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Attorney for Third-Party Defendant
The New Jersey Department
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L-9868-05 (PASR)

NEW JERSEY DEPARTMENT OF :
ENVIRONMENTAL PROTECTION, et al., :

Plaintiffs, :

v. :

OCCIDENTAL CHEMICAL CORPORATION, :
et al., :

Defendants. :

MAXUS ENERGY CORPORATION and :
TIERRA SOLUTIONS, INC., :

Third-Party Plaintiffs, :

v. :

BAYONNE MUNICIPAL UTILITIES :
AUTHORITY, et al., :

Third-Party Defendants. :

Third-Party Defendant, The New Jersey Department of
Agriculture ("NJDOAg"), with an address at the Health and

: THIRD PARTY DEFENDANT
: DEPARTMENT OF AGRICULTURE'S
: ANSWER AND SEPARATE
: AFFIRMATIVE DEFENSES TO
: THIRD PARTY COMPLAINT "A"
: OF DEFENDANTS/THIRD PARTY
: PLAINTIFFS, MAXUS ENERGY
: CORPORATION AND TIERRA
: SOLUTIONS, INC.

Agriculture Building, John Fitch Plaza, 369 South Warren Street, P.O. Box 330, Trenton, New Jersey 08625-0330, in accordance with this court's Case Management Order V, submits the following Answers and Separate Affirmative Defenses to the Third Party Complaint "A" (Against Public Entities) of Defendants/Third-Party Plaintiffs, Maxus Energy Corporation and Tierra Solutions, Inc. (Hereinafter referred to as "Third-Party Plaintiffs"). Pursuant to Case Management Order V, the NJDOAg answers only those allegations that relate specifically to the New Jersey Department of Transportation as a Third Party Defendant or parcels or sites to which it is allegedly associated.

1. Paragraphs 1 through 7 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOT in accordance with Case Management Order V.

2. In response to paragraph 8 of the Third Party Complaint, the referenced pleading speaks for itself. To the extent that the paragraph contains contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, no answer is required of the NJDOT in accordance with Case Management Order V.

3. Paragraphs 9 through 14 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a

Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

4. Paragraphs 15 through 51 relate to allegations made in the original defendants' Counterclaim, which pleading speaks for itself. Furthermore, they contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

5. Paragraphs 52 through 103 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

6. The NJDOAg admits the allegations set forth paragraph 103 of the Third Party Complaint.

7. Paragraphs 104 to 138 of the Third Party Complaint identify Third Party Defendants, other than the NJDOAg, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

8. Paragraph 139 of the Third Party Complaint contains a legal conclusion, to which no answer is required.

9. Paragraphs 140 through 164 of the Third Party Complaint

contain definitions, to which no answers are required.

10. Paragraphs 165 through 931 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

11. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 932 of the Third Party Complaint and therefore denies the allegations.

12. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 933 of the Third Party Complaint and therefore denies the allegations.

13. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 934 of the Third Party Complaint and therefore denies the allegations.

14. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 935 of the Third Party Complaint and therefore denies the allegations.

15. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 936 of the Third Party Complaint and therefore denies the allegations.

16. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 937 of the Third Party Complaint and therefore denies the allegations.

17. Paragraph 938 of the Third Party Complaint contains allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

18. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 939 of the Third Party Complaint and therefore denies the allegations.

19. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 940 of the Third Party Complaint and therefore denies the allegations.

20. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 941 of the Third Party Complaint and therefore denies the allegations.

21. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 942 of the Third Party Complaint and therefore denies the allegations.

22. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 943 of the Third Party Complaint and therefore denies the allegations.

23. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 944 of the Third Party Complaint and therefore denies the allegations.

24. The NJDOAg denies the allegations set forth in paragraph

945.

25. The NJDOAg lacks sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 946 of the Third Party Complaint and therefore denies the allegations.

26. The NJDOAg denies the allegations set forth in paragraph 947 of the Third Party Complaint which apply to the NJDOAg and takes no position as to the allegations against the State of New Jersey.

27. Paragraphs 948 through 1147 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

FIRST COUNT

28. In response to paragraph 1148 of the Third Party Complaint, the NJDOAg repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 through 1147 of the Third Party Complaint as if fully set forth herein.

