

Kelley Drye & Warren LLP  
200 Kimball Drive  
Parsippany NJ 07054  
(973) 503-5900  
(973) 503-5950 (fax)  
Attorneys for Third-Party Defendant  
Seton Company

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, THE COMMISSIONER OF THE NEW  
JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND THE ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION, TIERRA  
SOLUTIONS, INC., MAXUS ENERGY CORPORATION,  
REPSOL YPF, S.A., YPF, YPF HOLDINGS, INC., AND CLH  
HOLDINGS,

Defendants,

v.

MAXUS ENERGY CORPORATION and TIERRA  
SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY,  
A.C.C., INC.,  
ACH FOOD COMPANIES, INC.,  
ACTIVE OIL SERVICE,  
ADCO CHEMICAL COMPANY,  
AGC CHEMICALS AMERICAS, INC.,  
AKZO NOBEL COATINGS, INC.  
ALDEN-LEEDS, INC.,  
ALLIANCE CHEMICAL, INC.,  
ALUMAX MILL PRODUCTS, INC.,  
AMCOL REALTY CO.,  
AMERICAN CYANAMID COMPANY (N/K/A  
Wyeth Holdings Corporation),  
AMERICAN INKS AND COATINGS CORPORATION,  
APEXICAL, INC.,  
APOLAN INTERNATIONAL, INC.,  
ARKEMA, INC.,

SUPERIOR COURT OF NEW  
JERSEY  
LAW DIVISION: ESSEX  
COUNTY

DOCKET NO. ESX-L-9868-05

Civil Action

**SETON COMPANY'S  
ANSWER AND  
AFFIRMATIVE  
DEFENSES TO  
DEFENDANTS'/THIRD-  
PARTY PLAINTIFFS'  
MAXUS ENERGY  
CORPORATION AND  
TIERRA SOLUTIONS,  
INC.'S THIRD-PARTY  
COMPLAINT "B"**

ASHLAND, INC.,  
ASHLAND INTERNATIONAL HOLDINGS, INC.,  
ASSOCIATED AUTOBODY & TRUCKS,  
ATLAS REFINERY, INC.,  
AUTOMATIC ELECTRO-PLATING CORP.,  
BASF CATALYSTS LLC.,  
BASF CONSTRUCTION CHEMICALS, INC.,  
BASF CORPORATION,  
BAYER CORPORATION,  
BAYONNE INDUSTRIES, INC.,  
BAYONNE MUNICIPAL UTILITIES AUTHORITY,  
BEAZER EAST, INC.,  
BELLEVILLE INDUSTRIAL CENTER,  
BENJAMIN MOORE & COMPANY,  
BEROL CORPORATION,  
B-LINE TRUCKING, INC.,  
BORDEN & REMINGTON CORP.,  
BOROUGH OF CARTERET,  
BOROUGH OF EAST NEWARK,  
BOROUGH OF EAST RUTHERFORD,  
BOROUGH OF ELMWOOD PARK,  
BOROUGH OF FAIR LAWN,  
BOROUGH OF FANWOOD,  
BOROUGH OF FRANKLIN LAKES,  
BOROUGH OF GARWOOD,  
BOROUGH OF GLEN ROCK,  
BOROUGH OF HALEDON,  
BOROUGH OF HAWTHORNE,  
BOROUGH OF KENILWORTH,  
BOROUGH OF LODI,  
BOROUGH OF LYNDHURST,  
BOROUGH OF MOUNTAINSIDE,  
BOROUGH OF NEW PROVIDENCE,  
BOROUGH OF NORTH ARLINGTON,  
BOROUGH OF NORTH CALDWELL,  
BOROUGH OF PROSPECT PARK,  
BOROUGH OF ROSELLE,  
BOROUGH OF ROSELLE PARK,  
BOROUGH OF RUTHERFORD,  
BOROUGH OF TOTOWA  
BOROUGH OF WALLINGTON,  
BOROUGH OF WEST PATERSON,  
BOROUGH OF WOOD-RIDGE,  
BP MARINE AMERICAS, INC.,  
C.S. OSBORNE & CO.,  
CAMPBELL FOUNDRY COMPANY,  
CASCHEM, INC.,  
CBS CORPORATION,  
CELANESE LTD.,  
CHEMICAL COMPOUNDS INC.,  
CHEMICAL WASTE MANAGEMENT, INC. and WASTE  
MANAGEMENT, INC.,

