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Attorneys for Third-Party Defendant,

Township of Little Falls

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,  
INC.,

Defendants.

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.

-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,

SUPERIOR COURT OF NEW  
JERSEY

LAW DIVISION: ESSEX COUNTY

DOCKET NO.: ESX-L-9868-05

Civil Action

**ANSWER OF TOWNSHIP OF  
LITTLE FALLS TO THE THIRD  
PARTY COMPLAINT "A" OF  
DEFENDANTS MAXUS ENERGY  
CORPORATION AND TIERRA  
SOLUTIONS, INC., SEPARATE  
DEFENSES, RESERVATION,  
DESIGNATION OF TRIAL  
COUNSEL, DEMAND FOR TRIAL  
BY JURY, DEMAND FOR  
STATEMENT OF DAMAGES AND  
CERTIFICATION**

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 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	:
TOWNSHIP OF SPRINGFIELD,	:
TOWNSHIP OF UNION,	:
TOWNSHIP OF WEST ORANGE,	:
TOWNSHIP OF WINFIELD PARK,	:
TOWNSHIP OF WYCKOFF, and	:
VILLAGE OF RIDGEWOOD,	:
	:
Third-Party Defendants.	:

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Third Party Defendant, Township of Little Falls, with principal offices located at  
225 Main Street, Little Falls, New Jersey 07424, by way of Answer and Separate

Defenses to the Third Party Complaint "A" (Against Public Entities) filed by the Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., hereby states the following:

1. Other than to admit that the Township of Little Falls is a public body and a municipality of the State of New Jersey, with its principal offices located at 225 Main Street, Little Falls, New Jersey, and that the Township of Little Falls is currently a member of the Passaic Valley Sewerage Commission, all other allegations against the Township of Little Falls are denied.

**WHEREFORE**, Third Party Defendant, Township of Little Falls, demands judgment as follows:

- A. Dismissal of the Third Party Complaint "A" (Against Public Entities);
- B. Awarding the Township of Little Falls attorneys fees, interest and costs of suit; and
- C. For such other and further relief as the Court deems equitable and just.

**SEPARATE DEFENSES**

1. The Third Party Complaint "A" fails to state a cause of action upon which relief may be granted, and therefore, the Third Party Defendant reserves the right to move for a dismissal of the Third Party Complaint "A" prior to trial.

- 2. This Third Party Defendant is free of any and all negligence.
- 3. This Third Party Defendant acted in a reasonably prudent manner at all times.
- 4. The Third Party Plaintiffs lack standing to maintain this cause of action as set forth in the Third Party Complaint "A".

5. Any damages allegedly sustained by the Third Party Plaintiffs, if any, were the proximate result of the negligence and wrongful actions of third persons, natural or corporate, over whom this Third Party Defendant exercised no control and for whose actions this Third Party Defendant is not legally responsible.

6. Any claim of the Third Party Plaintiffs is barred by contributory negligence and/or limited by comparative negligence.

7. The claims asserted in the Third Party Complaint "A" is barred by the Statue of Limitations.

8. At all times relevant herein, the Third Party Defendant complied with all applicable laws, regulations or standards and government approvals.

9. This Third Party Defendant acted in good faith at all times.

10. The Third Party Complaint "A" is barred by the Equitable Doctrine of Laches.

11. The Third Party Complaint "A" is barred by the Equitable Doctrine of Estoppel.

12. The Third Party Complaint "A" is barred under the Equitable Doctrine of Unclean Hands.

13. The Third Party Complaint "A" is barred under the Equitable Doctrine of Waiver.

14. The Third Party Complaint "A" is barred under the Statue of Frauds.

15. The Third Party Complaint "A" is barred by the doctrine of accord and satisfaction.

16. This Third Party Defendant reserves the right to assert additional defenses throughout the course of this action.

17. The Third Party Complaint "A" is barred by the notice provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, et seq.

18. The Third Party Complaint "A" is barred by the doctrine of Unjust Enrichment.

19. The Third Party Complaint "A" is barred by the doctrine of Qualified Immunity.

20. The Third Party Complaint "A" is barred by the doctrine of Res Judicata and/or collateral estoppel.

21. The Third Party Complaint "A" is barred by the absolute immunity of this Third Party Defendant.

22. The Third Party Complaint "A" is barred by the doctrine of Force Majeure.

23. The Third Party Complaint "A" is barred by the doctrine of "coming to the nuisance."

24. The Third Party Complaint "A" is barred by the failure of the third Party Plaintiffs to exhaust all administrative remedies.

25. The Third Party Complaint "A" is barred due to a lack of *in personam* and/or subject matter jurisdiction.

26. The claims of the Third Party Plaintiffs are barred, or in the alternative, the damages alleged must be reduced under the doctrine of comparative negligence, N.J.S.A. 2A:15-5.1.

27. Pursuant to N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

28. The claims of the Third Party Plaintiffs are barred, or in the alternative, the damages alleged 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., and other similar and applicable environmental litigation.

29. Although the Third Party Defendant, Township of Little Falls, denies that it is liable for any alleged contamination, in the event that the Third Party Defendant, Township of Little Falls, is found liable, it is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity joined as a Third Party Defendant in this action that would be liable to the State of New Jersey.

30. Any injuries or damages allegedly sustained by the Plaintiffs were caused by the joint or several negligence and/or intentional acts of Third Party Plaintiffs and/or other parties over whom this Third Party Defendant has no control.

31. The Third Party Complaint "A" as to this Third Party Defendant should be dismissed because the Third Party Plaintiffs' injuries, if any, were due to supervening events for which this Third Party Defendant had no control or responsibility.

