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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTIONS 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,

BAYONNE MUNICIPAL UTILITIES
AUTHORITY, *et al.*,

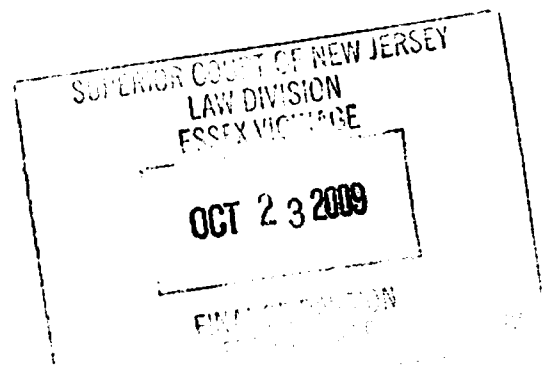
Third Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
ESSEX COUNTY

Docket No. ESX-L-9868-05

Civil Action

**ANSWER TO THIRD PARTY
COMPLAINT “A” OF
DEFENDANTS MAXUS ENERGY
CORPORATION AND TIERRA
SOLUTIONS, INC. AND
AFFIRMATIVE DEFENSES**



Third-Party Defendant, City of Jersey City, having their principal place of business at 280 Grove Street, Jersey City, New Jersey, by way of Answer to Defendants/Third Party Plaintiffs, Maxus Energy Corporation's and Tierra Solutions, Inc.'s ("Third Party Plaintiffs"), Third Party Complaint "A" (Against Public Entities"), filed February 4, 2009 hereby says:

1. The allegations contained in paragraphs 1 through 14 relate to allegations made by the original plaintiffs and defendants which do not require an answer from the City of Jersey City.

2. The allegations contained in paragraphs 15 through 51 relate to allegations contained in the original defendants' counterclaim which document speaks for itself and also relate to other third party defendants which do not require an answer from the City of Jersey City.

3. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 52 and 54, and leave the Third Party Plaintiffs to their proofs.

4. The allegations contained in paragraphs 55 through 99 relate to other third party defendants which require no answer from the City of Jersey City.

5. The City of Jersey City denies the allegations contained in paragraph 90 to the extent that JCMUA is a public body and New Jersey municipality with its principal place of business at 280 Grove Street, Jersey City, New Jersey.

6. The allegations contained in paragraphs 101 through 139 relate to other third party defendants which require no answer from the City of Jersey City.

7. The allegations contained in paragraphs 140 through 164 are definitions of relevant terms that require no answer from the City of Jersey City.

8. The allegations contained in paragraphs 165 through 359 relate to other third party defendants which require no answer from the City of Jersey City.

9. The City of Jersey City admits the that the City of Jersey City "Jersey City" was initially incorporated by act of the State Legislature in 1820 in paragraph 360. However, Jersey City was reincorporated on January 23, 1829 and February 22, 1838.

10. The City of Jersey City admits the allegations in paragraph 361.

11. The City of Jersey City admits the allegations in paragraph 362.

12. The City of Jersey City admits the allegations contained in paragraph 363.

13. The City of Jersey City admits the allegations contained in paragraph 364.

14. The City of Jersey City admits the allegations in paragraph 365.

15. The City of Jersey City admits the allegations in paragraph 366.

16. The City of Jersey City admits the allegations in paragraph 367.

17. The City of Jersey City denies the allegations in paragraph 368.

18. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 369 through 372 leave the Third Party Plaintiffs to their proofs.

19. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 373 through 377 and leave the Third Party Plaintiffs to their proofs.

20. The allegations contained within paragraph 378 relate to a report prepared by the New Jersey Department of Health ("NJDOH"), which document speaks for itself. To the extent the allegations in paragraph 378 differ from the provisions within the NJDOH report they are denied by the City of Jersey City.

21. The allegations contained within paragraph 379 relate to a report prepared by the New Jersey Department of Health ("NJDOH"), which document speaks for itself. To the extent

the allegations in paragraph 379 differ from the provisions within the NJDOH report they are denied by the City of Jersey City.

22. The allegations contained within paragraph 380 relate to a report prepared by the Hudson County Utilities Authority ("HCUA"), which document speaks for itself. To the extent the allegations in paragraph 380 differ from the provisions within the HCUA report they are denied by the City of Jersey City.

23. The allegations contained within paragraph 381 relate to a report prepared by the Hudson County Utilities Authority ("HCUA"), which document speaks for itself. To the extent the allegations in paragraph 381 differ from the provisions within the HCUA report they are denied by the City of Jersey City.

