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Honeywell International 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,

v.

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,

v.

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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**HONEYWELL INTERNATIONAL
INC.'S ANSWER TO THIRD-PARTY
COMPLAINT "B"**

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.

HONEYWELL INTERNATIONAL INC.'S ANSWER
TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Honeywell International Inc. ("Honeywell"), 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

1. Honeywell 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

(Paragraphs 1 through 15)

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

AS TO THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

4. To the extent that the allegations in Paragraphs 19 through 209 relate to other parties, no response is required pursuant to CMO V.

109. Admitted.

210. The allegations of Paragraph 210 set forth legal conclusions to which no responsive pleading is required.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

237. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

AS TO THE ALLIED SIGNAL SITE

340. Honeywell admits that its predecessor AlliedSignal Inc. formerly owned approximately 177 acres of real property and associated improvements located at 10 North Avenue East, Elizabeth, Union County, New Jersey.

341. Honeywell admits that Allied Chemical and Dye Corporation constructed a manufacturing facility occupying approximately 39 acres at the AlliedSignal Site in or about 1957 and that Honeywell's predecessors continued to operate at the site until December 1999. Honeywell further admits that its predecessors' operations at the AlliedSignal Site included, at various times, the manufacture of the products identified in paragraph 341. Honeywell further admits that its predecessors blended chlorofluorocarbon solvents at the site until approximately 1992. Honeywell denies the remaining allegations of paragraph 341.

342. Admitted.

343. Admitted.

344. Denied.

345. Admitted.

346. Honeywell admits that it is the successor to Allied Chemical and Dye Corporation, Allied Chemical Corporation, Allied Corporation, and AlliedSignal Inc. Honeywell denies the remaining allegations of paragraph 346.

347. Honeywell admits that Continental Airlines, Inc. purchased the Allied Signal Site on September 10, 1999. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of paragraph 347 and, on that basis, denies those allegations.

348. Admitted.

349. Honeywell admits that its predecessors utilized, manufactured, processed, stored, and discharged Hazardous Substances, as that term is defined at N.J.S.A. 58:10-23.11b, at the Allied Signal Site. By making the foregoing admission, Honeywell does not admit that any Hazardous Substance was discharged, directly or indirectly, from the Allied Signal Site to Newark Bay. The substances used at the Allied Signal Site changed substantially over the forty-one year period of Honeywell's predecessors' operations and Honeywell is presently without information sufficient to form a belief as to whether each of the specific substances identified in paragraph 349 were used at the Allied Signal Site and, on that basis, denies the remaining allegations of paragraph 349.

350. Honeywell admits that the Allied Signal Site abuts Newark Bay and that a public ditch that runs across the Allied Signal Site discharged to Newark Bay. Honeywell is without information sufficient to form a belief as to truth of the remaining allegations of paragraph 350 and, on that basis, denies the allegations

351. Honeywell admits that at various time process wastewaters generated at the Allied Signal Site contained some of the substances identified in paragraph 351, which wastewaters were subject to various levels of onsite treatment. By making the foregoing admission,

Honeywell does not admit that any of the substances identified in paragraph 351 were discharged, directly or indirectly, to Newark Bay.

352. Honeywell admits that wastewaters were generated at the Allied Signal Site that contained Hazardous Substances, as that term is defined at N.J.S.A. 58:10-23.11b, including some of the substances identified in paragraph 352. Honeywell further admits that some of the wastewaters generated at the Allied Signal Site were discharged to the public ditch traversing the site after undergoing various levels of treatment at various times. By making the foregoing admission, Honeywell is not admitting that any of the substances identified in paragraph 352 were discharged, directly or indirectly, from the Allied Signal Site to Newark Bay.

353. Honeywell admits that an earthen public ditch constructed by the State of New Jersey traversed the Allied Signal Site and discharged to Newark Bay. Honeywell further admits that the public ditch received, among other waters, discharges from Honeywell's predecessors' manufacturing operations at the Allied Signal Site and storm water runoff from the Allied Signal Site. Honeywell denies the remaining allegations of paragraph 353.

354. Honeywell admits that from 1957 until 1965 the main method of waste water treatment used by Honeywell's predecessors at the Allied Signal Site was primary neutralization and sedimentation. Honeywell denies the remaining allegations of paragraph 354.

355. Honeywell admits that wastewater lagoons were used at the Allied Signal Site as part of Honeywell's predecessors' wastewater treatment operations and that water from these lagoons was discharged to the public ditch. Honeywell denies the remaining allegations of paragraph 355.