32. The Third Party Complaint "A" is barred by the Entire Controversy Doctrine.

33. The claims of the Third Party Plaintiffs are barred by contributory and/or comparative negligence, which negligence was greater than that of this Third Party Defendant.

34. This Third Party Defendant did not owe any duty or obligation to the Third Party Plaintiffs; and in the event that the Third Party Plaintiffs prove that there was a duty owed by this Third Party Defendant, then this Third Party Defendant states that such duty was not breached.

35. This Third Party Defendant was not given notice of any alleged breach of duty or obligation within a reasonable time after the Third Party Plaintiffs knew, or reasonably should have known, of such alleged breach.

36. The Third Party Plaintiffs have failed to comply with conditions precedent necessary to recover under the claims and causes of action asserted in the Third Party Complaint "A".

37. Third Party Plaintiffs have willfully refused to comply with the laws made and provided, and therefore, the Third Party Plaintiffs are barred from recovery.

38. The Third Party Complaint "A" is frivolous and without merit; constituting an abuse of process under the laws of the State of New Jersey, in violation of Rule 1:4-8 and/or N.J.S.A. 2A:15-59.1 et. seq., and the Defendant Township hereby reserves their right to file a counterclaim seeking all appropriate damages against the Plaintiff.

39. The Third Party Plaintiffs are barred from recovery as a matter of law because the alleged claim was not made and/or perfected in the manner and within the time provided and required by the laws, statutes, rules, regulations and/or contracts upon which it is predicated.

40. This Third Party Defendant affirmatively and specifically pleads each and every defense, limitation or immunity provided to it under N.J.S.A. 59:1-1, et seq., the New Jersey Tort Claims Act.

41. This Third Party Defendant, at all times, acted pursuant to the laws, statutes, rules and/or regulations made and provided.

42. Without admitting any liability, if it is determined that this Third Party Defendant engaged in any of the activities alleged in the Third Party Complaint "A", such activities were de minimus.

43. Plaintiffs' and Defendants/Third Party Plaintiffs costs incurred or to be incurred at the site are unreasonable, duplicative, not cost effective, and not consistent with the National Contingency Plan.

44. Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints include claims for costs not yet expended. The Spill Act does not authorize Plaintiffs and/or Defendants/Third Party Plaintiffs to recover future costs. Therefore, Plaintiffs and Defendants/Third Party Plaintiffs claims are premature and not yet ripe for adjudication.

45. The Third Party Complaint "A" represents an unauthorized and unconstitutional retroactive application of the Spill Act and other applicable case law.

46. Plaintiffs and Defendants/Third Party Plaintiffs have failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act.

47. Certain of the costs incurred or to be incurred by the Plaintiffs and/or Defendants/Third Party Plaintiffs in connection with the site are not "response costs", recoverable from the Township of Little Falls, within the meaning of section 101 (23),

(24) and (25) of CERCLA, 42 U.S.C. Section 01 (23), (24) and (25), as applied to the Spill Act.

48. Certain of the actions taken to date by Plaintiffs and/or Third Party Plaintiffs for which Third Party Plaintiffs are making a claim against this Third Party Defendant were not consistent with the National Contingency Plan because, among other things this Third Party Defendant was not provided with notice or an opportunity to comment.

49. Defendants/Third Party Plaintiffs have not paid more than their fair share of any damages, costs or other relief sought by the Plaintiffs, and are therefore not entitled to contribution from this Third Party Defendant.

50. The claims of the Defendants/ Third Party Plaintiffs are barred by the statutory defenses to liability provided by the Spill Compensation and Control Act.

51. Defendants/Third Party Plaintiffs have no Spill Act claim against this Third Party Defendant because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

52. The claims brought by the Third Party Plaintiffs reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

53. The Third Party Complaint "A" is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws..

54. Third Party Defendant, Township of Little Falls, hereby adopts and asserts all other defenses which have been or will be asserted at any time by any other party in this action provided said defenses are applicable to the Township of Little Falls.

55. This Third Party Defendant reserves the right to amend this pleading to add additional defenses as discovery proceeds.

**WHEREFORE**, Third Party Defendant, Township of Little Falls, demands judgment as follows:

- A. Dismissal of the Third Party Complaint "A" (Against Public Entities);
- B. Awarding the Township of Little Falls attorneys fees, interest and costs of suit; and
- C. For such other and further relief as the Court deems equitable and just.

**DEMAND FOR TRIAL BY JURY**

The Third Party Defendant, Township of Little Falls, demands a trial by jury of twelve (12) persons as to all issues so triable pursuant to Rule 1:8-2(b), (c), et seq.

**RESERVATION**

Third Party Defendant, Township of Little Falls, reserves the right to file an amendment to the within pleading alleging additional causes of action and/or defenses as and when they accrue as to any and all other issues and/or parties.

**DESIGNATION OF TRIAL COUNSEL**

Jeffrey J. Trapanese, Esq., is hereby designated as trial counsel as to all issues and matters affecting this litigation.

**DEMAND FOR STATEMENT OF DAMAGES CLAIMED**

Third Party Defendant, Township of Little Falls, demands that the Third Party Plaintiffs provide a written statement of the amount of damages claimed in accordance with R. 4:5-2.

**CERTIFICATION PURSUANT TO RULE 4:5-1**

The undersigned, Attorney for the Third Party Defendant, Township of Little Falls, hereby certifies as follows :

1. The above captioned matter is not the subject of any other action pending in any court or arbitration proceedings.
2. No other actions or arbitration proceedings are contemplated at this time.
3. There are no other parties who should be joined in this action at this time.
4. The statements contained herein are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**TRAPANESE & TRAPANESE, ESQS.**  
Attorneys for Third-Party Defendant  
Township of Little Falls

  
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**JEFFREY J. TRAPANESE, ESQUIRE**

Dated : October 15, 2009