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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.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION -ESSEX COUNTY DOCKET NO. ESX-L-9868-05 (PASR) **VILLAGE OF RIDGEWOOD'S ANSWER TO DEFENDANT MAXUS ENERGY CORPORATION'S AND TIERRA SOLUTIONS, INC.'S THIRD PARTY COMPLAINT "A"**
	:	
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.	:	
	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
BAYONE 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 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,	:	
VILLAGE OF RIDGEWOOD,	:	
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 Village of Ridgewood, with its principal address at 131 North Maple Ave., Ridgewood, New Jersey, by way of Answer to the Third-Party Complaint "A" brought by Defendants Maxus Energy Corporation and Tierra Solutions, Inc., says:

ANSWER

Third-Party Defendants

1. The Village of Ridgewood admits with respect to ¶138 that it is a public body and a municipality of the State of New Jersey with its principal place of business at 131 North Maple Ave., Ridgewood, New Jersey. The Village of Ridgewood further admits that it is a contributing municipality of the Passaic Valley Sewerage Commissioners Service District ("PVSC"). All other allegations against the Village of Ridgewood are denied. The Village of Ridgewood is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1 through 1147, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, the Village of Ridgewood demands judgment dismissing the Third-Party Complaint, awarding of attorney fees and costs of suit, and such other relief as the Court may deem just and equitable.

FIRST COUNT

(New Jersey Spill Compensation and Control Act,
N.J.S.A. 58:10-23.11f.a.(2)(a))

2. The Village of Ridgewood repeats and re-alleges its answers contained in paragraph 1 as if set forth at length herein.

3. The Village of Ridgewood is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1148 through 1158, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at time of trial.

WHEREFORE, the Village of Ridgewood demands judgment dismissing the Third-Party Complaint, awarding of attorney fees and costs of suit, and such other relief as the Court may deem just and equitable.

SECOND COUNT

(Statutory Contribution)

4. The Village of Ridgewood repeats and re-alleges its answers contained in paragraphs 1-3 as if set forth at length herein.

5. The Village of Ridgewood is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1159-1160, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at time of trial.

WHEREFORE, the Village of Ridgewood demands judgment dismissing the Third-Party Complaint, awarding attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

THIRD COUNT

(Enforcement of N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and Environmental Rights Act Claim)

6. The Village of Ridgewood repeats and re-alleges its answers contained in paragraphs 1-5 as if set forth at length herein.

7. The Village of Ridgewood is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1161-1186, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at time of trial.

WHEREFORE, the Village of Ridgewood demands judgment dismissing the Third-Party Complaint, awarding attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

FOURTH COUNT

(Nuisance)

8. The Village of Ridgewood repeats and re-alleges its answers contained in paragraphs 1-7 as if set forth at length herein.

9. The Village of Ridgewood is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1187-1195, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at time of trial.

WHEREFORE, the Village of Ridgewood demands judgment dismissing the Third-Party Complaint, awarding attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

FIFTH COUNT

(Breach of the Public Trust)

10. The Village of Ridgewood repeats and re-alleges its answers contained in paragraphs 1-9 as if set forth at length herein.

11. The Village of Ridgewood is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1196-1229, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at time of trial.

WHEREFORE, the Village of Ridgewood demands judgment dismissing the Third-Party Complaint, awarding attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

DEFENSES

1. The Third Party Complaint "A" fails to state a claim upon which relief may be granted.
2. The Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties.
3. The Village of Ridgewood is not liable pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12.3.
4. Third-Party Plaintiffs have failed to provide notice in accordance with N.J.S.A. 59:8-1 et seq.
5. Third-Party Plaintiffs lack standing.
6. Third-Party Plaintiffs have failed to exhaust administrative remedies.

7. Any wrongful conduct alleged in the Third-Party Complaint "A" resulted from and was proximately caused by the conduct of persons other than the Village of Ridgewood or by the conduct of persons over whom the Village of Ridgewood had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of the Village of Ridgewood.
8. Without admitting any liability, if it is determined that the Village of Ridgewood engaged in any of the activities alleged in the Third Party Complaint "A", such activities were *de minims*.
9. Any damages were caused by an Act of God.
10. The claims asserted in the Third Party Complaint "A" are barred, in whole or in part, by the applicable statutes of limitations.
11. 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.
12. To the extent that the Village of Ridgewood is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harm suffered.
13. At all times relevant, the Village of Ridgewood complied with all applicable laws, regulations or standards and government approvals.
14. Plaintiffs and Defendants/Third-Party Plaintiffs failed to provide notice to the Village of Ridgewood that it was considered a potentially responsible party prior to undertaking numerous response actions relating to the site, which has precluded the Village of Ridgewood from commenting upon or participation in the selection of the remedial action at the site. This has resulted in a deprivation of the Village of Ridgewood's substantive and procedural due process rights under the Federal and State Constitutions.

