

Lindabury, McCormick, Estabrook & Cooper, P.C.

53 Cardinal Drive

Westfield, NJ 07091

Tel: 908.233.6800

Fax: 908.233.5078

Attorneys for Third-Party Defendant The Valspar Corporation

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

**ANSWER, AFFIRMATIVE
DEFENSES, AND R. 4:5-1
CERTIFICATION ON BEHALF OF
THE VALSPAR CORPORATION 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-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.

THE VALSPAR CORPORATION'S

ANSWER TO THIRD-PARTY COMPLAINT "B"

Third-Party Defendant The Valspar Corporation ("Valspar"), 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

Valspar 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)

1-15. Valspar 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)

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

AS TO THE THIRD-PARTY DEFENDANTS

(Paragraphs 19 through 210)

To the extent that the allegations in Paragraphs 19 through 209 relate to other parties, no response is required pursuant to CMO V, except to the extent noted below.

190. Valspar admits that it is a Delaware corporation but denies the remainder of the allegations contained in paragraph 190 of Third-Party Complaint "B."

210. The allegations contained in paragraph 210 of Third-Party Complaint "B" express legal conclusions as to which Valspar is not required to admit or deny herein. To the extent a response by Valspar is necessary, Valspar denies the allegations contained in paragraph 210 of the Third-Party Complaint "B."

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

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

CENTRAL STEEL DRUM SITE

(Paragraphs 3288 through 3334)

3288-3334. Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3288 through 3334 of Third-Party Complaint "B" and, accordingly, denies those allegations.

CENTRAL STEEL DRUM SITE PRPs

(Paragraphs 3335 through 3342)

3335-3342. Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3335 through 3342 of Third-Party Complaint "B" and, accordingly, denies those allegations.

CENTRAL STEEL DRUM SITE PRP: VALSPAR CORPORATION

(Paragraphs 3395 through 3397)

3395. Valspar admits that it acquired an entity that owned and operated an industrial paint and coatings facility at 145 Dividend Road in Rocky Hill, Connecticut. Valspar denies the remainder of the allegations contained in paragraph 3395 of Third-Party Complaint "B."

3396. Valspar admits that Lilly Industries, Inc. sent a letter to the EPA dated February 20, 1998 and submits that the referenced document speaks for itself. Valspar denies the remainder of the allegations contained in paragraph 3396 of Third-Party Complaint "B."

3397. The allegations contained in paragraph 3397 of Third-Party Complaint "B" call for a legal conclusion as to which no response is required. To the extent that a response by Valspar is necessary, Valspar denies the allegations contained in paragraph 3397 of 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)

3446. Valspar repeats and realleges its responses to the allegations contained in the preceding paragraphs Third-Party Complaint "B" as if fully set forth at length herein.

3447. The allegations contained in paragraph 3447 of Third-Party Complaint "B" express a legal conclusion as to which Valspar is not required to admit or deny herein. To the extent a response is required, Valspar denies the allegations that pertain to it in paragraph 3447

of Third-Party Complaint “B.” Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3447 of Third-Party Complaint “B” pertaining to other parties.

3448. The allegations contained in paragraph 3448 of Third-Party Complaint “B” express a legal conclusion as to which Valspar is not required to admit or deny herein. To the extent a response is required, Valspar denies the allegations contained in paragraph 3448 of the Third-Party Complaint “B” and submits that the New Jersey Spill Compensation and Control Act, N.J.S.A. 23.11.f.a.(2)(a) (“the Spill Act”) speaks for itself.

3449. Valspar denies that Third-Party Plaintiffs are entitled to contribution from Valspar to recover a proportionate share of any cleanup and removal costs or damages, if any, for which Third-Party Plaintiffs may be found liable under the Spill Act in this lawsuit. Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3449 of Third-Party Complaint “B” pertaining to other parties.

3450. The allegations contained in paragraph 3450 of Third-Party Complaint “B” express a legal conclusion as to which Valspar is not required to admit or deny herein. To the extent a response is required, Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3450 of Third-Party Complaint “B” and, accordingly, denies these allegations.