356. Honeywell admits that the Defendants have produced a document that purports to be a New Jersey State Department of Health Stream Pollution Control Program Surveillance

Report dated March 1, 1965, which document speaks for itself. Honeywell does not admit that the document produced by Defendants is authentic nor does Honeywell admit the accuracy of any of the document's contents. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 356 and, on that basis, denies the allegations.

357. Honeywell admits that the Defendants have produced a document that purports to be a New Jersey State Department of Health memorandum dated March 11, 1968, the contents of which speak for themselves. Honeywell does not admit that the document produced by Defendants is authentic, nor does Honeywell admit the accuracy of any of the document's contents. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 357 and, on that basis, denies the allegations.

358. Honeywell admits that the Defendants have provided a document to the U.S. Environmental Protection Agency ("EPA") that purports to be a memorandum from John P. Cofman, Chemical Engineer Trainee, to an illegible recipient dated on or about June 24, 1970, the contents of which speak for themselves. Honeywell does not admit that the document provided by Defendants is authentic, nor does Honeywell admit the accuracy of any of the document's contents. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 358 and, on that basis, denies the allegations.

359. Honeywell admits that the Defendants have produced a document that purports to be an Order issued by the New Jersey Department of Environmental Protection directing Allied Chemical Corp. to "alter, add to or improve" the wastewater treatment plant at the AlliedSignal facility, the contents of which speak for themselves. The copy of the document made available to Honeywell is undated. Honeywell does not admit that the document produced by Defendants

is authentic, nor does Honeywell admit the accuracy of any of the document's contents.

Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 359 and, on that basis, denies the allegations.

360. Honeywell admits that the Defendants have produced a document that purports to be a letter from the New Jersey Department of Environmental Protection and Energy to Mr. J. Thomas Eck, Allied Signal, Incorporated, dated June 30, 1993, the contents of which speak for themselves. Honeywell does not admit that the document provided by Defendants is authentic, nor does Honeywell admit the accuracy of any of the document's contents. Honeywell is without information sufficient to form a belief as to the basis of the remaining allegations of Paragraph 360 and, on that basis, denies the allegations.

361. Honeywell admits that "discharges" of "hazardous substances" occurred at the AlliedSignal Site, as those terms are defined in N.J.S.A. 58:10-23.11b. By making the foregoing admission, Honeywell does not admit that any hazardous substances were discharged directly or indirectly from the Allied Signal Site to Newark Bay. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of paragraph 361 and, on that basis, denies the allegations.

362. Honeywell admits that the substances identified in paragraph 362 have been found in soil samples taken from the Allied Signal site and that some of those substances are Hazardous Substances as that term is defined at N.J.S.A. 58:10-23.11b. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 362 at the Allied Signal site is related to Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from the Allied Signal Site to Newark Bay.

363. Honeywell is without information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 363 and, on that basis, denies those allegations.

364. Honeywell admits that the substances identified in paragraph 364 have been found in sediment samples taken from the public ditch that transverses the Allied Signal Site. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 364 in the public ditch sediments is related to Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from the Allied Signal Site to Newark Bay.

365. Honeywell admits that some of the substances identified in paragraph 365 have been found in surface water samples taken from the public ditch that transverses the Allied Signal Site. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 365 in the surface water of the public ditch is the result of Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from the Allied Signal Site to Newark Bay.

366. Honeywell admits that the substances identified in paragraph 366 have been found in groundwater samples taken from the Allied Signal Site. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 366 in the groundwater at the Allied Signal Site is the result of Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from the Allied Signal Site to Newark Bay.

367. Honeywell admits that groundwater at the AlliedSignal Site generally flows in the direction of Newark Bay. Honeywell denies the remaining allegations of paragraph 367.

368. Honeywell admits that it received a General Notice Letter from the U.S. Environmental Protection Agency (“EPA”) dated August 24, 2006, the contents of which speak for themselves. Honeywell denies the remaining allegations of paragraph 368.

369. The allegations of paragraph 369 state legal conclusions to which no responsive pleading is required.

AS TO THE GENERAL CHEMICAL SITE

1356. Honeywell admits that the property designated as Block 1029, lot 25 on the Tax Map of the City of Passaic has been referred to as the “Dundee Warehouse.” The remaining allegations of paragraph 1356 are definitional and no responsive pleading is required.

