

David A. Picon
PROSKAUER ROSE LLP
1585 BROADWAY
NEW YORK, NY 10036-8299
Tel: 212.969.3000
Fax: 212.969.2900

Gail S. Port (Admitted Pro Hac Vice)
PROSKAUER ROSE LLP
1585 BROADWAY
NEW YORK, NY 10036-8299
Tel: 212.969.3000
Fax: 212.969.2900

ATTORNEYS FOR THIRD-PARTY DEFENDANT TEVA PHARMACEUTICALS USA, INC.

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY,
A.C.C., INC.,
ACH FOOD COMPANIES, INC.,
ACTIVE OIL SERVICE,
ADCO CHEMICAL COMPANY,
AGC CHEMICALS AMERICAS, INC.,
ALDEN-LEEDS, INC.,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**TEVA PHARMACEUTICALS USA,
INC.'S ANSWER TO THIRD-PARTY
COMPLAINT "B"**

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

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

MACE ADHESIVES & COATINGS COMPANY, INC.,
MALLINCKRODT INC.,
MERCK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC.,
NAPPWOOD LAND CORPORATION,
NATIONAL FUEL OIL, INC.,
NATIONAL-STANDARD, LLC,
NELL-JOY INDUSTRIES, INC.,
NESTLE U.S.A., INC.,
NEW JERSEY TRANSIT CORPORATION,
NEWS AMERICA, INC.,
NEWS PUBLISHING AUSTRALIA LIMITED,
NORPAK CORPORATION,
NOVELIS CORPORATION,
ORANGE AND ROCKLAND UTILITIES, INC.,
OTIS ELEVATOR COMPANY,
PRC-DESOTO INTERNATIONAL, INC.,
PASSAIC PIONEERS PROPERTIES COMPANY,
PFIZER INC.,
PHARMACIA CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING COMPANY,
PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,
QUALA SYSTEMS, INC.,
QUALITY CARRIERS, INC.,
RECKITT BENCKISER, INC.,
REICHHOLD, INC.,
REVERE SMELTING & REFINING CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,

RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.
SINGER SEWING COMPANY
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS, INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VALSPAR 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.

**TEVA PHARMACEUTICALS USA, INC.'S ANSWER TO THIRD-PARTY
COMPLAINT "B"**

Third-Party Defendant Teva Pharmaceuticals USA, Inc. ("TEVA"), by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "B" ("Third-Party Complaint 'B'") by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

1. TEVA 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
(Paragraphs 1 through 15)

2. TEVA responds that the pleadings set forth in Paragraphs 1 through 15 of the Third-Party Complaint "B" speak for themselves, do not relate to TEVA and no response is required pursuant to CMO V.

THIRD-PARTY PLAINTIFFS
(Paragraphs 16 through 18)

3. TEVA responds that the pleadings set forth in Paragraphs 16 through 18 of the Third-Party Complaint "B" do not relate to TEVA and no response is required pursuant to CMO V.

THIRD-PARTY DEFENDANTS

(Paragraphs 19 through 210)

4. To the extent that the allegations in Paragraphs 19 through 209 relate to parties other than TEVA, no response is required pursuant to CMO V.

5. TEVA admits the allegations in Paragraph 180.

6. TEVA neither admits nor denies the allegations contained in Paragraph 210 of the Third-Party Complaint “B” as they purport to state legal conclusions which do not require a response; however, to the extent a response is required, TEVA denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 210 of the Third-Party Complaint “B”.

DEFINITIONS

(Paragraphs 211 through 236)

7. Paragraphs 211 through 236 contain definitions used by Third-Party Plaintiffs in the Third-Party Complaint “B” and no response is required pursuant to CMO V.

FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

8. TEVA responds that the pleadings set forth in Paragraphs 237 through 3445 of the Third-Party Complaint “B” do not relate to TEVA and no response is required pursuant to CMO V, except to the extent set forth below in Paragraphs 9 through 24 hereafter responding to Paragraphs 644 through 659 of the Third-Party Complaint “B”.

Biocraft Site

9. TEVA denies the allegations contained in Paragraph 644 of the Third-Party Complaint “B”, except admits that in 1972, Biocraft Laboratories, Inc. (“Biocraft”) acquired real properties located at 12 Industrial Park in Waldwick, Bergen County, New Jersey (“12 Industrial Park”), also designated as Block 154, Lot 46, and 140 Hopper Avenue, a warehouse

facility located contiguous to 12 Industrial Park and designated as Block 154, Lot 36. TEVA admits that Biocraft constructed and operated a pharmaceutical manufacturing facility at the 12 Industrial Park property, and that in 1985, Biocraft constructed a storage warehouse on the 140 Hopper Avenue property.

10. TEVA denies the allegations contained in Paragraph 645 of the Third-Party Complaint “B”, except admits that in April 1964, Biocraft Laboratories, Inc. was incorporated in the State of New Jersey.

