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Attorneys for Third-Party Defendant,
Vitsua Corp.

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

Plaintiffs,

vs.

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

Defendants.

MAXUS ENGERGY 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,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY
DOCKET NO. L-9869-05 (PASR)

CIVIL ACTION

**VITUSA CORP.'S ANSWER TO
THIRD-PARTY COMPLAINT "B"**

AGC CHEMICALS AMERICANS, INC.,
ALDEN-LEEDS, INC.,
ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERICAN INKS AND COATINGS
CORPORATION,
APEXICAL, INC.,
APLOCAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INCE,
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 & REMINTON 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,
GLINT 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,
KEOHLER-BRIGHT STAR, INC.,
LINDE, INC.
LUCENT TECHNOLOGIES, INC.,
MACE ADHESIVES & COATINGS COMPANY,
INC.
MALLINCKRODT INC.,
MERCK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
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.,
PRECEISION MANUFACTURING GROUP, INC.,
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,
T.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.,
SINGER SWEING COMPANY,
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYSLE INGREDIENTS AMERICA, INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND
COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS,
THE VALSPAR CORPORATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN
CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,

UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VITUSA CORP.,
VULCAN MATERIALS COMPANY,
W.A.S. TERMINALS CORPORATION,
W.A.S. TERMINALS, INC.,
W.C. INDUSTRIES,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
ZENECA INC.,

Third-Party Defendants.

**VITUSA CORP.'S ANSWER TO
THIRD-PARTY COMPLAINT "B"**

Third-Party Defendant Vitusa Corp. ("Vitusa"), 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. Vitsua is without knowledge or information sufficient to form a belief as to the truth of 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)

1-15. Vitusa responds that no answer is required pursuant to CMO V.

THE PARTIES

Third-Party Plaintiffs
(Paragraphs 16 through 18)

16-18. Vitusa responds that no answer is required pursuant to CMO V.

Third-Party Defendants
(Paragraphs 19 through 210)

19-202. To the extent that the allegations in Paragraphs 19 through 99 relate to other parties, Vitusa responds that no answer is required pursuant to CMO V. To the extent these allegations allege facts against Vitusa, such factual allegations are denied.

203. Vitusa admits the allegations contained in paragraph 203 of Third-Party Complaint "B."

204-209. To the extent that the allegations in Paragraphs 101 through 209 relate to other parties, Vitusa responds that no answer is required pursuant to CMO V. To the extent these allegations allege facts against Vitusa, such factual allegations are denied.

210. Paragraph 210 states conclusions of law to which no response is required. To the extent this paragraph alleges facts against Vitusa, such factual allegations are denied.

DEFINITIONS
(Paragraphs 211 through 236)

211-236. Paragraphs 211 through 236 state definitions to which no response is required pursuant to CMO V. To the extent these allegations allege facts against Vitusa, such factual allegations are denied.

FACTUAL ALLEGATIONS
(Paragraphs 237 through 1629)

237- 1629. To the extent that the allegations in Paragraphs 237 through 1629 relate to other parties, no answer by Vitusa is required pursuant to CMO V. To the extent these allegations allege facts against Vitusa, such factual allegations are denied.

Industrial Petrochemicals Site

1630. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1630 of Third-Party Complaint B.

1631. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1631 of Third-Party Complaint B.

1632. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1632 of Third-Party Complaint B.

1633. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1633 of Third-Party Complaint B.

1634. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1634 of Third-Party Complaint B.

1635. Vitusa states that by agreement dated June 27, 1983, it purchased the outstanding shares of Industrial Petrochemicals and denies the remaining allegations asserted in Paragraph 1635 of Third-Party Complaint B.

1636. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph in Paragraph 1636 of Third-Party Complaint B.

1637. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1637 of Third-Party Complaint B.

1638. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1638 of Third-Party Complaint B.

1639. Vitusa states that above ground storage tanks were located near the northern the property boundary, but is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in the remainder of the allegations in Paragraph 1639 of Third-Party Complaint B, including any time period before 1983 and after 1986.

1640. Vitusa admits that the property is located adjacent to the Passaic River but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1640 of Third-Party Complaint B.

1641. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1641 of Third-Party Complaint B.

1642. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1642 of Third-Party Complaint B.

1643. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1643 of Third-Party Complaint B.

1644. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1644 of Third-Party Complaint B.

1645. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1645 of Third-Party Complaint B.

1646. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1646 of Third-Party Complaint B.

1647. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1647 of Third-Party Complaint B.

1648. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1648 of Third-Party Complaint B.

1649. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1649 of Third-Party Complaint B.

1650. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1650 of Third-Party Complaint B.

1651. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1651 of Third-Party Complaint B.

