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ATTORNEY FOR THIRD-PARTY DEFENDANT(S)
PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND PSEG FOSSIL LLC

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
ENVIRONMENTAL PROTECTION AGENCY,
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,

vs.

PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY AND PSEG FOSSIL
LLC'S ANSWER TO THIRD-PARTY
COMPLAINT "B"**

**PUBLIC SERVICE ELECTRIC AND GAS' AND PSEG FOSSIL'S ANSWER TO
THIRD-PARTY COMPLAINT "B"**

Third-Party Defendants Public Service Electric and Gas Company (PSE&G) and PSEG Fossil LLC (PSEG Fossil), by and through their undersigned counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answer the Third-Party Complaint "B" filed by Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

PSE&G and PSEG Fossil deny each and every allegation contained in Third Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B".

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 15)

1-15. PSE&G and PSEG Fossil respond that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THE THIRD PARTY PLAINTIFFS

(Paragraphs 16 through 155)

16-155. To the extent that the allegations in paragraphs 16 through 155 relate to other parties, no response is required pursuant to CMO V.

AS TO THE THIRD PARTY DEFENDANTS

(Paragraphs 19 through 209)

156. PSEG Fossil admits it is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 80 Park Plaza, Newark, New Jersey.

157. PSE&G is a corporation organized under the laws of the State of New Jersey with its principal place of business at 80 Park Plaza, Newark, New Jersey

158-210. To the extent that the allegations in Paragraphs 157 through 210 relate to other parties, no response is required pursuant to CMO V.

AS TO DEFINITIONS

(Paragraphs 211 through 236)

211-236. The referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 237 through 3445)

237-3445. The referenced pleadings speak for themselves. No response is required pursuant to CMO V, except to the extent noted below.

Public Service Electric and Gas Company City Dock Street Site

2335. Third-Party Defendants admit that City Dock Street Site is bounded by the former Coal Street Site to the north, the Passaic River to the east, City Dock Street and Newark's Penn Station to the south, and River Street and the Newark Legal Center (Riverfront Plaza) to the west. The remaining allegations of Paragraph 2235 of the Complaint are denied.

2336. Third-Party Defendants admit that the City Dock Street Site was operated as a power generating facility as far back as the late 1800s; that by 1892, Newark Light and

Power Company owned and operated all or a portion of the City Dock Street Site; that in 1905, United Electric Company acquired the site and continued electric generation operations; that by 1908, the site was being operated by the Public Service Corporation, and was operated as a power generating facility; that the Public Service Corporation became PSE&G in approximately 1924. The remaining allegations in Paragraph 2336 of the Complaint are denied.

2337. PSE&G admits that PCBs, mercury and battery acid, were stored at the City Dock Street Site. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2337 of the Complaint.

2338. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the City Dock Street Site.

2339. PSE&G admits that the City Dock Street Site dock abuts the Passaic River. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2339 of the Complaint.

2340. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been have been stored and/or detected in the soil at the City Dock Street Site.

2341. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2341 of the Complaint.

2342. The allegations contained in Paragraph 2342 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2342 of the Complaint.

Public Service Electric and Gas Company Coal Street Site

2343. PSE&G admits that the Coal Street Site is located on the western shore of the Passaic River, and is bordered on the east by the Passaic River. PSE&G denies the remaining allegations of Paragraph 2343 of the Complaint.

2344. PSEG admits that from approximately 1894-1898, Consolidated Traction Company owned and operated a street railway service station at the Coal Street Site; that in or about 1898, Consolidated Traction Company leased the property to North Jersey Street Railway Company which continued the street railway operations until 1905, when operations expanded to include light and power generating operations; that in or about 1907, North Jersey Street Railway Company merged into Public Service railway Company; that in or about 1908, a steam pipeline was added; that Public Service railway Company continued to operate the PSE&G Coal Street Site from about 1908 until 1910, when it merged into Public Service Electric Company; that Public Service Electric Company continued railway and power generating operations until about 1924, when it merged into PSE&G.; that in about 1926, the power generating operations ceased and only the railway operations were maintained.; that in or around June 1928, PSE&G used the Coal Street Site as a vehicle maintenance garage, which continued until sometime in the 1980; that PSE&G demolished the Coal Street Site building in or around 1990.

