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**Attorneys for Third-Party Defendant, Pharmacia Corporation**

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

**PHARMACIA CORPORATION'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 TECIINOLOGIES, 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.

**PHARMACIA CORPORATION'S ANSWER TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Pharmacia Corporation ("Pharmacia"), 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:<sup>1</sup>

**GENERALLY**

Pharmacia 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, which do not relate specifically to Pharmacia. To the extent an answer is required, Pharmacia responds that the pleadings, documents and agreement referenced in Paragraphs 1 through 15 are writings and speak for themselves and any

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<sup>1</sup> The paragraph numbers used herein respond to the paragraph numbers used in the Third-Party Complaint B.

mischaracterizations 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 Pharmacia.

#### **AS TO THE THIRD PARTY DEFENDANTS**

19-145. Denied. The allegations in Paragraphs 19 through 145 relate to other Third-Party Defendants, do not specifically relate to Pharmacia, and pursuant to CMO V do not require an answer from Pharmacia. To the extent these paragraphs plead legal conclusions, no response is required and Pharmacia denies said legal conclusions.

146. Denied. By way of further answer, Pharmacia is a corporation organized under the laws of the state of Delaware, with a place of business in Peapack, New Jersey.

147-209. Denied. The allegations in Paragraphs 147 through 209 relate to other Third-Party Defendants, do not specifically relate to Pharmacia, and pursuant to CMO V do not require an answer from Pharmacia. To the extent these paragraphs plead legal conclusions, no response is required and Pharmacia denies said legal conclusions.

210. Denied. The allegation in Paragraph 210 states a legal conclusion as to which no response is required and therefore is denied. To the extent that a response is required, Pharmacia denies the allegations in Paragraph 210.

#### **AS TO DEFINITIONS**

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

### **AS TO FACTUAL ALLEGATIONS**

237-1888. The allegations in Paragraphs 237 through 1888 relate to other Third-Party defendants, do not specifically relate to Pharmacia, and, pursuant to CMO V, do not require an answer from Pharmacia. To the extent these paragraphs plead legal conclusions, no response is required and Pharmacia denies said legal conclusions. To the extent a response is required to Paragraphs 237 through 1888, Pharmacia 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 237 through 1888 speak for themselves, and any mischaracterizations thereof are denied.

#### **Monsanto Site**

1889. Admitted.

1890. Admitted in part and denied in part. It is admitted only that in 1901 Monsanto Chemical Works was incorporated in Missouri. In 1933 Monsanto Chemical Company was incorporated in Delaware and acquired the assets of Monsanto Chemical Works. In 1964, Monsanto Chemical Company changed its name to Monsanto Company. Pharmacia denies the remaining allegations of paragraph 1890.

1891. Admitted.

1892. Admitted in part and denied in part. It is admitted only that Monsanto owned the Monsanto Site from approximately 1954 until approximately 1994, that manufacturing operations were conducted at the Monsanto Site from 1955 until 1991, and that Monsanto produced phosphoric acid, sodium triphosphate, steroxes and alkylphenol at the Monsanto Site at various times. Pharmacia denies the remaining allegations of paragraph 1892 and specifically denies that it manufactured the referenced products at all times during its operation of the Monsanto Site.



1893. Admitted.

1894. Admitted.

1895. Admitted in part and denied in part. To the extent that the allegations in Paragraph 1895 state conclusions of law, no response is required and such allegations are therefore denied. To the extent that the allegations in Paragraph 1895 plead factual allegations requiring a response, Pharmacia admits only that certain phenols, ethylene oxide, phosphoric acid, potassium hydroxide, certain PCBs, toluene, and certain petroleum hydrocarbons were present at the Monsanto Site, at one time or another, in conjunction with normal operations. Pharmacia specifically denies that Monsanto discharged hazardous substances to the Passaic River. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of any remaining allegations in paragraph 1895 and therefore they are denied.

1896. Admitted in part and denied in part. Pharmacia admits only that the Monsanto Site abuts the Passaic River. Pharmacia specifically denies that the Passaic River received direct discharges from the Monsanto Site. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 1896 and therefore they are denied.

1897. Denied. To the extent that the allegations in Paragraph 1897 state conclusions of law, no response is required and such allegations are therefore denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1897 plead factual allegations regarding the alleged observations of a third party more than forty-five years ago, Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of such

allegations and therefore they are denied. Pharmacia specifically denies that Monsanto discharged hazardous substances to the Passaic River.

1898. Denied. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 1898 and therefore they are denied. To the extent that the allegations contained in this paragraph refer to a written document, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1897 plead factual allegations regarding the alleged observations of a third party more than thirty-five years ago, Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Pharmacia specifically denies that Monsanto discharged hazardous substances to the Passaic River.

