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Universal Oil Products Company

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, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC., Defendants. MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC., Third-Party Plaintiffs, v. 3M COMPANY, *et al.*, Third-Party Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. L-9868-05 (PASR) CIVIL ACTION

UNIVERSAL OIL PRODUCTS COMPANY'S
ANSWER TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant Universal Oil Products Company ("UOP"), by and through its undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "B" by

Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

1. UOP 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. UOP responds that the referenced pleadings 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.

109. Admitted.

210. The allegations of Paragraph 210 set forth legal conclusions to which no responsive pleading is required.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

237. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

AS TO THE UNIVERSAL OIL PRODUCTS SITE

2885. UOP admits that property consisting of approximately seventy-five acres located at the intersection of Route 17 and Paterson Plank Road in the Borough of East Rutherford, Bergen County, New Jersey has at times been referred to as "the Universal Oil Products Site," which is bordered on the southeast by Berry's Creek, and which flows into the Hackensack River downstream from the Universal Oil Products Site. UOP denies the remaining allegations of paragraph 2285.

2886. UOP admits that the Universal Oil Products Site was developed in or about 1932, that operations included handling of chemicals and solvent recovery, that Universal Oil Products Company and The Trubek Laboratories, Inc. (or a successor to that entity) merged, and that Universal Oil Products Company was the surviving entity. UOP is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 2886 and, on that basis, denies the allegations.

2887. UOP admits to the existence of the documents referenced in paragraph 2887, the contents of which speak for themselves. By making the foregoing admission, UOP does not admit the accuracy of the these documents' contents. UOP denies the remaining allegations of paragraph 2887.

2888. UOP admits that Allied Corporation and the Signal Companies merged into Allied-Signal Inc. and that Allied-Signal Inc. changed its name to AlliedSignal Inc. UOP denies the remaining allegations of paragraph 2888.

2889. UOP admits to the existence of the document referenced in paragraph 2889, the contents of which speak for themselves. By making the foregoing admission, UOP does not admit the accuracy of the document's contents. UOP denies the remaining allegations of paragraph 2889.

2890. UOP admits to the existence of the document referenced in paragraph 2890, the contents of which speak for themselves. By making the foregoing admission, UOP does not admit the accuracy of the document's contents. UOP denies the remaining allegations of paragraph 2890.

2891. The allegations of paragraph 2891 state legal conclusions to which no response is required. To the extent a response is required, UOP denies the allegations.

2892. Admitted.

2893. UOP admits that a system of natural and artificial surface water channels crossed the Universal Oil Products Site and that these channels flow or flowed into Berry's Creek. UOP is without knowledge sufficient to form a belief as to the truth of the remaining allegations and, on that basis, denies the allegations.

2894. UOP admits that two wastewater lagoons were constructed at the Universal oil Products Site and that these lagoons remained in use until the early 1970s. UOP is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 2894 and, on that basis, denies the allegations.

2895. UOP is without information sufficient to form a belief as to the truth of the allegations of paragraph 2895 and, on that basis, denies the allegations.

2896. UOP admits that Hazardous Substances, as that term is defined at N.J.S.A. 58:10-23.11b, have been detected in the process sewer at the Universal Oil Products Site. By making

the foregoing admission, UOP does not admit that any Hazardous Substance was discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex. UOP is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2896 and, on that basis, denies the allegations.

2897. UOP admits that Defendants have produced a document that purports to be an NJDEP Fact Sheet dated April 10, 1990, the contents of which speak for themselves. UOP does not admit that the document produced by Defendants is authentic nor does UOP admit the accuracy of any of the document's contents. UOP is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2897 and, on that basis, denies the allegations.

2898. UOP admits that sampling of the residual materials in the wastewater lagoons at the Universal Oil Products Site identified Hazardous Substances, as that term is defined at N.J.S.A. 58:10-23.11b, and other compounds. By making the foregoing admission, UOP does not admit that any Hazardous Substance was discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex. UOP is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2898.

2899. UOP is without knowledge or information sufficient to form a belief as to the truth of paragraph 2899 and, on that basis, denies the allegations.

2900. UOP admits that the some of the substances identified in paragraph 2900 have been found in groundwater samples taken from the Universal Oil Products Site. By making the foregoing admission, UOP does not admit that the presence of any of the substances identified in paragraph 2900 in the groundwater at the Universal Oil Products Site is the result of Universal

Oil Products' operations at the site or that any of those substances were discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex.

2901. Admitted.

2902. UOP is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2902 and, on that basis, denies the allegations.

2903. UOP admits that PCBs and mercury have been detected at the Universal Oil Products Site. By making the foregoing admission, UOP does not admit that the presence of any of the substances identified in paragraph 2900 in the groundwater at the Universal Oil Products Site is the result of Universal Oil Products' operations at the site or that any of those substances were discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex. UOP is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2903 and, on that basis, denies the allegations.

2904. Admitted.

2905. UOP admits that the some of the substances identified in paragraph 2905 have been found in soil samples taken from the Universal Oil Products Site. By making the foregoing admission, UOP does not admit that the presence of any of the substances identified in paragraph 2900 in the soil at the Universal Oil Products Site is the result of Universal Oil Products' operations at the site or that any of those substances were discharged, directly or indirectly, from the Universal Oil Products Site to the Newark Bay Complex.

