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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**EXXON MOBIL CORPORATION'S
ANSWER TO THIRD-PARTY
COMPLAINT "B"**

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

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

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

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

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

Third-Party Defendants.

EXXON MOBIL CORPORATION'S ANSWER TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Exxon Mobil Corporation ("ExxonMobil"), 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. ExxonMobil 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)

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

AS TO THE THIRD-PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. No response is required pursuant to CMO V.

AS TO THE THIRD-PARTY DEFENDANTS

(Paragraphs 19 through 209)

4. To the extent that the allegations in Paragraphs 19 through 209 relate to other parties, no response is required pursuant to CMO V.

5. In response to paragraph 85, ExxonMobil admits that it is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its principal place of business at 5959 Las Colinas Boulevard, Irving, Texas.

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

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

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

Exxon Bayonne Site

9. In response to paragraph 1224, ExxonMobil admits only that Third-Party Plaintiffs purport to define the “Exxon Bayonne Site” in the fashion set forth in Paragraph 1224; denies specifically that said definition is intelligible; and denies specifically that Third-Party Plaintiffs’ definition is sufficient to identify any particular piece of real property.

10. In response to paragraph 1225, ExxonMobil denies each and every allegation contained in Paragraph 1225 thereof, except: Admits that beginning in 1877 ExxonMobil or its predecessors in interest owned property in Bayonne, N.J., generally known as the Bayonne

Plant, on portions of which ExxonMobil or its predecessors in interest operated a petroleum refinery prior to 1972 and at various times operated certain additional facilities; and admits that portions of the said property were sold to IMTT.

11. In response to paragraph 1226, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1226 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

12. In response to paragraph 1227, paragraph 1227 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

13. In response to paragraph 1228, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1228 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

14. In response to paragraph 1229, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1229 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

15. In response to paragraph 1230, paragraph 1230 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

16. In response to paragraph 1231, paragraph 1231 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

17. In response to paragraph 1232, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1232 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

18. In response to paragraph 1233, paragraph 1233 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

19. In response to paragraph 1234, paragraph 1234 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

20. In response to paragraph 1235, paragraph 1235 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

21. In response to paragraph 1236, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1236 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

22. In response to paragraph 1237, paragraph 1237 contains a conclusion of law to which no response is required.

23. In response to paragraph 1238, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1238 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

24. In response to paragraph 1239, paragraph 1239 contains a conclusion of law to which no response is required.

25. In response to paragraph 1240, ExxonMobil admits only that seventeen NAPL plumes have been identified during Remedial Investigation and Interim Remedial Measure activities at the Bayonne Plant property. By way of further response, the allegations in this paragraph related to a remedial investigation report are neither admitted nor denied, as the subject document speaks for itself.

26. In response to paragraph 1241, paragraph 1241 contains a conclusion of law to which no response is required.

Exxon Bayway Site

27. In response to paragraph 1242, ExxonMobil denies each and every allegation contained in Paragraph 1242 thereof, except: Admits that Third-Party Plaintiffs purport to define the "Exxon Bayway Site" in the fashion set forth in Paragraph 1242; denies specifically that said definition is intelligible; denies specifically that Third-Party Plaintiffs' definition is sufficient to identify any particular piece of real property; admits that from 1909 to 1993

Exxon Corporation or its predecessors in interest owned property in Linden, N.J., generally known as the Bayway Refinery; and admits that portions of the said property were sold to ConocoPhillips or its predecessors in interest.

28. In response to paragraph 1243, ExxonMobil denies each and every allegation contained in Paragraph 1243 thereof, except: Admits that from 1909 to 1993 Exxon Corporation or its predecessors in interest owned property in Linden, N.J., generally known as the Bayway Refinery, on portions of which Exxon Corporation or its predecessors in interest at various times operated a petroleum refinery and certain petrochemical and other manufacturing facilities; and admits that for a period of time the Bayonne Plant and Bayway Refinery were interconnected by a pipeline and the two facilities were known as the Jerseys Works.

29. In response to paragraph 1244, ExxonMobil denies each and every allegation contained in Paragraph 1244 thereof, except: Admits that from 1909 to 1993 Exxon Corporation or its predecessors in interest owned property in Linden, N.J., generally known as the Bayway Refinery, on portions of which Exxon Corporation or its predecessors in interest at various times operated a petroleum refinery and certain petrochemical and other manufacturing facilities.

