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Newark, New Jersey 07102-5310

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Attorney for Third-Party Defendant

ITT Corporation

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

ITT CORPORATION'S ANSWER TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant ITT Corporation ("ITT"), by and through its undersigned counsel, hereby answers the Third-Party Complaint "B" asserted by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

1. ITT responds that the referenced pleadings speak for themselves. To the extent a response is required, ITT is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 1 through 15, and therefore denies the same.

THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

2. ITT is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 16 through 18, and therefore denies the same.

THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

3. The allegations in Paragraphs 19 through 116 relate to other parties. Accordingly, ITT is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 19 through 116, and therefore denies the same.

4. ITT admits the allegations in Paragraph 117

5. ITT is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 118 through 209, and therefore denies the same.

6. The allegations in Paragraph 210, state a legal conclusion as to which no response is required. To the extent a response is required, ITT responds that the referenced statute speaks for itself and denies the allegations in Paragraph 210.

DEFINITIONS

7. Paragraphs 211 through 236 contain definitions to which no response is required.

FACTUAL ALLEGATIONS

8. ITT responds that the referenced pleadings speak for themselves. To the extent a response required, ITT is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 237 through 1670, and therefore denies the same.

9. In answer to the allegations in paragraph 1671, ITT admits that at one time it owned real property and associated improvements known as 100 Kingsland Road in Clifton, New Jersey, and 500 Washington Avenue (also historically referred to as 390 Washington Avenue, 417 River Road, 483 River Road and 493 River Road), and 492 River Road in Nutley, New Jersey. ITT admits that Nutley and Clifton are located in Passaic County, New Jersey. ITT denies that it ever owned property known as 491 River Road in Nutley or in Clifton New Jersey, and therefore denies the definition of "ITT Site."

10. In answer to the allegations in Paragraph 1672, ITT states that portions of property it owned abutted the Third River and that the Third River is a tributary of the Passaic River. ITT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1672 and therefore denies the same.

11. ITT denies the allegations of Paragraph 1673.

12. ITT admits that it was incorporated in the State of Maryland in 1920 as International Telephone and Telegraph Corporation, and that in 1968, it was reincorporated in the State of Delaware. ITT denies the remaining allegations of Paragraph 1674.

13. As to Paragraph 1675, ITT admits that on September 5, 1985, ITT Indiana, Inc. was incorporated in the State of Indiana. ITT further admits that on December 20, 1995, ITT Delaware merged with ITT Indiana, Inc., with the surviving entity being known as ITT Industries, Inc., an Indiana corporation.

14. ITT admits that on July 1, 2006, ITT Industries, Inc. changed its name to ITT Corporation. ITT denies the remaining allegations of Paragraph 1676.

15. In answer to the allegations in Paragraph 1677, ITT states that from approximately 1946 to 1996, ITT and its predecessors owned and operated an electrical component manufacturing facility on portions of its property. ITT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1677 and therefore denies the same.

16. ITT denies the allegations in Paragraph 1678.

17. With respect to Paragraph 1679, ITT admits that its operations at 77 River Road, Clifton, New Jersey include the manufacture and assembly of electronic equipment used in the defense industry. ITT further admits that its operations include soldering, painting, printing, degreasing, drilling, machining, grinding, assembly, and product testing, as well as very minor and infrequent welding. ITT admits that in the past, it manufactured television and radio tubes, telephones, radios, washing machines and printed circuit boards at various times on its property.

18. With respect to Paragraph 1680, ITT admits that, at various times, it processed, handled, mixed, consumed, stored or otherwise used chemicals, and denies the remaining allegations in Paragraph 1680.

19. With respect to Paragraph 1681, ITT admits that it installed a treatment system to treat its waste water effluent prior to discharge into the PVSC sanitary sewer connection. ITT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1681 and therefore denies same.

20. With respect to Paragraph 1682, ITT admits that it reported that a discharge of 1, 1, 1 Trichloroethane at 100 Kingsland Road, Clifton, NJ occurred sometime between 8/12/86 and 8/13/86, and denies the remaining allegations in Paragraph 1682.

21. With respect to Paragraph 1683, ITT is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

22. With respect to Paragraph 1684, ITT is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

23. With respect to Paragraph 1685, ITT is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

24. With respect to Paragraph 1686, ITT is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

25. With respect to Paragraph 1687, ITT is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

26. With respect to Paragraph 1688, ITT denies the allegations of Paragraph 1688.

27. With respect to Paragraph 1689, ITT denies the allegations of Paragraph 1689.

28. With respect to Paragraph 1690, ITT admits that EPA sent a General Notice letter dated June 8, 2006 to ITT Industries, Inc. notifying it of its potential liability relating to the Diamond Alkalai Superfund Site and denies the remaining allegations in Paragraph 1690.

