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Attorneys for Third-Party Defendant,

Nestlé 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)

CIVIL ACTION

**NESTLÉ USA, INC'S ANSWER 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.

NESTLÉ USA, INC.'S ANSWER TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Nestlé USA, Inc. ("Nestlé"), 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 Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

Nestlé 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

1-15. Pursuant to CMO V, no response is required to the factual allegations of Paragraphs 1 through 15 that do not relate specifically to Nestlé. To the extent an answer is required, Nestlé responds that the pleadings, documents and agreement referenced in Paragraphs 1 through 15 are writings and speak for themselves, and any characterizations thereof are denied. To the extent that these paragraphs contain legal conclusions, no response is required and the conclusions are denied.

AS TO THE THIRD-PARTY PLAINTIFFS

16-18. Pursuant to CMO V, no response is required to the allegations of Paragraphs 16 through 18, which identify Third-Party Plaintiffs and do not relate specifically to Nestlé.

AS TO THE THIRD-PARTY DEFENDANTS

19-134. Denied. The allegations contained in Paragraphs 19 through 134 relate to other Third-Party Defendants, do not specifically relate to Nestlé, and pursuant to CMO V do not require an answer from Nestlé. To the extent these paragraphs plead legal conclusions, no response is required and the conclusions are denied. To the extent a response is required to Paragraphs 19 through 134, Nestlé is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same.

135. Admitted.

136-209. Denied. The allegations contained in Paragraphs 136 through 209 relate to other Third-Party Defendants, do not specifically relate to Nestlé, and pursuant to CMO V do not require an answer from Nestlé. To the extent these paragraphs plead legal conclusions, no response is required and the conclusions are denied. To the extent a response is required to Paragraphs 136 through 209, Nestlé is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same.

210. Denied. The allegation in Paragraph 210 related to Nestlé is a conclusion of law to which no response is required, and the allegation is therefore denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in Paragraph 210 relating to other Third-Party Defendants, and therefore denies the same.

AS TO DEFINITIONS

211-236. Paragraphs 211 through 236 contain definitions. No response from Nestlé is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

237-3086. The allegations contained in Paragraphs 237 through 3086 relate to other Third-Party Defendants, do not specifically relate to Nestlé, and pursuant to CMO V do not require an answer from Nestlé. To the extent these paragraphs plead legal conclusions, no response is required and the conclusions are denied. To the extent a response is required to Paragraphs 237 through 3086, Nestlé is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same.

Bayonne Barrel and Drum Site Allegations

3087. Admitted in part, denied in part. Nestlé admits that the property located at or about 150-154 Raymond Boulevard in Newark, New Jersey has been referred to as the “Bayonne Barrel and Drum Site,” but Nestlé is without knowledge or information sufficient to form a belief as to the identity of the owner of the property, or whether there are any associated improvements thereon and therefore denies the same.

3088. Admitted in part, denied in part. Upon information and belief, Nestlé admits only that Bayonne Barrel & Drum Co. operated a drum reconditioning facility for some period of time. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 3088 and therefore denies the same.

3089. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3089 and therefore denies the same.

3090. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3090 and therefore denies the same.

3091. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3091 and therefore denies the same.

3092. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3092 and therefore denies the same.

3093. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3093 and therefore denies the same.

3094. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3094 and therefore denies the same. To the extent the PVSC inspections referenced in Paragraph 3094 were documented, those documents speak for themselves and any characterizations thereof are denied.

3095. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3095 and therefore denies the same. To the extent the PVSC report referenced in Paragraph 3095 was documented, that document speaks for itself and any characterizations thereof are denied.

3096. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3096 and therefore denies the same. To the extent the NJDEP inspectors' observations referenced in Paragraph 3096 were documented, that document speaks for itself and any characterizations thereof are denied.

3097. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3097 and therefore denies the same. To the

extent the PVSC inspection referenced in Paragraph 3097 was documented, that document speaks for itself and any characterizations thereof are denied.

3098. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3098 and therefore denies the same. To the extent the EPA preliminary assessment referenced in Paragraph 3098 was documented, that document speaks for itself and any characterizations thereof are denied.

3099. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3099 and therefore denies the same.

3100. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3100 and therefore denies the same.

3101. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3101 and therefore denies the same. To the extent the EPA analysis referenced in Paragraph 3101 was documented, that document speaks for itself and any characterizations thereof are denied.

3102. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3102 and therefore denies the same. To the extent the soil sample analysis referenced in Paragraph 3102 was documented, that document speaks for itself and any characterizations thereof are denied.

