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Fort James Corporation

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, et al.,

Plaintiffs,  
v.

OCCIDENTAL CHEMICAL CORPORATION, et  
al.,

Defendants,

MAXUS ENERGY CORPORATION, et al.

Third-Party Plaintiffs,  
v.

3M COMPANY, et al.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-ESSEX COUNTY

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

Civil Action

**FORT JAMES CORPORATION'S  
ANSWER TO DEFENDANTS/THIRD-  
PARTY PLAINTIFFS MAXUS  
ENERGY CORPORATION'S AND  
TIERRA SOLUTIONS, INC.'S  
THIRD-PARTY COMPLAINT "B"**

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

The paragraph numbers used herein respond to the paragraph numbers used in the Third-Party Complaint.

## **GENERALLY**

Fort James denies each and every allegation contained in the Third-Party Complaint 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 the Third-Party Complaint.

## **AS TO PROCEDURAL BACKGROUND** **(Paragraphs 1 through 15)**

1. – 15. Fort James responds that the referenced pleadings speak for themselves and do not assert any allegations against Fort James. No response is required pursuant to CMO V.

## **AS TO THE PARTIES** **(Paragraphs 16 through 210)**

16. – 90. To the extent that the allegations in Paragraphs 16 through 90 relate to other parties, no response is required pursuant to CMO V.

91. Fort James admits the allegations in Paragraph 91 of the Third-Party Complaint.

92. – 210. To the extent that the allegations in Paragraphs 92 through 210 relate to other parties, no response is required pursuant to CMO V.

## **AS TO DEFINITIONS** **(Paragraphs 211 through 236)**

211. – 236. Fort James responds that the referenced pleadings speak for themselves and do not assert any allegations against Fort James. No response is required pursuant to CMO V.

## **AS TO FACTUAL ALLEGATIONS** **(Paragraphs 237 through 3445)**

237. – 3379. To the extent that the allegations in Paragraphs 237 through 3379 relate to other parties, no response is required pursuant to CMO V.

3380. Fort James admits the allegations in the first sentence in Paragraph 3380 of the Third-Party Complaint relating to the allegations that Fort James and/or its predecessors owned or

operated an ink manufacturing facility in Lionville, Pennsylvania but states that only flexographic and rotogravure printing inks for use in food and consumer packaging were manufactured at this facility. Fort James denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the balance of the first sentence of Paragraph 3380 of the Third-Party Complaint. Fort James denies the allegations contained in the second sentence of Paragraph 3380 of the Third-Party Complaint.

3381. Fort James admits that it sent a letter to the Environmental Protection Agency dated January 20, 1998 (the "Letter") but denies the remaining allegations in the first sentence of Paragraph 3381 of the Third-Party Complaint and refers the Court to the Letter for an accurate statement of its contents. Fort James denies the allegations contained in the second sentence of Paragraph 3381.

3382. Fort James denies the allegations contained in Paragraph 3382 of the Third-Party Complaint.

3383. - 3445. To the extent that the allegations in Paragraphs 3383 through 3445 relate to other parties, no response is required pursuant to CMO V.

#### **FIRST COUNT**

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

3446. In response to Paragraph 3446 of the Third-Party Complaint, Fort James repeats and reiterates its answers to the allegations in their entirety contained in the preceding paragraphs as though fully set forth herein.

3447. The allegations contained in Paragraph 3447 of the Third-Party Complaint set forth legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations in said paragraph relate to Fort James, Fort James denies the allegations

contained in Paragraph 3447. Fort James further responds to Paragraph 3447 by stating that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph as it relates to the other Third-Party Defendants.

3448. The allegations contained in Paragraph 3448 of the Third-Party Complaint set forth legal conclusions to which no response is required. To the extent a response by Fort James is required, Fort James denies the allegations contained in Paragraph 3448. Fort James further responds to Paragraph 3448 by referring the Court to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a), for an accurate statement of its contents.

3449. The allegations contained in Paragraph 3449 of the Third-Party Complaint set forth legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations in said paragraph relate to Fort James, Fort James denies the allegations contained in Paragraph 3449. Fort James further responds to Paragraph 3449 by stating that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph as it relates to the other Third-Party Defendants.

