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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,

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.

BAYONE MUNICIPAL UTILITIES
AUTHORITY,
BOROUGH OF CARTERET,
BOROUGH OF EAST NEWARK,
BOROUGH OF EAST RUTHERFORD,
BOROUGH OF ELMWOOD PARK,
BOROUGH OF FAIR LAWN,
BOROUGH OF FANWOOD,

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - ESSEX COUNTY

:
: DOCKET NO. ESX-L-9868-05

:
: **ANSWER TO THIRD PARTY**
: **COMPLAINT "A"**
: **(Against Public Entities)**

BOROUGH OF FRANKLIN LAKES,	:
BOROUGH OF GARWOOD,	:
BOROUGH OF GLEN RIDGE,	:
BOROUGH OF GLEN ROCK,	:
BOROUGH OF HALEDON,	:
BOROUGH OF HASBROUCK HEIGHTS,	:
BOROUGH OF HAWTHORNE,	:
BOROUGH OF KENILWORTH,	:
BOROUGH OF LODI,	:
BOROUGH OF MOUNTAINSIDE,	:
BOROUGH OF NEW PROVIDENCE,	:
BOROUGH OF NORTH ARLINGTON,	:
BOROUGH OF NORTH CALDWELL,	:
BOROUGH OF NORTH HALEDON,	:
BOROUGH OF PROSPECT PARK,	:
BOROUGH OF ROSELLE PARK,	:
BOROUGH OF ROSELLE,	:
BOROUGH OF RUTHERFORD,	:
BOROUGH OF TOTOWA,	:
BOROUGH OF WALLINGTON,	:
BOROUGH OF WEST PATERSON,	:
BOROUGH OF WOOD-RIDGE,	:
CITY OF BAYONNE,	:
CITY OF CLIFTON,	:
CITY OF EAST ORANGE,	:
CITY OF ELIZABETH,	:
CITY OF GARFIELD,	:
CITY OF HACKENSACK,	:
CITY OF JERSEY CITY,	:
CITY OF LINDEN,	:
CITY OF NEWARK	:
CITY OF ORANGE,	:
CITY OF PASSAIC,	:
CITY OF PATERSON,	:
CITY OF RAHWAY,	:
CITY OF SUMMIT,	:
CITY OF UNION CITY,	:
HOUSING AUTHORITY OF THE CITY OF	:

NEWARK, :
JERSEY CITY MUNICIPAL UTILITIES :
AUTHORITY, :
JOINT MEETING OF ESSEX AND UNION :
COUNTIES, :
LINDEN ROSELLE SEWERAGE :
AUTHORITY, :
PASSAIC VALLEY SEWERAGE :
COMMISSIONERS; :
PORT AUTHORITY OF NEW YORK AND :
NEW JERSEY, :
RAHWAY VALLEY SEWERAGE :
AUTHORITY, :
THE NEW JERSEY DEPARTMENT OF :
AGRICULTURE, :
THE NEW JERSEY DEPARTMENT OF :
TRANSPORTATION, :
THE STATE OF NEW JERSEY, :
TOWN OF BELLEVILLE, :
TOWN OF HARRISON, :
TOWN OF KEARNY, :
TOWN OF NUTLEY, :
TOWN OF WESTFIELD, :
TOWN OF WOODBRIDGE, :
TOWNSHIP OF BERKELEY HEIGHTS, :
TOWNSHIP OF BLOOMFIELD; :
TOWNSHIP OF CEDAR GROVE, :
TOWNSHIP OF CLARK, :
TOWNSHIP OF CRANFORD, :
TOWNSHIP OF HILLSIDE, :
TOWNSHIP OF IRVINGTON, :
TOWNSHIP OF LITTLE FALLS, :
TOWNSHIP OF LIVINGSTON, :
TOWNSHIP OF LYNDHURST, :
TOWNSHIP OF MAPLEWOOD, :
TOWNSHIP OF MILLBURN, :
TOWNSHIP OF MONTCLAIR, :
TOWNSHIP OF ORANGE, :
TOWNSHIP OF SADDLE BROOK, :
TOWNSHIP OF SCOTCH PLAINS, :
TOWNSHIP OF SOUTH HACKENSACK, :
TOWNSHIP OF SOUTH ORANGE VILLAGE, :
TOWNSHIP OF SPRINGFIELD, :
TOWNSHIP OF UNION, :
TOWNSHIP OF WEST ORANGE, :
TOWNSHIP OF WINFIELD PARK, :

TOWNSHIP OF WYCKOFF,
VILLAGE OF RIDGEWOOD,

Third-Party Defendants.

