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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,

v.

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

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L-9868-05

CIVIL ACTION

**THIRD PARTY DEFENDANT
THE STATE OF NEW JERSEY'S
ANSWER AND DEFENSES TO THIRD
PARTY COMPLAINT "A" OF
DEFENDANTS/THIRD PARTY
PLAINTIFFS MAXUS ENERGY
CORPORATION AND TIERRA
SOLUTIONS, INC.**

Third Party Defendant the State of New Jersey (the "State"), in accordance with this court's Case Management Order V, submits the following Answer and Defenses to the Third Party Complaint "A" of Defendants/Third Party Plaintiffs Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") ("Maxus and Tierra's Third Party Complaint"). Pursuant to

Case Management Order V, the State answers only those allegations that relate specifically to the State of New Jersey as a Third Party Defendant or parcels or sites to which it is allegedly associated.

I.

ANSWER TO MAXUS AND TIERRA’S THIRD PARTY COMPLAINT

PROCEDURAL BACKGROUND

1-7. Paragraphs 1 through 7 of Maxus and Tierra’s Third Party Complaint contain allegations not specifically related to the State as a Third Party Defendant or parcels or sites allegedly associated with the State as a Third-Party Defendant, to which no answers are required of the State in accordance with Case Management Order V.

8. In response to paragraph 8 of Maxus and Tierra’s Third Party Complaint, the referenced pleading speaks for itself. The State, however, denies that it “has done nothing to remediate the problem.” The State does not have sufficient information or knowledge to form a belief as to the truth of the allegation that Maxus and Tierra have spent millions of dollars to assess and address contamination of the Newark Bay Complex, but denies that Maxus or Tierra have ever paid to remove a single teaspoon of contaminated sediment from the Newark Bay Complex as of this date. To the extent the paragraph calls for a further answer, the State denies the remaining allegations of paragraph 8.

9-14. Paragraphs 9 through 14 of Maxus and Tierra’s Third Party Complaint contain allegations not specifically related to the State as a Third Party Defendant or parcels or sites allegedly associated with the State as a Third-Party Defendant, to which no answers are required of the State in accordance with Case Management Order V.

ADDITIONAL HISTORICAL BACKGROUND

15-51. Paragraphs 15 through 51 of Maxus and Tierra's Third Party Complaint contain allegations not specifically related to the State as a Third Party Defendant or parcels or sites allegedly associated with the State as a Third-Party Defendant, to which no answers are required of the State in accordance with Case Management Order V.

THE PARTIES

Third-Party Plaintiffs

52-54. Paragraphs 52 through 54 of Maxus and Tierra's Third Party Complaint contain allegations not specifically related to the State as a Third Party Defendant or parcels or sites allegedly associated with the State as a Third-Party Defendant, to which no answers are required of the State in accordance with Case Management Order V.

Third Party Defendants

55-107. Paragraphs 55 through 107 of Maxus and Tierra's Third Party Complaint identify Third Party Defendants, other than the State, to which no answers are required of the State in accordance with Case Management Order V.

108. In response to paragraph 108 of Maxus and Tierra's Third Party Complaint, the State admits that the State House is located at 125 State Street, Trenton, New Jersey.

109-138. Paragraphs 109 through 138 of Maxus and Tierra's Third Party Complaint identify Third Party Defendants, other than the State, to which no answers are required of the State in accordance with Case Management Order V.

139. Paragraph 139 of Maxus and Tierra's Third Party Complaint contains a legal conclusion, to which no answer is required.

DEFINITIONS

140-164. Paragraphs 140 through 164 of Maxus and Tierra's Third Party Complaint contain definitions to which no answers are required.

FACTUAL ALLEGATIONS

WASTEWATER DISPOSAL ENTITIES

Borough of Carteret

165-189. Paragraphs 165 through 189 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Borough of Carteret, to which no answers are required of the State in accordance with Case Management Order V.

City of Bayonne

190-292. Paragraphs 190 through 292 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Bayonne, to which no answers are required of the State in accordance with Case Management Order V.

City of Elizabeth

293-359. Paragraphs 293 through 359 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Elizabeth, to which no answers are required of the State in accordance with Case Management Order V.

