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June 9, 2010

**VIA FEDEX**

Clerk, Superior Court of New Jersey  
Essex County Court House  
Room 131  
50 West Market Street  
Newark, NJ 07102

**Re: New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation, et al.; Docket No. L-9868-05 (PASR)**

Dear Sir or Madam:

We enclose for filing in the above-referenced matter on behalf of Lucent Technologies Inc., n/k/a Alcatel-Lucent USA Inc., an original and one copy of its Answer to Third Party Complaint B, together with its case information statement.

Please mark the copy of the Answer and Case Information Statement "filed" and return them in the self-addressed stamped envelope. Please charge Lowenstein Sandler's account #62300 for any filing fees.

Very truly yours,

  
James Stewart

JS:ab

12453/125  
06/09/10 14524144.1

Enclosure(s)

cc: Honorable Sebastian Lombardi (via email)  
Simi Junior (via email)  
Eric Rothenberg, Esq. (via email)  
All Counsel of Record

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ATTORNEY FOR THIRD-PARTY DEFENDANTS  
Lucent Technologies, Inc., now know as Alcatel-Lucent USA 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,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

Answer of Lucent Technologies, Inc.,  
now know as Alcatel-Lucent USA Inc., to  
Third-Party Complaint "B"

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

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

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

QUALA SYSTEMS, INC.,  
QUALITY CARRIERS, INC.,  
RECKITT BENCKISER, INC.,  
REICHHOLD, INC.,  
REVERE SMELTING & REFINING CORPORATION,  
REXAM BEVERAGE CAN COMPANY,  
ROMAN ASPHALT CORPORATION,  
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,  
R.T. VANDERBILT COMPANY, INC.,  
RUTHERFORD CHEMICALS LLC,  
S&A REALTY ASSOCIATES, INC.,  
SCHERING CORPORATION,  
SEQUA CORPORATION,  
SETON COMPANY,  
SIEMENS WATER TECHNOLOGIES CORP.  
SINGER SEWING COMPANY  
SPECTRASERV, INC.,  
STWB, INC.,  
SUN CHEMICAL CORPORATION,  
SVP WORLDWIDE, LLC,  
TATE & LYLE INGREDIENTS AMERICAS, INC.,  
TEVA PHARMACEUTICALS USA, INC.,  
TEVAL CORP.,  
TEXTRON INC.,  
THE DIAL CORPORATION,  
THE DUNDEE WATER POWER AND LAND  
COMPANY,  
THE NEWARK GROUP, INC.,  
THE OKONITE COMPANY, INC.,  
THE SHERWIN-WILLIAMS COMPANY,  
THE STANLEY WORKS,  
THE VALSPAR CORPRATION,  
THIRTY-THREE QUEEN REALTY INC.,  
THREE COUNTY VOLKSWAGEN CORPORATION,  
TIDEWATER BALING CORP.,  
TIFFANY & CO.,  
TIMCO, INC.,  
TRIMAX BUILDING PRODUCTS, INC.,  
TROY CHEMICAL CORPORATION, INC.,  
UNIVERSAL OIL PRODUCTS COMPANY,  
V. OTTILIO & SONS, INC.,  
VELSICOL CHEMICAL CORPORATION,  
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,  
VERTELLUS SPECIALTIES INC.,  
VITUSA CORP.,

VULCAN MATERIALS COMPANY,  
W.A.S. TERMINALS CORPORATION,  
W.A.S. TERMINALS, INC.,  
W.C. INDUSTRIES,  
WHITTAKER CORPORATION,  
WIGGINS PLASTICS, INC.,  
ZENECA INC.,

Third-Party Defendants.

**ALCATEL-LUCENT USA INC.'S ANSWER TO THIRD-PARTY COMPLAINT "B"**

Third-Party Named Defendant Lucent Technologies Inc., now known as Alcatel-Lucent USA 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. Alcatel-Lucent USA 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. Alcatel-Lucent USA 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 of Third-Party Complaint "B" relate to other parties, no response is required pursuant to CMO V. Alcatel-Lucent USA Inc. denies the allegations in paragraph 122 of the third-Party Complaint "B", except it admits that Alcatel-Lucent USA Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 600 Mountain Avenue, Murray Hill, New Jersey.

5. The allegations of paragraph 210 of Third-Party Complaint "B" state a legal conclusion as to which no response is required.

