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Counsel for Third-Party Defendant
News Publishing Australia Limited

NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION and	:	LAW DIVISION: ESSEX COUNTY
THE ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION FUND,	:	DOCKET NO. ESX-L-9868-05 (PASR)
	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
	:	
OCCIDENTAL CHEMICAL	:	ANSWER OF THIRD-PARTY
CORPORATION, TIERRA SOLUTIONS,	:	DEFENDANT NEWS PUBLISHING
INC., MAXUS ENERGY CORPORATION,	:	AUSTRALIA LIMITED TO THIRD-
REPSOL YPF, S.A., YPF, S.A., YPF	:	PARTY COMPLAINT "B"
HOLDINGS, INC. and CLH HOLDINGS,	:	
INC.,	:	
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA	:	
SOLUTIONS,	:	
INC.,	:	
Third-Party Plaintiffs,	:	
v.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

**ANSWER OF THIRD-PARTY DEFENDANT
NEWS PUBLISHING AUSTRALIA LIMITED TO THIRD-PARTY COMPLAINT “B”**

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

GENERALLY

1. NPAL 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 in Third-Party Complaint “B”.

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

2. The referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD-PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. No response is required pursuant to CMO V.

AS TO THE THIRD-PARTY DEFENDANTS

(Paragraphs 19 through 210)

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

5. NPAL admits the allegations in Paragraph 138 that it is a corporation organized under the laws of the State of Delaware with its principal place of business at 1211 Avenue of the Americas, New York, New York.

6. The allegations in Paragraph 210 state a legal conclusion to which no response is required.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

8. To the extent that the allegations in Paragraphs 237 through 3445 relate to other parties, no response is required pursuant to CMO V.

9. The allegations of Paragraph 1906 are descriptive only and no response is required.

10. NPAL admits the allegations of Paragraph 1907 that Montrose Chemical Company (“Montrose”) formerly owned and operated a chemical manufacturing facility at 100 Lister Avenue in Newark, New Jersey (“Montrose Site”), from 1946 until 1961. NPAL admits that the following chemicals were manufactured at the Montrose Site at certain times between 1943 and 1972: DDT, benzene hexachloride, lindane, 1,2,4-trichlorobenzene, bis(2-ethylhexyl)phthalate, 2,4-dichlorophenoxyacetic acid (“2,4-D”), and tricresyl phosphate. NPAL denies that Montrose owned and operated the Montrose before 1946 or after 1961, and denies that 2,4,5-trichlorophenoxyacetic acid (“2,4,5-T”) was manufactured at the Montrose Site. Except as so admitted or denied, NPAL is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1907 and therefore denies them.

11. NPAL admits the allegations of Paragraph 1908 that during certain years before 1950, it manufactured approximately three million pounds of DDT at the Montrose Site. NPAL denies that Montrose manufactured DDT at the Montrose Site after 1950. Except as so

admitted or denied, NPAL is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1908 and therefore denies them.

12. NPAL admits the allegations of Paragraph 1909 that Montrose and Baldwin Rubber Company were parties to a merger in 1961, and further admits that the surviving entity was Baldwin-Montrose Chemical Company ("Baldwin-Montrose"). Except as so admitted, NPAL denies the allegations of Paragraph 1909.

13. NPAL admits the allegations of Paragraph 1910 that Baldwin-Montrose merged with Chris-Craft in 1968, and that certain operations continued at the Montrose Site thereafter, until 1972. NPAL further states that Chris-Craft sold the Montrose Site to a third-party in 1972 and had no involvement with, or responsibility for, operations at the site thereafter. Except as so admitted and stated, NPAL denies the allegations of Paragraph 1910.

14. NPAL admits the allegations of Paragraph 1911 that in August 2000, an agreement and plan of merger were entered into by and among Chris-Craft, The News Corporation Limited, NPAL, and Fox Television Holdings, Inc. NPAL further admits that pursuant to the merger, which was concluded in 2001 following regulatory approvals, Chris-Craft was merged into NPAL. Except as so admitted, NPAL denies any factual allegations of Paragraph 1911. The last sentence of Paragraph 1911 states a legal conclusion to which no response is required.

