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Attorneys for Third-Party Defendant,
ISP Chemicals LLC

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, ET AL.,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL
CORPORATION, ET AL.,

Defendants.

MAXUS ENERGY CORPORATION, ET AL.,

Third Party Plaintiffs,

v.

3M COMPANY, ET AL.,

Third Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. L-009868-05

Civil Action

**ISP CHEMICALS LLC'S ANSWER TO
DEFENDANTS/THIRD-PARTY
PLAINTIFFS MAXUS ENERGY
CORPORATION'S AND TIERRA
SOLUTIONS, INC.'S THIRD-PARTY
COMPLAINT "B"**

Third-Party Defendant ISP Chemicals LLC, incorrectly named as ISP Chemicals Inc. ("ISP"), by and through its attorneys Wolff & Samson PC, and in accordance with Case Management Order V (April 16, 2009), by way of Answer to the specific allegations in Third-Party Complaint "B" of Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (collectively, "Defendants/Third-Party Plaintiffs"), hereby respond as follows:

GENERALLY

ISP denies each and every allegation contained in Third-Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief

sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B."

PROCEDURAL BACKGROUND

1 – 15. ISP responds that no answer is required pursuant to Case Management Order V. To the extent that an answer is required, ISP denies each of the allegations contained in Paragraphs 1 – 15 of the Third Party Complaint "B".

THE PARTIES

16 – 210. To the extent that the allegations in Paragraphs 16 through 210 relate to other parties, no answer is required pursuant to Case Management Order V. To the extent that an answer is required, ISP denies each of the allegations contained in Paragraphs 16 – 210 of the Third Party Complaint "B".

116. ISP Chemicals LLC is a Delaware entity with offices at 1361 Alps Road, Wayne, New Jersey.

DEFINITIONS

211 – 236. ISP responds that no answer is required pursuant to Case Management Order V. To the extent an answer is required, ISP denies each of the allegations contained in Paragraphs 211 – 236 of the Third Party Complaint "B".

FACTUAL ALLEGATIONS

237 – 3445. To the extent that the allegations in Paragraphs 237 through 3445 relate to other parties, no answer is required pursuant to Case Management Order V. To the extent that an answer is required, except as set forth below, ISP denies each of the allegations contained in Paragraphs 237 – 3445 of the Third Party Complaint "B".

Van Dyk Site

2914. ISP admits that the Van Dyk Site consists of real property and associated improvements located at 11 Williams Street in Belleville, Essex County, New Jersey, but leaves the Third-Party Plaintiffs to their proofs regarding the lot and block designations as they have changed over time and may not be properly alleged in paragraph 2914 of Third-Party Complaint "B".

2915. ISP admits only the existence of certain floor drains and storm sewers on or beneath the Van Dyk Site and denies any connection between the floor drains and the Passaic River as well as the allegations contained in paragraph 2915 of Third-Party Complaint "B".

2916. ISP admits that Van Dyk acquired and operated certain parcels of the Van Dyk Site at different points in time beginning in or about 1942 and leaves third-party plaintiffs to their proofs regarding the remaining allegations contained in paragraph 2916 of Third-Party Complaint "B".

2917. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2917 of Third-Party Complaint "B".

2918. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2918 of Third-Party Complaint "B".

2919. ISP denies that International Specialty Products, Inc. acquired the fixed and operating assets of the Van Dyk division of Mallinckrodt, including the Van Dyk Site, but admits the remaining allegations contained in paragraph 2919 of Third-Party Complaint "B".

2920. Paragraph 2920 of Third-Party Complaint "B" contains Defendants/Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that this

paragraph is deemed to express facts, ISP denies the allegations contained in paragraph 2920 of Third-Party Complaint "B".

2921. ISP denies the allegations contained in Paragraph 2921 of Third-Party Complaint "B".

2922. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2922 of Third-Party Complaint "B".

2923. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2923 of Third-Party Complaint "B".

2924. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2924 of Third-Party Complaint "B".

2925. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2925 of Third-Party Complaint "B".

2926. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2926 of Third-Party Complaint "B".

2927. ISP admits that certain spills occurred on the site during its ownership and operation of the site and denies the remaining allegations contained in paragraph 2927 of Third-Party Complaint "B".

2928. ISP admits that certain spills occurred on the site during its ownership and operation of the site and denies the remaining allegations contained in paragraph 2928 of Third-Party Complaint "B".

2929. ISP admits that certain spills occurred on the site during its ownership and operation of the site and denies the remaining allegations contained in paragraph 2929 of Third-Party Complaint "B".

2930. Paragraph 2930 of Third-Party Complaint "B" contains Defendants/Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts, ISP admits that certain contaminants have been detected in soils at the site, all of which are believed to be from historic operations at the site prior to ISP's ownership and operation, and denies the remaining allegations of Paragraph 2930 of Third-Party Complaint "B".

2931. Paragraph 2931 of Third-Party Complaint "B" contains Defendants/Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts ISP admits that certain contaminants have been detected in the groundwater at the site, all of which are believed to be from off-site sources or historic operations at the site prior to ISP's ownership and operation, and denies the remaining allegations of Paragraph 2931 of Third-Party Complaint "B".

2932. ISP is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2932 of Third-Party Complaint "B" as they pertain to other parties. To the extent that this paragraph is deemed to express facts that relate to ISP, the allegations are denied.

2933. ISP admits that it received a General Notice Letter from the USEPA in June 2004 relating to the Lower Passaic River Study Area and denies the remaining allegations of paragraph 2933 of Third-Party Complaint "B".

2934. Paragraph 2934 of Third-Party Complaint "B" contains Defendants/Third-Party Plaintiffs' conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts, the allegations are denied.

FIRST COUNT

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

3446. ISP incorporates by reference its responses and denials as asserted in Paragraphs 1 through 3445 as if fully set forth herein.