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Third Party Defendant, Township of Berkeley Heights, having its principal office at 29 Park Avenue, Berkeley Heights, New Jersey 07922-1499, by way of Answer to the Third Party Complaint "A" (Against Public Entities) brought by defendants, Maxus Energy Corporation and Tierra Solutions, Inc., and in accordance with Case Management Order V, Section 9, entered April 16, 2009 (CMO V), says as follow:

1. Other than to admit that the Township of Berkeley Heights is a public body of the State of New Jersey with its principal place of operation as set forth, and has been served as a customer by the joint meeting of Essex and Union Counties, it denies all other allegations against the Township of Berkeley Heights.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

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 SEPARATE DEFENSE

Third Party Defendant is not a discharger or person in any way responsible for a discharge in accordance with N.J.S.A. 58:10-23, et seq. (New Jersey Spill Act).

THIRD SEPARATE DEFENSE

Third Party Plaintiffs' claims 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 SEPARATE DEFENSE

Third Party Plaintiffs' have no Spill Act Claims as against this Third Party Defendant because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH SEPARATE DEFENSE

Third Party Plaintiffs have no right or contribution against this Third Party Defendant under the WPCA.

SIXTH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred in whole or in part by the Entire Controversy Doctrine.

SEVENTH SEPARATE DEFENSE

To the extent the Third Party Complaint purports to seek any relief under the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-et seq., in whole or in part, the claim is barred because Third Party Plaintiffs failed to meet the procedural and/or substantive requirements entitling them to sue Third Party Defendants under the statute.

EIGHTH SEPARATE DEFENSE

The Third Party Complaint is barred to the extent some or all of Third Party Plaintiffs do not have standing to bring suit.

NINTH SEPARATE DEFENSE

The claims asserted by Third Party Plaintiffs in Third Party Complaint "A" are barred by the applicable statutes of limitations.

TENTH SEPARATE DEFENSE

The Third Party Complaint is barred to the extent provided in the New Jersey Spill Act with

regard to liability for Municipal Waste.

ELEVENTH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred to the extent that they assert claims for damages that are only speculative, conjectural, unreasonable, excessive, and/or arbitrarily capricious.

TWELFTH SEPARATE DEFENSE

The claims against this Third Party Defendant are barred to the extent that they would be required to pay Third Party Plaintiffs' damages or other claims based upon actions or inactions by Third Party Defendant that arise out of conduct lawfully undertaken and in compliance with permits for or approved and issued by relevant governmental agencies, including 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 from all appropriate governmental entities.

THIRTEENTH SEPARATE DEFENSE

Insofar as the State of New Jersey is barred from asserting direct claims against this Third Party Defendant for the damages sought in the Amended Complaint, all claims that may be derivative of claims by the State of New Jersey are barred as to this Third Party Defendant, including all the claims set forth in Third Party Complaint.

FOURTEENTH SEPARATE DEFENSE

Third Party Complaint is barred and/or is unconstitutional and impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized and/or condoned by applicable laws, regulations, statutes, permits, or approvals by State and/or other local, county, or municipal governmental entities. At all times this Third Party Defendant 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.

FIFTEENTH SEPARATE DEFENSE

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

SIXTEENTH SEPARATE DEFENSE

The Third Party Plaintiffs suffered no losses or injuries that were proximately caused by the Third Party Defendant.

SEVENTEENTH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred in whole or in part by the Doctrine of Accord and Satisfaction, Waiver, Consent, Estoppel, and/or Assumption of Risk.

EIGHTEENTH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred in whole or in part by the Doctrine of Unclean Hands.

NINETEENTH SEPARATE DEFENSE

The claims for contribution under the Spill Act asserted in the Third Party Complaint are barred under the equitable doctrines including the impossibility performance, status of existing law, as well as the prohibition from collecting double recovery.

TWENTIETH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred in whole or in part by the doctrine of collateral estoppel, res judicata and judicial estoppel including, but not limited to, prior findings and rulings as to Third Party Plaintiffs' intentional misconduct.

TWENTY-FIRST SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred to the extent that neither Third Party Plaintiffs nor

Plaintiffs have incurred any costs of restoration and replacement of any natural resources alleged to have been damaged or destroyed by any discharge in accordance with the Spill Act.