1357. Honeywell admits that the General Chemical Site, as that term is defined in paragraph 1356, abuts the Passaic River. Honeywell further admits that there is believed to have been a floor drain at the former facility that discharged directly to the Passaic River. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1357 and, on that basis, denies the allegations.

1358. Honeywell admits that General Chemical Company was formed in 1899 and that it acquired the Dundee Warehouse in that year. Honeywell further admits that General Chemical Company and its successors operated the Dundee Warehouse site as a bulk acid distribution facility and nitrating plant until approximately 1960 and that the Dundee Warehouse site was subsequently used for the storage of engineered plastics and pellets. Honeywell is without knowledge regarding, and makes no admission with respect to, the nature of the acid distribution and nitrating operations conducted by its predecessors and the Dundee Warehouse site.

1359 Honeywell admits that General Chemical Company and four other companies were consolidated under Allied Chemical and Dye Corporation in approximately 1920.

Honeywell denies the remaining allegations of paragraph 1359.

1360. Admitted.

1361. Honeywell admits that Allied Corporation was merged into Allied-Signal Inc. in 1987 and that Allied Corporation continued operations at the General Chemical Site until approximately 1986. Honeywell denies the remaining allegations of paragraph 1361.

1362. Honeywell admits that it is the successor to General Chemical Corporation, Allied Chemical and Dye Corporation, Allied Chemical Corporation, Allied Corporation, and AlliedSignal Inc. Honeywell denies the remaining allegations of paragraph 346.

1363. Honeywell admits that its predecessors owned the Dundee Warehouse site from 1899 to 1987. Honeywell further admits that its predecessors operated a nitrating plant at the site from an unknown date until approximately 1960 and that its predecessors conducted acid distribution operations at the site from an unknown date until some date between 1974 and 1976. Honeywell is without knowledge regarding, and makes no admission with respect to, the nature of the acid distribution and nitrating operations conducted by its predecessors and the Dundee Warehouse site. Honeywell further admits that its predecessors used the site from 1976 until 1986 for the storage of engineered plastics and pellets. Honeywell denies the remaining allegations of paragraph 1363.

1364. Honeywell admits that its predecessor sold the Dundee Warehouse site to Anthony R. Triolo on or about January 8, 1987 and that the site was subsequently operated by Tri-State Building Materials Corp. Honeywell is without information sufficient to form a belief

as to the truth of the remaining allegations of paragraph 1364 and, on that basis, denies the allegations.

1365. Honeywell admits that its predecessors operated an incinerator at the Dundee Warehouse site and that it is believed that the incinerator was located approximately thirty feet from the banks of the Passaic River. Honeywell admits that a drum wash disposal pit formerly existed at the site and that the pit was located approximately sixty to eighty feet from the banks of the Passaic River. By admitting the foregoing allegations, Honeywell does not admit that there were releases from either the former incinerator or the former drum wash disposal pit to the Passaic River. Honeywell denies the remaining allegations of paragraph 1365.

1366. Honeywell admits that its predecessors formerly stored gasoline and diesel fuel at the Dundee Warehouse site and that those substances are Hazardous Substances as defined at N.J.S.A. 58:10-23.11b. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1366 and, on that basis, denies the allegations.

1367. Honeywell admits that a floor drain that discharged directly to the Passaic River is believed to have existed at the Dundee Warehouse facility. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1367 and, on that basis, denies the allegations.

1368. Honeywell is without information sufficient to form a belief as to the truth of the allegations of paragraph 1368 and, on that basis, denies the allegations.

1369. Honeywell admits that the substances identified in paragraph 1369 have been found in soil samples taken from the Dundee Warehouse site and that some of those substances are Hazardous Substances as that term is defined at N.J.S.A. 58:10-23.11b. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances

identified in paragraph 1369 at the Dundee Warehouse site is related to Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from the Dundee Warehouse site to the Passaic River.

1370. Honeywell admits that the substances identified in paragraph 1370 have been found in groundwater samples taken from the Dundee Warehouse site and that some of those substances are Hazardous Substances as that term is defined at N.J.S.A. 58:10-23.11b. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 1369 in the groundwater beneath the Dundee Warehouse site is related to Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from the Dundee Warehouse site to the Passaic River.

1371. Honeywell admits that groundwater at the Dundee Warehouse site is believed to be influenced by tidal flows in the Passaic River and that groundwater level measurements suggest a slight hydraulic gradient at the site from east to west toward the Passaic River. Honeywell is without information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1371 and, on that basis, denies the allegations.