CHEMTURA CORPORATION,  
CIBA CORPORATION,  
CITY OF BAYONNE,  
CITY OF CLIFTON,  
CITY OF EAST ORANGE,  
CITY OF ELIZABETH,  
CITY OF GARFIELD,  
CITY OF HACKENSACK,  
CITY OF JERSEY CITY,  
CITY OF LINDEN,  
CITY OF NEWARK,  
CITY OF ORANGE TOWNSHIP,  
CITY OF PASSAIC,  
CITY OF PATERSON,  
CITY OF RAHWAY,  
CITY OF SUMMIT,  
CITY OF UNION CITY,  
CLEAN EARTH OF NORTH JERSEY, INC.,  
COLTEC INDUSTRIES INC.,  
COLUMBIA TERMINALS, INC.,  
COMO TEXTILE PRINTS, INC.,  
CONAGRA PANAMA, INC.,  
COPOPCO, INC.,  
CONSOLIDATED RAIL CORPORATION,  
COOK & DUNN PAINT CORPORATION,  
COSAN CHEMICAL CORPORATION,  
COSMOPOLITAN GRAPHICS CORPORATION,  
COVANTA ESSEX COMPANY,  
CRODA, INC.,  
CRUCIBLE MATERIALS CORPORATION,  
CURTISS-WRIGHT CORPORATION,  
CWC INDUSTRIES, INC.,  
CYTEC INDUSTRIES,  
DARLING INTERNATIONAL, INC.,  
DAVANNE REALTY CO.,  
DELEET MERCHANDISING CORPORATION,  
DELVAL INK AND COLOR, INCORPORATED,  
DILORENZO PROPERTIES COMPANY, L.P.,  
THE DOW CHEMICAL CORPORATION,  
DURAPORT REALTY ONE LLC,  
DURAPORT REALTY TWO LLC,  
DUNDEE WATER POWER AND LAND COMPANY,  
EASTMAN KODAK COMPANY,  
EDEN WOOD CORPORATION,  
E.I. DU PONT DE NEMOURS AND COMPANY,  
ELAN CHEMICAL COMPANY, INC.,  
ELECTRIC BOAT CORPORATION (improperly identified  
as GENERAL DYNAMICS CORPORATION),  
EM SERGEANT PULP & CHEMICAL CO.,  
EPEC POLYMERS, INC.,  
ESSEX CHEMICAL CORPORATION,  
EXXON MOBIL,

FER 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.,  
G.J. CHEMICAL CO.,  
GARFIELD MOLDING COMPANY, INC.,  
GATX TERMINALS CORP.,  
GENERAL CABLE INDUSTRIES, INC.,  
GENERAL DYNAMICS,  
GENERAL ELECTRIC COMPANY,  
GENTEK HOLDING LLC,  
GETTY PROPERTIES CORP.,  
GOODRICH CORPORATION (on behalf of  
KALAMA SPECIALTY CHEMICALS INC.),  
GIVAUDAN FRAGRANCES CORPORATION,  
GOODY PRODUCTS, INC.,  
GORDON TERMINAL SERVICE CO. OF NJ, INC.,  
HARRISON SUPPLY COMPANY,  
HARTZ MOUNTAIN CORPORATION,  
HAVENICK ASSOCIATES L.P.,  
HESS CORPORATION,  
HEXCEL CORPORATION,  
HEXION SPECIALTY CHEMICALS, INC.,  
HOFFMAN-LA ROCHE INC.,  
HONEYWELL INTERNATIONAL INC.,  
HOUGHTON INTERNATIONAL INC.,  
HOUSING AUTHORITY OF NEWARK,  
HUDSON TOOL & DIE COMPANY, INC.,  
HY-GRADE ELECTROPLATING CO.,  
ICI AMERICAS INC.,  
IMTT-BAYONNE,  
INNOPEC ACTIVE CHEMICALS LLC,  
INX INTERNATIONAL INK CO.,  
ISP CHEMICALS INC.,  
ITT CORPORATION,  
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY,  
JOINT DEFENSE GROUP (JDG), A Group of  
Non-Municipal Third Party Defendants,  
JOINT MEETING OF ESSEX & UNION COUNTIES,  
KAO BRANDS COMPANY,  
KEARNY SMELTING & REFINING CORP.,  
KINDER MORGAN ENERGY PARTNERS, L.P.,  
KOEHLER-BRIGITT STAR, INC.,  
LEGACY VULCAN CORPORATION,  
LINDE, INC.,  
LINDEN ROSELLE SEWERAGE AUTHORITY,  
LUCENT TECHNOLOGIES, INC.,  
MACE ADHESIVES & COATINGS COMPANY, INC.,