30. In response to paragraph 1245, paragraph 1245 contains a conclusion of law to which no response is required.

31. In response to paragraph 1246, paragraph 1246 contains a conclusion of law to which no response is required.

32. In response to paragraph 1247, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1247 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

33. In response to paragraph 1248, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1248 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

34. In response to paragraph 1249, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

35. In response to paragraph 1250, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

36. In response to paragraph 1251, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

37. In response to paragraph 1252, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

38. In response to paragraph 1253, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

39. In response to paragraph 1254, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

40. In response to paragraph 1255, the allegations in this paragraph are neither admitted nor denied, as the subject document speaks for itself.

41. In response to paragraph 1256, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1256 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

42. In response to paragraph 1257, paragraph 1257 contains a conclusion of law to which no response is required. To the extent the paragraph contains factual allegations, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to

admit or deny the allegations and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

43. In response to paragraph 1258, paragraph 1258 contains a conclusion of law to which no response is required.

44. In response to paragraph 1259, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1259 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

45. In response to paragraph 1260, paragraph 1260 contains a conclusion of law to which no response is required.

46. In response to paragraph 1261, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1259 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

47. In response to paragraph 1262, after reasonable investigation, ExxonMobil lacks knowledge or information sufficient with which to admit or deny the allegations in Paragraph 1262 and therefore denies same and leaves Third-Party Plaintiffs to their proofs.

48. In response to paragraph 1263, paragraph 1263 contains a conclusion of law to which no response is required.

AS TO FIRST COUNT

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

49. ExxonMobil incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 48 herein.

50. ExxonMobil 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.

51. ExxonMobil denies that it is liable to Third-Party Plaintiffs for contribution. ExxonMobil 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

52. ExxonMobil incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 51 herein.

53. ExxonMobil denies that it is liable to Third-Party Plaintiffs for contribution. ExxonMobil is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

54. 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

55. 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

56. 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

57. 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

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

60. 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

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

NINTH AFFIRMATIVE DEFENSE

62. 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

63. 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

64. 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

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

THIRTEENTH AFFIRMATIVE DEFENSE

66. 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 AFFIRMATIVE DEFENSE

67. 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

68. 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

69. 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

70. 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

71. 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

72. 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

73. 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

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

75. 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

76. 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

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

79. 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

80. 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

81. 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

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

84. 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

85. 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

86. 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 AFFIRMATIVE DEFENSE

87. 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

88. 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

89. 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

90. 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

91. 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

92. 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

93. 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

94. 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

95. 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

96. 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

97. 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

98. 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

99. 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

100. 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

101. 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

102. 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

103. 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:

- 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 or statute of repose 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.

FIFTY-FIRST AFFIRMATIVE DEFENSE

104. 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

105. 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

106. 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

107. 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

108. 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

109. Any injury or damages suffered by Plaintiffs were the product of conduct for which ExxonMobil cannot have liability to Plaintiffs, because Plaintiffs and other agencies of the State of New Jersey ratified ExxonMobil's actions at the Bayway and Bayonne sites, including those actions that are the subject of the Third-Party Complaint "B."

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

110. Third-Party Plaintiffs' claims are barred, in whole or in part, because ExxonMobil has acted pursuant to the approval and direction of the State with regard to clean-up and remediation of the Bayonne and Bayway sites.

FIFTY-EIGHTH AFFIRMATIVE DEFENSE

111. Any injury or damages suffered by Third-Party Plaintiffs have been increased by Plaintiffs' failure to mitigate their damages.

FIFTY-NINETH AFFIRMATIVE DEFENSE

112. Third-Party Plaintiffs' claims are barred, in whole or in part, by the New Jersey Comparative Negligence Act, N.J.S.A. 2A:15-5.2.

SIXTIETH AFFIRMATIVE DEFENSE

113. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, Complaint is barred, in whole or in part, because the claims asserted are preempted by federal law, including, without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §§ 9601.

SIXTY-FIRST AFFIRMATIVE DEFENSE

114. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, claim for damages is barred by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the equal protection doctrine of this State.