29. With respect to Paragraph 1691, ITT denies the allegations in Paragraph 1691.

30. ITT responds that the referenced pleadings speak for themselves. To the extent a response required, ITT is without knowledge or information sufficient to form a belief as to the matters alleged in Paragraphs 1692 through 3445, and therefore denies the same.

FIRST COUNT

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

31. ITT incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 30 herein.

32. ITT is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447 through 3448, and therefore denies the same.

33. ITT denies that it is liable to Third-Party Plaintiffs for contribution. ITT is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451, and therefore denies the same.

SECOND COUNT

Statutory Contribution

34. ITT incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 33 herein.

35. ITT denies that it is liable to Third-Party Plaintiffs for contribution. ITT is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

36. 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

37. 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") with respect to the Newark Bay Complex and the Passaic River.

THIRD AFFIRMATIVE DEFENSE

38. The claims of Third-Party Plaintiffs, their agents, employees, successors and assigns (“Third-Party Plaintiffs”) are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act (“WPCA”).

FOURTH AFFIRMATIVE DEFENSE

39. 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.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

42. The damages sought by Third-Party Plaintiffs are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

44. 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.

TENTH AFFIRMATIVE DEFENSE

45. 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.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

47. 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 subject property, 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.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH THIRD AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

50. 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.

SIXTEENTH AFFIRMATIVE DEFENSE

51. 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

53. 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.

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

55. 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-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

57. Third-Party Defendant did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA, N.J.S.A.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

59. 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-FIFTH AFFIRMATIVE DEFENSE

60. 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* including, without limit, State of New Jersey agencies and instrumentalities, including without limit Trustees for tidelands, and United States agencies and instrumentalities with liability under the Spill Act.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

61. 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 more than their equitable share of the liability.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

62. 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 limit, unpermitted and storm event discharges from publicly owned treatment works.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

63. 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.

TWENTY-NINTH AFFIRMATIVE DEFENSE

64. 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.

THIRTIETH AFFIRMATIVE DEFENSE

65. 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-FIRST AFFIRMATIVE DEFENSE

66. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Complaint is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs, including, without limit, through issuance of a no further action letter, consent order, settlement agreement or other applicable document.

THIRTY-SECOND AFFIRMATIVE DEFENSE

67. 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.

THIRTY-THIRD AFFIRMATIVE DEFENSE

68. 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.

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

71. Third-Party Plaintiffs' claims are barred due to its 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.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

72. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

73. 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.

THIRTY-NINTH AFFIRMATIVE DEFENSE

74. 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.

FORTIETH AFFIRMATIVE DEFENSE

75. 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.

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

77. 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-THIRD AFFIRMATIVE DEFENSE

78. 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.

FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE

79. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), 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 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.

FORTY-FIFTH AFFIRMATIVE DEFENSE

80. 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.

FORTY-SIXTH AFFIRMATIVE DEFENSE

81. Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Third-Party Complaint is at odds with Third-Party Defendant's responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at

any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against 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).

FORTY-SEVENTH AFFIRMATIVE DEFENSE

82. 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.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

83. 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.

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

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

DESIGNATION OF TRIAL COUNSEL

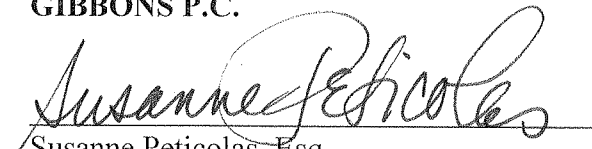
85. In Accordance with Rule 4:25-4 you are hereby notified that Susanne Peticolas is assigned to try this case.

WHEREFORE, Third-Party Defendant ITT 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: January 11, 2010

Respectfully submitted,

GIBBONS P.C.



Susanne Peticolas, Esq.

One Gateway Center

Newark, New Jersey 07102-5310

Attorney for Third-Party Defendant

ITT Corporation

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; and

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

(c) In the event the Court shall determine that the potential liability of a third-party defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R. 4:28; and

(d) In either event, some or all of such non-parties are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

OR

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

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that: (a) 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 7, 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.

Dated: January 11, 2010

Respectfully submitted,
Gibbons P.C.

A handwritten signature in cursive script, reading "Susanne Peticolas", written over a horizontal line.

Susanne Peticolas, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
ITT Corporation

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(973) 596-4500

Attorney for Third-Party Defendant

ITT Corporation

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

Plaintiffs

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA SOLUTIONS,
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Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

CERTIFICATION OF SERVICE

I, **SUSANNE PETICOLAS, ESQ.**, hereby certify as follows:

On January 11, 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 January 11, 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 January 11, 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: January 11, 2010

Respectfully submitted,

GIBBONS P.C.

A handwritten signature in black ink, reading "Susanne Peticolas". The signature is written in a cursive style with a large, looping "S" and "P".

Susanne Peticolas, Esq.

One Gateway Center

Newark, New Jersey 07102-5310

Attorney for Third-Party Defendant

ITT Corporation

Service List - First Class Mail

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