1372. Honeywell admits that two sediment core samples were taking from the Passaic River in the general vicinity of the Dundee Warehouse site and that the substances identified in paragraph 1372 have been found in those sediment samples. By making the foregoing admission, Honeywell does not admit that the presence of the substances identified in paragraph 1372 in sediment samples from the Passaic River is in any way related to the Dundee Warehouse site or Honeywell's predecessors' operations at the site. Honeywell is without information sufficient to for a belief as to the truth of the remaining allegations of paragraph 1372 and, on that basis, denies the allegations.

1373. Honeywell admits that it received a letter dated June 8, 2006 from the U.S. Environmental Protection Agency, the contents of which speak for themselves. Honeywell denies the remaining allegations of paragraph 1373.

1374. The allegations of paragraph 1374 state legal conclusions to which no response is required. To the extent a response is required, Honeywell denies the allegations.

AS TO THE HONEYWELL SITE

1554. Honeywell admits that Study Area 7 of the Hudson County Chromium sites consists of three contiguous properties known as Sites 115, 120, and 157, and that Study Area 7 abuts the Hackensack River near its confluence with Newark Bay.

1555. Admitted.

1556. Honeywell admits that Study Area 7 was formerly used by Mutual Chemical Company of America for the disposal of Chromite Ore Processing Residue (“COPR”), and that Mutual transported COPR to Study Area 7 by means of a pipeline. Honeywell further admits that approximately one million tons of COPR was disposed of at Study Area 7, that the COPR covered substantially all of Study Area 7 at thicknesses of up to twenty feet, and that the COPR disposed of at Study Area 7 contained chromium and hexavalent chromium. Honeywell denies the remaining allegations of paragraph 1556.

1557. Admitted.

1558. Honeywell admits that The New Jersey Department of Environmental Protection (“NJDEP”) prepared a letter addressed to Mr. E.W. Callahan, Allied Corporation, dated April 28, 1983, the contents of which speak for themselves. Honeywell denies the remaining allegations of paragraph 1558.

1559. Honeywell admits that James Wong, a former Honeywell employee, gave testimony during the trial in *Interfaith Community Organization v. Honeywell*, No. 95-cv-2097 (D.N.J.), and that he testified that his “first reaction” when he saw Study Area 7 in 1993 is that “there’s something terribly not right with the site.” Honeywell does not admit the truth of Mr. Wong’s statements. Honeywell denies the remaining allegations of paragraph 1559.

1560. Honeywell admits that NJDEP prepared a letter dated November 6, 1995 regarding an inspection of Site 115 by NJDEP on October 31, 1995, the contents of which speak for themselves. Honeywell denies the remaining allegations of paragraph 1560.

1561. Honeywell admits that the United States Court of Appeals for the Third Circuit issued an opinion in *Interfaith Community Organization v. Honeywell International Inc.*, reported at 399 F.3d 248 (3d Cir. 2005), which opinion speaks for itself. Honeywell denies the remaining allegations of paragraph 1561.

1562. Honeywell admits that the United States Court of Appeals for the Third Circuit issued an opinion in *Interfaith Community Organization v. Honeywell International Inc.*, reported at 399 F.3d 248 (3d Cir. 2005), which opinion speaks for itself. Honeywell denies the remaining allegations of paragraph 1562.

1563. Honeywell admits that the United States Court of Appeals for the Third Circuit issued an opinion in *Interfaith Community Organization v. Honeywell International Inc.*, reported at 399 F.3d 248 (3d Cir. 2005), which opinion speaks for itself. Honeywell denies the remaining allegations of paragraph 1563.

1564. Honeywell admits that the United States Court of Appeals for the Third Circuit issued an opinion in *Interfaith Community Organization v. Honeywell International Inc.*,

reported at 399 F.3d 248 (3d Cir. 2005), which opinion speaks for itself. Honeywell denies the remaining allegations of paragraph 1564.

1565. Honeywell admits that the United States Court of Appeals for the Third Circuit issued an opinion in *Interfaith Community Organization v. Honeywell International Inc.*, reported at 399 F.3d 248 (3d Cir. 2005), which opinion speaks for itself. Honeywell denies the remaining allegations of paragraph 1565.

