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City of Newark

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

Plaintiffs,

vs.

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

Defendants.

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third Party Plaintiffs,

BAYONNE MUNICIPAL UTILITIES  
AUTHORITY, et al.,

Third Party Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
ESSEX COUNTY

Docket No. ESX-L-9868-05

CIVIL ACTION

**ANSWER TO THIRD PARTY  
COMPLAINT “A”**

Third Party Defendant City of Newark (“Newark”) by its attorneys, Golub & Isabel, P.C., limits its answers to the allegations contained in Third Party Complaint “A” of Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (“Plaintiff”) as provided by Case Management Order V, Paragraph 9(c)(iv), which states that each Third Party Defendant may “elect to answer only those allegations that

related specifically to it including also any allegations concerning parcel(s) or site(s) with which the Third Party Defendant is allegedly associate”, as follows:

**City of Newark**

433. Newark admits that it is a public body and a municipality of the State of New Jersey, with its principal offices located at 920 Broad Street, Newark, New Jersey 07102.

434. Newark admits that a 1975 Pollution Abatement Plan prepared by Purcell Associates (“1975 Pollution Plan”) states Newark installed its principal trunk and sewer system between 1830 and 1930.

435. Paragraph 435 of Complaint A contains only referential information and does not require a response.

436. Newark admits that, according to New Jersey Pollutant Discharge Elimination System (NJPDES) Permit No. NJ0024724, dated May 8, 1986, Newark has the authority to discharge pollutants to the Passaic River, the Second River, the Peripheral Ditch, and/or Newark Bay.

437. Admitted.

438. Admitted.

439. Admitted.

440. Newark admits that the 1975 Pollution Plan states the following: (1) Newark’s sewers existed prior to the construction of the PVSC interceptor trunk sewer; (2) there were at least twenty-one sewer connections, including diversion chambers, regulators, metering facilities, and/or manhole interfaces; and (3) that “[l]ittle maintenance is provided for these facilities and at times they have been known to

malfunction and discharge sanitary waste directly into the river even at low flow periods.” Newark is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 440 of Third Party Complaint “A”.

441. Newark admits that a 1976 Report Upon Overflow Analysis to Passaic Valley Sewerage Commissioners (“1976 PVSC Overflow Analysis”) for the Newark Area states that Passaic Valley Sewerage Commissioners (“PVSC”) interceptor sewer in Newark “is entirely inadequate to carry but a very small portion of the total storm flow potential from the combined sewers in the City of Newark.” Newark is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 441 of Third Party Complaint “A”.

*Drainage Districts and Basins*

442. Admitted.

443. Newark admits Paragraph 443 of Third Party Complaint “A” accurately summarizes the description of the Industrial River District provided by the 1975 Pollution Report.

444. Newark admits that Paragraph 444 of Third Party Complaint “A” accurately summarizes the description of the Saybrook Basin provided by the 1975 Pollution Report.

445. Newark admits that Paragraph 445 of Third Party Complaint “A” accurately summarizes the description of the Millbrook Basin provided by the 1975 Pollution Report.

446. Newark admits that Paragraph 446 of Third Party Complaint "A" accurately summarizes the description of the Adams District provided by the 1975 Pollution Report.

447. Newark admits that Paragraph 447 of Third Party Complaint "A" accurately summarizes the description of the Wheeler District provided by the 1975 Pollution Report.

448. Newark admits that Paragraph 448 of Third Party Complaint "A" accurately summarizes the description of the Peddie District provided by the 1975 Pollution Report.

449. Newark admits that Paragraph 449 of Third Party Complaint "A" accurately summarizes the description of the Queen District provided by the 1975 Pollution Report.

450. Newark admits that the 1975 Pollution Report states that, although the Queen District is provided with separate sewage system, the collected sanitary waste is discharged into the combined sewers which, during periods of intense rainfall will be discharged into the ditch systems surrounding Newark Airport.

451. Newark admits that Paragraph 451 of Third Party Complaint "A" accurately summarizes the description of the Waverly District provided by the 1975 Pollution Report.

452. Newark admits that the 1975 Pollution Plan states that Newark constructed the South Side Interceptor in approximately 1965 and that it transports flow from the Peddie, Queen, and Waverly Districts to the PVSC.

453. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 453 of Third Party Complaint “A”.

454. Newark admits that Paragraph 454 of Third Party Complaint “A” accurately summarizes the description of the Airport Basin provided by the 1975 Pollution Report.

