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Attorneys for Third-Party Defendant  
Borough of Garwood

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

Plaintiffs,

vs.

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

Defendants,

and

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

BAYONNE MUNICIPAL UTILITIES  
AUTHORITY, BOROUGH OF CARTERET,  
BOROUGH OF EAST NEWARK, BOROUGH  
OF EAST RUTHERFORD, BOROUGH OF  
ELMWOOD PARK, BOROUGH OF  
FAIR LAWN, BOROUGH OF FANWOOD,  
BOROUGH OF FRANKLIN LAKES,

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION – ESSEX COUNTY

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

: Civil Action

: ANSWER OF BOROUGH OF  
: GARWOOD TO DEFENDANTS  
: MAXUS ENERGY CORPORATION  
: AND TIERRA SOLUTIONS, INC.'S  
: THIRD PARTY COMPLAINT "A",  
: AND SEPARATE DEFENSES

BOROUGH OF GARWOOD, BOROUGH OF :  
GLEN RIDGE, BOROUGH OF GLEN ROCK, :  
BOROUGH OF HALEDON, BOROUGH OF :  
HASBROUCK HEIGHTS, BOROUGH OF :  
HAWTHORNE, BOROUGH OF KENILWORTH, :  
BOROUGH OF LODI, BOROUGH OF :  
MOUNTAINSIDE, BOROUGH OF :  
NEW PROVIDENCE, BOROUGH OF :  
NORTH ARLINGTON, BOROUGH OF :  
NORTH CALDWELL, BOROUGH OF NORTH :  
HALEDON, BOROUGH OF PROSPECT PARK, :  
BOROUGH OF ROSELLE PARK, BOROUGH :  
OF ROSELLE, BOROUGH OF RUTHERFORD, :  
BOROUGH OF TOTOWA, BOROUGH OF :  
WALLINGTON, BOROUGH OF WEST :  
PATERSON, BOROUGH OF WOOD-RIDGE, :  
CITY OF BAYONNE, CITY OF CLIFTON, :  
CITY OF EAST ORANGE, CITY OF :  
ELIZABETH, CITY OF GARFIELD, CITY OF :  
HACKENSACK, CITY OF JERSEY CITY, :  
CITY OF LINDEN, CITY OF NEWARK, CITY :  
OF ORANGE, CITY OF PASSAIC, CITY OF :  
PATERSON, CITY OF RAHWAY, CITY OF :  
SUMMIT, CITY OF UNION CITY, HOUSING :  
AUTHORITY OF THE CITY OF NEWARK, :  
JERSEY CITY MUNICIPAL UTILITIES :  
AUTHORITY, JOINT MEETING OF ESSEX :  
AND UNION COUNTIES, LINDEN ROSELLE :  
SEWERAGE AUTHORITY, PASSAIC VALLEY :  
SEWERAGE COMMISSIONERS, PORT :  
AUTHORITY OF NEW YORK AND NEW :  
JERSEY, RAHWAY VALLEY SEWERAGE :  
AUTHORITY, THE NEW JERSEY :  
DEPARTMENT OF AGRICULTURE, THE :  
NEW JERSEY DEPARTMENT OF :  
TRANSPORTATION, THE STATE OF NEW :  
JERSEY, TOWN OF BELLEVILLE, TOWN OF :  
HARRISON, TOWN OF KEARNY, TOWN OF :  
NUTLEY, TOWN OF WESTFIELD, TOWN OF :  
WOODBIDGE, TOWNSHIP OF BERKELEY :  
HEIGHTS, TOWNSHIP OF BLOOMFIELD, :  
TOWNSHIP OF CEDAR GROVE, TOWNSHIP :  
OF CLARK, TOWNSHIP OF CRANFORD, :  
TOWNSHIP OF HILLSIDE, TOWNSHIP OF :  
IRVINGTON, TOWNSHIP OF LITTLE FALLS, :  
TOWNSHIP OF LIVINGSTON, TOWNSHIP OF :

LYNDHURST, TOWNSHIP OF MAPLEWOOD, :  
TOWNSHIP OF MILLBURN, TOWNSHIP OF :  
MONTCLAIR, TOWNSHIP OF ORANGE, :  
TOWNSHIP OF SADDLE BROOK, TOWNSHIP :  
OF SCOTCH PLAINS, TOWNSHIP OF SOUTH :  
HACKENSACK, TOWNSHIP OF SOUTH :  
ORANGE VILLAGE, TOWNSHIP OF :  
SPRINGFIELD, TOWNSHIP OF UNION, :  
TOWNSHIP OF WEST ORANGE, :  
TOWNSHIP OF WINFIELD PARK, TOWNSHIP :  
OF WYCKOFF, VILLAGE OF RIDGEWOOD, :

Third-Party Defendants, :  
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Third-Party Defendant Borough of Garwood, having its principal office at 403 South Avenue, Garwood, New Jersey 07027, by way of answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. says:

1. Other than to admit that the Borough of Garwood is a public body and a municipality of the State of New Jersey, with its principal place of business at 403 South Avenue, Garwood, New Jersey 07027 and that the Borough of Garwood is a member municipality of the Rahway Valley Sewage Authority and of the Joint Meeting of Essex and Union Counties, all other allegations against the Borough of Garwood are denied.

