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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, et al.

Plaintiffs,

v.

OCCIDENTAL CHEMICAL  
CORPORATION, et al,

Defendants,

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, et al,

Third-Party  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ESSEX COUNTY

DOCKET NO. L-009868-05

Civil Action

PRENTISS INCORPORATED'S  
ANSWER TO  
THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Prentiss Incorporated ("Prentiss" or "Third-Party Defendant Prentiss"), by and through its undersigned counsel, and in accordance with this Court's Case Management Order V ("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. Prentiss denies each and every allegation contained in the 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 the Third-Party Complaint “B”.

### **Procedural Background**

2. In response to paragraphs 1 through 15, no response is required pursuant to CMO V.

### **The Parties**

3. In response to paragraphs 16 through 153 and 155 through 209, no response is required pursuant to CMO V, ¶4.

4. Prentiss denies the allegations of paragraph 154, except to admit that it is a corporation organized under the laws of the State of New York,

5. Paragraph 210 of the Third-Party Complaint “B” states a legal conclusion as to which no response is required.

### **Definitions**

6. Paragraphs 211 through 236 of the Third-Party Complaint “B” contain definitions. No response is required pursuant to CMO V.

### **Factual Allegations**

7. As to Paragraphs 237 through 2227, no response is required pursuant to CMO V, except to the extent noted below.

8. As to Paragraph 2228, Prentiss denies that it owned or operated an approximately 9 acre parcel of real property located at or about 338 Wilson Avenue in Newark, Essex County,

New Jersey, also designated as Block 503A, Lot 70 on the Tax Map of the City of Newark.

Prentiss is without knowledge or information sufficient to form a belief as to the truths of the remaining allegations of Paragraph 2228.

9. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2229.

10. Prentiss admits the allegations of Paragraph 2230.

11. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2231.

12. Prentiss denies the allegations of Paragraph 2232, except to admit that in or about 1977 Pulaski Skyway Realty Company sold real property to the Newark Housing Authority including a two-story building known as 322 Wilson Avenue (and alternatively known as 338 Wilson Avenue), Newark, New Jersey. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2232.

13. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 2233 to 2234.

14. Prentiss admits the allegations of Paragraph 2235 with the caveat that on or about December 28, 1949 Prentiss became known as “Prencos”, and from January 4, 1950 until January 3, 1991 the company was known as Prentiss Drug & Chemical Co.

15. Prentiss denies the allegations of Paragraph 2236, except to admit that Prentiss blended various pesticides in a two-story brick building leased on a portion of premises known as 322 Wilson Avenue (and alternatively known as 338 Wilson Avenue), Newark, New Jersey.

16. Prentiss denies the allegations of Paragraph 2237, except to admit that Prentiss handled dichloro-diphenyl-trichloroethane (DDT), lindane, warfarin, methoxychlor, chlordane,

malathion and endrin at the building it leased at 322 Wilson Avenue (and alternatively known as 338 Wilson Avenue) Newark, New Jersey.

17. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 2238.

18. Prentiss denies the allegations of Paragraph 2239, except to admit that Prentiss purchased lindane for use in its operations in the building it leased at 322 Wilson Avenue (and alternatively known as 338 Wilson Avenue), Newark, New Jersey.

19. As to Paragraph 2240, Prentiss denies that the referenced soil samples pertain to the former Prentiss leasehold. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2240.

20. Prentiss denies the allegations of Paragraph 2241 as it pertains to the former Prentiss leasehold. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2241.

21. Prentiss denies the allegations of Paragraph 2242, except to admit that on or about March 15, 1995 Prentiss received a Directive and Notice to Insurers from the NJDEP which document speaks for itself.

22. Prentiss admits the allegations of Paragraph 2243.

23. Prentiss denies the allegations of Paragraphs 2244 except to admit that on or about July 23, 1996 Prentiss entered into an Administrative Consent Order, which Administrative Consent Order speaks for itself.

24. Prentiss is without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 2245.

25. Prentiss denies that hazardous substances from the operations of Prentiss were transported into Pierson's Creek and thence into Newark Bay. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2246.