MALLINCKRODT INC.,  
McKESSON CORPORATION (on behalf of itself and  
SAFETY-KLEEN ENVIROSYSTEMS COMPANY),  
McKESSON ENVIROSYSTEMS,  
MERCK & CO., INC.,  
METALS MANAGEMENT NORTHEAST, INC.,  
MI HOLDINGS, INN.,  
MILLER ENVIRONMENTAL GROUP, INC.,  
MORTON INTERNATIONAL, 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,  
N L INDUSTRIES, INC.,  
NORPAK CORPORATION,  
NOVELIS CORPORATION,  
NPEC, INC.,  
ORANGE AND ROCKLAND UTILITIES, INC.,  
OTIS ELEVATOR COMPANY,  
PASSAIC PIONEERS PROPERTIES COMPANY,  
PASSAIC VALLEY SEWERAGE COMMISSIONERS (PVCS),  
PFIZER INC.,  
PHARMACIA CORPORATION,  
PHELPS DODGE INDUSTRIES, INC.,  
PHILBRO, INC.,  
PITT-CONSOL CHEMICAL COMPANY,  
PIVOTAL UTILITY HOLDINGS, INC.,  
POWER TEST REALTY COMPANY, L.P.,  
PPG INDUSTRIES, INC.,  
PRC-DESOTO INTERNATIONAL, INC.,  
PRAXAIR, INC.,  
PRECISION MANUFACTURING GROUP, LLC,  
PRENTISS INCORPORATED,  
PROCTOR & 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.,  
RAHWAY VALLEY SEWERAGE AUTHORITY (RVSA),  
RECKITT BENSKISER, INC.,  
REICHHOLD, INC.,  
REVERE SMELTING & REFINING CORPORATION,  
REXAM BEVERAGE CAN COMPANY,  
ROMAN ASPHALA CORPORATION,  
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,

RUTHERFORD CHEMICALS, LLC,  
R.T. VANDERBILT COMPANY, INC.,  
RUTHERFORD CHEMICALS LLC,  
S&A REALTY ASSOCIATES, INC.,  
SCHERING CORPORATION,  
SEQUA CORPORATION,  
SETON COMPANY,  
SHULTON, INC.,  
SIEMENS WATER TECHNOLOGIES CORP.,  
SINGER SEWING COMPANY,  
SPECTRASERV, INC.,  
STWB, INC.,  
SUN CHEMICAL CORPORATION,  
SUN PIPELINE CO.,  
SUNOCO, INC. (R&M) f/k/a SUN REFINING  
& MARKETING CO.,  
SUNOCO, INC. f/k/a SUN OIL CO.,  
SUPERIOR MPM LLC,  
SVP WORLDWIDE, LLC,  
TATE & LYLE INGREDIENTS AMERICAS, INC.,  
TEVA PHARMACEUTICALS USA, INC.,  
TEVAL CORP.,  
TEXTRON INC.,  
THE DIAL CORPORATION,  
THE NEW JERSEY DEPARTMENT OF AGRICULTURE,  
THE NEW JERSEY DEPARTMENT OF TRANSPORTATION,  
THE NEWARK GROUP, INC.,  
THE OKONITE COMPANY, INC.,  
THE PORT AUTHORITY OF NY & NJ,  
THE SHERWIN-WILLIAMS COMPANY,  
THE STANLEY WORKS,  
THE STATE OF NEW JERSEY,  
THIRTY-THREE QUEEN REALTY INC.,  
THOMAS & BETTS CORPORATION,  
THREE COUNTY VOLKSWAGON CORPORATION,  
TIDEWATER BALING CORP.,  
TIFFANY & CO.,  
TIMCO, INC.,  
TOWN OF BELLEVILLE,  
TOWN OF KEARNY,  
TOWN OF NUTLEY,  
TOWN OF WESTFIELD,  
TOWN OF WOODBRIDGE,  
TOWNSHIP OF BLOOMFIELD,  
TOWNSHIP OF CEDAR GROVE,  
TOWNSHIP OF CLARK,  
TOWNSHIP OF CRANFORD,  
TOWNSHIP OF IRVINGTON,  
TOWNSHIP OF LITTLE FALLS,  
TOWNSHIP OF LIVINGSTON,  
TOWNSHIP OF LYNDHURST,  
TOWNSHIP OF MAPLEWOOD,

