

THE PORT AUTHORITY OF NY & NJ

*Darrell Buchbinder, General Counsel
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October 28, 2010

VIA HAND DELIVERY

Clerk
Superior Court of New Jersey
Civil Case Filing Office
131 Essex County Courts Building
50 West Market Street
Newark, New Jersey 07102

**Re: New Jersey Department of Environmental Protection, *et al.* v.
Occidental Chemical Corporation, *et al.*
Docket No. ESX-L-9868-05 (PASR)**

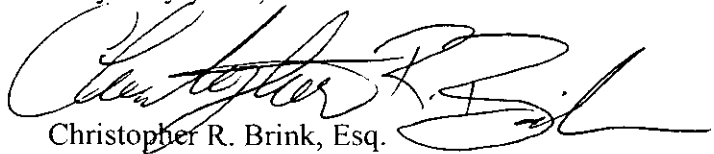
Dear Sir/Madam:

Enclosed herein please find an original and one copy of an Amended Answer on behalf of Third-party Defendant the Port Authority of New York and New Jersey. Kindly file the Original and return the copy stamped "Filed" in the enclosed self-addressed, stamped envelope.

Kindly charge any filing fees to the account of the Port Authority of New York and New Jersey, standing in the name of **Christopher M. Hartwyk, Esq.: Account No. 0081350.**

Thank you for your courtesy.

Very truly yours,


Christopher R. Brink, Esq.
Direct Line: (212) 435-3426

Enclosure

cc: Hon. Sebastian P. Lombardi, J.S.C. (via Federal Express)
All Counsel of Record (via electronic platform for service)
Richard J. Dewland, Esq. (via Federal Express)
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<p>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,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. AND CLH HOLDINGS,</p> <p>Defendants.</p> <p>MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,</p> <p>Third-Party Plaintiffs,</p> <p>vs.</p> <p>3M CORP., et al.</p> <p>Third-Party Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY</p> <p>DOCKET NO. ESX-L-9868-05 (PASR)</p> <p>AMENDED ANSWER TO THIRD-PARTY COMPLAINT</p>
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Third-party defendant, The Port Authority of New York and New Jersey (the “Port Authority”), having its principal place of business at 225 Park Avenue South, New York, New York 10003 by way of its Amended Answer to the Complaint of the Third-

Party Defendants/Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc.

(hereinafter referred to as “third-party plaintiffs”) hereby says:

1. The allegations contained in paragraphs “1” through “14” of the Third-Party Complaint relate to allegations made by the original plaintiffs and defendants which do not require an answer from the Port Authority. To the extent that an answer is required, the Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of these allegations contained in paragraphs “1” through “14” as leaves the parties to their proofs.

2. The allegations contained in paragraphs “15” through “51” of the third-party complaint, relate to allegations made in the original defendants’ counterclaim and do not relate to or require an answer from the Port Authority. To the extent an answer is required, The Port Authority has insufficient knowledge or information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “15” through “51” and leaves third-party plaintiffs to their proofs.

3. The Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs “52” through “54” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

4. The allegations contained in paragraph “55” through “105” of the third-party complaint relate to other third-party defendants, and therefore require no answer from the Port Authority. To the extent an answer is required, the Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of these allegations, and leaves third-party plaintiffs to their proofs.

5. The Port Authority denies the allegations contained in paragraph “106” of the third-party complaint, except admits that its principal place of business is 225 Park Avenue South, New York, New York 10003, and affirmatively alleges that it is a bi-state agency created by compact between the States of New York and New Jersey.

6. The allegations in paragraphs “107” through “138” of the third-party complaint relate to other third-party defendants, and therefore require no answer from the Port Authority. To the extent an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “107” through “138”, and leaves third-party plaintiffs to their proofs.

7. The Port Authority denies the allegations contained in paragraph “139” of the third-party complaint, to the extent they refers to it, and respectfully refers all questions of law to the Court.

8. The Port Authority neither admits nor denies the allegations in paragraphs “140” through “164” of the third-party complaint inasmuch as these are not factual allegations, and respectfully refers all questions of law to the Court.

9. The allegations in paragraphs “165” through “483” of the third-party complaint relates to other third-party defendants and therefore do not require an answer from the Port Authority. To the extent an answer is required, the Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs “165” through “483”, and leaves the third-party plaintiffs to their proofs.