SIXTY-SECOND AFFIRMATIVE DEFENSE

115. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, claim for damages is barred by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, paragraph 1 of the New Jersey State Constitution, because, among other reasons (1) Plaintiffs would impose on ExxonMobil retroactive liability for conduct that was legal when it occurred; (2) Plaintiffs would impose unlawful double or multiple liability for the same conduct; (3) Plaintiffs would give themselves a double or multiple recovery for the same injury and damage; (4) the law of this State governing the damages sought provides inadequate procedural protections against arbitrary or erroneous awards of such damages; and (5) ExxonMobil lacked adequate notice either of the type of conduct that could warrant an award of damages under the law of this State, or of the amount of such damages that could be awarded.

SIXTY-THIRD AFFIRMATIVE DEFENSE

116. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because the law of this State governing punitive damages provides inadequate procedural protections against arbitrary or erroneous awards of such damages. A state may constitutionally award punitive damages only if the law of that state provides significant and effective procedural protections, which the law of this state does not.

SIXTY-FOURTH AFFIRMATIVE DEFENSE

117. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because defendant lacked adequate notice either of the type of conduct that could warrant an award of punitive damages under the law of this state, or of the amount of such damages that could be awarded. The lack of fair notice bars any award of punitive damages.

SIXTY-FIFTH AFFIRMATIVE DEFENSE

118. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because the law of this state fails to require that any award of punitive damages bear a close relationship to

appropriate civil fines or penalties established by the legislature, or by administrative agencies under authority delegated by the legislature.

SIXTY-SIXTH AFFIRMATIVE DEFENSE

119. Plaintiffs', the New Jersey Department of Environmental Protection, Commissioner of the NJDEP and the Administrator of the Spill Compensation Fund, claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because the law of this State may permit the introduction of 'net worth' with respect to the quantum of punitive damages. The introduction of such evidence violates Due Process by inviting the jury to award an arbitrary amount of punitive damages based on defendant's status as an industrial enterprise.

SIXTY-SEVENTH AFFIRMATIVE DEFENSE

120. Third-Party Defendant, ExxonMobil, 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

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

DESIGNATION OF TRIAL COUNSEL

122. Third-Party Defendant, ExxonMobil, hereby designates Marc A. Rollo, Esquire, as trial counsel.

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

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

- (a) The matter in controversy is the subject of the following actions pending in State and Federal Court:

- i. NJDEP, et al. v. ExxonMobil, et al., Docket No. UNN-L-3026-04 (consolidated with UNN-L-1650-05); and
 - ii. NJDEP, et al. v. Atlantic Richfield Co., et al., Docket No. US MDL 1358 Case No. 08 Civ 00312 (SAS).
- (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, with the exception of Mobil Mining and Minerals Co., 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, with the exception of Mobil Mining and Minerals Co., 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. Further, listed below are certain additional non-parties known to the undersigned counsel:
 - i. Buckey Partners, LLP, 2650 Marshes Dock Rd., Linden, New Jersey;

- ii. ConocoPhillips, Co. (and its predecessors, Bayway Refining Co. and Tosco, Co.), 1400 Park Ave., Linden, New Jersey;
- iii. International Specialty Products, 4000 Road to Grasselli, Linden, New Jersey;
- iv. The New Jersey Turnpike, rights of way in Linden, New Jersey;
- v. Reinauer Transportation, surface water release at 1400 Park Ave., Linden, New Jersey;
- vi. Tank Barge RTC 320, surface water release into Arthur Kill;
- vii. T/V BT Nautilus, surface water release into Kill van Kull;
- viii. Vessel Concho, surface water release into Kill van Kull; and
- ix. Cibro/ Montauk, surface water release into Arthur Kill.

WHEREFORE, Third-Party Defendant, ExxonMobil, 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.

ARCHER & GREINER
A Professional Corporation
Attorneys for Exxon Mobil Corporation

By: 
MARC A. ROLLO

Dated: November 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that ExxonMobil's Answer to Third-Party Complaint "B", Affirmative Defenses and Certification Pursuant to R. 4:5-1(b)(2) were filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by Federal Express and was served upon all parties which have consented to electronic service by posting to <http://njdepvoce.sfile.com> on this 6th day of November, 2009. All other Counsel of Record were served *via* first class, regular mail.

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.



MARC A. ROLLO, ESQ.

Dated: November 6, 2009

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