## **AS TO DEFINITIONS**

### **(Paragraphs 211 through 236)**

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

## **AS TO FACTUAL ALLEGATIONS**

### **(Paragraphs 237 through 3445)**

7. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

8. Alcatel-Lucent USA Inc lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of the first sentence of paragraph 1767 of

Third-Party Complaint “B”, except it admits the allegations of the remainder of paragraph 1767 of Third-Party Complaint “B”.

9. Alcatel-Lucent USA Inc. denies the allegations of paragraph 1768 of the Third-Party Complaint “B”, except it admits that the Lucent Site was acquired over time by multiple parcels on multiple dates beginning in 1923.

10. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of paragraph 1769 of Third Party Complaint “B”, and therefore denies same, except it admits that AT&T Technologies, Inc. sold the Lucent Site to Union Minerals and Alloys Corporation in 1984, but Union Minerals and Alloys Corporation did not acquire title until 1985.

11. Alcatel-Lucent USA Inc. admits the allegation of paragraph 1770 of Third-Party Complaint “B”.

12. Alcatel-Lucent USA Inc. admits the allegation of paragraph 1771 of Third-Party Complaint “B”.

13. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1772 of Third-Party Complaint “B”, except it admits that in 1995, AT&T Corp. announced its intention to divest its manufacturing divisions into a new company. NS-MPG Inc., a wholly owned subsidiary of AT&T Corp., was incorporated on November 25, 1995. On February 1, 1996, AT&T Corp. transferred assets to NS-MPG and NS-MPG commenced operations and remained a wholly-owned subsidiary of AT&T Corp. On February 6, 1996, NS-MPG Inc. changed its name to Lucent Technologies Inc. AT&T Corp. divested all ownership of Lucent Technologies Inc. on September 30, 1996. Effective November 1, 2008, Lucent Technologies Inc. changed its name to Alcatel-Lucent USA Inc. Alcatel-Lucent USA Inc. is not a corporate successor to Western Electric Manufacturing Inc. but is contractually obligated to indemnify AT&T Corp. for the claims asserted against AT&T Corp. in the instant matter and is thus the successor in interest to AT&T Corp. and real party in interest for the claims asserted in this action.

14. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1773 of Third-Party Complaint “B”, except it admits that products were manufactured by Western Electric, and that arsenic, nickel, zinc, cyanide, silver, chromium, copper, and lead were used from time to time in manufacturing processes occurring during the period 1925 to 1984.

15. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1774 of Third-Party Complaint “B”, except it admits that chromium, copper, lead, nickel, zinc, cyanide and silver were used periodically in manufacturing processes.

16. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 1775 of Third-Party Complaint “B”, and therefore denies same.

17. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 1776 of Third-Party Complaint “B” and therefore denies same.

18. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1777 of Third-Party Complaint “B” and therefore denies same.

19. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1778 of Third-Party Complaint “B” and therefore denies same.

20. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 1779 of Third-Party Complaint “B”, and therefore denies same.

21. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1780 of Third-Party Complaint “B” and therefore denies same.

22. Alcatel-Lucent USA Inc. denies the allegations of paragraph 1781 of Third-Party Complaint “B” but admits that on May 17, 1974, the State Department of Environmental Protection of the State of New Jersey filed a certification approving the application of Western Electric to construct an industrial wastewater treatment plant and refers to the entirety of the referenced certification for its full and accurate text.

23. Alcatel-Lucent USA Inc. denies the allegations of paragraph 1782 of Third-Party Complaint “B”.

24. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1783 of Third-Party Complaint “B”.

25. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1784 of Third-Party Complaint "B".

26. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1785 of Third-Party Complaint "B", except it admits that Western Electric conducted plating operations on the Lucent Site, including Building 170.

27. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 1786 of Third-Party Complaint "B", and therefore denies same.

28. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1787 of Third-Party Complaint "B".

29. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1788 of Third-Party Complaint "B" and therefore denies same.

30. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1789 of Third-Party Complaint "B" and therefore denies same.

31. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1790 of Third-Party Complaint "B" and therefore denies same.

32. Alcatel-Lucent USA Inc. denies the allegations of paragraph 1791 of Third-Party Complaint "B".

33. Alcatel-Lucent USA Inc. does not answer the allegations of paragraph 1792 of Third-Party Complaint "B", but refers to correspondence from NJDEP dated August 11, 1992 regarding ECRA case #84025, for its terms.