10. The Port Authority denies the allegations contained in paragraph “484” of the third-party complaint, except admits that the Port Authority participated in the construction of the Peripheral Ditch which provides drainage for an area that includes Newark Liberty Airport (“EWR”) and respectfully refers the Court to the historical records relating to the construction of the Peripheral Ditch as best evidence.

11. The Port Authority denies the allegations contained in paragraph “485” of the third-party complaint, except admits that the Peripheral Ditch encompasses portions of EWR extending from the Northwest through to the Southeast where it discharges into the Elizabeth channel, and respectfully refers the Court to maps of the area as most accurately reflecting the location of the Peripheral Ditch and its outlets.

12. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “486” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

13. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “487” through “489” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

14. The Port Authority denies the allegations contained in paragraphs “489” of the third-party complaint, except admits that on or about July 26, 1965, the Port Authority may have issued a report of the discharge of untreated storm, commercial, industrial waste water, and respectfully refers the Court to such report as its best evidence of its own content.

15. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “490” through “495” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

16. The allegations contained in paragraphs “496” through “919” of the third-party complaint related to other third-party defendants and therefore to not require an answer. To the extent that an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations in paragraphs “496” through “919”, and leaves the third-party plaintiffs to their proofs.

17. The Port Authority denies the allegations contained in paragraph “920” of the third-party complaint, except that the Port Authority has insufficient information to form a belief as to the truth or accuracy with respect to the first sentence of this paragraph and admits that the Port Authority leases the land for EWR and Port Newark from the City of Newark and in connection therewith has paid monies to the City of Newark and respectfully refers the Court to the lease and all supplements thereto as best evidence of their own content.

18. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “921” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

19. The Port Authority denies the allegations contained in paragraph “922” of the third-party complaint, except admits that the Port Authority operates and maintains marine terminals and berths at Port Newark.

20. The Port Authority denies the allegations contained in paragraph “923” of the third-party complaint.

21. The Port Authority denies the allegations contained in paragraph “924” of the third-party complaint, except admits that the U.S. Army Corps of Engineers (“The Corps”), pursuant to an agreement with the Port Authority has dredged channels in Newark Bay.

22. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “925” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

23. The Port Authority denies the allegations contained in paragraph “926” of the third-party complaint, except admits that the Port Authority has from time to time dredged the berths.

24. The Port Authority denies the allegations contained in paragraph “927” of the third-party complaint, except admits that it has an agreement with The Corps whereby the Corps has been dredging channels and the Port Authority has dredged certain berths in Newark Bay.

25. The Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraph “928” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

26. The Port Authority denies the allegations contained in paragraph “929” of the third-party complaint, except admits that it has from time to time dredged berths.

27. The Port Authority denies the allegations contained in paragraph “930” of the third-party complaint, and respectfully refers all questions of law to the Court.

28. The Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs “932” through “952” of the third-party complaint as they relate to third-party defendants other than the Port Authority. To the extent an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “932” through “952”, and leaves third-party plaintiffs to their proofs.

Newark Airport Site

29. The Port Authority denies the allegations contained in paragraph “953” of the third-party complaint, except admits that EWR consists of approximately 2,027 acres of real property and improvements located in Essex and Union Counties.

30. The Port Authority admits the allegations contained in paragraph “954” of the third-party complaint.

31. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “955” and “956” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

32. The Port Authority denies the allegations contained in paragraph “957” of the third-party complaint, except admits that current activities at EWR include vehicle and aircraft maintenance facilities, fuel storage facilities, air cargo and freight areas, hangars, and ancillary support facilities for the operation of the airport.

33. The Port Authority denies the allegations contained in paragraph “958” of the third-party complaint, except admits that substances which may be currently utilized or handled or stored or discharged at EWR include diesel and jet fuels, oils used in machinery, gasoline, deicing chemicals, paints and related products.

34. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “959” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

35. Admits the allegations in paragraph “960” of the third-party complaint.

36. The Port Authority denies the allegations contained in paragraphs “961” and “962” of the third-party complaint, except admits the Port Authority operates and maintains those portions of EWR not operated and maintained by others.