3450. Fort James is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3450 of the Third-Party Complaint. Fort James further responds to Paragraph 3450 by referring the Court to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b.d., for an accurate statement of its contents.

3451. The allegations contained in Paragraph 3451 of the Third-Party Complaint set forth legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations in said paragraph relate to Fort James, Fort James denies the allegations contained in Paragraph 3451. Fort James further responds to Paragraph 3451 by stating that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph as it relates to the other Third-Party Defendants.

**WHEREFORE**, Fort James demands dismissal of the Third-Party Complaint with prejudice, costs of litigation, attorneys' fees, and such other relief, including but not limited to interest (pre- and post-judgment), as the Court deems just and proper.

**SECOND COUNT**  
**(Statutory Contribution)**

3452. In response to Paragraph 3452 of the Third-Party Complaint, Fort James repeats and reiterates its answers to the allegations in their entirety contained in the preceding paragraphs as though fully set forth herein.

3453. The allegations contained in Paragraph 3453 of the Third-Party Complaint set forth legal conclusions to which no response is required. To the extent a response is required and to the extent the allegations in Paragraph 3453 relate to Fort James, Fort James denies the allegations contained in said paragraph. Fort James further responds to the allegations contained in Paragraph 3453 by referring the Court to N.J.S.A. 2A:53A-1 et seq. for an accurate statement of its contents. Additionally, Fort James responds to Paragraph 3453 by stating that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph as it relates to the other Third-Party Defendants.

**WHEREFORE**, Fort James demands dismissal of the Third-Party Complaint with prejudice, costs of litigation, attorneys' fees, and such other relief, including but not limited to interest (pre- and post-judgment), as the Court deems just and proper.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

1. The Third-Party Complaint fails to set forth a cause of action upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

2. The Third-Party Complaint is barred by the doctrine of unclean hands.

### **THIRD AFFIRMATIVE DEFENSE**

3. The Third-Party Defendant owed no duty to the Third-Party Plaintiffs.

### **FOURTH AFFIRMATIVE DEFENSE**

4. The damages alleged by the Third-Party Plaintiffs were caused by individuals and/or entities over which the Third-Party Defendant did not exert control.

### **FIFTH AFFIRMATIVE DEFENSE**

5. Third-Party Plaintiffs' claims are barred, in whole or in part, by the Entire Controversy Doctrine.

### **SIXTH AFFIRMATIVE DEFENSE**

6. Third-Party Defendant is not a discharger under N.J.S.A. 58:10-23.11 et seq. ("The Spill Act") and thus not required to contribute any funds for the clean up and removal costs alleged in the Third-Party Complaint.

### **SEVENTH AFFIRMATIVE DEFENSE**

7. 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").

### **EIGHTH AFFIRMATIVE DEFENSE**

8. 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.

### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

10. To the extent that the Third-Party Complaint seeks any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., the pleading is barred because Third-Party Plaintiffs have failed to establish that Third-Party Defendant has violated any statute, regulation or ordinance designed to prevent or minimize pollution, impairment or destruction of the environment to any of the properties or waterways alleged in the Third-Party Complaint.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

12. Third-Party Plaintiffs' claims are barred by the collateral source doctrine or its equitable equivalent.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

13. Third-Party Plaintiffs' claims are barred because they are mere volunteers for the remediation of the environmental contaminants for which they claim contribution and/or other relief.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

14. Third-Party Plaintiffs' claims are barred by Rule 4:26-1 of the New Jersey Court Rules because they are not the real parties in interest for pursuit of the claims alleged 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.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

15. The Third-Party Complaint fails to state a claim because the damages sought are speculative.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

16. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State 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 (the "Applicable Environmental Laws").

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

17. The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Second 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.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

18. 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 the Applicable Environmental Laws.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

19. The Third-Party Complaint is barred to the extent that it seeks relief for damages incurred before the effective date of the Spill Act.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

20. 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.



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

21. 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 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 in 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.

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

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

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

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

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

24. 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-FIFTH AFFIRMATIVE DEFENSE**

25. 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-SIXTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. 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-EIGHTH AFFIRMATIVE DEFENSE**

28. 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-NINTH AFFIRMATIVE DEFENSE**

29. 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.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

31. 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**

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

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

33. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded to the existing parties pursuant to Rule 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.

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

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

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

35. 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 the Applicable Environmental Laws, 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.