*Combined Sewer and Storm Sewer Outfalls*

455. Newark admits that a February 1996 Sewer System Inventory and Assessment Report (“1996 Inventory Report”) prepared on behalf of Newark by Killam Associates as a requirement of Newark’s NJPDES Permit No. NJ0105023 states that Newark’s combined sewer system (the “Newark System”) includes a total of thirty (30) overflows. According to the 1996 Inventory Report, ten (10) of those overflows are owned by Newark and twenty (20) are owned by PVSC. Newark is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 455 of Third Party Complaint “A”.

456. Newark admits that the 1996 Inventory Report states that Newark owns Outfall 001 – the Meadowbrook Outfall, which is located at the intersection of Sixth Avenue and Thirteenth Street and discharges into the Second River. The 1996 Inventory Report also states that the Meadowbrook Outfall relieves surging combined flows from a 36-inch combined sewer flowing east from East Orange and a 48-inch combined sewer flowing north from Newark.

457. Newark admits that the PVSC Annual Report for 1972, prepared by Chief Engineer S. A. Lubetkin, states that “coliform is still being detected in the discharge of [the Meadowbrook Storm Sewer] to Second River.”

458. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 458 of Third Party Complaint "A".

459. Newark admits that the 1996 Inventory Report states that dry weather flows from Outfalls 002 through 015 are diverted to the adjacent PVSC Main Intercepting Sewer.

460. Newark admits that the 1996 Inventory Report states that Newark owns Outfall 019 – the Brown Street Outfall, which is located off Lister Avenue and under property owned by Sherwin William and discharges into the Passaic River. The 1996 Inventory Report also states that although the 24-inch outlet line is still present, the facility is no longer in use. According to the 1996 Inventory Report, this service area, located in the Ironbound section north of Raymond Boulevard and between Lockwood and Chapel Streets, is serviced by a nominally separate storm sewer system comprised of Outfalls 019 through 021.

461. Newark admits that the 1996 Inventory Report states that Newark owns Outfall 020 – the Lockwood Street Outfall, which is an 84-inch pipe located in the Ironbound section north of Raymond Boulevard. The 1996 Inventory Report states that the storm drain starts at the upper reaches near Chapel Street and along Albert and Euclid Avenues, eventually flowing easterwardly down Lister Avenue until it discharges through a 72-inch diameter pipe into the Passaic River, on or near property owned by Benjamin Moore.

462. Newark admits that the 1996 Inventory Report states that Newark owns Outfall 021 – the Blanchard Street Outfall, which is 24-inch storm drain located along the

center line of Blanchard Street and discharges at the end of Blanchard Street into the Passaic River.

463. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 463 of Third Party Complaint "A".

464. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 464 of Third Party Complaint "A".

465. Newark admits that the PVSC Annual Report for 1972 refers to a "Pollution Report and Abatement Plan of the City of Newark", sent to PVSC by Newark on June 8, 1972, wherein it was recommended that "a visual inspection and manhole to manhole survey be made in order to determine and seal illegal connections" within the Lockwood Street Storm Sewer.

466. Newark admits that the 1996 Inventory Report refers to a 1979 Report by Clinton Bogert Associates, which indicated that a number of illicit, polluting, industrial discharges to the storm sewer system comprised of Brown Street, Lockwood Street, and Blanchard Street Outfalls.

467. Newark admits that the 1996 Inventory Report states that during inspections on August 3, 1992 and/or August 12, 1992, dry weather discharges into the Lockwood Street Outfall were noticed at two locations: Chemical Compounds on Lister Avenue and a refinery on Lockwood Avenue.

468. Newark admits that the 1996 Inventory Report states that Newark owns Outfall 022 – the Roanoke Avenue Regulated Combined System Overflow Chamber is located on the east side of Doremus Avenue, southeast of the intersection of Roanoke and Doremus Avenues. According to that report, the facility was constructed in 1983 and

replaced a mechanically operated regulator. According to the report, the facility discharges to the Passaic River via a 60-inch outfall.

469. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 469 of Third Party Complaint "A".

470. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 470 of Third Party Complaint "A".

471. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 471 of Third Party Complaint "A".

472. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 472 of Third Party Complaint "A".

473. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 473 of Third Party Complaint "A".

474. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 474 of Third Party Complaint "A".

475. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 475 of Third Party Complaint "A".