TOWNSHIP OF MILLBURN,  
TOWNSHIP OF MONTCLAIR,  
TOWNSHIP OF SADDLE BROOK,  
TOWNSHIP OF SCOTCH PLAINS,  
TOWNSHIP OF SOUTH HACKENSACK,  
TOWNSHIP OF SOUTH ORANGE VILLAGE,  
TOWNSHIP OF SPRINGFIELD,  
TOWNSHIP OF WEST ORANGE,  
TOWNSHIP OF WYCKOFF,  
TRMI-H LLC,  
TRIMAX BUILDING PRODUCTS, INC.,  
TROY CHEMICAL CORPORATION, INC.,  
UNIVERSAL OIL PRODUCTS COMPANY,  
V. OTTILIO & SONS, INC.,  
VALSPAR CORPORATION,  
VELSICOL CHEMICAL CORPORATION,  
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,  
VERTELLUS SPECIALTIES, INC.,  
VILLAGE OF RIDGEWOOD,  
VITUSA CORP.,  
VULCAN MATERIALS COMPANY,  
W.A.S. TERMINALS CORPORATION,  
W.A.S. TERMINALS, INC.,  
WASTE MANAGEMENT, INC.,  
W.C. INDUSTRIES,  
WHITTAKER CORPORATION,  
WIGGINS PLASTICS, INC.,  
WYETH and WYETH HOLDINGS CORPORATION,  
ZENECA INC.

Third-Party Defendants.

Third-Party Defendant, Seton Company (“Seton”), by and through its undersigned attorneys and in accordance with Case Management Order V, Section 9, entered April 16, 2009 (“CMO V”), hereby answers the Third-Part Complaint “B” by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (collectively “Third-Party Plaintiffs”), as follows:

**GENERALLY**

Seton 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.”

**PROCEDURAL BACKGROUND**

1–15. Seton responds that the referenced pleadings speak for themselves.

No response is required pursuant to CMO V.

**AS TO THIRD-PARTY PLAINTIFFS**

16–18. No response is required pursuant to CMO V.

**AS TO THIRD-PARTY DEFENDANTS**

19-171. As the allegations in paragraphs 19 through 170 relate to other parties, no response is required pursuant to CMO V.

172. Seton denies the allegations contained in paragraph 172 of Third-Party Complaint “B.”

173-209. As the allegations contained in Paragraphs 173 through 209 relate to other parties, no answer is required pursuant to Case Management Order V.

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

**DEFINITIONS**

211–236. Seton responds that no answer is required pursuant to Case Management Order V.

**FACTUAL ALLEGATIONS**  
**Commercial Sites**

237–2586. As the allegations in Paragraphs 237 through 2586 relate to other parties, no answer is required pursuant to Case Management Order V.

**Seton Company Site**

2587. Seton admits that it is the owner of real property located at 849 Broadway, Newark, New Jersey but denies currently operating a business at the location. Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the remaining allegations contained in paragraph 2587 of Third-Party Complaint “B.”