3451. Valspar denies that Third Party Plaintiffs are entitled to contribution from Valspar to recover a proportionate share of any cleanup and removal costs that Third Party Plaintiffs have incurred and will incur in the future. Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3451 of Third-Party Complaint “B” pertaining to other parties.

WHEREFORE, Valspar demands dismissal of claims in Third-Party Complaint “B” which are asserted against it, with prejudice, costs of litigation, attorney’s fees, and for such other costs and remedies as the Court deems just.

AS TO SECOND COUNT

Statutory Contribution

3452. Valspar repeats and realleges its responses to the allegations contained in the preceding paragraphs and first count of Third-Party Complaint “B” as if fully set forth at length herein.

3453. Valspar denies that it is liable to Third-Party Plaintiffs for contribution. Valspar is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3453 of Third-Party Complaint “B” pertaining to other parties and therefore denies same.

WHEREFORE, Valspar demands dismissal of claims in Third-Party Complaint “B” which are asserted against it, with prejudice, costs of litigation, attorney’s fees, and for such other costs and remedies as the Court deems just.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Valspar 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 Valspar because they have not cleaned up and/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 Valspar 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 “B” purports to seek any relief under New Jersey’s Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Valspar under that statute.

EIGHTH AFFIRMATIVE DEFENSE

Some or all of the 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 Third-Party Complaint “B”, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

Valspar cannot be held liable for or be required to pay Third-Party Plaintiffs’ damages or other claims based on actions or inactions by Valspar or Valspar’s alleged predecessors that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities (“applicable Environmental Laws”).

FOURTEENTH AFFIRMATIVE DEFENSE

At common law, Valspar 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. Valspar 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 Valspar directly. As a result, the claims set forth in Third-Party Complaint "B" are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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, Valspar and any of Valspar's alleged predecessors in interest 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 Valspar in Third-Party Complaint “B” are barred because at all relevant times Valspar and its alleged predecessors in interest 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 solely caused by the negligence, acts or omissions of third parties over whom Valspar 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 Third-Party Complaint “B” are barred in whole or in part by the doctrine of preemption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Valspar or Valspar’s alleged predecessors in interest.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs’ claims against Valspar 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 Third-Party Complaint "B" 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 Valspar, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

Valspar 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 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

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

Valspar 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 Valspar exercised no control and for whose conduct Valspar 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 Valspar, 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 Valspar denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Valspar 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 Third-Party Complaint "B" is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

FORTIETH AFFIRMATIVE DEFENSE

The disposal of waste, if any, which allegedly originated from Valspar, 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 Valspar cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

Any discharge that allegedly originated from Valspar and any of its alleged predecessors, 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 Valspar 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 Valspar, 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

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

FORTY-SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs cannot assert contribution claims against Valspar because the discharges for which the Plaintiffs are seeking relief are different from Valspar's or any alleged predecessor in interest's alleged discharges.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendants 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 Valspar liable, in contribution, for any claims for which it would be a violation of public policy to hold Valspar 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 Valspar 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 Valspar are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Valspar 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 Valspar. Examples of legal extinguishments that are or may be applicable to Valspar include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Valspar;
- B. Any settlement or other compromise between Plaintiffs and Valspar;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Valspar;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in Third-Party Complaint "B") in a prior litigation between Plaintiffs and Valspar, 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 Valspar, 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 Valspar, were it claimed directly by Plaintiffs, would amount to a "taking" of Valspar'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 Valspar'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 Valspar, thereby exposing Valspar 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 Valspar 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 Valspar, the claims for equitable contribution under the Spill Act in Third-Party Complaint "B" are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

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

FIFTY-FIFTH AFFIRMATIVE DEFENSE

Valspar 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 Valspar.

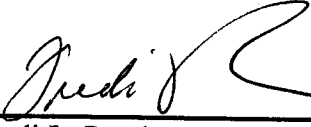
FIFTY-SIXTH AFFIRMATIVE DEFENSE

Valspar 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

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

Respectfully Submitted,
Lindabury, McCormick, Estabrook & Cooper, P.C.
Attorneys for Third-Party Defendant The Valspar Corporation



Fredi L. Pearlmutter, Esq.

