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Borough of East Newark

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY

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,

Defendant,

vs.

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

DOCKET NO.: ESX-L-9868-05 (PASR)

Civil Action



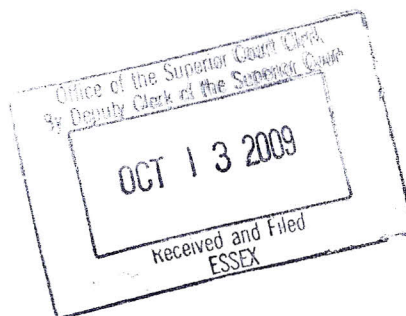
ANSWER OF BOROUGH OF EAST
NEWARK TO DEFENDANTS
MAXUS ENERGY CORPORATION
AND TIERRA SOLUTIONS, INC.'S
THIRD PARTY COMPLAINT "A"
(AGAINST PUBLIC ENTITIES) AND
SEPARATE DEFENSES

vs.

BAYONNE 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,
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 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 SWERAGE :
 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 :
 CRANFORD, TOWNSHIP OF HILLSIDE,
 TOWNSHIP OF IRVINGTON, :
 TOWNSHIP OF LITTLE FALLS,
 TOWNSHIP OF LIVINGSTON, :
 TOWNSHIP OF LYNDURST,
 TOWNSHIP OF MAPLEWOOD, :
 TOWNSHIP OF MILBURN,
 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, :



Third-Party Defendant, Borough of East Newark, having its principal office at 34

Sherman Avenue, East Newark, New Jersey 07029, by way of Answer to the Third Party

Complaint "A" brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc, says:

PROCEDURAL BACKGROUND

1. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1 through 14 of the third party complaint and leaves third party plaintiffs to their proofs.

ADDITIONAL HISTORICAL BACKGROUND

2. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 15 through 51 of the third party complaint and leaves third party plaintiffs to their proofs.

THE PARTIES

3. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 52 through 56 of the third party complaint and leaves third party plaintiffs to their proofs.

4. The third party defendant, Borough of East Newark admits that portion of paragraph 57 that alleges it is a public body and municipality of the State of New Jersey and denies that its principal place of business is located at 501 N.3rd Street, East Newark, New Jersey, as the Borough's principal place of business is located at 34 Sherman Avenue, East Newark, New Jersey.

5. The allegations set forth in paragraphs 58 through 139 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in

paragraphs 58 through 139 of the third party complaint and leaves third party plaintiffs to their proofs.

DEFINITIONS

6. The allegations contained in paragraphs 140 through 164 are not factual allegations and therefore require no response. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 140 through 164 of the third party complaint and leaves third party plaintiffs to their proofs.

FACTUAL ALLEGATIONS

7. The allegations contained in paragraphs 165 through 743 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 165 through 743 of the third party complaint and leaves third party plaintiffs to their proofs.

8. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 744 through 761, of the third party complaint, and leaves third party plaintiffs to their proofs.

9. The third party defendant, Borough of East Newark, admits that portion of paragraph 762 that pertains to East Newark and is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 762, of the third party complaint, and leaves third party plaintiffs to their proofs.

10. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 763, of the third party complaint, and leaves third party plaintiffs to their proofs.

11. The third party defendant, Borough of East Newark, denies that portion of paragraph 764 that pertains to East Newark and is without knowledge or information sufficient to form a belief as to the balance of the allegations set forth in paragraph 764, of the third party complaint, and leaves third party plaintiffs to their proofs.

12. The allegations contained in paragraphs 765 through 824 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 767 through 824 of the third party complaint and leaves third party plaintiffs to their proofs.

13. The third party defendant, Borough of East Newark, denies that portion of paragraph 825 that pertains to East Newark. The balance of the allegations relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the balance of the allegations set forth in paragraph 825, of the third party complaint, and leaves third party plaintiffs to their proofs.

14. The allegations contained in paragraphs 826 through 1147 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is

without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 826 through 1147 of the third party complaint and leaves third party plaintiffs to their proofs.

FIRST COUNT

15. Third party defendant, Borough of East Newark, repeats and realleges its answers to paragraphs 1-1147 as though set forth more fully herein, verbatim.

16. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1149, of the third party complaint, and leaves third party plaintiffs to their proofs.

17. The allegations contained in paragraphs 1150 through 1155 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1150 through 1155 of the third party complaint and leaves third party plaintiffs to their proofs.

18. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1156 of the third party complaint.

19. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1157, of the third party complaint, and leaves third party plaintiffs to their proofs.

20. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1158 of the third party complaint.

WHEREFORE, the Borough of East Newark demands judgment against third party plaintiffs, as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety;
- b. Awarding East Newark attorney's fees, together with interest and costs;
- c. Such other relief as the Court deems just and equitable.