2588. Seton denies the allegations contained in paragraph 2588 of Third-Party Complaint “B.”

2589. Seton denies the allegations contained in paragraph 2589 of Third-Party Complaint “B.”

2590. Seton denies the allegations set forth in paragraph 2590 of Third-Party Complaint “B.”

2591. Seton denies the allegations set forth in paragraph 2591 of the Third-Party Complaint “B.”

2592. Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the allegations contained in paragraph 2592 of Third-Party Complaint “B.”

2593. Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the allegations contained in paragraph 2593 of Third-Party Complaint “B.”

2594. Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the allegations contained in paragraph 2594 of Third-Party Complaint “B.”

2595. Seton admits that, in 1978, Seton met with PVSC but denies the remaining allegations.

2596. Seton admits that, in 1980, Seton met with PVSC but denies the remaining allegations.

2597. Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the allegations contained in paragraph 2597 of Third-Party Complaint “B.”

2598. Seton admits that PVSC filed a civil action against Seton in 1988 but denies the remaining allegations contained in paragraph 2598 of Third-Party Complaint “B.”

2599. Seton admits that it was cited for discharges of animal hides but denies the remaining allegations contained in paragraph 2599 of Third-Party Complaint “B.”

2600. Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the allegations contained in paragraph 2600 of Third-Party Complaint “B.”

2601. Seton denies the allegations in paragraph 2601.

2602. Seton admits that PCB sampling occurred and that Seton received a Notice of Violation but denies the remaining allegations contained in paragraph 2602 of Third-Party Complaint “B.”

2603. Seton admits that groundwater sampling took place on its site in 1997. The remaining allegations contained in paragraph 2603 of Third Party Complaint “B” are

legal conclusions to which no response is required. To the extent a response is required, Seton denies knowledge or information sufficient to form a belief as to the truth or validity of the remaining allegations.

2604. Seton admits to receiving such letter but denies the remaining allegations contained in paragraph 2604 of Third-Party Complaint “B.”

2605. Paragraph 2605 is a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, Seton denies the allegations in paragraph 2605.

2606-3445. Paragraphs 2606 through 3445 relate to other parties and no answer is required by Seton pursuant to Case Management Order V.

#### **FIRST COUNT**

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

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

3447-3451. Paragraphs 3447-3451 of Third-Party Complaint “B” contain Defendants/Third-Party Plaintiffs’ conclusions of law and therefore no answer is required. To the extent that these paragraphs are deemed to express facts, the allegations are denied.

#### **SECOND COUNT**

#### **Statutory Contribution**

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

3453. Paragraph 3453 of Third-Party Complaint “B” contains Defendants/Third-Party Plaintiffs’ conclusions of law and therefore no answer is required. To the extent that this paragraph is deemed to express facts, the allegations are denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

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

**SECOND AFFIRMATIVE DEFENSE**

Seton is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 48:10-23 *et seq.* (the “Spill Act”).

**THIRD AFFIRMATIVE DEFENSE**

The claims of Defendants/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 Seton because they have not claimed up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

**FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiff’s have no right of contribution against Seton under the WPCA.

**SIXTH AFFIRMATIVE DEFENSE**

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

**SEVENTH AFFIRMATIVE DEFENSE**

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.*, 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 Seton under the statute.

**EIGHTH AFFIRMATIVE DEFENSE**

Some or all of Third-Party Plaintiffs do not have a 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 "B," 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 Seton. Consequently, the claims in the Third-Party Complaint "B" are barred, in whole or in part.

**TWELFTH AFFIRMATIVE DEFENSE**

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

### **THIRTEENTH AFFIRMATIVE DEFENSE**

Seton cannot be held liable for, or be required to pay, Third-Party Plaintiffs' damages or other claims based on actions or inactions by Seton 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, Seton 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. Seton 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 Seton directly. As a result, the claims set forth in the Third-Party Complaint "B" are barred, in whole or in part.

