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Attorneys for Third-Party Defendant Borough of Totowa

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 SOLUTIONS, RESPOL YPF,
S.A., YPF HOLDINGS, INC., AND CHL
HOLDINGS, INC.,

Defendants.

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 FAIR LAWN,
BOROUGH OF FANWOOD,
BOROUGH OF FRANKLIN LAKES,
BOROUGH OF GARWOOD,
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 PATERSON,	:
CITY OF EAST ORANGE,	:
CITY OF ELIZABETH,	:
CITY OF GARFIELD,	:
CITY OF CLIFTON,	:
CITY OF GARFIELD,	:
CITY OF 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	:
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.	:

ANSWER

The Third-Party Defendant, Borough of Totowa, through their attorneys at the laws firm of Corrado & Corrado, Esqs., by way of Answer to the Complaint says:

1. The Borough of Totowa admits that it is public body and a municipality of the State of New Jersey, and that the Borough of Totowa is currently a member of the Passaic Valley Sewerage Commissioners. All other allegations against the Borough of Totowa are denied.

WHEREFORE, the Borough of Totowa demands judgment dismissing the Third-Party Complaint "A", awarding the Borough of Totowa attorney fees, interest and costs of suit, and such other relief as the Court and may deem just and equitable.

FIRST COUNT

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

2. The Borough of Totowa repeats and incorporates its answers provided in paragraph 1 as set forth at length herein.

3. The Borough of Totowa denies the allegations provided in paragraphs 1148-1158 to the extent they are asserted against the Borough of Totowa.

WHEREFORE, the Borough of Totowa demands judgment dismissing the Third-Party Complaint "A", awarding the Borough of Totowa attorney fees, interest and costs of suit, and such other relief as the Court and may deem just and equitable.

SECOND COUNT

(Statutory Contribution)

4. The Borough of Totowa repeats and incorporates its answers provided in paragraphs 1-3 as set forth at length herein.

5. The Borough of Totowa denies the allegations provided in paragraphs 1159-1160 to the extent they are asserted against the Borough of Totowa.

WHEREFORE, the Borough of Totowa demands judgment dismissing the Third-Party Complaint “A”, awarding the Borough of Totowa attorney fees, interest and costs of suit, and such other relief as the Court and 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. The Borough of Totowa repeats and incorporates its answers provided in paragraph 1-5 as set forth at length herein.

7. The Borough of Totowa denies the allegations provided in paragraphs 1161-1186 to the extent they are asserted against the Borough of Totowa.

WHEREFORE, Borough of Totowa, demands judgment dismissing the Third-Party Complaint “A”, awarding the Borough of Totowa attorneys fees, interest and costs of suit, and such other relief as the Court may deem just and equitable.

FOURTH COUNT

(Nuisance)

8. The Borough of Totowa repeats and incorporates its answers provided in paragraph 1-7 as set forth at length herein.

9. The Borough of Totowa denies the allegations provided in paragraphs 1187-1195 to the extent they are asserted against the Borough of Totowa.

WHEREFORE, Borough of Totowa, demands judgment dismissing the Third-Party Complaint “A”, awarding the Borough of Totowa attorneys fees, interest and costs of suit, and such other relief as the Court may deem just and equitable.

FIFTH COUNT

(Breach of the Public Trust)

10. The Borough of Totowa repeats the incorporates its answers provided in paragraph 1-9 as set forth at length herein.

11. The Borough of Totowa denies the allegations provided in paragraphs 1196-1229 to the extent they are asserted against the Borough of Totowa.

WHEREFORE, Borough of Totowa, demands judgment dismissing the Third-Party Complaint "A", awarding the Borough of Totowa attorneys fees, interest and costs of suit, and such other relief as the Court may deem just and equitable.

SEPARATE DEFENSES

FIRST DEFENSE

The Complaint herein fails to state a claim upon which relief can be granted and/or the Third-Party Defendant is entitled to judgment as a matter of law, and the Third-Party Defendant reserves the right to move at or before the time of trial to dismiss the Complaint.

