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October 26, 2010

Clerk of the Court  
Superior Court of New Jersey  
Veterans Courthouse  
50 West Market Street, Room 113  
Newark, NJ 07102

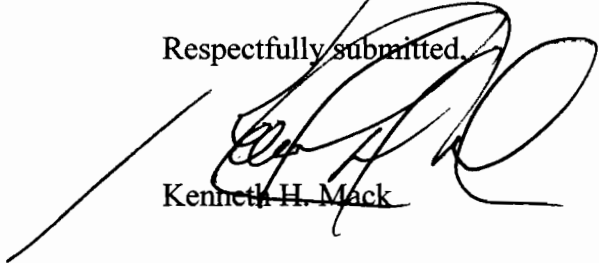
**Re: NJDEP v. Occidental Chemical Corporation, et al.**  
**ESX-L-9868-05 (PASR)**

Dear Sir/Madam:

Enclosed please find an original and two (2) copies of Morton International, Inc.'s ("Morton") Answer To Complaint "B" and Separate Defenses, along with Case Information Statement in the above-captioned matter, charging our Superior Court account #31965 for the filing fee. Please return one copy stamped "filed" in the self-addressed stamped envelope.

Neither the filing or contents of the enclosed Answer on the part of Morton is intended to be a waiver of its right to compel Third Party Plaintiffs to produce a "nexus package" as to Morton pursuant to par. 8e of Case Management Order V, to claim that no such nexus package in compliance with that provision has been produced by third party plaintiffs, or that, accordingly, the time period for Morton to produce its initial disclosures, or any other document production, has not yet commenced pursuant to paragraph 3 of Case Management Order XVIII, all of which rights and claims are hereby preserved and reserved.

Respectfully submitted,



Kenneth H. Mack

KHM:cs  
Enclosures

A Pennsylvania Limited Liability Partnership

California

Connecticut

Delaware

Florida

Nevada

New Jersey

New York

Pennsylvania

Clerk of the Court  
October 26, 2010  
Page 2

cc: The Honorable Sebastian P. Lombardi, J.S.C., by first class mail  
The Honorable Marina Corodemus, by posting on CT Summation  
All Parties Consenting to Electronic Service by posting on CT Summation  
All Parties Not Consenting to Electronic Service by regular mail

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Attorneys for Third-Party Defendant Morton International, Inc.

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, THE  
COMMISSIONER OF THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION 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, INC.,

Defendants,

:  
:  
: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION: ESSEX COUNTY

:  
: DOCKET NO. L-9868-05 (PASR)

:  
: CIVIL ACTION

:  
: **THIRD-PARTY DEFENDANT**  
: **MORTON INTERNATIONAL,**  
: **INC.'S ANSWER TO COMPLAINT**  
: **"B" AND SEPARATE DEFENSES**

MAXUS ENERGY CORPORATION and TIERRA :  
SOLUTIONS, INC., :

Third-Party Plaintiffs, :

vs. :

3M COMPANY, *et al.*, :

Third-Party Defendants. :

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Third-Party Defendant Morton International, Inc. (“Morton”), by and through its undersigned counsel, and (in accordance with this Court’s Case Management Order V, Subsection Section 9(iv) entered April 16, 2009, hereinafter “CMO V”), without waiver of any kind, hereby elects to answer only those allegations of the Third-Party Complaint “B” (the “Complaint”) by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc., (the “Third-Party Plaintiffs”) which relate specifically to it, including any allegations concerning parcel(s) or site(s) which the Complaint alleges Morton is associated with, and states:

#### **GENERALLY**

1. Morton 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”**

2-15. No answer is required to the allegations contained in paragraphs 1 through 15 of the Complaint pursuant to CMO V.

## **THE PARTIES**

16-128. No answer is required to the allegations contained in paragraphs 16 through 128 of the Complaint pursuant to CMO V.

129. Morton admits the allegations contained in paragraph 129 of the Complaint, except that Morton denies its principal place of business is at the address indicated in that paragraph. Morton's principal place of business is at 123 N. Wacker Drive, Chicago, IL 60606-1743.

130-236. No answer is required to the allegations contained in paragraphs 130 through 236 of the Complaint pursuant to CMO V.