15. NPAL is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1912-1913, and therefore denies them.

16. NPAL denies the allegation of Paragraph 1914 that the Montrose Site is proximate to the Passaic River. NPAL is without knowledge or information sufficient to form

a belief as to the truth of the remaining allegations of Paragraph 1914, and therefore denies them.

17. NPAL admits the allegation of Paragraph 1915 that floor drains and troughs in production areas and buildings at the Montrose Site collected process wastewaters and conveyed the effluent into a sanitary sewer line beneath Lister Avenue. NPAL denies the allegation of Paragraph that News America, Inc. generated process wastewaters at the Montrose Site. NPAL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1915, and therefore denies them.

18. NPAL is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1916-1918, and therefore denies them.

19. NPAL denies the allegation of Paragraph 1919 that wastewater from the Montrose Site was discharged directly to the Passaic River. NPAL is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1919, and therefore denies them.

20. NPAL is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1920-1926, and therefore denies them.

21. Paragraphs 1927 and 1928 purport to characterize letters from EPA to Chris-Craft; the letters speak for themselves and no response is required.

22. Paragraph 1929 states legal conclusions to which no response is required. To the extent a response is required, NPAL denies that it is liable in any amount or at all, to any person or entity, either public or private, for any contamination in the Passaic River or the Newark Bay Complex.

AS TO FIRST COUNT

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

23. NPAL incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 22 herein.

24. Paragraphs 3447-3451 state legal conclusions to which no response is required. To the extent that a response is required, NPAL denies that it is liable to Third-Party Plaintiffs in any amount or at all.

AS TO SECOND COUNT

Statutory Contribution

25. NPAL incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 24 herein.

26. Paragraph 3453 states legal conclusions to which no response is required. To the extent that a response is required, NPAL denies that it is liable to Third-Party Plaintiffs in any amount or at all.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

28. NPAL is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. ("Spill Act").

THIRD AFFIRMATIVE DEFENSE

29. 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

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

33. 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 NPAL under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

35. 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

36. 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

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

39. NPAL cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by NPAL 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 THIRD AFFIRMATIVE DEFENSE

40. At common law, NPAL 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. NPAL 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 NPAL directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

41. The State of New Jersey is legally barred from asserting direct claims against NPAL 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 NPAL as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

42. 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.

SEVENTEENTH AFFIRMATIVE DEFENSE

43. 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

44. At all relevant times, NPAL 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.

NINETEENTH AFFIRMATIVE DEFENSE

45. The claims asserted against NPAL in the Third-Party Complaint are barred because at all relevant times NPAL exercised due care with respect to hazardous substances, if

any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom NPAL 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.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

48. Third-Party Plaintiffs' claims against NPAL 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-THIRD AFFIRMATIVE DEFENSE

49. 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-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH 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.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

53. 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-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

56. NPAL did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-FIRST 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.

THIRTY-SECOND 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.

THIRTY-THIRD 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.

THIRTY-FOURTH THIRD 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 and will not pay more than their fair or equitable share of the liability.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

61. NPAL 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 NPAL exercised no control and for whose conduct NPAL was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH 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 NPAL, 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-SEVENTH AFFIRMATIVE DEFENSE

63. Although NPAL denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, NPAL 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-EIGHTH 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-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

66. The disposal of waste, if any, which allegedly originated from NPAL, 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 NPAL cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

67. Any discharge that allegedly originated from NPAL, 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 NPAL cannot be found retroactively liable.

FORTY-SECOND 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.

FORTY-THIRD AFFIRMATIVE DEFENSE

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

FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

FORTY-FIFTH AFFIRMATIVE DEFENSE

71. NPAL'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.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

76. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against NPAL are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against NPAL 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 NPAL. Examples of legal extinguishments that are or may be applicable to NPAL include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to NPAL;
- B. Any settlement or other compromise between Plaintiffs and NPAL;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against NPAL;
- 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 NPAL, 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 NPAL, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY FIRST AFFIRMATIVE DEFENSE

77. Third-Party Plaintiffs' claims are barred because the relief sought against NPAL, were it claimed directly by Plaintiffs, would amount to a "taking" of NPAL'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.

