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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,

v.

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

Defendants.

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Springfield, NJ 07081

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L-9868-05

CIVIL ACTION

**PLAINTIFFS' ANSWER AND
DEFENSES TO COUNTERCLAIM OF
DEFENDANTS MAXUS ENERGY
CORPORATION AND TIERRA
SOLUTIONS, INC.**

Plaintiffs the New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs") submit the following

Answer and Defenses to the Counterclaim of Defendants Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”) (“Maxus and Tierra’s Counterclaim”).

I.

ANSWER TO MAXUS AND TIERRA’S COUNTERCLAIM

INTRODUCTION

1. In response to paragraph 1 of Maxus and Tierra’s Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

2. In response to paragraph 2 of Maxus and Tierra’s Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

3. Paragraph 3 of Maxus and Tierra’s Counterclaim contains argument to which no response is required. To the extent a response is required, Plaintiffs deny the allegations.

4. In response to paragraph 4 of Maxus and Tierra’s Counterclaim, Plaintiffs admit that the State of New Jersey holds the submerged lands of the Passaic River, Hackensack River and Newark Bay, plus parts of the submerged lands of the Kill van Kull and Arthur Kill in trust for the citizens of New Jersey. Plaintiffs deny the remaining allegations in Paragraph 4.

5. In response to paragraph 5 of Maxus and Tierra’s Counterclaim, Plaintiffs deny the allegations.

6. In response to Paragraph 6 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

7. In response to paragraph 7 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

8. In response to paragraph 8 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

9. In response to paragraph 9 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

10. In response to paragraph 10 of Maxus and Tierra's Counterclaim, Plaintiffs admit that hazardous substances have been discharged into the Newark Bay Complex and that many of these hazardous substances remain entrained in the sediments of the Newark Bay Complex to this day. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

11. In response to paragraph 11 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

12. In response to paragraph 12 of Maxus and Tierra's Counterclaim, the paragraph contains a legal conclusion to which no answer is required. To the extent a further answer is required, Plaintiffs deny that Maxus and Tierra are entitled to any relief as a result of Maxus and Tierra's Counterclaim.

THE PARTIES

13. In response to paragraph 13 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

14. In response to paragraph 14 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

15. In response to paragraph 15 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

16. In response to paragraph 16 of Maxus and Tierra's Counterclaim, the paragraph contains a legal conclusion to which no answer is required. To the extent a further answer is required, Plaintiffs admit that they are seeking relief on behalf of the State of New Jersey, otherwise Plaintiffs deny the remaining allegations in paragraph 16.

17. In response to paragraph 17 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

18. In response to paragraph 18 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

PROCEDURAL BACKGROUND

19. In response to paragraph 19 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

20. In response to paragraph 20 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from Plaintiffs' Second Amended Complaint and state that the document speaks for itself.

21. In response to paragraph 21 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves.

22. In response to paragraph 22 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra have answered the Plaintiffs' Second Amended Complaint and state that the document shall speak for itself.

23. In response to paragraph 23 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

24. In response to paragraph 24 of Maxus and Tierra's Counterclaim, Plaintiffs deny that the State has been inactive with respect to the contamination of the Passaic River and Newark Bay Complex. Plaintiffs do not have sufficient information or knowledge to form a belief as to the truth of the allegation that Maxus and Tierra have spent millions of dollars to assess and address contamination of the Newark Bay Complex, but deny that Maxus or Tierra have ever paid to remove a single teaspoon of contaminated sediment from the Newark Bay Complex as of this date. Plaintiffs admit that Maxus and Tierra have implemented studies in the Newark Bay Complex, and state that the agreements under which these studies were implemented speak for themselves. To the extent a further answer is required, Plaintiffs deny the remaining allegation in paragraph 24.

25. In response to paragraph 25 of Maxus and Tierra's Counterclaim, Plaintiffs are without sufficient information or knowledge to form an opinion as to the truth of the allegation that Maxus and Tierra proposed the actions described in the AOC entered into in 2008, and further state that the AOC speaks for itself.

26. In response to paragraph 26 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra have conducted some studies under the direction and supervision of the EPA. Plaintiffs are without sufficient information or knowledge to form an opinion as to the truth of the allegation that implementing the AOCs was a monumental task or that Maxus and Tierra have expended many millions of dollars implementing the AOCs. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 26.