## **FACTUAL ALLEGATIONS**

### **COMMERCIAL SITES**

237-2934. No answer is required to the allegations contained in paragraphs 237 through 2934 of the Complaint pursuant to CMO V.

#### **Ventron/Velsicol Site**

2935. With respect to the first sentence of paragraph 2935, Morton does not know what Plaintiff means by "The Ventron/Velsicol Property" and therefore lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph. Morton admits that there is a site which the United States Environmental Protection Agency has designated the "Ventron/Velsicol Site" located in the Boroughs of Wood-Ridge and Carlstadt in Bergen County, New Jersey, which site is bordered by Berry's Creek to the east, and that Berry's Creek is a tributary of the Hackensack River.

2936. With respect to the allegations contained in the first sentence of paragraph 2936, Morton admits upon information and belief that Berk operated a mercury processing plant

on a portion of Ventron/Velsicol Site from 1932 until 1960. With respect to the allegations contained in the second sentence of paragraph 2936, Morton admits on information and belief that Berk sold its assets to Wood Ridge and ceased its corporate existence in 1960. Morton is otherwise without knowledge or information sufficient to form as belief as to the remainder of the allegations contained in this paragraph. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2936.

2937. With respect to the allegations contained in the first sentence of paragraph 2937, Morton admits on information and belief that in 1960 Velsicol formed Wood Ridge as a wholly-owned subsidiary, that Wood Ridge purchased Berk's assets that same year, and that Wood Ridge began operating the mercury processing plant in 1960. With respect to the allegations contained in the second sentence of paragraph 2937, Morton admits on information and belief that Wood Ridge subdivided the property in 1967 and declared a thirty-three-acre land divided to Velsicol. Morton is otherwise without knowledge or information sufficient to form as belief as to the remainder of the allegations contained in this paragraph. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2937.

2938. Morton admits that Velsicol sold Wood Ridge to Ventron in 1968, and admits the remaining allegations contained in paragraph 2938 of the Complaint on information and belief.

2939. With respect to the allegations contained in paragraph 2939, Morton admits that a mercury processing plant operated on a portion of Ventron's property at the Ventron/Velsicol site until 1974 and that in 1974 Wood Ridge merged into Ventron. The remainder of the allegations contained in paragraph 2939 of the Complaint state legal

conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2939.

2940. Morton denies the allegations contained in the first sentence of paragraph 2940. Morton denies that Morton-Thiokol later became Morton. To the extent that the allegations contained in paragraph 2940 state legal conclusions, no response is required; Morton otherwise denies those allegations. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2940.

2941. Morton admits that the allegations contained in paragraph 2941 are paraphrases of statements from *State v. Ventron*, 468 A.2d 150 (N.J. 1983), but states that the *State v. Ventron* decision speaks for itself. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2941.

2942. Morton admits that the allegations contained in paragraph 2942 are paraphrases of statements from *State v. Ventron*, 468 A.2d 150 (N.J. 1983). Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2942.

2943. Morton denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2943.

2944. Morton admits that some concentrations of mercury, lead, zinc, cadmium, and arsenic have been detected in the soil at the Ventron/Velsicol site at some time. Whether these substances constitute Hazardous Substances is a legal conclusion to which no response is required. The remainder of the allegations contained in paragraph 2944 state legal conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2944.

2945. Morton admits that some concentrations of mercury, cadmium and zinc have been detected in the groundwater at the Ventron/Velsicol site at some time. Whether these substances constitute Hazardous Substances is a legal conclusion to which no response is required. The remainder of the allegations contained in paragraph 2945 state legal conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2945.

2946. Paragraph 2946 states legal conclusions as to which no response is required. To the extent a response is necessary, Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2946.

2947. Paragraph 2947 states legal conclusions as to which no response is required. To the extent a response is necessary, Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 2947.

2948. No answer is required to the allegations contained in paragraphs 2948 through 3445 of the Complaint pursuant to CMO V.

### **FIRST COUNT**

3446. Morton repeats and realleges its answers to the allegations in paragraphs 1 through 3445 as though fully set forth herein.

3447. Morton denies that it is a discharger and/or “a person in any way responsible” for the discharge of Hazardous Substances into the Newark Bay Complex. The remainder of the allegations in paragraph 3447 state legal conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 3447.



