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

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**SIEMENS WATER TECHNOLOGIES
CORP.'S ANSWER TO THIRD-PARTY
COMPLAINT "B"**

APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS, INC.,
ASSOCIATED AUTO BODY & TRUCKS, INC.,
ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AKZO NOBEL COATINGS, INC.,
BASF CATALYSTS LLC,
BASF CONSTRUCTION CHEMICALS INC.,
BASF CORPORATION,
BAYER CORPORATION,
BEAZER EAST, INC.,
BELLEVILLE INDUSTRIAL CENTER,
BENJAMIN MOORE & COMPANY,
BEROL CORPORATION,
B-LINE TRUCKING, INC.,
BORDEN & REMINGTON CORP.,
C.S. OSBORNE & CO.,
CAMPBELL FOUNDRY COMPANY,
CASCHEM, INC.,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMTURA CORPORATION,
CLEAN EARTH OF NORTH JERSEY, INC.,
COSMOPOLITAN GRAPHICS CORPORATION,
CIBA CORPORATION,
COLTEC INDUSTRIES INC.,
COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC.,
CONAGRA PANAMA, INC.,
CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COSAN CHEMICAL CORPORATION,
COVANTA ESSEX COMPANY,
CRODA, INC.,
CRUCIBLE MATERIALS CORPORATION,
CURTISS-WRIGHT CORPORATION,
CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,
DAVANNE REALTY CO.,

DELEET MERCHANDISING CORPORATION,
DELVAL INK AND COLOR, INCORPORATED,
DILORENZO PROPERTIES COMPANY, L.P.,
E.I. DU PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY,
EDEN WOOD CORPORATION,
ELAN CHEMICAL COMPANY, INC.,
EM SERGEANT PULP & CHEMICAL CO.,
EMERALD HILTON DAVIS, LLC,
ESSEX CHEMICAL CORPORATION,
EXXON MOBIL
F.E.R. PLATING, INC.,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORPORATION,
FLINT GROUP INCORPORATED,
FORT JAMES CORPORATION,
FOUNDRY STREET CORPORATION,
FRANKLIN-BURLINGTON PLASTICS, INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY,
GENTEK HOLDING LLC,
GIVAUDAN FRAGRANCES CORPORATION,
G. J. CHEMICAL CO.,
GOODY PRODUCTS, INC.,
GORDON TERMINAL SERVICE CO. OF N.J., INC.,
HARRISON SUPPLY COMPANY,
HARTZ MOUNTAIN CORPORATION,
HAVENICK ASSOCIATES L.P.,
HEXCEL CORPORATION,
HEXION SPECIALTY CHEMICALS, INC.,
HOFFMANN-LA ROCHE INC.,
HONEYWELL INTERNATIONAL INC.,
HOUGHTON INTERNATIONAL INC.,
HUDSON TOOL & DIE COMPANY, INC.,
HY-GRADE ELECTROPLATING CO.,
ICI AMERICAS INC.,
INNOSPEC ACTIVE CHEMICALS LLC,
INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC.,
ITT CORPORATION,

KEARNY SMELTING & REFINING CORP.,
KAO BRANDS COMPANY,
KOEHLER-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.,
NL 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,
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.

**SIEMENS WATER TECHNOLOGIES CORP.'S
ANSWER TO THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Siemens Water Technologies Corp. ("SIEMENS" or "Third-Party Defendant"), 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 Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

1. SIEMENS 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

(Paragraphs 1 through 15)

2. SIEMENS responds that the referenced paragraphs speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 18)

3. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

4. To the extent that the allegations in Paragraphs 19 through 209 relate to other parties, no response is required pursuant to CMO V.
5. SIEMENS admits the allegations set forth in Paragraph 173.
6. The allegations in Paragraph 210 state a legal conclusion as to which no response is required.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

8. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.
9. SIEMENS admits that property located at or about 25 Main Street in Belleville, Essex County, New Jersey is sometimes referred to as the “Wallace & Tiernan Site.” Siemens denies each and every allegation set forth in Paragraph 2948 not specifically admitted herein.
10. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 2949 – 2956, and on that basis denies them.
11. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 2957 – 2962, and on that basis denies them.
12. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 2963 – 2964, and on that basis denies them.