11. TEVA denies the allegations contained in Paragraph 646 of the Third-Party Complaint “B”, except admits that in approximately 1996, pursuant to an Agreement and Plan of Merger, Biocraft Laboratories, Inc. (a Delaware corporation) became a wholly-owned subsidiary of Teva Pharmaceutical Industries Limited, an Israeli public company. As part of a reorganization of the United States operations of Teva Pharmaceutical Industries Limited, TAG Pharmaceuticals, Inc. (another subsidiary of Teva Pharmaceutical Industries Limited) along with Lemmon Company (a subsidiary of TAG Pharmaceuticals, Inc.) was merged into Biocraft Laboratories, Inc., and thereafter, Biocraft Laboratories, Inc. was renamed Teva Pharmaceuticals USA, Inc. TEVA admits that Teva Pharmaceuticals USA, Inc. is operated as a wholly-owned subsidiary of Teva Pharmaceutical Industries Limited.

12. TEVA denies the allegations contained in Paragraph 647 of the Third-Party Complaint “B” as they purport to state legal conclusions which do not require a response; however, to the extent a response is required, TEVA denies the allegations.

13. TEVA denies the allegations contained in Paragraph 648 of the Third-Party Complaint “B”, except admits that semi-synthetic penicillin products and intermediates were manufactured in bulk form at the facility located at 12 Industrial Park from approximately 1972 until approximately 1997.

14. As a consequence of the over-breadth of the definition of “Biocraft Site”, the allegations contained in Paragraph 649 of the Third-Party Complaint “B” are misleading and, accordingly, TEVA denies the allegations contained in Paragraph 649.

15. TEVA denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 650 of the Third-Party Complaint “B”.

16. TEVA admits the allegations contained in the first sentence of Paragraph 651 of the Third-Party Complaint “B”, and denies each and every allegation contained in the remaining sentences of Paragraph 651 of the Third-Party Complaint “B”.

17. TEVA denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 652 of the Third-Party Complaint “B”.

18. TEVA denies the allegations contained in Paragraph 653 of the Third-Party Complaint “B”, except admits that approximately 50 gallons of hydrochloric acid was discharged on December 13, 1993 from a hydrochloric acid tank line at the facility located at 12 Industrial Park into the on-site stormwater collection system.

19. TEVA denies the allegations contained in Paragraph 654 of the Third-Party Complaint “B”, except admits that hydrochloric acid was discharged on February 24, 1994 from a broken valve on the hydrochloric acid tank into a secondary containment unit and some onto the parking lot pavement at the facility located at 12 Industrial Park.

20. TEVA denies the allegations contained in Paragraph 655 of the Third-Party Complaint “B”.

21. TEVA denies the allegations contained in Paragraph 656 of the Third-Party Complaint “B”.

22. TEVA denies the allegations contained in Paragraph 657 of the Third-Party Complaint “B”.

23. TEVA denies the allegations contained in Paragraph 658 of the Third-Party Complaint “B”, except admits that on or about September 18, 2003, Teva Pharmaceuticals USA Inc. received a document entitled General Notice Letter from EPA, and TEVA respectfully refers the Court to that letter for the contents thereof.

24. TEVA denies the allegations contained in Paragraph 659 of the Third-Party Complaint “B”.

FIRST COUNT

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

25. With respect to Paragraph 3446 of the Third-Party Complaint “B”, TEVA repeats and realleges, as if fully set forth herein, each and every answer set forth in Paragraphs 1 through 24 hereof responding to each and every allegation contained in Paragraphs 1 through 3445 of the Third-Party Complaint “B”.

26. TEVA denies the allegations contained in Paragraph 3447 of the Third-Party Complaint “B” as they relate to TEVA, and is without knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to other Third-Party Defendants.

27. TEVA denies the allegations contained in Paragraph 3448 of the Third-Party Complaint “B”, and respectfully refers the Court to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a), which speaks for itself, for a full and accurate recitation of the contents thereof.

28. TEVA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 3449 through 3451 of the Third-Party Complaint “B”, except denies that it is liable to Third-Party Plaintiffs.

SECOND COUNT
Statutory Contribution

29. With respect to Paragraph 3452 of the Third-Party Complaint “B”, TEVA repeats and realleges, as if fully set forth herein, each and every answer set forth in Paragraphs 1 through 28 hereof responding to each and every allegation contained in Paragraphs 1 through 3451 of the Third-Party Complaint “B”.

30. TEVA denies the allegations contained in Paragraph 3453 of the Third-Party Complaint “B” as they relate to TEVA, and is without knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to other Third-Party Defendants.