2345. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Coal Street Site.

2346. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Coal Street Site.

2347. PSE&G admits that the Coal Street Site dock abuts the Passaic River. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2347 of the Complaint.

2348. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Coal Street Site.

2349. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2349 of the Complaint.

2350. The allegations contained in Paragraph 2350 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2350 of the Complaint.

Public Service Electric and Gas Company Essex Site

2351. PSE&G admits that PSEG Power LLC is the current owner of property located at 155 Raymond Boulevard in Newark; that the Essex Site is bounded on the north and east by the Passaic River, on the south by the Lawyer's Ditch and the Pulaski Skyway Right Of Way and to the west by the New Jersey Turnpike and the former Passaic Branch of New York Bay Rail Road. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2351 of the Complaint.

2352. PSE&G denies the allegations contained in Paragraph 2352 of the complaint as they state a legal conclusion.

2353. PSE&G admits it and or its predecessor companies at various times owned and operated the Essex Street Site. To the extent that Paragraph 2353 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants

deny the remaining allegations and legal conclusions contained in Paragraph 2353 of the Complaint.

2354. PSE&G admits that the burning of coal results in the production of coal ash, but it neither admits nor denies the remaining allegations of the first sentence of Paragraph 2354. Third-Party Defendants neither admit nor deny as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Essex Site.

2355. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2355 of the Complaint as it lacks sufficient knowledge. To the extent that Paragraph 2355 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2355 of the Complaint.

2356. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 2356 of the Complaint.

2357. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2357 of the Complaint as it lacks sufficient knowledge. To the extent that Paragraph 2357 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2357 of the Complaint.

2358. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2358 of the Complaint as it lacks sufficient knowledge. To the extent that Paragraph 2358 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2358 of the Complaint.

2359. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2359 of the Complaint. To the extent that Paragraph 2359 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2359 of the Complaint.

2360. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2360 of the Complaint. To the extent that Paragraph 2360 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2360 of the Complaint.

2361. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2361 of the Complaint. To the extent that Paragraph 2361 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2361 of the Complaint.

2362. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2362 of the Complaint. To the extent that Paragraph 2362 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2362 of the Complaint.

2363. Third-Party Defendants neither admit nor deny the allegations contained in Paragraph 2363 of the Complaint. To the extent that Paragraph 2363 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants

deny the remaining allegations and legal conclusions contained in Paragraph 2363 of the Complaint.

2364. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Essex Site.

2365. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2365 of the Complaint.

2366. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Essex Site.

2367. Third-Party Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2367 of the Complaint. To the extent that Paragraph 2367 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2367 of the Complaint.

2368. To the extent that Paragraph 2368 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2368 of the Complaint.

2369. PSE&G neither admits nor denies the allegations contained in Paragraph 2369 of the Complaint, but refers Third Party Plaintiffs to said document, the content of which speaks for itself.

2370. The allegations contained in Paragraph 2370 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2370 of the Complaint.

Public Service Electric and Gas Company Front Street Site

2371. PSE&G admits that, at various times, PSE&G or its predecessors owned an approximately three acre parcel located on Route 21, adjacent to the Passaic River between Lombardy Place and Fulton Street in Newark, New Jersey; that the Front Street Site consists of two parcels: Parcel 1, encompasses approximately 2.7 acres and is bordered by a restaurant to the North, the Passaic River to the east, a public parking facility to the south, and McCarter Highway to the west, Parcel 2, encompasses an area of approximately 0.23 acres and is bordered by Lombardy Street to the north, McCarter Highway to the east and a public parking facility to the south and west.