29. Paragraph 1149 of the Third Party Complaint contains a legal conclusion to which no answer is required.

30. Paragraphs 1150 through 1152 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are

required of the NJDOAg in accordance with Case Management Order V.

31. The NJDOAg denies the allegations in paragraph 1153.

32. Paragraph 1154 of the Third Party Complaint contains allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

33. Paragraph 1155 of the Third Party Complaint contains a legal conclusion to which no response is required.

34. The NJDOAg denies the allegations contained in paragraph 1156.

35. The NJDOAg has insufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1157 and leaves the Third-Party Plaintiffs to their proofs regarding same.

36. In response to the allegations contained in paragraph 1158 of the Third Party Complaint, the NJDOAg denies the allegations as to the NJDOAg. The NJDOAg further denies that the Third Party Plaintiffs are entitled to any of the relief pled for in Count I from the NJDOAg.

WHEREFORE, the NJDOAg demands judgment against Third-Party Plaintiff as follows:

a. Dismissal of the Third-Party Complaint "A" with prejudice in its entirety;

- b. Awarding attorney's fees, interest and costs of suit; and
- c. Such other relief as the Court may deem necessary, just and equitable.

SECOND COUNT

37. In response to paragraph 1159 of the Third Party Complaint, the NJDOAg repeats and incorporates by reference its response to the allegations contained in paragraphs 1 through 1158 of the Third Party Complaint as if fully set forth herein.

38. In response to the allegations contained in paragraph 1160 of the Third Party Complaint, the NJDOAg denies the allegations as to the NJDOAg. The NJDOAg further denies that the Third Party Plaintiffs are entitled to any of the relief pled for in Count II from the NJDOAg.

WHEREFORE, the NJDOAg demands judgment against Third-Party Plaintiff as follows:

- a. Dismissal of the Third-Party Complaint "A" with prejudice in its entirety;
- b. Awarding attorney's fees, interest and costs of suit; and
- c. Such other relief as the Court may deem necessary, just and equitable.

THIRD COUNT

39. In response to paragraph 1161 of the Third Party Complaint, the NJDOAg repeats and incorporates by reference its response to the allegations contained in paragraphs 1 through 1160

of the Third Party Complaint as if fully set forth herein.

40. Paragraph 1162 of the Third Party Complaint contains allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

41. The allegations in paragraphs 1163 to 1164 contain legal conclusions and thus no response is required.

42. Paragraphs 1165 through 1177 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

43. The allegations in paragraph 1178 contain a legal conclusion and thus no response is required.

44. Paragraphs 1179 through 1181 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

45. The allegations in paragraph 1182 contain a legal conclusion and thus no response is required.

46. Paragraphs 1183 through 1186 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a

Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

WHEREFORE, the NJDOAg demands judgment against Third-Party Plaintiff as follows:

- a. Dismissal of the Third-Party Complaint "A" with prejudice in its entirety;
- b. Awarding attorney's fees, interest and costs of suit; and
- c. Such other relief as the Court may deem necessary, just and equitable.

FOURTH COUNT

47. In response to paragraph 1187 of the Third Party Complaint, the NJDOAg repeats and incorporates by reference its response to the allegations contained in paragraphs 1 through 1186 of the Third Party Complaint as if fully set forth herein.

48. Paragraphs 1188 through 1195 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

WHEREFORE, the NJDOAg demands judgment against Third-Party Plaintiff as follows:

- a. Dismissal of the Third-Party Complaint "A" with prejudice in its entirety;

- b. Awarding attorney's fees, interest and costs of suit; and
- c. Such other relief as the Court may deem necessary, just and equitable.

COUNT V

49. In response to paragraph 1196 of the Third Party Complaint, the NJDOAg repeats and incorporates by reference its responses to the allegations contained in paragraphs 1 through 1195 of the Third Party Complaint as if fully set forth herein.

50. Paragraphs 1197 through 1229 of the Third Party Complaint contain allegations not specifically related to the NJDOAg as a Third Party Defendant or parcels or sites allegedly associated with the NJDOAg as a Third Party Defendant, to which no answers are required of the NJDOAg in accordance with Case Management Order V.

WHEREFORE, the NJDOAg demands judgment against Third-Party Plaintiff as follows:

- a. Dismissal of the Third-Party Complaint "A" with prejudice in its entirety;
- b. Awarding attorney's fees, interest and costs of suit; and
- c. Such other relief as the Court may deem necessary, just and equitable.

