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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.,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**ANSWER TO THIRD-PARTY  
COMPLAINT "B", AFFIRMATIVE  
DEFENSES AND R. 4:5-1  
CERTIFICATION OF  
PRECISION MANUFACTURING  
GROUP, LLC**

ALLIANCE CHEMICAL. INC.,  
ALUMAX MILL PRODUCTS, INC.,  
AMCOL REALTY CO.,  
AMERICAN INKS AND COATINGS  
CORPORATION,  
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-BRIGHT 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 CORPORATION,  
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.

**PRECISION MANUFACTURING GROUP, LLC'S ANSWER AND  
AFFIRMATIVE DEFENSES TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Precision Manufacturing Group, LLC, a New Jersey limited liability company ("Precision"), 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**

Precision 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. Precision responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

### **AS TO THE THIRD-PARTY PLAINTIFFS**

16-18. Precision responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

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

19-153. The allegations of Paragraphs 19 through 153 relate to other parties; accordingly, no response is required pursuant to CMO V.

153. Precision denies that it is a limited liability company organized under the laws of the State of Illinois. Precision a limited liability company organized under the laws of the State of New Jersey, with its principal place of business at 501 Little Falls Road, Cedar Grove, New Jersey. Precision denies the remaining allegations of Paragraph 153.

154-209. The allegations of Paragraphs 154 through 209 relate to other parties; accordingly, no response is required pursuant to CMO V:

210. The allegations of Paragraph 210 consist of legal conclusions which require no response. To the extent these allegations pertain to parties other than Precision, no response is required pursuant to CMO V. To the extent that these allegations may be interpreted to require a response, Precision denies them in their entirety as they pertain to Precision.

### **AS TO DEFINITIONS**

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

### **AS TO FACTUAL ALLEGATIONS**

237-2578. The allegations of Paragraphs 237 through 2578 relate to other parties; accordingly, no response is required pursuant to CMO V.

2579. Precision admits that Paragraph 2579 sets forth the Third-Party Plaintiffs' definition of the term "Servometer Site" for purposes of Third-Party Complaint "B." Precision

lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and, therefore, denies them.

2580. Precision lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and, therefore, denies them.

2581. Precision denies the allegations in this paragraph. To the contrary, Servometer Corporation, (which on information and belief underwent a name change to Servodot Corporation and then a corporate dissolution in 2002), was not at any time “merged into” Precision. Pursuant to an Asset Purchase Agreement dated October 6, 2000 by and among Servometer Corporation, a New Jersey corporation, Dorothy A. Holowachuk, Jayne A. Holowachuk, and, Stacie L. Delos, and Omega Acquisitions, L.L.C., an Illinois limited liability company, certain assets were purchased by Omega Acquisitions, L.L.C., an Illinois limited liability company. Those certain assets and other rights and remedies were assigned by Omega Acquisitions, L.L.C. to Precision Manufacturing Group, L.L.C., an Illinois limited liability company as assignee pursuant to Paragraph VIII of the Asset Purchase Agreement. Precision Manufacturing Group, LLC, an Illinois limited liability company, in 2007 became Precision Manufacturing Group, LLC, a New Jersey limited liability company. Furthermore, pursuant to the Asset Purchase Agreement, Omega Acquisitions, L.L.C., and thus its assignee Precision Manufacturing Group, L.L.C., an Illinois limited liability company, and later entity Precision Manufacturing Group, LLC, a New Jersey limited liability company, did not assume any liability that is alleged in the Third Party Complaint regarding the alleged acts, omissions or statutory environmental liability of (the alleged Servodot Corporation or) Servometer Corporation. In addition, pursuant to the Asset Purchase Agreement, Servometer Corporation (and the alleged Servodot Corporation) and the above named individuals owe indemnification as contractual



indemnitors, for certain liabilities of Servometer Corporation, which would include those liabilities alleged in this Third Party Complaint. In making this averment regarding such indemnification issues, Precision further incorporates in this response that Precision lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations regarding Servometer Corporation (or the alleged Servodot Corporation) in paragraphs 2579-2586, and, therefore, denies those allegations. The remaining allegations of Paragraph 2581 consist of legal conclusions which require no response. To the extent these allegations may be interpreted to require a response, Precision denies them.

