

GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07102-5310

(973) 596-4500

Attorney for Third-Party Defendant

National-Standard, LLC

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

Plaintiffs

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA SOLUTIONS,
INC., MAXUS ENERGY CORPORATION,
REPSOL YPF, S.A., YPF, S.A., YPF
HOLDINGS, INC. and CLH HOLDINGS,
INC.,

Defendants.

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, *et al.*,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

NATIONAL-STANDARD, LLC'S ANSWER TO

THIRD-PARTY COMPLAINT "B"

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

PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

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

THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

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

THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

3. The allegations in Paragraphs 19 through 132 relate to other parties. Accordingly, National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 19 through 132, and therefore denies the same.

4. National-Standard admits that it is a limited liability company organized under the laws of the State of Delaware. National-Standard denies the remaining allegations of Paragraph 133.

5. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 134 through 209, and therefore denies the same.

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

DEFINITIONS

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

FACTUAL ALLEGATIONS

8. National-Standard responds that the referenced pleadings speak for themselves. To the extent a response required, National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 237 through 1929, and therefore denies the same.

9. National-Standard admits the allegations of Paragraph 1930.

10. National-Standard admits that National-Standard Company (Delaware) was incorporated on June 29, 1955 in Delaware. National-Standard further admits that, on or about January 31, 1994, National Standard Company (Delaware) merged with and into National Standard Company (Indiana). National-Standard also admits that on or about March 31, 2005, National-Standard, LLC incorporated in Delaware, and that on April 1, 2005, National Standard Company (Indiana) merged with and into National Standard, LLC. National-Standard denies the remaining allegations of Paragraph 1931.

11. National-Standard admits that until approximately 1988, National-Standard Company owned and operated a facility at the National-Standard Site, and that the facility was known as the National-Standard Company - Athenia Steel Division facility. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1932, and therefore denies the same.

12. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 1933, and therefore denies the same.

13. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 1934, and therefore denies the same.

14. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 1935, and therefore denies the same.

15. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 1936, and therefore denies the same.

16. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1937, and therefore denies the same.

17. National-Standard admits that Discharges of Hazardous Substances occurred at the National-Standard Site. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1938, and therefore denies the same.

18. National-Standard admits that on or about May 25, 1988, an acid spill occurred at the National-Standard site. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1939, and therefore denies the same.

19. National-Standard admits that Hazardous Substances have been detected in the soil at the National-Standard Site. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1940, and therefore denies the same.

20. National-Standard admits that the National-Standard Site is located near Weasel Brook. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1941, and therefore denies the same.

21. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 1942, and therefore denies the same.

22. National-Standard admits that Hazardous Substances have been detected in the groundwater at the National-Standard Site. National-Standard is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1943, and therefore denies the same.

23. National-Standard admits the allegations contained in Paragraph 1944.

24. The allegations in Paragraph 1945, state a legal conclusion as to which no response is required. To the extent a response is required, National-Standard denies the allegations set forth in Paragraph 1945.

25. National-Standard responds that the referenced pleadings speak for themselves. To the extent a response required, National-Standard is without knowledge or information sufficient to form a belief as to the matters alleged in Paragraphs 1946 through 3445, and therefore denies the same.

FIRST COUNT

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

26. National-Standard incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 25 herein in response to the allegations in Paragraph 3446

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

28. National-Standard admits that the quoted language in Paragraph 3448 appears in the statutory cite referenced.

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

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

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

SECOND COUNT

Statutory Contribution

32. In answer to Paragraph 3452, National-Standard incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 31 herein.

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

FIRST AFFIRMATIVE DEFENSE

34. 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

35. Third-Party Defendant is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 *et seq.* ("Spill Act") with respect to Newark Bay Complex and Passaic River.

THIRD AFFIRMATIVE DEFENSE

36. Claims of Third-Party Plaintiffs, their agents, employees, successors and assigns (“Third-Party Plaintiffs”) are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act (“WPCA”), N.J.S.A. 58:10A-1, *et seq.*

FOURTH AFFIRMATIVE DEFENSE

37. 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

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

42. Third-Party Defendant cannot be liable for or be required to pay Third-Party Plaintiffs’ damages that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances,

directives and common law, and other requirements of all foreign, federal, state and local government entities (“applicable Environmental Laws”).

TENTH AFFIRMATIVE DEFENSE

43. The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

ELEVENTH AFFIRMATIVE DEFENSE

44. Third-Party Plaintiffs’ Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

46. The claims asserted against Third-Party Defendant in the Complaint are barred because at all relevant times Third-Party Defendant exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendant had no control, whether by, in whole or part, contract or otherwise, or any duty to control,

including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

FOURTEENTH THIRD AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

49. 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

50. 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

52. The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTIETH AFFIRMATIVE DEFENSE

53. 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.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

58. 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-SIXTH AFFIRMATIVE DEFENSE

59. 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* of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the "Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

60. Third-Party Plaintiffs' claims are not ripe for adjudication, inter alia, because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid more than their equitable share of the liability.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

61. Third-Party Defendant denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendant exercised no control and for whose conduct Third-Party Defendant was not responsible including, without limit, unpermitted and storm event discharges from publicly owned treatment works.

TWENTY-NINTH AFFIRMATIVE DEFENSE

62. 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.

THIRTIETH AFFIRMATIVE DEFENSE

63. 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.

THIRTY-FIRST AFFIRMATIVE DEFENSE

64. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

66. The disposal of waste, if any, which allegedly originated from Third-Party Defendant, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements.

