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*Attorneys for Third-Party Defendant, Hudson Tool & Die Company*

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**ANSWER OF HUDSON TOOL & DIE  
COMPANY TO THIRD-PARTY  
COMPLAINT "B"**

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

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

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

QUALA SYSTEMS, INC.,  
QUALITY CARRIERS, INC.,  
RECKITT BENCKISER, INC.,  
REICHHOLD, INC.,  
REVERE SMELTING & REFINING CORPORATION,  
REXAM BEVERAGE CAN COMPANY,  
ROMAN ASPHALT CORPORATION,  
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,  
R.T. VANDERBILT COMPANY, INC.,  
RUTHERFORD CHEMICALS LLC,  
S&A REALTY ASSOCIATES, INC.,  
SCHERING CORPORATION,  
SEQUA CORPORATION,  
SETON COMPANY,  
SIEMENS WATER TECHNOLOGIES CORP.  
SINGER SEWING COMPANY  
SPECTRASERV, INC.,  
STWB, INC.,  
SUN CHEMICAL CORPORATION,  
SVP WORLDWIDE, LLC,  
TATE & LYLE INGREDIENTS AMERICAS, INC.,  
TEVA PHARMACEUTICALS USA, INC.,  
TEVAL CORP.,  
TEXTRON INC.,  
THE DIAL CORPORATION,  
THE DUNDEE WATER POWER AND LAND COMPANY,  
THE NEWARK GROUP, INC.,  
THE OKONITE COMPANY, INC.,  
THE SHERWIN-WILLIAMS COMPANY,  
THE STANLEY WORKS,  
THE VALSPAR CORPORATION,  
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.

**ANSWER OF HUDSON TOOL & DIE COMPANY TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Hudson Tool & Die Company ("Hudson" or "Third-Party Defendant"), 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" of Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

**GENERALLY**

1. Hudson 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 against Hudson in the First Count and the Second Count.

**AS TO PROCEDURAL BACKGROUND**

**(Paragraphs 1 through 15)**

2. Hudson responds that the referenced pleadings speak for themselves. Pursuant to CMO V, no response is required.

**AS TO THE THIRD-PARTY PLAINTIFFS**

**(Paragraphs 16 through 18)**

3. Pursuant to CMO V, no response is required.

**AS TO THE THIRD PARTY DEFENDANTS**

**(Paragraphs 19 through 210)**

4. Pursuant to CMO V, to the extent that the allegations of Paragraphs 19 through 209 relate to parties other than Hudson, no response is required.
5. Hudson admits the allegations of Paragraph 111.
6. The allegations of Paragraph 210 state a legal conclusion as to which no response is required.

**AS TO DEFINITIONS**

**(Paragraphs 211 through 236)**

7. Paragraphs 211 through 236 contain definitions. Pursuant to CMO V, no response is required.

**AS TO FACTUAL ALLEGATIONS**

**(Paragraphs 237 Through 3445)**

8. The referenced pleadings speak for themselves. Pursuant to CMO V, no response is required, except to the extent noted below.
9. Hudson admits the allegations of Paragraph 1572.
10. Hudson admits the allegations of Paragraph 1573.
11. Hudson denies the allegations of Paragraph 1574.
12. Hudson denies the allegations of Paragraph 1575.
13. Answering the allegations of Paragraph 1576, Hudson admits that the Passaic River Valley Sewerage Commissioners ("PVSC") issued a letter to Daytona Finishing Company ("Daytona") on February 20, 1987. The letter speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in

contravention of law from the property located at 59 Wall Street, Newark, New Jersey ("Hudson Tool Site") to the Passaic River or the Newark Bay Complex.

14. Answering the allegations of Paragraph 1577, Hudson admits that PVSC issued a letter to Daytona on July 31, 1987. The letter speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

15. Answering the allegations of Paragraph 1578, Hudson admits that PVSC issued a letter to Daytona on February 22, 1988. The letter speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

16. Answering the allegations of Paragraph 1579, Hudson admits that Daytona sent a letter to PVSC on March 21, 1988. The letter speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

17. Answering the allegations of Paragraph 1580, Hudson admits the existence of a memorandum from Jack Traina to Mario Graglia dated May 7, 1990. The memorandum speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.