**WHEREFORE**, Third Party Defendant, Borough of Garwood, demands judgment as follows:

1. Dismissal of the Third Party Plaintiff's Complaint;
2. Awarding Borough of Garwood attorneys' fees, interest and costs of suit; and
3. For such other relief as the Court may deem just and equitable.

**SEPARATE DEFENSES**

1. The Third Party Complaint fails to state a cause of action upon which relief may be granted.

2. This Third Party Defendant is free of any and all negligence.

3. This Third Party Defendant acted in a reasonably prudent manner at all times.

4. The Third Party Plaintiffs lack standing to maintain this cause of action set forth in Third Party Complaint "A".

5. Damages sustained by third party plaintiffs, if any, were the proximate result of the negligence and wrongful acts of third persons, natural or corporate, over whom this Third Party Defendant Borough of Garwood exercised no control and for whose actions this defendant is not legally responsible.

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

7. The claims asserted in Third Party Complaint "A" are barred by the applicable Statute of Limitations.

8. At all times relevant herein, Third Party Defendants Borough of Garwood complied with all applicable laws, regulations or standards and government approvals.

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

10. The Borough of Garwood hereby adopts and asserts all other defenses which have been or will be asserted at any time by any other party in this action provided said defenses are applicable to the Borough of Garwood.

11. Third Party Plaintiff's claims for relief are barred by the doctrine of Waiver.

12. Third Party Plaintiff's claims for relief are barred by the doctrine of Estoppel.

13. Third Party Plaintiff's claims for relief are barred by the doctrine of Laches.

14. The Borough of Garwood reserves the right to assert additional defenses throughout the course of this action.

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

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

17. The Third Party Complaint is barred by the Doctrine of Unjust Enrichment.

18. The Third Party Complaint is barred by the Doctrine of Qualified Immunity.

19. The Third Party Complaint is barred by the Doctrine of Res Judicata.

20. The Third Party Complaint is barred by the absolute immunity of this third-party defendant.

21. The Third Party Complaint is barred by the Doctrine of Force Majeure.

22. The Third Party Complaint is barred by the failure of Third Party Plaintiffs to exhaust all administrative remedies.

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

24. Third Party Plaintiffs' claims are barred, or in the alternative, the damages alleged must be reduced as a result of statutory defenses available under the Spill Compensation and Control Act, *N.J.S.A. 58:10-23.11, et seq.*, and other similar and applicable environmental litigation.

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

liable to the State of New Jersey.

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

27. The Third Party Complaint is barred by the Doctrine of Unclean Hands.

28. The Third Party Complaint as to Borough of Garwood should be dismissed because the Third Party Plaintiffs' injuries, if any, were due to supervening events for which the Borough of Garwood had no control of responsibility.

29. Third Party Borough of Garwood reserves the right to allege crossclaims and counterclaims at such time as is permitted by the Court.

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Robert F. Renaud, Esq. is hereby assigned as trial counsel.

#### **CERTIFICATION PURSUANT TO R. 4:5-1**

It is certified that this matter is not the subject of any other action now pending in any Court or of a pending arbitration proceeding. No other action or arbitration is contemplated. There are no other parties known who should be joined in this action.

Palumbo & Renaud  
Attorneys for Third Party Defendant Borough of Garwood

By: Catherine M. DeAppolonio  
Catherine M. DeAppolonio

Dated: October 6, 2009

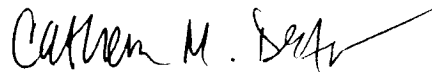
### **CERTIFICATION OF SERVICE**

Catherine M. DeAppolonio, an attorney at law in the State of New Jersey, hereby certifies as follows:

1. I am an associate at the law firm of Palumbo & Renaud, which law firm represents the Third Party Defendant Borough of Garwood in connection with this matter.

2. I hereby certify the Borough of Garwood Answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. and separate defenses was served upon the Clerk of the Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey 07102, via overnight Federal Express dated October 6, 2009.

3. I hereby certify the Borough of Garwood Answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. and separate defenses was served electronically on all parties which have consented to service by posting on the following website, <http://njdepvocc.sfile.com> on October 6, 2009.



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Catherine M. DeAppolonio

Dated: October 6, 2009