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General Cable Industries, Inc. and Whittaker Corporation

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.,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**GENERAL CABLE INDUSTRIES,
INC.'S ANSWER TO THIRD-PARTY
COMPLAINT "B"**

ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERICAN INKS AND COATINGS CORPORATION,
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-BRIGHT 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.

Third Party Defendant General Cable Industries, Inc. (“General Cable”), 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” filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”) (collectively, “Defendants/Third Party Plaintiffs”), as follows:

GENERALLY

1. General Cable denies each and every allegation contained in Third Party Complaint “B” that is not otherwise addressed herein, 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 “B”.

AS TO PROCEDURAL BACKGROUND
(Paragraphs 1 through 15)

2. 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. The allegations of paragraph 95 are admitted.

6. The allegations of paragraph 210 are denied.

AS TO THE DEFINITIONS
(Paragraphs 211 through 236)

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

AS TO THE FACTUAL ALLEGATIONS
(Paragraphs 237 through 3445)

8. To the extent that the allegations in paragraphs 237 through 3445 relate to other parties, no response is required pursuant to CMO V.

9. The allegations of paragraph 1375 are admitted in part and denied in part.

General Cable admits the allegations of paragraph 1375 only to the extent that the General Cable Site, as that term is defined in paragraph 1375, includes real property located at 236 West First Street in Bayonne, Hudson County, New Jersey. The remaining allegations are denied.

10. The allegations of paragraph 1376 are admitted in part and denied in part.

General Cable admits the allegations of paragraph 1376 only to the extent that from approximately 1929 until approximately 1978, General Cable Corporation owned and operated a wire and power cable research and development facility on real property located at 236 West First Street in Bayonne, Hudson County, New Jersey. The remaining allegations are denied.

11. The allegations of paragraph 1377 are denied.

12. The allegations of paragraph 1378 are admitted in part and denied in part. The allegations of paragraph 1378 are admitted only to the extent that in approximately 1978, General Cable Corporation sold the property located at 236 West First Street in Bayonne, Hudson County, New Jersey to Pirelli Cable Corporation ("Pirelli"). The remaining allegations

are denied, as General Cable is without knowledge or information sufficient to form a belief as to truth of the matters asserted in paragraph 1378 since they relate to events that occurred after the sale of the property to Pirelli.

13. The allegations of paragraph 1379 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1379.

14. The allegations of paragraph 1380 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1380.

15. The allegations of paragraph 1381 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1381.

16. The allegations of paragraph 1382 are admitted in part and denied in part. The allegations of paragraph 1382 are admitted only to the extent that certain hazardous substances and other compounds were generated, utilized and/or stored at 236 West First Street in Bayonne, Hudson County, New Jersey by General Cable Corporation. The remaining allegations are denied.

17. The allegations of paragraph 1383 are admitted in part and denied in part. The allegations of paragraph 1383 are admitted only to the extent that the property located at 236 West First Street in Bayonne, Hudson County, New Jersey abuts the Kill Van Kull, the Kill Van Kull is a tributary of Newark Bay, and discharges, overland flow, and storm water runoff may have been deposited into the Kill Van Kull from the property located at 236 West First Street in Bayonne, Hudson County, New Jersey. The remaining allegations are denied.

18. The allegations of paragraph 1384 are admitted in part and denied in part. General Cable admits the allegations of paragraph 1384 only to the extent that some portion of General Cable Corporation's process wastewater at the property located at 236 West First Street in Bayonne, Hudson County, New Jersey may have been discharged into the City of Bayonne's sanitary sewer system. The remaining allegations are denied, as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted regarding where discharges made into the City of Bayonne's sanitary sewer system were ultimately discharged, if at all.

19. The allegations of paragraph 1385 are admitted in part and denied in part. General Cable admits the allegations of paragraph 1385 only to the extent that there was a pipe or pipes emanating from the property located at 236 West First Street in Bayonne, Hudson County, New Jersey. The remaining allegations are denied.

20. The allegations of paragraph 1386 are admitted in part and denied in part. General Cable admits that it is aware of a memorandum dated December 15, 1969, which discusses industrial sampling that occurred on December 10, 1969. The remaining allegations in this paragraph are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1386.

