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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.

AMERICAN CYANAMID,  
BAYER CORPORATION,  
BAYONNE INDUSTRIES, INC.,  
BP MARINE AMERICAS, INC.,  
CHEMICAL WASTE MANAGEMENT INC.,  
DOW CHEMICAL COMPANY,  
DURAPORT REALTY ONE LLC,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**HESS CORPORATION'S  
ANSWER TO THIRD-PARTY  
COMPLAINT "D"**

DURAPORT REALTY TWO LLC,  
EPEC POLYMERS, INC.,  
GAESS ENVIRONMENTAL SERVICES, INC.,  
GATX TERMINALS CORPORATION,  
GOODRICH CORPORATION,  
HESS CORPORATION,  
IMTT-BAYONNE,  
KINDER MORGAN ENERGY PARTNERS,  
L.P.,McKESSON CORPORATION,  
McKESSON ENVIROSYSTEMS CO.,  
SAFETY-KLEEN CORPORATION,  
SHULTON INCORPORATED, USA,  
SUN PIPELINE CO.,  
SUN REFINING AND MARKETING CO.,  
SUN OIL CO.,  
SUPERIOR MPM LLC,  
THOMAS & BETTS CORP.,  
WASTE MANAGEMENT, INC.  
WYETH,

Third-Party Defendants.

**HESS CORPORATION'S ANSWER TO THIRD-PARTY COMPLAINT "D"**

Third-Party Defendant Hess Corporation ("Hess"), 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 "D" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

**GENERALLY**

Hess denies each and every allegation contained in Third-Party Complaint "D" 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 "D."

### **AS TO PROCEDURAL BACKGROUND**

1-7. Pursuant to CMO V, no response to the factual allegations of Paragraphs 1 through 7, which do not relate to Hess, is required. To the extent a response is required, Hess responds that the pleadings and agreement referenced in Paragraphs 1 through 7 speak for themselves.

### **AS TO FIRST COUNT**

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

8. Hess incorporates by reference, as if fully set forth herein, its responses and denials as asserted in Paragraphs 1 through 7 herein.

9. Hess denies that it is “a discharger” and/or “a person in any way responsible” for “the discharge of Hazardous Substances into the Newark Bay Complex” as alleged in Paragraph 9 of Third-Party Complaint “D”, and refers and relates to the text of the Spill Act for the content thereof. Hess further states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 9, and therefore denies the same.

10. Hess refers and relates to the text of N.J.S.A. 58:10-23.11f.a.(2)(a), and the remaining provisions of the Spill Act for the content thereof, and states that the Spill Act speaks for itself.

11. Hess denies that Third-Party Plaintiffs are entitled to contribution from Hess under the Spill Act. Hess is without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 11, and therefore denies the same.

12. Hess is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 12, and therefore denies the same.

13. Hess denies that it has or is violating the Spill Act, and further denies that Third-Party Plaintiffs are entitled to contribution from Hess. Hess is without knowledge or information

sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 13, and therefore denies the same.

#### **AS TO FACTUAL ALLEGATIONS**

14. In response to the first sentence of Paragraph 14, Hess states that is the current owner of property located at 1111 Delancy Street, but Hess denies that it is the operator of storage terminals at that location. Hess further states that it is the owner and operator of storage terminals on property located at 921-981 Delancy Street. Hess admits the allegations in the second sentence of Paragraph 14. In response to the third sentence of Paragraph 14, Hess admits that the site is approximately 60 acres and is bounded to the east by the Newark Bay. Hess denies all remaining allegations in Paragraph 14.

15. Hess is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15, and therefore denies them.

16. Hess denies the allegations in Paragraph 16.

17. Hess denies the allegations in Paragraph 17.

18. Hess is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18, and therefore denies them.

19. Hess denies the allegations in Paragraph 19.

20-89. The allegations contained in Paragraphs 20 through 89 relate to other Third-Party Defendants, do not specifically relate to Hess, and pursuant to CMO V do not require a response from Hess. To the extent a response is required, Hess is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraphs 20 though 89, and therefore denies them.

## **AS TO SECOND COUNT**

### **Statutory Contribution**

90. Hess incorporates by reference, as if fully set forth herein, its responses and denials as asserted in Paragraphs 1 through 89 herein.