26. In response to Paragraph 2247, Prentiss denies that process discharges, air emissions, spills and leaks of hazardous substances from the Prentiss operation were routed into ditches or flowed to Pierson's Creek and thence to Newark Bay. Prentiss is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2247.

27. In response to Paragraph 2248, Prentiss denies that floor drains in the building operated by Prentiss connected directly to the ground surface outside the building. Prentiss is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 2248.

28. Prentiss is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 2249, except to deny that Pierson's Creek is within the former Prentiss leasehold area.

29. Prentiss is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 2250.

30. Prentiss denies the allegations of Paragraph 2251 and 2252.

31. Prentiss denies the allegations of Paragraph 2253 except to admit that on or about August 24, 2006 EPA sent a General Notice Letter to Prentiss which General Notice Letter speaks for itself.

32. Prentiss denies the allegations of Paragraph 2254.

33. As to Paragraphs 2255 through 3445, no response is required pursuant to CMO V.

**First Count**

34. With respect to Paragraph 3446, Prentiss repeats its responses to paragraphs 1 through 3345.

35. To the extent the allegations of Paragraph 3447 of the Third-Party Complaint “B” are directed at Prentiss, Prentiss denies that it is a discharger and/or “a person in any way responsible” for the discharge of the Hazardous Substance into the Newark Bay Complex as set forth in the Third-Party Complaint “B”.

36. Paragraph 3448 of the Third-Party Complaint “B” quotes from the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 f.a(2)(a) and as such, Prentiss refers to the statute for specificity as to its terms.

37. Prentiss denies the allegations of Paragraph 3449 of the Third-Party Complaint “B” to the extent they pertain to Prentiss. Prentiss denies the remaining allegations of Paragraph 3449 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

38. Prentiss denies the allegations of Paragraph 3450 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

39. Prentiss denies the allegations of Paragraph 3451 of the Third-Party Complaint “B” to the extent they pertain to Prentiss.

**Second Count**

40. With respect to Paragraph 3452, Prentiss repeats its responses to paragraphs 1 through 3451.

41. To the extent the allegations of Paragraph 3453 of the Third-Party Complaint “B” are directed at Prentiss, Prentiss denies that it is liable to Third-Party Plaintiffs for contribution.

**First Affirmative Defense**

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

**Second Affirmative Defense**

43. Prentiss 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**

44. The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act.

**Fourth Affirmative Defense**

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

**Fifth Affirmative Defense**

46. Third-Party Plaintiffs have no right of contribution against Prentiss under the Spill Act.

**Sixth Affirmative Defense**

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

**Seventh Affirmative Defense**

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

#### **Eighth Affirmative Defense**

49. Prentiss cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Prentiss 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").

#### **Ninth Affirmative Defense**

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

#### **Tenth Affirmative Defense**

51. At all relevant times, Prentiss 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.

#### **Eleventh Affirmative Defense**

52. The claims asserted against Prentiss in the Third-Party Complaint are barred because at all relevant times Prentiss exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Prentiss 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.

**Twelfth Affirmative Defense**

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

**Thirteenth Affirmative Defense**

54. Third-Party Plaintiffs' claims against Prentiss are barred, in whole or in part, by the equitable doctrines of laches and estoppel.

**Fourteenth Affirmative Defense**

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

**Fifteenth Affirmative Defense**

56. 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.

**Sixteenth Affirmative Defense**

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

**Seventeenth Affirmative Defense**

58. Prentiss did not own or operate a "Major Facility" as defined in the Spill Act.

**Eighteenth Affirmative Defense**

59. 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, that 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.

**Nineteenth Affirmative Defense**

60. Prentiss 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 Laws, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Prentiss exercised no control and for whose conduct Prentiss was not responsible.

**Twentieth Affirmative Defense**

61. 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 Prentiss, 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.

**Twenty-First Affirmative Defense**

62. Although Prentiss denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Prentiss 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-Second Affirmative Defense**

63. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Prentiss alleged to give rise to liability in the Third-Party Complaint "B" 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 determination, 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.