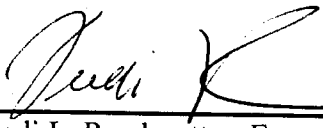
Dated: November 30, 2009

CERTIFICATION

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) Because 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 7, 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.

Respectfully Submitted,
Lindabury, McCormick, Estabrook & Cooper, P.C.
Attorneys for Third-Party Defendant The Valspar Corporation



Fredi L. Pearlmutter, Esq.

Dated: November 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the within Answer, Affirmative Defenses, and R. 4:5-1 Certification prepared on behalf of The Valspar Corporation was served upon all counsel of record as set forth on the attached service lists by timely posting the above-referenced pleadings on the Electronic Case Management Platform NJDEP, et al. v. OCC, et al.; Docket No. ESX-L-9868-05 (PASR) website, or by U.S. Mail to those counsel of record who have not consented to electronic service.

Respectfully Submitted,

Lindabury, McCormick, Estabrook & Cooper, P.C.
Attorneys for Third-Party Defendant The Valspar Corporation



Fredi L. Pearlmutter, Esq.

Dated: November 30, 2009

Third-Party Defendants for Regular Service as of November 9, 2009

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
Celanese Ltd.	B	Anthony J. Reitano Herold Law, PA 25 Independence Blvd. Warren, NJ 07059-6747 908.647.1022 908.647.7721 - fax areitano@heroldlaw.com
City of Clifton	A	Thomas M. Egan, Esq. Assistant Municipal Attorney City of Clifton Law Department 900 Clifton Avenue Clifton, NJ 07013 973.470.5817 973.470.5254 - fax tegan@cliftonnj.org
City of Orange	A	John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 - fax jmcgovern@ci.orange.nj.us
Clean Earth of North Jersey, Inc.	B	Eric S. Aronson Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932 973.360.7900 973.301.8410 - fax aronson@gtlaw.com
DiLorenzo Properties Company, L.P.	B	Steven R. Gray Water, McPherson, McNeill, P.C. 300 Lighting Way P.O. Box 1560 Secaucus, NJ 07096 201.863.4400 201.863.2866 - fax sgray@lawwmm.com
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com

Third-Party Defendants for Regular Service as of November 9, 2009

Township of Cranford	A	Carl R. Woodward, III, Esq. cwoodward@carellabyrne.com Brian H. Fenlon, Esq. bfenlon@carellabyrne.com Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein 5 Becker Farm Road Roseland, NJ 07068 973.994.1700
Vitusa Corp.	B	Gerald Poss Gerald Poss, P.A. & Associates 58 Vose Avenue South Orange, NJ 07079-2026 973.762.6400 gpossinc@aol.com

Third-Party Defendants for Electronic Service as of November 17, 2009

NAMED PARTY	THIRD-PARTY COMPLAINT
3M Company	B
ACH Food Companies, Inc.	B
AGC Chemicals Americas, Inc.	B
Akzo Nobel Coatings, Inc.	B
Alden-Leeds, Inc.	B
Alliance Chemical, Inc.	B
Alumax Mill Products, Inc.	B
American Cyanamid	D
Apexical, Inc.	B
APOLAN International, Inc.	B
Arkema, Inc.	B
Ashland Inc.	B
Ashland International Holdings, Inc.	B
Associated Auto Body & Trucks, Inc.	B
Atlas Refinery, Inc.	B
BASF Catalysts LLC	B
BASF Construction Chemicals Inc.	B
BASF Corporation	B
Bayer Corporation	B

Third-Party Defendants for Electronic Service as of November 17, 2009

Bayonne Industries, Inc.	D
Bayonne Municipal Utilities Authority	A
Beazer East, Inc.	B
Belleville Industrial Center	B
Benjamin Moore & Company	B
Berol Corporation	B
B-Line Trucking, Inc.	B
Borden & Remington Corp.	B
Borough of Carteret	A
Borough of East Rutherford	A
Borough of Elmwood Park	A
Borough of Fair Lawn	A
Borough of Fanwood	A
Borough of Franklin Lakes	A
Borough of Garwood	A
Borough of Glen Rock	A
Borough of Haledon	A
Borough of Hawthorne	A
Borough of Lodi	A
Borough of Mountainside	A