476. Newark admits that on June 23, 1969 the PVSC filed a complaint against Newark in the New Jersey Superior Court, Chancery Division, Essex County alleging that Newark was discharging untreated wastes from storm sewers in a tributary of the Passaic River.

477. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 477 of Third Party Complaint "A".



478. Newark admits that the PVSC Annual Report for 1972 states that “[i]ndustrial waste continued to discharge into the Passaic River, despite the concrete dam built by [Newark] to keep the sanitary sewer from overflowing into the storm sewer.”

479. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 479 of Third Party Complaint “A”.

480. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 480 of Third Party Complaint “A”.

481. Newark admits that the 1996 Inventory Report states that, during inspections on August 4, 1992 and August 5, 1992, “[a] dark red thick substance was apparent throughout all chambers, gates and outfall . . . “ and that “. . . it is apparent that a heavy source of industrial pollution flows into and out of this facility.”

482. Newark admits that the 1996 Inventory Report states that Newark owns Outfall 030 – the Avenue A Outfall, which is an unregulated overflow located at the intersection of Emmet Street and McCarter Highway that ultimately discharges to the Peripheral Ditch.

483. Newark admits that the 1996 Inventory Report states that, during an inspection in September 1992, “the level of sewerage in the diversion/overflow chamber is approximately 1-2” below the invert of the 60” x 96” sewer. Thus, slightly heavier than normal flow and possible peak daily flow could result in an overflow condition.”

#### *The Peripheral Ditch*

484. Newark admits that Paragraph 484 of Third Party Complaint “A” summarizes the description of the Peripheral Ditch as provided by the 1975 Pollution

Report and the June 1995 report on Identification and Classification of the Tributary Discharges to Peripheral Ditch prepared by Killam Associates for the Port Authority ("1995 Peripheral Ditch Report").

485. Newark admits that Paragraph 485 of Third Party Complaint "A" summarizes the description of the Peripheral Ditch as provided by the 1975 Pollution Report and the 1995 Peripheral Ditch Report, with the exception that those reports indicate that the ditch is approximately 80 feet wide.

486. Newark admits that Paragraph 486 of Third Party Complaint "A" summarizes the description of the Peripheral Ditch as provided by the 1975 Pollution Report and the 1995 Peripheral Ditch Report.

487. Admitted.

488. Admitted.

489. Admitted.

490. Newark admits that, in a July 9, 1965 letter to the Honorable Harrison A. Williams, Jr., the New Jersey State Commissioner of Health stated that "[t]he City of Newark has been discharging tens of millions of gallons daily of untreated domestic and industrial wastes into Peddy Ditch [in] Newark for many years. These wastes have been discharged into Newark Bay." The letter also states that, prior to the completion of a new trunk sewer to carry these wastes to the facilities of the PVSC, the Port Authority constructed "... a peripheral ditch around its premises so as to convey the wastewaters to the Newark Bay . . . ." Newark is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 490 of Third Party Complaint "A".

491. Newark admits that in a March 1, 1972 letter to the Environmental Protection Agency ("EPA") Alvin L. Zach, Newark's Chief Engineer stated that, "the City of Newark discharges 30 percent of its total combined sewage into the peripheral ditch which flows into Newark Bay during wet weather conditions."

492. Newark admits that the 1976 PVSC Overflow Analysis for the East Newark Area states that "[p]reliminary estimates [from a study period between October 1, 1974 and September 30, 1975] indicate that the annual storm water overflow from [the Waverly Avenue District, the Peddie Street District, and the Queens Street District, which are located on the South Side of the City of Newark] will be in excess of 2,000 million gallons per year." Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 492 of Third Party Complaint "A".

493. Newark admits that 1996 Inventory Report states that Newark owns and/or operates Outfall 023 – Adams Street, Outfall – 024 Wheeler, Outfall 028 – Haynes Avenue, and Outfall 030 – Avenue A, which, according to the report, discharge into the Peripheral Ditch.

494. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 494 of Third Party Complaint "A".

495. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 495 of Third Party Complaint "A".

*Other Discharges from the Newark System*

496. Newark admits that the December 1963 New Jersey Department of Health ("DOH") report described the alleged nature of certain overflows from the McClellan

Street sewer. Newark further admits that the DOH report states that Newark owned and operated the McClellan Street sewer at that time.