1899. Denied. To the extent that the allegations in Paragraph 1899 state conclusions of law, no response is required and such allegations are therefore denied. To the extent that the allegations contained in Paragraph 1899 refer to a written document that speaks for itself, any mischaracterization thereof is denied. To the extent that the allegations in Paragraph 1899 plead factual allegations requiring a response, they are denied. Pharmacia specifically denies that it discharged hazardous substances into the Passaic River.

1900. Denied. To the extent that the allegations contained in Paragraph 1900 refer to a written document that speaks for itself, any mischaracterization thereof is denied. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of the alleged observations of a third party more than thirty-five years ago, and therefore the remaining allegations of this Paragraph are denied.

1901. Denied. Pharmacia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1901 and therefore they are denied.

1902. Denied. To the extent the allegations in Paragraph 1902 state conclusions of law, no response is required and they are therefore denied. Pharmacia specifically denies poor housekeeping practices at the Monsanto Site or that alleged spills, leaks, mechanical failures, and/or poor housekeeping practices resulted in discharges of hazardous substances to the Passaic River. Pharmacia further denies the allegations in Paragraph 1902 to the extent that they suggest that any operations at the Monsanto Site impacted the Passaic River. To the extent that the remaining allegations contained in Paragraph 1902 plead factual allegations requiring a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

1903. Admitted in part and denied in part. Pharmacia admits only that EPA sent General Notice letters to Monsanto on or about April 26, 1996 and September 15, 2003. To the extent that the allegations contained in Paragraph 1903 refer to a written document that speaks for itself, any mischaracterization thereof is denied. To the extent a response is required, the allegations in Paragraph 1903 refer to the legal conclusions of EPA to which no response is required. To the extent that the allegations contained in Paragraph 1903 plead factual allegations requiring a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Pharmacia further denies the allegations in Paragraph 1903 to the extent that they suggest that any operations at the Monsanto Site impacted the Passaic River.

1904. Admitted in part and denied in part. Pharmacia admits only that NJDEP issued Directive No. 1 In the Matter of the Lower Passaic River on September 19, 2003. To the extent that the allegations contained in Paragraph 1904 refer to a written document that speaks for itself, any mischaracterization thereof is denied. To the extent a response is required, the

allegations in Paragraph 1904 refer to the legal conclusions of NJDEP to which no response is required. To the extent that the allegations contained in Paragraph 1904 plead factual allegations requiring a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied. Pharmacia further denies the allegations in Paragraph 1904 to the extent that they suggest that any Hazardous Substances were released from the Monsanto Site or impacted the Passaic River.

1905. Denied. The allegations in Paragraph 1905 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 1905 plead factual allegations requiring a response, they are denied. Pharmacia specifically denies the allegations in Paragraph 1902 to the extent that they suggest that there were any Discharges of Hazardous Substances at the Monsanto Site that impacted the Newark Bay Complex.

1906-3086. The allegations in Paragraphs 1906 through 3086 relate to other Third-Party defendants, do not specifically relate to Pharmacia, and, pursuant to CMO V, do not require an answer from Pharmacia. To the extent these paragraphs plead legal conclusions, no response is required and Pharmacia denies said legal conclusions. To the extent a response is required to Paragraphs 1906 through 3086, Pharmacia 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 1906 through 3086 speak for themselves, and any mischaracterizations thereof are denied.

#### **The Bayonne Barrel and Drum Site**

3087-3114. Denied. The allegations in Paragraphs 3087 through 3114 relate to other parties, and do not specifically reference Pharmacia, so no response is required pursuant to CMO V. To the extent these paragraphs plead legal conclusions, no response is required, and said

allegations are therefore denied. To the extent Paragraphs 3087 through 3114 contain factual allegations that could be construed as pertaining to Pharmacia, they are denied. Any documents referenced in Paragraphs 3087 through 3114 speak for themselves, and any mischaracterizations thereof are denied. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations pertaining to the operation of the Bayonne Barrel and Drum Site and said allegations are therefore denied.

3115. Admitted in part and denied in part. The allegations in Paragraph 3115 refer to a written document which speaks for itself and any mischaracterization thereof is denied.

Pharmacia admits only that the referenced Site Participation Agreement was entered into on or about the referenced date.

3116. Admitted in part and denied in part. The allegations in Paragraph 3116 refer to a written document which speaks for itself and any mischaracterization thereof is denied.

Pharmacia admits only that is among the parties to the referenced Administrative Order on Consent.

3117. Admitted in part and denied in part. The allegations in Paragraph 3117 refer to a written document which speaks for itself and any mischaracterization thereof is denied.

Pharmacia admits only that it is among the parties to the referenced 2004 Agreement.