FIFTY SECOND AFFIRMATIVE DEFENSE

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

FIFTY THIRD AFFIRMATIVE DEFENSE

79. To the extent NPAL 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 NPAL, 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.

FIFTY FOURTH AFFIRMATIVE DEFENSE

80. Without admitting liability, NPAL 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.

FIFTY FIFTH AFFIRMATIVE DEFENSE

81. NPAL 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 NPAL.

FIFTY SIXTH AFFIRMATIVE DEFENSE

82. NPAL reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

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

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

DESIGNATION OF TRIAL COUNSEL

84. In accordance with Rule 4:25-4 you are hereby notified that Robert J. Del Tufo is assigned to try this case.

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

85. Pursuant to Rule 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 Rule 4:28; but that

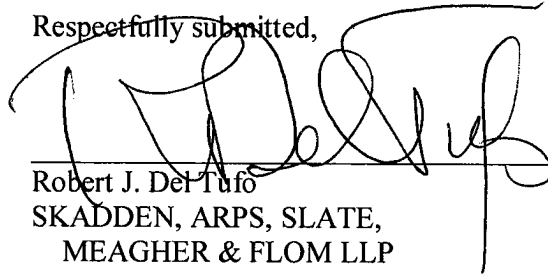
c) In the event the Court shall determine that the potential liability of a third party defendant, if any, for the claims set forth in the Third Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the October, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to Rule 4:28; and

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

WHEREFORE, NPAL respectfully requests that the Court enter an Order dismissing the Third-Party Complaint "B" with prejudice, and awarding costs, attorneys' fees and any other relief the Court deems just and proper.

Dated: November 9, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert J. Del Tufo', written over a horizontal line.

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 Attorney for Third-Party Defendants
 News America, Inc. and News Publishing Australia Limited

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NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION, THE	:	SUPERIOR COURT OF NEW JERSEY
COMMISSIONER OF THE NEW JERSEY	:	LAW DIVISION: ESSEX COUNTY
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and THE ADMINISTRATOR OF	:	DOCKET NO. ESX-L-9868-05 (PASR)
THE NEW JERSEY SPILL COMPENSATION	:	
FUND,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	
	:	CERTIFICATE
	:	<u>OF SERVICE</u>
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,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	
-----	X	

I, ROBERT J. DEL TUFO, certify as follows:

- I am an attorney in the State of New Jersey and counsel at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, attorneys for Third-Party Defendants News

America, Inc. and News Publishing Australia Limited. As such, I am familiar with the facts stated herein.


2. I hereby certify that the documents listed below were served electronically on all parties which have consented to service by posting on www.sfile.com/njdepvocc on November 9, 2009:

- i. Answer Of Third-Party Defendant News America, Inc. To Third-Party Complaint "B" (with Case Information Statement annexed thereto); and
- ii. Answer Of Third-Party Defendant News Publishing Australia Limited To Third-Party Complaint "B" (with Case Information Statement annexed thereto).

3. I further certify that counsel of record identified on the List attached hereto were served on November 9, 2009 via first class, regular mail.

4. I further certify that the pleadings identified herein were served within the time period allowed by R. 4:6-1.

Dated: November 9, 2009



Robert J. Del Tufo

Third-Party Defendants for Regular Service as of October 13, 2009

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
3M Company	B	Donald J. Camerson, II Bressler, Amery & Ross, P.C. 325 Columbia Turnpike Florham Park, NJ 07932 973.660.4433 973.514.1660 - fax dcamerson@bressler.com
Alden-Leeds, Inc.	B	Joseph B. Fiorenza Sokol, Behot & Fiorenza 433 Hackensack, NJ 07601 201.488.1300 jbfioorenza@sbflawfirm.com
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Clean Earth of North Jersey, Inc.	B	Eric S. Aronson Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932 973.360.7900 973.301.8410 - fax aronson@gtlaw.com

