

Joe Robert Caldwell, Jr.
BAKER BOTTS, L.L.P.
1299 Pennsylvania Ave. NW
Washington, D.C. 20004-2400
Tel: (202) 639-7788
Fax: (202) 905-9826

*Attorney for Third-Party Defendants
Hexcel Corporation and Fine Organics Corporation*

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY, et al.

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**HEXCEL CORPORATION AND FINE
ORGANICS CORPORATION'S ANSWER
TO THIRD-PARTY COMPLAINT "B"**

HEXCEL CORPORATION AND FINE ORGANICS CORPORATION'S
ANSWER TO THIRD-PARTY COMPLAINT "B"

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

GENERALLY

Hexcel and Fine Organics deny 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. Pursuant to CMO V, no response to the factual allegations of Paragraphs 1 through 15, which do not relate to Hexcel and Fine Organics, is required. To the extent a response is required, Hexcel and Fine Organics respond that the pleadings and agreement referenced in Paragraphs 1 through 15 speak for themselves.

AS TO THE THIRD PARTY PLAINTIFFS

16-18. Pursuant to CMO V, no response to the allegations of Paragraphs 16 through 18 is required.

AS TO THE THIRD PARTY DEFENDANTS

19-86. The allegations contained in Paragraphs 19 through 86 relate to other Third-Party Defendants, do not specifically relate to Hexcel or Fine Organics, and pursuant to CMO V do not require a response from Hexcel and Fine Organics. To the extent a response is required, Hexcel

and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraphs 19 through 86, and therefore deny them.

87. Fine Organics admits the allegations in Paragraph 87. The allegations contained in Paragraph 87 do not specifically relate to Hexcel and, pursuant to CMO V, do not require a response from Hexcel.

88-105. The allegations contained in Paragraphs 88 through 105 relate to other Third-Party Defendants, do not specifically relate to Hexcel or Fine Organics, and pursuant to CMO V do not require a response from Hexcel and Fine Organics. To the extent a response is required, Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraphs 88 through 105, and therefore deny them.

106. Hexcel admits the allegations in Paragraph 106. The allegations contained in Paragraph 106 do not specifically relate to Fine Organics and, pursuant to CMO V, do not require a response from Fine Organics.

107-209. The allegations contained in Paragraphs 107 through 209 relate to other Third-Party Defendants, do not specifically relate to Hexcel or Fine Organics, and pursuant to CMO V do not require a response from Hexcel and Fine Organics. To the extent a response is required, Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraphs 107 through 209, and therefore deny them.

210. The allegations in Paragraph 210 state a legal conclusion as to which no response is required. To the extent a response is required, Hexcel and Fine Organics deny the allegations in Paragraph 210.

AS TO DEFINITIONS

200-236. Paragraphs 211 through 236 contain definitions. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

237-1466. The allegations contained in Paragraphs 237 through 1466 relate to other Third-Party Defendants, do not specifically relate to Hexcel or Fine Organics, and pursuant to CMO V do not require a response from Hexcel and Fine Organics. To the extent a response is required, Hexcel and Fine Organics state that the referenced pleadings speak for themselves. To the extent any additional response is required, Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraphs 237 through 1466, and therefore deny them.

1467. Hexcel and Fine Organics admit the allegations contained in Paragraph 1467.

1468. Hexcel and Fine Organics admit that the site was formerly occupied by United Piece Dye Works and that it has been operated as a chemical manufacturing facility since the early 1900s. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1486, and therefore deny the same.

1469. Hexcel admits the allegations contained in the first sentence of paragraph 1469. With respect to the second sentence, Hexcel admits that Fine Organics, Inc. manufactured certain pharmaceutical, organic, and inorganic chemicals. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1486, and therefore denies the same. In response to Paragraph 1469, Fine Organics admits that Fine Organics, Inc. previously owned and operated at the site and that Fine Organics, Inc.

manufactured certain pharmaceutical, organic, and inorganic chemicals. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1469, and therefore denies the same.