### **FIFTEENTH DEFENSE**

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

### **SIXTEENTH DEFENSE**

The Third-Party Complaint “B” 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**

Plaintiffs’ Third-Party Complaint “B” is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

### **EIGHTEENTH AFFIRMATIVE DEFENSE**

At all relevant times, Seton complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

### **NINETEENTH AFFIRMATIVE DEFENSE**

The claims asserted against Seton in the Third-Party Complaint “B” are barred because at all relevant times Seton exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Seton had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

**TWENTIETH AFFIRMATIVE DEFENSE**

The claims set forth in the Third-Party Complaint “B” 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 Seton.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs’ claims against Seton 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 doctrine of “coming to the nuisance.”

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs’ claims are barred, in whole or in part, by the “unclean hands” doctrine.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

The claims for equitable contribution under the Spill Act in the Third-Party Complaint “B” 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-SEVENTH 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-EIGHTH AFFIRMATIVE DEFENSE**

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

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

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

**THIRTIETH AFFIRMATIVE DEFENSE**

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

**THIRTY-FIRST -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 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.

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

Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement . . . of any natural resources damaged or destroyed by a discharge" under the Spill Act.

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

Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the "Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

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

Third-Party Plaintiffs' claims are not ripe for adjudication, *inter alia*, because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.

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

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

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

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

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

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

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Seton's 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" letter, consent order, settlement agreement or other

applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

**FORTIETH AFFIRMATIVE DEFENSE**

The disposal of waste, if any, which allegedly originated from Seton, was undertaken in accordance with the then state-of-the-art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which Seton cannot be found retroactively liable.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

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

**FORTY-SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

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

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

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

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

Seton’s liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. \_\_\_\_; 129 S.Ct. 870 (2009), and other comparable decisional law.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

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

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

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

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

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

**FORTY-NINTH AFFIRMATIVE DEFENSE**

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

**FIFTIETH AFFIRMATIVE DEFENSE**

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 Seton are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Seton 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 Seton. Examples of legal extinguishments that are or may be applicable to Seton include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Seton;
- B. Any settlement or other compromise between Plaintiffs and Seton;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs right to maintain a claim against Seton;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint "B") in a prior litigation between Plaintiffs and Seton, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or,
- F. Any issuance by Plaintiffs to Seton, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

**FIFTY FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred because the relief sought against Seton, were it claimed directly by Plaintiffs, would amount to a "taking" of Seton's property in

violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.*

**FIFTY SECOND AFFIRMATIVE DEFENSE**

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

**FIFTY THIRD AFFIRMATIVE DEFENSE**

To the extent Seton is acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Seton, the claims for equitable contribution under the Spill Act in the Third-Party Complaint "B" are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

**FIFTY FOURTH AFFIRMATIVE DEFENSE**

Without admitting liability, Seton alleges that if it 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.

**FIFTY FIFTH AFFIRMATIVE DEFENSE**

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

**FIFTY SIXTH AFFIRMATIVE DEFENSE**

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

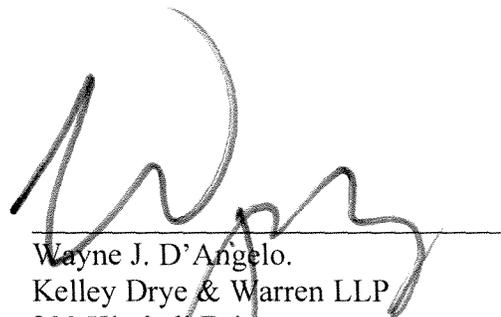
**COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS**

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

2. Pursuant to R. 4:7-5(b), all cross claims and/or counterclaims for statutory and/or common law contribution and indemnification asserted by other parties against Seton, whether filed in the past or future, are deemed denied by Seton without the need for responsive pleadings.