497. Newark admits that the 1975 Pollution Plan states that “[s]amples taken in Queen Street or the Queen Diversion Chamber during dry flow period indicate extremely high concentrations of pollutants. The sewers in the Queen District are in a deteriorated condition and generally have inadequate slopes to generate sufficient velocities to carry all suspended matter into the South Side Interceptor Sewer. During dry weather flow periods it is believed that a substantial amount of suspended material settles to the bottom of these sewers. Then, during the storm flow periods, the settled material is picked back up in suspension and is carried out into the Queen Ditch area.” Newark is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 497 of Third Party Complaint “A”.

498. Newark admits that the 1975 Pollution Plan states that “Four locations in the Adams District were also sampled . . . The pH of many samples was quite acidic with the lowest pH reported as 2.5.”

499. Admitted.

500. Admitted.

501. Admitted.

502. Admitted.

503. Admitted.

504. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 504 of Third Party Complaint “A”.

505. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 505 of Third Party Complaint "A".

506. Denied.

507. Denied.

\* \* \*

#### **Joint Meeting of Essex and Union Counties**

Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 522 through 734 of Third Party Complaint "A", except as follows:

523. Newark admits that it is a member community of the JMEUC.

734. The allegations contained in Paragraph 734 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

\* \* \*

#### **Passaic Valley Sewerage Commissioners**

Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 744 through 825 of Third Party Complaint "A", except as follows:

762. Newark admits that it is a member municipality of the PVSC.

825. The allegations contained in Paragraph 825 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

\* \* \*

### **The Port Authority and the City of Newark**

919. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 919 of Third Party Complaint "A".

920. Admitted.

921. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 921 of Third Party Complaint "A".

922. Other than what was admitted in response to Paragraph 920 of Third Party Complaint "A" above, Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 922 of Third Party Complaint "A".

923. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 923 of Third Party Complaint "A".

924. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 924 of Third Party Complaint "A".

925. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 925 of Third Party Complaint "A".

926. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 926 of Third Party Complaint "A".

927. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 927 of Third Party Complaint "A".

928. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 928 of Third Party Complaint "A".

929. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 929 of Third Party Complaint "A".

930. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 930 of Third Party Complaint "A".

931. Denied.

\* \* \*

**80 Lister Avenue**

948. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 948 of Third Party Complaint "A".

949. Newark admits that it conveyed the property known and designated as Block 2438, Lot 59 and commonly referred to as 86-92 Lister Avenue to Walter R. Ray Holding Co Inc. by way of Deed dated March 27, 1979 and recorded on or about May 23, 1979. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 949 of Third Party Complaint "A".

950. Plaintiff's Second Amended Complaint speaks for itself and the allegations contained in Paragraph 950 of Third Party Complaint "A" do not require a response from Newark.

951. The allegations contained in Paragraph 951 of Third Party Complaint "A" assert legal conclusions to which no response from Newark is required, but, to the extent any response is required, Newark denies the allegations.

952. The allegations contained in Paragraph 952 of Third Party Complaint "A" assert legal conclusions to which no response from Newark is required, but, to the extent any response is required, Newark denies the allegations.

### **Newark Airport Site**

953. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 953 of Third Party Complaint "A".

954. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 954 of Third Party Complaint "A".

955. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 955 of Third Party Complaint "A".

956. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 956 of Third Party Complaint "A".

957. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 957 of Third Party Complaint "A".

958. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 958 of Third Party Complaint "A".

959. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 959 of Third Party Complaint "A".

960. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 959 of Third Party Complaint "A".

961. Newark admits that, since approximately March 22, 1948, the Port Authority has leased certain lands from Newark for the operation and/or development of Newark Airport. The exact nature and extent of that leasehold is provided in the original lease agreement between Newark and the Port Authority, subject to any modifications provided in the numerous subsequent Supplemental Lease Agreements.



962. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 962 of Third Party Complaint "A".

963. Newark admits that Paragraph 484 of Third Party Complaint "A" summarizes the description of the Peripheral Ditch as provided by the 1975 Pollution Report and the 1995 Peripheral Ditch Report. Newark is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 963 of Third Party Complaint "A".

964. Newark refers to its response to Paragraph 486 of Third Party Complaint "A".

965. Newark refers to its response to Paragraph 485 of Third Party Complaint "A".

966. Admitted.

967. Newark is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 967 of Third Party Complaint "A".

968. Newark admits that a November 18, 1971 Report from Port Authority to NJDEP states that "most of the storm water at Newark Airport" and "approximately 1,200 gallons per day" of sewage discharged into the Peripheral Ditch. Newark is without knowledge of information sufficient to form a belief as to the remainder of the allegations contained in Paragraph 968 of Third Party Complaint "A".