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

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

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

37. Although Third-Party Defendant denies that it is liable for the contamination described in the Third-Party 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 party in this action that would be liable to Third-Party Plaintiffs.

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

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

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

39. Third-Party Plaintiffs' claims are barred to the extent that the conduct of 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 documents, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

#### **FORTIETH AFFIRMATIVE DEFENSE**

40. The disposal of waste, if any, which allegedly originated from 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**

41. 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**

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

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

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

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

44. Third-Party Plaintiffs' claims are barred due to their 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**

45. Third-Party Defendant's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to

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

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

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

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

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

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

48. 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**

49. 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**

50. Third-Party Plaintiffs' claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against 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**

51. Third-Party Plaintiffs' claims are barred to the extent that the relief sought by Third-Party Plaintiffs 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-SECOND AFFIRMATIVE DEFENSE**

52. 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-THIRD AFFIRMATIVE DEFENSE**

53. 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-FOURTH AFFIRMATIVE DEFENSE**

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

#### **FIFTY-FIFTH AFFIRMATIVE DEFENSE**

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

#### **FIFTY-SIXTH AFFIRMATIVE DEFENSE**

56. At common law Third-Party Defendant held, and still holds, an 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.

#### **FIFTY-SEVENTH AFFIRMATIVE DEFENSE**

57. Third-Party Plaintiffs claims are barred, in whole or in part, by their failure to properly mitigate damages.

#### **FIFTY-EIGHTH AFFIRMATIVE DEFENSE**

58. 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.

#### **FIFTY-NINTH AFFIRMATIVE DEFENSE**

59. 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.

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

1. Fort James repeats and reiterates its answers and Affirmative Defenses in their entirety contained in the preceding paragraphs as though fully set forth herein.

2. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V, paragraph 6.

3. Pursuant to Rule 4:7-5(b), all counter-claims or cross-claims for statutory or common-law contribution and indemnification asserted by the other parties against Fort James,

whether filed in the past or in the future, are deemed denied by Fort James without the need for responsive pleadings.

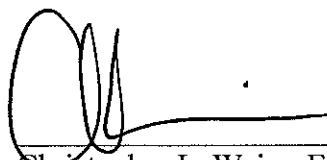
### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Christopher L. Weiss, Esq., is hereby designated as trial counsel in the within matter.

### **RULE 4:5-1 CERTIFICATION**

This is to certify that the within matter is not the subject of any other action pending in any court or arbitration proceeding, and that no other such action or proceeding is contemplated. I know of no other parties that should be joined in this matter pursuant to Rule 4:28 as it is Fort James' position that the potential liability, if any, of any third-party defendant for the claims set forth in the Third-Party Complaint is several. However, should the Court determine that the potential liability of any third-party defendant is joint and several (which is denied) for the claims set forth in the Third-Party Complaint, then Fort James states that there are additional parties that may have contributed to the damages alleged by the Third-Party Plaintiffs. The identity of all know parties believed to have potential liability for the claims alleged in the Third-Party Complaint have been or will be identified in accordance with the procedures set forth in CMO V. Likewise, additional discovery or investigation may indentify additional parties to be joined in this litigation.

FERRO LABELLA & ZUCKER L.L.C.  
Attorneys for Third-Party Defendant  
Fort James Corporation

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right.

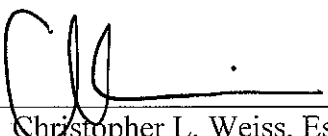
Christopher L. Weiss, Esq.

Dated: November 9, 2009

### CERTIFICATION OF SERVICE

The undersigned hereby certifies that on November 9, 2009, I caused a true and correct copy of the Answer to Third-Party Complaint and Case Information Statement to be filed via hand delivery with the Clerk of the Court, Superior Court of New Jersey, 50 West Market Street, Newark, New Jersey 07102, with a courtesy copy of same to be served via hand delivery to the Honorable Sebastian P. Lombardi, J.S.C., 470 Dr. Martin Luther King, Jr. Boulevard, Newark, New Jersey 07102. I caused a copy of the same to be served upon all parties which have consented to electronic posting to <http://njdepvocc.sfile.com>. All other counsel were served via first class, regular mail.

Dated: November 9, 2009

  
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Christopher L. Weiss, Esq.