township of Montclair	A
Township of Saddle Brook	A
Township of Scotch Plains	A
Township of South Hackensack	A
Township of South Orange Village	A
Township of West Orange	A

Third-Party Defendants for Electronic Service as of October 23, 2009

Township of Wyckoff	A
TRMI-H LLC	C
Troy Chemical Corporation, Inc.	B
Universal Oil Products Company	B
Velsicol Chemical Corporation	B
Veolia ES Technical Solutions, L.L.C.	B
Vertellus Specialties Inc.	B
Village of Ridgewood	A
W.A.S. Terminals Corporation	B
W.A.S. Terminals, Inc.	B
Waste Management, Inc.	D
Whittaker Corporation	B
Wiggins Plastics, Inc.	B
Wyeth	D
Zeneca Inc.	B