37. The Port Authority denies the allegations contained in paragraph “963” of the third-party complaint, except admits that the Port Authority had a role in the construction of the Peripheral Ditch and maintains the property within its leasehold at EWR not maintained by others, including the Peripheral Ditch.

38. The Port Authority denies the allegations contained in paragraph “964” of the third-party complaint, except admits that the Peripheral Ditch replaced certain waterways, and respectfully refers the Court to the construction documents and maps as best evidence of their own content.

39. The Port Authority denies the allegations contained in paragraph “965” of the third-party complaint, except admits that the Peripheral Ditch encompasses portions

of EWR from Northwest to the Southeast and that it discharges into the Elizabeth Channel, and respectfully refers the Court to maps of the areas as most accurately reflecting the location of the Peripheral Ditch.

40. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “966” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

41. The Port Authority denies the allegations contained in paragraph “967” of the complaint, except admits that the storm water runoff from paved and unpaved areas of EWR is discharged into the Peripheral Ditch or the Newark Channel in accordance with the Port Authority’s Storm Pollution Discharge Elimination System (“SPDES”) Permit for EWR.

42. The Port Authority denies the allegations contained in paragraph “968” of the third-party complaint, and respectfully refers this Court to the 1971 report by the Port Authority referenced in this paragraph as best evidence of its own content.

43. The Port Authority denies the allegations contained in paragraph “969” of the third-party complaint, except admits that the Port Authority prepares studies from time to time and respectfully refers the Court to the Port Authority study of July 1, 1980 referenced in paragraph “969” as best evidence of its own content.

44. The Port Authority denies the allegations contained in paragraph “970” of the third-party complaint, and respectfully refers the Court to the incident reports of

October 9, 1988 concerning jet fuel referenced in paragraph “970” as best evidence of its own content.

45. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “971” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

46. The Port Authority denies the allegations contained in paragraph “972” of the third-party complaint.

47. The Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs “973” through “977” of the third-party complaint, and respectfully refers the Court to the NJEP reports of June 6, 1988, January 6, 1989, December 29, 1989, December 1, 1991 and March 31, 1992, referenced in paragraphs “973” through “977” respectively as best evidence of their own content.

48. The Port Authority denies the allegations contained in paragraph “978” of the third-party complaint, except admits that from time to time the Port Authority, in accordance with its SPDES Permit, has reported exceeding limits and respectfully refers the Court to the Port Authority reports for the period April-December, 1992 as best evidence of their own content.

49. The Port Authority denies the allegations contained in paragraph “979” and “980” of the third-party complaint, and respectfully refers the Court to the NJDEP reports of March 26, 1993 and September 1, 1994 as best evidence of their own content.

50. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “981” and “982” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

51. The Port Authority denies the allegations contained in paragraphs “983” of the third-party complaint and respectfully refers all questions of law to the Court.

Newark Seaport Site

52. The Port Authority denies the allegations contained in paragraph “984” of the third-party complaint, except admits that Port Newark includes approximately 930 acres of real property and improvements.

53. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “985” and “986” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

54. The Port Authority admits the allegations in paragraph “987” of the third-party complaint.

55. The Port Authority denies the allegations in paragraph “988” of the third-party complaint, except admits that the Port Authority has from time to time, leased certain real property from the City of Newark for seaport operations, and respectfully refers the Court to the leases as best evidence of their own content.

56. The Port Authority denies the allegations contained in paragraph “989” of the third-party complaint, except admits that the Port Authority has from time to time,

leased certain real property from the City of Newark including parcels that may have been used as shipyards.

57. The Port Authority denies the allegations contained in paragraph “990” of the third-party complaint, except admits that from time to time, the Port Authority made improvements to Port Elizabeth, which currently consists of approximately 1257 acres.

58. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “991” of the third-party complaint and leaves third-party plaintiffs to their proofs.

59. The Port Authority denies the allegations contained in paragraph “992” of the third-party complaint, except admits that at Port Elizabeth and Port Newark, there are maritime cargo operations which include the use of ship berths, cargo distribution buildings, storage lots, rail tracks and roadway.

60. The Port Authority denies the allegations contained in paragraph “993” of the third-party complaint, except admits that Port Elizabeth and/or Port Newark abut the Elizabeth Channel and Newark Bay and that Port Newark abuts the Port Newark Channel.

