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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**ANSWER TO THIRD-PARTY
COMPLAINT "B," AFFIRMATIVE
DEFENSES AND R. 4:5-1
CERTIFICATION OF GOODY
PRODUCTS, INC.**

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

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

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

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

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

Third-Party Defendants.

**GOODY CORPORATION'S ANSWER AND
AFFIRMATIVE DEFENSES TO THIRD-PARTY COMPLAINT "B"**

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

GENERALLY

Goody denies each and every allegation contained in Third-Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B."

AS TO PROCEDURAL BACKGROUND

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

AS TO THE THIRD-PARTY PLAINTIFFS

16-18. Goody responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

19-100. The allegations of Paragraphs 19 through 100 relate to other parties; accordingly, no response is required pursuant to CMO V.

101. Goody admits the allegations of Paragraph 101.

102-209. The allegations of Paragraphs 102 through 209 relate to other parties; accordingly, no response is required pursuant to CMO V.

210. The allegations of Paragraph 210 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody denies them.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

237-1415. The allegations of Paragraphs 237 through 1263 relate to other parties; accordingly, no response is required pursuant to CMO V.

1416. The allegations of Paragraph 1416 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody responds as follows. Goody admits that H. Goodman & Sons leased property and operated a business at 969 Newark Turnpike, Kearny, New Jersey, also designated as Block 286, Lot 45C on the tax maps of the City of Kearny, Hudson County, New Jersey. On information and belief, Goody admits that the property measured approximately 9.45 acres. Goody admits that Paragraph 1416 sets forth the Third-Party Plaintiffs' definition of the term "Goody Products Site" for purposes of Third-Party Complaint "B." Goody admits that the business it operated at the Goody Products Site was a hair care accessory manufacturing facility. Goody denies the remaining allegations of this Paragraph.

1417. Goody admits the allegations of Paragraph 1417.

1418. The allegations of Paragraph 1418 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody denies them.

1419. Goody denies that the Dead Horse Creek flows into Frank's Creek. Goody lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and, therefore, denies them.

1420. The allegations of Paragraph 1420 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody denies them.

1421-3445. The allegations of Paragraphs 1421 through 3445 relate to other parties; accordingly, no response is required pursuant to CMO V.

AS TO FIRST COUNT

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

3446. Goody incorporates by reference its responses to Paragraphs 1 through 3445 as if fully set forth herein.

3447. The allegations of Paragraph 3447 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody responds as follows. Goody denies the allegations to the extent they apply to Goody. Goody lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3447 and, therefore, denies them.

3448. The cited statutory provision speaks for itself. Goody denies the allegations of Paragraph 3448 to the extent they are inconsistent with or unsupported by that statutory provision.

3449. The allegations of Paragraph 3449 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody responds as follows. Goody denies the allegations to the extent they apply to Goody. Goody lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3449 and, therefore, denies them.

3450. The allegations of Paragraph 3450 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody denies them.

3451. The allegations of Paragraph 3451 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody responds as follows. Goody denies the allegations to the extent they apply to Goody. Goody lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3451 and, therefore, denies them.

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

AS TO SECOND COUNT

Statutory Contribution

3452. Goody incorporates by reference its responses to Paragraphs 1 through 3451 as if fully set forth herein.

3453. The allegations of Paragraph 3453 consist of legal conclusions which require no response. To the extent these allegations require a response, Goody responds as follows. Goody denies the allegations to the extent they apply to Goody. Goody lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3453 and, therefore, denies them.

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

AFFIRMATIVE DEFENSES

Without altering the burden of proof, Goody will rely on the following defenses and any and all further defenses that become available or appear during discovery proceedings in this action and specifically reserves its right to amend this Answer for purposes of asserting additional defenses.

FIRST AFFIMATIVE DEFENSE

3454. Third-Party Complaint "B" fails to state a cause of action against Goody upon which relief can be granted.

SECOND AFFIMATIVE DEFENSE

3455. The claims asserted against and relief sought from Goody are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.* ("WPCA").

THIRD AFFIMATIVE DEFENSE

3456. The claims asserted against Goody are barred, in whole or in part, by the entire controversy doctrine.

FOURTH AFFIMATIVE DEFENSE

3457. Third-Party Plaintiffs, or one of them, do not have standing to sue.

FIFTH AFFIMATIVE DEFENSE

3458. The claims asserted against and relief sought from Goody are barred, in whole or in part, because they are wholly speculative, conjectural, unreasonable, excessive, and arbitrary and capricious.

SIXTH AFFIMATIVE DEFENSE

3459. The claims asserted against and relief sought from Goody are barred, in whole or in part, because Goody cannot be liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Goody that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by

relevant government agencies, including the State 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").

SEVENTH AFFIRMATIVE DEFENSE

3460. The claims asserted against Goody are barred and constitutionally impermissible, in whole or in part, to the extent they seek to impose retroactive liability for acts that were previously authorized or condoned by law, including applicable Environmental Laws.

