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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,

VS.

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

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC., :

VS.

:
:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: ESSEX COUNTY
:
: DOCKET NO. L-009868-05 (PASR)

CIVIL ACTION

ANSWER,
AFFIRMATIVE DEFENSES,
DESIGNATION OF TRIAL COUNSEL,
AND R. 4:5-1 CERTIFICATION
ON BEHALF OF
GIVAUDAN FRAGRANCES
CORPORATION TO THIRD-PARTY
COMPLAINT B

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,	:
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 CORPORATION,	:
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 Givaudan Fragrances Corporation ("Givaudan"), 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:

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

PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

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

THE PARTIES

Third-Party Plaintiffs

(Paragraphs 16 through 18)

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

Third-Party Defendants

(Paragraphs 19 through 210)

To the extent that the allegations in Paragraphs 19 through 210 relate to other parties, no response is required pursuant to CMO V.

99. Givaudan admits that it is a corporation organized under the laws of the State of Delaware. Givaudan denies the remainder of the allegations set forth in paragraph 99 of the Third-Party Complaint B.

210. The allegations in paragraph 210 of the Third-Party Complaint B express a legal opinion the accuracy of which Givaudan is not required to admit or deny herein. To the extent a response by Givaudan is necessary, Givaudan denies the allegations contained in paragraph 210 of the Third-Party Complaint B.

DEFINITIONS

(Paragraphs 211 through 236)

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

FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

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

1401. Givaudan admits that the former Givaudan facility (the "Givaudan Site") was approximately 31 acres and was located at 125 Delawanna Avenue, Clifton, NJ. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 1401 of the Third-Party Complaint B and, accordingly, denies those allegations.

1402. Givaudan admits that the property at 125 Delawanna Avenue had industrial activity from approximately 1905 to 1998. Givaudan further admits that on or about March 1, 1924, its predecessor (Givaudan Corporation) purchased a portion of the Givaudan Site and, thereafter, additional sections of the Site

were subsequently acquired through 1982. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 1402 of the Third-Party Complaint B and, accordingly, denies those allegations.

1403. Givaudan admits the allegations contained in paragraph 1403 of the Third-Party Complaint B.

1404. Givaudan admits the allegations contained in paragraph 1404 of the Third-Party Complaint B.

1405. Givaudan admits that hexachlorophene was produced at the Givaudan Site from 1947 through approximately 1984. Givaudan admits that low levels of 2,3,7,8 tetrachlorodibenzo-p-dioxin ("TCDD") were previously detected in limited soil areas on the Givaudan Site that have since been remediated. Givaudan admits that additional compounds were detected in certain soils on the Givaudan Site that have been or are being remediated. Givaudan denies that hexachlorophene is associated with the presence of TCDD. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 1405 of the Third-Party Complaint B and, accordingly, denies those allegations.

1406. Givaudan admits that surface water at the Givaudan Site was collected in an on-site storm water pond. Givaudan denies the remainder of the allegations contained in paragraph 1406 of the Third-Party Complaint B.

1407. Givaudan admits that a portion of groundwater at the Givaudan Site flows toward the southeast. Givaudan admits that certain compounds were detected in groundwater at the Givaudan Site. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 1407 of the Third-Party Complaint B and, accordingly, denies those allegations.

1408. Givaudan admits that in August 1977, Givaudan replaced a sewer line owned by the City of Clifton that was suspended from Passaic County Bridge No. 80 crossing the Third River and that the sewer line carried domestic sewage and industrial wastes.

1409. Givaudan admits that on or about March 15 and 21, 1978 there was a Clifton of City sewer line break in the vicinity of the Third River. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations

contained in paragraph 1409 of the Third-Party Complaint B and, accordingly, denies those allegations.

1410. Givaudan admits that an investigation was conducted in or around 1983 of a former sewer system on the Givaudan Site. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1410 of the Third-Party Complaint B and, accordingly, denies those allegations.

1411. Givaudan admits that an Executive Order was issued in or around June 17, 1983 by Governor Kean and Givaudan submits that the referenced Executive Order speaks for itself. Givaudan denies the remainder of allegations contained in paragraph 1411 of the Third-Party Complaint B.