2372. PSE&G admits that from approximately 1869 until approximately 1937 a manufactured gas plant existed at the Front Street Site; that the Front Street Site was subsequently used as a gas holding facility, and later as a district operations headquarters for PSE&G.

2373. PSE&G admits that Citizens acquired a part of Parcel 1 of the PSE&G Front Street Site between 1869 and 1872; that in 1884, Citizens acquired the remainder of Parcel 1 of the Front Street Site; that in 1891, Citizens acquired part of Parcel 2 of the Front Street Site; that Newark Consolidated Gas Company leased its property, plant and franchises to United Gas Improvement Company which, in turn, leased such assets to the Essex and Hudson Gas Company; that the entire Front Street Site was leased to Public Service Corporation of New Jersey; that in 1939, both Newark Consolidated Gas Company and Essex and Hudson Gas Company were merged into PSE&G. PSE&G is without sufficient information or to admit or deny the remaining allegations of Paragraph 2373.

2374. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Front Street Site.

2375. PSE&G admits that its operations included coal gasification, but it denies the remaining allegations of Paragraph 2375 of the Complaint.

2376. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected in the soil at the Front Street Site. To the extent that Paragraph 2376 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2376 of the Complaint.

2377. PSE&G admits that the Front Street Site abuts the Passaic River. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2377 of the Complaint.

2378. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2378 of the Complaint.

2379. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the groundwater at the Front Street Site.

2380. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2380 of the Complaint.

2381. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Front Street Site.

2382. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Front Street Site.

2383. The allegations contained in Paragraph 2383 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2383 of the Complaint.

Public Service Electric and Gas Company Harrison Site

2384. PSE&G admits that it is the current owner of a parcel of approximately thirty acres located at 2000 Frank E. Rodgers Boulevard, Harrison, Hudson County, New Jersey, which is designated as Block 78, Lot 1 on the tax map of the Township of Harrison, Hudson County; that the Harrison Site is located on the east side of the Passaic River between Frank E. Rodgers Boulevard and the former Newark Penn Central Railroad Line. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2384 of the Complaint.

2385. PSE&G admits it and or its predecessor companies at various times owned and operated the Harrison Site. It neither admits nor denies the remaining allegations of Paragraph 2385. The allegations contained in Paragraph 2385 state conclusions of law to which no response is required.

2386. PSE&G admits the Harrison Site remains in operation as a natural gas metering and regulating station; that PSE&G continues to receive liquefied petroleum gas/air peak shaving gases at the Site to supplement natural gas supplies during periods of peak demand; that PSE&G and or its predecessor companies at various times operated the Harrison Site. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2386 of the Complaint.

2387. PSE&G admits that it used coal at the PSE&G Harrison Site and denies the remaining allegations of Paragraph 2387 of the Complaint.

2388. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Harrison Site.

2389. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Harrison Site.

2389. PSE&G admits that at a point in time effluent from the Harrison Site was discharged to the PVSC sewer system. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2389 of the Complaint.

2390. Third-Party Defendants state that to the extent that Paragraph 2390 purports to quote or paraphrase from a document, the document speaks for itself. PSE&G neither admits nor denies that each of the named compounds have been detected in discharges at the Harrison Site.

2391. Third-Party Defendants admit that the combustion of coal and coke produces ash. Third-Party Defendants state that to the extent that Paragraph 2390 purports to quote or paraphrase from a document, the document speaks for itself. PSE&G neither admits nor denies that each of the named compounds have been detected in ash at the Harrison Site.

2392. Third-Party Defendants state that to the extent that Paragraph 2392 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2392 of the Complaint.

2393. Third-Party Defendants state that to the extent that Paragraph 2393 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2393 of the Complaint.

2394. Third-Party Defendants state that to the extent that Paragraph 2394 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2394 of the Complaint.