27. In response to paragraph 27 of Maxus and Tierra's Counterclaim, the paragraph contains a legal conclusion to which no answer is required. Plaintiffs admit that the AOCs were implemented by Maxus and Tierra on behalf of Occidental Chemical Corporation. Plaintiffs admit that Diamond Shamrock Corporation was incorporated in 1983 as the parent of Diamond Shamrock Chemicals Corporation. Plaintiffs do not have knowledge or information sufficient to form a belief as to the truth of the allegation that Tierra Solutions, Inc. did not exist until 1986. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 27.

28. In response to paragraph 28 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

29. In response to paragraph 29 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

30. In response to paragraph 30 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

31. In response to paragraph 31 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Tierra is the current owner of 80 and 120 Lister Avenue and that Diamond Shamrock Chemical Land Holdings, Inc., now Tierra, acquired both parcels in August 1986. Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the remaining allegations contained in Paragraph 31 of Maxus and Tierra's Counterclaim.

32. In response to paragraph 32 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

33. In response to paragraph 33 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

34. In response to paragraph 34 of Maxus and Tierra's Counterclaim, Plaintiffs deny that the Lister Plant has been "singled out" as a result of the Complaint. Plaintiffs admit that other plants discharged hazardous substances into the Passaic, but deny that the Passaic River would have suffered severe dioxin contamination even if the Lister Plant had not existed. To the extent a further answer is required, Plaintiffs deny the remaining allegation in paragraph 34.

35. In response to paragraph 35 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 35 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

36. In response to paragraph 36 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To

the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

37. In response to paragraph 37 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

38. In response to paragraph 38 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

39. In response to paragraph 39 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

40. In response to paragraph 40 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

41. In response to paragraph 41 of Maxus and Tierra's Counterclaim, Plaintiffs admit that in December 1982, the NJDEP banned the sale of certain fish from the Newark Bay, Lower Passaic River, Lower Hackensack River, Arthur Kill and Kill van Kull as a result of PCB contamination. Plaintiffs admit that the first fish advisory related to dioxin contamination in the Newark Bay Complex was issued in 1983. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 41.

42. Paragraph 42 of Maxus and Tierra's Counterclaim contains argument to which no answer is required. To the extent an answer is required, Plaintiffs deny the allegations.

HISTORICAL BACKGROUND

43. Paragraph 43 of Maxus and Tierra's Counterclaim contains argument to which no answer is required. To the extent an answer is required, Plaintiffs deny the allegations.

44. Paragraph 44 of Maxus and Tierra's Counterclaim contains historical generalizations or arguments which require no answer. To the extent an answer is required, Plaintiffs deny the allegations.

45. In response to paragraph 45 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

46. In response to paragraph 46 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra cite facts from publicly-available documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To

the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

47. In response to paragraph 47 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

48. In response to paragraph 48 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

49. In response to paragraph 49 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from publicly-available documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

SUMMARY OF DISCHARGES DURING THE STATE'S OWNERSHIP AND CONTROL

50. In response to paragraph 50 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the State of New Jersey holds the submerged lands of the Newark Bay Complex in trust for the citizens of New Jersey. Plaintiffs admit that contaminants were introduced into the Newark

Bay during such time. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 50.

51. In response to paragraph 51 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the State of New Jersey holds title to certain submerged lands in trust for the citizen of New Jersey, subject to such transfers of land as have occurred from time to time. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 51.

52. In response to paragraph 52 of Maxus and Tierra's Counterclaim, the paragraph contains a legal conclusion to which no answer is required. Plaintiffs state that the State of New Jersey holds title to certain submerged lands in trust for the citizen of New Jersey and that hazardous substances were discharged into the waters of the State of New Jersey. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 52.

53. In response to paragraph 53 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the 2003 Directive states that the "Respondents are responsible for the hazardous substances in the Lower Passaic River that were discharged onto the land and into the waters of the State." Plaintiffs deny that this statement constitutes an admission.

54. In response to paragraph 54 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the Newark Bay Complex has received liquid and solid wastes and that this waste has included wastewater from industries and municipalities.