969. Newark admits that a November 1982 *Jersey Effluents* magazine article reported that a Port Authority pollution control study observed the presence of oil-saturated soils at a thickness of 0.1 feet to 4.1 feet at the South Bulk Fuel Farm, of 0.1 to 2.8 feet at the North Fuel Farm, and of 0.3 to 3.6 feet at the Central Terminal Area.

Newark is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 969 of Third Party Complaint "A".

970. Newark admits that an October 12, 1988 *Record* newspaper article states that October 9, 1988 maintenance accident resulted in the spilling of 50,000 gallons of jet fuel onto the ground and into a "100-foot long trench" or "drainage ditch". Newark further admits that the NJDEP Investigation Report for this incident states that some of that fuel may have reached the Peripheral Ditch.

971. Newark admits that, according to a NJDEP Communications Center Notification Report, on September 26, 1993 an oil sheen approximately 600 yards long was observed in the Newark Channel of Newark Bay and that the source was unknown. Handwritten comments on that report indicate that there was "ongoing problem with runoff from [the] airport."

972. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 972 of Third Party Complaint "A".

973. Admitted.

974. Admitted.

975. Admitted.

976. Admitted.

977. Admitted.

978. Newark admits that a March 19, 1993 NJDEP Discharge Surveillance Report states Port Authority permit exceedences at five airport outfalls between July 1, 1992 and December 31, 1992. Permit limits exceeded included those for total organic carbon, total suspended solids, petroleum hydrocarbons, and pH.

979. Admitted.

980. Admitted.

981. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 981 of Third Party Complaint "A".

982. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 982 of Third Party Complaint "A".

983. The allegations contained in Paragraph 983 of Third Party Complaint "A" are denied to the extent they pertain to Newark.

#### **Newark Seaport Site**

984. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 984 of Third Party Complaint "A".

985. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 985 of Third Party Complaint "A".

986. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 986 of Third Party Complaint "A".

987. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 987 of Third Party Complaint "A".

988. Admitted.

989. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 989 of Third Party Complaint "A".

990. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 990 of Third Party Complaint "A".

991. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 991 of Third Party Complaint "A".

992. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 992 of Third Party Complaint "A".

993. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 993 of Third Party Complaint "A".

994. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 994 of Third Party Complaint "A".

995. Admitted.

996. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 996 of Third Party Complaint "A".

997. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 997 of Third Party Complaint "A".

998. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 998 of Third Party Complaint "A".

999. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 999 of Third Party Complaint "A".

1000. Denied.

1001. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 1001 of Third Party Complaint "A".

\* \* \*

## **FIRST COUNT**

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

1148. Newark repeats and incorporates herein by reference the answers provided in each of the foregoing paragraphs.

1149. The allegations contained in Paragraph 1149 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

\* \* \*

1155. The allegations contained in Paragraph 1155 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1156. The allegations contained in Paragraph 1156 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

1157. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 1157 of Third Party Complaint "A".

1158. The allegations contained in Paragraph 1158 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

## **SECOND COUNT**

### **(Statutory Contribution)**

1159. Newark repeats and incorporates herein by reference the answers provided in each of the foregoing paragraphs.

1160. The allegations contained in Paragraph 1160 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

### **THIRD COUNT**

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

1161. Newark repeats and incorporates herein by reference the answers provided in each of the foregoing paragraphs.

1162. The allegations contained in Paragraph 1162 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

1163. The allegations contained in Paragraph 1163 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1164. The allegations contained in Paragraph 1164 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1165. The allegations contained in Paragraph 1165 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

1166. Denied.

1167. Denied.

\* \* \*

1177. The allegations contained in Paragraph 1177 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

1178. The allegations contained in Paragraph 1178 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1179. The allegations contained in Paragraph 1179 of Third Party Complaint "A" are denied to the extent they are asserted against Newark.

1180. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 1180 of Third Party Complaint "A". To the

extent these allegations require a response they are denied to the extent they are asserted against Newark.

1181. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 1181 of Third Party Complaint "A". To the extent these allegations require a response they are denied to the extent they are asserted against Newark.