2582-2586. Precision lacks knowledge or information sufficient to form a belief as to the truth of the allegations herein and therefore denies those allegations. Precision further avers that it has never had any involvement whatsoever with or responsibility for the allegations herein, or the property referenced herein, or the activities alleged herein, nor did Precision ever legally assume any liability for any entity in regard to the allegations herein or property referenced herein. To the extent that the allegations herein are legal conclusions, they require no response. To the extent these allegations may be interpreted to require a response, Precision denies them.

2587-3445. The allegations of Paragraphs 2587 through 3445 relate to other parties: accordingly, no response is required pursuant to CMO V.

**AS TO FIRST COUNT**

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

3446. Precision incorporates by reference its responses to Paragraphs 1 through 3445 as if fully set forth herein.

3447. The allegations of Paragraph 3447 consist of legal conclusions which require no response. To the extent these allegations require a response, Precision denies the allegations to

the extent they apply to Precision. Precision lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3447 and therefore denies them.

3448. The cited statutory provision speaks for itself. Precision denies the allegations to the extent they are inconsistent with or unsupported by that statutory provision.

3449. The allegations of Paragraph 3449 consist of legal conclusions which require no response. To the extent these allegations require a response, Precision denies the allegations to the extent they apply to Precision. Precision lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3449 and, therefore, denies them.

3450. The allegations of Paragraph 3450 consist of legal conclusions which require no response. To the extent these allegations require a response, Precision denies them.

3451. The allegations of Paragraph 3451 consist of legal conclusions which require no response. To the extent these allegations require a response, Precision denies the allegations to the extent they apply to Precision. Precision lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3451 and, therefore, denies them.

WHEREFORE, Third-Party Defendant Precision respectfully requests that the Court enter an Order dismissing 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. Precision incorporates by reference its responses to Paragraphs 1 through 3451 as if fully set forth herein.

3453. The allegations of Paragraph 3447 consist of legal conclusions which require no response. To the extent these allegations require a response, Precision denies the allegations to

the extent they apply to Precision. Precision lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3453 and, therefore, denies them.

WHEREFORE, Third-Party Defendant Precision respectfully requests that the Court enter an Order dismissing Third-Party Complaint “B” with prejudice, and awarding costs, attorneys’ fees and any other relief the Court deems just and proper.

### **AFFIRMATIVE DEFENSES**

Without altering the burden of proof, Precision will rely on the following defenses and any and all further defenses that become available or appear during discovery proceedings in this action and specifically reserves its right to amend this Answer for purposes of asserting additional defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

3454. Third-Party Complaint “B” fails to state a cause of action against Precision upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

3455. The claims asserted against and relief sought from Precision are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (“WPCA”).

#### **THIRD AFFIRMATIVE DEFENSE**

3456. The claims asserted against Precision are barred, in whole or in part, by the entire controversy doctrine.

#### **FOURTH AFFIRMATIVE DEFENSE**

3457. Third-Party Plaintiffs, or one or more of them, do not have standing to sue.

#### **FIFTH AFFIRMATIVE DEFENSE**

3458. The claims asserted against and relief sought from Precision are barred, in whole or in part, because they are wholly speculative, conjectural, unreasonable, excessive, and arbitrary and capricious.

#### **SIXTH AFFIRMATIVE DEFENSE**

3459. The claims asserted against and relief sought from Precision are barred, in whole or in part, because Precision cannot be liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Precision or any alleged predecessor or related company that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities ("applicable Environmental Laws").