FIRST AFFIRMATIVE DEFENSE

31. 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

32. 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

33. 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

34. 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

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

37. 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

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

NINTH AFFIRMATIVE DEFENSE

39. 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

40. 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

41. 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

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

THIRTEENTH AFFIRMATIVE DEFENSE

43. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Third-Party Defendant 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 THIRD AFFIRMATIVE DEFENSE

44. At common law, Third-Party Defendant 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. Third-Party Defendant 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

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

45. 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

46. 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

47. 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

48. At all relevant times, Third-Party Defendant 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

49. The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because at all relevant times Third-Party Defendant 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 Third-Party Defendant 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

50. 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

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

52. 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

53. 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

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

56. 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

57. 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

58. 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

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

61. 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

62. 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

63. 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 THIRD AFFIRMATIVE DEFENSE

64. 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

65. 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

66. 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

67. 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

68. 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

69. Third-Party Plaintiffs' claims are barred to the extent that the conduct of 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

70. The disposal of waste, if any, which allegedly originated from Third-Party Defendant, 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

71. Any discharge that allegedly originated from Third-Party Defendant, 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

72. 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

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

FORTY-FOURTH THIRD AFFIRMATIVE DEFENSE

74. Third-Party Plaintiffs' claims are barred due to its 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

75. 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

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

77. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) are 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

78. 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

79. 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

80. 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 a 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
- E. Any issuance by Plaintiffs to Third-Party Defendant, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY-FIRST AFFIRMATIVE DEFENSE

81. 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

82. 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 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

83. To the extent Third-Party Defendant 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 Third-Party Defendant, 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

84. Without admitting liability, Third-Party Defendant alleges that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

85. 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

86. Third-Party Defendant reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

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

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

DESIGNATION OF TRIAL COUNSEL

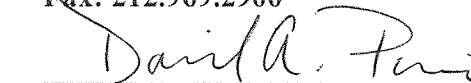
88. In accordance with Rule 4:25-4 you are hereby notified that David A. Picon is assigned to try this case.

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

Dated: January 3, 2010

Respectfully submitted,

PROSKAUER ROSE LLP
Attorneys for Third-Party Defendant
Teva Pharmaceuticals USA, Inc.
1585 Broadway
New York, NY 10036-8299
Tel: 212.969.3000
Fax: 212.969.2900


DAVID A. PICON

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; 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 & Myers LLP 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.

Respectfully submitted,

PROSKAUER ROSE LLP
Attorneys for Third-Party Defendant
Teva Pharmaceuticals USA, Inc.
1585 Broadway
New York, NY 10036-8299
Tel: 212.969.3000
Fax: 212.969.2900



David A. Picon, Esq.

David A. Picon
PROSKAUER ROSE LLP
1585 BROADWAY
NEW YORK, NEW YORK 10036-8299
Tel: (212) 969-3000
Fax: (212) 969-2900

Gail S. Port (Admitted Pro Hac Vice)
PROSKAUER ROSE LLP
1585 BROADWAY
NEW YORK, NEW YORK 10036-8299
Tel: (212) 969-3000
Fax: (212) 969-2900

Attorneys for Third-Party Defendant Teva
Pharmaceuticals USA, Inc.

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
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, S.A., YPF
HOLDINGS, INC. and CLH HOLDINGS,
INC.,

Defendants.

TIERRA SOLUTIONS, INC. and MAXUS
ENERGY CORPORATION,

Third-Party Plaintiffs,

v.

3M COMPANY, *et al.*,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. ESX-L-9868-05 (PASR)

CIVIL ACTION

**CERTIFICATE OF SERVICE OF TEVA
PHARMACEUTICALS USA, INC.'S
ANSWER TO THIRD-PARTY
COMPLAINT "B"**

I, Gail S. Port, hereby certify that Teva Pharmaceuticals USA, Inc.'s Answer to Third-Party Complaint "B" was served: (1) electronically on all parties that have consented to service by posting on <https://njdepvocc.sfile.com/> on January 4, 2010; and (2) on the following parties by their counsel of record identified below, on January 4, 2010, via first class, regular mail:

Celanese Ltd.
Anthony J. Reitano, Esq.
Herold Law, PA
25 Independence Blvd.
Warren, NJ 07059-6747

City of Clifton
Thomas M. Egan, Esq.
Assistant Municipal Attorney
City of Clifton Law Department
900 Clifton Avenue
Clifton, NJ 07013

City of Orange Township
John P. McGovern
Assistant City Attorney
City of Orange Township
29 North Day St.
Orange, NJ 07050

Clean Earth of New Jersey, Inc.
Eric S. Aronson, Esq.
Greenberg Traurig, LLP
200 Park Avenue
Florham Park, NJ 07932

DiLorenzo Properties Company, L.P.
Steven R. Gray, Esq.
Water, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096

Passaic Pioneers Properties Company
John A. Daniels, Esq.
Daniels & Daniels LLC

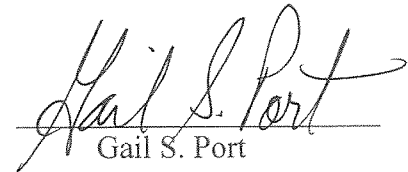
6812 Park Ave.
Guttenberg, NJ 07093

Township of Cranford
Carl R. Woodward, III, Esq.
Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart
& Olstein
5 Becker Farm Road
Roseland, NJ 07068

Township of Cranford
Brian H. Fenlon, Esq.
Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart
& Olstein
5 Becker Farm Road
Roseland, NJ 07068

Vitusa Corp.
Gerald Poss, Esq.
Gerald Poss, P.A. & Associates
58 Vose Avenue
South Orange, NJ 07079-2026

Date: January 4, 2010



Gail S. Port