

BLANK ROME LLP
A Pennsylvania LLP
STEPHEN M. ORLOFSKY
New Jersey Resident Partner
BENJAMIN G. STONELAKE, JR.
SCOTT E. COBURN
RACHEL S. WOLFE
301 Carnegie Center, 3rd Floor
Princeton, NJ 08540
(609) 750-7700

Attorneys for Third-Party Defendants
General Cable Industries, Inc. and Whittaker 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.,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**WHITTAKER CORPORATION'S
ANSWER TO THIRD-PARTY
COMPLAINT "B"**

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

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

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

WHITTAKER CORPORATION'S ANSWER TO THIRD PARTY COMPLAINT "B"

Third Party Defendant Whittaker Corporation ("Whittaker"), 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" filed by Defendants/Third Party Plaintiffs Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") (collectively, "Defendants/Third Party Plaintiffs"), as follows:

GENERALLY

1. Whittaker denies each and every allegation contained in Third Party Complaint "B" that is not otherwise addressed herein, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in the Third Party Complaint "B".

AS TO PROCEDURAL BACKGROUND
(Paragraphs 1 through 15)

2. Whittaker 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.
5. The allegations of paragraph 207 are admitted.
6. The allegations of paragraph 210 state a legal conclusion for which no response is required.

AS TO THE DEFINITIONS
(Paragraphs 211 through 236)

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

AS TO THE FACTUAL ALLEGATIONS
(Paragraphs 237 through 3445)

8. The referenced pleadings speak for themselves. To the extent that the allegations in paragraphs 237 through 3445 relate to other parties, no response is required pursuant to CMO V.

9. Admitted in part; denied in part. Whittaker admits the allegations of paragraph 3114 only to the extent that it received a letter from the Environmental Protection Agency ("EPA") dated July 6, 2001 ("July 6, 2001 Letter"). The July 6, 2001 letter is a document that speaks for itself. Therefore, any characterization of the July 6, 2001 letter is expressly denied. The remaining allegations contained in this paragraph are denied.

10. Admitted in part; denied in part. Whittaker admits the allegations of paragraph 3117 only to the extent that it entered into an Agreement for Recovery of Past Response Costs with EPA. The Agreement for Recovery of Past Response Costs is a document that speaks for

itself. Therefore, any characterization of the Agreement for Recovery of Past Response Costs is expressly denied. The remaining allegations contained in this paragraph are denied.

11. The allegations in paragraph 3118 are denied.

12. Admitted in part; denied in part. Whittaker admits the allegations of paragraph 3215 only to the extent that it owned and/or operated a facility located at 40 Burnett Road, Chicopee, MA ("Chicopee Facility") from January 10, 1979, until March 30, 1990, and a facility located at 1470 Jersey Avenue, North Brunswick, NJ ("North Brunswick Facility"). The remaining allegations in this paragraph are denied.

13. Admitted in part; denied in part. Whittaker admits the allegations of paragraph 3216 only to the extent that on or about February 2, 1996, Whittaker sent a letter to EPA ("February 2, 1996 Letter"). The February 2, 1996 Letter is a document that speaks for itself. Therefore, any characterization of the February 2, 1996 Letter is expressly denied. The remaining allegations contained in this paragraph are denied.

14. Admitted in part; denied in part. Whittaker admits the allegations of paragraph 3217 only to the extent that EPA sent the July 6, 2001 Letter to Whittaker. The July 6, 2001 Letter is a document that speaks for itself. Therefore, any characterization of the July 6, 2001 letter is expressly denied. The remaining allegations contained in this paragraph are denied.

15. The allegations of paragraph 3218 are denied.

16. Admitted in part; denied in part. Whittaker admits the allegations of paragraph 3219 only to the extent that it executed the Agreement for Recovery of Past Response Costs on July 27, 2004. The Agreement for Recovery of Past Response Costs is a document which speaks for itself. Therefore, any characterization of the Agreement for Recovery of Past Response Costs is expressly denied. The remaining allegations contained in this paragraph are denied.

17. Denied. The allegations contained in paragraph 3220 constitute legal conclusions for which no response is required. To the extent a response is required, the allegations in paragraph 3220 are denied.

