

MEYNER AND LANDIS LLP
One Gateway Center
Suite 2500
Newark, New Jersey 07102
Attorneys for Third-Party Defendants
Borough of Glen Ridge

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,

and

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS. INC.,

Third-Party Plaintiffs,

vs.

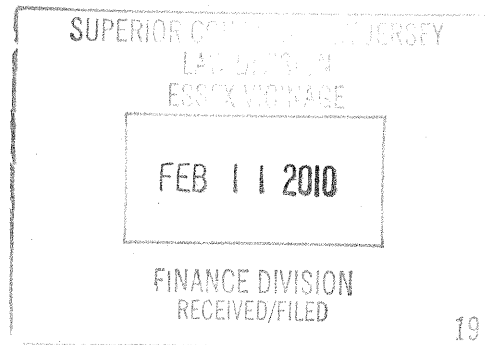
BAYONNE MUNICIPAL UTILITIES
AUTHORITY, BOROUGH OF CARTERET,
BOROUGH OF EAST NEWARK, BOROUGH
OF EAST RUTHERFORD, BOROUGH OF
ELMWOOD PARK, BOROUGH OF
FAIRLAWN, BOROUGH OF FANWOOD,
BOROUGH OF FRANKLIN LAKES,
BOROUGH OF GARWOOD, BOROUGH OF
GLEN RIDGE, BOROUGH OF GLEN ROCK,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY

DOCKET NO. ESX-L-9868-05

CIVIL ACTION

THIRD-PARTY DEFENDANT
BOROUGH OF GLEN RIDGE' S
ANSWER AND
AFFIRMATIVE DEFENSES TO
THIRD-PARTY COMPLAINT "A"
(Against Public Entities)



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
WOODBIDGE, 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 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 WINFIELD PARK, TOWNSHIP
OF WYCKOFF, VILLAGE OF RIDGEWOOD,

Third-Party Defendants,

Third-Party Defendant Borough of Glen Ridge (“Glen Ridge”), with its principal place of business at 825 Bloomfield Avenue, Glen Ridge, New Jersey, 07009, hereby Answers Third-Party Plaintiffs’ Third-Party Complaint “A” (Against Public Entities)

ANSWER

1. Pursuant to Case Management Order V, Sect. 9 (c) (iv), third-party defendant, Glen Ridge, answers only those allegations in the third party complaint that relate to Glen Ridge specifically and any allegations concerning parcel(s) or site(s) with which Glen Ridge is allegedly associated.

Therefore, Glen Ridge admits the allegations in paragraph 64 of the third party complaint that Glen Ridge is a Borough and public body and has its principal place of business at 825 Bloomfield Avenue, Glen Ridge, New Jersey.

Further, Glen Ridge admits that it is a contributing municipality to the Passaic Valley Sewerage Commission. As to the remainder of the allegations contained in paragraph 762, Glen Ridge has insufficient information to form a belief as to their truth and leaves the third party plaintiffs to their proofs regarding same.

As to the truth of the remaining paragraphs in Third-Party Complaint “A”, or the allegations in the remaining paragraphs that do not pertain to Glen Ridge, it lacks sufficient knowledge of information to form a belief as to the truth of such allegations and leaves third-party plaintiffs to their proofs.

WHEREFORE, Glen Ridge demands judgment dismissing the Third-Party Complaint awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

FIRST COUNT

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

2. Glen Ridge repeats and re-alleges its answers previously set forth herein.

3. Glen Ridge is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1148-1158, denies the allegations and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Glen Ridge demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

SECOND COUNT (Statutory Contribution)

4. Glen Ridge repeats and re-alleges its answers previously set forth herein.

5. Glen Ridge is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1159-1160, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Glen Ridge demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

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

6. Glen Ridge repeats and re-alleges its answers previously set forth herein.

7. Glen Ridge is without sufficient knowledge or information to form a belief as to the truth of the allegations Contained in paragraphs 1161-1186, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Glen Ridge demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

FOURTH COUNT
(Nuisance)

8. Glen Ridge repeats and re-alleges its answers previously set forth herein.

9. Glen Ridge is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1187-1195, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Glen Ridge demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

FIFTH COUNT
(Breach of the Public Trust)

10. Glen Ridge repeats and re-alleges its answers previously set forth herein.

11. Glen Ridge is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1196-1229, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Glen Ridge demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

AFFIRMATIVE DEFENSES

Glen Ridge, as and for Affirmative Defenses to each and every allegation in the Complaint, says as follows:

FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs lack standing to maintain this cause of action as set forth in Third Party Complaint "A".

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for relief are barred by the applicable statutory authority of the Municipal Land Use Law.

FIFTH AFFIRMATIVE DEFENSE

Third-Party Complaint "A" is the result of actions by Third-Party Plaintiffs or other parties over whom Glen Ridge exercises no control and for which Glen Ridge cannot be held legally responsible.

