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Attorney for Third-Party Defendant

Innospec Active Chemicals, LLC

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

**INNOSPEC ACTIVE CHEMICALS, LLC'S**

**ANSWER TO THIRD-PARTY COMPLAINT "B"**

Third Party Defendant Innospec Active Chemicals, LLC ("Innospec"), 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. Innospec responds that the referenced pleadings speak for themselves. To the extent a response is required, Innospec 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. Innospec 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 113 relate to other parties. Accordingly, Innospec is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 19 through 113, and therefore denies the same.

4. Innospec admits the allegations in Paragraph 114.

5. Innospec is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 115 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, Innospec responds that the referenced statute speaks for itself and denies the allegations in Paragraph 210 to the extent the allegations relate to Innospec.

## **DEFINITIONS**

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

## **FACTUAL ALLEGATIONS**

8. The allegations in paragraphs 237 through 1659 relate to other parties.

Accordingly, Innospec is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 237 through 1659, and therefore denies the same.

9. The allegations contained in Paragraph 1660 constitute a definition to which no response is required. To the extent a response is required, Innospec denies the allegations set forth in paragraph 1660.

10. With regard to the allegations in paragraph 1661, Innospec lacks sufficient information or knowledge on which to form a belief as to the truth of these matters, and therefore denies the same.

11. With respect to the allegations in paragraph 1622, Innospec admits that Octel Corp. acquired Finetex, Inc. ("Finetex") in January 2005, and that Octel Corp. changed its name to Innospec, Inc. effective January 1, 2006. Innospec further admits that effective January 1, 2007, Finetex was merged into Innospec Performance Chemicals U.S. Co., which was later renamed Innospec Active Chemicals, LLC. Innospec asserts that the last sentence of paragraph 1662 calls for a legal conclusion, to which no response is required. However, to the extent that a response is required to this allegation, Innospec denies same. Innospec denies the remaining allegations of paragraph 1662.

12. With respect to the allegations in paragraph 1663, Innospec admits that it stored acetic acid, benzoic acid, biphenyl, diethanolamine, formaldehyde, dodecyl benzene sulfonic acid, maleic anhydride, methanol, monoethanolamine, perchloroethylene, petroleum hydrocarbons, phosphoric acid, phosphorous trichloride, phthalic anhydride, sulfuric acid, synthetic sperm oil, 1,2,4-trichlorobenzene, and xylenes at the site. With regard to the remaining

allegations of paragraph 1663, Innospec lacks sufficient information or knowledge on which to form a belief as to the truth of these matters, and therefore denies the same.

13. Innospec lacks sufficient information or knowledge on which to form a belief as to the truth of the matters stated in Paragraph 1664, and therefore denies the same. Innospec further denies that any dioxin compounds were ever associated with its processes or ever found in any environmental media at the Innospec Site.

14. Innospec admits that Fleisher Brook is located approximately 775 feet west of the Innospec Site and denies the remaining allegations in Paragraph 1665.

15. With respect to the allegations in paragraph 1666, Innospec admits that Finetex entered into a settlement agreement with the NJDEP in 1999 for a minor exceedance of Finetex's non-contact cooling and storm water permit in October 1998. Innospec further admits that the failure of a pressure relief safety device at the Innospec Site on September 14, 2000 resulted in the discharge of benzoic acid and Neodol-25 onto the soil at the Innospec Site. Innospec is without information or knowledge sufficient to respond to the remaining allegations in Paragraph 1666, and therefore denies same.

16. As to Paragraph 1667, Innospec admits that benzene was detected in the soil at the Innospec Site in May 2002, and that benzene and chlorobenzene were detected in the soil at the Innospec Site in November 2002, but denies the remaining allegations contained in Paragraph 1667.

17. As to Paragraph 1668, Innospec admits that vinyl chloride, benzene, chlorobenzene, total xylenes, 1,3-dichlorobenzene, 1,4-dichlorobenzene, and 1,2,4-trichlorobenzene were detected in the groundwater at the Innospec Site in November 2002, but denies the remainder of the allegations in paragraph 1668.

18. As to the allegations in paragraph 1669, Innospec admits that groundwater at the Innospec Site flows in the direction of Fleisher Brook, but denies the remainder of the allegations in paragraph 1669.