91. Hess denies that it is liable to Third-Party Plaintiffs for contribution.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

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

### **Second Affirmative Defense**

Hess 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”) for the discharges alleged in Third-Party Complaint “D”.

### **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 Hess 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 Hess 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 Third-Party Complaint “D” 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 Hess under that statute.

#### **Eighth Affirmative Defense**

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

#### **Ninth Affirmative Defense**

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

#### **Tenth Affirmative Defense**

Hess cannot be held liable for or be required to pay Third-Party Plaintiffs’ damages or other claims based on actions or inactions by Hess 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”).

#### **Eleventh Affirmative Defense**

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

#### **Twelfth Affirmative Defense**

The claims asserted against Hess in Third-Party Complaint “D” are barred because at all relevant times Hess 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 Hess 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.

#### **Thirteenth Affirmative Defense**

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

#### **Fourteenth Affirmative Defense**

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

#### **Fifteenth Affirmative Defense**

Third-Party Plaintiffs’ claims against Hess 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.

#### **Sixteenth Affirmative Defense**

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

#### **Seventeenth Affirmative Defense**

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

#### **Eighteenth 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.

#### **Nineteenth 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.

#### **Twentieth 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.

#### **Twenty-First 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.



### **Twenty-Second Affirmative Defense**

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

### **Twenty-Third 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 Hess, 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.

### **Twenty-Fourth Affirmative Defense**

Although Hess denies that it is liable for the contamination described in Third-Party Complaint "D", in the event it is found liable, Hess 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-Fifth 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.

#### **Twenty-Sixth Affirmative Defense**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Hess alleged to give rise to liability in Third-Party Complaint "D" 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.

#### **Twenty-Seventh Affirmative Defense**

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

#### **Twenty-Eighth Affirmative Defense**

Hess's liability to Third-Party Plaintiffs, if any, is divisible or subject to a reasonable basis for apportionment.

#### **Twenty-Ninth Affirmative Defense**

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Hess 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.

#### **Thirtieth Affirmative Defense**

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

#### **Thirty-First 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 Hess are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Hess pertaining to the alleged environmental contamination (including natural resource damage) of any site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Hess. Examples of legal extinguishments that are or may be applicable to Hess include:

1. Any release or covenant not to sue granted by Plaintiffs to Hess;
2. Any settlement or other compromise between Plaintiffs and Hess;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Hess;
4. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in Third-Party Complaint "D") in a prior litigation between Plaintiffs and Hess, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
5. Any issuance by Plaintiffs to Hess, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

#### **Thirty-Second Affirmative Defense**

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

#### **Thirty-Third Affirmative Defense**

To the extent Hess is acting or has acted to conduct environmental cleanup at any site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Hess, the

claims for equitable contribution under the Spill Act in Third-Party Complaint "D" are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

**Thirty-Fourth Affirmative Defense**

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

**Thirty-Fifth Affirmative Defense**

Hess 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 Hess.

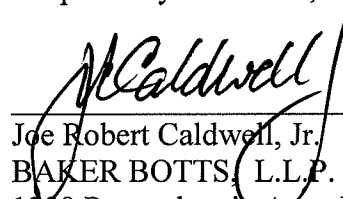
**COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS**

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

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

Dated: November 13, 2009

Respectfully submitted,

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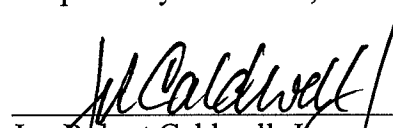
**CERTIFICATION PURSUANT TO RULE 4:5-1(B)(2)**

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 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.

Dated: November 13, 2009

Respectfully submitted,

  
\_\_\_\_\_  
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*Attorney for Third-Party Defendant Hess Corporation*

**CERTIFICATE OF SERVICE**

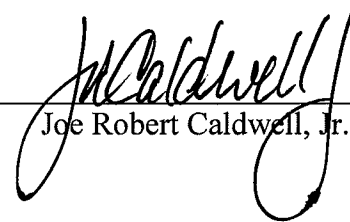
I, Joe Robert Caldwell, Jr., an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served Hess Corporation's Answer to Third-Party Complaint "D" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via Federal Express.

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.

Joe Robert Caldwell, Jr.

Attorney for Third-Party Defendant Hess  
Corporation

By: \_\_\_\_\_

  
Joe Robert Caldwell, Jr.

Dated: November 13, 2009

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