2395. Third-Party Defendants state that to the extent that Paragraph 2395 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2395 of the Complaint.

2396. Third-Party Defendants state that to the extent that Paragraph 2396 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2396 of the Complaint.

2397. Third-Party Defendants state that to the extent that Paragraph 2397 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2397 of the Complaint.

2398. Third-Party Defendants state that to the extent that Paragraph 2398 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph

2398 of the Complaint. PSE&G neither admits nor denies that each of the named compounds have been detected in soil at the Harrison Site.

2399. PSE&G admits that the banks of the Passaic River are sometime eroded by floods and tidal waters. Third-Party Defendants state that to the extent that Paragraph 2399 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2399 of the Complaint.

2400. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Harrison Site.

2400. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Harrison Site.

2401. Third-Party Defendants state that to the extent that Paragraph 2401 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2401 of the Complaint.

2402. PSE&G admits that on or about July 1, 1997 EPA sent a General Notice Letter to PSE&G. Third-Party Defendants state that to the extent that Paragraph 2402 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2402 of the Complaint.

2403. PSE&G admits that on or about September 15, 2003 EPA sent a General Notice Letter to PSE&G. Third-Party Defendants state that to the extent that Paragraph 2403 purports to quote or paraphrase from a document, the document speaks for itself. Third-

Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2403 of the Complaint.

2404. The allegations contained in Paragraph 2404 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2404 of the Complaint.

Public Service Electric and Gas Company Hudson Site

2405. PSE&G denies that PSE&G Fossil LLC is the current owner of property located at Duffield and Van Keuren Avenues, Jersey City, New Jersey. It admits that the Hudson site borders the Hackensack River.

2406. PSEG Fossil admits that it operates the Hudson Site; that the Hudson Generating Station was built on the site of the former Marion Generating Station. Third-Party Defendants state that to the extent that Paragraph 2406 purports to quote or paraphrase from a document, the document speaks for itself.

2407. Third-Party Defendants state that to the extent that Paragraph 2407 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2407 of the Complaint.

2408. PSEG admits that PSE&G transferred ownership of the PSE&G Hudson Site and Hudson Generating Station to PSEG Power in the year 2000. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2408 of the Complaint.

2409. Third-Party Defendants state that to the extent that Paragraph 2409 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party

Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2409 of the Complaint.

2410. Third-Party Defendants state that to the extent that Paragraph 2410 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2410 of the Complaint.

2411. Third-Party Defendants state that to the extent that Paragraph 2411 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2411 of the Complaint.

2412. Third-Party Defendants state that to the extent that Paragraph 2412 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2412 of the Complaint.

2413. Third-Party Defendants state that to the extent that Paragraph 2413 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2413 of the Complaint.

2414. Third-Party Defendants state that to the extent that Paragraph 2414 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2414 of the Complaint.

2415. Third-Party Defendants state that to the extent that Paragraph 2415 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2415 of the Complaint.

2416. Third-Party Defendants state that to the extent that Paragraph 2416 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2416 of the Complaint.

2417. Third-Party Defendants state that to the extent that Paragraph 2417 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2417 of the Complaint.

2418. Third-Party Defendants state that to the extent that Paragraph 2418 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2418 of the Complaint.

2419. Third-Party Defendants state that to the extent that Paragraph 2419 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2419 of the Complaint.

2420. The allegations contained in Paragraph 2420 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2420 of the Complaint.

Public Service Electric and Gas Company Kearny Site

2421. Third-Party Defendants deny that PSEG Fossil is the current owner of property located in Kearny, New Jersey, which is bordered by the Hackensack River. Third-Party Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2421 of the Complaint.

2422. Third-Party Defendants state that to the extent that Paragraph 2422 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2422 of the Complaint.

2423. Third-Party Defendants state that to the extent that Paragraph 2423 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2423 of the Complaint.