#### **SEVENTH AFFIRMATIVE DEFENSE**

3460. The claims asserted against Precision are barred and constitutionally impermissible, in whole or in part, to the extent they seek to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

#### **EIGHTH AFFIRMATIVE DEFENSE**

3461. The claims asserted against Precision are barred, in whole or in part, to the extent they seek relief for damages incurred prior to the effective date of the Spill Act.

#### **NINTH AFFIRMATIVE DEFENSE**

3462. The claims asserted against Precision fail, in whole or in part, because at all relevant times, Precision or any alleged predecessor or related company complied with all applicable Environmental Laws and industry standards, and otherwise conducted itself

reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

#### **TENTH AFFIRMATIVE DEFENSE**

3463. The claims asserted against and relief sought from Precision are barred, in whole or in part, because at all relevant times, Precision, or any alleged predecessor or related company exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because each release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, was caused solely by the negligence, acts or omissions of third-parties over whom Precision or any alleged predecessor or related company had no control and no duty to control, including without limitation: (a) the State of New Jersey and its agencies, instrumentalities and officials, including, without limitation, Trustees for tidelands; and (b) the United States and its agencies, instrumentalities and officials.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

3464. The claims asserted against Precision are barred, in whole or in part, by the doctrine of preemption.

#### **TWELFTH AFFIRMATIVE DEFENSE**

3465. The claims asserted against Precision fail, in whole or in part, because the actions or omissions of Precision or any alleged predecessor or related company were not the actual, legal or proximate cause of Third-Party Plaintiffs' alleged damages.

### **THIRTEENTH AFFIRMATIVE DEFENSE**

3466. The claims asserted against and relief sought from Precision are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose and the equitable doctrines of laches and estoppel.

### **FOURTEENTH AFFIRMATIVE DEFENSE**

3467. The claims asserted against and relief sought from Precision are barred, in whole or in part, by the doctrines of accord and satisfaction, waiver, consent, estoppel, release or assumption of risk.

### **FIFTEENTH AFFIRMATIVE DEFENSE**

3468. The claims asserted against and relief sought from Precision are barred, in whole or in part, by the doctrine of “coming to the nuisance.”

### **SIXTEENTH AFFIRMATIVE DEFENSE**

3469. The claims asserted against and relief sought from Precision for equitable contribution under the Spill Act in the Third-Party Complaint “B” may be barred, in whole or in part, because: (a) equity will not compel action that is impossible to perform; (b) equity will not exceed the rights of parties existing at law; (c) equity will not consciously become an instrument of injustice; and (d) equity will not permit double satisfaction.

### **SEVENTEENTH AFFIRMATIVE DEFENSE**

3470. The claims asserted against and relief sought from Precision 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.

### **EIGHTEENTH AFFIRMATIVE DEFENSE**

3471. The relief sought against Precision is barred, in whole or in part, because if the relief sought was claimed directly by Plaintiffs it would amount to unlawful taxation.

### **NINETEENTH AFFIRMATIVE DEFENSE**

3472. The relief sought against Precision is subject to setoff and recoupment and must be reduced accordingly.

### **TWENTIETH AFFIRMATIVE DEFENSE**

3473. The claims asserted against and relief sought from Precision are barred, in whole or in part, because Third-Party Plaintiffs' claims are not ripe for adjudication, inter alia because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid more than their equitable share of the liability.

### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

3474. Precision 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, the claims asserted against and relief sought from Precision are barred, in whole or in part, because such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Precision, or alternatively any alleged predecessor or related company, exercised no control and for whose conduct Precision or alternatively any alleged predecessor or related company was not responsible including, without limitation, unpermitted and storm event discharges from publicly owned treatment works.

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

3475. The claims asserted against and relief sought from Precision are barred, in whole or in part, because if Third-Party Plaintiffs sustained any injury, such injury was caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care or fault 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

Precision, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs, its agents or employees.