13. In response to Paragraph 2965, SIEMENS specifically denies that Wallace II was acquired by United States Filter Corporation (incorrectly identified in the Complaint as “U.S. Filter Corporation”), and specifically denies that Wallace II was thereafter operated as a subsidiary known as U.S. Filter/Wallace & Tiernan, Inc. By way of further response SIEMENS states as follows:

- A. Pursuant to a transaction (the “1997 Transaction”) commenced in October of 1996 and concluded in early January, 1997, United States Filter Corporation (“USFC”) acquired the businesses that comprised the Process Equipment Division of United Utilities PLC, a company then organized under the laws of England and Wales (“United Utilities”).
- B. Among the United Utilities subsidiaries that participated in the 1997 Transaction was Wallace & Tiernan, Inc., a Delaware corporation with a principal place of business in Belleville, New Jersey. Upon information and belief SIEMENS avers that this entity is the entity defined as “Wallace II” in paragraph 2963 of the Third Party Complaint B, and SIEMENS will herein refer to this entity as “Wallace II”.
- C. USFC did not acquire the stock of Wallace II in the 1997 Transaction, nor did USFC acquire ownership of, or operate in any manner at, the Wallace & Tiernan Site in connection with, or as a result of, the 1997 Transaction. Rather, USFC purchased only certain assets of Wallace II, as described below.
- D. To facilitate the transfer of only specified assets of Wallace II, United Utilities formed Wallace & Tiernan Newco, Inc. in Delaware on December 16, 1996. Thereafter, Wallace & Tiernan Newco, Inc. entered into an Assignment and Assumption Agreement, dated December 28, 1996, with Wallace II pursuant to which certain assets of Wallace II were

transferred to Wallace & Tiernan Newco, Inc., but which assets specifically excluded any stock of Wallace II or any interest in the Wallace & Tiernan Site.

- E. Thereafter, United Utilities and/or Wallace II caused to be filed with the Delaware Secretary of State (i) an amendment to Wallace II's certificate of incorporation changing the name of that company to "NWW Properties Inc." effective as of 3:00 p.m. on January 2, 1997, and (ii) an amendment to Wallace & Tiernan Newco, Inc.'s certificate of incorporation changing the name of that company to "Wallace & Tiernan, Inc." effective as of 3:01 p.m. on January 2, 1997.
- F. Thereafter, in connection with completing the 1997 Transaction, USFC purchased, among other businesses, the stock of Wallace & Tiernan, Inc. (which had been named Wallace & Tiernan Newco, Inc. prior to January 2, 1997). Subsequently, USFC caused to be filed with the Delaware Secretary of State an amendment to Wallace & Tiernan, Inc.'s certificate of incorporation changing the name of that company to "U.S. Filter/Wallace & Tiernan, Inc." effective as of 3:00 p.m. on April 29, 1997.
- G. The entity that came into existence on December 16, 1996 as Wallace & Tiernan Newco, Inc., and which had its name changed to U.S. Filter/Wallace & Tiernan, Inc. on April 29, 1997 is not the corporate successor to Wallace II. Immediately after the 1997 Transaction, Wallace II continued as a corporation owned and controlled by United Utilities with the name NWW Properties Inc.

14. In response to Paragraph 2966, Siemens admits that an entity named U.S. Filter/Wallace & Tiernan, Inc. was merged with and into SIEMENS effective August 31, 2006, but SIEMENS denies that such entity was Wallace II, or was the corporate successor to

Wallace II. SIEMENS further denies each and every allegation of Paragraph 2966 not specifically admitted herein. By way of further response, SIEMENS states as follows:

- A. In a transaction (the “2004 Transaction”) that was completed on August 1, 2004, Siemens Corporation purchased from USFC all of the issued and outstanding stock of USFilter Corporation, a Delaware corporation. At the time of the 2004 Transaction, USFilter Corporation had several wholly-owned subsidiaries, including U.S. Filter/Ionpure Inc., a Massachusetts corporation, and U.S. Filter/Wallace & Tiernan, Inc. (the same entity that was formed on December 16, 1996 as “Wallace & Tiernan Newco, Inc.” by United Utilities and that was acquired by USFC in the 1997 Transaction).
- B. Subsequently, on June 1, 2006 U.S. Filter/Ionpure Inc. amended its certificate of incorporation to change its name to “Siemens Water Technologies Corp.” Thereafter, on August 31, 2006 U.S. Filter/Wallace & Tiernan, Inc. was merged into Siemens Water Technologies Corp. with the latter being the surviving corporation. Finally, on September 1, 2006 USFilter Corporation amended its certificate of incorporation to change its name to “Siemens Water Technologies Holding Corp.”
- C. As of the date of this Answer, Siemens Water Technologies Corp. is a wholly-owned subsidiary of Siemens Water Technologies Holding Corp., which in turn is an indirect, wholly-owned subsidiary of Siemens Corporation.