3103. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3103 and therefore denies the same. To the extent the soil sample analysis referenced in Paragraph 3103 was documented, that document speaks for itself and any characterizations thereof are denied.

3104. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3104 and therefore denies the same. To the extent the ground water analysis referenced in Paragraph 3104 was documented, that document speaks for itself and any characterizations thereof are denied.

3105. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3105 and therefore denies the same.

3106. Admitted in part, denied in part. Upon information and belief, Nestlé admits only that EPA has been involved in remedial activities in or around the Bayonne Barrel and Drum Site. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations stated in Paragraph 3106 and therefore denies the same.

3107. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3107 and therefore denies the same.

3108. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3108 and therefore denies the same.

3109. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3109 and therefore denies the same. To the extent the sediment core sampling referenced in Paragraph 3109 was documented, that document speaks for itself and any characterizations thereof are denied.

3110. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3110 and therefore denies the same.

3111. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3111 and therefore denies the same.

3112. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3112 and therefore denies the same. The Administrative Order referenced in Paragraph 3112 speaks for itself, and any characterizations thereof are denied.

3113. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3113 and therefore denies the same. By way of further response, the General Notice Letters referenced in Paragraph 3113 are writings, speak for themselves, and any characterizations thereof are denied

3114. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3114 and therefore denies the same. By way of further response, the General Notice Letters referenced in Paragraph 3114 are writings, speak for themselves, and any characterizations thereof are denied.

3115. Admitted in part, denied in part. Nestlé admits only that on or about July 1, 2003, EPA and certain private parties entered into an agreement identified as a “Site Participation Agreement.” That agreement is a writing, speaks for itself, and any characterizations thereof are denied.

3116. Denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3116 and therefore denies the same. By way of further response, the Administrative Order on Consent referenced in Paragraph 3116 is a writing, speaks for itself, and any characterizations thereof are denied.

3117. Admitted in part, denied in part. Nestlé admits that it entered into an “Agreement for Recovery of Past Response Costs” with the EPA (the “Agreement”) on or about August 24, 2004 related to the Bayonne Barrel and Drum Site, and that the other parties to the

Agreement included, but were not limited to, the parties listed in Paragraph 3117. The Agreement is a writing, speaks for itself, and any characterizations thereof are denied. Nestlé further denies any allegation in Paragraph 3117 that Nestlé had liability for EPA's past response costs related to the Bayonne Barrel and Drum Site.

3118. Denied. Nestlé denies any allegation in Paragraph 3118 that it is currently "associated" with the Bayonne Barrel and Drum Site. Nestlé is without knowledge or information sufficient to form a belief as to what remedial activities have been conducted relating to the Bayonne Barrel and Drum Site and therefore denies the allegations in Paragraph 3118 related to such activities. By way of further response, Nestlé has complied with the requirements of EPA regarding the Bayonne Barrel & Drum Site as reflected in the August 24, 2004 Agreement for Recovery of Past Response Costs.

3119-3173. The allegations contained in Paragraphs 3119 through 3173 relate to other Third-Party Defendants, do not specifically relate to Nestlé, and pursuant to CMO V do not require an answer from Nestlé. To the extent these paragraphs plead legal conclusions, no response is required and the conclusions are denied. To the extent a response is required to Paragraphs 3119 through 3173, Nestlé is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Any documents referenced in Paragraphs 3119 through 3173 speak for themselves, and any characterizations thereof are denied.

Nestlé Allegations

3174. Admitted in part, denied in part. Nestlé admits on information and belief that Buitoni Foods, Inc. sold drums to the Bayonne Barrel and Drum Site for reconditioning, but

Nestlé is currently without knowledge or information sufficient to form a belief as to the allegation in Paragraph 3174 regarding the time period during which such sales occurred.

3175. Admitted.

3176. Denied. Paragraph 3176 pleads a conclusion of law to which no response is required, and the allegation is therefore denied.

3177. Denied. Paragraph 3177 pleads a conclusion of law to which no response is required, and the conclusion is therefore denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3177 regarding the discharge of hazardous substances from the Bayonne Barrel and Drum Site, and therefore denies the same. Nestlé specifically denies that it is in any way responsible any such discharge of hazardous substances to the Newark Bay Complex from the Bayonne Barrel and Drum Site.

