

**WOLFF & SAMSON PC**

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Hilton Davis Chemical Co.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION : ESSEX COUNTY

Docket No. ESX-L-9869-05

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.

CIVIL ACTION

**THIRD PARTY DEFENDANT HILTON DAVIS CHEMICAL CO.'S ANSWER TO  
MAXUS ENERGY CORPORATION'S AND TIERRA SOLUTIONS, INC.'S  
THIRD PARTY COMPLAINT "B"**

Third-Party Defendant Hilton Davis Chemical Co. ("Hilton Davis"), (improperly named and served in this action as "Emerald Hilton Davis, LLC") by and through its attorneys Wolff & Samson PC, and in accordance with Case Management Order V (April 16, 2009), by way of Answer to the specific allegations in Third-Party Complaint "B" of Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (collectively, "Defendants/Third-Party Plaintiffs"), hereby responds as follows:

**GENERALLY**

Hilton Davis 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."

**PROCEDURAL BACKGROUND**

1 – 82. Hilton Davis responds that no answer is required pursuant to Case Management Order V.

**THE PARTIES**

83. Answering paragraph 83, Hilton Davis, improperly named as Emerald Hilton Davis, LLC, admits that it is a limited liability company organized under the laws of the state of Delaware and denies the remaining allegations of paragraph 83.

84 – 210. To the extent that the allegations in Paragraphs 84 through 210 relate to other parties, no answer is required pursuant to Case Management Order V.

## **DEFINITIONS**

211 – 236. Hilton Davis responds that no answer is required pursuant to Case Management Order V.

## **FACTUAL ALLEGATIONS**

237 – 1496. To the extent that the allegations in Paragraphs 237 through 1496 relate to other parties, no answer is required pursuant to Case Management Order V.

### **Hilton Davis Site**

1497. Hilton Davis denies the allegations of paragraph 1497.

### **Emerald Hilton Davis, LLC**

1498. Hilton Davis denies the allegations of paragraph 1498 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1499. Hilton Davis denies the allegations of paragraph 1499 of for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1500. Hilton Davis denies the allegations of paragraph 1500 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1501. Hilton Davis admits the allegations of paragraph 1501.

1502. Answering paragraph 1502, Hilton Davis admits that in 1998, The B.F. Goodrich Company acquired Freedom Chemical Corporation. Further answering, Hilton Davis admits that the Hilton Davis Chemical Co. changed its name to B.F. Goodrich Hilton Davis, Inc. Hilton Davis denies the remaining allegations of paragraph 1502.

1503. Answering paragraph 1503, Hilton Davis admits that in 2001, The B.F. Goodrich Company spun-off its Performance Materials Division, including B.F. Goodrich Hilton Davis, Inc. Further answering, Hilton Davis admits that The B.F. Goodrich Company's former Performance Materials Division became known as Noveon Hilton Davis, Inc.

1504. Hilton Davis denies the allegations of paragraph 1504 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1505. Hilton Davis denies the allegations of paragraph 1505 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1506. Hilton Davis denies the allegations of paragraph 1506 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

STWB, Inc. and Eastman Kodak

1507. Hilton Davis denies the allegations of paragraph 1507 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1508. Hilton Davis denies the allegations of paragraph 1508 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1509. Hilton Davis denies the allegations of paragraph 1509 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1510. Hilton Davis denies the allegations of paragraph 1510 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1511. Hilton Davis denies the allegations of paragraph 1511 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1512. Hilton Davis denies the allegations of paragraph 1512 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1513. Hilton Davis denies the allegations of paragraph 1513 for lack of knowledge or information sufficient to form a belief as to the truth thereof. –

1514. Hilton Davis denies the allegations of paragraph 1514 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1515. Hilton Davis denies the allegations of paragraph 1515 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1516. Hilton Davis denies the allegations of paragraph 1516 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1517. Hilton Davis denies the allegations of paragraph 1517 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1518. Hilton Davis denies the allegations of paragraph 1518 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1519. Hilton Davis denies the allegations of paragraph 1519 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1520. Hilton Davis denies the allegations of paragraph 1520 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1521. Hilton Davis denies the allegations of paragraph 1521 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1522. Hilton Davis denies the allegations of paragraph 1522 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1523. Hilton Davis denies the allegations of paragraph 1523 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1524. Hilton Davis denies the allegations of paragraph 1524 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1525. Hilton Davis denies the allegations of paragraph 1525 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1526. Hilton Davis denies the allegations of paragraph 1526 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1527. Hilton Davis denies the allegations of paragraph 1527 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1528. Hilton Davis denies the allegations of paragraph 1528 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1529. Hilton Davis denies the allegations of paragraph 1529 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1530. Hilton Davis denies the allegations of paragraph 1530 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1531. Hilton Davis denies the allegations of paragraph 1531 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1532. Hilton Davis denies the allegations of paragraph 1532 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1533. Hilton Davis denies the allegations of paragraph 1533.