EIGHTH AFFIRMATIVE DEFENSE

3461. The claims asserted against Goody are barred, in whole or in part, to the extent they seek relief for damages incurred prior to the effective date of the Spill Act.

NINTH AFFIRMATIVE DEFENSE

3462. The claims asserted against Goody fail, in whole or in part, because at all relevant times, Goody complied with all applicable Environmental Laws and industry standards, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

TENTH AFFIRMATIVE DEFENSE

3463. The claims asserted against and relief sought from Goody are barred, in whole or in part, because, at all relevant times, Goody exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because each release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, was caused solely by the negligence, acts or omissions of third-parties over whom Goody had no control and no duty to control, including without limitation: (a) the State of New Jersey and

its agencies, instrumentalities and officials, including, without limitation, Trustees for tidelands; and (b) the United States and its agencies, instrumentalities and officials.

ELEVENTH AFFIRMATIVE DEFENSE

3464. The claims asserted against Goody are barred, in whole or in part, by the doctrine of preemption.

TWELFTH AFFIRMATIVE DEFENSE

3465. The claims asserted against Goody fail, in whole or in part, because the actions or omissions of Goody were not the actual, legal, or proximate cause of Third-Party Plaintiffs' alleged damages.

THIRTEENTH AFFIRMATIVE DEFENSE

3466. The claims asserted against and relief sought from Goody are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and the equitable doctrines of laches and estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

3467. The claims asserted against and relief sought from Goody are barred, in whole or in part, by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and assumption of risk.

FIFTEENTH AFFIRMATIVE DEFENSE

3468. The claims asserted against and relief sought from Goody are barred, in whole or in part, by the doctrine of "coming to the nuisance."

SIXTEENTH AFFIRMATIVE DEFENSE

3469. The claims asserted against and relief sought from Goody for equitable contribution under the Spill Act in the Third-Party Complaint "B" are barred, in whole or in part, because: (a) equity will not compel action that is impossible to perform; (b) equity will not exceed the rights of parties existing at law; (c) equity will not consciously become an instrument of injustice; and (d) equity will not permit double satisfaction.

SEVENTEENTH AFFIRMATIVE DEFENSE

3470. The claims asserted against and relief sought from Goody 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

3471. The relief sought against Goody is barred, in whole or in part, because if the relief sought was claimed directly by Plaintiffs it would amount to unlawful taxation.

NINETEENTH AFFIRMATIVE DEFENSE

3472. The relief sought against Goody is subject to setoff and recoupment and, therefore, must be reduced accordingly.

TWENTIETH AFFIRMATIVE DEFENSE

3473. The claims asserted against and relief sought from Goody are barred, in whole or in part, because 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 more than their equitable share of the liability.

TWENTY-FIRST AFFIRMATIVE DEFENSE

3474. Goody 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, the claims asserted against and relief sought from Goody are barred, in whole or in part, because such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Goody exercised no control and for whose conduct Goody was not responsible including, without limitation, unpermitted and storm event discharges from publicly owned treatment works.

TWENTY-SECOND AFFIMATIVE DEFENSE

3475. The claims asserted against and relief sought from Goody are barred, in whole or in part, because if Third-Party Plaintiffs sustained any injury, such injury was caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault, 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 Goody, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs, its agents or employees.

TWENTY-THIRD AFFIMATIVE DEFENSE

3476. Although Goody denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Goody 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.

TWENTY-FOURTH AFFIMATIVE DEFENSE

3477. 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.

TWENTY-FIFTH AFFIMATIVE DEFENSE

3478. The claims asserted against and relief sought from Goody are barred to the extent that the conduct of Goody alleged to give rise to liability in the Third-Party Complaint "B" is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

TWENTY-SIXTH AFFIMATIVE DEFENSE

3479. The claims asserted against Goody fail, in whole or in part, because the disposal of waste, if any, which allegedly originated from Goody, was undertaken in

accordance with the then accepted and state of the art industrial practice and technology, and the then prevailing legal requirements, for which Goody cannot be found retroactively liable.

TWENTY-SEVENTH AFFIMATIVE DEFENSE

3480. The claims asserted against Goody fail, in whole or in part, because any discharge that allegedly originated from Goody, was investigated and remediated by a licensed professional under the direct oversight of State and/or federal agencies with the then accepted and state of the art industrial practice and technology, and the then prevailing requirements, for which Goody cannot be found retroactively liable.

TWENTY-EIGHTH AFFIMATIVE DEFENSE

3481. The claims asserted against and relief sought from Goody are barred, in whole or in part, because Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

TWENTY-NINTH AFFIMATIVE DEFENSE

3482. The claims asserted against and relief sought from Goody are barred, in whole or in part, because the damages Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

THIRTIETH AFFIMATIVE DEFENSE

3483. The claims asserted against and relief sought from Goody are barred, in whole or in part, to the extent that, through Third-Party Plaintiffs' own conduct, Third-Party Plaintiffs have taken actions that resulted in commingling of formerly divisible areas of environmental harm.