SECOND COUNT

21. Third party defendant, Borough of East Newark, repeats and realleges its answers to paragraphs 1-1158 as though set forth more fully herein, verbatim.

22. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1160 of the third party complaint.

WHEREFORE, the Borough of East Newark demands judgment against third party plaintiffs, as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety;
- b. Awarding East Newark attorney's fees, together with interest and costs;
- c. Such other relief as the Court deems just and equitable.

THIRD COUNT

23. Third party defendant, Borough of East Newark, repeats and realleges its answers to paragraphs 1-1160 as though set forth more fully herein, verbatim.

24. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1162, of the third party complaint, and leaves third party plaintiffs to their proofs.

25. The allegations contained in paragraphs 1163 through 1164 are not factual allegations and therefore require no response. To the extent the allegations may be construed

as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1163 through 1164 of the third party complaint and leaves third party plaintiffs to their proofs.

26. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1165 of the third party complaint.

27. The allegations contained in paragraphs 1166 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1166 of the third party complaint and leaves third party plaintiffs to their proofs.

28. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1167 of the third party complaint.

29. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1168 of the third party complaint.

30. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1169 of the third party complaint.

31. The allegations contained in paragraphs 1170 through 1176 relate to third party defendants, other than the Borough of East Newark and do not require an answer. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1170 through 1176 of the third party complaint and leaves third party plaintiffs to their proofs.

32. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1177 of the third party complaint.

33. The allegations contained in paragraph 1178 are not factual allegations and therefore require no response. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1178 of the third party complaint and leaves third party plaintiffs to their proofs.

34. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1179 of the third party complaint.

35. Third party defendant, Borough of East Newark, denies that portion of the allegations set forth in paragraph 1180 of the third party complaint, which alleges that the Borough of East Newark "placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River". The Borough is without knowledge or information sufficient to form a belief as to the balance of the allegations set forth in paragraph 1180 of the third party complaint and leaves third party plaintiffs to their proofs.

36. Third party defendant, Borough of East Newark, denies that portion of the allegations set forth in paragraph 1181 of the third party complaint, which alleges that the Borough of East Newark "placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River". The Borough is without knowledge or information sufficient to form a belief as to the balance of the allegations set forth in paragraph 1181 of the third party complaint and leaves third party plaintiffs to their proofs.

37. The allegations contained in paragraph 1182 through 1185 are not factual allegations and therefore require no response. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1182 through 1185 of the third party complaint and leaves third party plaintiffs to their proofs.

38. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1186, of the third party complaint, and leaves third party plaintiffs to their proofs.

WHEREFORE, the Borough of East Newark demands judgment against third party plaintiffs, as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety;
- b. Awarding East Newark attorney's fees, together with interest and costs;
- c. Such other relief as the Court deems just and equitable.

FOURTH COUNT

39. Third party defendant, Borough of East Newark, repeats and realleges its answers to paragraphs 1-1186 as though set forth more fully herein, verbatim.

40. The allegations contained in paragraph 1188 are not factual allegations and therefore require no response. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1188 of the third party complaint and leaves third party plaintiffs to their proofs.

41. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1189 of the third party complaint.

42. The allegations contained in paragraph 1190 are not factual allegations and therefore require no response. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1190 of the third party complaint and leaves third party plaintiffs to their proofs.

43. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1191 of the third party complaint.

44. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1192 of the third party complaint.

45. Third party defendant, Borough of East Newark, denies that portion of the allegations set forth in paragraph 1193 of the third party complaint, which alleges that the Borough of East Newark “placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River...”. The Borough is without knowledge or information sufficient to form a belief as to the balance of the allegations set forth in paragraph 1193 of the third party complaint and leaves third party plaintiffs to their proofs.

46. Third party defendant, Borough of East Newark, denies that portion of the allegations set forth in paragraph 1194 of the third party complaint, which alleges that the Borough of East Newark “placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River...”. The Borough is without knowledge or information sufficient to form a belief as to the balance of the allegations set forth in paragraph 1194 of the third party complaint and leaves third party plaintiffs to their proofs.

47. Third party defendant, Borough of East Newark, denies the allegations set forth in paragraph 1195 of the third party complaint.

WHEREFORE, the Borough of East Newark demands judgment against third party plaintiffs, as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety;
- b. Awarding East Newark attorney's fees, together with interest and costs;
- c. Such other relief as the Court deems just and equitable.

FIFTH COUNT

48. Third party defendant, Borough of East Newark, repeats and realleges its answers to paragraphs 1-1195 as though set forth more fully herein, verbatim.

49. The allegations contained in paragraph 1197 are not factual allegations and therefore require no response. To the extent the allegations may be construed as against the Borough of East Newark, the Borough is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 1197 of the third party complaint and leaves third party plaintiffs to their proofs.