3448. Paragraph 3448 states legal conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 3448.

3449. Morton denies that Third-Party Plaintiffs are entitled to contribution from Morton to recover any share of cleanup and removal costs or damages for which Third-Party Plaintiffs may be found liable. The remainder of the allegations in paragraph 3449 state legal conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 3449.

3450. Morton is without knowledge or information sufficient to form as belief as to the allegations contained in this paragraph 3450 and so therefore denies those allegations.

3451. Morton denies that Third-Party Plaintiffs are entitled to contribution from Morton to recover any share of cleanup and removal costs that Third-Party Plaintiffs have allegedly incurred and will allegedly continue to incur in the future. Morton is otherwise without knowledge or information sufficient to form as belief as to the remainder of the allegations contained in paragraph 3451. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 3451.

**WHEREFORE**, Morton International, Inc. respectfully requests that the Court enter a judgment dismissing Third-Party Complaint “B” as to Morton with prejudice and awarding Morton its reasonable costs and attorneys fees incurred in defending this action; and such other and further relief as it may deem just and proper.

#### **SECOND COUNT**

3452. Morton repeats and realleges its answers to the allegations in paragraphs 1 through 3451 as though fully set forth herein.

3453. Morton denies that Third-Party Plaintiffs are entitled to contribution from Morton to recover any share of Response costs, cleanup and removal costs, damages, or other loss or harm, for which Third-Party Plaintiffs may be held liable or which Third-Party Plaintiffs have allegedly incurred and will allegedly continue to incur in the future. The remainder of the allegations in paragraph 3453 state legal conclusions as to which no response is required. Morton denies specifically any liability which may be sought to be conferred by the allegations of paragraph 3453.

**WHEREFORE**, Morton International, Inc. respectfully requests that the Court enter a judgment that Morton is not liable under the Second Count, dismissing Third-Party Complaint “B” as to Morton with prejudice and awarding Morton its reasonable costs and attorneys fees incurred in defending this action; and such other and further relief as it may deem just and proper.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Third-Party Complaint is barred in whole or in part to the extent it fails to state a cause of action against Morton upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Morton 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 Passaic River, or the discharges alleged against Third Party Plaintiffs, their agents, employees, successors and assigns (“Third Party Plaintiffs”).

### **THIRD AFFIRMATIVE DEFENSE**

Claims of Third-Party Plaintiffs as against Morton are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act (“WPCA”).

### **FOURTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs have no Spill Act claim against Morton 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’ claims are barred by the entire controversy doctrine.

### **SIXTH AFFIRMATIVE DEFENSE**

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

### **SEVENTH AFFIRMATIVE DEFENSE**

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

### **EIGHTH AFFIRMATIVE DEFENSE**

Morton 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 or departments, including those 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**

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 permitted by law including applicable Environmental Laws.

#### **TENTH AFFIRMATIVE DEFENSE**

At all relevant times, Morton 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.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

The claims asserted against Morton in the Complaint are barred because at all relevant times Morton 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 Morton 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, instrumentals and officials, and the United States and its agencies and officials.

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

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

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims against Morton 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.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

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, and last clear chance.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

Third Party Plaintiffs' 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; (4) equity will not permit double satisfaction; and/or to the extent Morton 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 Morton, equity will not compel action that is already being undertaken and/or is unnecessary.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

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.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred because the relief sought against Morton, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FIRST 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 that Third-Party Plaintiffs have not incurred Cleanup and Removal costs recoverable under the Spill Act and that Third-Party Plaintiffs have failed to conduct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible, as required under the Spill Act.

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

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-THIRD AFFIRMATIVE DEFENSE**

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-FOURTH AFFIRMATIVE DEFENSE**

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 that liability.

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

Morton denies that Third-Party Plaintiffs have suffered any harm whatsoever arising from the matters alleged as to Morton in the Complaint, but in the event that they did suffer any form of injury or damage cognizable with such claims, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Morton exercised no control and for whose conduct Morton was not responsible including, without limit, unpermitted and storm event discharges from publicly owned treatment works.

#### **TWENTY-SIXTH 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 Plaintiffs' or Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Plaintiffs' or 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 Morton, if any, must be reduced by the proportionate damages caused by the acts and conduct of Plaintiffs or Third-Party Plaintiffs and/or their respective agents or employees.