1412. Givaudan admits that it entered into an Administrative Consent Order on March 5, 1987 and submits that the referenced document speaks for itself. Givaudan denies the remainder of allegations contained in paragraph 1412 of the Third-Party Complaint B.

1413. Givaudan admits that it entered into an Administrative Consent Order on March 5, 1987, which was amended

in February 1988, and submits that the referenced document speaks for itself. Givaudan denies the remainder of allegations contained in paragraph 1413 of the Third-Party Complaint B.

1414. Givaudan admits that in August 2004, EPA sent Givaudan a General Notice Letter, which document speaks for itself. Givaudan denies the remainder of allegations contained in paragraph 1414 of the Third-Party Complaint B.

1415. Givaudan asserts that the allegations contained in paragraph 1415 calls for a legal conclusion. To the extent a response by Givaudan is necessary, Givaudan denies the allegations contained in paragraph 1415 of the Third-Party Complaint B.

FIRST COUNT

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

3446. Givaudan repeats and makes a part hereof its responses to the allegations contained in the preceding paragraphs as if fully set forth at length herein.

3447. The allegations in paragraph 3447 of the Third-Party Complaint B express a legal opinion the accuracy of which Givaudan is not required to admit or deny herein. To the extent

a response is required Givaudan denies the allegations that pertain to it in paragraph 3447 of the Third-Party Complaint B. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3447 pertaining to the other Third-Party Defendants.

3448. The allegations in paragraph 3448 of the Third-Party Complaint B express a legal opinion the accuracy of which Givaudan is not required to admit or deny herein. To the extent a response is required, Givaudan submits that the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11.f.a.(2)(a) speaks for itself.

3449. Givaudan denies that Maxus and Tierra are entitled to contribution from Givaudan to recover a proportionate share of any cleanup and removal costs or damages, if any, for which Maxus or Tierra may be found liable under the Spill Act in this lawsuit. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3449 pertaining to the other Third-Party Defendants.

3450. The allegations in paragraph 3450 of the Third-Party Complaint B express a legal opinion the accuracy of which Givaudan is not required to admit or deny herein. To the extent

a response is required, Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3450 and, accordingly, denies those allegations.

3451. Givaudan denies that Maxus and Tierra are entitled to contribution from Givaudan to recover a proportionate share of any cleanup and removal costs that Maxus or Tierra have incurred and will incur in the future. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3451 pertaining to the other Third-Party Defendants.

WHEREFORE, Givaudan demands dismissal of the Third-Party Complaint "B" with prejudice, costs of litigation, attorney's fees, and for such other costs as the Court deems just.

SECOND COUNT
(Statutory Contribution)

3452. Givaudan repeats and makes a part hereof its responses to the allegations contained in the preceding paragraphs as if fully set forth at length herein.

3453. Givaudan denies that Maxus and Tierra are entitled to contribution from Givaudan, pursuant to the New

Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), for all or a proportionate share of response costs, cleanup and removal costs, damages, or other loss or harm, if any, for which Maxus or Tierra may be held liable, or which they have incurred or will incur in the future, relating to the Newark Bay Complex. Givaudan is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3453 pertaining to the other Third-Party Defendants.

WHEREFORE, Givaudan demands dismissal of the Third-Party Complaint "B" with prejudice, costs of litigation, attorney's fees, and for such other costs as the Court deems just.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another.

Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Third-Party Defendant that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of

all foreign, federal, state and local government entities ("applicable Environmental Laws").

FOURTEENTH AFFIRMATIVE DEFENSE

At common law, Third-Party Defendant held, and still holds, a usufructuary interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Third-Party Defendant has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and cannot be any greater than, the claims that the State of New Jersey has or would have against Third-Party Defendant directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because at all relevant times Third-Party Defendant exercised due care with respect to hazardous substances, if any, that may have been handled at the

subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendant had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*,

and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

with the National Contingency Plan to the greatest extent possible.