21. The allegations of paragraph 1387 are denied as they refer to written documents which speak for themselves. Therefore, any characterization of those documents is expressly denied.

22. The allegations of paragraph 1388 are denied as they refer to written documents, including an Information filed by the United States against General Cable Corporation, which speak for themselves. Therefore, any characterization of those documents is expressly denied.

23. The allegations of paragraph 1389 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1389.

24. The allegations of paragraph 1390 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1390.

25. The allegations of paragraph 1391 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1391.

26. The allegations of paragraph 1392 are admitted in part and denied in part. General Cable admits that there was a drain or drains at the General Cable Site. The remaining allegations in paragraph 1392 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1392.

27. The allegations of paragraph 1393 are admitted in part and denied in part. General Cable admits the allegations only to the extent that it is aware that documents commissioned by third parties indicate that hazardous substances were detected at the General Cable Site after General Cable sold the Site to Pirelli Cable Corporation in 1978. The remaining allegations in paragraph 1393 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1393.

28. The allegations of paragraph 1394 are admitted in part and denied in part. General Cable admits the allegations of paragraph 1394 only to the extent that storm events and general erosion may have occurred at the real property located at 236 West First Street in Bayonne, Hudson County, New Jersey. The remaining allegations are denied, as General Cable

is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in paragraph 1394.

29. The allegations of paragraph 1395 are admitted in part and denied in part. The allegations of paragraph 1395 are admitted only to the extent that the real property located at 236 West First Street in Bayonne, Hudson County, New Jersey experienced flooding conditions during certain heavy rain events. The remaining allegations are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the remaining matters asserted in paragraph 1395.

30. The allegations of paragraph 1396 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1396.

31. The allegations of paragraph 1397 are admitted in part and denied in part. General Cable admits the allegations only to the extent that it is aware that documents commissioned by third parties indicate that hazardous substances were detected at the General Cable Site after General Cable sold the Site to Pirelli Cable Corporation in 1978. The remaining allegations in paragraph 1397 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1397.

32. The allegations of paragraph 1398 are admitted in part and denied in part. General Cable admits the allegations of paragraph 1398 only to the extent that on or about July 13, 2007, EPA sent a General Notice Letter to General Cable. The remaining allegations are denied because they refer to a written document, the General Notice Letter, which is a document which speaks for itself. Therefore, any characterization of the General Notice Letter is expressly denied.

33. The allegations of paragraph 1399 are denied.

34. The allegations of paragraph 1400 are denied as General Cable is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 1400.

AS TO THE FIRST COUNT

**New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.f.a.2(a)
(Paragraphs 3446 – 3451)**

35. General Cable incorporates by reference as if fully set forth herein its responses and denials as asserted in paragraphs 1 - 34 herein.

36. General Cable is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3447 that relate to other parties. To the extent that any allegations in paragraph 3447 relate to General Cable, these allegations are denied.

37. General Cable is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3448 that relate to other parties. To the extent that any allegations in paragraph 3448 relate to General Cable, these allegations are denied.

38. General Cable denies that it is liable to Third-Party Plaintiffs for contribution. To the extent a further response is required, General Cable is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3449 that relate to other parties. To the extent that any allegations in paragraph 3449 relate to General Cable, these allegations are denied.

39. General Cable denies that it is liable to Third-Party Plaintiffs for contribution. To the extent a further response is required, General Cable is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3450, and therefore denies the same.

40. General Cable denies that it is liable to Third-Party Plaintiffs for contribution. To the extent a further response is required, General Cable is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3451 that relate to other parties. To the extent that any allegations in paragraph 3451 relate to General Cable, these allegations are denied.

AS TO THE SECOND COUNT
(Statutory Contribution)
(Paragraphs 3452 – 3453)

41. General Cable incorporates by reference as if fully set forth herein its responses and denials as asserted in paragraphs 1 – 40 herein.

42. General Cable denies that it is liable to Third-Party Plaintiffs for contribution. General Cable is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3453, and therefore denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

43. 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

44. General Cable 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

45. 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

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

FIFTH AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs have no right of contribution against General Cable under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

49. 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 General Cable under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

51. 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

52. 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

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

55. General Cable cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by General Cable 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

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

58. 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

59. 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

60. At all relevant times, General Cable 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

61. The claims asserted against General Cable in the Third-Party Complaint are barred because at all relevant times General Cable 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 General Cable 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

62. 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

63. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by General Cable.