**WHEREFORE**, Third-Party Defendant, Seton, 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.

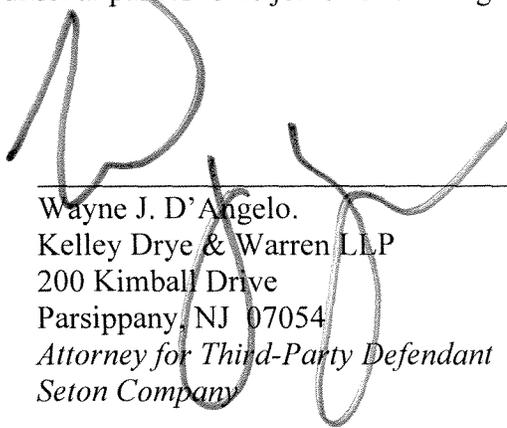
Dated: March 5, 2010

  
\_\_\_\_\_  
Wayne J. D'Angelo.  
Kelley Drye & Warren LLP  
200 Kimball Drive  
Parsippany, NJ 07054  
*Attorney for Third-Party Defendant  
Seton Company*

**CERTIFICATION PURSUANT TO RULE 4:5-1**

I hereby certify that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding and I know of no other parties who should be joined in this action pursuant to R. 4:28 as it is the legal position of Seton that liability of a third-party defendant for the claims set forth in Third-Party Complaint "B," if any, is several. However, should the Court determine that the potential liability of a third-party defendant, if any, is joint and several for the claim set forth in Third-Party Complaint "B," then Seton states that there are other parties that may have discharged Hazardous Substances into the Newark Bay Complex contributing to the damages alleged by Defendants/Third-Party Plaintiffs. The identity of all known parties believed to have discharged Hazardous Substances will be identified in accordance with the procedures set forth in Case Management Order V. Likewise, additional discovery or investigation may identify additional parties to be joined in the litigation.

Dated: March 5, 2010

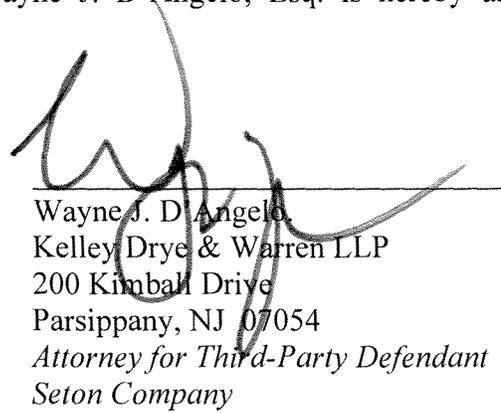


Wayne J. D'Angelo.  
Kelley Dye & Warren LLP  
200 Kimball Drive  
Parsippany, NJ 07054  
*Attorney for Third-Party Defendant  
Seton Company*

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Wayne J. D'Angelo, Esq. is hereby assigned as trial counsel.

Dated: March 5, 2010

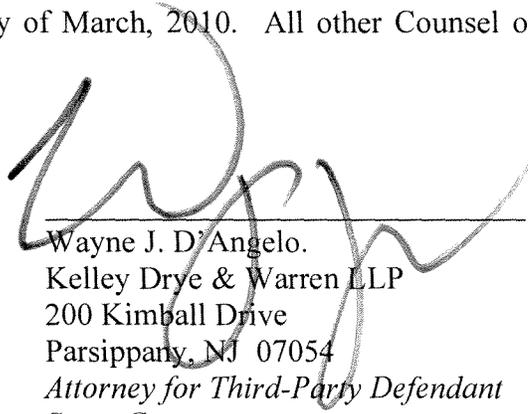


Wayne J. D'Angelo  
Kelley Dye & Warren LLP  
200 Kimball Drive  
Parsippany, NJ 07054  
*Attorney for Third-Party Defendant  
Seton Company*

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Third-Party Complaint “B,” Affirmative Defenses, and Case Information Statement, was filed with the Clerk of the Court, Superior Court of New Jersey, Essex County, by Federal Express and was served upon all parties which have consented to electronic service by posting to <http://njdepvocc.sfile.com> on this 5<sup>th</sup> day of March, 2010. All other Counsel of Record were served via first-class, regular U.S. mail.

Dated: March 5, 2010



Wayne J. D'Angelo.  
Kelley Drye & Warren LLP  
200 Kimball Drive  
Parsippany, NJ 07054  
*Attorney for Third-Party Defendant  
Seton Company*