City of Jersey City

360-420. Paragraphs 360 through 420 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Jersey City, to which no answers are required of the State in accordance with Case Management Order V.

City of Linden

421-432. Paragraphs 421 through 432 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Linden, to which no answers are required of the State in accordance with Case Management Order V.

City of Newark

433-507. Paragraphs 433 through 507 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

City of Rahway

508-521. Paragraphs 508 through 521 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Rahway, to which no answers are required of the State in accordance with Case Management Order V.

Joint Meeting of Essex and Union Counties

522-734. Paragraphs 522 through 734 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Joint Meeting of Essex and Union Counties, to which no answers are required of the State in accordance with Case Management Order V.

Linden Roselle Sewerage Authority

735-743. Paragraphs 735 through 743 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Linden Roselle Sewerage Authority, to which no answers are required of the State in accordance with Case Management Order V.

Passaic Valley Sewerage Commissioners

744-825. Paragraphs 744 through 825 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Passaic Valley Sewerage Commissioners, to which no answers are required of the State in accordance with Case Management Order V.

Rahway Valley Sewerage Authority

826-860. Paragraphs 826 through 860 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Rahway Valley Sewerage Authority, to which no answers are required of the State in accordance with Case Management Order V.

City of Kearny

861-912. Paragraphs 861 through 912 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant City of Kearny, to which no answers are required of the State in accordance with Case Management Order V.

OWNERS AND OPERATORS OF SUBMERGED LANDS WITHIN THE NEWARK BAY COMPLEX

The State of New Jersey

913. In response to paragraph 913 of Maxus and Tierra's Third Party Complaint, the State admits that it holds certain submerged lands of the Newark Bay Complex in trust for the citizens of New Jersey. But record title to some of these submerged lands is no longer in the State as a result of the delivery of valid State riparian grants and the operation of certain legislative acts approved during and before 1869. The State also admits that contaminants were introduced into the Newark Bay Complex during such time. To the extent the paragraph calls for a further answer, the State denies the remaining allegations in paragraph 913.

914. In response to paragraph 914 of Maxus and Tierra's Third Party Complaint, the State admits that it holds title to certain submerged lands in trust for the citizens of New Jersey.

But record title to some of these submerged lands is no longer in the State as a result of the delivery of valid State riparian grants and the operation of certain legislative acts approved during and before 1869. The State also admits that contaminants were introduced into the Newark Bay Complex during such time. To the extent the paragraph calls for a further answer, the State denies the remaining allegations in paragraph 914.

915. Paragraph 915 of Maxus and Tierra's Third Party Complaint contains a legal conclusion to which no answer is required. The State admits that it holds title to certain submerged lands in trust for the citizens of New Jersey. But record title to some of these submerged lands is no longer in the State as a result of the delivery of valid State riparian grants and the operation of certain legislative acts approved during and before 1869. The State admits that hazardous substances were discharged into the waters of the State of New Jersey. To the extent the paragraph calls for a further answer, the State denies the remaining allegations in paragraph 915.

916. In response to paragraph 916 of Maxus and Tierra's Third Party Complaint, the State admits that the 2003 Directive states that the "Respondents are responsible for the hazardous substances in the Lower Passaic River that were discharged onto the land and into the waters of the State." The State denies that this statement constitutes an admission.

917. In response to paragraph 917 of Maxus and Tierra's Third Party Complaint, the State admits that the Newark Bay Complex has received liquid and solid wastes and that this waste has included wastewater from industries and municipalities.

918. Paragraph 918 of Maxus and Tierra's Third Party Complaint contains a legal conclusion to which no answer is required. The State admits that it holds certain submerged lands of the Newark Bay Complex in trust for the citizens of New Jersey. But record title to

some of these submerged lands is no longer in the State as a result of the delivery of valid State riparian grants and the operation of certain legislative acts approved during and before 1869. The State admits that discharges from property adjacent to the submerged lands occurred. The State denies the remaining allegations of paragraph 918.