61. The Port Authority denies the allegations contained in paragraph “994” of the third-party complaint.

60. The Port Authority denies the allegations contained in paragraph “995” of the third-party complaint, except admits that The Port Authority from time to time, issued

reports and respectfully refers the Court to the report of November 18, 1971 referenced in paragraph “995” as best evidence of its own content.

63. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “996” of the third-party complaint, and respectfully refers the Court to the NJDEP report of January 12, 1972 referenced in paragraph “996” as best evidence of its content.

64. The Port Authority denies the allegations contained in paragraphs “998”, except admits that ground water at Port Newark and Port Elizabeth discharges into waterways that connect to Newark Bay.

65. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “1000” inasmuch as these are legal contentions with respect to the City of Newark.

66. The Port Authority denies the allegations contained in paragraph “1001” of the third-party complaint, and respectfully refers all questions of law to the Court.

Other Sites

67. The allegations contained in paragraphs “1002” through “1016” of the third-party complaint relate to other third-party defendants and therefore do not require an answer. To the extent an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1002” through “1016”, and leaves plaintiffs to their proofs.

American Ref-Fuel Site

68. The Port Authority denies the allegations contained in paragraph “1017” of the third-party complaint, except admits that the Port Authority acquired approximately 25 acres on Blanchard Street known as the American Ref-Fuel Site.

69. The Port Authority denies the allegations contained in paragraph “1018” of the third-party complaint, except denies sufficient knowledge or information to form a belief as to the truth or accuracy of the allegations concerning particular prior use of the site as alleged in the operation of the Essex County Resources Recovery Facility, and except admits the Port Authority has entered into various leasehold agreements and respectfully refers the Court to the agreement referenced in paragraph “1018” between the Port Authority and American Ref-Fuel as best evidence of its own content.

70. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “1019” of the third-party complaint, except admits that American Ref-Fuel is now known as Covanta.

71. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1020” through “1028” of the third-party complaint inasmuch as they concern only American Ref-Fuel and respectfully refers the Court to the NJDEP statements, reports or orders dated June 21, 1993, June 8, 1994, June 20, 1995, June 22, 1998 and December 1, 1992 referenced in paragraphs “1022” through “1029” as best evidence of their own content.

72. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1029” and “1030” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

73. The Port Authority denies the allegations contained in paragraph “1031” of the third-party complaint, and respectfully refers all questions of law to the Court.

Other Sites

74. The allegations contained in paragraphs “1032” through “1147” of the third-party complaint apply to other third-party defendants and therefore do not require an answer by the Port Authority. To the extent an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1032” to “1147”, and leaves third-party plaintiffs to their proofs.

FIRST COUNT

75. In response to paragraph “1148” of the third-party complaint, the Port Authority restates its answers to paragraphs “1” through “1147” and incorporates them as if more fully set forth herein.

76. The Port Authority denies the allegations contained in paragraphs “1149” of the third-party complaint as they apply to it, and respectfully refers all questions of law to the Court.

77. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1150” through “1155” of the third-party complaint inasmuch as they relate to other parties or assert legal contentions and leaves third-party plaintiffs to their proofs while respectfully referring all questions of law to the Court.

78. The Port Authority denies the allegations contained in paragraph “1156” of the third-party complaint as they apply to it and has insufficient information to form a belief as to the truth or accuracy of the allegations as they apply to other third-party defendants, and leaves third-party plaintiffs to their proofs.

79. The Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “1157” of the third-party complaint, and respectfully refers all questions of law to the Court.

80. The Port Authority denies the allegations contained in paragraph “1158” of the third-party complaint.

WHEREFORE, The Port Authority demands judgment as against third-party plaintiffs as follows:

- a) Dismissal of the third-party complaint with prejudice in its entirety; and
- b) Awarding the Port Authority attorney’s fees, interest and costs; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

SECOND COUNT

81. In response to paragraph “1159” of the third-party complaint, The Port Authority restates its answers to paragraphs “1” through “1158” of the third-party complaint and incorporates them as if fully set forth at length herein.

82. The Port Authority denies the allegations contained in paragraph “1160” of the third-party complaint as they apply to it, except denies sufficient knowledge to form a belief as to the truth or accuracy of these allegations as they apply to other third party defendants, and respectfully refers all questions of law to the Court.