1470. In response to Paragraph 1470, Hexcel admits that at certain times in the past, PCBs were used in the heat exchange system of Building 1 at the Hexcel site. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1470, and therefore denies the same.

1471. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1471, and therefore deny the same.

1472. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1472, and therefore deny the same.

1473. Hexcel admits the allegations in Paragraph 1473. In response to Paragraph 1473, Fine Organics admits that Aroclor 1248 was detected in soil at the Hexcel site. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1473, and therefore denies the same.

1474. Hexcel admits the first sentence of Paragraph 1474. In response to the second sentence of Paragraph 1474, Hexcel admits that Hexcel Subsidiary and Fine Organics, Inc. merged on May 14, 1973 and that the surviving corporation became known as Fine Organics, Inc., a California corporation. Hexcel denies the remaining allegations in Paragraph 1474. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1474, and therefore denies the same.

1475. In response to the first sentence of Paragraph 1475, Hexcel admits that on June 30, 1975, Fine Organics, Inc., a California Corporation, merged into Hexcel Corporation, a California Corporation. Hexcel denies the remaining allegations in the first sentence of Paragraph 1475. The allegations in the second sentence of Paragraph 1475 state a legal conclusion as to which no response is required. To the extent a response is required, Hexcel denies the allegations in the second sentence of Paragraph 1475. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1475, and therefore denies the same.

1476. Hexcel admits the allegations in the first sentence of Paragraph 1476. In response to the second sentence of Paragraph 1476, Hexcel admits that it blended and packaged industrial cleaning compounds at the site between 1975 and 1986 and that it produced resin products at the site between approximately 1983 and 1986. Hexcel denies the remaining allegations in Paragraph 1476. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1476, and therefore denies the same.

1477. In response to Paragraph 1477, Hexcel admits that, on or about March 31, 1986, Hexcel sold the Hexcel site to Fine Organics Corporation, a Delaware Corporation. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1477, and therefore denies the same. In response to the first sentence of Paragraph 1477, Fine Organics admits that, on or about April 1, 1986, Hexcel sold the Hexcel site to Fine Organics Corporation, a Delaware Corporation. Fine Organics denies the allegations in the second sentence of Paragraph 1477.

1478. In response to Paragraph 1478, Hexcel admits that Fine Organics Corporation owned the Hexcel site from March 1987 until on or about April 4, 1997 and that Fine Organics

Corporation vacated the site in 1998. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1478, and therefore denies the same. Fine Organics admits the allegations in Paragraph 1478.

1479. Hexcel admits the allegations in the first sentence of Paragraph 1479. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1479, and therefore denies the same. In response to Paragraph 1479, Fine Organics admits that there was an industrial sewer on the Hexcel site and that in the past the industrial sewer discharged to the Hendricks Pump Station. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1479, and therefore denies the same.

1480. Hexcel admits the allegations in Paragraph 1480. In response to Paragraph 1480, Fine Organics admits that there were reports of PCBs detected in a manhole in the industrial sewer system. Fine Organics admits the allegations in the first sentence of Paragraph 1480. In response to the second sentence of Paragraph 1480, Fine Organics admits that there were reports of PCBs detected in a manhole in the industrial sewer system. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1480, and therefore denies the same.

1481. In response to Paragraph 1481, Hexcel and Fine Organics admit that at certain times water floating in a drain in a pit in Building 1 at the Hexcel site contained oil and PCBs. Hexcel and Fine Organics deny the remaining allegations in Paragraph 1481.