3118. Admitted in part and denied in part. Pharmacia admits only that it has fully complied with its obligations under the Site Participation Agreement and the Administrative Order on Consent. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of any remaining allegations in Paragraph 3118 and therefore they are denied.

3119-3177. Denied. The allegations in Paragraphs 3119 through 3177 relate to other parties, and do not specifically reference Pharmacia, so no response is required pursuant to CMO V. To the extent these paragraphs plead legal conclusions, no response is required, and said allegations are therefore denied. To the extent Paragraphs 3119 through 3177 contain factual allegations that could be construed as pertaining to Pharmacia, they are denied. Any documents referenced in Paragraphs 3119 through 3177 speak for themselves, and any mischaracterizations thereof are denied.

***Bayonne Barrel and Drum Site: Pharmacia Corporation***

3178. Admitted.

3179. Admitted in part and denied in part. Pharmacia admits only that Monsanto sent empty drums to the Bayonne Barrel and Drum Site from Pharmacia's facility in Springfield, Massachusetts. Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of any remaining allegations in Paragraph 3179 and therefore they are denied.

3180. Admitted in part and denied in part. Pharmacia admits only that it agreed to participate in certain activities at the Bayonne Barrel and Drum Site as set forth in the December 22, 2003 Administrative Order on Consent for a Removal Action, Docket No. CERCLA-02-2004-2006. The referenced Administrative Order on Consent speaks for itself and any mischaracterization thereof is denied.

3181. Admitted.

3182. Denied. The allegations in Paragraph 3182 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3182 plead factual allegations requiring a response, they are denied. Pharmacia further denies the allegations in Paragraph 3182 to the extent that they suggest that there were

any Discharges of Hazardous Substances at the Monsanto Site that impacted the Newark Bay Complex.

3183-3445. The allegations in Paragraphs 3183 through 3445 relate to other Third-Party defendants, do not specifically relate to Pharmacia, and, pursuant to CMO V, do not require an answer from Pharmacia. To the extent these paragraphs plead legal conclusions, no response is required and Pharmacia denies said legal conclusions. To the extent a response is required to Paragraphs 3183 through 3445, Pharmacia 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 3183 through 3445 speak for themselves, and any mischaracterizations 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. Pharmacia incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 3445 herein.

3447. Denied. The allegations in Paragraph 3447 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3447 plead factual allegations requiring a response, Pharmacia denies the allegations that pertain to it. Pursuant to CMO V, allegations related to other Third-Party Defendants in Paragraph 3447 require no further answer from Pharmacia.

3448. Admitted in part and denied in part. To the extent that the allegations in Paragraph 3448 state conclusions of law to which no response is required, such allegations are denied. It is admitted only that the allegations in Paragraph 3448 quote a portion of N.J.S.A. 58:10-23.11f.a(2)(a).

3449. Denied. The allegations in Paragraph 3449 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3449 require any response, Pharmacia denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations contained in Paragraph 3449 plead additional factual allegations requiring a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

3450. Denied. The allegations in Paragraph 3450 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3450 require a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth or accuracy of such allegations and therefore they are denied.

3451. Denied. The allegations in Paragraph 3451 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3451 require any response, Pharmacia denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations contained in Paragraph 3451 plead additional factual allegations requiring a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.



WHEREFORE, Third-Party Defendant Pharmacia 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.

**AS TO SECOND COUNT**

**Statutory Contribution**

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

3453. Denied. The allegations in Paragraph 3453 state conclusions of law to which no response is required and are therefore denied. To the extent that the allegations contained in Paragraph 3453 require any response, Pharmacia denies that it is liable to Third-Party Plaintiffs for contribution. To the extent that the allegations contained in Paragraph 3453 plead additional factual allegations requiring a response, Pharmacia is without knowledge or information sufficient to form a belief as to the truth of or accuracy of such allegations and therefore they are denied.

WHEREFORE, Third-Party Defendant Pharmacia 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.

**FIRST AFFIRMATIVE DEFENSE**

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

**SECOND AFFIRMATIVE DEFENSE**

Pharmacia is not a discharger or a person in any way responsible for under N.J.S.A. 58:10-23 *et seq.* (“Spill Act”) for the discharges to the Passaic River and Newark Bay Complex alleged in the Third-Party Complaint.

### **THIRD AFFIRMATIVE DEFENSE**

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

### **FOURTH AFFIRMATIVE DEFENSE**

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

### **FIFTH AFFIRMATIVE DEFENSE**

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

### **SIXTH AFFIRMATIVE DEFENSE**

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

### **SEVENTH AFFIRMATIVE DEFENSE**

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 Pharmacia under that statute.

