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ATTORNEYS FOR THIRD PARTY DEFENDANT ZENECA, INC.

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

Plaintiffs,

vs.

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

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

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

**ZENECA, INC.'S ANSWER 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 TECINOLOGIES, 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

ZENECA, INC.'S ANSWER TO THIRD-PARTY COMPLAINT "B"

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

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

2. ZENECA 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. ZENECA admits the allegation of Paragraph 209 of the Third-Party Complaint “B” that it is incorporated in the State of Delaware and that its principal place of business is located at 1800 Concord Pike, Wilmington, Delaware 19850.

6. The allegations in Paragraph 210 state a legal conclusion as to which no response is required.

AS TO DEFINITIONS

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

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

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

9. ZENECA admits the allegations in paragraph 3111 of the Third-Party Complaint “B” that Bayonne Barrel & Drum, Co. filed for bankruptcy and is no longer in operation.

10. ZENECA admits the allegations in paragraph 3112 of the Third-Party Complaint “B” and further states that the 1996 AOC speaks for itself.

11. ZENECA admits that the General Notice Letters referenced in paragraph 3113 of the Third-Party Complaint “B” speak for themselves and deny that receipt of such a letter creates any liability and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

12. ZENECA admits that the General Notice Letters referenced in paragraph 3114 of the Third-Party Complaint “B” speak for themselves and deny that receipt of such a letter

creates any liability and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

13. ZENECA admits that the Site Participation Agreement referenced in paragraph 3115 of the Third-Party Complaint “B” speaks for itself and denies any characterization of the terms of that Agreement that are inconsistent with the Agreement itself. ZENECA denies that such Agreement creates any liability for any cause of action herein and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

14. ZENECA admits that the Administrative Order on Consent for a Removal Action referenced in paragraph 3116 of the Third-Party Complaint “B” speaks for itself and denies any characterization of the terms of that Order that are inconsistent with the Order itself. ZENECA denies that consent to the Order creates any liability for any cause of action herein and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

15. ZENECA admits that the Agreement for Recovery of Past Response Costs referenced in paragraph 3117 of the Third-Party Complaint “B” speaks for itself and denies any characterization of the terms of that Agreement that are inconsistent with the Agreement itself. ZENECA denies that the Agreement creates any liability for any cause of action herein and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

16. ZENECA denies the allegations in paragraph 3118 of the Third-Party Complaint “B”.

17. ZENECA admits the allegations in paragraph 3221 of the Third-Party Complaint “B”.

18. ZENECA denies the allegations in paragraph 3222 of the Third-Party Complaint “B” to the extent it alleges that ZENECA operated as Converter’s Ink. ZENECA admits that it is the successor to Converter’s Ink.

19. ZENECA admits the allegations in paragraph 3223 of the Third-Party Complaint “B” to the extent that it operated at a facility at 1301 South Park Avenue in Linden, New Jersey. ZENECA denies as vague the allegation that Converter’s Ink “generated” Hazardous Substances and/or solid or hazardous wastes at the Linden facility to the extent the allegation implies that any such Hazardous Substance was released or otherwise disposed of in a manner that would create any liability for any cause of action herein.

20. ZENECA admits the allegations in paragraph 3224 of the Third-Party Complaint “B” that Converter’s Ink sent drums from its Linden facility to Bayonne Barrel and Drum Co. for reconditioning. ZENECA denies the remainder of the allegations in paragraph 3224 of the Third-Party Complaint “B”.

21. ZENECA admits that the letter referenced in paragraph 3225 speaks for itself and denies any characterization of the terms of that letter that are inconsistent with the letter itself.

22. ZENECA admits that the General Notice Letter referenced in paragraph 3226 of the Third-Party Complaint “B” speaks for itself and denies that receipt of such a letter creates any liability for any cause of action herein and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

23. In response to paragraph 3227 of the Third-Party Complaint “B”, ZENECA admits it entered into an Administrative Order on Consent for a Removal Action referenced in paragraph 3116 of the Third-Party Complaint “B” and further admits that the AOC speaks for itself. ZENECA denies any characterization of the terms of that Order that are inconsistent

with the Order itself. ZENECA denies that consent to the Order creates any liability for any cause of action herein and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

24. ZENECA admits that the Agreement for Recovery of Past Response Costs referenced in paragraph 3228 of the Third-Party Complaint “B” speaks for itself and denies any characterization of the terms of that Agreement that are inconsistent with the Agreement itself. ZENECA denies that the Agreement creates any liability for any cause of action herein and ZENECA further denies that it has any liability at the Bayonne Barrel and Drum Site.