WHEREFORE, The Port Authority demands judgment against third-party plaintiffs as follows:

- a) Dismissal of the third-party complaint with prejudice in its entirety; and
- b) Awarding the Port Authority attorney’s fees, interest and costs; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

THIRD COUNT

83. In response to paragraph “1161” of the third-party complaint, The Port Authority restates its answers to paragraphs “1” through “1160” and incorporates them as if fully set forth at length herein.

84. The allegations contained in paragraph “1162” of the third-party complaint relate to other third-party defendants and therefore do not require an answer from the Port Authority.

85. The Port Authority neither admits nor denies the allegations contained in paragraphs “1163” and “1164” of the third-party complaint, inasmuch as they are not factual allegations but purport to quote N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and the Port Authority respectfully refers all questions of law to the Court.

86. The allegations contained in paragraphs “1165” through “1177” of the third-party complaint relate to the other third-party defendants and therefore do not require an answer from the Port Authority. To the extent an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1165” through “1177”, and leaves third-party plaintiffs to their proofs.

87. The Port Authority neither admits nor denies the allegations contained in paragraph “1178” of the third-party complaint, inasmuch as they are not factual allegations but legal contentions concerning other parties with respect to N.J.S.A. 58: 14-33, and the Port Authority respectfully refers all questions of law to the Court.

88. The Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1179” through “1181” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

89. The Port Authority neither admits nor denies the allegations contained in paragraphs “1182” through “1185”, inasmuch as they are not factual allegations but legal contentions concerning other third-party defendants with respect to N.J.S.A. 2A: 35A-4, N.J.S.A. 2A: 35A-3a; N.J.S.A. 58: 14-7 and 58: 14-8, N.J.S.A. 2A: 35A-4a, and the Port Authority respectfully refers all questions of law to the Court.

90. The allegations contained in paragraph “1186” relate to other third-party defendants and therefore do not require an answer. To the extent an answer is required, the Port Authority has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph “1186” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

WHEREFORE, The Port Authority demands judgment against third-party plaintiffs as follows:

- a) Dismissal of the third-party complaint with prejudice in its entirety; and
- b) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

FOURTH COUNT

91. In response to paragraph “1187” of the third-party complaint, The Port Authority restates its answers to paragraphs “1” through “1186” and incorporates them as if fully set forth herein.

92. The allegations contained in paragraphs “1188” through “1195” relate to other third-party defendants and do not require an answer. To the extent that an answer

might be required, The Port Authority has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraph “1188” through “1195” of the third-party complaint, and leaves third-party plaintiffs to their proofs.

WHEREFORE, The Port Authority demands judgment against third-party plaintiffs as follows:

- a) Dismissal of the third-party complaint with prejudice in its entirety; and
- b) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

FIFTH COUNT

93. In response to paragraph “1196” of the third-party complaint, The Port Authority restates its answers to paragraphs “1” through “1195” of the third-party complaint.

94. The Port Authority neither admits nor denies the allegations contained in paragraph “1197” of the third-party complaint inasmuch as they are not factual allegations but contentions of law referring to N.J.S.A. 58: 10-23-11a, and the Port Authority respectfully refers all questions of law to the Court.

95. The allegations contained in paragraphs “1198” through “1229” of the third-party complaint relate to other third-party defendants and therefore require no response. To the extent that an answer is required, The Port Authority has insufficient

knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs “1198” through “1229”, and leaves third-party plaintiffs to their proofs.

WHEREFORE, The Port Authority demands judgment against third-party plaintiffs as follows:

- a) Dismissal of the third-party complaint with prejudice in its entirety; and
- b) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

96. Third-party plaintiffs’ claims are barred for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

97. Third-party plaintiffs’ claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

98. Third-party plaintiffs’ claims are barred by their failure to comply with the Port Authority’s suability statute.

FOURTH AFFIRMATIVE DEFENSE

99. The Port Authority is immune from suit because it was acting at all times as a state governmental agency.

FIFTH AFFIRMATIVE DEFENSE

100. Third-party plaintiffs' claims are barred by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

101. Third-party plaintiffs' claims are barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

102. Third-party plaintiffs' claims are barred by their failure to exhaust administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

103. Third-party plaintiffs' claims are barred by the doctrines of *res judicata* and collateral estoppel.

NINTH AFFIRMATIVE DEFENSE

104. Third-party plaintiffs' claims are barred by the federal doctrine of preemption and the applicable federal statutes.