The Passaic River

55. In response to paragraph 55 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

56. In response to paragraph 56 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

57. In response to paragraph 57 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

58. In response to paragraph 58 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

59. In response to paragraph 59 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have

been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

60. In response to paragraph 60 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

61. In response to paragraph 61 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

62. In response to paragraph 62 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

63. In response to paragraph 63 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

64. In response to paragraph 64 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

65. In response to paragraph 65 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

66. In response to paragraph 66 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

67. In response to paragraph 67 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

68. In response to paragraph 68 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To

the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

69. In response to paragraph 69 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

70. In response to paragraph 70 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

71. In response to paragraph 71 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

72. In response to paragraph 72 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

73. In response to paragraph 73 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

74. In response to paragraph 74 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

75. In response to paragraph 75 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

76. In response to paragraph 76 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

77. In response to paragraph 77 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To

the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

78. In response to paragraph 78 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

79. In response to paragraph 79 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

80. In response to paragraph 80 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

81. In response to paragraph 81 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts contained in the published opinion in Van Cleve v. PVSC, 71 N.J.L. 183, 204-05 (Sup. Ct. 1904) and state that the opinion will speak for itself. Plaintiffs deny that the quoted figures pertain to discharges made "[a]s of at least 1905." To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

82. In response to paragraph 82 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

83. In response to paragraph 83 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

84. In response to paragraph 84 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

85. In response to paragraph 85 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

86. In response to paragraph 86 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To

the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

87. In response to paragraph 87 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to summarize the content of historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

88. In response to paragraph 88 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

89. In response to paragraph 89 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

90. In response to paragraph 90 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

91. In response to paragraph 91 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

92. In response to paragraph 92 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

Newark Bay, The Kills and Other Parts of the Newark Bay Complex

93. In response to paragraph 93 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

94. In response to paragraph 94 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

95. In response to paragraph 95 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have

been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

96. In response to paragraph 96 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to summarize facts contained in historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

97. In response to paragraph 97 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

98. In response to paragraph 98 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

99. In response to paragraph 99 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To

the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

100. In response to paragraph 100 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

101. In response to paragraph 101 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

102. In response to paragraph 102 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

103. In response to paragraph 103 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for

themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

104. In response to paragraph 104 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

105. In response to paragraph 105 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

106. In response to paragraph 106 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

107. In response to paragraph 107 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which

have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

108. In response to paragraph 108 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

109. In response to paragraph 109 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 109 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

110. In response to paragraph 110 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

111. In response to paragraph 111 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for

themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

112. In response to paragraph 112 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

113. In response to paragraph 113 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

114. In response to paragraph 114 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

115. In response to paragraph 115 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which

have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

116. In response to paragraph 116 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

117. In response to paragraph 117 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

Discharges From Mosquito Control Efforts

118. In response to paragraph 118 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

119. In response to paragraph 119 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

120. In response to paragraph 120 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

121. In response to paragraph 121 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

122. In response to paragraph 122 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 122 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

123. In response to paragraph 123 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

124. In response to paragraph 124 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

125. In response to paragraph 125 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

126. In response to paragraph 126 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient

knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

127. In response to paragraph 127 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

128. In response to paragraph 128 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

129. In response to paragraph 129 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

130. In response to paragraph 130 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for

themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

131. In response to paragraph 131 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

132. In response to paragraph 132 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 132 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

133. In response to paragraph 133 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

Discharges from Sewer Systems

134. In response to paragraph 134 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

135. In response to paragraph 135 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

136. In response to paragraph 136 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from the opinion in the People of the State of New York v. State of New Jersey, 256 U.S. 296 (1921) and state that the opinion speaks for itself. Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the remaining allegations in paragraph 136 and therefore deny the allegations.

137. In response to paragraph 137 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

138. In response to paragraph 138 of Maxus and Tierra's Counterclaim, Plaintiffs admit that certain municipalities operate combined sewer systems that are permitted under State and federal law. Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations and therefore deny the allegations.