3447 – 3451. Paragraphs 3447 through 3451 of Third-Party Complaint “B” contain Defendants/Third-Party Plaintiffs’ conclusions of law and therefore no answer is required. To the extent that these paragraphs are deemed to express facts, the allegations are denied.

SECOND COUNT

Statutory Contribution

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

3453. Paragraph 3453 of Third-Party Complaint “B” contains Defendants/Third-Party Plaintiffs’ conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts, the allegations are denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Third-Party Complaint “B” fails to state a claim against ISP upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

The claims of Defendants/Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

One or both of Defendants/Third-Party Plaintiffs do not have standing to sue.

SEVENTH AFFIRMATIVE DEFENSE

The claims by Defendants/Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

EIGHTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in Third-Party Complaint "B".

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs cannot recover damages or maintain claims based on actions or inactions that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities.

TWELFTH AFFIRMATIVE DEFENSE

At common law, ISP held, and still holds, an 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. ISP has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Defendants/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 ISP directly. As a result, the claims set forth in Third-Party Complaint "B" are barred, in whole or in part.

THIRTEENTH AFFIRMATIVE DEFENSE

Third-Party Complaint "B" is barred, in whole or in part, because the claims asserted are preempted by federal law, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims set forth in Third-Party Complaint "B" are barred and/or are constitutionally impermissible to the extent that they seeks to impose retroactive liability for acts that were previously authorized or condoned by law.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims set forth in Third-Party Complaint "B" are barred to the extent that they seek relief for damages incurred prior to the effective date of the Spill Act.

SIXTEENTH AFFIRMATIVE DEFENSE

At all relevant times, ISP 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent that the Defendants/Third-Party Plaintiffs seek to recover for loss of use or loss of natural resources, Defendants/Third-Party Plaintiffs do not have standing to bring such claims.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by ISP.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims 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.

TWENTIETH AFFIRMATIVE DEFENSE

The damages as alleged by Defendants/Third-Party Plaintiffs were caused by pre-existing conditions over which ISP had no control.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Any acts or omissions, if any, relating to any hazardous substance, conformed to industry custom and practice.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendants/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-SIXTH AFFIRMATIVE DEFENSE

Defendants/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 cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs have failed to present a justiciable controversy in that the operative facts in connection with any alleged remediation are future, contingent and uncertain and their claims should be dismissed.

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

Although ISP denies that it is liable for the contamination described in Third-Party Complaint "B," in the event it is found liable, ISP 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 Defendants/Third-Party Plaintiffs.

THIRTY-FIRST 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-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims are barred to the extent that the environmental contamination alleged to give rise to liability in Third-Party Complaint "B" as to ISP is the subject of a release, covenant not to sue, or has otherwise been assumed by a third-party by way of sale and purchase agreement, settlement agreement or other applicable document, with or without inclusion of contribution protection.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

The relief sought in Third-Party Complaint "B" cannot be granted because liability under the Spill Act is several and/or the harm alleged is divisible.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

THIRTY-NINTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims for contribution, whether under the Spill Act or New Jersey law for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Defendants/Third-Party Plaintiffs. Consequently, Defendants/Third-Party Plaintiffs' claims are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs pertaining to the alleged environmental contamination (including natural resource damage) of any site alleged by Defendants/Third-Party Plaintiffs to be the subject of their contribution claims.

FORTIETH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims are barred to the extent the relief sought is at odds with ISP's responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Defendants/Third-Party Plaintiffs to be the subject of

their claims against ISP, thereby exposing ISP to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs claims are not ripe, since clean up and remediation have not been completed.

FORTY-FOURTH AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

Any and all damages allegedly sustained, or to be sustained, by Defendants/Third-Party Plaintiffs are the result of intervening or superseding acts or omissions of third parties over whom ISP had no control.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims are subject to recoupment and/or offset, including by any settlements entered into by Defendants/Third-Party Plaintiffs with any other party, and therefore, must be reduced accordingly.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims are barred, in whole or in part, by their failure to properly mitigate damages.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, in whole or in part, because they seek costs beyond costs allowed for under the Spill Act.

FORTY-NINTH AFFIRMATIVE DEFENSE

Defendants/Third-Party Plaintiffs' claims are barred because they seek damages, costs or expenses beyond costs for "cleanup" and "removal" as those terms are defined under the Spill Act.

FIFTIETH AFFIRMATIVE DEFENSE

ISP reserves the right to assert and hereby invokes each and every defense that may be available during the course of this action.

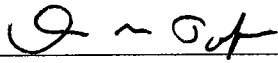
FIFTY-FIRST AFFIRMATIVE DEFENSE

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

COUNTERCLAIMS, CROSS-CLAIMS, THIRD/FOURTH PARTY CLAIMS

Counterclaims, cross-claims, third-party claims and fourth-party claims are expressly reserved pursuant to Case Management Order V. Therefore, ISP Chemicals LLC is not required to assert any such claims at this time.

WOLFF & SAMSON PC
Attorneys for Third-Party Defendant,
ISP Chemicals LLC

By 
DENNIS M. TOFT

Dated: March 22, 2010

RULE 4:5-1 CERTIFICATION

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

additional parties to be joined in the litigation.

WOLFF & SAMSON PC
Attorneys for Third-Party Defendant,
ISP Chemicals LLC

By 
DENNIS M. TOFT

Dated: March 22, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Third-Party Complaint "B" and Affirmative Defenses was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by Federal Express and was served upon all parties which have consented to electronic service by posting to <http://njdepvocc.sfile.com> on this 22 day of March, 2010. Any party that has not consented to electronic service was served via first class, regular mail.


DIANA L. BUONGIORNO

Dated: March 22, 2010