SEPARATE AFFIRMATIVE DEFENSES

FIRST SEPARATE AFFIRMATIVE DEFENSE

Recovery is barred in this action by the reason of Third-Party Plaintiffs' failure to comply with the New Jersey Tort Claims

Act, N.J.S.A. 59:8-1 et seq.

SECOND SEPARATE AFFIRMATIVE DEFENSE

Recovery is barred in this action by the reason of Third Party Plaintiffs' failure to state a claim against the NJDOAg upon which relief can be granted.

FOURTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' Third Party Complaint against the NJDOAg is barred by the Doctrines of Collateral Estoppel, Res Judicata and Entire Controversy.

FIFTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' Third Party Complaint against NJDOAg is barred by the applicable statute of limitations.

SIXTH SEPARATE AFFIRMATIVE DEFENSE

The damages alleged by Third-Party Plaintiffs were caused by a third party or third parties, the acts or omissions of whom Third Party Defendant NJDOAg is not responsible.

SEVENTH SEPARATE AFFIRMATIVE DEFENSE

Parties other than Third Party Defendant NJDOAg are comparatively and/or contributorily negligent and, therefore, the Third Party Plaintiffs' claims are barred by, or must be apportioned under the New Jersey Comparative Negligence Act, N.J.S.A. 2A:15-5.1 et seq.

EIGHTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims are barred or, in the

alternative, the damages to which they are entitled 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. ("Spill Act"), and similar environmental legislation.

NINTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg at all times acted pursuant to its lawful authority and all actions constitute exercise of appropriate authority.

TENTH SEPARATE AFFIRMATIVE DEFENSE

The Doctrines of Laches, Waiver, Avoidable Consequences, Estoppel, failure to exhaust administrative remedies and/or unclean hands may act to bar Third Party Plaintiffs' claims as to the NJDOAg.

ELEVENTH SEPARATE AFFIRMATIVE DEFENSE

Any injuries and/or damages allegedly sustained by the Third-Party Plaintiffs were caused by the joint or several negligence and/or intentional acts of co-defendants and third parties over whom Third Party Defendant NJDOAg had no control.

TWELFTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg's conduct was not the proximate cause of damages alleged by Third Party Plaintiffs.

THIRTEENTH SEPARATE AFFIRMATIVE DEFENSE

Claims against Third Party Defendant NJDOAg for costs of suit and/or attorney's fees are improper in this action.

FOURTEENTH SEPARATE AFFIRMATIVE DEFENSE

Any action or inaction on the part of Third Party Defendant NJDOAg was 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 59:3-2.

FIFTEENTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg at all times relevant to this action acted in good faith and without fraud, malice or any intent to damage or harm Third Party Plaintiffs.

SIXTEENTH SEPARATE AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the subject matter.

SEVENTEENTH SEPARATE AFFIRMATIVE DEFENSE

Recovery is or may be barred in whole or in part by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and/or the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and/or the doctrine of sovereign immunity, and the State is entitled to all protections, immunities, exemptions and limitations enumerated therein.

EIGHTEENTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs are barred from recovery by reason of failure to mitigate or avoid any of the alleged damages referred to in its Third Party Complaint.

NINETEENTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims are barred by the

equitable doctrine of unclean hands.

TWENTIETH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg's conduct did not cause any injury to Third Party Plaintiffs.

TWENTY-FIRST SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims against the NJDOAg are subject to setoff and recoupment and therefore must be reduced accordingly.

TWENTY-SECOND SEPARATE AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent they seek relief for conduct occurring or damages incurred prior to the effective date of the Spill Act.

TWENTY-THIRD SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg did not own or operate a "Major Facility" as defined by the Spill Act.

TWENTY-FOURTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs lack standing to pursue some or all of their third party claims.

TWENTY-FIFTH SEPARATE AFFIRMATIVE DEFENSE

Although Third Party Defendant NJDOAg denies that it is liable for the contamination described in the Third-Party Complaint, in the event that it is found liable, it is entitled to an offset against any such liability on their part for the equitable share of the liability of any person or entity not joined

as a defendant in this action that would be liable to the State.

TWENTY-SIXTH SEPARATE AFFIRMATIVE DEFENSE

Without admitting any liability, should it be determined that Third Party Defendant NJDOAg engaged in any of the activities alleged in the Third Party Complaint "A", such activities were *de minimus*.