139. In response to paragraph 139 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to summarize statements contained in historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack

sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

140. In response to paragraph 140 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

141. In response to paragraph 141 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

142. In response to paragraph 142 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

143. In response to paragraph 143 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

144. In response to paragraph 144, Plaintiffs deny the allegations.

145. In response to paragraph 145 contains arguments or legal conclusions to which no response is required. In response to paragraph 145 of Maxus and Tierra's Counterclaim, Plaintiffs further admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

146. In response to paragraph 146 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to summarize the content of historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

147. In response to paragraph 147 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

148. In response to paragraph 148 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient

knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

149. In response to paragraph 149 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

150. In response to paragraph 150 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

151. In response to paragraph 151 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

152. In response to paragraph 152 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

153. In response to paragraph 153 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

154. In response to paragraph 154 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

155. In response to paragraph 155 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

156. In response to paragraph 156 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient

knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

157. In response to paragraph 157 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

158. In response to paragraph 158 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

159. In response to paragraph 159 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 159 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

160. In response to paragraph 160 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to cite facts from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient

knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

161. In response to paragraph 161 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 161 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

162. In response to paragraph 162 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 162 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

163. In response to paragraph 163 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 163 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

164. In response to paragraph 164 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

165. In response to paragraph 165 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for

themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

166. In response to paragraph 166 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

Contamination Facilitated by the State of New Jersey

167. In response to paragraph 167 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the NJDEP has issued permits to municipalities and other entities authorizing them to place or discharge sewage into the Passaic River pursuant to valid state and federal laws, regulations and rules. To the extent further answer is required, Plaintiffs deny the remaining allegation in paragraph 167.

168. In response to paragraph 168 of Maxus and Tierra's Counterclaim, Plaintiffs state that N.J.S.A. 58:14-7 speaks for itself.

169. In response to paragraph 169 of Maxus and Tierra's Counterclaim, Plaintiffs state that N.J.S.A. 58:14-8 speaks for itself.

170. In response to paragraph 170 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

171. In response to paragraph 171 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

172. In response to paragraph 172 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

173. In response to paragraph 173 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from a document which speaks for itself.

174. In response to paragraph 174 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Plaintiffs' Complaint makes the allegation in the first sentence of paragraph 174. Plaintiffs deny the remaining allegations in paragraph 174.

175. In response to paragraph 175 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from a document which speaks for itself.

176. In response to paragraph 176 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Commissioner Jackson made the quoted remark. To the extent further answer is required, Plaintiffs deny the remaining allegations in paragraph 176.

177. In response to paragraph 177 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

***Discharges During the State's Control
of the Kearny Wastewater Treatment Plant***

178. In response to paragraph 178 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

179. In response to paragraph 179 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

180. In response to paragraph 180 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

181. In response to paragraph 181 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to refer to historical documents, some or all of which have been supplied to the Plaintiffs, and state that the referenced documents speak for themselves.

182. In response to paragraph 182 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves.

183. In response to paragraph 183 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been supplied to the Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

184. In response to paragraph 184 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra refer to historical documents, some or all of which have been supplied to the Plaintiffs and which speak for themselves. To the extent a further answer is required, Plaintiffs deny the allegations.

185. In response to paragraph 185 of Maxus and Tierra's Counterclaim, Plaintiffs deny that the NJDEP made the statements contained in paragraph 185. Plaintiffs further respond that

the document speaks for itself, but deny that the document contains official observations of the NJDEP.

186. In response to paragraph 186 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

DISCHARGES BY THE NEW JERSEY DEPARTMENT OF TRANSPORTATION

187. In response to paragraph 187 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the State owns the property disclosed on Plaintiffs' supplemental disclosures, including Block 285 Lot 2 in the Town of Kearny.

188. In response to paragraph 188 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

189. In response to paragraph 189 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

190. In response to paragraph 190 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

191. In response to paragraph 191 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves.

To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

192. In response to paragraph 192 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

193. In response to paragraph 193 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

194. In response to paragraph 194 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

195. In response to paragraph 195 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

196. In response to paragraph 196 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves.

To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

197. In response to paragraph 197 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

198. In response to paragraph 198 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

199. In response to paragraph 199 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

200. In response to paragraph 200 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

201. In response to paragraph 201 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

202. In response to paragraph 202 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

203. In response to paragraph 203 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

204. In response to paragraph 204 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

205. In response to paragraph 205 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

206. In response to paragraph 206 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

207. In response to paragraph 207 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which

have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

208. In response to paragraph 208 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

209. In response to paragraph 209 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

210. In response to paragraph 210 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

211. In response to paragraph 211 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

212. In response to paragraph 212 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

213. In response to paragraph 213 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

214. In response to paragraph 214 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

215. In response to paragraph 215 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

216. In response to paragraph 216 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra appear to be referencing historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents speak for themselves.