TENTH AFFIRMATIVE DEFENSE

105. Third-party plaintiffs' claims against The Port Authority must fail since the Port Authority is not subject to single state legislation.

ELEVENTH AFFIRMATIVE DEFENSE

106. Third-party plaintiffs' claims must be reduced by their own culpable conduct as provided under the comparative negligence statute N.J.S.A. 2A: 15-5.1.

TWELFTH AFFIRMATIVE DEFENSE

107. Any damages and/or injuries sustained by third-party plaintiffs were caused by the negligence of other parties or persons over whom the Port Authority has no control.

THIRTEENTH AFFIRMATIVE DEFENSE

108. Third-party plaintiffs' claims are barred or in the alternative, the damages to which they were entitled must be reduced by the statutory defenses to which the Port Authority is entitled under applicable New Jersey Law.

FOURTEENTH AFFIRMATIVE DEFENSE

109. The Port Authority is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23, *et seq.* (the "Spill Act") with respect to the Newark Bay Complex and Passaic River, or the discharges alleged against the Third-party Plaintiffs, their agents, employees, successors, and assigns (the "Third-party Plaintiffs").

FIFTEENTH AFFIRMATIVE DEFENSE

110. Third-party Plaintiffs' claims against the Port Authority are barred as they are not in any way related to any transactions or occurrences that serve as the basis for the Plaintiffs' lawsuit.

SIXTEENTH AFFIRMATIVE DEFENSE

111. Third-party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because the Port Authority is not liable for "the same injury" caused by Third-party Plaintiffs' discharges and do not share a common liability to the State.

SEVENTEENTH AFFIRMATIVE DEFENSE

112. The Third-party Plaintiffs cannot assert contribution claims because the Plaintiffs are seeking to recover past and future damages caused by discharges from the Diamond Shamrock Chemicals Plant, located at 80 and 120 Lister Avenue in Newark (the "Lister Site"), and there is no relationship or nexus alleged between the Port Authority and the Lister Site.

EIGHTEENTH AFFIRMATIVE DEFENSE

113. The Third-party Plaintiffs cannot assert contribution claims because the Plaintiffs are seeking to recover past and future damages caused by discharges of specific hazardous substances, including 2,3,7,8-tetracholordibenzo-p-dioxin ("TCDD"), dichlorodiphenyltrichloroethane ("DDT"), phenoxy herbicides, 2,4-dichlorophenoxyacetic acid ("2,4-D"), and/or 2,4,5-trichlorophenoxyacetic acid ("2,4,5-

T”), and there is no relationship or nexus alleged between the Port Authority and such hazardous substances.

NINETEENTH AFFIRMATIVE DEFENSE

114. Claims of Third-party Plaintiffs as against the Port Authority are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act (“WPCA”), including, but not limited to, N.J.S.A. 58:10-23.11g⁴ through 58:10-23.11g⁸.

TWENTIETH AFFIRMATIVE DEFENSE

115. Third-party Plaintiffs claims are barred by the entire controversy doctrine.

TWENTY-FIRST AFFIRMATIVE DEFENSE

116. Some or all of the Third-party Plaintiffs do not have standing to sue.

TWENTY-SECOND AFFIRMATIVE DEFENSE

117. The Port Authority cannot be liable for or be required to pay Third-party Plaintiffs’ damages that arise out of conduct not prohibited under N.J.S.A. 58:10-23.11c.

TWENTY-THIRD AFFIRMATIVE DEFENSE

118. The Third-party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or permitted by law including applicable Environmental Laws.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

119. At all relevant times, the Port Authority complied with all applicable Environmental Laws, regulations, industry standards, and ordinances, and otherwise conducted themselves reasonably, prudently, in good faith, and with due care for the rights, safety, and property of others.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

120. Third-party Plaintiffs suffered no losses or injuries that were proximately caused by the Port Authority.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

121. Third-party Plaintiffs' claims are barred because the relief sought against the Port Authority, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

122. Third-party Plaintiffs claims against the Port Authority are subject to setoff and recoupment and therefore must be reduced accordingly.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

123. Third-party Plaintiffs claims are barred, in whole or in part, by Third-party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act, including, without limitation, that Third-party Plaintiffs have not incurred Clean-up and Removal costs recoverable under the Spill Act, and Third-party Plaintiffs have failed to

conduct Clean-up and Removal activities in accordance with the National Contingency Plan to the greatest extent possible, as required under the Spill Act.