25. The allegations of paragraph 3229 of the Third-Party Complaint “B” state a legal conclusion as to which no response is required. To the extent there are any factual allegations regarding ZENECA’s liability they are denied.

AS TO FIRST COUNT

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

26. ZENECA incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 25 herein.

27. ZENECA is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447 through 3448, and therefore denies the same.

28. ZENECA denies that it is liable to Third-Party Plaintiffs for contribution. ZENECA is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451, and therefore denies the same.

AS TO SECOND COUNT

Statutory Contribution

29. ZENECA incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 28 herein.

30. ZENECA denies that it is liable to Third-Party Plaintiffs for contribution. ZENECA is without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

32. ZENECA is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. ("Spill Act").

THIRD AFFIRMATIVE DEFENSE

33. The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

39. At all relevant times, ZENECA 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.

TENTH AFFIRMATIVE DEFENSE

40. The claims asserted against ZENECA in the Third-Party Complaint "B" are barred because at all relevant times ZENECA 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 ZENECA 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.

ELEVENTH AFFIRMATIVE DEFENSE

41. The claims set forth in the Third-Party Complaint are barred in whole or in part by the doctrine of preemption.

TWELVTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

43. Third-Party Plaintiffs' claims against ZENECA are barred, in whole or in part, by the equitable doctrines of laches and estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

45. 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.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

48. 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.

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

50. 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 ZENECA, 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-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

52. Third-Party Plaintiffs' claims are barred to the extent that the conduct of ZENECA is alleged to give rise to liability in the 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.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

56. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because ZENECA 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.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

57. Third-Party Plaintiffs’ claims are barred to the extent they seek to hold ZENECA liable, in contribution, for punitive damages and penalties.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

- A. Any release or covenant not to sue granted by Plaintiffs to ZENECA;
- B. Any settlement or other compromise between Plaintiffs and ZENECA;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs’ right to maintain a claim against ZENECA;
- D. Any failure to join a claim relating to the “Bayonne Barrel and Drum Site” (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and ZENECA, 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 ZENECA, directly or indirectly, of any “No Further Action” (a/k/a “NFA”) determination, “Negative Declaration,” or similar determination.

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

60. ZENECA incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on ZENECA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

61. ZENECA 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

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

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

63. Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that to its knowledge:

- (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 Zeneca, Inc. for the claims set forth in the Third Party Complaint “B” 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 “B” is in any respect joint and several (which is denied), then all or some of the non-parties listed on the attachments to the letter dated October 7, 2009 from Eric Rothenberg, Esq. of O’Melveny and Myers to the Honorable Marina Corodemus 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.

WHEREFORE, ZENECA respectfully requests that the Court enter an Order dismissing the Third-Party Complaint “B” with prejudice, and awarding costs, attorney fees and any other

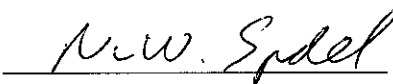
relief the Court deems just and proper.

Dated: December 1, 2009

Respectfully submitted,

LOWENSTEIN SANDLER PC
Attorneys for Third-Party Defendant Zeneca,
Inc.

65 Livingston Avenue
Roseland, NJ 07039
Tel: 973.597.2500
Fax: 973.597.2515

Signed 

And

John A. Andreasen
Kristopher J. Covi
MCGRATH NORTH MULLIN & KRATZ, PC
LLO
1601 Dodge St., Ste. 3700
Omaha, NE 68102
Attorneys for Third-Party Defendant Zeneca,
Inc.

CERTIFICATION OF SERVICE

Norman W. Spindel hereby certifies as follows:

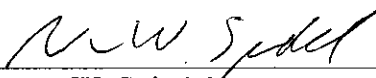
1. I am Senior Counsel at the law firm of Lowenstein Sandler PC, which law firm represents Third-Party Defendant Zeneca, Inc. in this matter.

2. I hereby certify that Zeneca, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served upon the Clerk of the Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey, 07102, by hand delivery on December 1, 2009.

3. I hereby certify that Zeneca, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served electronically on all parties who have consented to service by electronic posting on the following website, <http://njdepvocc.sfile.com> on December 1, 2009.

4. I hereby certify that Zeneca, Inc.'s Answer to the Third Party Complaint "B" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and separate defenses was served on December 1, 2009 by regular mail, postage pre-paid, on counsel for all parties who have not consented to service by electronic posting.

Dated: December 1, 2009



Norman W. Spindel