The Port Authority and the City of Newark

919-931. Paragraphs 919 through 931 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendants the Port Authority of New York and New Jersey and the City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

THE STATE OF NEW JERSEY AND NEW JERSEY DEPARTMENT OF AGRICULTURE MOSQUITO AND PEST CONTROL PRACTICES

932. In response to paragraph 932 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite and quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

933. In response to paragraph 933 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

934. In response to paragraph 934 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

935. In response to paragraph 935 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

936. In response to paragraph 936 of Maxus and Tierra's Third Party Complaint, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

937. In response to paragraph 937 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts and quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

938. In response to paragraph 938 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to quote from historical documents, some or all of

which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

939. In response to paragraph 939 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts and quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

940. In response to paragraph 940 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts and quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

941. In response to paragraph 941 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

942. In response to paragraph 942 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

943. In response to paragraph 943 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

944. In response to paragraph 944 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

945. In response to paragraph 945 of Maxus and Tierra's Third Party Complaint, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

946. In response to paragraph 946 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to quote from historical documents, some or all of

which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

947. Paragraph 947 of Maxus and Tierra's Third Party Complaint contains a legal conclusion to which no answer is required. To the extent the paragraph calls for a further answer, the State denies the allegations.

COMMERCIAL SITES

80 Lister Avenue

948-952. Paragraphs 948 through 952 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant the City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

Newark Airport Site

953-983. Paragraphs 953 through 983 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendants the Port Authority of New York and New Jersey and the City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

Newark Seaport Site

984-1001. Paragraphs 984 through 1001 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendants the Port Authority of New York and New Jersey and the City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

Revere Site

1002-1012. Paragraphs 1002 through 1012 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Housing Authority of the City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

Housing Authority of the City of Newark McCarter Highway Site

1013-1016. Paragraphs 1013 through 1016 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant Housing Authority of the City of Newark, to which no answers are required of the State in accordance with Case Management Order V.

American Ref-Fuel Site

1017-1031. Paragraphs 1017 through 1031 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant the Port Authority of New York and New Jersey, to which no answers are required of the State in accordance with Case Management Order V.

NJDOT Kearney Oil Lake Site

1032-1066. Paragraphs 1032 through 1066 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant New Jersey Department of Transportation, to which no answers are required of the State in accordance with Case Management Order V.

LANDFILL SITES

The Keegan Landfill Site

1067-1085. Paragraphs 1067 through 1085 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant the Town of Kearny, to which no answers are required of the State in accordance with Case Management Order V.

The MSLA 1-D Landfill Site

1086-1122. Paragraphs 1086 through 1122 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant the Town of Kearny, to which no answers are required of the State in accordance with Case Management Order V.

Avenue P Landfill Site

1123-1147. Paragraphs 1123 through 1147 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant the Newark Housing Authority, to which no answers are required of the State in accordance with Case Management Order V.

FIRST COUNT

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

1148. In response to paragraph 1148 of Maxus and Tierra's Third Party Complaint, the State repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 – 1147 of Maxus and Tierra's Third Party Complaint as if fully set forth herein.

1149. Paragraph 1149 of Maxus and Tierra's Third Party Complaint contains a legal conclusion to which no answer is required.

1150. Paragraph 1150 of Maxus and Tierra's Third Party Complaint contains a legal conclusion to which no answer is required. The State admits that it holds certain submerged lands of the Newark Bay Complex in trust for the citizens of New Jersey. But record title to

some of these submerged lands is no longer in the State as a result of the delivery of valid State riparian grants and the operation of certain legislative acts approved during and before 1869. The State admits that discharges from property adjacent to the submerged lands occurred. The State denies the remaining allegations of paragraph 1150.

1151. In response to paragraph 1151 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1152. In response to paragraph 1152 of Maxus and Tierra's Third Party Complaint, the State admits that, pursuant to valid permits issued under state and federal law, municipalities and local and regional sewerage authorities release permitted levels of sewage materials into the Passaic River and its tributaries. The State denies the remaining allegations of paragraph 1152.

1153. In response to paragraph 1153 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1154. Paragraph 1154 of Maxus and Tierra's Third Party Complaint contain allegations against Third Party Defendant New Jersey Department of Transportation to which no answers are required of the State in accordance with Case Management Order V.