2424. Third-Party Defendants admit that in 2000, PSE&G transferred the Kearny Site to PSEG Power. Third-Party Defendants state that to the extent that Paragraph 2424 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2424 of the Complaint.

2425. Third-Party Defendants state that to the extent that Paragraph 2425 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2425 of the Complaint.

2426. Third-Party Defendants state that to the extent that Paragraph 2426 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2426 of the Complaint.

2427. Third-Party Defendants state that to the extent that Paragraph 2427 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2427 of the Complaint.

2428. Third-Party Defendants state that to the extent that Paragraph 2428 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2428 of the Complaint.

2429. Third-Party Defendants state that to the extent that Paragraph 2429 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2429 of the Complaint.

2430. Third-Party Defendants state that to the extent that Paragraph 2430 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2430 of the Complaint.

2431. Third-Party Defendants state that to the extent that Paragraph 2431 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph

2431 of the Complaint.

2432. Third-Party Defendants state that to the extent that Paragraph 2432 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2432 of the Complaint.

2433. Third-Party Defendants state that to the extent that Paragraph 2433 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2433 of the Complaint.

2434. Third-Party Defendants state that to the extent that Paragraph 2434 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2434 of the Complaint.

2435. Third-Party Defendants state that to the extent that Paragraph 2435 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2435 of the Complaint.

2436. Third-Party Defendants state that to the extent that Paragraph 2436 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2436 of the Complaint.

2437. Third-Party Defendants state that to the extent that Paragraph 2437 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party

Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2437 of the Complaint.

2438. Third-Party Defendants state that to the extent that Paragraph 2438 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2438 of the Complaint.

2439. Third-Party Defendants state that to the extent that Paragraph 2439 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2439 of the Complaint.

2440. Third-Party Defendants state that to the extent that Paragraph 2440 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or been detected in the soil at the Kearny Site. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2440 of the Complaint.

2441. Third-Party Defendants state that to the extent that Paragraph 2441 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2441 of the Complaint.

2442. Third-Party Defendants state that to the extent that Paragraph 2442 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named

compounds have been stored and/or detected in the soil at the Kearny Site. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2442 of the Complaint.

2443. Third-Party Defendants state that to the extent that Paragraph 2443 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusion contained in Paragraph 2443 of the Complaint. Third-Party Defendants neither admit nor deny that each of the named compounds have been detected in the groundwater at the Kearny Site.

2444. The allegations contained in Paragraph 2444 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 2444 of the Complaint.

Public Service Electric and Gas Company Market Street Site

2445. Third-Party Defendants admit that PSE&G and its predecessors owned and operated a manufactured gas plant facility located along Market Street and Raymond Boulevard in Newark, New Jersey; that the Market Street Site consisted of 5 parcels designated on the tax map of the City of Newark as parcel 1 Block 171, Lots 1,6,8,11, 41 and 42; Parcel 2, Block 172, Lots 1,3,31,33 and 35; Parcel 3 Block 177, Lot 35; Parcel 4 Block 176 Lots 1, 6 and 10; and Parcel 5 Block 175, southern part of lot 1; that the Market Street Site is located on the south side of the Passaic River.

2446. PSE&G admits that it became owner of the Market Street Site upon purchase of the Newark Gas and Light Company.

2447. Third-Party Defendants state that to the extent that Paragraph 2447 purports to

quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2447 of the Complaint.

2448. Third-Party Defendants state that to the extent that Paragraph 2448 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2448 of the Complaint.

2449. Third-Party Defendants state that to the extent that Paragraph 2449 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2449 of the Complaint.

2450. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected at the Market Street Site.

2451. Third-Party Defendants state that to the extent that Paragraph 2451 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2451 of the Complaint.

2452. Third-Party Defendants state that to the extent that Paragraph 2452 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2452 of the Complaint.

2453. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected in the soil at the Market

Street Site.

2454. Third-Party Defendants state that to the extent that Paragraph 2454 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2454 of the Complaint.