TWENTY-NINTH AFFIRMATIVE DEFENSE

124. Third-party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement...of any natural resources damaged or destroyed by a discharge" under the Spill Act.

THIRTIETH AFFIRMATIVE DEFENSE

125. Third-party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded the existing parties pursuant to R. 4:28-1 including, without limit, State of New Jersey agencies and instrumentalities, including, without limitation, Trustees for tidelands, and United States agencies and instrumentalities with liability under the Spill Act.

THIRTY-FIRST AFFIRMATIVE DEFENSE

126. Third-party Plaintiffs claims are not ripe for adjudication, *inter alia*, because Third-party Plaintiffs have a joint liability to Plaintiffs and have not paid more than their equitable share of that liability.

THIRTY-SECOND AFFIRMATIVE DEFENSE

127. Although the Port Authority denies that it is liable for the contamination described in the Complaint, in the event it is found liable, the Port Authority is entitled to

an offset against such liability on its 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 Third-party Plaintiffs.

THIRTY-THIRD AFFIRMATIVE DEFENSE

128. *Arguendo*, but without admission that the Port Authority is jointly and severally liable with Third-party Plaintiffs or any other person for the injuries alleged in the Complaint, then, under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

129. The damages Third-party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-party Plaintiffs.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

130. Third-party Plaintiffs' claims are barred to the extent that the conduct of the Port Authority alleged to give rise to liability in the Complaint is the subject of a release, covenant not to sue, or otherwise excused by Plaintiffs, including, without limit, through issuance of a no further action letter, consent order, settlement agreement, or other applicable document.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

131. Third-party Plaintiffs; claims are barred due to its own conduct in unilaterally, and without notice to the Port Authority, implementing a clean-up plan(s) or

taking other actions that resulted in the commingling of formerly divisible areas of environmental harm or of separate discharges.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

132. The Port Authority's liability to Third-party Plaintiffs, if any, is limited to Spill Act and contribution claims by Third Parties and excludes any such claims which may properly be apportioned to parties pursuant to Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al., 556 U.S. ____; 129 S. Ct. 1870 (2009), and other comparable decisional law.

THIRTY-EIGHT AFFIRMATIVE DEFENSE

133. Third-party Plaintiffs cannot assert contribution claims against the Port Authority because the discharges for which the Plaintiffs seek relief are different from the Port Authority's alleged discharges.

THIRTY-NINTH AFFIRMATIVE DEFENSE

134. Third-party Plaintiffs claims are barred to the extent that they seek to hold the Port Authority liable, in contribution, for any claims for which it would be a violation of public policy or unlawful to hold the Port Authority liable, including but not limited to *punitive damages and penalties*.

FORTIETH AFFIRMATIVE DEFENSE

135. Third-party Plaintiffs claims are barred, in whole or in part, because no actions or inactions by the Port Authority have resulted in any permanent impairment or damage to a natural resource.

FORTY-FIRST AFFIRMATIVE DEFENSE

136. Third-party Plaintiffs' claims for contribution, whether under the Pill Act or the New Jersey statutory provision for contribution (including N.J.S.A. 2A:53A-1, *et seq.*) are derivative, of, and therefore no greater than, Plaintiffs' claims against Third-party Plaintiffs. Consequently, Third-party Plaintiffs' claims against the Port Authority are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against the Port Authority pertaining to the alleged environmental contamination of any site(s) alleged by Third-party Plaintiffs to be the subject of their contribution claims against the Port Authority.

FORTY-SECOND AFFIRMATIVE DEFENSE

137. To the extent the Port Authority is acting or has acted to conduct environmental clean-up at any site(s) alleged by Third-party Plaintiffs to be the subject of their contribution claims against the Port Authority, the claims for equitable contribution under the Spill Act in the Third-party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FORTY-THIRD AFFIRMATIVE DEFENSE

138. Without admitting liability, the Port Authority alleges that if it is found to be engaged in any of the activities alleged in the Third-party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-party Plaintiffs.

