

By: Kenneth M. Worton
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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, et al.,

V.

Defendants.

Third-Party Plaintiffs,

V.

Third-Party Defendants.

Third-Party Defendant New Jersey Transit Corporation ("NJ Transit"), with an address at One Penn Plaza East, Newark, New

Jersey 07105, in accordance with this Court's Case Management Order V ("CMO V"), hereby answers the Third-Party Complaint "B" by Defendants/Third-Party Plaintiffs, Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

NJ Transit denies each and every allegation contained in the Third-Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and in all headings and titles used in Third-Party Complaint "B".

AS TO PROCEDURAL BACKGROUND

1. As to paragraphs 1-15 of the Third-Party Complaint, pursuant to the CMO V, no response is required to the factual allegations which do not relate specifically to NJ Transit. To the extent an answer is required, NJ Transit responds that the pleadings, documents, and agreements referenced in these paragraphs are writings and any mischaracterizations thereof are denied. To the extent that these paragraphs contain legal conclusions, no response is required and the conclusions are denied.

AS TO THE THIRD-PARTY PLAINTIFFS

2. As to paragraphs 16-18, no response is required of NJ Transit pursuant to CMO V.

AS TO THE THIRD-PARTY DEFENDANTS

3. Pursuant to CMO V, no response is required to the allegations of paragraphs 19 through 135 and 137 through 209 which identify parties other than NJ Transit.

4. As to paragraph 136, NJ Transit denies that it is a corporation organized under the laws of the State of New Jersey but admits the remaining allegations of this paragraph.

5. The allegations in paragraph 210 state a legal conclusion as to which no response is required. To the extent that such a response is required, NJ Transit denies the allegations of this paragraph.

AS TO DEFINITIONS

6. Paragraphs 211-236 contain definitions. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

7. Paragraphs 237-2000 of the Third-Party Complaint contain allegations not specifically related to NJ Transit as a Third-Party Defendant or parcels or sites not specifically associated with NJ Transit. No answers are required of NJ Transit in accordance with CMO V.

New Jersey Transit Site

8. NJ Transit admits the allegations of paragraph 2001.
9. NJ Transit admits the allegations of paragraph 2002.
10. NJ Transit neither admits nor denies the allegations of paragraph 2003 since these allegations do not relate to it.
11. NJ Transit neither admits nor denies the allegations of paragraph 2004 since these allegations do not relate to it.
12. NJ Transit neither admits nor denies the allegations of paragraph 2005 since these allegations do not relate to it.
13. NJ Transit admits the allegations of paragraph 2006.
14. As to paragraph 2007, NJ Transit admits that Conrail conveyed the approximately 76.609 acres comprising the NJ Transit Site to NJ Transit on or about January 19, 1984. It is further admitted that temporary easement rights were given to Conrail as alleged in paragraph 2007 and that Conrail's New Jersey Pollutant Discharge Elimination System (NJDPES) permit was transferred to NJ Transit. NJ Transit is without information or belief as to the truth of the remaining allegations stated in paragraph 2007.
15. NJ Transit admits the allegations of paragraph 2008 but denies that there are nine buildings on the New Jersey Transit Site.
16. NJ Transit neither admits nor denies the allegations of paragraph 2009 since the allegations do not relate to it.

17. NJ Transit admits the allegations of paragraph 2010.

18. NJ Transit generally admits the allegations of paragraph 2011 but denies certain specific details contained therein.

19. NJ Transit neither admits nor denies the allegations of paragraph 2012 since these allegations do not relate to it.

20. NJ Transit admits the allegations of paragraph 2013 except to the extent that it objects to the use of the term "periodically".

21. NJ Transit neither admits nor denies the allegations of paragraphs 2014-2021 as these allegations do not relate to it.

22. As to the allegations of paragraphs 2022-2033, NJ Transit neither admits nor denies the allegations of these paragraphs since the documents upon which they rely speak for themselves.

23. NJ Transit denies the allegations of paragraph 2034.

24. NJ Transit neither admits nor denies the allegations of paragraphs 2035-2042 since the allegations do not relate to it.

25. As to the allegations of paragraphs 2043-2046, NJ Transit neither admits nor denies these allegations since the documents upon which they rely speak for themselves.

26. NJ Transit admits that certain Hazardous Substances have been detected in the soil at the NJ Transit Site but denies the remaining allegations of this paragraph.

27. NJ Transit neither admits nor denies the allegations of paragraph 2048 since the documents upon which they rely speak for themselves.

28. NJ Transit is without knowledge or information sufficient to form a belief as to the allegations of paragraph 2049 and therefore denies the same.

29. NJ Transit admits that certain Hazardous Substances have been detected in the groundwater at the NJ Transit Site but denies the remaining allegations of this paragraph.

30. NJ Transit neither admits nor denies the allegations of paragraph 2051 and to the extent that they rely upon documents, such documents speak for themselves.

31. NJ Transit admits the allegations contained in the first sentence of 2052. It denies the remaining allegations of this paragraph.

32. NJ Transit denies the allegations of paragraph 2053.

33. NJ Transit admits the allegations of paragraph 2054.

34. NJ Transit neither admits nor denies the allegations of paragraph 2055 since these allegations do not relate to it.

35. NJ Transit denies the allegations of paragraph 2056.

36. Paragraphs 2057-3445 of the Third-Party Complaint contain allegations not specifically related to NJ Transit and, pursuant to CMO V, do not require an answer from it.