3178-3445. The allegations contained in Paragraphs 3178 through 3445 relate to other Third-Party Defendants, do not specifically relate to Nestlé, and pursuant to CMO V do not require an answer from Nestlé. To the extent these paragraphs plead legal conclusions, no response is required and the conclusions are denied. To the extent a response is required to Paragraphs 3178 through 3445, Nestlé is without knowledge or information sufficient to form a belief as to the truth of the factual allegations stated in those paragraphs and therefore denies the same. Any documents referenced in Paragraphs 3178 through 3445 speak for themselves, and any characterizations thereof are denied.

AS TO FIRST COUNT

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

3446. Nestlé incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3445 herein.

3447. Denied. To the extent this paragraph pleads legal conclusions, no response is necessary and those conclusions are therefore denied. Nestlé specifically denies the allegations in Paragraph 3447 to the extent they relate to Nestlé. Pursuant to CMO V, the allegations related to other Third-Party Defendants in Paragraph 3447 require no further answer from Nestlé. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the allegations stated in Paragraph 3447 related to other Third-Party Defendants and therefore denies the same.

3448. Admitted in part and denied in part. Nestlé admits only that Paragraph 3448 accurately quotes a portion of the New Jersey Spill Compensation and Control Act found at N.J.S.A. 58:10-23.11f.a.(2)(a). No response is required to any implied legal conclusions in Paragraph 3448, and any such conclusions are therefore denied.

3449. Denied. Paragraph 3449 pleads conclusions of law to which no response is required, and those conclusions are therefore denied. Nestlé specifically denies that it is liable to Third-Party Plaintiffs for contribution as alleged in Paragraph 3449. To the extent the allegations in Paragraph 3449 relate to other Third-Party Defendants and do not specifically relate to Nestlé, no response is required from Nestlé pursuant to CMO V. To the extent such a response is required, Nestlé is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 related to other Third-Party Defendants and therefore denies the same.

3450. Denied. To the extent Paragraph 3450 pleads legal conclusions, no response is required and those conclusions are therefore denied. Nestlé is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3450, and therefore denies the same.

3451. Denied. Paragraph 3451 pleads conclusions of law to which no response is required, and those conclusions are therefore denied. Nestlé specifically denies that it is liable to Third-Party Plaintiffs for contribution as alleged in Paragraph 3451. To the extent the allegations in Paragraph 3451 relate to other Third-Party Defendants and do not specifically relate to Nestlé, no response is required from Nestlé pursuant to CMO V. To the extent such a response is required, Nestlé is without knowledge or information sufficient to form a belief as to the truth of allegations in Paragraphs 3451 related to other Third-Party Defendants and therefore denies the same.

WHEREFORE, Third-Party Defendant Nestlé USA, Inc. respectfully requests that the Court enter an Order dismissing Third-Party Complaint “B” with prejudice as to Nestlé, and awarding costs, attorney fees and any other relief the Court deems just and proper.

AS TO SECOND COUNT

Statutory Contribution

3452. Nestlé incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3451 herein.

3453. Denied. Paragraph 3453 pleads legal conclusions to which no response is required and those conclusions are therefore denied. Nestlé specifically denies that it is liable to Third-Party Plaintiffs for contribution. Nestlé is without knowledge or information sufficient to form a belief as to the truth of allegations in Paragraphs 3451 related to other Third-Party Defendants and therefore denies the same.

WHEREFORE, Third-Party Defendant Nestlé USA, Inc. respectfully requests that the Court enter an Order dismissing Third-Party Complaint “B” with prejudice as to Nestlé, and awarding costs, attorney fees and any other relief the Court deems just and proper.

FIRST AFFIRMATIVE DEFENSE

1. The Third-Party Complaint is barred, in whole or in part, as it fails to state a cause of action against Nestlé upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Nestlé is not a discharger or a person in any way responsible under N.J.S.A. 58:10-23 et seq. (“Spill Act”) for the discharges alleged in the Third-Party Complaint.

THIRD AFFIRMATIVE DEFENSE

3. 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

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

7. 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 Nestlé under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

9. 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.

TENTH AFFIRMATIVE DEFENSE

10. 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.

ELEVENTH AFFIRMATIVE DEFENSE

11. 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.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

13. Nestlé cannot be held liable for, or be required to pay, Third-Party Plaintiffs' damages or other claims based on actions or inactions by Nestlé and/or Nestlé's alleged predecessor in interest 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").

FOURTEENTH AFFIRMATIVE DEFENSE

14. Third-Party Plaintiffs' claims are barred to the extent the State of New Jersey would be barred from asserting those claims directly against Nestlé for the damages sought in its Amended Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

15. 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.