1482. In response to Paragraph 1482, Hexcel denies that phenol and chloroform have been detected in the soil at the Hexcel site. Hexcel admits the remaining allegations in Paragraph 1482. In response to Paragraph 1482, Fine Organics admits that total petroleum

hydrocarbons, volatile organic compounds, PCBs and some heavy metals were detected in the soil at the Hexcel site. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1482, and therefore denies the same

1483. In response to the first sentence of Paragraph 1483, Hexcel admits that the Saddle River has been subject to flood events and that the Hexcel facility is located in a flood plain adjacent to the Saddle River. Hexcel admits the allegations in the second and third sentences of Paragraph 1483. In response to the fourth sentence of Paragraph 1483, Hexcel admits that a three-inch diameter metal pipe was uncovered on the eastern bank of the Saddle River approximately 1,000 feet downstream of the Hexcel site, but denies that this pipe was associated with the Hexcel site. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1483, and therefore denies the same.

In response to the first sentence of Paragraph 1483, Fine Organics admits that the Saddle River has been subject to flood events and that the Hexcel facility is located in a flood plain adjacent to the Saddle River. Fine Organics admits the allegations in the second and third sentences of Paragraph 1483. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1483, and therefore denies the same.

1484. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1484, and therefore deny the same.

1485. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the first sentence of Paragraph 1485, and therefore denies them.

Hexcel admits the allegations contained in the second sentence of Paragraph 1485. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1485, and therefore denies the same.

1486. In response to Paragraph 1486, Hexcel and Fine Organics admit that the storm sewer system and the industrial sewer associated with the Hexcel site were interconnected at certain times. Hexcel and Fine Organics deny the remaining allegations in Paragraph 1486.

1487. In response to Paragraph 1487, Hexcel admits that a letter dated November 20, 2001 from NJDEP stated that there had been releases to the storm sewer line from the industrial sewer. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1487, and therefore denies the same.

1488. In response to Paragraph 1488, Hexcel and Fine Organics admit that a dye test of the industrial sewer system at the Hexcel Site on April 14, 1987 confirmed that water in the industrial sewer was flowing into the storm drainage system at that time. Hexcel and Fine Organics deny the remaining allegations in Paragraph 1488.

1489. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in the first sentence of Paragraph 1489, and therefore denies the same. In response to the second sentence of Paragraph 1489, Hexcel admits that an interconnection between the storm sewer and the industrial sewer at the Hexcel site was closed in March 1990. Hexcel is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1489, and therefore denies the same. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1489, and therefore denies the same.

1490. Hexcel admits the allegations in Paragraph 1490. In response to Paragraph 1490, Fine Organics admits that chlorobenzene, tetrachloroethene, antimony, beryllium, cadmium, chromium, copper, lead, mercury, nickel, PCBs, dense non-aqueous phase liquids, light non-aqueous phase liquids, 1,2-dichlorobenzene, 1,4-dichlorobenzene, methylene chloride, trans-1,2-dichloroethene, toluene, benzene, and vinyl chloride were detected in the groundwater at the Hexcel site. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1490, and therefore denies the same.

1491. Hexcel admits the allegations in Paragraph 1491. In response to Paragraph 1491, Fine Organics admits that 1,2-dichlorobenzene and 1,4-dichlorobenzene were detected in the groundwater at the Hexcel site. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1491, and therefore denies the same.

1492. In response to Paragraph 1492, Hexcel and Fine Organics admit that, in the shallow formation, the general direction of the groundwater flow is from east to west towards the Saddle River. Hexcel and Fine Organics deny the remaining allegations in Paragraph 1492.

1493. Hexcel admits the allegations in Paragraph 1493. In response to Paragraph 1493, Fine Organics admits that chlorobenzene and tetrachloroethene were detected in the groundwater at the Hexcel site. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 1493, and therefore denies the same.

1494. In response to Paragraph 1494, Hexcel and Fine Organics admit the allegations in Paragraph 1494. In further response to Paragraph 1494, Hexcel states that the NJDEP rescinded

the Directive as to Hexcel without prejudice and removed Hexcel from the list of respondents to the Directive in a letter dated March 18, 2005.

1495. Hexcel admits the allegations in Paragraph 1495. Fine Organics is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 1495, and therefore denies the same.