SECOND DEFENSE

The Third-Party Defendant, public entities or public employees, within the contemplation of the New Jersey Tort Claims Act, are entitled to all provisions, immunities, exemptions and limitations of the Act and, consequently, are not liable to the claimants or, if liable, only as limited by the Act.

THIRD DEFENSE

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

FOURTH DEFENSE

Even if it is found that this Third-Party Defendant engaged in the wrongful conduct alleged by Third-Party Complaint “A”, the Third-Party Defendant’s alleged wrongful conduct was de minimis.

FIFTH DEFENSE

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

SIXTH DEFENSE

At all times relevant, the Third-Party Defendant complied with all applicable laws, regulations or standards and government approvals.

SEVENTH DEFENSE

The Third-Party Defendant acted in good faith at all times.

EIGHTH DEFENSE

Third-Party Defendant hereby incorporates and adopts by reference all separate defenses asserted by any other Third-Party Defendant, presently or hereafter filed, except to the extent that such separate defense of others may make allegations against the instant Third-Party Defendant. This Third-Party Defendant reserves the right to amend this Answer to assert additional defenses and make further admissions upon completion of further investigation and discovery.

NINTH DEFENSE

Third-Party Defendant did not owe a duty to Third-Party Plaintiffs, and in the event that Third-Party Plaintiffs prove there was a duty owed by Third-Party Defendant, then Third-Party Defendant states that such duty was not breached.

TENTH DEFENSE

Third-Party Defendant violated no legal duty owed by them to Third-Party Plaintiffs.

ELEVENTH DEFENSE

Third-Party Plaintiffs are barred from recovery for failure to mitigate damages.

TWELFTH DEFENSE

Third-Party Plaintiffs are solely liable for the underlying incident, thereby allowing Third-Party Defendant to deny the alleged claim.

THIRTEENTH DEFENSE

The alleged incident and damages complained of by Third-Party Plaintiffs, were the result of the sole conduct of Third-Party Plaintiffs.

FOURTEENETH DEFENSE

Third-Party Defendant is only responsible to Third-Party Plaintiffs, if at all, to the extent of Third-Party Plaintiffs' own degree of negligence. Any damages allegedly sustained by Third-Party Plaintiffs were the result of the contributory actions of Third-Party Plaintiffs.

FIFTEENTH DEFENSE

Any damages allegedly sustained by Third-Party Plaintiffs were a result of the actions of Third Parties over whom Third-Party Defendant exercised no control.

SIXTEENTH DEFENSE

Third-Party Plaintiffs' Complaint is barred, in whole or in part, by the Equitable Doctrine of Laches.

SEVENTEENTH DEFENSE

Third-Party Plaintiffs' Complaint is barred, in whole or in part, under the Doctrine of Unclean Hands.

EIGHTEENTH DEFENSE

Third-Party Plaintiffs' Complaint is barred, in whole or in part, under the Equitable Doctrine of Waiver.

NINETEENTH DEFENSE

Third-Party Plaintiffs' Complaint is barred, in whole or in part, by the Doctrine of Accord and Satisfaction.

TWENTYITH DEFENSE

Third-Party Plaintiffs' Complaint is barred by the Equitable Doctrine of Estoppel In Pais.

TWENTY-FIRST DEFENSE

Third-Party Plaintiffs' Complaint is barred by a lack of jurisdiction.

TWENTY-SECOND DEFENSE

Third-Party Plaintiffs' Complaint is barred due to Third-Party Plaintiffs' fraud.

TWENTY-THIRD DEFENSE

Third-Party Plaintiffs' claims are barred from recovery as a matter of law because the alleged claims were not made and/or perfected in the manner and within the time provided and required by the laws, statutes, rules, regulations and/or contracts upon which it is predicated.

TWENTY-FOURTH DEFENSE

At no time germane to the incidents complained of by the Third-Party Plaintiffs did Third-Party Defendant act in an arbitrary or capricious manner.

TWENTY-FIFTH DEFENSE

At no time germane to the incidents complained of by Third-Party Plaintiffs did Third-Party Defendant abuse its discretion in carrying out their legal duties and obligations.