1182. The allegations contained in Paragraph 1182 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1183. The allegations contained in Paragraph 1183 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1184. The allegations contained in Paragraph 1184 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1185. The allegations contained in Paragraph 1185 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark.

1186. Newark is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1186 of Third Party Complaint "A".

#### **FOURTH COUNT**

##### **(Nuisance)**

1187. Newark repeats and incorporates herein by reference the answers provided in each of the foregoing paragraphs.

1188. The allegations contained in Paragraph 1188 of Third Party Complaint "A" asserted legal conclusions to which no response is required from Newark. To the extent these allegations require a response from Newark they are denied.

1189. The allegations contained in Paragraph 1189 of Third Party Complaint “A” are denied to the extent they are asserted against Newark.

1190. The allegations contained in Paragraph 1190 of Third Party Complaint “A” are denied to the extent they are asserted against Newark.

1191. The allegations contained in Paragraph 1191 of Third Party Complaint “A” are denied to the extent they are asserted against Newark.

1192. The allegations contained in Paragraph 1192 of Third Party Complaint “A” are denied to the extent they are asserted against Newark.

1193. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 1193 of Third Party Complaint “A”. To the extent these allegations require a response they are denied to the extent they are asserted against Newark.

1194. Newark is without knowledge of information sufficient to form a belief as to the allegations contained in Paragraph 1194 of Third Party Complaint “A”. To the extent these allegations require a response they are denied to the extent they are asserted against Newark.

1195. The allegations contained in Paragraph 1195 of Third Party Complaint “A” are denied to the extent they are asserted against Newark.



## **AFFIRMATIVE DEFENSES**

Newark sets forth the following Affirmative Defenses without waiving its right to put Third Party Plaintiffs to their proofs and without assuming any burden of proof not otherwise imposed on Newark.

### **FIRST AFFIRMATIVE DEFENSE**

Third Party Complaint "A" fails to state a claim upon which relief may be granted.

### **SECOND AFFIRMATIVE DEFENSE**

Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties, including, but not limited to, federal natural resource damages trustees, thereby exposing Newark to the risk of duplicative and inconsistent determinations.

### **THIRD AFFIRMATIVE DEFENSE**

Any wrongful conduct alleged in Third Party Complaint "A" resulted from or was proximately caused by the conduct of persons other than or by the conduct of persons over whom Newark had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of Newark.

### **FOURTH AFFIRMATIVE DEFENSE**

Third Party Complaint "A" is barred in whole or in part by N.J.S.A. 58:10-23.11v to the extent that it seeks compensation for damages or cleanup costs barred by that statute.

#### **FIFTH AFFIRMATIVE DEFENSE**

The claims asserted in Third Party Complaint "A" are barred, in whole or in part, by the applicable statutes of limitations.

#### **SIXTH AFFIRMATIVE DEFENSE**

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

#### **SEVENTH AFFIRMATIVE DEFENSE**

To the extent that Newark is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harms suffered.

#### **EIGHTH AFFIRMATIVE DEFENSE**

At all times relevant, Newark complied with all applicable laws, regulations or standards and government approvals.

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints include claims for costs not yet expended under the New Jersey Spill Act which does not allow Plaintiffs and/or Defendants/Third Party Plaintiffs to recover future costs. Therefore, Plaintiffs' and Defendants/Third Party Plaintiffs' Spill Act claims for costs not yet expended are premature and not ripe for adjudication.

#### **TENTH AFFIRMATIVE DEFENSE**

Third Party Complaint "A" is barred in whole or in part by the doctrines of laches, estoppel, unclean hands and/or waiver.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because plaintiff lacks the appropriate standing to bring this action.

#### **TWELVTH AFFIRMATIVE DEFENSE**

Third Party Plaintiffs' claims are barred by the doctrine of res judicata.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

The damages claimed by Third Party Plaintiffs were caused by a force majeure and are therefore barred.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Third Party Plaintiffs' claims are barred because they failed to exhaust all their administrative remedies.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Third Party Plaintiffs' claims against Newark should be dismissed because Third Party Plaintiffs' injuries, if any, were to supervening events for which Newark had no control or responsibility.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/Third Party Plaintiffs' Third Party Complaint "A" is barred in whole or in part by the Due Process, Equal Protection and Supremacy Clauses of the United States Constitution.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints are preempted, in whole or in part, by federal law.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

Sewage and sewage sludge are not considered as hazardous substances under the New Jersey Spill Act.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Defendants/Third Party Plaintiffs' claims against Newark are barred in whole or in part under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

Defendants/Third Party Plaintiffs' claims are barred in whole or in part to the extent they represent an unauthorized and unconstitutional retroactive application of the New Jersey Spill Act and applicable case law.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

Newark is not a discharger or a person in any way responsible for discharge of hazardous substances under the New Jersey Spill Act.

