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Borough of Kenilworth

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

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION – ESSEX COUNTY
:
: DOCKET NO. ESX-L-9868-05 (PASR)

Civil Action

: ANSWER OF BOROUGH OF
: KENILWORTH TO DEFENDANTS
: MAXUS ENERGY CORPORATION
: AND TIERRA SOLUTIONS, INC.'S
: THIRD PARTY COMPLAINT "A",
: AND SEPARATE DEFENSES

FAIR LAWN, BOROUGH OF KENILWORTH, :
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 :
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 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, :
 _____:

Third-Party Defendant Borough of Kenilworth, having its principal office at 567
 Boulevard, Kenilworth, New Jersey 07033, by way of answer to the Third Party Complaint “A”
 (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra
 Solutions, Inc. says:

1. Other than to admit that the Borough of Kenilworth is a public body and a
 municipality of the State of New Jersey, with its principal place of business at 567 Boulevard ,
 Kenilworth New Jersey 07033 and that a section of the Borough of Kenilworth is a user and
 member of the sewer system of the Rahway Valley Sewage Authority, all other allegations
 against the Borough of Kenilworth are denied.

WHEREFORE, Third Party Defendant, Borough of Kenilworth, demands judgment as
 follows:

1. Dismissal of the Third Party Plaintiff’s Complaint;
2. Awarding Borough of Kenilworth attorneys’ fees, interest and costs of suit; and
3. For such other relief as the Court may deem just and equitable.

SEPARATE DEFENSES

1. The Third Party Complaint fails to state a cause of action upon which relief may be granted.

2. This Third Party Defendant is free of any and all negligence.

3. This Third Party Defendant acted in a reasonably prudent manner at all times.

4. The Third Party Plaintiffs lack standing to maintain this cause of action set forth in Third Party Complaint “A”.

5. Damages sustained by third party plaintiffs, if any, were the proximate result of the negligence and wrongful acts of third persons, natural or corporate, over whom this Third Party Defendant Borough of Kenilworth exercised no control and for whose actions this defendant is not legally responsible.

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

7. The claims asserted in Third Party Complaint “A” are barred by the applicable Statute of Limitations.

8. At all times relevant herein, Third Party Defendants Borough of Kenilworth complied with all applicable laws, regulations or standards and government approvals.

9. This Third Party Defendant acted in good faith at all times.

10. The Borough of Kenilworth hereby adopts and asserts all other defenses which have been or will be asserted at any time by any other party in this action provided said defenses are applicable to the Borough of Kenilworth.

11. Third Party Plaintiff's claims for relief are barred by the doctrine of Waiver.
12. Third Party Plaintiff's claims for relief are barred by the doctrine of Estoppel.
13. Third Party Plaintiff's claims for relief are barred by the doctrine of Laches.
14. The Borough of Kenilworth reserves the right to assert additional defenses throughout the course of this action.
15. The Third Party Complaint is barred by the doctrine of accord and satisfaction.
16. The Third Party Complaint is barred by the notice provisions of the New Jersey Tort Claims Act, *N.J.S.A.* 59:8-1, et seq.
17. The Third Party Complaint is barred by the Doctrine of Unjust Enrichment.
18. The Third Party Complaint is barred by the Doctrine of Qualified Immunity.
19. The Third Party Complaint is barred by the Doctrine of Res Judicata.
20. The Third Party Complaint is barred by the absolute immunity of this third-party defendant.
21. The Third Party Complaint is barred by the Doctrine of Force Majeure.
22. The Third Party Complaint is barred by the failure of Third Party Plaintiffs to exhaust all administrative remedies.
23. Third Party Plaintiffs' claims are barred, or in the alternative, the damages alleged must be reduced under the doctrine of comparative negligence, *N.J.S.A.* 2A:15-5.1.
24. Third Party Plaintiffs' claims are barred, or in the alternative, the damages alleged 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 other similar and applicable environmental litigation.

25. Although Third Party Defendant Borough of Kenilworth denies that it is liable for any alleged contamination, in the event Third Party Defendant Borough of Kenilworth 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 of New Jersey.

26. 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 the Borough of Kenilworth has no control.

27. The Third Party Complaint is barred by the Doctrine of Unclean Hands.

28. The Third Party Complaint as to Borough of Kenilworth should be dismissed because the Third Party Plaintiffs' injuries, if any, were due to supervening events for which the Borough of Kenilworth had no control of responsibility.

29. Third Party Borough of Kenilworth reserves the right to allege crossclaims and counterclaims as such time as is permitted by the Court.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Harvey Fruchter, Esq. is hereby assigned as trial counsel.

CERTIFICATION PURSUANT TO R. 4:5-1

It is certified that this matter is not the subject of any other action now pending in any Court or of a pending arbitration proceeding. No other action or arbitration is contemplated.

There are other parties known who should be joined in this action including those entities from New York State and others that have been identified by other firms.

Fruchter & Associates, LLC
Attorneys for Third Party Defendant
Borough of Kenilworth



By: _____
Harvey Fruchter

Dated: January 13, 2009

CERTIFICATION OF SERVICE

Harvey Fruchter, an attorney at law in the State of New Jersey, hereby certifies as follows:

1. I am an associate at the law firm of Fruchter & Associates, LLC, which law firm represents the Third Party Defendant Borough of Kenilworth in connection with this matter.

2. I hereby certify the Borough of Kenilworth Answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. and separate defenses was served upon the Clerk of the Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey 07102, via Lawyers Service.

3. I hereby certify the Borough of Kenilworth Answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra

Solutions, Inc. and separate defenses was served electronically on all parties which have consented to service by posting on the following website, <http://njdepvocc.sfile.com> on January 15, 2010.

A handwritten signature in black ink, appearing to read "Harvey Fruchter", written in a cursive style.

Harvey Fruchter

Dated: January 15, 2010