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ATTORNEY FOR THIRD-PARTY DEFENDANT  
Linde, Inc.

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

Plaintiffs,

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, 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

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**THE LINDE, INC.'S ANSWER TO  
THIRD-PARTY COMPLAINT "B"**

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., QALIA 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.  
OTILIO & SONS, INC., VELSCOL 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.

**The Linde, Inc.'s**

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

Third-Party Defendant Linde, Inc., by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

**GENERALLY**

1. Linde, Inc. denies each and every allegation contained in Third Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B".

**AS TO PROCEDURAL BACKGROUND**

**(Paragraphs 1 through 15)**

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

**AS TO THE THIRD PARTY PLAINTIFFS**

**(Paragraphs 16 through 18)**

3. No response is required pursuant to CMO V.

**AS TO THE THIRD PARTY DEFENDANTS**

**(Paragraphs 19 through 209)**

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

5. Linde, Inc. admits the allegations in Paragraph 121
6. The allegations in Paragraph 210, state a legal conclusion as to which no response is required.

**AS TO DEFINITIONS**

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

**AS TO FACTUAL ALLEGATIONS**

**(Paragraphs 237 through 3445)**

8. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.
9. Linde, Inc. denies the allegations in paragraph 606 of the Third-Party Complaint.
10. Linde, Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 607 of the Third-Party Complaint.
11. Linde, Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 608 of the Third-Party Complaint.
12. Linde, Inc. denies the allegations in paragraph 609 of the Third-Party Complaint, except it admits that Airco's assets were purchased by BOC International Ltd and that BOC International's name changed to the BOC Group, plc.
13. Linde, Inc. denies the allegations in paragraph 610 of the Third-Party Complaint.
14. Linde, Inc. admits the allegations in paragraph 611 of the Third-Party Complaint.
15. Linde, Inc. admits the allegations of paragraph 612 of the Third-Party Complaint.
16. Linde, Inc. denies the allegations in paragraph 613 of the Third-Party Complaint.
17. Linde, Inc. denies the allegations in paragraph 614 of the Third-Party Complaint.

18. Linde, Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 615 and 616 of the Third-Party Complaint.

19. Linde, Inc. respectfully refers the Court to the PVSC 1926 report for its terms and does not otherwise answer the allegations in paragraph 617 of the Third-Party Complaint.

20. Linde, Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 619 - 627 of the Third-Party Complaint.

21. Linde, Inc. respectfully refers the Court to the June 8, 2006 EPA letter for its terms and does not otherwise answer the allegations in paragraph 628 of the Third-Party Complaint.

22. Linde, Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 629 of the Third-Party Complaint.

23. Linde, Inc. denies the allegations in paragraph 630 of the Third-Party Complaint.

24. Linde, Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 631 of the Third-Party Complaint.

#### **AS TO FIRST COUNT**

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

25. The Linde, Inc. incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 20 herein.

26. The Linde, Inc. 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.

27. Linde, Inc. denies that it is liable to Third-Party Plaintiffs for contribution. Linde, INC. 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.

**AS TO SECOND COUNT**

**Statutory Contribution**

28. Linde, Inc.. incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 23 herein.

29. Linde, Inc. denies that it is liable to Third-Party Plaintiffs for contribution. Linde, Inc. 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**

30. 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**

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

**THIRD AFFIRMATIVE DEFENSE**

32. The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act.

**FOURTH AFFIRMATIVE DEFENSE**

33. 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**

34. Third-Party Plaintiffs have no right of contribution against Third-Party Defendant under the Spill Act.

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTH AFFIRMATIVE DEFENSE**

37. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Third-Party Defendants 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 ("Applicable Environmental Laws").

#### **NINTH AFFIRMATIVE DEFENSE**

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

#### **TENTH AFFIRMATIVE DEFENSE**

39. The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because at all relevant times Third-Party Defendants exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendants 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.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

42. 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.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

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

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

47. 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.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

48. 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 Defendants exercised no control and for whose conduct Third-Party Defendants were not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

#### **TWENTYTH AFFIRMATIVE DEFENSE**

49. 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-FIRST AFFIRMATIVE DEFENSE**

50. 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-SECOND AFFIRMATIVE DEFENSE**

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

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

53. Third-Party Plaintiffs' claims are barred due to their own conduct in implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

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

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

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

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

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

56. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Third-Party Defendants liable, in contribution, for punitive damages and penalties.

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

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

Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party

Defendant include, with respect to each such site:

1. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
2. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
3. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
4. 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
5. 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.

#### **TWENTY-NINETH AFFIRMATIVE DEFENSE**

58. 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.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

59. 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.

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

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

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

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

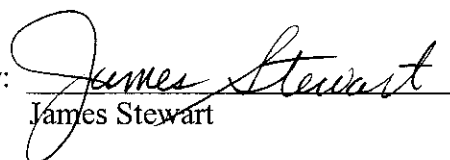
**DESIGNATION OF TRIAL COUNSEL**

62. Linde, Inc. designates James Stewart as trial counsel in this case.

WHEREFORE, Third-Party Defendant Linde, Inc. 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: February 2, 2010

Respectfully submitted,  
Lowenstein Sandler PC  
Attorney for Third-Party Defendant Linde, Inc.

By:   
James Stewart

**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 Linde, Inc. that its potential liability, if any, as 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

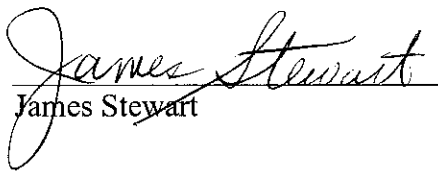


- (d) In either event, some or all of such non-parties are subject to joinder pursuant to R.4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

Respectfully submitted,

Lowenstein Sandler PC

Attorney for Third-Party Defendant Linde, Inc.

By:   
James Stewart

### **CERTIFICATION OF SERVICE**

Annetta Benedict hereby certifies as follows:

1. I am the legal secretary to James Stewart, Esq. of the law firm of Lowenstein Sandler, which law firm represents Third-Party Defendant Linde, Inc. in this matter.

2. I hereby certify that Linde, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served upon the Clerk of the Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey, 07102, by regular mail, postage pre-paid, on February 2, 2010.

3. I hereby certify that Linde, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants/Third-Party Plaintiffs Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served electronically on all parties who have consented to service by electronic posting on the following website, <http://njdepvocc.sfile.com> on February 2, 2010.

4. I hereby certify that Linde, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served by regular mail, postage pre-paid, on counsel for all parties who have not consented to service by electronic posting.

Dated: February 2, 2010

  
Annetta Benedict