TWENTY-SECOND AFFIRMATIVE DEFENSE

64. Third-Party Plaintiffs' claims against General Cable 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

65. 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

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

68. 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

69. 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

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

72. General Cable did not own or operate a “Major Facility” as defined by the Spill Act or the WPCA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

73. 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

74. 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

75. 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

76. 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

77. General Cable 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 General Cable exercised no control and for whose conduct General Cable was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

78. 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 General Cable, 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

79. Although General Cable denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, General Cable 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

80. 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

81. Third-Party Plaintiffs' claims are barred to the extent that the conduct of General Cable 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

82. The disposal of waste, if any, which allegedly originated from General Cable, 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 General Cable cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

83. Any discharge that allegedly originated from General Cable 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 General Cable cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

84. 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

85. 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

86. Third-Party Plaintiffs' claims are barred due to its own conduct in unilaterally, and without notice to General Cable, 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

87. General Cable'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

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

92. 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 General Cable are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against General Cable 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 General Cable. Examples of legal extinguishments that are or may be applicable to General Cable include, with respect to each such site:

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

FIFTY FIRST AFFIRMATIVE DEFENSE

93. Third-Party Plaintiffs' claims are barred because the relief sought against General Cable, were it claimed directly by Plaintiffs, would amount to a "taking" of General Cable'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

94. Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with General Cable'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 General Cable, thereby exposing General Cable to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (*i.e.*, double recovery).

FIFTY THIRD AFFIRMATIVE DEFENSE

95. To the extent General Cable 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 General Cable, 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

96. Without admitting liability, General Cable 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

97. General Cable 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 General Cable.

FIFTY SIXTH AFFIRMATIVE DEFENSE

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

FIFTY SEVENTH AFFIRMATIVE DEFENSE

99. The Third-Party Complaint is barred in whole or in part as it fails to state a claim against Third-Party Defendant upon which relief can be granted, pursuant to R. 4:6-2(e) of the New Jersey Court Rules.

FIFTY EIGHTH AFFIRMATIVE DEFENSE

100. Any contamination attributable to General Cable and the response costs associated therewith are divisible from those attributable to the other Third Party Defendants and/or other parties.

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

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

DESIGNATION OF TRIAL COUNSEL

102. In accordance with Rule 4:25-4 you are hereby notified that Stephen M. Orlofsky is assigned to try this case.

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

Respectfully submitted,

Stephen M. Orlofsky/RSW

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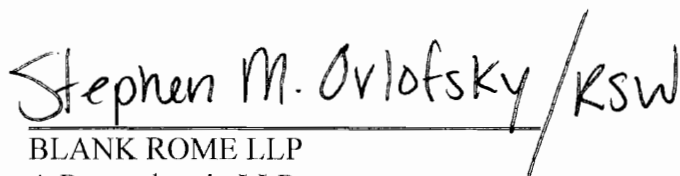
Whittaker Corporation

Dated: March 17, 2010

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

Undersigned counsel hereby certifies, in accordance with Rule 4:5-1(b)(2), that: (a) the matters in controversy in this action are not the subject of any other known or pending court action or arbitration proceeding (though the same may become the subject of a federal action pursuant to certain federal environmental statutes) and (b) reference is made to that October 20, 2009 "Additional Discharger" posting by O'Melveny and Myers as to non-parties who may be joined to this action pursuant to Rule 4:28, or who may be subject to joinder pursuant to Rule 4:29-1.

Respectfully submitted,

Handwritten signature of Stephen M. Orlofsky in black ink, followed by the initials 'KSW'.

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Attorneys for Third-Party Defendants
General Cable Industries, Inc. and
Whittaker Corporation

Dated: March 17, 2010

CERTIFICATION OF SERVICE

I, Rachel S. Wolfe, an attorney-of-law in the State of New Jersey, do hereby state upon my oath that I have served General Cable Industries, Inc.'s Answer to Third Party Complaint "B" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via hand delivery.

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 willingly false, I am subject to punishment.



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General Cable Industries, Inc. and
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Dated: March 17, 2010

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