18. Answering the allegations of Paragraph 1581, Hudson admits the existence of a memorandum from Jack Traina to Mario Graglia dated May 15, 1990. The memorandum speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

19. Answering the allegations of Paragraph 1582, Hudson admits that PVSC issued a Notice of Violation to Daytona on October 3, 1990. The Notice of Violation speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

20. Answering the allegations of Paragraph 1583, Hudson admits the existence of a memorandum from Angela Culver to Mario Graglia dated April 28, 1992. The memorandum speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

21. Answering the allegations of Paragraph 1584, Hudson admits the existence of a memorandum from Angela Culver to Mario Graglia dated April 28, 1992. The memorandum speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

22. Answering the allegations of Paragraph 1585, Hudson admits the existence of an October 19, 1992 Pretreatment Monitoring Report. The Pretreatment Monitoring Report speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of

an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

23. Answering the allegations of Paragraph 1586, Hudson admits that PVSC issued to Daytona a Notice of Violation on December 10, 1992. The Notice of Violation speaks for itself. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

24. Answering the allegations of Paragraph 1587, Hudson admits that, on or about March 17, 1993, PVSC commenced a legal action against Dayton in a matter captioned *PVSC v. Daytona Finishing Corporation*. The pleadings and orders in that matter speak for themselves. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

25. Hudson admits the allegations of Paragraph 1588.

26. Answering the allegations of Paragraph 1589, Hudson admits that soil samples were taken from the Hudson Tool Site between April 1993 and April 1994. The results of any analyses of those samples speak for themselves. By way of further answer, Hudson denies that it discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

27. Hudson denies the allegations of Paragraph 1590, except that Hudson admits that process wastewater and surface water runoff from the Hudson Tool Site were discharged under a permit to the PVSC combined sewer system. By way of further answer, Hudson denies that it

discharged any substance in excess of an applicable permit standard or in contravention of law from the Hudson Tool Site to the Passaic River or the Newark Bay Complex.

28. Answering the allegations of Paragraph 1591, Hudson is without knowledge or information sufficient to form a belief as to the truth of the allegations of this Paragraph.

29. Hudson denies the allegations of Paragraph 1592.

**AS TO THE FIRST COUNT**

**(New Jersey Spill Compensation and Control Act, N.J.A.S. 58:23-11f.a(2)(a))**

30. Answering the allegations of Paragraph 3446, Hudson repeats its answers to the allegations of paragraphs 1 through and including 3445 and incorporates them herein as if set forth in full.

31. To the extent that the allegations of Paragraph 3447 are directed to Third-Party Defendants other than Hudson, no answer is required under CMO V. To the extent that the allegations are directed to Hudson, Hudson denies the allegations of this Paragraph.

32. To the extent that the allegations of Paragraph 3448 are directed to Third-Party Defendants other than Hudson, no answer is required under CMO V. To the extent that the allegations are directed to Hudson, they call for a legal conclusion to which no answer is required. If an answer is required, Hudson denies the allegations of this Paragraph. In any event, the New Jersey Spill Compensation and Control Act speaks for itself.

33. To the extent that the allegations of Paragraph 3449 are directed to Third-Party Defendants other than Hudson, no answer is required under CMO V. To the extent that the allegations are directed to Hudson, Hudson denies that it is liable to Third-Party Plaintiffs for contribution.

34. To the extent that the allegations of Paragraph 3450 are directed to Third-Party Defendants other than Hudson, no answer is required under CMO V. To the extent that the

allegations are directed to Hudson, Hudson is without knowledge or information sufficient to form a belief as to the truth of the allegations of this Paragraph and denies that Hudson is liable to Third-Party Plaintiffs for the alleged “cleanup and removal costs.”

35. To the extent that the allegations of Paragraph 3451 are directed to Third-Party Defendants other than Hudson, no answer is required under CMO V. To the extent that the allegations are directed to Hudson, Hudson denies that it is liable to Third-Party Plaintiffs for contribution.