1496. Hexcel and Fine Organics deny the allegations of Paragraph 1496.

1497-3445. The allegations contained in Paragraphs 1497 through 3445 relate to other Third-Party Defendants, do not specifically relate to Hexcel or Fine Organics, and pursuant to CMO V do not require a response from Hexcel and Fine Organics. To the extent a response is required, Hexcel and Fine Organics state that the referenced pleadings speak for themselves. To the extent any additional response is required, Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraphs 1498 through 3445, and therefore deny them.

AS TO FIRST COUNT

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

3446. Hexcel and Fine Organics incorporate by reference as if fully set forth herein their responses and denials as asserted in Paragraphs 1 through 3445 herein.

3447. Hexcel and Fine Organics deny that they are “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 3447 of Third-Party Complaint “B”, and refer and relate to the text of the Spill Act for the content thereof. Hexcel and Fine Organics further state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 3447, and therefore deny the same.

3448. Hexcel and Fine Organics refer and relate 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 state that the Spill Act speaks for itself. Hexcel and Fine Organics further state that they are without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3448, and therefore deny the same.

3449. Hexcel and Fine Organics deny that Third-Party Plaintiffs are entitled to contribution from Hexcel or Fine Organics deny under the Spill Act. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 3449, and therefore deny the same.

3450. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 3450, and therefore deny the same.

3451. Hexcel and Fine Organics deny that they have violated or are violating the Spill Act, and further deny that Third-Party Plaintiffs are entitled to contribution from Hexcel and Fine Organics. Hexcel and Fine Organics are without knowledge or information sufficient to form a belief as to the truth of the remaining matters stated in Paragraph 3451, and therefore deny the same.

Hexcel and Fine Organics deny that Third-Party Plaintiffs are entitled to the relief sought.

AS TO SECOND COUNT

Statutory Contribution

3452. Hexcel and Fine Organics incorporate by reference as if fully set forth herein their responses and denials as asserted in Paragraphs 1 through 3451 herein.

3453. Hexcel and Fine Organics deny that they are liable to Third-Party Plaintiffs for contribution. Hexcel and Fine Organics further state that they are without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraph 3453, and therefore deny the same.

Hexcel and Fine Organics deny that Third-Party Plaintiffs are entitled to the relief sought.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Third-Party Complaint "B" is barred in whole or in part as it fails to state a cause of action against Hexcel and Fine Organics upon which relief can be granted.

Second Affirmative Defense

Hexcel and Fine Organics are not dischargers or a persons 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 "B".

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 Hexcel or Fine Organics because Third-Party Plaintiffs 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 Hexcel or Fine Organics 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 "B" 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 Hexcel or Fine Organics 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

Hexcel and Fine Organics cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Hexcel or Fine Organics 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 "B" 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 Hexcel and Fine Organics in Third-Party Complaint "B" are barred because at all relevant times Hexcel and Fine Organics 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 Hexcel and Fine Organics 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 "B" 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 Hexcel or Fine Organics.

Fifteenth Affirmative Defense

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

Seventeenth Affirmative Defense

Hexcel and Fine Organics 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

Hexcel and Fine Organics deny 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 Hexcel and Fine Organics exercised no control and for whose conduct Hexcel and Fine Organics were 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 Hexcel and Fine Organics, 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 Hexcel and Fine Organics deny that it is liable for the contamination described in Third-Party Complaint "B", in the event it is found liable, Hexcel and Fine Organics are 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 Hexcel and Fine Organics alleged to give rise to liability in Third-Party Complaint "B" 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

Hexcel's and Fine Organics' 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 Hexcel and Fine Organics 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.