SIXTEENTH AFFIRMATIVE DEFENSE

16. 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

SEVENTEENTH AFFIRMATIVE DEFENSE

17. The claims asserted against Nestlé in the Third-Party Complaint are barred, in whole or in part to the extent that Nestlé and/or Nestlé's alleged predecessor in interest complied with 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 during the relevant time period.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. The claims asserted against Nestlé in the Third-Party Complaint are barred, in whole or in part because the release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties whose liability Nestlé is not the successor to, and over whom Nestlé had no control, whether by contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, the United States and its agencies and officials, and publically owned treatment works.

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

20. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Nestlé and/or Nestlé's alleged predecessor in interest.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. Third-Party Plaintiffs' claims against Nestlé 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.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. 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.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. 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 to perform; (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.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. 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.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. 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' failure to incur costs authorized by the Spill Act and Third-Party Plaintiffs' failure to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. Third-Party Plaintiffs' claims are barred, in whole or in part, 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-NINTH AFFIRMATIVE DEFENSE

29. Third-Party Plaintiffs' claims are barred, in whole or in part, because they have not paid more than their fair or equitable share of any damages, costs or other relief sought by the Plaintiffs, and are, therefore, not entitled to contribution from Nestlé .

THIRTIETH AFFIRMATIVE DEFENSE

30. If Third-Party Plaintiffs sustained any injury or 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 or damages, Third-Party Plaintiffs' recovery against Nestlé, 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.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Although Nestlé denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Nestlé 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-SECOND AFFIRMATIVE DEFENSE

32. 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-THIRD AFFIRMATIVE DEFENSE

33. 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.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. Third-Party Plaintiffs claims are barred, in whole or in part, because Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

37. Nestlé's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims 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.*, 129 S.Ct. 1870 (2009), and other comparable decisional law.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. Third-Party Plaintiffs' contribution claims are barred, in whole or in part, because the discharges for which the Plaintiffs are seeking relief are different from the discharges for which Third-Party Plaintiffs allege Nestlé is responsible.

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

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

FORTY-FIRST AFFIRMATIVE DEFENSE

41. Third-Party Plaintiffs' claims are barred, in whole or in part, because no actions or inactions by Nestlé and/or Nestlé's alleged predecessor in interest have resulted in any permanent impairment or damage to a natural resource.

FORTY-SECOND AFFIRMATIVE DEFENSE

42. Without admitting liability, Nestlé asserts that if it is found liable for the activities alleged to have been conducted by Nestlé's alleged predecessor in interest 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-THIRD AFFIRMATIVE DEFENSE

43. To the extent Nestlé is acting or has contributed to an environmental cleanup at the site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against

Nestlé, 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-FOURTH AFFIRMATIVE DEFENSE

44. To the extent that the actions of Nestlé and/or its alleged predecessor in interest are determined to constitute disposal of waste, which Nestlé denies, such disposal was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which Third-Party Defendant cannot be found retroactively liable.

FORTY-FIFTH AFFIRMATIVE DEFENSE

45. Third-Party Plaintiffs' claims are barred, in whole or in part, to the extent that any discharge for which Nestlé is allegedly responsible 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 for which Third-Party Defendant cannot be found retroactively liable.

FORTY-SIXTH AFFIRMATIVE DEFENSE

46. 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.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

48. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Nestlé liable for any alleged discharge of hazardous substances resulting from the reconditioning and/or recycling of Nestlé's useful materials, Nestlé's supply of useful products, or any other action where Nestlé did not intend to dispose of Hazardous Substances.

WHEREFORE, Third-Party Defendant Nestlé USA, Inc. respectfully requests that the Court enter an Order dismissing Third-Party Complaint "B" with prejudice as to Nestlé, and awarding costs, attorney fees and any other relief the Court deems just and proper.

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

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

Dated: November 20, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Christopher D. Ball', written over a horizontal line.

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CERTIFICATION PURSUANT TO RULE 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 a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Because it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint is several only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that
- (c) In the event the Court shall determine that the potential liability of a Third-Party Defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October 7, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R. 4:28; and
- (d) In either event, some or all of such non-parties may be subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

Dated: November 20, 2009

Respectfully submitted,



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CERTIFICATION OF SERVICE

I, Christopher D. Ball, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served the Answer of Nestlé USA, Inc. to Third-Party Complaint "B" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via overnight mail.

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

Christopher D. Ball

Attorney for Third-Party Defendant,
Nestlé USA, Inc.

By: 
Christopher D. Ball

Dated: November 20, 2009

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