2906. UOP is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2906 and, on that basis, denies the allegations.

2907. UOP admits that Defendants have produced a document that purports to be a Site Inspection Report prepared by NJDEP dated July 2, 1979, the contents of which speak for

themselves. UOP does not admit that the document produced by Defendants is authentic nor does UOP admit the accuracy of any of the document's contents. UOP is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2907 and, on that basis, denies the allegations.

2908. UOP admits that a seep/sewer network investigation was undertaken at the Universal Oil Products Site. UOP is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2908 and, on that basis, denies the allegations.

2909. Admitted.

2910. Admitted.

2911. UOP is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2911 and, on that basis, denies the allegations.

2912. Admitted.

2913. The allegations of paragraph 2913 state legal conclusions to which no responsive pleading is required. To extent a response is required, UOP denies the allegations.

AS TO FIRST COUNT

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

3446. UOP incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 1571 herein.

3447. UOP is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3447 and, on that basis, denies the allegations.

3448. UOP is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3448 and, on that basis, denies the allegations.

3449. UOP denies that it is liable to Third-Party Plaintiffs for contribution. The remaining allegations of paragraph 3449 state legal conclusions to which no responsive pleading is required. To the extent a response is required, UOP denies the allegations.

3450. UOP is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 3450 and, on that basis, denies the allegations.

3451. UOP denies that it is liable to Third-Party Plaintiffs for contribution. The remaining allegations of paragraph 3451 state legal conclusions to which no responsive pleading is required. To the extent a response is required, UOP denies the allegations.

AS TO SECOND COUNT

Statutory Contribution

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

3453. UOP denies that it is liable to Third-Party Plaintiffs for contribution. The remaining allegations of paragraph 3453 state legal conclusions to which no responsive pleading is required. To the extent a response is required, UOP denies the allegations.

FIRST AFFIRMATIVE DEFENSE

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

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

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

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

FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs have no right of contribution against Third-Party Defendant 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 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

Some or all of Third-Party Plaintiffs do not have 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, 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 *Rule* 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 Third-Party Defendant. Consequently, the claims in the Third-Party Complaint 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, or arbitrary and capricious.

THIRTEENTH AFFIRMATIVE DEFENSE

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 the United States 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, 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

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

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

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

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

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

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

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

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 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

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 Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

Third-Party Defendant 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, 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

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

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

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

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 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

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

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

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 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

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 N. & Santa Fe Rwy. Co. v. United States*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

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

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

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

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

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

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

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, the United States or any of its agencies, or any state or federal court 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

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

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

Third-Party Defendant 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 Third-Party Defendant.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

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

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

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

DESIGNATION OF TRIAL COUNSEL

In accordance with *Rule* 4:25-4 you are hereby notified that Edward F. McTiernan is assigned to try this case.

WHEREFORE, Third-Party Defendant UOP 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 23, 2010

Respectfully submitted,

GIBBONS P.C.

Edward F. McTiernan, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
Universal Oil Products Company

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

Undersigned counsel hereby certifies, in accordance with *Rule* 4:5-1(b)(2), that: (a) except as set forth below, the matters in controversy in this action are not the subject of any other known or pending court action or arbitration proceeding (though the same may become the subject of a federal action pursuant to certain federal environmental statutes) and (b) reference is made to that October 20, 2009 "Additional Discharger" posting by O'Melveny and Myers as to non-parties who may be joined to this action pursuant to *Rule* 4:28, or who may be subject to joinder pursuant to *Rule* 4:29-1.

Dated: March 23, 2010

Respectfully submitted,
GIBBONS P.C.

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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, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC., Defendants. MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC., Third-Party Plaintiffs, v. 3M COMPANY, *et al.*, Third-Party Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO. L-9868-05 (PASR) CIVIL ACTION **CERTIFICATION OF SERVICE**

I, **EDWARD F. McTIERNAN, ESQ.,** hereby certify as follows:

On March 23, 2010, I filed the within Answer to Third-Party Complaint "B", Civil Case Information Statement, and this Certification of Service by causing the original and two copies of same to be sent via overnight delivery to the Clerk of the Superior Court, Essex County.

On March 23, 2010, I also filed same via the SFile website, which will be distributed to all counsel who have consented to such service and to the Honorable Sebastian P. Lombardi, J.S.C.

On March 23, 2010, I also mailed a copy, via regular mail, to all parties on the attached service list.

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

Dated: March 23, 2010

Respectfully submitted,

GIBBONS P.C.

Edward F. McTiernan, Esq.
One Gateway Center
Newark, New Jersey 07102-5310
Attorney for Third-Party Defendant
Universal Oil Products Company

Third-Party Defendants for Regular Service as of March 21, 2010

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
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Township of Hillside	A	Christine M. Burgess Township Attorney Hillside Township Municipal Bldg. 1409 Liberty Ave. Hillside, NJ 07205 973.926.3000 973.926.9232 - fax