To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

217. In response to paragraph 217 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from historical documents, some or all of which have been provided to Plaintiffs and state that the referenced documents which speak for themselves. To the extent the paragraph calls for a further answer, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

218. In response to paragraph 218 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

219. In response to paragraph 219 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

220. In response to paragraph 220 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations and therefore deny the allegations.

221. In response to paragraph 221 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

COUNT I

CONTRIBUTION UNDER THE SPILL ACT -- § 58:10-23.11f(2)(a)

222. In response to paragraph 222 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-221 of Maxus and Tierra's Counterclaim as if fully set forth herein.

223. Paragraph 223 of Maxus and Tierra's Counterclaim states a legal conclusion to which no response is required.

224. In response to paragraph 224 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the State holds the submerged lands of the Newark Bay Complex in trust for the citizens of New Jersey and that discharges from property adjacent to the submerged lands occurred. Plaintiffs deny the remaining allegations of Paragraph 224.

225. In response to paragraph 225 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

226. In response to paragraph 226 of Maxus and Tierra's Counterclaim, Plaintiffs admit that pursuant to valid permits issued under state and federal law, municipalities and local and regional sewerage authorities release permitted levels of sewage materials into the Passaic River and its tributaries. Plaintiffs deny the remaining allegations of paragraph 226.

227. In response to paragraph 227 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

228. In response to paragraph 228 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

229. In response to paragraph 229 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

230. In response to paragraph 230 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

231. In response to paragraph 231 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

232. In response to paragraph 232 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations. Plaintiffs further deny that Maxus and Tierra are entitled to any of the relief pled for in Count I.

COUNT II

ENVIRONMENTAL RIGHTS ACT CLAIM AND CLAIM TO ENFORCE N.J.S.A. 58:14-7 AND 58:14-8

233. In response to paragraph 233 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-232 of Maxus and Tierra's Counterclaim as if fully set forth herein.

234. In response to paragraph 234 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

235. In response to paragraph 235 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

236. In response to paragraph 236 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

237. In response to paragraph 237 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

238. In response to paragraph 238 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

239. Paragraph 239 of Maxus and Tierra's Counterclaim contains a legal conclusion to which no answer is required. Plaintiffs deny the remaining allegations in Paragraph 239.

240. Paragraph 240 of Maxus and Tierra's Counterclaim contains a legal conclusion to which no answer is required.

241. Paragraph 241 of Maxus and Tierra's Counterclaim purports to quote a statute which speaks for itself. Paragraph 241 contains a legal conclusion to which no answer is required.

242. Paragraph 242 of Maxus and Tierra's Counterclaim contains a legal conclusion to which no answer is required.

243. Paragraph 243 of Maxus and Tierra's Counterclaim contains a legal conclusion to which no answer is required.

244. In response to paragraph 244 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

245. In response to paragraph 245 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

246. In response to paragraph 246 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the NJDEP received a letter on September 5, 2008 purporting to be an ERA notice regarding alleged unspecified violations of N.J.S.A. 58:14-7 and 14-8 and admit that such letter contained information to the effect that the entities listed in paragraph 246 were copied on the letter. Plaintiffs deny that Maxus and Tierra are entitled to any of the relief described in Count II.

COUNT III

BREACH OF THE PUBLIC TRUST

247. In response to paragraph 247 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-246 of Maxus and Tierra's Counterclaim as if fully set forth herein.

248. In response to paragraph 248 of Maxus and Tierra's Counterclaim, Plaintiffs admit the allegations.

249. In response to paragraph 249 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

250. In response to paragraph 250 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding unnamed "multiple lawsuits," but admits that N.J.S.A. 58:10-23.11(b) provides that the natural resources of the State of New Jersey include land, fish, shellfish, wildlife, biota, air, water and other such resources owned, managed, held in trust or otherwise controlled by the State.

251. In response to paragraph 251 of Maxus and Tierra's Counterclaim, Plaintiffs lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding unnamed "multiple lawsuits," but admit that the natural resources of the State of New Jersey include the waters of the state, which include the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

252. In response to paragraph 252 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

253. Paragraph 253 of Maxus and Tierra's Counterclaim contains legal conclusions to which no answer is required.

254. Paragraph 254 of Maxus and Tierra's Counterclaim contains legal conclusions to which no answer is required.

255. Paragraph 255 of Maxus and Tierra's Counterclaim contains legal conclusions to which no answer is required.

256. Paragraph 256 of Maxus and Tierra's Counterclaim contains legal conclusions to which no answer is required. Plaintiffs admit that Tierra owns 80 and 120 Lister Avenue, which abut the Passaic River, but otherwise deny the allegations.