### **AS TO THE SECOND COUNT**

#### **(Statutory Contribution)**

36. Answering the allegations of Paragraph 3452, Hudson repeats its answers to the allegations of paragraphs 1 through and including 3451 and incorporates them herein as if set forth in full.

37. To the extent that the allegations of Paragraph 3453 are directed to Third-Party Defendants other than Hudson, no answer is required under CMO V. To the extent that the allegations are directed to Hudson, Hudson denies that it is liable to Third-Party Plaintiffs for contribution.

### **FIRST AFFIRMATIVE DEFENSE**

Third-Party Complaint “B” fails to state a claim for relief against Hudson.

### **SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs’ claims against Hudson are barred by the applicable statute of limitations, statute of repose, laches, or any combination thereof.

### **THIRD AFFIRMATIVE DEFENSE**

Hudson did not cause the complained-of harm. Hudson complied with applicable law. Other parties, including and primarily Third-Party Plaintiffs, caused the complained-of harm.

Hudson has not impaired or damaged a natural resource in the Newark Bay Complex. None of Third-Party Plaintiffs' costs or potential liability were caused by—or are even related to—Hudson's operations, which did not involve dioxin.

#### **FOURTH AFFIRMATIVE DEFENSE**

Hudson is not liable under the Spill Compensation and Control Act, N.J.S.A. 58:23-11, *et seq.* ("Spill Act"), for the costs sought by Third-Party Plaintiffs in Third-Party Complaint "B", because:

a. Hudson's discharges of hazardous substances were pursuant to and in compliance with the conditions of a Federal or State permit.

b. Hudson is not an owner or operator of a facility at which Third-Party Plaintiffs have incurred or will incur response costs. Hudson is not an owner or operator of a facility at which Third-Party Plaintiffs have reimbursed or will reimburse another party for its expenditure of response costs.

c. Hudson is not a discharger or person in any way responsible for the discharge of hazardous substances into the Newark Bay Complex. Hudson did not intend to discharge hazardous substances into the Newark Bay Complex. Hudson discharged wastewater to the sewer system in compliance with a permit issued by the PVSC. If any hazardous substances were discharged from the sewer system into the Newark Bay Complex, then the PVSC is the discharger or person responsible for that discharge.

d. Hudson did not acquire, use, manufacture, discharge, or dispose of dioxin. Hudson is not liable to Third-Party Plaintiffs for any costs they may incur addressing dioxin contamination.

e. Third-Party Plaintiffs are not entitled to bring a contribution claim under the Spill Act against Hudson. They have not incurred costs authorized for contribution under the Spill Act.

#### **FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs lack standing to bring this action against Hudson. They did not suffer compensable harm fairly traceable to Hudson's actions.

#### **SIXTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' recovery from Hudson is barred by the applicability of the collateral source rule.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Hudson is not liable for any punitive damages or penalties paid by Third-Party Plaintiffs.

#### **EIGHTH AFFIRMATIVE DEFENSE**

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

#### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the entire controversy doctrine.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

The damages sought by Third-Party Plaintiffs are wholly speculative, conjectural, unreasonable and excessive.

#### **TWELFTH AFFIRMATIVE DEFENSE**

The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability.

#### **THIRTEENTH 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.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

The claims asserted against Third-Party Defendant in the 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 property for which Hudson is alleged to bear responsibility.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

#### **NINETEENTH 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. Without limiting the generality of the foregoing, Third-Party Plaintiffs have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs have failed to perform cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

#### **TWENTIETH 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.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are not ripe for adjudication because Third-Party Plaintiffs have joint liability to the Plaintiffs and have not paid more than their fair share of such liability.

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

The claims asserted against Third-Party Defendant in the Complaint are barred because any release or threat of release of any hazardous substances, if any, and any costs, injuries or damages resulting therefrom, were caused by the intervening or supervening negligence, acts or omissions of persons over whom Third-Party Defendant had no control, or any duty to control, whether by contract or otherwise.