34. Alcatel-Lucent USA Inc. lacks information sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1793 of Third-Party Complaint "B" and therefore denies same.

35. Alcatel-Lucent USA Inc. does not answer the allegations of paragraph 1794 , but refers to the February 6, 1984 ECRA Notification and the June, 1985 Amended Environmental Cleanup Plan for their terms.

36. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1795 of Third-Party Complaint “B”, but refers to the Cleanup Plan for its terms.

37. Alcatel-Lucent USA Inc. lacks information sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1796 of Third-Party Complaint “B” and, therefore, denies same, and it refers to the August 1996 NJDEP communication and the February 7, 1997 Subsurface Soil Investigation Report for their terms.

38. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1797 of Third-Party Complaint “B” and therefore denies same.

39. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1798 of Third-Party Complaint “B”.

40. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1799 of Third-Party Complaint “B”, except it admits that groundwater at the Lucent Site was discharged to the Passaic River from at least four outfalls at the Lucent Site.

41. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 1800 of Third-Party Complaint “B” and therefore denies same.

42. Alcatel-Lucent USA Inc. denies the allegations of paragraph 1801 of Third-Party Complaint “B”, except it admits that at least four outfalls at the Lucent Site discharged stormwater to the Passaic River and that a portion of the Lucent Site is under a 100-year flood plain elevation.

43. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 1802 of Third-Party Complaint “B” and therefore denies same

44. Alcatel-Lucent USA Inc. does not answer the allegations of paragraph 1803 of Third-Party Complaint “B”, and refers to the September 20, 2004 EPA General Notice Letter for its terms.

45. Alcatel-Lucent USA Inc. does not answer the allegation of paragraph 1804 of Third-Party Complaint “B”, and refers to the September 15, 2003 EPA General Notice Letter for its terms.

46. Alcatel-Lucent USA Inc. does not answer the allegations of paragraph 1805 of the Third-Party Complaint "B", and refers to the September 19, 2003 NJDEP Directive No. 1 for its terms.

47. Alcatel-Lucent USA Inc. denies the allegation of paragraph 1806 of Third-Party Complaint "B".

48. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3230 of Third-Party Complaint "B" and therefore denies same.

49. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3231 of Third-Party Complaint B and therefore denies same.

50. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3232 of the Third-Party Complaint "B" and therefore denies same.

51. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3233 of Third-Party Complaint "B" and therefore denies same.

52. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3234 of Third-Party Complaint "B" and therefore denies same.

53. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3235 of Third-Party Complaint "B" and therefore denies same.

54. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3236 of Third-Party Complaint "B" and therefore denies same.

55. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3237 of Third-Party Complaint "B" and therefore denies same.

56. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3238 of Third-Party Complaint “B” and therefore denies same.

57. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3239 of Third-Party Complaint “B” and therefore denies same.

58. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3240 of Third-Party Complaint “B” and therefore denies same.

59. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3241 of Third-Party Complaint “B” and therefore denies same.

60. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3242 of Third-Party Complaint “B” and therefore denies same.

61. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3243 of Third-Party Complaint “B” and therefore denies same.

62. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3244 of Third-Party Complaint “B” and therefore denies same.

63. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3245 of Third-Party Complaint “B” and therefore denies same.

64. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3246 of Third-Party Complaint “B” and therefore denies same.

65. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3247 of Third-Party Complaint “B” and therefore denies same.

66. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3248 of Third-Party Complaint “B” and therefore denies same.

67. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3249 of Third-Party Complaint “B” and therefore denies same.

68. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3250 of Third-Party Complaint “B” and therefore denies same.

69. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3251 of Third-Party Complaint “B” and therefore denies same.

70. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3252 of Third-Party Complaint “B” and therefore denies same.

71. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3253 of Third-Party Complaint “B” and therefore denies same.

72. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3254 of Third-Party Complaint “B” and therefore denies same.

73. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3255 of Third-Party Complaint “B” and therefore denies same.

74. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3256 of Third-Party Complaint “B” and therefore denies same.

75. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3257 of Third-Party Complaint “B” and therefore denies same.

76. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3258 of Third-Party Complaint “B” and therefore denies same.

77. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3259 of Third-Party Complaint “B” and therefore denies same.

78. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3260 of Third-Party Complaint “B” and therefore denies same.

79. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3261 of Third-Party Complaint “B” and therefore denies same.

80. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 3262 of Third-Party Complaint “B” and therefore denies same.

81. Alcatel-Lucent USA Inc. lacks information or knowledge sufficient to form a belief as to the truth or accuracy of the allegation of paragraph 3263 of Third-Party Complaint “B” and therefore denies same.

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

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

82. Alcatel-Lucent USA Inc. incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3263 herein.

83. To the extent the allegations of paragraph 3447 of Third-Party Complaint “B” are directed at Alcatel-Lucent USA Inc., Alcatel-Lucent USA Inc. denies the allegations.

84. Alcatel-Lucent USA Inc. does not answer the allegations of Paragraph 3448 of Third-Party Complaint “B”, and refers to the New Jersey Spill Compensation and Control Act.

85. To the extent the allegations of paragraphs 3449 through 3451 are directed at Alcatel-Lucent USA Inc., Alcatel-Lucent USA Inc. denies that it is liable to Third-Party Plaintiffs for contribution.

## **AS TO SECOND COUNT**

### **Statutory Contribution**

86. Alcatel-Lucent USA Inc. incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3263 herein.

87. To the extent the allegations of paragraph 3453 of Third-Party Complaint “B” are directed at Alcatel-Lucent USA Inc., Alcatel-Lucent USA Inc. denies that it is liable to Third-Party Plaintiffs for contribution.

### **FIRST AFFIRMATIVE DEFENSE**

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**

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”).

### **THIRD AFFIRMATIVE DEFENSE**

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, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

### **FOURTH AFFIRMATIVE DEFENSE**

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

### **FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have no right of contribution against Third-Party Defendant under the WPCA.

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTH AFFIRMATIVE DEFENSE**

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 Defendant 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**

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**

The claims asserted against Third-Party Defendant in the Third-Party 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 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 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.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

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**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

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**

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

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

Third-Party Defendant did not own or operate a “Major Facility” as defined by the Spill Act or the WPCA.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs’ claims are barred, in whole or in part, by Third-Party Plaintiffs’ failure to comply with the prerequisites to liability under the Spill Act 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**

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

#### **TWENTIETH AFFIRMATIVE DEFENSE**

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

by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Although Third-Party Defendant denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Third-Party Defendant is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

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**

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**

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.

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

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**

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**

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

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

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:

Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;

Any settlement or other compromise between Plaintiffs and Third-Party Defendant;

Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;

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

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-NINTH AFFIRMATIVE DEFENSE**

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

#### **THIRTIETH AFFIRMATIVE DEFENSE**

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

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

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.

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

Third-Party Defendant cannot be held liable for discharges that were permitted by NPDES permit No. NJ0020443.

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

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

**DESIGNATION OF TRIAL COUNSEL**

Alcatel-Lucent USA Inc. designates James Stewart its trial counsel in this case.

WHEREFORE, Alcatel-Lucent USA, formerly known as Lucent Technologies 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: June 9, 2010

Respectfully submitted,

Ralph L. McMurry, Esq

30 Vesey Street – 15<sup>th</sup> Floor

New York, New York, 10007

Tel: 212 608 5444

Fax: 212 608 5054

Signed Ralph L. McMurry

Ralph L. McMurry, Esq.

Counsel admitted *pro hac vice*

Lowenstein Sandler PC

65 Livingston Avenue

Roseland, New Jersey 07068

Telephone: 973 597 2400

Facsimile: 973 597 2400

Signed James Stewart

James Stewart, Esq.

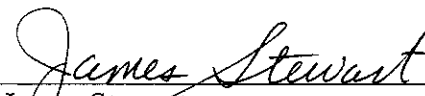
**CERTIFICATION PURSUANT TO R. 4:5-1(b) (2)**

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 Lucent Technologies 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 Lucent  
Technologies 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 Alcatel-Lucent USA Inc. in this matter.

2. I hereby certify that Alcatel-Lucent USA 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 Federal Express, postage pre-paid, on June 9, 2010.

3. I hereby certify that Alcatel-Lucent USA 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 June 9, 2010.

4. I hereby certify that Alcatel-Lucent USA 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: June 9, 2010

  
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