1534. Hilton Davis denies the allegations of paragraph 1534 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

1535 – 3445. To the extent that the allegations in Paragraphs 1535 through 3445 relate to other parties, no answer is required pursuant to Case Management Order V

### **FIRST COUNT**

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

3446. Hilton Davis repeats and herein incorporates by reference its answers to paragraphs 1 – 3445.

3447. Hilton Davis denies the allegations of paragraph 3447 to the extent they pertain to Hilton Davis. Hilton Davis denies the remaining allegations of paragraph 3447 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3448. Hilton Davis states that the New Jersey Spill Compensation and Control Act speaks for itself.

3449. Hilton Davis denies the allegations of paragraph 3449 to the extent they pertain to Hilton Davis. Hilton Davis denies the remaining allegations of paragraph 3449 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3450. Hilton Davis denies the allegations of paragraph 3450 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3451. Hilton Davis denies the allegations of paragraph 3451 to the extent they pertain to Hilton Davis. Hilton Davis denies the remaining allegations of paragraph 3451 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

## **SECOND COUNT**

### **(Statutory Contribution)**

3452. Hilton Davis repeats and herein incorporates by reference its answers to paragraphs 1 – 3445

3453. Hilton Davis denies the allegations of paragraph 3453 to the extent they pertain to Hilton Davis. Hilton Davis denies the remaining allegations of paragraph 3453 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

Third Party Plaintiffs fails to state a claim against Hilton Davis upon which relief may be granted.

### **Second Affirmative Defense**

Third Party Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

### **Third Affirmative Defense**

Third Party Plaintiffs' claims are barred by the doctrines of laches and waiver.

### **Fourth Affirmative Defense**

Third Party Plaintiffs' claims are barred by the doctrine of "unclean hands."

### **Fifth Affirmative Defense**

Third Party Plaintiffs' claims are barred by the doctrines of collateral estoppel, res judicata, and/or judicial estoppel.

### **Sixth Affirmative Defense**

Some or all of the Third Party Plaintiffs lack standing to sue.

**Seventh Affirmative Defense**

Third Party Plaintiffs have failed to mitigate damages, if any, thereby barring or diminishing any recovery.

**Eighth Affirmative Defense**

Third Party Plaintiffs' injuries or damages, if any, were caused in whole or in part by the acts or omissions of the plaintiffs or of third parties, over whom Hilton Davis had neither control nor right of control, thereby barring or diminishing any recovery.

**Ninth Affirmative Defense**

Third Party Plaintiffs' injuries or damages, if any, were caused by intervening and/or superseding acts or omissions of third parties, thereby barring or diminishing any recovery.

**Tenth Affirmative Defense**

The Third Party Complaint "B" is vague and ambiguous in its identification of the "Hilton Davis Site," rendering Third Party Plaintiffs' allegations untenable as against Hilton Davis.

**Eleventh Affirmative Defense**

Third Party Plaintiffs' claims are barred in whole or in part by the statutory defenses to liability in the New Jersey Spill Compensation and Control Act ("Spill Act").

**Twelfth Affirmative Defense**

The Third Party Complaint "B" is barred to the extent it seeks relief for damages incurred prior to the effective date of the Spill Act.

**Thirteenth Affirmative Defense**

Third Party Plaintiffs fail to state a claim against Hilton Davis pursuant to the New Jersey Spill Compensation and Control Act, as plaintiffs have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.



#### **Fourteenth Affirmative Defense**

Some or all of the costs and/or damages alleged by Third Party Plaintiffs are not recoverable under 42 U.S.C. § 9613 and/or are not necessary or consistent “to the greatest extent possible” with The National Contingency Plan, 40 C.F.R. Part 300, as required under the Spill Act, N.J.S.A. 58:10-23.11f.

#### **Fifteenth Affirmative Defense**

Third Party Plaintiffs failed to allege facts that demonstrate that Hilton Davis is among the class of persons potentially liable for cleanup costs under the Spill Act.