1155. Paragraph 1155 of Maxus and Tierra's Third Party Complaint contains a legal conclusion to which no answer is required.

1156. In response to paragraph 1156 of Maxus and Tierra's Third Party Complaint, the State denies that Maxus and Tierra are entitled to contribution from the State.

1157. In response to paragraph 1157 of Maxus and Tierra's Third Party Complaint, the State admits the allegations.

1158. In response to paragraph 1158 of Maxus and Tierra's Third Party Complaint, the State denies the allegations as to the State. The State further denies that Maxus and Tierra are entitled to any of the relief pled for in Count I from the State.

SECOND COUNT

(Statutory Contribution)

1159. In response to paragraph 1159 of Maxus and Tierra's Third Party Complaint, the State repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 – 1158 of Maxus and Tierra's Third Party Complaint as if fully set forth herein.

1160. In response to paragraph 1160 of Maxus and Tierra's Third Party Complaint, the State denies the allegations as to the State. The State further denies that Maxus and Tierra are entitled to any of the relief pled for in Count II from the State.

THIRD COUNT

(Enforcement of N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and Environmental Rights Act Claim)

1161. In response to paragraph 1161 of Maxus and Tierra's Third Party Complaint, the State repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 – 1160 of Maxus and Tierra's Third Party Complaint as if fully set forth herein.

1162-1186. Paragraph 1162 through 1186 of Maxus and Tierra's Third Party Complaint contains allegations against Third Party Defendants, other than the State, to which no answers are required of the State in accordance with Case Management Order V.

FOURTH COUNT

(Nuisance)

1187. In response to paragraph 1187 of Maxus and Tierra's Third Party Complaint, the State repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 – 1186 of Maxus and Tierra's Third Party Complaint as if fully set forth herein.

1188-1195. Paragraph 1188 through 1195 of Maxus and Tierra's Third Party Complaint contains allegations against Third Party Defendants, other than the State, to which no answers are required of the State in accordance with Case Management Order V.

COUNT V

BREACH OF THE PUBLIC TRUST

1196. In response to paragraph 1196 of Maxus and Tierra's Third Party Complaint, the State repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 – 1195 of Maxus and Tierra's Third Party Complaint as if fully set forth herein.

1197. In response to paragraph 1197 of Maxus and Tierra's Third Party Complaint, the State admits the allegations.

1198. In response to paragraph 1198 of Maxus and Tierra's Third Party Complaint, the State states that the Plaintiffs' Complaint contains the quoted language, and further states that the document speaks for itself.

1199. In response to paragraph 1199 of Maxus and Tierra's Third Party Complaint, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding unnamed "multiple lawsuits," but admits that N.J.S.A. 58:10-23.11(b) provides that the natural resources of the State of New Jersey include land, fish, shellfish, wildlife, biota, air,

water and other such resources owned, managed, held in trust or otherwise controlled by the State.

1200. In response to paragraph 1200 of Maxus and Tierra's Third Party Complaint, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding unnamed "multiple lawsuits," but admits that the natural resources of the State of New Jersey include the waters of the state, which include the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

1201. In response to paragraph 1201 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1202. Paragraph 1202 of Maxus and Tierra's Third Party Complaint contains legal conclusions to which no answer is required.

1203. Paragraph 1203 of Maxus and Tierra's Third Party Complaint contains legal conclusions to which no answer is required.

1204. Paragraph 1204 of Maxus and Tierra's Third Party Complaint contains legal conclusions to which no answer is required.

1205. Paragraph 1205 of Maxus and Tierra's Third Party Complaint contains legal conclusions to which no answer is required. The State admits that Tierra owns 80 and 120 Lister Avenue, which abut the Passaic River, but otherwise denies the allegations.

1206. Paragraph 1206 of Maxus and Tierra's Third Party Complaint contains legal conclusions to which no answer is required.

1207. Paragraph 1207 of Maxus and Tierra's Third Party Complaint contains legal conclusions to which no answer is required.

1208. In response to paragraph 1208 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1209. In response to paragraph 1209 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1210. In response to paragraph 1210 of Maxus and Tierra's Third Party Complaint, the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the allegations.