1566. Honeywell admits that the United States Court of Appeals for the Third Circuit issued an opinion in *Interfaith Community Organization v. Honeywell International Inc.*, reported at 399 F.3d 248 (3d Cir. 2005), which opinion speaks for itself. Honeywell denies the remaining allegations of paragraph 1566.

1567. Honeywell admits that the substances identified in paragraph 1567 have been found in groundwater samples taken from Study Area 7. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 1567, other than total chromium and hexavalent chromium, in the groundwater at Study Area 7 is related to Honeywell's predecessors' operations at the site or that any of those substances were discharged, directly or indirectly, from Study Area 7 to the Hackensack River. Honeywell denies the remaining allegations of paragraph 1567.

1568. Honeywell admits that some of the substances identified in paragraph 1568 have been found in surface water samples taken from Study Area 7. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 1568, other than chromium, in the surface water at Study Area 7 is related to Honeywell's predecessors' operations at the site or that any of those substances were discharged,

directly or indirectly, from Study Area 7 to the Hackensack River. Honeywell denies the remaining allegations of paragraph 1567.

1569. Admitted. Honeywell denies, however, that Study Area 7 is the only source of the hexavalent chromium detected in sediments adjacent to Study Area 7 or downstream of Study Area 7.

1570. Honeywell admits that sediments samples collected by Honeywell pursuant to the Final Judgment in *Interfaith Community Organization v. Honeywell International Inc.*, No 95-cv-2097 (D.N.J.) were found to contain the substances identified in paragraph 1570. Honeywell denies that any of the substances found, other than chromium, are related to Study Area 7. Honeywell further denies that Study Area 7 is the only source of chromium in the sediments sampled by Honeywell.

1571. The allegations of paragraph 1571 state legal conclusions to which no responsive pleading is required. To extent a response is required, Honeywell denies the allegations.

AS TO THE UNIVERSAL OIL PRODUCTS SITE

2885. Honeywell admits that property consisting of approximately seventy-five acres located at the intersection of Route 17 and Paterson Plank Road in the Borough of East Rutherford, Bergen County, New Jersey has at times been referred to as “the Universal Oil Products Site,” which is bordered on the southeast by Berry’s Creek, and which flows into the Hackensack River downstream from the Universal Oil Products Site. Honeywell denies the remaining allegations of paragraph 2285.

2886. Honeywell admits that the Universal Oil Products Site was developed in or about 1932, that operations included handling of chemicals and solvent recovery, that Universal Oil Products Company and The Trubek Laboratories, Inc. (or a successor to that entity) merged, and that Universal Oil Products Company was the surviving entity. Honeywell is without knowledge

sufficient to form a belief as to the truth of the remaining allegations of paragraph 2886 and, on that basis, denies the allegations.

2887. Honeywell admits to the existence of the documents referenced in paragraph 2887, the contents of which speak for themselves. By making the foregoing admission, Honeywell does not admit the accuracy of the these documents' contents. Honeywell denies the remaining allegations of paragraph 2887.

2888. Honeywell admits that Allied Corporation and the Signal Companies merged into Allied-Signal Inc. and that Allied-Signal Inc. changed its name to AlliedSignal Inc. Honeywell denies the remaining allegations of paragraph 2888.

2889. Honeywell admits to the existence of the document referenced in paragraph 2889, the contents of which speak for themselves. By making the foregoing admission, Honeywell does not admit the accuracy of the document's contents. Honeywell denies the remaining allegations of paragraph 2889.

2890. Honeywell admits to the existence of the document referenced in paragraph 2890, the contents of which speak for themselves. By making the foregoing admission, Honeywell does not admit the accuracy of the document's contents. Honeywell denies the remaining allegations of paragraph 2890.

2891. The allegations of paragraph 2891 state legal conclusions to which no response is required. To the extent a response is required, Honeywell denies the allegations.

2892. Admitted.

2893. Honeywell admits that a system of natural and artificial surface water channels crossed the Universal Oil Products Site and that these channels flow or flowed into Berry's

Creek. Honeywell is without knowledge sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies the allegations.

2894. Honeywell admits that two wastewater lagoons were constructed at the Universal Oil Products Site and that these lagoons remained in use until the early 1970s. Honeywell is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 2894 and, on that basis, denies the allegations.

2895. Honeywell is without information sufficient to form a belief as to the truth of the allegations of paragraph 2895 and, on that basis, denies the allegations.

2896. Honeywell admits that Hazardous Substances, as that term is defined at N.J.S.A. 58:10-23.11b, have been detected in the process sewer at the Universal Oil Products Site. By making the foregoing admission, Honeywell does not admit that any Hazardous Substance was discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2896 and, on that basis, denies the allegations.