**Twenty-Third Affirmative Defense**

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

**Twenty-Fourth Affirmative Defense**

65. Third-Party Plaintiffs' claims are barred due to its own conduct in implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

**Twenty-Fifth Affirmative Defense**

66. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Prentiss liable, in contribution, for punitive damages and penalties.

**Twenty-Sixth Affirmative Defense**

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

### **Twenty-Seventh Affirmative Defense**

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

### **Twenty-Eighth Affirmative Defense**

69. 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 Prentiss are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Prentiss 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 Prentiss. Examples of legal extinguishments that are or may be applicable to Prentiss include, without limitation:

- (a) Any release or covenant not to sue granted by Plaintiffs to Prentiss;
- (b) Any settlement or other compromise between Plaintiffs and Prentiss;
- (c) Any expiration of the statute of limitations or statute of repose governing Plaintiffs’ right to maintain a claim against Prentiss;
- (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 Prentiss, 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 Prentiss, directly or indirectly, of any “No Further Action” (a/k/a “NFA”) determination, “Negative Declaration,” or similar determination.

### **Twenty-Ninth Affirmative Defense**

70. Without admitting liability, Prentiss alleges that if it 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.

### **Thirtieth Affirmative Defense**

71. Prentiss 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 Prentiss.

### **Thirty-First Affirmative Defense**

72. Prentiss reserves the right to assert and hereby invokes any and all defenses under Applicable Environmental Laws that may be available during the course of this action.

### **Counter-Claims, Cross Claims and Fourth Party Claims**

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

### **Designation of Trial Counsel**

74. In accordance with Rule 4:25-4 you are hereby notified that Paul H. Schneider, Esq. is assigned to try this case.

### **Certification Pursuant to R.4:5-1(b)(2)**

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

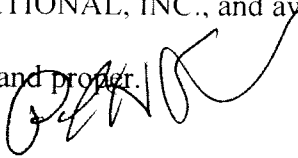
- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceedings and no action or arbitration proceeding is contemplated by the undersigned; and

- (b) Since it is the legal position of the undersigned that the potential liability, if any, of Prentiss for the claims set forth in the Third Party Complaint "B" 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 Prentiss, if any, for the claims set forth in the Third Party Complaint "B" is in any respect joint and several (which is denied), then all or some of the non-parties listed on the attachments to the letter dated October 7, 2009 from Eric Rothenberg, Esq. of O'Melveny and Myers to the Honorable Marina Corodemus 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 are 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.

WHEREFORE, Third-Party Defendant PRENTISS INTERNATIONAL, INC.

respectfully requests that the Court enter an Order dismissing, with prejudice, the Third-Party Complaint "B" against PRENTISS INTERNATIONAL, INC., and awarding it costs, attorney fees and any other relief the Court deems just and proper.

Dated: March 23, 2010



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PAUL H. SCHNEIDER  
GIORDANO, HALLERAN & CIESLA  
A Professional Corporation  
Attorneys for Prentiss Incorporated  
Third-Party Defendants

### **CERTIFICATION OF SERVICE**

Carolynn Huesken hereby certifies as follows:

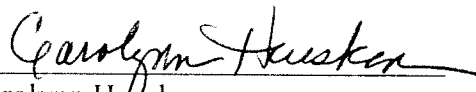
1. I am the legal secretary to Paul H. Schneider, Esq. of the law firm of Giordano, Halleran & Ciesla, which law firm represents Third-Party Defendant Prentiss Incorporated ("Prentiss") in this matter.

2. I hereby certify that Prentiss's Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served upon the Clerk of the Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey 07102, by regular mail, postage prepaid, on March 23, 2010.

3. I hereby certify that Prentiss's Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served electronically on all parties who have consented to service by electronic posting on the following website, <http://njdepvocc.sfile.com> on March 23, 2010.

4. I hereby certify that Prentiss's Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses were served by regular mail, postage pre-paid, on counsel for all parties who have not consented to service by electronic posting.

Dated: March 23, 2010

  
Carolynn Huesken

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