50. The allegations set forth in paragraph 1198 of the third party complaint refer to provisions contained in plaintiff's complaint which document speaks for itself. To the extent the allegations in paragraph 1198 differ from the complaint, they are denied.

51. The third party defendant, Borough of East Newark, is without knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1199 through 1229, of the third party complaint, and leaves third party plaintiffs to their proofs.

WHEREFORE, the Borough of East Newark demands judgment against third party plaintiffs, as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety;
- b. Awarding East Newark attorney's fees, together with interest and costs;
- c. Such other relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

1. Third party plaintiff's claim is barred for failure to state a claim upon which relief may be granted.
2. Third party plaintiffs' claim is barred by the doctrine of unclean hands.
3. Third party plaintiffs' claim is barred by the doctrine of estoppel.
4. Third party plaintiffs' claim is barred by the doctrine of laches.
5. Third party plaintiffs' claim is barred by the applicable statutes of limitations.
6. Third party plaintiffs' claim is barred by the doctrine of waiver.
7. Third party plaintiffs' claim is barred for failure to exhaust their administrative remedies.
8. Third party plaintiffs' claim is barred by the laws of the State of New Jersey, the New Jersey Constitution, the United States Constitution, including but not limited to the Separation of Powers.
9. Third Party Plaintiffs' claims are barred as a result of said claims having been untimely filed.
10. Third Party Plaintiffs' complaint is barred by the doctrine of res judicata.
11. The damages claimed by Third Party Plaintiffs were caused by a force majeure and are therefore barred.

12. Third Party Plaintiffs' claims are barred, or in the alternative, the damages to which they are entitled must be reduced under the doctrine of comparative negligence. N.J.S.A. 2A:15-5.1.

13. The complained of occurrence was caused by third parties over whom East Newark had no control.

14. Third Party Plaintiffs' claims are subject to a specific regulatory scheme or schemes that require resolution of issues within the specific expertise of administrative agencies and there is a paramount need for specialized and consistent agency fact finding and oversight, therefore, this action should be dismissed or stayed, in whole or in part, pending determinations by the administrative agencies that are relevant to this case.

15. Third Party Plaintiffs' claims against East Newark are subject to setoff and recoupment and therefore must be reduced accordingly.

16. East Newark's alleged acts or omissions, if any, or the alleged actions or omissions of others, if any, which are the subject of this action, complied with all applicable federal and state permits and plans.

17. Although East Newark denies that it is liable for the contamination described in the complaint, in the event that East Newark is found liable, it is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity joined as a Third Party Defendant in this action that would be liable to the State.

18. East Newark hereby adopts the Separate Defenses heretofor and hereinafter asserted by all other Third Party Defendants to the extent that such defenses are not otherwise set forth herein.

19. Third Party Plaintiffs' claims are barred for lack of standing to bring an action against East Newark.

20. Any injuries and/or damages allegedly sustained by the original Plaintiffs were caused by the joint or several negligence and/or intentional acts of third party plaintiffs and other third party defendants over whom East Newark has no control.

21. Third party plaintiffs' claims against East Newark should be dismissed because third party plaintiff's injuries, if any, were due to supervening events for which East Newark had no control or responsibility.

22. Without admitting any liability, if it is determined that East Newark engaged in any of the activities alleged in the Third Party Complaint "A", such activities were *de minimus*.

23. Third party plaintiffs' costs incurred or to be incurred at the site are unreasonable, duplicative, not cost effective, and not consistent with the National Contingency Plan.

24. To the extent that East Newark is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harm suffered.

25. At all times relevant, East Newark complied with all applicable laws, regulations or standards and government approvals.

26. Third party plaintiffs' claims are barred, or in the alternative, the damages to which they are entitled must be reduced as a result of statutory defenses available under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, *et. seq.*, and similar environmental legislation.

27. Third party plaintiffs' complaint includes claims for costs not yet expended. The Spill Act does not authorize third party plaintiffs to recover future costs. Therefore, third party plaintiffs' claims are premature and not yet ripe for adjudication.

28. The third party complaint "A" represents an unauthorized and unconstitutional retroactive application of the Spill Act and other applicable case law.

29. East Newark has at all times acted in good faith.

30. To the extent that this action is brought pursuant to the Spill Act, East Newark is not liable because any release or threat of release of any hazardous substance was an omission of a third party other than an employee or agent of East Newark. East Newark exercised due care with respect to any such alleged hazardous substance, in light of all relevant facts and circumstances. East Newark took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeable result from such acts or omissions. Consequently, East Newark is not liable under the Spill Act.

31. In the event that third party plaintiffs' claims are not barred by their own conduct, then any recovery by these parties should be reduced in the proportion that such parties' acts or omissions bear to the acts or omissions that caused the alleged injuries or damages.