2455 PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Market Street Site.

2455. PSE&G neither admits nor denies as it is without knowledge that each of the named compounds have been stored and/or detected in the soil at the Market Street Site.

2456. Third-Party Defendants state that to the extent that Paragraph 2456 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2456 of the Complaint.

2457. The allegations contained in Paragraph 2457 state conclusions of law to which no response is required. To the extent a response is required, Third-Party Defendants deny the allegations contained in Paragraph 2457 of the Complaint.

Public Service Electric and Gas Company West End Site

2458. PSE&G admits that it is the current owner of property located at Duffield and Saint Paul Avenues, Jersey City, New Jersey. PSE&G lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 2458 of the Complaint.

2459. Third-Party Defendants state that to the extent that Paragraph 2459 purports to

quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2459 of the Complaint.

2460. Third-Party Defendants state that to the extent that Paragraph 2460 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2460 of the Complaint.

2461. PSE&G admits that the Public Service Corporation changed its name to Public Service Electric and Gas Company in 1948. Third-Party Defendants state that to the extent Paragraph 2460 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2460 of the Complaint.

2462. Third-Party Defendants state that to the extent that Paragraph 2462 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2462 of the Complaint.

2463. Third-Party Defendants state that to the extent that Paragraph 2463 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2463 of the Complaint.

2464. Third-Party Defendants admit that from about 1965 to 1985, the PSE&G West End Site served as a peak shaving facility to supplement supplies of natural gas during periods of high demand.

2465. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected in the soil at the West End Site.

2466. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected in the soil at the West End Site

2467. Third-Party Defendants state that to the extent that Paragraph 2467 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2467 of the Complaint.

2468. Third-Party Defendants state that to the extent that Paragraph 2468 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2468 of the Complaint.

2469. Third-Party Defendants state that to the extent that Paragraph 2469 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2469 of the Complaint.

2470. Third-Party Defendants state that to the extent that Paragraph 2470 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2470 of the Complaint.

2471. Third-Party Defendants state that to the extent that Paragraph 2471 purports to

quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2471 of the Complaint.

2472. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected in the soil at the West End Site.

2473. Third-Party Defendants state that to the extent that Paragraph 2473 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2473 of the Complaint.

2474. Third-Party Defendants neither admit nor deny as they are without knowledge that each of the named compounds have been stored and/or detected in the soil at the West End Site.

2475. Third-Party Defendants state that to the extent that Paragraph 2475 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 2475 of the Complaint.

2476. The allegations contained in Paragraph 2476 state conclusions of law to which no response is required. To the extent a response is required, Third-Party Defendants deny the allegations contained in Paragraph 2476 of the Complaint.

Bayonne Barrel and Drum Site PRP: Public Service Electric and Gas Company

3196. Third-Party Defendants state that to the extent that Paragraph 3196 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 3196 of the Complaint.

3197. Third-Party Defendants state that to the extent that Paragraph 3197 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 3197 of the Complaint.

3198. Third-Party Defendants state that to the extent that Paragraph 3198 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 3198 of the Complaint.

3199. The allegations contained in Paragraph 3199 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 3199 of the Complaint.

Borne Chemical Site PRP: Public Service Electric and Gas Company

3268. Third-Party Defendants state that to the extent that Paragraph 3268 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph

3268 of the Complaint.

3269. Third-Party Defendants state that to the extent that Paragraph 3269 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 3269 of the Complaint.

3270. Third-Party Defendants state that to the extent that Paragraph 3270 purports to quote or paraphrase from a document, the document speaks for itself. Third-Party Defendants deny the remaining allegations and legal conclusions contained in Paragraph 3270 of the Complaint.

3271. The allegations contained in Paragraph 2476 state conclusions of law to which no response is required. To the extent a response is required, PSE&G denies the allegations contained in Paragraph 3271 of the Complaint.