15. Plaintiffs' and Defendants/Third-Party Plaintiffs' Complaints include costs not yet expended. The New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq., does not authorize Plaintiffs and/or Third Party Plaintiffs to recover future costs. Therefore, any claims are premature and not yet ripe for adjudication.
16. The Third-Party Complaint "A" is an unauthorized retroactive application of the Spill Act and other applicable case law.
17. The Village of Ridgewood has at all times acted in good faith.
18. To the extent that this action is brought pursuant to the Spill Act, the Village of Ridgewood is not liable because any release or threat of release of any hazardous substance was an omission of a third party other than an employee or agent of the Village of Ridgewood. The Village of Ridgewood exercised due care with respect to any such alleged hazardous substance, in light of all relevant facts and circumstances. The Village of Ridgewood took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. Consequently, the Village of Ridgewood is not liable under the Spill Act.
19. Plaintiffs' and Defendants/Third Party Plaintiffs' claims for relief are barred by waiver, estoppel and/or laches.
20. In the event Plaintiff's and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, then any recovery by these parties should be reduced in the proportion that such parties' acts or omissions bear to the acts or omissions that caused the alleged injuries or damages.
21. 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.
22. The Village of Ridgewood is not a "responsible party" under the Spill Act.

23. 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 Village of Ridgewood, within the meaning of section 101 (23), (24) and (25) of CERCLA, 42 *U.S.C* 9601 (23), (24) and (25), as applied to the Spill Act.

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

25. The Village of Ridgewood exercised reasonable care under all the circumstances herein. Consequently, it is not liable to Plaintiffs or Defendants/Third Party Plaintiffs under the common law or any statutory theory of recovery averred herein.

26. The claims for relief are time barred by the terms of the Spill Act.

27. Third Party Plaintiffs' claims against the Village of Ridgewood are barred, in whole or in part, by Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3) because any releases, or threats of releases of hazardous substances, including those allegedly attributable to the Village of Ridgewood, an allegation the Village of Ridgewood denies, were caused by the acts or omissions of third parties other than the Village of Ridgewood's employees or agents, or other than one with whom the Village of Ridgewood had a direct or indirect contractual relationship, and the Village of Ridgewood exercised due care with respect to the alleged hazardous substances taking into consideration the characteristics thereof, in light of all the relevant facts and circumstances, and took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such act or omissions.

28. Third Party Plaintiffs have not paid more then their fair share of any damages, costs or other relief sought by the Plaintiffs, 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, and are, therefore, not entitled to contribution from the Village of Ridgewood.
29. Third-Party Plaintiffs' claims for indemnification are barred because any alleged liability of the Village of Ridgewood, liability the Village of Ridgewood denies, would be secondary, indirect, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Defendants/Third-Party Plaintiffs are direct, active and primary.
30. Third-Party Plaintiffs are not entitled to recover attorney's fees or costs, or fees of litigation.
31. Third Party Plaintiffs are not entitled to recovery for any alleged unjust enrichment as there exists an adequate remedy at law to redress Third-Party Plaintiffs' claims.
32. Third-Party Plaintiffs' claims are barred by the statutory defenses to liability provided by the Spill Act.
33. Third-Party Plaintiffs' claims are barred to the extent they seek relief for conduct occurring, or damages incurred, before the effective date of the Spill Act.
34. Third-Party Plaintiffs' claims are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy and applicable laws.
35. To the extent that Third-Party Plaintiffs' claims against the Village of Ridgewood are subject to contribution or any reduction or offset from other parties, any damages recovered against the Village of Ridgewood shall be reduced accordingly.
36. The Village of Ridgewood hereby asserts and adopts all other defenses which have been or will be asserted at any time by any other party in this action, to the extent said defenses are applicable to the Village of Ridgewood.

37. The Village of Ridgewood reserves the right to assert additional defenses that may be uncovered during the course of this action.

COUNTERCLAIMS AND CROSSCLAIMS

In accordance with Case Management Order V, the Village of Ridgewood is not asserting any counter claims or cross claims at this time and reserves its rights to do so as specified by the Court's Order.

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, Fred Semrau and Carolyn M. McGuire are designated as trial counsel.

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified in accordance with R. 4:5-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any pending arbitration proceeding. Other than the above referenced actions, there are no other actions or arbitration proceedings in existence or contemplated at this time; and I know of no other New Jersey party who should be joined in this action. There may be New York parties identified as discovery proceeds. I hereby certify that these statements made by me are true and that I am aware that if any of these statements is willfully false, I am subject to punishment.

FILING CERTIFICATION

I certify that the original and copy of the within Answer and Affirmative Defenses have been sent by overnight mail for filing to the Clerk of the Superior Court of New Jersey, Law Division, Essex County, at the Veterans Courthouse, 50 W. Market Street, Newark, NJ 07102, and a copy of the same has been sent *via* electronic posting and overnight mail this date to Third-Party Plaintiffs' attorneys as follows:

William L. Warren, Esq.
Drinker, Biddle & Reath, LLP
105 College Road East, Suite 300
Princeton, NJ 08542-0627

Thomas E. Starnes, Esq.
Andrews Kurth, LLP
1350 I Street NW – Suite 1100
Washington, DC 20005

I certify that a copy of said document has been posted on the electronic platform provided by Defendants. (http://njdepvocc.sfile.com), and/or served via the email service list and/or served regular mail as indicated by the Special Master.

DORSEY & SEMRAU LLC

By: Carolyn M McGuire

Carolyn M. McGuire, Esq.

Dated: October 16, 2009