32. Third party plaintiffs have failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act.

33. East Newark is not a "responsible party" under the Spill Act.

34. Certain of the costs incurred or to be incurred by the third party plaintiffs in connection with the site are not "response costs", recoverable from East Newark, within the meaning of section 101(23), (24), and (25) of CERCLA, 42 U.S.C. ¶ 01 (23), (24), and (25), as applied to the Spill Act.

35. Certain of the actions taken to date by third party plaintiffs for which third party plaintiffs are making a claim against East Newark were not consistent with the National Contingency Plan because, among other things, East Newark was not provided with notice or an opportunity to comment.

36. Certain of the claims for relief herein are time barred by the express terms of the Spill Act.

37. East Newark cannot be held liable under the Spill Act or Comprehensive Environmental Response Compensation and Liability Act for adopting regulations and/or ordinances authorizing waste pick-up in its municipality.

38. Third party plaintiffs' claims against East Newark are barred, in whole or in part, by Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3) because any releases, or threats of releases of hazardous substances, including those allegedly attributable to East Newark, an allegation that East Newark denies, were caused by the acts or omissions of third parties other than East Newark's employees or agents, or other than one with whom East Newark had a direct or indirect contractual relationship, and East Newark exercised due care with respect to the alleged hazardous substance is concerned, an allegation East Newark denies, taking into consideration the characteristics thereof, in light of all the relevant facts and circumstances, and took precautions against foreseeable acts or omissions of any such third party and the consequences that could be foreseeable from such acts or omissions.

39. Third party plaintiffs have not paid more than their fair share of any damages, costs or other relief sought by the plaintiffs, 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, and are, therefore, not entitled to contribution from East Newark.

40. Third party plaintiffs' claims for indemnification are barred because any alleged liability of East Newark, liability that East Newark denies, would be secondary, indirect, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the third party plaintiffs are direct, active and primary.

41. Third party plaintiffs are not entitled to recover attorneys' fees or costs, or fees of litigation.

42. Third party plaintiffs are not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress third party plaintiffs' claims.

43. Third party plaintiffs' claims are barred to the extent that they seek relief for conduct occurring, or damages incurred, before the effective date of the Spill Act.

44. Third party plaintiffs' claims for indemnification and otherwise are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy and applicable laws.

45. To the extent that third party plaintiffs' claims against East Newark are subject to contribution or any reduction or offset from other parties, any damages recovered against East Newark shall be reduced accordingly.

46. The claims of third party plaintiffs are barred by the New Jersey Tort Claims Act NJSA 59:1-1 et seq.

47. Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties.

48. East Newark reserves the right to assert additional defenses that may be uncovered during the course of this action.

49. East Newark exercised reasonable care under all of the circumstances herein. Consequently, it is not liable to third party plaintiffs under the common law or any statutory theory of recovery averred herein.

DEMAND FOR DOCUMENTS

Pursuant to R 4:18-2, third party defendant Borough of East Newark demands that defendants/third party plaintiffs furnish the undersigned, within five days after service hereof, with copies of each document referenced in the complaint.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R 4:25-4, Neil D. Marotta, Esq. is hereby designated as trial counsel.

RESERVATIONS OF RIGHTS

Third party defendant, Borough of East Newark, reserves its right to amend this answer to assert any additional defenses it may have which further investigation reveals to be appropriate.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R 4:5-1, I hereby certify that to the best of my knowledge, the subject matter of the within controversy is not the subject of any other action presently pending in any Court or of a pending arbitration proceeding and that no such action or arbitration proceeding is contemplated by this third party defendant. I am not aware of any other party who is not presently joined who should be joined in the above caption.

MAROTTA & GARVEY
Attorneys for Third-Party Defendant,
Borough of East Newark


Neil D. Marotta

Dated: October 13, 2009

CERTIFICATION OF SERVICE

I, Neil D. Marotta, an attorney at law of the State of New Jersey, do hereby state upon my oath as follows:

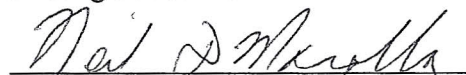
1. I am a partner in the law firm of Marotta & Garvey and represent the third party defendant, Borough of East Newark, in the above captioned matter.

2. I hereby certify that the Borough of East Newark's answer to the third party complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) and Affirmative Defenses was served electronically on all parties which have consented to service by posting on www.sfilc.com/njdepvocc on October 13, 2009.

3. I hereby certify that the Borough of East Newark's Answer to third party complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) and Affirmative Defenses was served upon the Clerk of the Court via hand delivery on October 13, 2009.

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 willfully false, I am subject to punishment.

MAROTTA & GARVEY
Attorneys for Third-Party Defendant,
Borough of East Newark


Neil D. Marotta

Dated: October 13, 2009