Third-Party Defendants for Regular Service as of October 13, 2009

DiLorenzo Properties Company, L.P.	B	Steven R. Gray Water, McPherson, McNeill, P.C. 300 Lighting Way P.O. Box 1560 Secaucus, NJ 07096 201.863.4400 201.863.2866 - fax sgray@lawwmm.com
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Fine Organics Corporation	B	Joe R. Caldwell Baker Botts L.L.P. 1299 Pennsylvania Ave. N.W. Washington, D.C. 20004-2400 202.639.7788 202.585.1074 - fax joe.caldwell@bakerbotts.com
Flexon Industries Corporation	B	Thomas Spiesman Porzio Bromberg & Newman, P.C. 100 Southgate Parkway Morristown, NJ 07962 973.889.4208 973.538.5146 – fax tspiesman@pbnlaw.com
Flint Group Incorporated	B	Donald J. Camerson, II Bressler, Amery & Ross, P.C. 325 Columbia Turnpike Florham Park, NJ 07932 973.660.4433 973.514.1660 - fax dcamerson@bressler.com
Houghton International Inc.	B	Robert A. White Morgan, Lewis & Bockius LLP 502 Carnegie Center Princeton, NJ 08540-6241 609.919.6600
Hudson Tool & Die Company, Inc.	B	Keith E. Lynott McCarter & English, LLP 100 Mulberry Street 4 Gateway Center Newark, NJ 07102 973.622.4444 973.624.7070 - fax klynott@mccarter.com

Third-Party Defendants for Regular Service as of October 13, 2009

Koehler-Bright Star, Inc.	B	Norman W. Spindel Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973.597.2500 973.597.2515 - fax nspindel@lowenstein.com
Legacy Vulcan Corp.	C	Corinne A. Goldstein, Esq. Covington & Burling, LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004 cgoldstein@cov.com 202.662.5534 202.778.5534 - fax cgoldstein@cov.com
Metal Management Northeast, Inc.	B	Norman W. Spindel Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973.597.2500 973.597.2515 - fax nspindel@lowenstein.com
New Jersey Transit Corporation	B	Kenneth M. Worton Deputy Attorney General State of New Jersey One Penn Plaza East Newark, NJ 07105-2246 973.491.7034 973.491.7044 - fax kworton@njtransit.com
Novelis Corporation	B	Paul Casteleiro, Esq. 200 Washington St., 5th Floor Hoboken, NJ 07030 201.656.1696 201.656.4688 - fax paul@casteleirolaw.com
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com
Precision Manufacturing Group, LLC	B	Bradley L. Mitchell Stevens & Lee 600 College Road East Suite 4400 Princeton, NJ 08540 609.987.6680 610.371.7928 - fax blm@stevenslee.com

Third-Party Defendants for Regular Service as of October 13, 2009

R.T. Vanderbilt Company, Inc.	B	Howard A. Neuman Satterlee Stephens Burke & Burke LLP 33 Wood Avenue South Iselin, NJ 08830 732.603.4966 hneuman@ssbb.com
Revere Smelting & Refining Corporation [Has provided consent; however, counsel of record needs to register at website for service of notifications]	B	Nicholaus M. Kouletis, Esq. Pepper Hamilton, LLP Suite 400 301 Carnegie Center Princeton, NJ 08543-5276 609.452.0808 609.452.1147 - fax kouletisn@pepperlaw.com
The Stanley Works [Has provided consent; however, counsel of record needs to register at website for service of notifications]	B	Robert T. Barnard Thompson Hine LLP 335 Madison Ave., 12th Floor New York, NY 10017 212.344.5680 212.344.6101 - fax Robert.Barnard@ThompsonHine.com
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Vitusa Corp.	B	Gerald Poss Gerald Poss, P.A. & Associates 58 Vose Avenue South Orange, NJ 07079-2026 973.762.6400 gpossinc@aol.com
Wiggins Plastics, Inc.	B	Russell S. Burnside Greenberg Dauber Epstein & Tucker, P.C. One Gateway Center, Suite 600 Newark, NJ 07201 973.643.3700 973.643.1218 - fax rburnside@greenbergdauber.com