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

67. Any discharge that allegedly originated from Third-Party Defendant, was investigated and remediated by a licensed professional and under the direct oversight of State and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

71. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co.*,

et al. v. United States, et al., 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

73. 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.

FORTY-FIRST AFFIRMATIVE DEFENSE

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

FORTY-SECOND AFFIRMATIVE DEFENSE

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

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

78. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and Third-Party Defendant, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
- E. Any issuance by Plaintiffs to Third-Party Defendant, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FORTY-SIXTH AFFIRMATIVE DEFENSE

79. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to a "taking" of Third-Party Defendant's property in violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

80. Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Third-Party Complaint is at odds with Third-Party Defendant's responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-EIGHTH AFFIRMATIVE DEFENSE

81. To the extent Third-Party Defendant is acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY- NINTH AFFIRMATIVE DEFENSE

82. 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.

FIFTIETH AFFIRMATIVE DEFENSE

83. To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

FIFTY-FIRST AFFIRMATIVE DEFENSE

84. Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

FIFTY-SECOND AFFIRMATIVE DEFENSE

85. Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

FIFTY-THIRD AFFIRMATIVE DEFENSE

86. Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from Third-Party Defendant. Consequently, the claims in the Third-Party Complaint are barred, in whole or in part.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

87. At common law, Third-Party Defendant held, and still holds, a usufructuary interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Third-Party Defendant has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and cannot be any greater than, the claims that the State of New Jersey has or would have against Third-Party Defendant directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

88. The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendant as well, including the claims set forth in the Third-Party Complaint.

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

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

DESIGNATION OF TRIAL COUNSEL

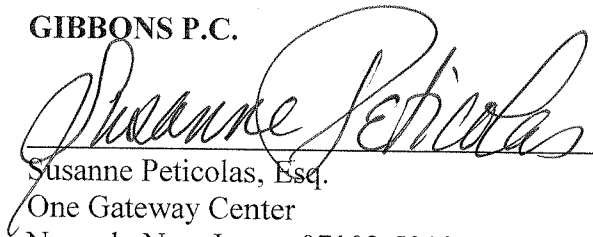
90. In Accordance with Rule 4:25-4 you are hereby notified that Susanne Peticolas is assigned to try this case.

WHEREFORE, Third-Party Defendant National-Standard, LLC 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 12, 2010

Respectfully submitted,

GIBBONS P.C.

A handwritten signature in black ink, appearing to read "Susanne Peticolas", is written over a horizontal line.

Susanne Peticolas, Esq.

One Gateway Center

Newark, New Jersey 07102-5310

Attorney for Third-Party Defendant

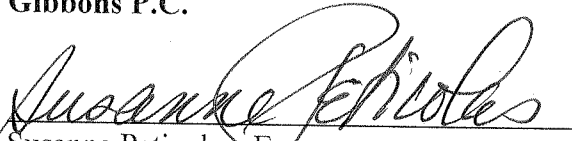
National-Standard, LLC

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

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that: (a) the matters in controversy in this action are not the subject of any other known or pending court action or arbitration proceeding (though the same may become the subject of a federal action pursuant to certain federal environmental statutes) and (b) reference is made to that October 7, 2009 "Additional Discharger" posting by O'Melveny and Myers as to non-parties who may be joined to this action pursuant to Rule 4:28, or who may be subject to joinder pursuant to Rule 4:29-1.

Dated: February 12, 2010

Respectfully submitted,
Gibbons P.C.

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

Susanne Peticolas, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
National-Standard, LLC

GIBBONS P.C.

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(973) 596-4500

Attorney for Third-Party Defendant

National-Standard, LLC

NEW JERSEY DEPARTMENT OF
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THE ADMINISTRATOR OF THE NEW
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Plaintiffs

v.

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

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

CERTIFICATION OF SERVICE

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

On February 12, 2010, I filed the within Answer to Third-Party Complaint "B", Civil Case Information Statement, and this Certification of Service by causing the original and two copies of same to be sent via overnight delivery to the Clerk of the Superior Court, Essex County.

On February 12, 2010, I also filed same via the SFile website, which will be distributed to all counsel who have consented to such service and to the Honorable Sebastian P. Lombardi, J.S.C.

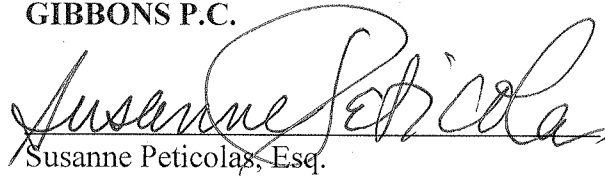
On February 12, 2010, I also mailed a copy, via regular mail, to all parties on the attached service list.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 12, 2010

Respectfully submitted,

GIBBONS P.C.

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

Susanne Peticolas, Esq.

One Gateway Center

Newark, New Jersey 07102-5310

Attorney for Third-Party Defendant

National-Standard, LLC

Service List - First Class Mail

Donna M. Russo, Esq. City of Bayonne, Law Division 630 Avenue C Bayonne, NJ 07002	City of Bayonne
Thomas M. Egan, Esq. City of Clifton, Law Department 900 Clifton Avenue Clifton, NJ 07013	City of Clifton
John P. McGovern, Esq. City of Orange 29 North Day Street Orange, NJ 07050	City of Orange
Eric S. Aronson, Esq. Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932	Clean Earth of North Jersey, Inc.
John A. Daniels, Esq. Daniels & Daniels, LLC 6812 Park Avenue Guttenberg, NJ 07093	Passaic Pioneers Properties Company
Gustavo Garcia, Esq. Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111	Township of Irvington