19. Innospec denies the allegations in Paragraph 1670.

20. Innospec responds that the allegations in Paragraphs 1671 through 3445 relate to parties other than Innospec, and therefore, no response is required. To the extent a response required, Innospec is without knowledge or information sufficient to form a belief as to the matters alleged in Paragraphs 1671 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)**

21. Innospec incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 20 herein in response to the allegations in Paragraph 3446.

22. Innospec denies that it is a discharger or “person in any way responsible” for the discharge of Hazardous Substances into the Newark Bay Complex and states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations against other Third Party defendants stated in Paragraph 3447, and therefore denies the same.

23. Innospec admits that the quoted language in Paragraph 3448 appears in the statutory cite referenced.

24. Innospec denies that it is liable to Third-Party Plaintiffs for contribution and further states that it without knowledge or information sufficient to form a belief as to the truth of the matters asserted against the other Third Party Defendants in Paragraph 3449.

25. Innospec is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3450, and therefore denies the same.

26. Innospec denies that it is liable to Third-Party Plaintiffs for contribution and further states that it without knowledge or information sufficient to form a belief as to the truth of the matters asserted against the other Third Party Defendants in Paragraph 3451, and therefore denies the same.

## **SECOND COUNT**

### **Statutory Contribution**

27. Innospec incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 26 herein in answer to Paragraph 3452.

28. Innospec denies that it is liable to Third Party Plaintiffs for contribution. Innospec is without knowledge or information sufficient to form a belief as to the truth of the matters asserted against other Third Party Defendants in Paragraph 3453, and therefore denies the same.

## **FIRST AFFIRMATIVE DEFENSE**

29. 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**

30. 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**

31. 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"), N.J.S.A. 58:10A-1, *et seq.*

#### **FOURTH AFFIRMATIVE DEFENSE**

32. 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**

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

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTH AFFIRMATIVE DEFENSE**

36. 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**

37. 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**

38. 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**

39. 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**

40. 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**

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

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

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



#### **FIFTEENTH AFFIRMATIVE DEFENSE**

43. 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**

44. 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**

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

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

46. 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**

47. 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**

48. 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**

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

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

50. 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**

51. 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 AFFIRMATIVE DEFENSE**

52. 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**

53. 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**

54. 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**

55. 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**

56. 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**

57. 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**

58. 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**

59. 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**

60. 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**

61. 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 AFFIRMATIVE DEFENSE**

62. 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**

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

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

64. 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**

65. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties 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**

66. 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 Defendants' alleged discharges.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

67. 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**

68. 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**

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

#### **FORTY-SECOND AFFIRMATIVE DEFENSE**

70. 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**

71. 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 AFFIRMATIVE DEFENSE**

72. 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**

73. 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**

74. 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 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**

75. 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**

76. 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**

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

**DESIGNATION OF TRIAL COUNSEL**

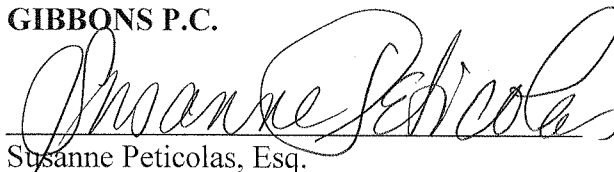
78. In Accordance with Rule 4:25-4 you are hereby notified that Susanne Peticolas is assigned to try this case.

WHEREFORE, Third Party Defendant Innospec 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 18, 2010

Respectfully submitted,

**GIBBONS P.C.**



Susanne Peticolas, Esq.

One Gateway Center

Newark, New Jersey 07102-5310

Attorney for Third-Party Defendant

Innospec Active Chemicals, LLC



**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

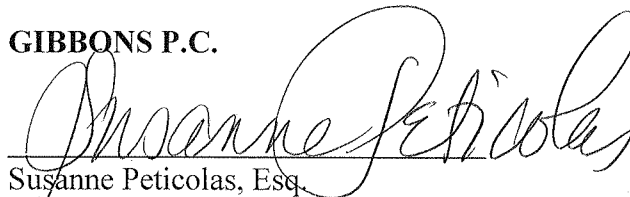
(c) In the event the Court shall determine that the potential liability of a third-party defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny 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.

Dated: January 18, 2010

Respectfully submitted,

**GIBBONS P.C.**



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Newark, New Jersey 07102-5310  
Attorney for Third-Party Defendant  
Innospec Active Chemicals, LLC