2897. Honeywell admits that Defendants have produced a document that purports to be an NJDEP Fact Sheet dated April 10, 1990, the contents of which speak for themselves. Honeywell does not admit that the document produced by Defendants is authentic nor does Honeywell admit the accuracy of any of the document's contents. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2897 and, on that basis, denies the allegations.

2898. Honeywell admits that sampling of the residual materials in the wastewater lagoons at the Universal Oil Products Site identified Hazardous Substances, as that term is defined at N.J.S.A. 58:10-23.11b, and other compounds. By making the foregoing admission,

Honeywell does not admit that any Hazardous Substance was discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex. Honeywell is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2898.

2899. Honeywell is without knowledge or information sufficient to form a belief as to the truth of paragraph 2899 and, on that basis, denies the allegations.

2900. Honeywell admits that the some of the substances identified in paragraph 2900 have been found in groundwater samples taken from the Universal Oil Products Site. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 2900 in the groundwater at the Universal Oil Products Site is the result of Universal Oil Products' operations at the site or that any of those substances were discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex.

2901. Admitted.

2902. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2902 and, on that basis, denies the allegations.

2903. Honeywell admits that PCBs and mercury have been detected at the Universal Oil Products Site. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 2900 in the groundwater at the Universal Oil Products Site is the result of Universal Oil Products' operations at the site or that any of those substances were discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex. Honeywell is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2903 and, on that basis, denies the allegations.

2904. Admitted.

2905. Honeywell admits that the some of the substances identified in paragraph 2905 have been found in soil samples taken from the Universal Oil Products Site. By making the foregoing admission, Honeywell does not admit that the presence of any of the substances identified in paragraph 2900 in the soil at the Universal Oil Products Site is the result of Universal Oil Products' operations at the site or that any of those substances were discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex.

2906. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2906 and, on that basis, denies the allegations.

2907. Honeywell admits that Defendants have produced a document that purports to be a Site Inspection Report prepared by NJDEP dated July 2, 1979, the contents of which speak for themselves. Honeywell does not admit that the document produced by Defendants is authentic nor does Honeywell admit the accuracy of any of the document's contents. Honeywell is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2907 and, on that basis, denies the allegations.

2908. Honeywell admits that a seep/sewer network investigation was undertaken at the Universal Oil Products Site. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2908 and, on that basis, denies the allegations.

2909. Admitted.

2910. Admitted.

2911. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2911 and, on that basis, denies the allegations.

2912. Admitted.

2913. The allegations of paragraph 2913 state legal conclusions to which no responsive pleading is required. To extent a response is required, Honeywell denies the allegations.

AS TO FIRST COUNT

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

3446. Honeywell incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 1571 herein.

3447. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3447 and, on that basis, denies the allegations.

3448. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3448 and, on that basis, denies the allegations.

3449. Honeywell denies that it is liable to Third-Party Plaintiffs for contribution. The remaining allegations of paragraph 3449 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Honeywell denies the allegations.

3450. Honeywell is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3450 and, on that basis, denies the allegations.

3451. Honeywell denies that it is liable to Third-Party Plaintiffs for contribution. The remaining allegations of paragraph 3451 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Honeywell denies the allegations.

AS TO SECOND COUNT

Statutory Contribution

3452. Honeywell incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3451 herein.

3453. Honeywell denies that it is liable to Third-Party Plaintiffs for contribution. The remaining allegations of paragraph 3453 state legal conclusions to which no responsive pleading is required. To the extent a response is required, Honeywell denies the allegations.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, *N.J.S.A. 2A:35A-1 et seq.*, in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under *Rule 4:26-1* of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Amended Complaint. Consequently, all claims that are

or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendant as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because at all relevant times Third-Party Defendant exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendant had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, res judicata, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

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

FORTY-FIRST AFFIRMATIVE DEFENSE

Any discharge that allegedly originated from Third-Party Defendant, was investigated and remediated by a licensed professional and under the direct oversight of state and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements for which Third-Party Defendant cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

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

parties pursuant to *Burlington N. & Santa Fe Rwy. Co. v. United States*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Third-Party Defendant are barred to the extent of any legal extinguishments of actual or

potential claims by the Plaintiffs against Third-Party Defendant pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such site:

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

FIFTY-FIRST AFFIRMATIVE DEFENSE

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

FIFTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Third-Party Defendant's responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs, the United States or any of its agencies, or any state or federal court at any site(s) alleged by Third-Party Plaintiffs to be the

subject of their contribution claims against Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FIFTY-THIRD AFFIRMATIVE DEFENSE

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

FIFTY-FOURTH AFFIRMATIVE DEFENSE

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

FIFTY-FIFTH AFFIRMATIVE DEFENSE

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

FIFTY-SIXTH AFFIRMATIVE DEFENSE

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

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

Any of Third-Party Plaintiffs' claims with respect to discharges or releases of any Hazardous Substances or other substances from the Honeywell Site (also known as Study Area 7, see paragraph 1554) are satisfied, released, discharged, or barred by the final judgment of the

United States District Court for the District of New Jersey in *Interfaith Community Organization v. Honeywell International Inc.*, No. 95-cv-2097, entered on June 30, 2003, and the United States District Court for the District of New Jersey has sole and exclusive jurisdiction over any claim against Honeywell with respect to discharges or releases from Study Area 7.

FIFTY-EIGHTH AFFIRMATIVE DEFENSE

Honeywell is not the legal successor to Universal Oil Products Corporation or any of its corporate predecessors, and Honeywell is not responsible for the acts or liabilities of Universal Oil Products Corporation.

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.

DESIGNATION OF TRIAL COUNSEL

In accordance with *Rule* 4:25-4 you are hereby notified that Edward F. McTiernan is assigned to try this case.

WHEREFORE, Third-Party Defendant Honeywell respectfully requests 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: March 22, 2010

Respectfully submitted,

GIBBONS P.C.



Edward E. McTiernan, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
Honeywell International Inc.

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

Undersigned counsel hereby certifies, in accordance with *Rule 4:5-1(b)(2)*, that: (a) except as set forth below, the matters in controversy in this action are not the subject of any other known or pending court action or arbitration proceeding (though the same may become the subject of a federal action pursuant to certain federal environmental statutes) and (b) reference is made to that October 20, 2009 "Additional Discharger" posting by O'Melveny and Myers as to non-parties who may be joined to this action pursuant to *Rule 4:28*, or who may be subject to joinder pursuant to *Rule 4:29-1*.

With respect to the Honeywell Site, which is the subject of paragraphs 1554 through 1571 of Third Party Complaint "B," Honeywell International Inc.'s liability for discharges from the Honeywell Site to the Hackensack River and Newark Bay are the subject of proceedings in *Interfaith Community Organization v. Honeywell International Inc.*, No. 95-cv-2097, currently pending in the United States District Court for the District of New Jersey. Honeywell's liability for discharges from the Honeywell Site to the Hackensack River and Newark Bay was finally determined in that action by the District Court's Final Judgment dated June 30, 2003.

Dated: March 22, 2010

Respectfully submitted,
GIBBONS P.C.



Edward F. McTiernan, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
Honeywell International Inc.

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Attorney for Third-Party Defendant

Honeywell International Inc.

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

Plaintiffs

v.

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

Defendants.

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, *et al.*,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

CERTIFICATION OF SERVICE

I, **EDWARD F. McTIERNAN, ESQ.**, hereby certify as follows:

On March 22, 2010, I filed the within Answer to Third-Party Complaint "B", Civil Case Information Statement, and this Certification of Service by causing the original and two copies of same to be sent via overnight delivery to the Clerk of the Superior Court, Essex County.

On March 22, 2010, I also filed same via the SFile website, which will be distributed to all counsel who have consented to such service and to the Honorable Sebastian P. Lombardi, J.S.C.

On March 22, 2010, I also mailed a copy, via regular mail, to all parties on the attached service list.

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

Dated: March 22, 2010

Respectfully submitted,

GIBBONS P.C.



Edward F. McTiernan, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
Honeywell International Inc.

Third-Party Defendants for Regular Service as of March 21, 2010

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
Borough of Hasbrouck Heights	A	Richard J. Dewland Coffey & Associates 465 South Steet Morristown, NJ 07960 973.539.4500 rjd@coffeylaw.com
City of Orange	A	John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 - fax jmcgovern@ci.orange.nj.us
Township of Hillside	A	Christine M. Burgess Township Attorney Hillside Township Municipal Bldg. 1409 Liberty Ave. Hillside, NJ 07205 973.926.3000 973.926.9232 - fax