1211. Paragraph 1211 of Maxus and Tierra's Third Party Complaint contains legal conclusions or arguments to which no answer is required. The State otherwise denies the allegations.

1212. In response to paragraph 1212 of Maxus and Tierra's Third Party Complaint, the State admits that the NJDEP has granted valid permits pursuant to state and federal law regulating the release of wastewater treatment systems to the waters of the State of New Jersey. The State denies the remaining allegations in paragraph 1212.

1213. In response to paragraph 1213 of Maxus and Tierra's Third Party Complaint, the State admits that the NJDEP has granted valid permits pursuant to state and federal law that allow overflow to be released into the Newark Bay Complex during periods when the sewer flow cannot be accommodated in the existing sewage treatment plants. The State denies the remaining allegations in paragraph 1213.

1214. In response to paragraph 1214 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1215. In response to paragraph 1215 of Maxus and Tierra's Third Party Complaint, the State admits that Maxus and Tierra purport to quote from historical documents, some or all of

which have been supplied to the State, and states that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, the State denies the allegations.

1216. In response to paragraph 1216 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1217. In response to paragraph 1217 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1218. In response to paragraph 1218 of Maxus and Tierra's Third Party Complaint, the State admits that other sources of pollution exist above the Dundee Dam and that these sources may reach the Newark Bay Complex.

1219. In response to paragraph 1219 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1220. In response to paragraph 1220 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1221. In response to paragraph 1221 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1222. In response to paragraph 1222 of Maxus and Tierra's Third Party Complaint, the State denies the allegations.

1223. In response to paragraph 1223 of Maxus and Tierra's Third Party Complaint, the State states that the 2003 Directive contains the quoted language, except that the quoted language in the last sentence is contained in ¶ 2 of the 2003 Directive, and further states that the document speaks for itself.

1224. In response to paragraph 1224 of Maxus and Tierra's Third Party Complaint, the State states that the 2003 Directive contains the cited language, and further states that the document speaks for itself.

1225. In response to paragraph 1225 of Maxus and Tierra's Third Party Complaint, the State states that the 2003 Directive contains the cited language, and further states that the document speaks for itself.

1226. In response to paragraph 1226 of Maxus and Tierra's Third Party Complaint, the State states that the 2003 Directive contains the quoted language, and further states that the document speaks for itself.

1227. In response to paragraph 1227 of Maxus and Tierra's Third Party Complaint, the State states that the 2003 Directive contains the quoted language, and further states that the document speaks for itself.

1228. In response to paragraph 1228 of Maxus and Tierra's Third Party Complaint, the State admits that as alleged in the complaint, that as a result of TCDD contamination from the Lister plant, the ecosystem and natural resources of the Newark Bay Complex have been significantly injured.

1229. Paragraph 1229 of Maxus and Tierra's Third Party Complaint contains legal conclusions and arguments to which no answer is required. The State denies that Maxus and Tierra are entitled to any of the relief sought in paragraph 1229.

II.

AFFIRMATIVE DEFENSES

1. For its first affirmative defense, this Court lacks subject matter jurisdiction over some or all of Maxus and Tierra's third party claims.

2. For its second affirmative defense, some or all of Maxus and Tierra's third party claims are barred by the applicable statute of limitations or by the equitable doctrines of laches and estoppel.

3. For its third affirmative defense, Maxus and Tierra have failed to state a claim upon which relief can be granted.

4. For its fourth affirmative defense, Maxus and Tierra lack standing to pursue some or all of their third party claims.

5. For its fifth affirmative defense, Maxus and Tierra have failed to complete statutory requirements which are a prerequisite to filing suit against a public entity under the Tort Claims Act, N.J.S.A. 59:1-1 *et seq.*

6. For its sixth affirmative defense, Maxus and Tierra did not raise all reasonably ascertainable issues pursuant to N.J.A.C. 7:14A-15.13 related to the issuance of a permit under the Water Pollution Control Act and as a result may not participate in further proceedings related to any such permit.

7. For its seventh affirmative defense, Maxus and Tierra are ineligible for equitable relief because of their own inequitable conduct or the inequitable conduct of entities for which Maxus and Tierra have assumed liabilities under the doctrine of unclean hands.