FORTY-FOURTH AFFIRMATIVE DEFENSE

139. The Port Authority reserves the right to assert and hereby invoke each and every defense that may be available during the course of this action.

FORTY-FIFTH AFFIRMATIVE DEFENSE

140. The Port Authority incorporates by reference any affirmative defense asserted by other parties in this action that survive and are applicable to the Port Authority, to the extent that such affirmative defenses are defenses to Third-party Plaintiffs' claims and do not impose a liability on the Port Authority.

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

141. Pursuant to the Case Management Order XV, the Port Authority 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, and to have preserved said claims without waiver of any rights existing as of October 26, 2010 (the date of Case Management Order XV), until the further order of the Court.

DEMAND FOR STATEMENT OF DAMAGES

142. Pursuant to R. 4: 5-2, The Port Authority demands that third-party plaintiffs furnish it within five (5) days after service hereof with a written statement of damages claimed in each count of their third-party complaint.

DEMAND FOR DOCUMENTS

143. Pursuant to R – 4:18-2, The Port Authority demands that third-party plaintiffs furnish the undersigned within five (5) days after service hereof with copies of each document referenced in the third-party complaint.

DESIGNATION OF TRIAL COUNSEL

144. Pursuant to R 4:25-4, Christopher M. Hartwyk is designated as trial counsel.

RESERVATION OF ADDITIONAL DEFENSES

145. The Port Authority reserves its right to amend this answer to assert any additional defenses it may have which further investigation reveals to be appropriate as in accordance with New Jersey Law.

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 if a pending arbitration proceeding and that not such action is arbitration proceeding is contemplated by this third-party defendant. I am not aware of any other party who is not presently joined or who should be joined in the above-captioned action at this time.

CHRISTOPHER M. HARTWYK, ESQ.
Attorney for Third-Party Defendant
The Port Authority of New York
And New Jersey

By: 

Christopher R. Brink
One Path Plaza
Jersey City, New Jersey 07306
(212) 435-3426

Dated: October 28, 2010

CERTIFICATION OF SERVICE

I hereby certify that Third-party Defendant The Port Authority of New York and New Jersey's Amended Answer to Third-party Complaint "A" and Affirmative Defenses and Reservation of Cross-Claims and Counterclaims was hereby electronically served electronically on all parties that have consented to service by posting on <https://cvg.ctsummation.com> October 28, 2010. I the following counsel of record were served on October 28, 2010, via Federal Express:

Borough of Hasbrouck Heights
Richard J. Dewland, Esq.
Coffey & Associates
465 South Street
Morristown, New Jersey 07960

City of Orange
John P. McGovern, Esq.
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City of Orange Township
29 North Day Street
Orange, New Jersey 07050

Township of Winfield Park
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O'Toole, Fernandez, Weiner, Van Lieu
60 Pompton Avenue
Verona, New Jersey 07044

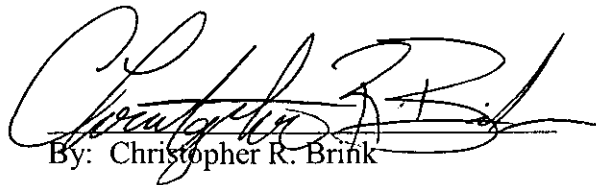
I further certify that an original and one (1) copy The Port Authority's Amended Answer to third-party Complaint "A" were personally served upon the clerk of the Court on October 28, 2010, at the following address:

Clerk, Superior Court of New Jersey
Civil Case Filing Office
131 Essex County Courts Building
50 West Market Street
Newark, New Jersey 07102

and a courtesy copy to the Judge at:

Hon. Sebastian P. Lombardi, J.S.C.
Superior Court of New Jersey
Essex County Historic Courthouse
470 Dr. Martin Luther King, Jr. Boulevard
Chambers 1009
Newark, New Jersey 07102

CHRISTOPHER M. HARTWYK, ESQ.
Attorney for Third-Party Defendant
The Port Authority of New York and
New Jersey



By: Christopher R. Brink

Dated: October 28, 2010