Thirtieth Affirmative Defense

Third-Party Plaintiffs’ claims are barred, in whole or in part, because no actions or inactions by Hexcel or Fine Organics 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 Hexcel and Fine Organics are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Hexcel and Fine Organics 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 Hexcel and Fine Organics. Examples of legal extinguishments that are or may be applicable to Hexcel and Fine Organics include:

1. Any release or covenant not to sue granted by Plaintiffs to Hexcel or Fine Organics;
2. Any settlement or other compromise between Plaintiffs and Hexcel or Fine Organics;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs’ right to maintain a claim against Hexcel or Fine Organics;
4. Any failure to join a claim relating to the “Newark Bay Complex” (as defined in Third-Party Complaint “B”) in a prior litigation between Plaintiffs and Hexcel or

Fine Organics, 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 Hexcel or Fine Organics, 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 "B" is at odds with Hexcel's or Fine Organics' 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 Hexcel and Fine Organics, thereby exposing Hexcel and Fine Organics 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 Hexcel and Fine Organics are acting or have acted to conduct environmental cleanup at any site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Hexcel and Fine Organics, the claims for equitable contribution under the Spill Act in Third-Party Complaint "B" are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

Thirty-Fourth Affirmative Defense

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

Thirty-Fifth Affirmative Defense

The claims against Hexcel must be dismissed because they were discharged in Hexcel's prior Chapter 11 bankruptcy proceeding (Case No. 93-48535, United States Bankruptcy Court for the Northern District of California, Oakland Division). Pursuant to the First Amended Plan Of Reorganization Proposed By The Debtor And The Official Committee Of Equity Holders, Dated As Of November 7, 1997 (the "Plan"), which was confirmed with amendments pursuant to an order of the Bankruptcy Court entered on January 12, 1995 ("Confirmation Order"), Hexcel was discharged from any and all debts and claims that arose before the date of entry of the Confirmation Order, unless otherwise provided for in the Plan. Such provisions operate as a permanent injunction which prohibits the commencement or continuation of any action, the employment of any process, or any act to collect, recover or offset any debt discharged as a personal liability of Hexcel or its estate, or from or against property of Hexcel or its estate.

Thirty-Sixth Affirmative Defense

Hexcel and Fine Organics incorporate 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 Hexcel and Fine Organics.

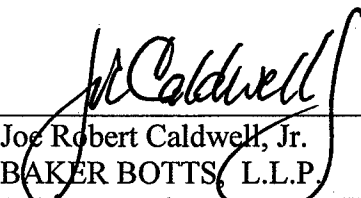
COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

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

WHEREFORE, Third-Party Defendants Hexcel and Fine Organics respectfully request that the Court enter an Order dismissing the Third-Party Complaint "B" with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

Dated: February 9, 2010

Respectfully submitted,



Joe Robert Caldwell, Jr.
BAKER BOTTS, L.L.P.
1299 Pennsylvania Ave., NW
Washington, D.C. 20004-2400
Tel: (202) 639-7788
Fax: (202) 905-9826

*Attorney for Third-Party Defendants Hexcel
Corporation and Fine Organics
Corporation*

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

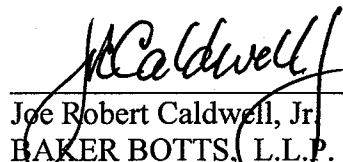
(b) Since it is the legal position of the undersigned that the potential liability, if any, of a third-party defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R.4:28; but that

(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: February 9, 2010

Respectfully submitted,



Joe Robert Caldwell, Jr.
BAKER BOTTS, L.L.P.
1299 Pennsylvania Ave., NW
Washington, D.C. 20004-2400
Tel: (202) 639-7788
Fax: (202) 905-9826

*Attorney for Third-Party Defendants Hexcel
Corporation and Fine Organics
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 Hexcel Corporation and Fine Organics Corporation's Answer to Third-Party Complaint "B" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via 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 Defendants Hexcel
Corporation and Fine Organics Corporation

By: _____


Joe Robert Caldwell, Jr.

Dated: February 9, 2010

THIRD PARTY DEFENDANTS SERVICE LIST

Richard J. Dewland
Coffey & Associates
465 South Street
Morristown, NJ 07960

John P. McGovern
Assistant City Attorney
City of Orange Township
29 North Day St.
Orange, NJ 07050

John A. Daniels
Daniels & Daniels LLC
6812 Park Ave.
Guttenberg, NJ 07093

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