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

Although Morton denies that it is liable for the contamination described in the Complaint, in the event it is found liable, Morton 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-EIGHTH AFFIRMATIVE DEFENSE**

If Morton were held to be jointly and severally liable with Third Party Plaintiffs or any other person for the matters alleged in the Complaint, which holding Morton would contend to be contrary to the facts and the law, then, 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.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Morton 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.

**THIRTIETH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred due to their own conduct in unilaterally, and without notice to Morton, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm or of separate discharges.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

Morton's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties and excludes any such claims which may properly be apportioned to



parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. \_\_\_\_; 129 S.Ct. 1870 (2009), and other comparable decisional law.

#### **THIRTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Morton is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State.

#### **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

Morton 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 Morton.

#### **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

#### **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent they seek to hold Morton liable, in contribution, for any claims for which it would be a violation of public policy to hold Morton liable, including but not limited to punitive damages and penalties.

### **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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

### **THIRTY-NINTH AFFIRMATIVE DEFENSE**

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 Morton are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Morton 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 Morton.

### **FORTIETH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred because the relief sought against Morton, were it claimed directly by Plaintiffs, would amount to a "taking" of Morton'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-FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Third-Party Complaint which conflict with Morton'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 Morton, thereby exposing Morton to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (*i.e.*, double recovery).

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

To the extent Morton 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 Morton, 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-THIRD AFFIRMATIVE DEFENSE**

Without admitting liability, Morton 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.

#### **FORTY-FOURTH AFFIRMATIVE DEFENSE**

The Third Party Plaintiffs have failed in whole or in part to mitigate any damages allegedly sustained by them.

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

No cross-claims or counter-claims are asserted at this time. Morton expressly reserves any third/fourth party claims pursuant to CMO V and CMO XII.

**WHEREFORE**, Third-Party Defendant Morton respectfully requests that the Court enter a judgment dismissing the Third-Party Complaint “B” with prejudice as to Morton, and awarding costs, attorney fees and any other relief the Court deems just and proper.

Fox Rothschild LLP  
Attorney for Third-Party Defendant Morton  
International, Inc.

By: 

Kenneth H. Mack

Goodwin Procter LLP  
Attorneys for Third-Party Defendant Morton  
International, Inc.  
(admitted Pro Hac Vice)

By:   
  


Laurence S. Kirsch  
Michael S. Giannotto  
Valerie E. Ross

Dated October 26, 2010

**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. :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.

Fox Rothschild LLP  
Attorney for Third-Party Defendant Morton  
International, Inc.

By: 

Kenneth H. Mack

Dated October 26, 2010

**CERTIFICATION PURSUANT TO R. 4:6-1**

I certify that this pleading was served within the time provided in R. 4:6-1, as extended by case management order.

Fox Rothschild LLP  
Attorney for Third-Party Defendant Morton  
International, Inc.

By: 

Kenneth H. Mack

Dated October 26, 2010

### **CERTIFICATE OF SERVICE**

I hereby certify that Third-Party Defendant Morton International, Inc.'s Answer To Complaint "B" and Separate Defenses was served electronically on all parties which have consented to service by posting on <https://cvg.ctsummation.com> on October 26, 2010. The following counsel of record was served on October 26, 2010 via first class, regular mail:

Borough of Hasbrouck Heights  
Richard J. Dewland  
Coffey & Associates  
465 South Street  
Morristown, NJ 07960

City of Orange  
John P. McGovern  
Assistant City Attorney  
City of Orange Township  
29 North Day St.  
Orange, NJ 07050

Township of Winfield Park  
Steven A. Weiner  
O'Toole Fernandez Weiner Van Lieu  
60 Pompton Avenue  
Verona, NJ 07044

I further certify that an original and two (2) copies were served upon the Court via first class, regular mail to the following address:

Clerk, Superior Court of New Jersey  
Essex County Court House  
Room 131, 50 West Market Street  
Newark, NJ 07101

and a courtesy copy to the Judge at:

Hon. Sebastian P. Lombardi, J.S.C.  
Superior Court, Law Division  
Essex County Courthouse  
50 West Market Street  
Newark, NJ 07102

Fox Rothschild LLP  
Attorney for Third-Party Defendant Morton  
International, Inc.

By:   
Kenneth H. Mack

Dated October 26, 2010