AS TO THE FIRST COUNT

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

18. Whittaker incorporates by reference as if fully set forth herein its responses and denials as asserted in paragraphs 1 - 17 herein.

19. Denied. The allegations of paragraph 3447 are conclusions of law to which no responsive pleading is required. To the extent a further response is required, Whittaker is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3447 that relate to other parties. To the extent that any allegations in paragraph 3447 relate to Whittaker, these allegations are denied.

20. Denied. The allegations of paragraph 3448 are conclusions of law to which no responsive pleading is required. To the extent a further response is required, Whittaker is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3448 that relate to other parties. To the extent that any allegations in paragraph 3448 relate to Whittaker, these allegations are denied.

21. Denied. The allegations of paragraph 3449 are conclusions of law to which no responsive pleading is required. To the extent a further response is required, Whittaker is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3449 that relate to other parties. To the extent that any allegations in paragraph 3449 relate to Whittaker, these allegations are denied.

22. Denied. The allegations of paragraph 3450 are conclusions of law to which no responsive pleading is required. To the extent a further response is required, Whittaker is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3450, and therefore denies the same.

23. Denied. The allegations of paragraph 3451 are conclusions of law to which no responsive pleading is required. To the extent a further response is required, Whittaker is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3451 that relate to other parties. To the extent that any allegations in paragraph 3451 relate to Whittaker, these allegations are denied.

AS TO THE SECOND COUNT
(Statutory Contribution)
(Paragraphs 3452 – 3453)

24. Whittaker incorporates by reference as if fully set forth herein its responses and denials as asserted in paragraphs 1 – 23 herein.

25. Denied. The allegations of paragraph 3453 are conclusions of law to which no responsive pleading is required. To the extent a further response is required, Whittaker is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3453, and therefore denies the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

26. 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

27. Whittaker 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

28. 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

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

FIFTH AFFIRMATIVE DEFENSE

30. Third-Party Plaintiffs have no right of contribution against Whittaker under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

32. 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 Whittaker under that statute.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

34. 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

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

38. Whittaker cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Whittaker 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

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

41. 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

42. 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

43. At all relevant times, Whittaker 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

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

45. 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

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs' claims against Whittaker 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

48. 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

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

51. 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

52. 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

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

55. Whittaker did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

56. 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

57. 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

58. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New

Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the “Newark Bay Complex,” as defined in Plaintiffs’ Second Amended Complaint.

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

59. 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

60. Whittaker 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 Whittaker exercised no control and for whose conduct Whittaker was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

61. 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 Whittaker, 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

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

63. 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

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

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

FORTY-FIRST AFFIRMATIVE DEFENSE

66. Any discharge that allegedly originated from Whittaker 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 Whittaker cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

67. 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

68. 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

69. Third-Party Plaintiffs' claims are barred due to its own conduct in unilaterally, and without notice to Whittaker, 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

70. Whittaker'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

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

FORTY-SEVENTH AFFIRMATIVE DEFENSE

72. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Whittaker 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.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

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

FORTY-NINTH AFFIRMATIVE DEFENSE

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

FIFTIETH AFFIRMATIVE DEFENSE

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

- A. Any release or covenant not to sue granted by Plaintiffs to Whittaker;
- B. Any settlement or other compromise between Plaintiffs and Whittaker;

- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Whittaker;
- 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 Whittaker, 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 Whittaker, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY FIRST AFFIRMATIVE DEFENSE

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

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

FIFTY THIRD AFFIRMATIVE DEFENSE

78. To the extent Whittaker 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 Whittaker, 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

79. Without admitting liability, Whittaker 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

80. Whittaker 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 Whittaker.

FIFTY SIXTH AFFIRMATIVE DEFENSE

81. Whittaker reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

FIFTY SEVENTH AFFIRMATIVE DEFENSE

82. The Third-Party Complaint is barred in whole or in part as it fails to state a claim against Third-Party Defendant upon which relief can be granted, pursuant to R. 4:6-2(e) of the New Jersey Court Rules.