Third-Party Defendants for Electronic Service as of November 17, 2009

Borough of North Arlington	A
Borough of North Caldwell	A
Borough of Prospect Park	A
Borough of Roselle Park	A
Borough of Rutherford	A
Borough of Wallington	A
Borough of West Paterson	A
Borough of Wood-Ridge	A
BP Marine Americas, Inc.	D
C.S. Osborne & Co.	B
CasChem, Inc.	B
CBS Corporation	B
Chemical Compounds Inc.	B
Chemical Waste Management, Inc.	D
Ciba Corporation	B
City of East Orange	A
City of Elizabeth	A
City of Garfield	A
City of Hackensack	A
City of Jersey City	A

Third-Party Defendants for Electronic Service as of November 17, 2009

City of Linden	A
City of Newark	A
City of Passaic	A
City of Rahway	A
City of Summit	A
Coltec Industries Inc.	B
Como Textile Prints, Inc.	B
ConAgra Panama, Inc.	B
Conopco, Inc.	B
Consolidated Rail Corporation	B
Cosan Chemical Corporation	B
Covanta Essex Company	B
Croda, Inc.	B
Curtiss-Wright Corporation	B
CWC Industries, Inc.	B
Cytec Industries, Inc.	C
Darling International, Inc.	B
Davanne Realty Co.	B
Deleet Merchandising Corporation	B
Dow Chemical Co.	D

Third-Party Defendants for Electronic Service as of November 17, 2009

Duraport Realty One LLC	D
Duraport Realty Two LLC	D
E.I. du Pont de Nemours and Company	B
Eastman Kodak Company	B
Eden Wood Corporation	B
Elan Chemical Company, Inc.	B
EM Sergeant Pulp & Chemical Co.	B
Emerald Hilton Davis, LLC	B
EPEC Polymers, Inc.	D
Essex Chemical Corporation	B
Exxon Mobil	B
F.E.R. Plating, Inc.	B
Fine Organics Corporation	B
Fiske Brothers Refining Company	B
Flexon Industries Corporation	B
Flint Group Incorporated	B
Fort James Corporation	B
Franklin-Burlington Plastics, Inc.	B
G. J. Chemical Co.	B
Garfield Molding Company, Inc.	B

Third-Party Defendants for Electronic Service as of November 17, 2009

GATX Terminals Corp.	D
General Cable Industries, Inc.	B
General Dynamics Corporation	B
General Electric Company	B
Gentek Holding LLC	B
Getty Properties Corp.	C
Givaudan Fragrances Corporation	B
Goodrich Corporation	D
Goody Products, Inc.	B
Gordon Terminal Service Co. of N.J., Inc.	B
Hartz Mountain Corporation	B
Hess Corporation	D
Hexcel Corporation	B
Hexion Specialty Chemicals, Inc.	B
Hoffmann-La Roche Inc.	B
Honeywell International Inc.	B
Houghton International Inc.	B
Hudson Tool & Die Company, Inc.	B
ICI Americas Inc.	B
IMTT-Bayonne	D

Third-Party Defendants for Electronic Service as of November 17, 2009

Innospec Active Chemicals LLC	B
INX International Ink Co.	B
ISP Chemicals Inc.	B
ITT Corporation	B
Jersey City Municipal Utilities Authority	A
Joint Meeting of Essex and Union Counties	A
Kao Brands Company	B
Kinder Morgan Energy Partners, L.P.	D
Koehler-Bright Star, Inc.	B
Legacy Vulcan Corp.	C
Linde, Inc.	B
Linden Roselle Sewerage Authority	A
Lucent Technologies, Inc.	B
Mace Adhesives & Coatings Company, Inc.	B
Mallinckrodt Inc.	B
McKesson Corporation	D
McKesson Envirosystems	D
Merck & Co., Inc.	B
Metal Management Northeast, Inc.	B
MI Holdings, Inc.	B