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

3476. Although Precision denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable Precision is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3477. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

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

3478. The claims asserted against and relief sought from Precision are barred to the extent that the conduct of Precision alleged to give rise to liability in the Third-Party Complaint "B" is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

#### **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

3479. The claims asserted against Precision fail, in whole or in part, because the disposal of waste, if any, which allegedly originated from Precision, was undertaken in accordance with the then accepted and state of the art industrial practice and technology, and the then prevailing legal requirements, for which Precision cannot be found retroactively liable.

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

3480. The claims asserted against Precision fail, in whole or in part, because any discharge that allegedly originated from Precision was investigated and remediated by a licensed



professional under the direct oversight of State and/or federal agencies with the then accepted and state of the art industrial practice and technology, and the then prevailing requirements, for which Precision cannot be found retroactively liable.

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

3481. The claims asserted against and relief sought from Precision 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.

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

3482. The claims asserted against and relief sought from Precision are barred, in whole or in part, because the damages Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

#### **THIRTIETH AFFIRMATIVE DEFENSE**

3483. The claims asserted against and relief sought from Precision are barred, in whole or in part, to the extent that, through Third-Party Plaintiffs' own conduct, Third-Party Plaintiffs have taken actions that resulted in commingling of formerly divisible areas of environmental harm.

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

3484. Precision's liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims, and excludes any such claim which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. \_\_\_\_, 129 S.Ct. 1870 (2009), and other comparable decisional law.

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

3485. The claims asserted against Precision fail, in whole or in part, because the discharges for which the Plaintiffs are seeking relief are different from Precision or any alleged predecessor or related company's alleged discharges.

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

3486. The claims asserted against and relief sought from Precision are barred, in whole or in part, because Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law since Precision is not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and does not share a common liability to the State.

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

3487. The claims asserted against and relief sought from Precision are barred, in whole or in part, by Third-Party Plaintiffs' failure to mitigate their claimed damages.

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

3488. The claims asserted against Precision are barred, in whole or in part, because each release or threat of release of hazardous substances, if any, and any costs or damages resulting therefrom, was caused solely by natural causes and/or the negligence, acts or omissions of third parties over whom Precision had no control, whether by, in whole or in part, contract or otherwise, or any duty to control, including, without limitation: (a) the State of New Jersey and its agencies, instrumentalities and officials, including, without limitation, Trustees for tidelands: and (b) the United States and its agencies, instrumentalities and officials.

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

3489. The claims asserted against and relief sought from Precision are barred, in whole or in part, to the extent they seek to hold Precision liable, in contribution, for any claims for

which it would be a violation of public policy to hold Precision liable, including but not limited to punitive damages and penalties.

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

3490. 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, the claims asserted against and relief sought from Precision are barred, in whole or in part, to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Precision pertaining to the alleged environmental contamination (including natural resources damage) of any site(s) alleged by Third-Party Plaintiffs of their contribution claims against Precision.

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

3491. The claims asserted against and relief sought from Precision are barred, in whole or in part, because the relief sought against Precision, were it claimed directly by Plaintiffs would amount to a "taking" of Precision'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. 20:31 et seq.

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

3492. The claims for equitable contribution under the Spill Act asserted against Precision are barred, in whole or in part, to the extent Precision or any alleged predecessor or related company has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Precision, because equity will not compel action that is already being undertaken and/or is unnecessary.

#### **FORTIETH AFFIRMATIVE DEFENSE**

3493. Without admitting liability, Precision alleges that if its or any alleged predecessor or related company is found to have been engaged in any of the activities alleged in the Third-Party Complaint "B" such activities were de minimis and not the cause of any damages or other claims by Third-Party Plaintiffs.

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

3494. The claims asserted against Precision fail, in whole or in part, to the extent Third-Party Complaint "B" purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1, *et seq.*, because Third-Party Plaintiffs have failed to meet one or more procedural or substantive requirement that is a prerequisite to filing suit against Precision under that statute.