TWENTY-SEVENTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' Third Party Complaint includes claims for costs not yet expended. The Spill Act does not authorize Third Party Plaintiffs to recover future costs. Therefore, Third Party Plaintiffs' claims are premature and not yet ripe for adjudication.

TWENTY-EIGHTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg is not a "responsible party" under the Spill Act.

TWENTY-NINTH SEPARATE AFFIRMATIVE DEFENSE

Certain of the costs incurred or to be incurred by Third Party Plaintiffs in connection with the site are not "response costs" recoverable from the NJDOAg within the meaning of Section 101(23), (24) and (25) of CERCLA, 42 U.S.C. § 01 (23), (24) and (25), as applied to the Spill Act.

THIRTIETH SEPARATE AFFIRMATIVE DEFENSE

Certain of the actions taken to date by Third Party Plaintiffs for which they are making a claim against Third Party

Defendant NJDOAg were not consistent with the National Contingency Plan because, among other things, NJDOAg was not provided with notice or an opportunity to comment.

THIRTY-FIRST SEPARATE AFFIRMATIVE DEFENSE

Certain of claims for relief herein are time-barred by the express terms of the Spill Act.

THIRTY-SECOND SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims against the NJDOAg 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 the NJDOAg, an allegation which NJDOAg denies, were caused by acts or omissions of third party other than NJDOAg's employees, or other than with whom the NJDOAg had a direct or indirect contractual relationship, and the NJDOAg exercised due care with respect to the alleged hazardous substance is concerned, an allegation which the NJDOAg denies, 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 that could be foreseeable from such acts or omissions.

THIRTY-THIRD SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs are not entitled to recover attorneys' fees or costs or fees of litigation.

THIRTY-FOURTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims for indemnification are barred since any alleged liability of the NJDOAg, which denies such claims, would be secondary, indirect, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Third Party Plaintiffs are direct, active and primary.

THIRTY-FIFTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs are not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress Third Party Plaintiffs' claims.

THIRTY-SIXTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims for indemnification and otherwise are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy and applicable laws.

THIRTY-SEVENTH SEPARATE AFFIRMATIVE DEFENSE

The NJDOAg hereby demands a trial by jury.

THIRTY-EIGHTH SEPARATE AFFIRMATIVE DEFENSE

The NJDOAg reserves the right to amend this Answer to assert any additional defenses it may have which further investigation reveals to be appropriate.

THIRTY-NINTH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg hereby adopts the Separate Defenses heretofore and hereinafter asserted by all co-Third-Party

Defendants to the extent such defenses are not otherwise set forth herein.

FORTIETH SEPARATE AFFIRMATIVE DEFENSE

Third Party Defendant NJDOAg reserves the right to assert such other affirmative defenses as may become known to said Third Party Defendant.

CLAIM FOR CONTRIBUTION

Third Party Defendant NJDOAg demands contribution from all defendants and co-third party defendants in accordance with the provisions of the Joint Tortfeasors Contribution Law and the Comparative Negligence Law.

RESERVATION OF RIGHTS

Third Party Defendant NJDOAg reserves the right, at or before trial, to move to dismiss the Third Party Complaint and/or for summary judgment, on the ground that it fails to state a claim upon which relief can be granted and/or Third Party Defendant NJDOAg is entitled to judgment as a matter of law, based on any or all of the above defenses.

NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17(c)

Please take notice that the undersigned attorneys do hereby demand, pursuant to the above-cited Court Rules, that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories and all documents, papers and other materials

referred to therein, received from any party, upon the undersigned attorneys and take notice that this is a continuing demand.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b) (2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Third Party Defendant NJDOAg at this time, nor is any non-party known to Third Defendant NJDOAg at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to Third Party Defendant NJDOAg, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b) (2).

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Dale Laster Lessne, Deputy Attorney General, is hereby designated as trial counsel for Third Party Defendant NJDOAg in the within designated matter.

CERTIFICATION

I hereby certify that a copy of the within pleading was timely filed and served within the time prescribed by R. 4:6-1.

ANNE MILGRAM
Attorney General of New Jersey
Attorney for Third Party Defendant
New Jersey Department of
Agriculture

By: Dale Laster Lessne
Dale Laster Lessne
Deputy Attorney General

DATED: November 5, 2009