Third-Party Defendants for Electronic Service as of November 17, 2009

Miller Environmental Group, Inc.	B
Morton International, Inc.	B
Nappwood Land Corporation	B
National Fuel Oil, Inc.	B
National-Standard, LLC	B
Nestle U.S.A., Inc.	B
New Jersey Transit Corporation	B
News America, Inc.	B
News Publishing Australia Limited	B
NL Industries, Inc.	B
Norpak Corporation	B
Novelis Corporation	B
Orange and Rockland Utilities, Inc.	B
Otis Elevator Company	B
Passaic Valley Sewerage Commissioners	A
Pfizer Inc.	B
Pharmacia Corporation	B
Phelps Dodge Industries, Inc.	B
Pitt-Consol Chemical Company	B
Pivotal Utility Holdings, Inc.	B

Third-Party Defendants for Electronic Service as of November 17, 2009

Port Authority of New York and New Jersey	A
Power Test Realty Co., L.P.	C
PPG Industries, Inc.	B
Praxair, Inc.	B
Precision Manufacturing Group, LLC	B
Prentiss Incorporated	B
Procter & Gamble Manufacturing Company	B
Prysmian Communications Cables and Systems USA LLC	B
PSEG Fossil LLC	B
Public Service Electric and Gas Company	B
Purdue Pharma Technologies, Inc.	B
Quala Systems, Inc.	B
Quality Carriers, Inc.	B
R.T. Vanderbilt Company, Inc.	B
Rahway Valley Sewerage Authority	A
Reckitt Benckiser, Inc.	B
Reichhold, Inc.	B
Revere Smelting & Refining Corporation	B
Rexam Beverage Can Company	B
Royce Associates, A Limited Partnership	B

Third-Party Defendants for Electronic Service as of November 17, 2009

Rutherford Chemicals LLC	B
S&A Realty Associates, Inc.	B
Safety-Kleen Corporation	D
Schering Corporation	B
Sequa Corporation	B
Seton Company	B
Shulton, Incorporated, USA	D
Siemens Water Technologies Corp.	B
Singer Sewing Company	B
Spectraserv, Inc.	B
STWB, Inc.	B
Sun Chemical Corporation	B
Sun Oil Co.	D
Sun Pipeline Co.	D
Sun Refining and Marketing Co.	D
Superior MPM LLC	D
Tate & Lyle Ingredients Americas, Inc.	B
Teva Pharmaceuticals USA, Inc.	B
Teval Corp.	B
Textron Inc.	B

Third-Party Defendants for Electronic Service as of November 17, 2009

The Dial Corporation	B
The Dundee Water Power and Land Company	B
The New Jersey Department of Agriculture	A
The New Jersey Department of Transportation	A
The Newark Group, Inc.	B
The Okonite Company, Inc.	B
The Sherwin-Williams Company	B
The Stanley Works	B
The State of New Jersey	A
The Valspar Corporation	B
Thirty-Three Queen Realty Inc.	B
Thomas & Betts Corp.	D
Three County Volkswagen Corporation	B
Tiffany & Co.	B
Town of Belleville	A
Town of Kearny	A
Town of Nutley	A
Town of Westfield	A
Town of Woodbridge	A
Township of Bloomfield	A

Third-Party Defendants for Electronic Service as of November 17, 2009

Township of Cedar Grove	A
Township of Clark	A
Township of Little Falls	A
Township of Livingston	A
Township of Lyndhurst	A
Township of Maplewood	A
Township of Millburn	A
Township of Montclair	A
Township of Saddle Brook	A
Township of Scotch Plains	A
Township of South Hackensack	A
Township of South Orange Village	A
Township of West Orange	A
Township of Wyckoff	A
TRMI-H LLC	C
Troy Chemical Corporation, Inc.	B
Universal Oil Products Company	B
Velsicol Chemical Corporation	B
Veolia ES Technical Solutions, L.L.C.	B
Vertellus Specialties Inc.	B

Third-Party Defendants for Electronic Service as of November 17, 2009

Village of Ridgewood	A
W.A.S. Terminals Corporation	B
W.A.S. Terminals, Inc.	B
Waste Management, Inc.	D
Whittaker Corporation	B
Wiggins Plastics, Inc.	B
Wyeth	D
Zeneca Inc.	B