TWENTY-SECOND SEPARATE DEFENSE

Third Party Defendant denies the Third Party Plaintiffs have suffered any harm whatsoever to the extent that injury was caused by intervening acts, omissions, or superseding acts of persons or entities over whom this Third Party Defendant had no control or for whose conduct this Third Party Defendant was not responsible, including without limitation the event of any discharge which may have been from any treatment works, maintained and operated by other entities; accordingly, there can be no liability to this Third Party Defendant.

TWENTY-THIRD SEPARATE DEFENSE

To the extent the Third Party Plaintiff sustained an injury and is 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 damage, Third Party Plaintiffs' recovery from this Third Party Defendant, if any, must be reduced by the portion of damages caused by the acts and conduct of Third Party Plaintiffs and/or their agents or employees.

TWENTY-FOURTH SEPARATE DEFENSE

Although Third Party Defendant denies that it is liable for the contamination described in Third Party Plaintiffs' Complaint, in the event that it is found liable, this Third Party Defendant is entitled to an apportionment of liability with regard to equitable factors.

TWENTY-FIFTH SEPARATE DEFENSE

In accordance with N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by

any amounts recovered from any other source.

TWENTY-SIXTH SEPARATE DEFENSE

There can be no liability as to this Third Party Defendant insofar as disposal of waste, if any, which allegedly originated through this Third Party Defendant, was done in accordance with the state of the art of the time and was in accordance with municipal disposal practices and technology and the prevailing legal requirements from which Third Party Defendant cannot be found to be retroactively liable.

TWENTY-SEVENTH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred to the extent that damages or other relief sought by Third Party Plaintiffs would constitute an unjust enrichment to Third Party Plaintiffs.

TWENTY-EIGHTH SEPARATE DEFENSE

Third Party Plaintiffs cannot assert a contribution claim against Third Party Defendant because the discharges for which Plaintiffs are seeking relief as against Third Party Plaintiffs are different and distinct from the releases, if any, which may be attributable to this Third Party Defendant.

TWENTY-NINTH SEPARATE DEFENSE

Third Party Plaintiffs cannot seek contribution under the joint tortfeasor's contribution law because this Third Party Defendant is not liable for the "same injuries" caused by Third Party Plaintiffs' discharges, and, this Third Party Defendant does not share a common liability to the State of New Jersey.

THIRTIETH SEPARATE DEFENSE

Third Party Plaintiffs' claims are barred in whole or in part because no actions or inactions of this Third Party Defendant have resulted in any permanent or temporary damage to a natural

resource. Without admitting liability, this Third Party Defendant alleges that if it is found to have engaged in any of the activities alleged in the Third Party Complaint, its actions or contribution to the conditions created, if any, were not the cause of any damage, injury or other claim asserted against Third Party Plaintiffs or asserted by Third Party Plaintiffs.

THIRTY-FIRST SEPARATE DEFENSE

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

COUNTERCLAIMS, CROSSCLAIMS AND FOURTH PARTY CLAIMS

No such claims are required to be asserted at this time, however, special reserve pursuant to Case Management Order V.

Wherefore, Third Party Defendant, Township of Berkeley Heights, demands judgment as follows:

1. Dismissing the Third Party Plaintiffs' Complaint against it;
2. Awarding counsel fees, interests and costs of suit; and
3. For such other relief as the Court deems just, equitable and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, **STEVEN A. KUNZMAN, ESQ.** is hereby designated as trial counsel in the within matter.

JURY DEMAND

This Third Party Defendant demands a trial by jury on all issues subject to determination by a jury.

CERTIFICATION

I hereby certify that the original of this pleading has been filed with the Clerk of this Court and that a copy of same has been served upon Third Party Plaintiffs' counsel in accordance with the provisions and procedures set forth in Case Management Order V.

R.4:5-1 CERTIFICATION

Pursuant to R.4:5-1, the undersigned hereby certifies that at the time of filing the within, the matter in controversy is not the subject of any other action pending in any court and/or arbitration proceeding.

R. 4:6-1 CERTIFICATION

The undersigned hereby certifies that this pleading was filed within the time period provided by R. 4:6-1©) and as provided by Case Management Order V.

DIFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS & LEHRER, P.C.
Attorneys for Third Party Defendant, Township of
Berkeley Heights

By: 

Steven A. Kunzman, Esq.

Dated: January 20, 2010