#### **Sixteenth Affirmative Defense**

Third Party Plaintiffs failed to allege facts that demonstrate that Hilton Davis is a “discharger” and/or a Person “in any way responsible” under the Spill Act, N.J.S.A. 58:10-23, *et seq.*

#### **Seventeenth Affirmative Defense**

No hazardous substance or other material owned, used, possessed or generated by Hilton Davis was released or threatened to be released at the Hilton Davis Site, within the meaning of the Spill Act.

#### **Eighteenth Affirmative Defense**

Hilton Davis did not own or operate the Hilton Davis Site at any time during which alleged hazardous substances were disposed or released at, upon or under the Hilton Davis Site, the Passaic River, or the Newark Bay Complex. No such disposals or releases occurred between 1986 and 1996, the only period of time during which Hilton Davis owned or operated the Hilton Davis Site.

#### **Nineteenth Affirmative Defense**

No hazardous substances or other material owned, possessed, used or generated by Hilton Davis caused cleanup costs to be incurred at the Hilton Davis Site, within the meaning of CERCLA or the Spill Act.

#### **Twentieth Affirmative Defense**

Any discharges at, upon or from the Hilton Davis Site and/or to the Passaic River and/or the Newark Bay Complex during the time Hilton Davis owned or operated the Site occurred pursuant to a permit or other express authority from the appropriate federal, state or local agency and/or officials.

#### **Twenty-First Affirmative Defense**

Third Party Plaintiffs' claims are barred to the extent the conduct of Hilton Davis giving rise to liability in the Third Party Complaint "B," if any, is the subject of a release, covenant not to sue, or has otherwise been discharged by Plaintiffs, including through the 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 the lapse of any applicable statute of limitations or statute of repose.

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

Third Party Plaintiffs have failed to join a party or parties indispensable or needed for the just adjudication of this action and in whose absence complete relief cannot be accorded.

#### **Twenty-Third Affirmative Defense**

Third Party Plaintiffs' allegations against Hilton Davis are barred because Hilton Davis acted at all relevant times in compliance with all federal, state, and local laws.

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

Hilton Davis incorporates all defenses asserted by the other Third Party Defendants as if stated herein.

#### **Final Affirmative Defense**

Hilton Davis reserves the right to assert additional affirmative defenses upon the completion of discovery.

WHEREFORE, defendant Hilton Davis Chemical Company, having fully answered the Third Party Complaint "B" hereby requests that Third Party Plaintiffs' Third Party Complaint "B" be dismissed with prejudice, that Hilton Davis Chemical Co. be awarded its costs, disbursements and attorneys' fees in the defense of this action, and that Hilton Davis Chemical Co. be granted any other relief to which it may be entitled.

WOLFF & SAMSON PC  
Attorneys for Third-Party Defendant,  
Hilton Davis Chemical Co.

By



LEE HENIG-ELONA

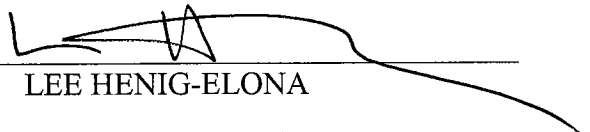
Dated: October 20, 2009

**RULE 4:5-1 CERTIFICATION**

I hereby certify that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding and I know of no other parties who should be joined in this action pursuant to R. 4:28 as it is the legal position of Hilton Davis that liability of a third-party defendant for the claims set forth in Third-Party Complaint "B", if any, is several. However, should the Court determine that the potential liability of a third-party defendant, if any, is joint and several for the claims set forth in Third-Party Complaint "B", then Hilton Davis states that there are other parties that may have discharged Hazardous Substances into the Newark Bay Complex contributing to the damages alleged by Defendants/Third-Party Plaintiffs. The identity of all known parties believed to have discharged Hazardous Substances will be identified in accordance with the procedures set forth in Case Management Order V. Likewise, additional discovery or investigation may identify additional parties to be joined in the litigation.

WOLFF & SAMSON PC  
Attorneys for Third-Party Defendant,  
Hilton Davis Chemical Co.

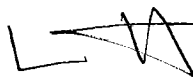
By

  
LEE HENIG-ELONA

Dated: October 20, 2009

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Third-Party Complaint "B" and Affirmative Defenses was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by Federal Express and was served upon all parties which have consented to electronic service by posting to <http://njdepvocc.sfile.com> on this 20th day of October, 2009. All other Counsels of Record were served via first class, regular mail.

A handwritten signature in black ink, appearing to read 'Lee Henig-Elona', is written over a horizontal line.

Lee Henig-Elona

Dated: October 20, 2009