24. The allegations contained within paragraph 382 relate to a report prepared by the Hudson County Utilities Authority ("HCUA"), which document speaks for itself. To the extent the allegations in paragraph 382 differ from the provisions within the HCUA report they are denied by the City of Jersey City.

25. The City of Jersey City admits the allegations contained in paragraph 383 to the extent they refer to a Consent Judgment with the United States of America, which document speaks for itself. To the extent the allegations in paragraph 383 differ from the provisions in the Consent Judgment they are denied.

26. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 384 through 386 and leave the Third Party Plaintiffs to their proofs.

27. The allegations contained within paragraph 387 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for

itself. To the extent the allegations in paragraph 387 differ from the provisions within the NJDEP report they are denied by the City of Jersey City.

28. The allegations contained within paragraph 388 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 388 differ from the provisions within the NJDEP report they are denied by the City of Jersey City.

29. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 389 and leave the Third Party Plaintiffs to their proofs.

30. The allegations contained within paragraph 390 relate to an Administrative Consent Order, which document speaks for itself. To the extent the allegations in paragraph 390 differ from the provisions within the signed Administrative Consent Order they are denied by the City of Jersey City.

31. The allegations contained within paragraph 391 relate to a Consent Decree entered into, which document speaks for itself. TO the extent the allegations in paragraph 391 differ from the provision within the Consent Order they are denied by the City of Jersey City.

32. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 392 and leave the Third Party Plaintiffs to their proofs.

33. The allegations contained within paragraph 393 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 393 differ from the provisions within the NJDEP report they are denied by the City of Jersey City.

34. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations in paragraphs 394 and 395 and leave the Third Party Plaintiffs to their proofs.

35. The allegations contained within paragraphs 396 through 399 relate to reports prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which documents speak for themselves. To the extent the allegations in paragraphs 396 through 399 differ from the provisions within the NJDEP reports they are denied by the City of Jersey City.

36. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 400 and leave the Third Party Plaintiffs to their proofs.

37. The City of Jersey City admits the allegations in paragraph 401.

38. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 402 and leave the Third Party Plaintiffs to their proofs.

39. The City of Jersey City admits the allegations in paragraph 403.

40. The City of Jersey City admits the allegations in paragraph 404.

41. The allegations contained within paragraph 405 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 405 differ from the provisions within the NJDEP report they are denied by the City of Jersey City.

42. The City of Jersey City admits the allegations in paragraphs 406 through 408.

43. The City of Jersey City denies the allegations in paragraph 409.

44. The City of Jersey City admits the allegations in paragraph 410.

45. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 411 and leave the Third Party Plaintiffs to their proofs.

46. The allegations contained within paragraph 412 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 412 differ from the provisions within the NJDEP report they are denied by the City of Jersey City.

47. The allegations contained within paragraph 413 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 413 differ from the provisions within the NJDEP report they are denied by the City of Jersey City.

48. The City of Jersey City denies the allegations in paragraph 414 and 415.

49. The City of Jersey City admits the allegations in paragraphs 416 and 417.

50. The City of Jersey City has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 418 through 420 and leave the Third Party Plaintiffs to their proofs.

51. The allegations contained in paragraphs 421 through 743 and from 826 through 1147 relate to other third party defendants which require no answer from the JCMUA.

52. **Passaic Valley Sewerage Commissioners**

Case Management Order V, Paragraph 9(c)(iv) provides that each Third Party Defendant may "elect to answer only those allegations that related specifically to it including also any allegations concerning parcel(s) or site(s) with which the Third-Party Defendant is allegedly associated." By virtue of its being a member municipality, the City of Jersey City is associated

with the Passaic Valley Sewerage Commissioners ("PVSC"). With respect to the allegations asserted against the PVSC, however, the City of Jersey City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 744 through 825 of Third Party Complaint "A", except as otherwise described below:

The City of Jersey City admits that it is a member municipality of the PVSC, as referenced in paragraph 762.

The allegations contained in Paragraph 825 of Third Party Complaint "A" are denied to the extent they are asserted against the City of Jersey City.

FIRST COUNT

53. The City of Jersey City restates its answers to paragraphs 1 through 1147 and incorporates them as if fully set forth herein.

54. The allegations contained in paragraphs 1149 through 1155 relate to the plaintiffs, defendants and other third-party defendants which do not require an answer by the City of Jersey City.

55. The City of Jersey City denies the allegations contained in paragraph 1156.

56. The City of Jersey City is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 1157 and leaves Third Party Plaintiffs to their proofs.