FIFTY EIGHTH AFFIRMATIVE DEFENSE

83. Any contamination attributable to Whittaker and the response costs associated therewith are divisible from those attributable to the other Third Party Defendants and/or other parties.

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

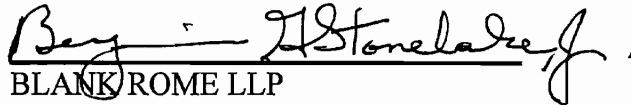
84. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

DESIGNATION OF TRIAL COUNSEL

85. In accordance with Rule 4:25-4 you are hereby notified that Stephen M. Orlofsky is assigned to try this case.

WHEREFORE, Third Party Defendant Whittaker 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.

Respectfully submitted,



BLANK/ROME LLP
A Pennsylvania LLP
STEPHEN M. ORLOFSKY
New Jersey Resident Partner
BENJAMIN G. STONELAKE, JR.
SCOTT E. COBURN
RACHEL S. WOLFE
301 Carnegie Center, 3rd Floor
Princeton, NJ 08540
(609) 750-7700

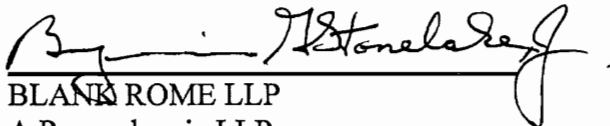
Attorneys for Third-Party Defendants
General Cable Industries, Inc. and
Whittaker Corporation

Dated: November 23, 2009

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

Undersigned counsel hereby certifies, in accordance with Rule 4:5-1(b)(2), that: (a) 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.

Respectfully submitted,



BLANK ROME LLP
A Pennsylvania LLP
STEPHEN M. ORLOFSKY
New Jersey Resident Partner
BENJAMIN G. STONELAKE, JR.
SCOTT E. COBURN
RACHEL S. WOLFE
301 Carnegie Center, 3rd Floor
Princeton, NJ 08540
(609) 750-7700

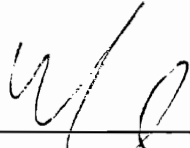
Attorneys for Third-Party Defendants
General Cable Industries, Inc. and
Whittaker Corporation

Dated: November 23, 2009

CERTIFICATION OF SERVICE

I, Rachel S. Wolfe, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served Whittaker Corporation's Answer to Third-Party Complaint "B" electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via overnight mail.

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



Rachel S. Wolfe
Attorney for Third-Party Defendant,
Whittaker Corporation

Dated, November 23, 2009

THIRD-PARTY DEFENDANTS SERVICE LIST

Anthony J. Reitano, Esquire
Herold Law, PA
25 Independence Blvd.
Warren, NJ 07059-6747
***Attorney for Third-Party Defendant
Celanese Ltd.***

John P. McGovern, Esquire
Assistant City Attorney
City of Orange Township
29 North Day Street
Orange, NJ 07050
***Attorney for Third-Party Defendant
City of Orange***

Steven R. Gray, Esquire
Water, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096
***Attorney for Third-Party Defendant
DiLorenzo Properties Company, L.P***

Carl R. Woodward, III, Esquire
Brian H. Fenlon, Esquire
Carella, Byrne, Bain, Gifillan, Cecchi,
Stewart & Olstein
5 Becker Farm Road
Roseland, NJ 07068
***Attorney for Third-Party Defendant
Township of Cranford***

Thomas M. Egan, Esquire
Assistant Municipal Attorney
City of Clifton Law Department
900 Clifton Avenue
Clifton, NJ 07013
***Attorney for Third-Party Defendant
City of Clifton***

Eric S. Aronson, Esquire
Greenberg Traurig, LLP
200 Park Avenue
Florham Park, NJ 07932
***Attorney for Third-Party Defendant
Clean Earth of North Jersey, Inc.***

John A. Daniels, Esquire
Daniels & Daniels LLC
6812 Park Avenue
Guttenberg, NJ 07093
***Attorney for Third-Party Defendant
Passaic Pioneers Properties Company***

Gerald Poss
Gerald Poss, P.A. & Associates
58 Vose Avenue
South Orange, NJ 07079-2026
***Attorney for Third-Party Defendant
Vitusa Corp.***