AS TO FIRST COUNT

37. As to paragraph 3446, NJ Transit incorporates by reference as if fully set forth herein its responses to the allegations contained in paragraphs 1-3445.

38. The allegations contained in paragraphs 3447-3449 of the Third-Party Complaint constitute legal conclusions to which no response is required. To the extent a response is required, the allegations in these paragraphs are denied.

39. NJ Transit is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3450 and therefore denies the same.

40. NJ Transit denies the allegations of paragraph 3451.

WHEREFORE, NJ Transit requests that an order be entered dismissing the Third-Party Complaint as against NJ Transit with prejudice and awarding costs, attorneys fees, and such other relief as the Court deems just and proper.

AS TO SECOND COUNT

41. As to paragraph 3452, NJ Transit incorporates by reference as if fully set forth herein its responses to the allegations contained in paragraphs 1-3451.

42. NJ Transit denies the allegations of paragraph 3453.

WHEREFORE, NJ Transit requests that an order be entered dismissing the Third-Party Complaint as against NJ Transit with prejudice and awarding costs, attorneys fees, and such other relief as the Court deems just and proper.

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 NJ Transit upon which relief can be granted.

FOURTH SEPARATE AFFIRMATIVE DEFENSE

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

FIFTH SEPARATE AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' Third-Party Complaint against NJ Transit 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 parties, the acts or omissions of whom Third-Party Defendant NJ Transit is not responsible.

SEVENTH SEPARATE AFFIRMATIVE DEFENSE

Parties other than Third-Party Defendant NJ Transit are comparatively and/or contributory 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 NJ Transit 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, and/or failure to exhaust administrative remedies may act to bar Third-Party Plaintiffs' claims as to NJ Transit.

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

Party Defendants over whom Third-Party Defendant NJ Transit had no control.

TWELFTH SEPARATE AFFIRMATIVE DEFENSE

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

THIRTEENTH SEPARATE AFFIRMATIVE DEFENSE

Claims against Third-Party Defendant NJ Transit 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 NJ Transit 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 NJ Transit 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 the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and the doctrine of sovereign immunity, and NJ Transit 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 their 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 NJ Transit's conduct did not cause any injury to Third-Party Plaintiffs.

TWENTY-FIRST SEPARATE AFFIRMATIVE DEFENSES

Third-Party Plaintiffs' claims against NJ Transit 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 NJ Transit 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 NJ Transit 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 NJ Transit.

TWENTY-SIXTH SEPARATE AFFIRMATIVE DEFENSE

Without admitting any liability, should it be determined that Third-Party Defendant NJ Transit engaged in any of the activities alleged in the Third-Party Complaint "B", 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 NJ Transit 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 NJ Transit within the meaning of Section 101 (23), (24) and (25) of CERCLA, 42 U.S.C. § 101 (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 NJ Transit were not consistent with the National Contingency Plan because, among other things, NJ Transit 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 NJ Transit 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 NJ Transit, an allegation which NJ Transit denies, were caused by acts or

omissions of third parties other than NJ Transit's employees, or other than with whom NJ Transit had a direct or indirect contractual relationship, and NJ Transit exercised due care with respect to the alleged hazardous substance concerned, 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 NJ Transit, 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

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

THIRTY-EIGHTH SEPARATE AFFIRMATIVE DEFENSE

Third-Party Defendant NJ Transit 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.

**RESERVATION OF COUNTERCLAIMS, CROSS CLAIMS
AND FOURTH-PARTY CLAIMS**

Pursuant to CMO V and subsequent directives of the Court, Third-Party Defendant NJ Transit is deemed to have reserved the right to assert any and all affirmative claims, cross-claims and counterclaims regarding other parties and potential parties as may be applicable under the law.

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 NJ Transit at this time, nor is any non-party known to Third-Party Defendant NJ Transit 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 NJ Transit, 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).

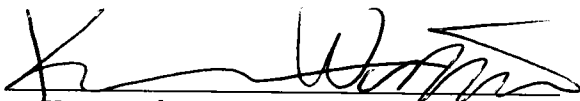
DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Kenneth M. Worton, Deputy Attorney General, is hereby designated as trial counsel for Third-Party Defendant NJ Transit in the within designated matter.

Respectfully submitted,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Third-Party Defendant
New Jersey Transit Corporation

By:



Kenneth M. Worton
Deputy Attorney General

Date: July 1, 2010

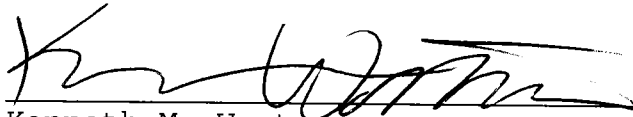
CERTIFICATION OF SERVICE

I, Kenneth M. Worton, Deputy Attorney General, an attorney-at-law of the State of New Jersey, do hereby state upon my oath that I have served NJ Transit Corporation's Answer to Third-Party Complaint "B" electronically via posting on S-file upon all parties which have consented to service by posting, and upon the following counsel of record by depositing the same with the United States Postal Service, and upon the Clerk of Court via overnight mail:

Richard J. Dewland, Esq.
Coffey & Associates
465 South Street
Morristown, New Jersey 07960
Attorney for Third-Party Defendant Borough of Hasbrouck Heights

John P. McGovern, Esq.
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Kenneth M. Worton
Deputy Attorney General

Dated: July 1, 2010