15. SIEMENS denies the allegations set forth in Paragraph 2967.

16. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2968, and on that basis denies them.

17. SIEMENS admits that on or about December 8, 2005, EPA sent a General Notice Letter to U.S. Filter/Wallace & Tiernan concerning the Lower Passaic River Study Area, which

letter constitutes the best evidence of its contents. SIEMENS denies each and every allegation set forth in Paragraph 2969 and not specifically admitted herein. By way of further response, SIEMENS states that, in response to the General Notice Letter, USFC by letter dated April 26, 2006 furnished to EPA the substance of the information set forth in paragraphs 13 and 14 of this Answer, thereby refuting that U.S. Filter/Wallace & Tiernan, Inc. was the corporate successor to Wallace II or in any manner responsible or liable for historical contamination or activity at the Wallace & Tiernan Site.

18. SIEMENS denies each and every allegation set forth in Paragraph 2970 that is or may be directed against SIEMENS, and makes no response to the allegations of Paragraph 2970 directed against Arkema.

AS TO FIRST COUNT

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

19. SIEMENS incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 18 herein.

20. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447 through 3448, and therefore denies the same.

21. SIEMENS denies that it is liable to Third-Party Plaintiffs for contribution. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451, and therefore denies the same.

AS TO SECOND COUNT

Statutory Contribution

22. SIEMENS incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 18 herein.

23. SIEMENS denies that it is liable to Third-Party Plaintiffs for contribution. SIEMENS is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

25. Third-Party Defendant 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

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

30. To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 *et seq.*, in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

32. 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

33. Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

36. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on any actions or inactions by any owner or operator of the Wallace & Tiernan Site that may have arisen 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

37. At common law, the owners and operators of the Wallace & Tiernan Site held, and still hold, a usufructuary interest allowing them, 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. On information and believe, the owners and operators of the Wallace & Tiernan Site have at all relevant times acted in accordance with their 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 Third-Party Defendant directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

38. The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Amended Complaint. Consequently, all

claims that are or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendant as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

41. On information and belief, at all relevant times the owners and operators of the Wallace & Tiernan Site complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted themselves reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

NINETEENTH AFFIRMATIVE DEFENSE

42. The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because, on information and belief, at all relevant times the owners and operators of the Wallace & Tiernan Site 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, on information and belief, 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 Third-Party Defendant and the owners and operators of the Wallace & Tiernan Site 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

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

45. Third-Party Plaintiffs' claims against Third-Party Defendant 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

46. Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-FOURTH THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

49. The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of

performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

50. 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

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

53. Third-Party Defendant did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

54. Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

THIRTY-SECOND AFFIRMATIVE DEFENSE

55. 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

56. 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

57. 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

58. Third-Party Defendant denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendant exercised no control

and for whose conduct Third-Party Defendant was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

59. 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 Third-Party Defendant, 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

60. Although Third-Party Defendant denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Third-Party Defendant 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

61. 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

62. Third-Party Plaintiffs' claims are barred to the extent that the conduct of the owners and operators of the Wallace & Tiernan Site Third-Party Defendants alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no

further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

FORTIETH AFFIRMATIVE DEFENSE

63. On information and belief, the disposal of waste, if any, which allegedly originated from the owners or operators of the Wallace & Tiernan Site, 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 Third-Party Defendant cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

64. On information and belief, any discharge that allegedly originated from the Wallace & Tiernan Site 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 Third-Party Defendant cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

65. 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

66. 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

67. Third-Party Plaintiffs' claims are barred due to their own conduct in unilaterally, and without notice to Third-Party Defendant, 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

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

69. Third-Party Plaintiffs cannot assert contribution claims against Third-Party Defendant because the discharges for which the Plaintiffs are seeking relief are different from the alleged discharges from the Wallace & Tiernan Site.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

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

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

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

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint) in prior litigation between Plaintiffs and Third-Party Defendant, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or