TWENTY-SIXTH DEFENSE

Third-Party Plaintiffs' assumed the risk and were fully cognizant of any and all circumstances surrounding the alleged incident and are, therefore, barred from recovery.

TWENTY-SEVENTH DEFENSE

Third-Party Plaintiffs' had full knowledge of any and all risks alleged in the Complaint, and Third-Party Plaintiffs have further assumed those damages.

TWENTY-EIGHTH DEFENSE

The allegations of Third-Party Plaintiffs' Complaint are frivolous and without merit, and an abuse of process under the laws of the State of New Jersey.

TWENTY-NINTH DEFENSE

Third-Party Plaintiffs have failed to implead all necessary parties to this action.

THIRTIETH DEFENSE

Third-Party Plaintiffs' Complaint is barred for failure to exhaust all administrative remedies.

THIRTY-FIRST DEFENSE

The Third-Party Plaintiffs have not demonstrated that they will suffer irreparable harm if the relief sought in the Third-Party Complaint is not granted by the Court.

THIRTY-SECOND DEFENSE

The Third-Party Plaintiffs have failed to substantiate a probability of success on the merits of the claims advanced within their Third-Party Complaint.

THIRTY-THIRD DEFENSE

Third-Party Plaintiffs have failed to comply with all conditions precedent to obtain the injunctive relief sought within their Third-Party Complaint.

THIRTY-FOURTH DEFENSE

Third-Party Plaintiffs' action is barred due to lack of in personam jurisdiction over the parties because there is insufficiency of process and insufficiency of service of process. The exercise of such jurisdiction over these parties is therefore in violation of these parties' rights under the Constitutions of the State of New Jersey and the United States of America. These parties reserve the right to move for dismissal of the Complaint.

THIRTY-FIFTH DEFENSE

The applicable law, rule, statute or regulation, including, but not limited to, the statute of limitations, controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by the claimants, and, accordingly, the claimants' claim is barred as a matter of law.

THIRTY-SIXTH DEFENSE

The Third-Party Plaintiffs are guilty of comparative negligence of a greater degree than the negligence of this Third-Party Defendant, which is denied.

THIRTY-SEVENTH DEFENSE

Third-Party Plaintiffs' action is barred by operation of the Entire Controversy Doctrine.

THIRTY-EIGHTH DEFENSE

The actions of the underlying matter were properly protected by State and Federal Law, constitutions, statutes, and common law.

THIRTY-NINTH DEFENSE

Third-Party Plaintiffs' allegations are not cognizable under either Federal or State Law.

FOURTIETH DEFENSE

The Third-Party Plaintiffs' claims are barred as a matter of law by the Doctrines of Res Judicata and Collateral Estoppel.

FOURTY-FIRST DEFENSE

Any action or inaction on the part of this Third-Party Defendant in connection with this cause of action was as the result of the exercise of judgment, discretion, or legislative function vested in it within the meaning of N.J.S.A. 59:2-3 and no liability may be imposed on this Third-Party Defendant.

FOURTY-SECOND DEFENSE

This Third-Party Defendant are immune from liability on this suit by virtue of N.J.S.A. 59:2-4 and N.J.S.A. 59:2-6 and by reason of any failure to make any inspection or adopting or failing to adopt or enforce any law.

FOURTY-THIRD DEFENSE

The conditions described in the Third-Party Complaint were not dangerous nor did they constitute a foreseeable risk of the kind of injury alleged by Third-Party Plaintiffs, nor were premises palpably dangerous and Third-Party Defendant are immune from liability to Third-Party Plaintiffs.

FOURTY-FOURTH DEFENSE

The Third-Party Defendant is free of any and all negligence.

FOURTY-FIFTH DEFENSE

This Third-Party Defendant had neither actual nor constructive knowledge of the conditions described by Third-Party Plaintiffs within a sufficient time prior to the alleged accident so as to have taken measures to protect against the same and is immune from liability by virtue of N.J.S.A. 59:4-2 and 59:4-3.