257. Paragraph 257 of Maxus and Tierra's Counterclaim contains legal conclusions to which no answer is required.

258. Paragraph 258 of Maxus and Tierra's Counterclaim contains legal conclusions to which no answer is required.

259. In response to paragraph 259 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

260. In response to paragraph 260 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations

261. In response to paragraph 261 of Maxus and Tierra's Counterclaim, Plaintiffs are without knowledge or information sufficient to permit them to form a belief as to the truth of the allegations contained in Paragraph 261 of Maxus and Tierra's Counterclaim and therefore deny such allegations.

262. Paragraph 262 of Maxus and Tierra's Counterclaim contains legal conclusions or arguments to which no answer is required. Plaintiffs deny the allegations.

263. In response to paragraph 263 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the NJDEP has granted valid permits pursuant to state and federal law regulating the release of wastewater treatment systems to the waters of the State of New Jersey. Plaintiffs deny the remaining allegations in paragraph 263.

264. In response to paragraph 264 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the NJDEP has granted valid permits pursuant to state and federal law that allow overflow to be released into the Newark Bay Complex during periods when the sewer flow cannot be accommodated in the existing sewage treatment plants. Plaintiffs deny the remaining allegations in paragraph 264.

265. In response to paragraph 265 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

266. In response to paragraph 266 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Maxus and Tierra purport to quote from documents which speak for themselves. To the extent a further answer is required, Plaintiffs deny the allegations.

267. In response to paragraph 267 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

268. In response to paragraph 268 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

269. In response to paragraph 269 of Maxus and Tierra's Counterclaim, Plaintiffs admit that other sources of pollution exist above the Dundee Dam and that these sources may reach the Newark Bay Complex.

270. In response to paragraph 270 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

271. In response to paragraph 271 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

272. In response to paragraph 272 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

273. In response to paragraph 273 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

274. In response to paragraph 274 of Maxus and Tierra's Counterclaim, Plaintiffs state that the 2003 Directive contains the quoted language, except that the quoted language in the last sentence is contained in ¶ 2 of the 2003 Directive. Plaintiffs further state that the document speaks for itself.

275. In response to paragraph 275 of Maxus and Tierra's Counterclaim, Plaintiffs state that the 2003 Directive contains the quoted language, and further state that the document speaks for itself.

276. In response to paragraph 276 of Maxus and Tierra's Counterclaim, Plaintiffs state that the 2003 Directive contains the quoted language, and further state that the document speaks for itself.

277. In response to paragraph 277 of Maxus and Tierra's Counterclaim, Plaintiffs state that the 2003 Directive contains the quoted language, and further state that the document speaks for itself.

278. In response to paragraph 278 of Maxus and Tierra's Counterclaim, Plaintiffs state that the 2003 Directive contains the quoted language, and further state that the document speaks for itself.

279. In response to paragraph 279 of Maxus and Tierra's Counterclaim, Plaintiffs admit that the State contends in this lawsuit, and so alleged in its complaint, that as a result of TCDD contamination from the Lister plant, the ecosystem and natural resources of the Newark Bay Complex have been significantly injured.

280. Paragraph 280 of Maxus and Tierra's Counterclaim contains legal conclusions and arguments to which no answer is required. Plaintiffs deny that Maxus and Tierra are entitled to any of the relief sought in paragraph 280.

COUNT IV

AIDING AND ABETTING

281. In response to paragraph 281 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-280 of Maxus and Tierra's Counterclaim as if fully set forth herein.

282. In response to paragraph 282 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

283. In response to paragraph 283 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

284. In response to paragraph 284 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

285. In response to paragraph 285 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

286. In response to paragraph 286 of Maxus and Tierra's Counterclaim, Plaintiffs admit that pursuant to valid permits issued pursuant to state and federal law, municipalities and

local and regional sewerage authorities release sewage and stormwater runoff into the Passaic River and tributaries.