FIFTY-FIRST AFFIRMATIVE DEFENSE

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

Third-Party Defendant'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

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

FIFTY-THIRD AFFIRMATIVE DEFENSE

76. To the extent any past or present owner or operator of the Wallace & Tiernan Site is acting or has acted to conduct environmental cleanup at the Wallace & Tiernan Site, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

77. Without admitting liability, Third-Party Defendant alleges that if any owner or operator of the Wallace & Tiernan Site it is found to have been engaged in any of the activities alleged in the Third-Party Complaint, on information and belief such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

78. 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 Third-Party Defendant.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

79. Third-Party Defendant 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

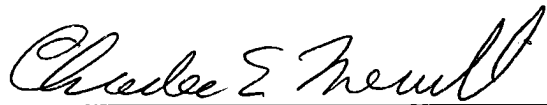
80. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

WHEREFORE, Third-Party Defendant Siemens Water Technologies Corp. 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: December 11, 2009

Respectfully submitted,

HUSCH BLACKWELL SANDERS, LLP.
Attorney for Third-Party Defendant
Siemens Water Technologies Corp.(s)



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Charles E. Merrill, Esq. *pro hac vice*
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Dwayne.stanley@huschblackwell.com
Attorneys for Third-Party Defendant
Siemens Water Technologies Corp.

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

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

(a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned (though the same may become the subject of a federal action pursuant to certain federal environmental statutes); and

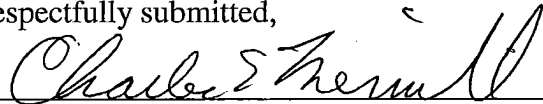
(b) Since it is the legal position of the undersigned that the potential liability, if any, of a third party defendant for the claims set forth in the Third Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R.4:28; but that

(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 all or some of the non-parties listed on the October 20, 2009 posting by O'Melveny and Myers may constitute non-parties who should be joined in the action pursuant to R. 4:28; and

(d) In either event, some or all of such non-parties 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. Further, an additional non-party known to the undersigned counsel is NWW Properties, Inc.

Dated: December 11, 2009

Respectfully submitted,



Dwayne F. Stanley, Esq. DS 6179

Charles E. Merrill, Esq. *pro hac vice*

Husch Blackwell Sanders, LLP

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314-480-1500

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Attorneys For Third-Party Defendant
Siemens Water Technologies Corp.

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY,
A.C.C., INC.,
ACH FOOD COMPANIES, INC.,
ACTIVE OIL SERVICE,
ADCO CHEMICAL COMPANY,
AGC CHEMICALS AMERICAS, INC.,
ALDEN-LEEDS, INC.,
ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERICAN INKS AND COATINGS CORPORATION,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

CERTIFICATION OF SERVICE

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.,
NL 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,
PASSAIC PIONEERS PROPERTIES COMPANY,
PFIZER INC.,
PHARMACIA CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING COMPANY,
PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,

QUALA SYSTEMS, INC.,
QUALITY CARRIERS, INC.,
RECKITT BENCKISER, INC.,
REICHHOLD, INC.,
REVERE SMELTING & REFINING CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.
SINGER SEWING COMPANY
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS, INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND
COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VALSPAR CORPRATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,

VULCAN MATERIALS COMPANY,
W.A.S. TERMINALS CORPORATION,
W.A.S. TERMINALS, INC.,
W.C. INDUSTRIES,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
ZENECA INC.,

Third-Party Defendants.

I, Charles E. Merrill, hereby certify as follows:

1. I am a partner with the law firm of Husch Blackwell Sanders, LLP, a Delaware limited liability partnership, attorneys for Third-Party Defendant Siemens Water Technologies Corp. ("Siemens") in connection with the above-captioned matter.

2. On December 11, 2009, I caused Siemens' Answer to Third-Party Complaint "B" and Civil Case Information Statement to be served electronically on all parties that have consented to service by posting on www.sfile.com/njdepvocc. The following counsel of record were served on that same date via regular mail.

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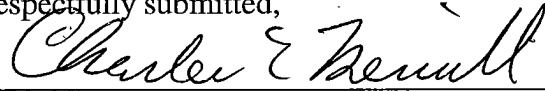
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Cranford

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South Orange, NJ 07079
Attorney for Vitusa Corp.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: December 11, 2009

Respectfully submitted,



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