FOURTY-SIXTH DEFENSE

Third-Party Plaintiffs failed to comply with the conditions precedent for making claims against this Third-Party Defendant by filing a claim in the manner and within the time provided by N.J.S.A. 59:8-4, 59:8-5, 59:8-6, 59:8-7 and 59:8-8 and are barred from now making claim.

FOURTY-SEVENTH DEFENSE

Any recoveries to which the claimants might be entitled against this Third-Party Defendant are subject to the limitation on damages provided by N.J.S.A. 59:9-2, and any award must be reduced in accordance with said statute.

FOURTY-EIGHTH DEFENSE

Damages Third-Party Plaintiffs may be entitled to, if any, must be diminished as to this Third-Party Defendant in proportion to the amount of negligence attributable to the Third-Party Plaintiffs in the manner in which they conducted themselves at the time the alleged accident occurred as provided by N.J.S.A. 59:9-4.

FOURTY-NINTH DEFENSE

The efforts to keep the premises so as to protect against the conditions alleged by Third-Party Plaintiffs were not palpably unreasonable and this Third-Party Defendant is immune from liability by virtue of N.J.S.A. 59:4-2.

FIFTIETH DEFENSE

Inasmuch as Third-Party Plaintiffs did not suffer an injury entitling them to damage for pain and suffering nor did they suffer any permanent loss of body function, disfigurement or dismemberment, nor did they incur medical treatment expense in excess of \$3,600 by reason of either/or a combination of the foregoing, this Third-Party Defendant are immune from liability pursuant to N.J.S.A. 59:9-2.

FIFTY-FIRST DEFENSE

Recovery is barred in this action by reason of negligence imputable to Third-Party Plaintiffs and co-Third-Party Defendants due to a joint, and common enterprise engaged in between Third-Party Plaintiffs and co-Third-Party Defendants.

FIFTY-SECOND DEFENSE

The instant Third-Party Defendant is not a joint tortfeasor and is not liable for contribution or indemnification to any other party.

FIFTY-THIRD DEFENSE

The Third-Party Complaint is barred by the following provisions of the New Jersey Tort Claims Act: N.J.S.A. 59:1-1, 59:2-2, 59:3-1, et. seq.

FIFTY-FOURTH DEFENSE

The instant Third-Party Defendant cannot have liability imposed upon it for Third-Party Plaintiffs' alleged claims for failure to protect against the dangerous condition since the condition precedent to the imposition of liability as set forth in N.J.S.A. 59:4-1 et. seq., has not been met.

FIFTY-FIFTH DEFENSE

Recovery is barred by the Third-Party Plaintiffs' failure to provide timely notice of claim or to present the claim in accordance with N.J.S.A. 59:8-1, et. seq.

FIFTY-SIXTH DEFENSE

The Third-Party Plaintiffs' Complaint is barred pursuant to the operation of N.J.S.A. 2A:53A-7, et. seq.

FIFTY-SEVENTH DEFENSE

Any liability which may otherwise be imposed upon the Third-Party Defendant must be reduced by the application of the standard comparative fault/negligence provided for in N.J.S.A. 59:9-3, 9-4; N.J.S.A. 2A:15-51; et. seq.; and N.J.S.A. 55:10-23, 11f.

FIFTY-EIGHTH DEFENSE

Third-Party Plaintiffs' claim is barred because it is against public policy.

FIFTY-NINTH DEFENSE

The Third-Party Defendant reserves the right to apply for the imposition of sanctions against the Third-Party Plaintiffs pursuant to N.J.S.A. 2A:15-59.1 and to make an application for counsel fees and costs of suit pursuant to N.J.S.A. 2A:15-59.1 and Fed.R.Civ.P. 11 on the basis that the cause of action is without merit, is frivolous and has been instituted by the Third-Party Plaintiffs in bad faith with the intent to harass this Third-Party Defendant and cause this Third-Party Defendant to incur great expense in defense of the same, all to the damages of this Third-Party Defendant.