### **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 Third-Party Defendant, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or their respective agents or employees.

### **TWENTY-FOURTH 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.

### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

### **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

### **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs cannot assert contribution claims against Third-Party Defendant because the discharges for which the Plaintiffs are seeking relief are different from Third-Party

Defendant's alleged discharges and the harm associated with such discharges is divisible from the harm caused by the discharges for which Plaintiffs are seeking relief.

#### **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and does not share a common liability to the State.

#### **TWENTY-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.

#### **THIRTIETH 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.

#### **THIRTY-FIRST AFFIRMATIVE DEFENSE**

The claims alleged in the Third-Party Complaint are barred, in whole or in part, by Third-Party Plaintiffs' failure to mitigate damages.

#### **THIRTY-SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are not entitled to recover from Third-Party Defendant more than Third-Party Defendant's fair, equitable, and proportionate share, if any, of the costs and damages sought by Third-Party Plaintiffs or to otherwise recover from Third-Party Defendant more than the amount of such relief, if any, for which Third-Party Defendant is liable.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

Hudson reserves the right to assert additional defenses, including any defense asserted by any other Third-Party Defendant as it may be applicable to Hudson.

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

Pursuant to CMO V, no such claims are required to be asserted at this time and are expressly reserved.

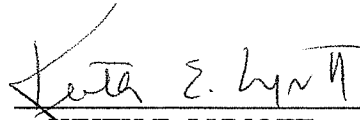
**DESIGNATION OF TRIAL COUNSEL**

In accordance with Rule 4:25-4, Keith E. Lynott, Esq., is designated to try this case on behalf of Hudson.

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

Respectfully submitted,

MCCARTER & ENGLISH, LLP  
*Attorneys for Third-Party Defendant Hudson Tool  
& Die Company*

By:   
\_\_\_\_\_  
KEITH E. LYNOTT

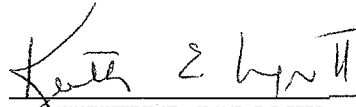
Dated: March 17, 2010

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

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

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned;
- (b) Because 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 that should be joined in the action pursuant to R.4:28; but that
- (c) In the event the Court should 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 that 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.

**McCARTER & ENGLISH, LLP**  
Attorneys for Third-Party Defendant Hudson Tool  
& Die Company.

  
\_\_\_\_\_  
KEITH E. LYNOTT

Dated: March 17, 2010

**CERTIFICATION OF SERVICE PURSUANT TO RULE 4:6-1 AND RULE 1:5-3**

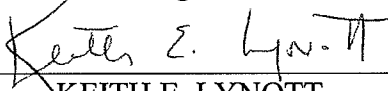
Keith E. Lynott, of full age, hereby certifies as follows:

1. I am an attorney-at-law admitted to practice in the State of New Jersey and a member of the firm of McCarter & English, LLP, attorneys for Third-Party Defendant Hudson Tool & Die Company.

2. On the date set forth below, which is within the time period allowed for service under CMO V, ¶9(c)(ii), I caused to be submitted for filing, via regular mail, with the Clerk of the Superior Court, Essex County Courthouse, 50 West Market Street, Newark, NJ 07102, an original and two copies of the Answer of Third-Party Defendant Hudson Tool & Die Company to Third-Party Complaint "B" and Case Information Statement.

3. On the date set forth below, I caused to be electronically served, by posting on [www.sfile.com/njdepvocc](http://www.sfile.com/njdepvocc), a true and accurate copy of the Answer of Third-Party Defendant Hudson Tool & Die Company to Third-Party Complaint "B" and Case Information Statement upon all parties that have consented to electronic service.

4. On the date set forth below, I caused to be served, via regular mail, a true and accurate copy of the Answer of Third-Party Defendant Hudson Tool & Die Company and Case Information Statement upon Counsel of Record for parties that have not consented to electronic service, listed on the attached "Third-Party Defendants for Regular Service."

  
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KEITH E. LYNOTT

Dated: March 17, 2010

**Third-Party Defendants for Regular Service as of February 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
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com
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
Township of Irvington	A	Gustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 - fax