### **EIGHTH AFFIRMATIVE DEFENSE**

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

### **NINTH AFFIRMATIVE DEFENSE**

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**

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**

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

#### **TWELFTH AFFIRMATIVE DEFENSE**

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

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

Pharmacia cannot be held liable for, or be required to pay, Third-Party Plaintiffs' damages or other claims based on actions or inactions by Pharmacia 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**

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

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

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

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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**

The claims asserted against Pharmacia in the Third-Party Complaint are barred, in whole or in part, to the extent that Pharmacia complied with 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 during the relevant time period.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

The claims asserted against Pharmacia 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 over whom Pharmacia had no control, whether by contract or otherwise, and/or who Pharmacia had no 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/or any publicly owned treatment works.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

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**

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

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

Third-Party Plaintiffs' claims against Pharmacia 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**

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 AFFIRMATIVE DEFENSE**

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

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

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-SIXTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

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

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

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

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

#### **TWENTY-NINTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs' 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.

### **THIRTIETH AFFIRMATIVE DEFENSE**

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.

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

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 Pharmacia .

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

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 Pharmacia, 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-THIRD AFFIRMATIVE DEFENSE**

Although Pharmacia denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Pharmacia 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-FOURTH AFFIRMATIVE DEFENSE**

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-FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Pharmacia 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-SIXTH AFFIRMATIVE DEFENSE**

To the extent that the actions of Pharmacia are determined to constitute disposal of waste, which Pharmacia denies, such disposal was undertaken in accordance with the state of the art, the accepted industrial practice and technology, and the prevailing legal requirements at the time, for which Pharmacia cannot be found retroactively liable.

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

Any discharge that allegedly originated from Pharmacia, was investigated and remediated by a licensed professional, and under the direct oversight of state and/or federal agencies, with the state of the art, the accepted industrial practice and technology, and the prevailing requirements at the time, for which Pharmacia cannot be found retroactively liable.

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

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 applicable government agencies.

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

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



#### **FORTIETH AFFIRMATIVE DEFENSE**

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

#### **FORTY-FIRST AFFIRMATIVE DEFENSE**

Pharmacia'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 other 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-SECOND AFFIRMATIVE DEFENSE**

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 Pharmacia is responsible.

#### **FORTY-THIRD AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Pharmacia 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.

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

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

#### **FORTY-FIFTH AFFIRMATIVE DEFENSE**

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

#### **FORTY-SIXTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Pharmacia are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Pharmacia 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 Pharmacia.

#### **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

To the extent that Pharmacia is participating or has participated in an environmental cleanup at the site alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Pharmacia, 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-EIGHTH AFFIRMATIVE DEFENSE**

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

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

#### **FIFTIETH AFFIRMATIVE DEFENSE**

To the extent that Pharmacia is participating or has participated in environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Pharmacia, 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-FIRST AFFIRMATIVE DEFENSE**

Without admitting liability, Pharmacia asserts that if it is found liable for the activities alleged to have been conducted by Pharmacia or Monsanto 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-SECOND AFFIRMATIVE DEFENSE**

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

### **FIFTY-THIRD AFFIRMATIVE DEFENSE**

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

WHEREFORE, Third-Party Defendant Pharmacia 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.

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

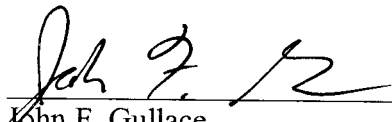
No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

### **DESIGNATION OF TRIAL COUNSEL**

In accordance with Rule 4:25-4 you are hereby notified that John F. Gullace is assigned to try this case.

Dated: November 20, 2009

Respectfully submitted,

  
\_\_\_\_\_  
John F. Gullace  
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401 City Avenue, Suite 500  
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Attorney for Third-Party Defendant,  
Pharmacia Corporation

**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

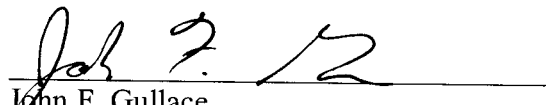
(b) Because it is the legal position of the undersigned that the potential liability, if any, of a Third-Party Defendant for the claims set forth in the Third-Party Complaint is several only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that

(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

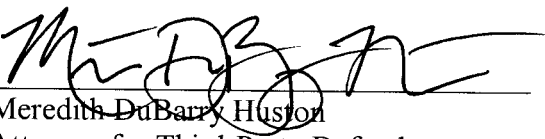
Respectfully submitted,

  
\_\_\_\_\_  
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Attorney for Third-Party Defendant,  
Pharmacia Corporation

### **CERTIFICATION OF SERVICE**

I, Meredith DuBarry Huston, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served Pharmacia Corporation's Answer 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.

  
Meredith DuBarry Huston  
Attorney for Third-Party Defendant,  
Pharmacia Corporation

Dated: November 20, 2009

### **THIRD-PARTY DEFENDANTS SERVICE LIST**

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