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

3495. The claims asserted against and relief sought from Precision are barred, in whole or in part, because (a) at common law Precision, or any alleged predecessor or related company, 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: (b) Precision or any alleged predecessor or related company has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets: and (c) 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 Precision or any alleged predecessor or related company directly.

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

3496. The claims asserted against Precision are barred, in whole or in part, because the State of New Jersey is legally barred from asserting direct claims against Precision or any

alleged predecessor or related company 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 Precision or any alleged predecessor or related company as well, including the claims set forth in the Third-Party Complaint "B."

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

3497. The claims asserted against and relief sought from Precision are barred, in whole or in part, by the "unclean hands" doctrine.

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

3498. Third-Party Defendant 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 Precision.

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

3499. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V. While no such claims are required to be plead at this time, Third-Party Defendant Precision states that it has advised counsel to Third-Party Plaintiffs, and hereby formally so advise Third-Party Plaintiffs themselves, that Precision did not "merge" with Servometer Corporation or Servodot Corporation, as is incorrectly alleged based on "knowledge and belief" in the Third-Party Complaint. Precision therefore has informally requested, and hereby formally requests, that Third-Party Plaintiffs consent to a dismissal without prejudice of this baseless suit against Precision. Should Third-Party Plaintiffs refuse this reasonable request, Precision advises that it is entitled to, and will seek reimbursement of, all reasonable fees (including attorneys' fees) and costs from the date of this filing forward, up to and until such time as the Third-Party Plaintiffs finally agree to Precision's dismissal, or at the time this Honorable Court orders the dismissal of this case against Precision.

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

Dated: January 4, 2010

Respectfully submitted,

**STEVENS & LEE**  
A PA Professional Corporation

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*Attorneys for Third Party Defendant  
Precision Manufacturing Group, LLC*

**DESIGNATION OF TRIAL COUNSEL**

Bradley L. Mitchell, Esquire is hereby designated as trial counsel on behalf of Third Party Defendant Precision Manufacturing Group, LLC pursuant to R. 4:25-4.

Dated: January 4, 2010

**STEVENS & LEE**  
A PA Professional Corporation

By:   
Bradley L. Mitchell, Esquire

*Attorneys for Third Party Defendant  
Precision Manufacturing Group, LLC*

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

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that:

(a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned: and

(b) Since it is the legal position of the undersigned that the potential liability, if any, of a third-party defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R. 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, upon further investigation, all or some of the following non-parties may constitute non-parties who should be joined in the action pursuant to R. 4:28:

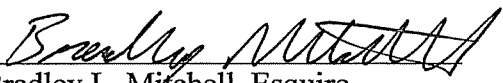
(i) Servometer Corporation (including any of its successors or any of its shareholders who are Indemnitors under the above referenced asset purchase agreement); and

(ii) The non-parties listed on the October 7, 2009, posting by O'Melveny and Myers; 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: January 4, 2010

**STEVENS & LEE**  
A PA Professional Corporation

By:   
Bradley L. Mitchell, Esquire

*Attorneys for Third Party Defendant  
Precision Manufacturing Group, LLC*



**CERTIFICATION OF SERVICE**

I hereby certify that on this date a true and correct copy of Third-Party Defendant Precision Manufacturing Group, LLC's Answer and Affirmative Defenses to Third-Party Complaint "B" was served via posting of said pleading upon the electronic platform adopted and approved by the Court for service upon all Parties in this action. In addition, I hereby certify that a true and correct copy of Third-Party Defendant Precision Manufacturing Group, LLC's Answer and Affirmative Defenses to Third-Party Complaint "B" was served via Federal Express on this date upon the Clerk of the Court, and that a courtesy copy of this pleading was provided on this date via Federal Express to The Honorable Sebastian P. Lombardi.

A handwritten signature in black ink, appearing to read "Bradley Mitchell", written over a horizontal line.

Bradley L. Mitchell

Dated: January 4, 2010