287. Paragraph 287 of Maxus and Tierra's Counterclaim contains a legal conclusion to which no answer is required.

288. In response to paragraph 288 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

289. In response to paragraph 289 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

290. Paragraph 290 of Maxus and Tierra's Counterclaim contains legal conclusions and arguments to which no answer is required. Plaintiffs deny the allegations.

291. In response to paragraph 291 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

292. In response to paragraph 292 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations, and further deny that Maxus and Tierra are entitled to any of the relief described in Count IV.

COUNT V

RECOUPMENT

293. In response to paragraph 293 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-292 of Maxus and Tierra's Counterclaim as if fully set forth herein.

294. In response to paragraph 294 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

295. In response to paragraph 295 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

296. In response to paragraph 296 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

297. In response to paragraph 297 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

298. In response to paragraph 298 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations, and further deny that Maxus and Tierra are entitled to any of the relief described in Count V.

COUNT VI

PUBLIC NUISANCE

299. In response to paragraph 299 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-298 of Maxus and Tierra's Counterclaim as if fully set forth herein.

300. In response to paragraph 300 of Maxus and Tierra's Counterclaim, Plaintiffs admit that Count III of the Second Amended Complaint alleges that the actions of the defendants or their predecessors and affiliates created or maintained a public nuisance as the result of the discharges of hazardous substances.

301. Paragraph 301 of Maxus and Tierra's Counterclaim states a legal conclusion to which no response is required. To the extent a response is required, Plaintiffs deny the allegations.

302. In response to paragraph 302 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

303. In response to paragraph 303 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

304. In response to paragraph 304 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations, and further deny that Maxus and Tierra are entitled to any of the relief described in Count VI.

COUNT VII

SETOFF

305. In response to paragraph 305 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-304 of Maxus and Tierra's Counterclaim as if fully set forth herein.

306. In response to paragraph 306 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

307. In response to paragraph 307 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

308. In response to paragraph 308 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations.

309. In response to paragraph 309 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations, and further deny that Maxus and Tierra are entitled to any of the relief described in Count VII.

COUNT VIII

CONTRIBUTION

310. In response to paragraph 310 of Maxus and Tierra's Counterclaim, Plaintiffs repeat and incorporate by reference its responses to the allegations contained in Paragraphs 1-309 of Maxus and Tierra's Counterclaim as if fully set forth herein.

311. In response to paragraph 311 of Maxus and Tierra's Counterclaim, Plaintiffs deny the allegations, and further deny that Maxus and Tierra are entitled to any of the relief described in Count VIII.

II.

AFFIRMATIVE DEFENSES

1. For their First Affirmative Defense, this Court lacks subject matter jurisdiction over some or all of the counterclaims.

2. For their Second Affirmative Defense, some or all of Maxus and Tierra's Counterclaims are barred by the applicable statute of limitations or by the equitable doctrines of laches and estoppel.

3. For their Third Affirmative Defense, Maxus and Tierra have failed to state a claim upon which relief can be granted.

4. For their Fourth Affirmative Defense, Maxus and Tierra lack standing to pursue some or all of their claims.

5. For their Fifth Affirmative Defense, Maxus and Tierra have failed to complete statutory requirements which are a prerequisite to filing suit against a public entity under the Tort Claims Act, N.J.S.A. 59:1-1 et seq.

6. For their Sixth Affirmative Defense, Maxus and Tierra did not raise all reasonably

ascertainable issues pursuant to N.J.A.C. 7:14A-15.13 related to the issuance of a permit under the Water Pollution Control Act and as a result may not participate in further proceedings related to any such permit.

7. For their Seventh Affirmative Defense, Maxus and Tierra are ineligible for equitable relief because of their own inequitable conduct or the inequitable conduct of entities for which Maxus and Tierra have assumed liabilities under the doctrine of unclean hands.

8. For their Eighth Affirmative Defense Maxus and Tierra's Counterclaims are barred in whole or in part by the Tort Claims Act, N.J.S.A. 59:1-1 et seq.

9. For their Ninth Affirmative Defense, Maxus and Tierra's claims are barred by the Separation of Powers doctrine as set out in Article III of the New Jersey Constitution.

10. For their Tenth Affirmative Defense, Maxus and Tierra's claims are barred by statutory defenses to liability provided by the Spill Act.