57. The City of Jersey City denies the allegations contained in paragraph 1158.

WHEREFORE, the City of Jersey City demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the City of Jersey City attorneys' fees, interest and costs; and

- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

SECOND COUNT

58. The City of Jersey City restates its answers to paragraphs 1 through 1158 and incorporates them as if fully set forth herein.

59. The City of Jersey City denies the allegations contained in paragraph 1160.

WHEREFORE, the City of Jersey City demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the City of Jersey City attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

THIRD COUNT

60. The City of Jersey City restates its answers to paragraphs 1 through 1160 and incorporates them as if fully set forth herein.

61. The City of Jersey City denies the allegations in paragraph 1162.

62. The allegations contained in paragraph 1163 relate to provisions contained in N.J.S.A. 58:14-7, which statute speaks for itself. To the extent that the allegations in paragraph 1163 are different from the statute they are denied.

63. The allegations contained in paragraph 1164 relate to provisions contained in N.J.S.A. 58:14-8, which statute speaks for itself. To the extent that the allegations in paragraph 1164 are different from the statute they are denied.

64. The City of Jersey City denies the allegations in paragraph 1165.

65. The allegations contained in paragraph 1166 through 1175 relate to other third party defendants which do not require an answer from the City of Jersey City.

66. The allegations contained in paragraph 1176 and 1177 relate to the PVSC and are denied to the extent they relate to the City of Jersey City.

67. The allegations in paragraph 1178 relate to provisions contained in N.J.S.A. 58:14-33 which statute speaks for itself. To the extent that the allegations in paragraph 1178 are different from the statute they are denied.

68. The City of Jersey denies the allegations in paragraphs 1179 through 1181 to the extent that they relate to Jersey City.

69. The allegations contained in paragraph 1182 relate to provisions contained in N.J.S.A. 2A:35A-4, which statute speaks for itself. To the extent that the allegations in paragraph 1182 are different from the statute they are denied.

70. The allegations contained in paragraph 1183 relate to other third party defendants which do not require an answer from the City of Jersey City.

71. The allegations contained in paragraph 1184 relate to provisions contained in N.J.S.A. 58:14-7 and 58:14-8, which statutes speak for themselves. To the extent that the allegations in paragraph 1184 are different from the statutes they are denied.

72. The allegations contained in paragraph 1185 relate to provisions contained in N.J.S.A. 2A:35A-4.a, which statute speaks for itself. To the extent that the allegations in paragraph 1185 are different from the statute they are denied.

73. The City of Jersey City denies the allegations contained in paragraph 1186 to the extent it applies to the City of Jersey City.

WHEREFORE, the City of Jersey City demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;

- b. Awarding the City of Jersey City attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

FOURTH COUNT

74. The City of Jersey City restates its answers to paragraphs 1 through 1186 and incorporates them as if fully set forth herein.

75. The City of Jersey City denies the allegations contained in paragraphs 1188 through 1195, as they apply to the City of Jersey City.

WHEREFORE, the City of Jersey City demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the City of Jersey City attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

FIFTH COUNT

76. The City of Jersey City restates its answers to paragraphs 1 to 1195 and incorporates them as if fully set forth herein.

77. The allegations contained in paragraph 1197 relate to provisions contained in N.J.S.A. 58:10-23.11a, which statute speaks for itself. To the extent that the allegations in paragraph 1197 are different from the statute they are denied.

78. The allegations contained in paragraphs 1198 through 1229 relate to other Third Party Defendants which do not require an answer from the City of Jersey City.

WHEREFORE, the JCMUA demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;

- b. Awarding the City of Jersey City attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

AFFIRMATIVE DEFENSES

The City of Jersey City sets forth the following Affirmative Defenses without waiving its right to put the Third Party Plaintiffs to their proofs and without assuming any burden of proof not otherwise imposed on the City of Jersey City.

FIRST AFFIRMATIVE DEFENSE

Third Party Complaint "A" fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties, including, but not limited to, federal natural resource damages trustees, thereby exposing the City of Jersey City to the risk of duplicative and inconsistent determinations.

THIRD AFFIRMATIVE DEFENSE

Any wrongful conduct alleged in Third Party Complaint "A" resulted from or was proximately caused by the conduct of persons other than or by the conduct of persons over whom the City of Jersey City had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of the City of Jersey City.

FOURTH AFFIRMATIVE DEFENSE

Third Party Complaint "A" is barred in whole or in part by N.J.S.A. 58:10-23.11v to the extent that it seeks compensation for damages or cleanup costs barred by that statute.