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

"Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Defendant denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendant exercised no control and for whose conduct Third-Party Defendant was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions,

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

FORTIETH AFFIRMATIVE DEFENSE

The disposal of waste, if any, which allegedly originated from Third-Party Defendant, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which Third-Party Defendant cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

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

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such site:

Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;

Any settlement or other compromise between Plaintiffs and Third-Party Defendant;

Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;

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

Any issuance by Plaintiffs to Third-Party Defendant, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY-FIRST AFFIRMATIVE DEFENSE

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

FIFTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Third-Party Defendant's responsibilities to conduct

ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FIFTY-THIRD AFFIRMATIVE DEFENSE

To the extent Third-Party Defendant is acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY-FORTH AFFIRMATIVE DEFENSE

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

FIFTY-FIFTH AFFIRMATIVE DEFENSE

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

FIFTY-SIXTH AFFIRMATIVE DEFENSE

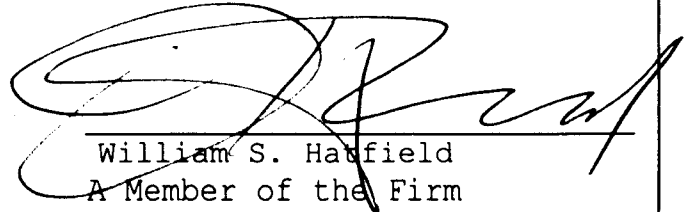
Third-Party Defendant reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

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

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

DAY PITNEY LLP
Attorneys for Third-Party Defendant
Givaudan Fragrances Corporation

By:



William S. Hatfield
A Member of the Firm


DATED: October 19, 2009

DESIGNATION OF TRIAL COUNSEL

William S. Hatfield, Esq. and Camille V. Otero, Esq. are hereby designated by Givaudan Fragrances Corporation as trial counsel.

DAY PITNEY LLP
Attorneys for Third-Party Defendant
Givaudan Fragrances Corporation

By:



William S. Hatfield
A Member of the Firm

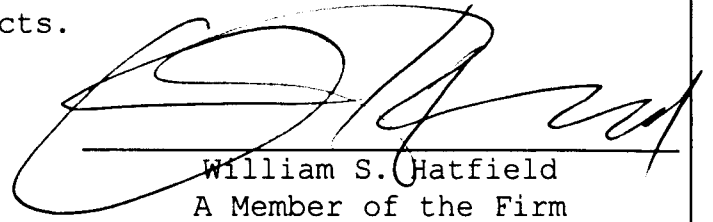
Dated: October 19, 2009

CERTIFICATION

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

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Because it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R.4:28; but that
- (c) In the event the Court shall determine that the potential liability of a third party defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R. 4:28; and
- (d) In either event, some or all of such non-parties are subject to joinder pursuant to R. 4:29-1(b) because of

potential liability to any party on the basis of the
same transactional facts.

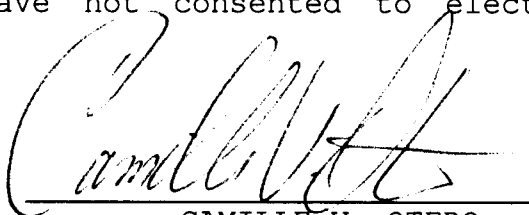


William S. Hatfield
A Member of the Firm

DATED: October 19, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the within Answer, Affirmative Defenses, R. 4:5-1 Certification and Designation of Trial Counsel of Givaudan Fragrances Corporation was served upon all counsel of record as set forth on the attached service list by timely posting the above-referenced pleadings on the Electronic Case Management Platform NJDEP, et al. v. OCC, et al.; Docket No. ESX-L-9868-05 (PASR) website, or by U.S. mail to those counsel of record who have not consented to electronic service.


CAMILLE V. OTERO

DATED: October 19, 2009

**New Jersey Department of Environmental Protection, et al.
v. Occidental Chemical Corporation, et al.**

***E-MAIL/SERVICE LIST
ESSEX COUNTY LAW DIVISION
DOCKET NO.: ESX-L-009868-05***

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