8. For its eighth affirmative defense, Maxus and Tierra's third party claims are barred in whole or in part by the Tort Claims Act, N.J.S.A. 59:1-1 *et seq.*

9. For its ninth affirmative defense, Maxus and Tierra's third party claims are barred by the Separation of Powers doctrine as set out in Article III of the New Jersey Constitution.

10. For its tenth affirmative defense, Maxus and Tierra's third party claims are barred by statutory defenses to liability provided by the Spill Act.

11. For its eleventh affirmative defense, exclusive jurisdiction for claims seeking review of final agency actions is in the Appellate Division, to which any such valid claims should be transferred.

12. For its twelfth affirmative defense, Maxus and Tierra's third party claims are barred by reason of the State's sovereign immunity.

13. For its thirteenth affirmative defense, Maxus and Tierra's third party claims are based on allegations involving entities other than the State, and for whose acts or omissions the State is not legally responsible or liable.

14. For its fourteenth affirmative defense, Maxus and Tierra are not entitled to any relief based on the NJDEP's issuance of valid permits pursuant to the authority duly invested in the NJDEP by state and federal laws.

15. For its fifteenth affirmative defense, Maxus and Tierra's third party claims are barred because Maxus and Tierra failed to exhaust their administrative remedies.

16. For its sixteenth affirmative defense, the State denies that Maxus and Tierra have suffered any injury, but in the event that they did suffer an injury, such injury was caused by intervening acts or omissions or superseding acts of persons or entities over which the State exercised no control and for whose conduct the State is not responsible.

17. For its seventeenth affirmative defense, Maxus and Tierra's request that the State be enjoined from issuing permits is unripe, because any challenge to such permits must be raised during the permitting process outlined in N.J.A.C. 7:14A.

18. For its eighteenth affirmative defense, Maxus and Tierra cannot enforce N.J.S.A. 58:14-7 or 14-8 against the State.

19. For its nineteenth affirmative defense, The Environmental Rights Act does not

provide a cause of action to compel a State agency to take action, but instead is to be used against polluters.

20. For its twentieth affirmative defense, Maxus and Tierra seek review of final agency actions, and any such review must occur in the Appellate Division, after exhaustion of administrative remedies.

21. For its twenty-first affirmative defense, Maxus and Tierra seek relief this Court does not have the constitutional ability to grant.

22. For its twenty-second affirmative defense, the State reserves the right to incorporate by reference the defenses pled, now or in the future, by any other defendant, cross-claim defendant or third-party defendant, to the extent such defenses may be applicable to the State.

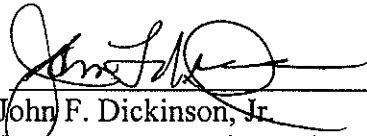
23. For its twenty-third affirmative defense, the State reserves the right to assert additional defenses that may become applicable to Maxus and Tierra's third party claims during the course of this action.

WHEREAS, the State demands judgment in its favor dismissing with prejudice Maxus and Tierra's claims asserted in the Third Party Complaint of Defendants Maxus Energy Corporation and Tierra Solutions, Inc.

DEMAND FOR TRIAL BY JURY

The State hereby demands a trial by jury on all issues involving the causes of action in the Second Count (Contribution), and Fifth Count (Breach of the Public Trust).

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
John F. Dickinson, Jr.
Deputy Attorney General

Dated: Nov. 6, 2009

Of Counsel:

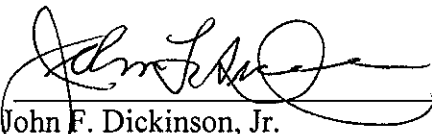
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Springfield, New Jersey 07081

CERTIFICATION PURSUANT TO R. 4:6-1

I hereby certify pursuant to R. 4:6-1 that the Answer and Defenses to Third Party Complaint "A" by Defendants Maxus Energy Corporation and Tierra Solutions, Inc. on behalf of the State of New Jersey has been served within the time and manner provided by Case Management Order V.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
John F. Dickinson, Jr.
Deputy Attorney General

Dated: Nov. 6, 2005

Of Counsel:

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