FIFTH AFFIRMATIVE DEFENSE

The claims asserted in Third Party Complaint "A" are barred, in whole or in part, by the applicable statutes of limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' and Defendants/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.

SEVENTH AFFIRMATIVE DEFENSE

To the extent that the City of Jersey City 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 harms suffered.

EIGHTH AFFIRMATIVE DEFENSE

At all times relevant, the City of Jersey City complied with all applicable laws, regulations or standards and government approvals.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints include claims for costs not yet expended under the New Jersey Spill Act which does not allow Plaintiffs and/or Defendants/Third Party Plaintiffs to recover future costs. Therefore, Plaintiffs' and Defendants/Third Party Plaintiffs' Spill Act claims for costs not yet expended are premature and not ripe for adjudication.

TENTH AFFIRMATIVE DEFENSE

Third Party Complaint "A" is barred in whole or in part by the doctrines of laches, estoppel, unclean hands, and/or waiver.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' Third Party Complaint "A" is barred in whole or in part by the Due Process, Equal Protection and Supremacy Clauses of the United States Constitution.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints are preempted, in whole or in part, by federal law.

THIRTEENTH AFFIRMATIVE DEFENSE

Sewage and sewage sludge are not considered as hazardous substances under the New Jersey Spill Act.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants/Third Party Plaintiffs' claims against the City of Jersey City are barred in whole or in part under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants/Third Party Plaintiffs' claims are barred in whole or in part to the extent they represent an unauthorized and unconstitutional retroactive application of the New Jersey Spill Act and applicable case law.

SIXTEENTH AFFIRMATIVE DEFENSE

The City of Jersey City is not a discharger or a person in any way responsible for discharge of hazardous substances under the New Jersey Spill Act.

SEVENTEENTH AFFIRMATIVE DEFENSE

While the City of Jersey City denies that it is a discharger or a person in any way responsible for discharge of hazardous substances under the New Jersey Spill Act, to the extent that discharges of hazardous substances occurred, the City of Jersey City is not liable under the New Jersey Spill Act for such discharges, because they were pursuant to and in compliance with the conditions of a federal or state permit.

EIGHTEENTH AFFIRMATIVE DEFENSE

If Plaintiffs' and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, 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.

NINETEENTH AFFIRMATIVE DEFENSE

Defendants/Third Party Plaintiffs' New Jersey Spill Act claims are barred by the statutory defenses to liability provided by that statute.

TWENTIETH AFFIRMATIVE DEFENSE

To the extent that Defendants/Third Party Plaintiffs' claims against the City of Jersey City are subject to contribution or any reduction or offset from other parties, any damages recovered against the City of Jersey City should be reduced accordingly.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The City of Jersey City has waste water treatment system has plan or design immunity under N.J.S.A. 59:4-6.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The City of Jersey City's operation and maintenance of its waste water treatment system has discretionary judgment immunity under N.J.S.A. 59:2-3.

TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent that Defendants/Third Party Plaintiffs' claims against the City of Jersey City relate to permits issued by the New Jersey Department of Environmental Protection, the City of Jersey City has permit immunity under N.J.S.A. 59:2-5.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

The City of Jersey City reserves the right to assert such additional defenses as are discovered during the course of this action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The City of Jersey City hereby asserts and adopts all other defenses which have been or will be asserted at any time by any other party in this action, to the extent said defenses are applicable.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claim is barred pursuant to the ruling in Wellenheider v. Rader, 49 NJ 1 (1967).

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

To the extent that the Second Count seeks contribution on N.J.S.A. 2A:53A-1 et seq. and N.J.S.A. 59:9-3, the claim is barred by the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq.

TWENTY EIGHTH AFFIRMATIVE DEFENSE


To the extent that the Fourth Count seeks to hold the City of Jersey City liable under the nuisance cause of action, that claim is barred by the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. and Third Party Plaintiffs' failure to file a timely Tort Claims Notice N.J.S.A. 59:8-1.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The common law and statutory violations alleged by Third Party Plaintiffs' were caused, in whole or in part, by third parties over which Defendant has no control and for which Defendant is not responsible.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Aurelio Vincitore, Esq., is hereby designated as trial counsel.

By: 
Aurelio Vincitore
Assistant Corporation Counsel

Dated: October 23, 2009

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 these Third Party Defendants. I am not aware of any other party who is not presently joined who should be joined in the above caption.

By: Aurelio Vincitore
Aurelio Vincitore
Assistant Corporation Counsel

Dated: October 23, 2009