THIRTY-FIRST AFFIMATIVE DEFENSE

3484. Goody's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims, and excludes any such claim 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.

THIRTY-SECOND AFFIMATIVE DEFENSE

3485. The claims asserted against Goody fail, in whole or in part, because the discharges for which the Plaintiffs are seeking relief are different from Goody's alleged discharges.

THIRTY-THIRD AFFIMATIVE DEFENSE

3486. The claims asserted against and relief sought from Goody are barred, in whole or in part, because Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law since Goody is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and does not share a common liability to the State.

THIRTY-FOURTH AFFIMATIVE DEFENSE

3487. The claims asserted against and relief sought from Goody are barred, in whole or part, by Third-Party Plaintiffs' failure to mitigate their claimed damages.

THIRTY-FIFTH AFFIMATIVE DEFENSE

3488. The claims asserted against Goody are barred, in whole or in part, because each release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, was caused solely by natural causes and/or the negligence, acts or omissions of third parties over whom Goody had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including, without limitation: (a) the State of New Jersey and its agencies, instrumentalities and officials, including, without limitation, Trustees for tidelands; and (b) the United States and its agencies, instrumentalities and officials.

THIRTY-SIXTH AFFIMATIVE DEFENSE

3489. The claims asserted against and relief sought from Goody are barred, in whole or in part, to the extent they seek to hold Goody liable, in contribution, for any

claims for which it would be a violation of public policy to hold Goody liable, including but not limited to punitive damages and penalties.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

3490. 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, the claims asserted against and relief sought from Goody are barred, in whole or in part, to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Goody 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 Goody.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

3491. The claims asserted against and relief sought from Goody are barred, in whole or in part, because the relief sought against Goody, were it claimed directly by Plaintiffs, would amount to a "taking" of Goody'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

THIRTY-NINTH AFFIRMATIVE DEFENSE

3492. The claims asserted against and relief sought from Goody are barred, in whole or in part, to the extent the relief sought by Third-Party Plaintiffs in Third-Party Complaint "B" is at odds with Goody'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 Goody, thereby exposing Goody to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTIETH AFFIMATIVE DEFENSE

3493. The claims for equitable contribution under the Spill Act asserted against Goody are barred, in whole or in part, to the extent Goody has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Goody, because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-FIRST AFFIMATIVE DEFENSE

3494. Without admitting liability, Goody alleges that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint "B," such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FORTY-SECOND AFFIMATIVE DEFENSE

3495. The claims asserted against Goody fail, in whole or in part, to the extent Third-Party Complaint "B" purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 *et seq.*, because Third-Party Plaintiffs have failed to meet one or more procedural or substantive requirement that is a prerequisite to filing suit against Goody under that statute.

FORTY-THIRD AFFIMATIVE DEFENSE

3496. The claims asserted against and relief sought from Goody are barred, in whole or in part, because (a) at common law, Goody 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; (b) Goody has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets; and (c) 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 Goody directly.

FORTY-FOURTH AFFIMATIVE DEFENSE

3497. The claims asserted against Goody are barred, in whole or in part, because the State of New Jersey is legally barred from asserting direct claims against Goody 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 Goody as well, including the claims set forth in the Third-Party Complaint "B."

FORTY-FIFTH AFFIMATIVE DEFENSE

3498. The claims asserted against and relief sought from Goody are barred, in whole or in part, by the "unclean hands" doctrine.

FORTY-SIXTH AFFIMATIVE DEFENSE

3499. 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 Goody.

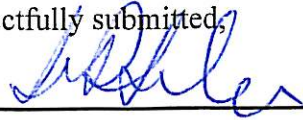
COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

3500. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

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

Dated: January 4, 2010

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "Aronsohn", written over a horizontal line.


Aronsohn Weiner & Salerno, P.C.
Attorneys for Third-Party Defendant,
Goody Products, Inc.
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Fax: (201) 487-7601

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

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

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



Gerald R. Salerno, Esq.

Dated: January 4, 2010

Gerald R. Salerno, Esq.
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Attorneys for Third-Party Defendant Goody Products, Inc.

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

CERTIFICATION OF SERVICE

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

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

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

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

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

I, CRAIG L. LEVINSOHN, hereby certify as follows:

1. I am an associate with the law firm of Aronsohn Weiner & Salerno, PC, attorneys for Third Party Defendant, Goody Products, Inc. ("Goody"), in connection with the above-captioned matter.

2. On January 4, 2010, I caused Goody's Answer to Third Party Complaint "B" and Civil Case Information Statement to be served electronically on all parties that have consented to service by posting on www.sfile.com/njdepvocc. The following counsel of record were served on that same date via regular mail.

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John P. McGovern, Esq.
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Newark, NJ 07107

Gustavo Garcia, Esq.
Municipal Attorney
Township of Irvington
Irvington Municipal Building
Civic Square
Irvington, NJ 07111

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

Dated: January 4, 2010

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Craig L. Levinsohn', is written over a horizontal line.

Craig L. Levinsohn, Esq.
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