1652. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1652 of Third-Party Complaint B

1653. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1653 of Third-Party Complaint B.

1654. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1654 of Third-Party Complaint B.

1655. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1655 of Third-Party Complaint B.

1656. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1656 of Third-Party Complaint B.

1657. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1657 of Third-Party Complaint B.

1658. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1658 of Third-Party Complaint B.

1659. Vitusa denies the allegations in Paragraph 1659 of Third Party Complaint B.

1660-3445. To the extent that the allegations in Paragraphs 1660 through 3445 relate to other parties, Vitusa responds that no answer is required pursuant to CMO V. To the extent these allegations allege facts against Vitusa, such factual allegations are denied.

FIRST COUNT

New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a) (Paragraphs 3446 through 3451)

3446. Vitusa incorporates by reference as if fully set forth herein its responses in Paragraphs 1 through 3445 above.

3447. Paragraph 3447 states conclusions of law to which no response is required. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3447 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3447 alleges facts against Vitusa, such factual allegations are denied.

3448. Paragraph 3448 states conclusions of law to which no response is required. To the extent Paragraph 3448 alleges facts against Vitusa, such factual allegations are denied.

3449. Paragraph 3449 states conclusions of law to which no response is required. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3449 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3449 alleges facts against Vitusa, such factual allegations are denied.

3450. Paragraph 3450 states conclusions of law to which no response is required. To the extent that a response is required, Vitusa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3450.

3451. Paragraph 3451 states conclusions of law to which no response is required. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3451 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3451 alleges facts against Vitusa, such factual allegations are denied.

SECOND COUNT
Statutory Contribution

3452. Vitusa incorporates by reference as if fully set forth herein its responses in Paragraphs 1 through 3451 above as fully set forth above.

3453. Paragraph 3453 states conclusions of law to which no response is required. Vitusa is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3453 concerning the Third-Party Defendants. Finally, to the extent Paragraph 3453 alleges facts against Vitusa, such factual allegations are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

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

Second Affirmative Defense

Vitusa is not a “discharger” nor a person “in any way responsible” for a discharge under the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the “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 do not have a viable Spill Act claim against Vitusa because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act nor have they incurred cleanup and removal costs that have been approved by the New Jersey Department of Environmental Protection.

Fifth Affirmative Defense

Third-Party Plaintiffs’ claims against Vitusa are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrine of laches.

Sixth Affirmative Defense

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

Seventh 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.

Eighth 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 R. 4:26-1 of the New Jersey Court Rules.

Ninth Affirmative Defense

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

Tenth Affirmative Defense

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

Eleventh 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 by law, including applicable environmental laws.

Twelfth Affirmative Defense

At all relevant times, Vitusa 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.

Thirteenth 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.

Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

Vitusa cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based upon actions or inactions of Vitusa that arise

out of conduct lawfully undertaken in compliance with permits and 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, rules, regulations, orders, ordinances, directives and common law, and other requirements of foreign, federal, state, and local government entities.

Sixteenth Affirmative Defense

The Plaintiffs have released Vitusa for all or a portion of the damages sought in its Amended Complaint. Consequently, Third-Party Plaintiffs are barred from pursuing claims that are derivative to the released claims, including the claims asserted in the Third-Party Complaint.

Seventeenth 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.

Eighteenth 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.

Nineteenth Affirmative Defense

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

Twentieth Affirmative Defense

Third-Party Plaintiffs' claims are barred, in whole or in part, by Third Party Plaintiffs' failure to comply with 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.

Twenty-First 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.

Twenty-Second 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 cannot be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules.

Twenty-Third 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.

Twenty-Fourth Affirmative Defense

Vitusa 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 law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Vitusa exercised no control and for whose conduct Vitusa was not responsible including, without limitation, unpermitted discharges, storm events and other discharges from publicly owned treatment works or sewer systems.

Twenty-Fifth 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 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 Vitusa, 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.

Twenty-Sixth Affirmative Defense

Although Vitusa denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Vitusa 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 also be liable to Third-Party Plaintiffs.

Twenty-Seventh Affirmative Defense

The amount of damages awarded to Third-Party Defendants, if any, should be reduced by any amounts recovered from any other source. See N.J.S.A. 2A:15-97.

Twenty-Eighth Affirmative Defense

Third-Party Plaintiffs' claims are barred to the extent that the conduct of Vitusa alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, and/or contribution protection in a settlement agreement with the State of New Jersey.

Twenty-Ninth Affirmative Defense

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

Thirtieth Affirmative Defense

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

Thirty-First Affirmative Defense

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

Thirty-Second Affirmative Defense

Vitusa'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 other parties.

