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ATTORNEY FOR THIRD-PARTY
DEFENDANT PORT AUTHORITY
OF NEW YORK AND NEW JERSEY

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, THE COMMISSIONER OF THE NEW
JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND THE ADMINISTRATOR OF THE
NEW JERSEY SPILL COMPENSATION FUND,

Plaintiffs,

vs.

OCCIDENTAL CHEMICAL CORPORATION, TIERRA
SOLUTIONS, INC., MAXUS ENERGY CORPORATION,
REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC.
AND CLH HOLDINGS,

Defendants.

MAXUS ENERGY CORPORATION and TIERRA
SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

BAYONNE MUNICIPAL UTILITIES AUTHORITY,
BOROUGH OF CARTERET, BOROUGH OF EAST
NEWARK, BOROUGH OF EAST RUTHERFORD,
BOROUGH OF ELMWOOD PARK, BOROUGH OF FAIR
LAWN, BOROUGH OF FANWOOD, BOROUGH OF
FRANKLIN LAKES, BOROUGH OF GARWOOD,
BOROUGH OF GLEN RIDGE, BOROUGH OF GLEN
ROCK, BOROUGH OF HALEDON, BOROUGH OF
HASBROUCK HEIGHTS, BOROUGH OF HAWTHORNE,
BOROUGH OF KENILWORTH, BOROUGH OF LODI,
BOROUGH OF MOUNTAINSIDE, BOROUGH OF NEW
PROVIDENCE, BOROUGH OF NORTH ARLINGTON,
BOROUGH OF NORTH CALDWELL, BOROUGH OF
NORTH HALEDON, BOROUGH OF PROSPECT PARK,
BOROUGH OF ROSELLE PARK, BOROUGH OF
ROSELLE, BOROUGH OF RUTHERFORD, BOROUGH
OF TOTOWA, BOROUGH OF WALLINGTON,
BOROUGH OF WEST PATERSON, BOROUGH OF
WOOD-RIDGE, CITY OF BAYONNE, CITY OF

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION – ESSEX
COUNTY

DOCKET NO. ESX-L-9868-05
(PASR)

ANSWER TO THIRD-PARTY
COMPLAINT

CLIFTON, CITY OF EAST ORANGE, CITY OF ELIZABETH, CITY OF GARFIELD, CITY OF HACKENSACK, CITY OF JERSEY CITY, CITY OF LINDEN, CITY OF NEWARK, CITY OF ORANGE, CITY OF PASSAIC, CITY OF PATERSON, CITY OF RAHWAY, CITY OF SUMMIT, CITY OF UNION CITY, HOUSING AUTHORITY OF THE CITY OF NEWARK, JERSEY CITY MUNICIPAL UTILITIES AUTHORITY, JOINT MEETING OF ESSEX AND UNION COUNTIES, LINDEN ROSELLE SEWERAGE AUTHORITY, PASSAIC VALLEY SEWERAGE COMMISSIONERS; PORT AUTHORITY OF NEW YORK AND NEW JERSEY; RAHWAY VALLEY SEWERAGE AUTHORITY, THE NEW JERSEY DEPARTMENT OF AGRICULTURE, THE NEW JERSEY DEPARTMENT OF TRANSPORTATION, THE STATE OF NEW JERSEY, TOWN OF BELLEVILLE, TOWN OF HARRISON, TOWN OF KEARNY, TOWN OF NUTLEY, TOWN OF WESTFIELD, TOWN OF WOODBRIDGE, TOWNSHIP OF BERKELEY HEIGHTS, TOWNSHIP OF BLOOMFIELD, TOWNSHIP OF CEDAR-GROVE, TOWNSHIP OF CLARK, TOWNSHIP OF CRANFORD, TOWNSHIP OF HILLSIDE, TOWNSHIP OF IRVINGTON, TOWNSHIP OF LITTLE FALLS, TOWNSHIP OF LIVINGSTON, TOWNSHIP OF LYNDHURST, TOWNSHIP OF MAPLEWOOD, TOWNSHIP OF MILLBURN, TOWNSHIP OF MONTCLAIR, TOWNSHIP OF ORANGE, TOWNSHIP OF SADDLE BROOK, TOWNSHIP OF SCOTCH PLAINS, TOWNSHIP OF SOUTH HACKENSACK, TOWNSHIP OF SOUTH ORANGE VILLAGE, TOWNSHIP OF SPRINGFIELD, TOWNSHIP OF UNION, TOWNSHIP OF WEST ORANGE, TOWNSHIP OF WINFIELD PARK, TOWNSHIP OF WYCKOFF, VILLAGE OF RIDGEWOOD,

Third-Party Defendants.

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 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 abuts 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.

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

109. Pursuant to the Case Management Order and subsequent directives of the Court, 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 April 16, 2009 (the date of the Case Management Order) until the further order of the Court.

DEMAND FOR STATEMENT OF DAMAGES

110. 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

111. 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

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

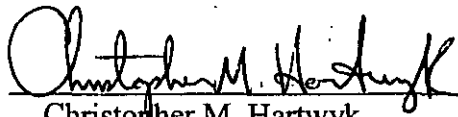
RESERVATION OF ADDITIONAL DEFENSES

113. 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.

DONALD F. BURKE, ESQ.
Attorney for Third Party Defendant
The Port Authority of New York
And New Jersey

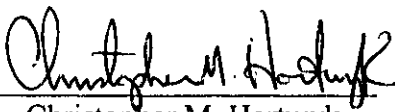
By: 
Christopher M. Hartwyk
One Path Plaza
Jersey City, New Jersey 07306
(212) 435-3653

Dated: October 14, 2009

CERTIFICATION OF SERVICE

I, Christopher M. Hartwyk, am an attorney-at-law of the State of New Jersey do hereby state upon my oath as follows:

1. I am an attorney for The Port Authority of New York a New Jersey and am a member of the New Jersey Bar.
2. I hereby certify that The Port Authority's answer to third-party complaint "A" of defendants Maxus Energy Corporation and Tierra Solutions, Inc. and Affirmative Defenses and Reservation of Cross-Claims and Counterclaims was hereby electronically served on all parties who have consented to service by posting on October 14, 2009.
3. I hereby certify that The Port Authority's Answer "A" of defendants Maxus Energy Corporation and Tierra Solutions, Inc. and Affirmative Defenses and Reservation of Counterclaims and Cross-Claims were personally served upon the clerk on October 14, 2009.
4. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are allegedly false, I am subject to punishment.


Christopher M. Hartwyk

Dated: October 14, 2009