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

While Newark denies that it is a discharger or a person in any way responsible for discharge of hazardous substances under the New Jersey Spill Act, to the extent that discharges of hazardous substances occurred, Newark is not liable under the New Jersey Spill Act for such discharges, because they were pursuant to and in compliance with the conditions of a federal or state permit.

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

If Plaintiffs' and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, any recovery by these parties should be reduced in the proportion that

such parties' acts or omissions bear to the acts or omissions that caused the alleged injuries or damages.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Defendants/Third Party Plaintiffs' New Jersey Spill Act claims are barred by the statutory defenses to liability provided by that statute.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

To the extent that Defendants/Third Party Plaintiffs' claims against Newark are subject to contribution or any reduction or offset from other parties, any damages recovered against Newark should be reduced accordingly.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

To the extent that Defendants/Third Party Plaintiffs' claims against Newark relate to permits issued by the State of New Jersey, Newark has permit immunity under N.J.S.A. 59:2-5.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

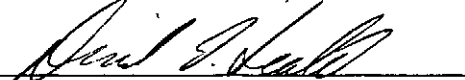
Newark reserves the right to assert such additional defenses as are discovered during the course of this action.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Newark hereby asserts and adopts all other defenses which have been or will be asserted at any time by any other party in this action, to the extent said defenses are applicable

**GOLUB & ISABEL, P.C.**

BY:



**David L. Isabel**

160 Littleton Road, Suite 300

Parsippany, NJ 07054  
(973) 968-3377  
Attorneys for City of Newark

Dated: October 19, 2009

**DEMAND FOR TRIAL BY JURY**

Third Party Defendant City of Newark hereby demands a trial by jury of all issues in this matter so triable.

**GOLUB & ISABEL, P.C.**

**BY:**



**David L. Isabel**

160 Littleton Road, Suite 300

Parsippany, NJ 07054

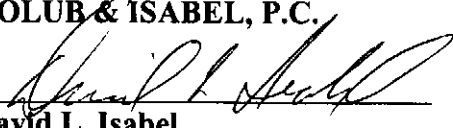
(973) 968 - 3377

Attorneys for City of Newark

Dated: October 19, 2009

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the City of Newark designates David L. Isabel as trial counsel in this matter.

**GOLUB & ISABEL, P.C.**  
**BY:**   
**David L. Isabel**  
160 Littleton Road, Suite 300  
Parsippany, NJ 07054  
(973) 968-3377  
Attorneys for City of Newark

Dated: October 19, 2009



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

Third Party Defendant City of Newark hereby certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding which is contemplated regarding the subject matter of this action. Defendant further certifies that it is unaware of any other parties who should be joined in this action.

**GOLUB & ISABEL, P.C.**

**BY:**

  
**David L. Isabel**

160 Littleton Road, Suite 300

Parsippany, NJ 07054

(973) 968-3377

Attorneys for City of Newark

Dated: October 19, 2009

**GOLUB & ISABEL, P.C.**  
160 Littleton Road, Suite 300  
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(973) 968-3377  
Attorneys for Third Party Defendant,  
City of Newark

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

Plaintiffs,

vs.

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

Defendants.

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third Party Plaintiffs,

BAYONNE MUNICIPAL UTILITIES  
AUTHORITY, et al.,

Third Party Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
ESSEX COUNTY

Docket No. ESX-L-9868-05


CIVIL ACTION

**CERTIFICATION OF SERVICE**

I hereby certify that, on behalf of the City of Newark, I caused this Answer to the Third Party Complaint "A" of Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. to be served on counsel for Third Party Plaintiffs via UPS Overnight Delivery and on all counsel of record via electronic filing on October 19, 2009.

**GOLUB & ISABEL, P.C.**

**BY:**

  
\_\_\_\_\_  
**Eric E. Tomaszewski**

160 Littleton Road, Suite 300

Parsippany, NJ 07054

(973) 968-3377

Attorneys for Third Party Defendant,  
City of Newark

Dated: October 19, 2009