SIXTH AFFIRMATIVE DEFENSE

Any claim of Third-Party Plaintiffs is barred by contributory negligence and/or limited by comparative negligence.

SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for relief should be dismissed because they suffered no damages as a result of any action or inaction by Glen Ridge.

EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for relief are barred by the applicable statute of limitations, repose, waiver, estoppel, and/or laches.

NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for relief are barred by the applicable General Codes of the Township of Glen Ridge.

TENTH AFFIRMATIVE DEFENSE

Glen Ridge is insulated from liability by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1. Further, the Third-Party complaint is barred by the notice provisions in the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, et seq.

ELEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11, and are also barred to the extent that Third-Party Plaintiffs seek relief for conduct occurring prior to the effective date of the New Jersey Spill Compensation and Control Act. Third-Party Plaintiffs have also failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act. Finally, Glen Ridge is not a "responsible party" under the Spill Act.

TWELFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiff's claims against Glen Ridge 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 Glen Ridge, were caused by the acts or omissions of third parties other than Glen Ridge's employees or agents, or other than with whom Glen Ridge had a direct or indirect contractual relationship, and Glen Ridge exercised due care with respect to the alleged hazardous substances 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 result from such act or omissions.

THIRTEENTH AFFIRMATIVE DEFENSE

Any disposal of waste by Glen Ridge was done in accordance with the prevailing legal requirements of the State of New Jersey.

FOURTEENTH AFFIRMATIVE DEFENSE

Without admitting any liability, if it is determined that Glen Ridge engaged in any of the activities alleged in Third-Party Complaint "A", such activities were de *minimis*.

FIFTEENTH AFFIRMATIVE DEFENSE

Glen Ridge, at all times, acted in good faith.

SIXTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Glen Ridge for indemnification are barred to the extent they seek recovery for any punitive damages because such claims are barred by public policy.

SEVENTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Glen Ridge for any injuries and or damages allegedly sustained are barred to the extent such injuries and or damages were caused by negligence and or intentional acts of co-defendants or third parties, over whom Glen Ridge had no control.

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent that Third-Party Plaintiffs' claims against Glen Ridge are subject to contribution, or any reduction or offset from other parties, any damages recovered against Glen Ridge shall be reduced accordingly.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent that Glen Ridge 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.

TWENTIETH AFFIRMATIVE DEFENSE

Glen Ridge exercised reasonable care under all the circumstances herein. Consequently, it is not liable to Plaintiffs or Defendants/Third Party Plaintiffs under the common law or any statutory theory of recovery awarded herein.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Any injuries or damages allegedly sustained by Plaintiffs were caused by the joint or several negligence and or intentional acts of Third Party Plaintiffs and other parties over whom Glen Ridge has no control.

TWENTY-SECOND AFFIRMATIVE DEFENSE

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, and are, therefore, not entitled to contribution from Glen Ridge.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims for indemnification are barred because any alleged liability of Glen Ridge, the liability Glen Ridge denies, would be secondary, indirect, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Defendants/Third-Party Plaintiffs are direct, active and primary.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Glen Ridge reserves the right to plead any additional affirmative defenses which might come to light in this action as it progresses.

JURY DEMAND

Glen Ridge hereby demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Glen Ridge designates John N. Malyska, Esq. as trial attorney.

MEYNER AND LANDIS LLP
Attorneys for Third-Party Defendants
Borough of Glen Ridge

By: 

John N. Malyska
One Gateway Center
Suite 2500
Newark, New Jersey 07102
Telephone: (973) 624-2800
Facsimile: (973) 624-0356

February 11, 2010

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned hereby certifies that to the best of the undersigned's knowledge and belief, the within action is not presently the subject of any other action pending in any court or of a pending arbitration proceeding to date, nor is any other action or arbitration proceeding contemplated at this time.

MEYNER AND LANDIS LLP
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Borough of Glen Ridge

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Suite 2500
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Facsimile: (973) 624-0356

February 11, 2010

FILING CERTIFICATION

I certify that the original and copy of the within Answer and Affirmative Defenses have been sent by Federal Express for filing to the Clerk of the Superior Court of New Jersey, Law Division, Essex County, at the Veterans Courthouse, 50 W. Market Street, Newark, New Jersey 07102, and a copy of the same has been sent by regular mail this date to Third Party Plaintiffs' Attorneys as follows:

William L. Warren, Esq.
Drinker, Biddle & Reath, LLP
105 College Road East, Suite 300
Princeton, New Jersey 08542-0627

Thomas E. Starnes, Esq.
Andrews Kurth, LLP
1350 I Street NW - Suite 1100
Washington, DC 20005

I certify that a copy of said document has been posted on the electronic platform provided by Defendants (<http://njdepvocc.sfile.com>)

MEYNER AND LANDIS LLP
Attorneys for Third-Party Defendants
Borough of Glen Ridge

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One Gateway Center
Suite 2500
Newark, New Jersey 07102
Telephone: (973) 624-2800
Facsimile: (973) 624-0356

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