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TRISHA M. CONNORS  
OF COUNSEL

October 7, 2009

Clerk, Superior Court of New Jersey  
Essex County Law Division  
New Court Building, Room 113  
50 West Market Street  
Newark, NJ 07102

Re: NJDEP v. Occidental, et. al.  
Docket No. ESX-L-9868-05 (PASR)

Dear Sir or Madame:

Enclosed please find an original and two copies of the Answer for Third Party Defendant City of Hackensack in the above-referenced matter. Please note that we paid the \$135.00 filing fee when we filed our Notice of Appearance on September 14, 2009. A copy of that check is enclosed. Please file the original and send a file-stamped copy back in the envelope provided.

Thank you.

Sincerely,  
ZISA & HITSCHERICH

Trisha M. Connors, Esq.

Trisha M. Connors, Esq.  
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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,  
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 (PASR)

ANSWER OF THE CITY OF  
HACKENSACK TO DEFENDANTS  
MAXUS ENERGY CORPORATION  
AND TIERRA SOLUTIONS, INC.'S  
THIRD PARTY COMPLAINT "A",  
AND SEPARATE DEFENSES

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 City of Hackensack, having its principal office at 65 Central Avenue, Hackensack, New Jersey 07601, 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 City of Hackensack is a public body and a municipality of the State of New Jersey, with its principal place of business at 65 Central Avenue, Hackensack, New Jersey and that the City of Hackensack is a contributing municipality to the Passaic Valley Sewerage Commission (PVSC) but is not a member of the PVSC, all other allegations against the City of Hackensack are denied.

**WHEREFORE,** Third Party Defendant, City of Hackensack, demands judgment as follows:

1. Dismissal of the Third Party Plaintiff's Complaint;
2. Awarding City of Hackensack 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 City of Hackensack exercised not 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 the Third Party Complaint “A” are barred by the applicable Statute of Limitations.

8. At all times relevant herein, Third Party Defendants City of Hackensack 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 City of Hackensack 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 City of Hackensack.

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 City of Hackensack reserves the right to assert additional defenses throughout the course of this action.

15. The Third Party Complaint 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 City of Hackensack denies that it is liable for any alleged contamination, in the event Third Party Defendant City of Hackensack 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 City of Hackensack has no control.

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

28. the Third Party Complaint as to the City of Hackensack should be dismissed because the Third Party Plaintiffs' Injuries, if any, were due to supervening events for which the City of Hackensack had no control or responsibility.

29. Third Party City of Hackensack reserves the right to allege cross-claims and counterclaims at such time as permitted by the Court.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to *R. 4:25-4*, Joseph C. Zisa, Esq. is hereby designated 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 no other parties known who should be joined in this action.

ZISA & HITSCHERICH  
Attorneys for Third Party Defendant City of Hackensack

By: \_\_\_\_\_  
Trisha Connors, Esq.

Dated: October 9, 2009



**CERTIFICATION OF SERVICE**

I, Trisha M. Connors, Attorney at Law in the State of New Jersey, certifies as follows:

1. I am of counsel for the Law Firm of Zisa & Hitscherich, attorneys for Third Party Defendant City of Hackensack.

2. I hereby certify that I served the City of Hackensack's Answer and Separate Defenses to the Third Party Complaint "A" brought by defendants Maxus Energy Corporation and Tierra Solutions, Inc. via first-class mail to the Essex County Superior Court, 50 W. Market Street, Newark, New Jersey, 07102 on October 9, 2009.

3. I hereby certify the City of Hackensack Answer and Separate Defenses to the Third Party Complaint "A" (Against Public Entities) brought by Defendants Maxus Energy Corporation and Tierra Solutions, Inc. was served electronically on all parties which have consented to service by posting on the following website, <http://njdepvocc.sfile.com> on October 9, 2009.

Dated: October 9, 2009

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Trisha M. Connors