11. For their Eleventh Affirmative Defense, exclusive jurisdiction for claims seeking review of final agency actions is in the Appellate Division, to which any such valid claims should be transferred.

12. For their Twelfth Affirmative Defense, Maxus and Tierra's counterclaims are barred by reason of the Plaintiffs' sovereign immunity.

13. For their Thirteenth Affirmative Defense, Maxus and Tierra's counterclaims are based on allegations involving entities other than the Plaintiffs, and for whose acts or omissions Plaintiffs are not legally responsible or liable.

14. For their Fourteenth Affirmative Defense, Maxus and Tierra have failed to join indispensable parties needed for just adjudication and in whose absence complete relief cannot be accorded among those already parties.

15. For their Fifteenth Affirmative Defense, Maxus and Tierra's claims under the Spill Act are barred because no party other than the NJDEP may seek relief against the Spill Fund for discharges occurring or damages incurred before the effective date of the Spill Act.

16. For their Sixteenth Affirmative Defense, Maxus and Tierra are not entitled to any relief based on the NJDEP's issuance of valid permits pursuant to the authority duly invested in the NJDEP by state and federal laws.

17. For their Seventeenth Affirmative Defense, Plaintiffs cannot be subject to any liability or penalties as a result of the NJDEP's issuance of valid permits pursuant to the authority duly invested in the NJDEP by state and federal laws,

18. For their Eighteenth Affirmative Defense, Maxus and Tierra's claims are barred because Maxus and Tierra failed to exhaust their administrative remedies.

19. For their Nineteenth Affirmative Defense, Plaintiffs deny that Maxus and Tierra have suffered any injury, but in the event that they did suffer an injury, such injury was caused by intervening acts or omissions or superseding acts of persons or entities over which Plaintiffs exercised no control and for whose conduct Plaintiffs are not responsible.

20. For their Twentieth Affirmative Defense, Maxus and Tierra lack standing to sue under the Environmental Rights Act.

21. For their Twenty-first Affirmative Defense, Maxus and Tierra's request that the NJDEP be enjoined from issuing permits is unripe, because any challenge to such permits must be raised during the permitting process outlined in N.J.A.C. 7:14A.

22. For their Twenty-second Affirmative Defense, Maxus and Tierra cannot enforce N.J.S.A. 58:14-7 or 14-8 against the NJDEP.

23. For their Twenty-third Affirmative Defense, the Environmental Rights Act does

not provide a cause of action to compel a State agency to take action, but instead is to be used against polluters.

24. For their Twenty-fourth Affirmative Defense, Maxus and Tierra seek review of final agency actions, and any such review must occur in the Appellate Division, after exhaustion of administrative remedies.

25. For their Twenty-fifth Affirmative Defense, Maxus and Tierra seek relief this Court does not have the constitutional ability to grant.

26. For their Twenty-sixth Affirmative Defense, Plaintiffs reserve the right to incorporate by reference the defenses pled, now or in the future, by any other defendant, cross-claim defendant or third-party defendant, to the extent such defenses may be applicable to Plaintiffs.

27. For their Twenty-seventh Affirmative Defense, Plaintiffs reserve the right to assert additional defenses that may become applicable to Maxus and Tierra's counterclaims during the course of this action.

WHEREFORE, Plaintiffs demand judgment in their favor dismissing with prejudice Maxus and Tierra's claims asserted in the Counterclaim of Defendants Maxus Energy Corporation and Tierra Solutions, Inc.


DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demands a trial by jury on all issues involving the causes of action in the Third Count (Breach of the Public Trust), Fourth Count (Aiding and Abetting), Fifth Count (Recoupment), Sixth Count (Public Nuisance), Seventh Count (Setoff), and Eighth Count (Contribution).

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to R. 4:5-2, Plaintiffs hereby request that Defendants provide a written statement of the amount of damages within 5 days of the service of this notice.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 


John F. Dickinson, Jr.
Deputy Attorney General

Dated: February 9, 2009

CERTIFICATION PURSUANT TO R. 4:6-1

I hereby certify pursuant to R. 4:6-1 that the Answer and Defenses to Counterclaims by Defendants Maxus Energy Corporation and Tierra Solutions, Inc. on behalf of the 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 has been served within the time and manner provided by Case Management Order IV dated November 14, 2008.

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 

John F. Dickinson, Jr.
Deputy Attorney General

Dated: February 9, 2009