SIXTIETH DEFENSE

Third-Party Plaintiffs are barred from recovery for failure to present and otherwise file a Notice of Claim within the time, form, and place required by Chapter 8 of Title 59 of the New Jersey revised statutes and as such this Third-Party Defendant are immune from liability and the Third-Party Plaintiffs are barred from recovery.

SIXTY-FIRST DEFENSE

This Third-Party Defendant is immune from any prejudgment interest in the event of a judgment pursuant to N.J.S.A. 59:9-2(a).

SIXTY-SECOND DEFENSE

This Third-Party Defendant is not liable for punitive damages pursuant to N.J.S.A. 59:9-2(c).

SIXTY-THIRD DEFENSE

The claims of the Third-Party Plaintiffs are barred by the Third-Party Plaintiffs' own criminal conduct.

SIXTY-FOURTH DEFENSE

This Third-Party Defendant incorporates by reference each and every defense of every co-Third-Party Defendant as if set forth at length herein.

SIXTY-FIFTH DEFENSE

The Third-Party Plaintiffs were required to abide by the laws of the United States and the State of New Jersey, and their failure to do so does not breed a civil cause of action. To the contrary, Third-Party Plaintiffs' conduct prohibits their advancement of a civil cause of action.

SIXTY-SIXTH DEFENSE

The Third-Party Plaintiffs' claims and allegations are not cognizable under either the laws of the United States or the State of New Jersey.

SIXTY-SEVENTH DEFENSE

Any and all actions allegedly taken by the instant Third-Party Defendant were taken in accordance with their authority under the color and title of law.

SIXTY-EIGHTH DEFENSE

The instant Third-Party Defendant did not deny the Third-Party Plaintiffs their constitutional protections.

SIXTY-NINTH DEFENSE

The claims against the instant Third-Party Defendant are barred by the Doctrines of Absolute and Qualified Immunity.

SEVENTIETH DEFENSE

At no time germane to the incidents complained of by the Third-Party Plaintiffs did Third-Party Defendant abuse its discretion in carrying out their legal duties and obligations.

SEVENTY-FIRST DEFENSE

Third-Party Plaintiffs have failed to comply with the conditions precedent for making claims against the instant Third-Party Defendant, and are barred from now making said claims.

SEVENTY-SECOND DEFENSE

Third-Party Plaintiffs' Complaint is barred by all New Jersey statutes governing the Office of the Prosecutor, which bar the Third-Party Plaintiffs' cause of action, including any and all actions against participating or funding municipalities. The extension of this immunity is provided by Federal and State law (including common law).

SEVENTY-THIRD DEFENSE

The Third-Party Plaintiffs' civil action should be dismissed or stayed, pursuant to the Federal Court's Abstention Doctrine.

SEVENTY-FOURTH DEFENSE

Any liability which might otherwise be imposed upon the defendant is subject to reduction by the application of comparative negligence as set forth in N.J.S.A. 59:9-4.

DEMAND FOR DAMAGES

Please take notice that pursuant to R.4:5-2, the party filing this Answer require that you, within five days, furnish them with a statement of the damages claimed.

JURY DEMAND

Third-Party Defendant hereby demands trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Kristin M. Corrado, Esq. is designated as trial counsel.

Corrado & Corrado, Esqs.
Attorneys for Third-Party Defendant,
BOROUGH OF TOTOWA

By: _____
Kristin M. Corrado, Esq.

DATED: December 23, 2009

CERTIFICATION, PURSUANT TO R. 4:5-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any other Court, or of a pending arbitration proceeding. There is no action or arbitration contemplated, nor is there any party who should be joined in this action, pursuant to my current understanding of this matter.

Corrado & Corrado, Esqs.
Attorneys for Third-Party Defendant,
BOROUGH OF TOTOWA

By: _____
Kristin M. Corrado, Esq.

DATED: December 23, 2009

PROOF OF MAILING

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 1:5-1 et. seq.

I certify that the foregoing statement made by me is true. I am aware that if the foregoing statement is willfully false, I am subject to punishment.

Judy Wright, Legal Secretary

DATED: December 23, 2009