Thirty-Third Affirmative Defense

Third-Party Plaintiffs cannot assert contribution claims against Vitusa because the discharges for which the Plaintiffs are seeking relief are different from the

discharges for which Vitusa is alleged to be responsible for in the Third-Party Complaint.

Thirty-Fourth Affirmative Defense

Third-Party Plaintiff cannot seek contribution under the Joint Tortfeasors Contribution Law because Vitusa is not liable for “the same injury” caused by Third-Party Plaintiffs’ discharges and do not share a common liability to the State of New Jersey. N.J.A.C. 2A:53A-1 et seq.

Thirty-Fifth Affirmative Defense

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

Thirty-Sixth Affirmative Defense

Third-Party Plaintiffs’ claims are barred, in whole or in part, because Vitusa has resolved its liability to Plaintiffs for any impairment or damage to natural resources as a result of discharges alleged in the Third-Party Complaint.

Thirty-Seventh 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 Vitusa’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 Vitusa, thereby exposing Vitusa to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

Thirty-Eighty Affirmative Defense

To the extent Vitusa 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 Vitusa, 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.

Thirty-Ninth Affirmative Defense

Without admitting liability, Vitusa alleges that if it is found to be responsible for discharges or activities alleged in the Third-Party Complaint, such discharges or activities were *de minimis* and not the cause of any damages sought by Plaintiffs.

Fortieth Affirmative Defense

Vitusa reserves the right to assert such other affirmative defenses as may become known to it.

COUNTERCLAIMS, CROSS-CLAIMS AND THIRD/FOURTH PARTY CLAIMS

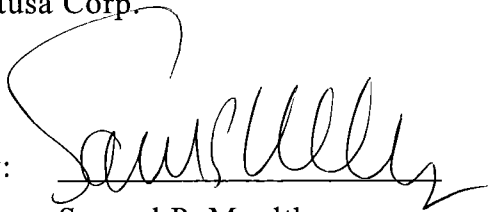
No such claims are permitted to be asserted at this time and are expressly reserved pursuant to CMO V.

WHEREFORE, Third-Party Defendant Vitusa Utilities, Inc. respectfully requests that the Court enter an Order dismissing the Third-Party Complaint "B" with prejudice, and awarding costs, attorneys fees and any other relief the Court deems just and proper.

Respectfully submitted,

RIKER, DANZIG, SCHERER
HYLAND & PERRETTI LLP
Attorneys for Third-Party Defendant
Vitusa Corp.

By:



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One Speedwell Avenue
Morristown, New Jersey 07962
(973) 538-0800

Dated: March 8, 2010

CERTIFICATION PURSUANT TO R. 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 the undersigned states that there are other parties that may have discharged hazardous substances into the Newark Bay Complex contributing to the harm alleged by the Third-Party Plaintiffs. O'Melveny and Myers has filed with the Special Master, a list of over 1,000 parties who, according to the New Jersey Department of Environmental Protection, discharged hazardous substances into the Newark Bay Complex. Subsequent investigation/discovery will determine which, if any of those parties or others not yet identified, should be joined in this case.

RULE 4:6 CERTIFICATION

The undersigned hereby certifies that this Answer to the Third-Party Complaint is being served within the time permitted by Case Management Order V.

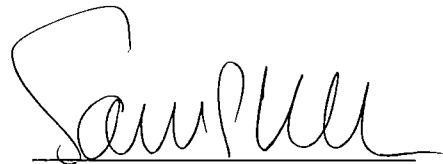
JURY DEMAND

Third-Party Defendant Vitusa Corp. hereby demands a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Samuel P. Moulthrop is hereby designated as trial counsel for Third-Party Defendant Vitusa Corp. in this matter.

By: _____

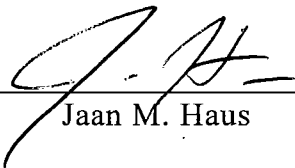


Samuel P. Moulthrop
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962
(973) 538-0800

Dated: March 8, 2010

CERTIFICATE OF SERVICE

I certify that Vitusa Corp.'s Answer to Third-Party Complaint "B" was filed with the Clerk of Court, Superior Court of New Jersey, Essex County, by hand delivery and was served electronically on all parties which have consented to electronic service by posting on www.sfile.com/njdepvocc on March 8, 2010. All counsel of record for parties that have not consented to electronic service, as set forth on the attached counsel list, were served on March 8, 2010 via first class, regular mail.



Jaan M. Haus

Dated: March 8, 2010

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

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
Borough of Hasbrouck Heights	A	Richard J. Dewland Coffey & Associates 465 South Steet Morristown, NJ 07960 973.539.4500 rjd@coffeylaw.com
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
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
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
Township of Irvington	A	Gustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 - fax