AS TO FIRST COUNT

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

1. **PSE&G** and **PSEG Fossil** incorporate by reference as if fully set forth herein their responses and denials as asserted in Paragraphs 1 through 3445 herein.

2. **PSE&G** and **PSEG FOSSIL** are without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraphs 3447 through 3448, and therefore deny the same.

3. **PSE&G** and **PSEG FOSSIL** deny that they are liable to Third-Party Plaintiffs for contribution. **PSE&G** and **PSEG FOSSIL** are without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451, and therefore deny the same.

AS TO SECOND COUNT

Statutory Contribution

4. PSE&G and PSEG FOSSIL incorporate by reference as if fully set forth herein their responses and denials as asserted in Paragraphs 1 through 3451 herein.

5. PSE&G and PSEG FOSSIL deny that they are liable to Third-Party Plaintiffs for contribution. PSE&G and PSEG FOSSIL are without knowledge or information sufficient to form a belief as to the truth of the matters in Paragraphs 3452 through 3453, and therefore deny the same.

FIRST AFFIRMATIVE DEFENSE

6. The Third-Party Complaint is barred in whole or in part as it fails to state a cause of action against Third-Party Defendants upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

7. Third-Party Defendants are not dischargers or persons in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. ("Spill Act").

THIRD AFFIRMATIVE DEFENSE

8. The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA").

FOURTH AFFIRMATIVE DEFENSE

9. Third-Party Plaintiffs have no Spill Act claims against Third-Party Defendants because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

10. Third-Party Plaintiffs have no right of contribution against Third-Party Defendants under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

11. Third-Party Plaintiffs' claims are barred, in whole or in part, by the entire controversy doctrine.

SEVENTH AFFIRMATIVE DEFENSE

12. To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendants under that statute.

EIGHTH AFFIRMATIVE DEFENSE

13. Some or all of Third-Party Plaintiffs do not have standing to sue.

NINTH AFFIRMATIVE DEFENSE

14. Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

TENTH AFFIRMATIVE DEFENSE

15. Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a

party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

16. Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from Third-Party Defendants. Consequently, the claims in the Third-Party Complaint are barred, in whole or in part.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

18. Third-Party Defendants cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Third-Party Defendants that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities ("applicable Environmental Laws").

FOURTEENTH THIRD AFFIRMATIVE DEFENSE

19. At common law, Third-Party Defendants held, and still hold, a usufructuary interest allowing them, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Third-Party Defendants have at all relevant times acted in accordance with their rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and

cannot be any greater than, the claims that the State of New Jersey has or would have against Third-Party Defendants directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

20. The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendants for the damages sought in its Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendants as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

22. Third-Party Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

23. At all relevant times, Third-Party Defendants complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

NINETEENTH AFFIRMATIVE DEFENSE

24. The claims asserted against Third-Party Defendants in the Third-Party Complaint are barred because at all relevant times Third-Party Defendants exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or

properties, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendants had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWENTIETH AFFIRMATIVE DEFENSE

25. The claims set forth in the Third-Party Complaint are barred in whole or in part by the doctrine of preemption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

26. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Third-Party Defendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE

27. Third-Party Plaintiffs' claims against Third-Party Defendants are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

28. Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

29. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrine of "coming to the nuisance."

TWENTY-FIFTH AFFIRMATIVE DEFENSE

30. Third-Party Plaintiffs' claims are barred, in whole or in part, by the "unclean hands" doctrine.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

31. The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

32. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

33. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendants, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

TWENTY-NINTH AFFIRMATIVE DEFENSE

34. Third-Party Plaintiffs' claims against Third-Party Defendants are subject to setoff and recoupment and therefore must be reduced accordingly.

THIRTIETH AFFIRMATIVE DEFENSE

35. Third-Party Defendants did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

36. Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs' have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs' have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

THIRTY-SECOND AFFIRMATIVE DEFENSE

37. Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement ... of any natural resources damaged or destroyed by a discharge" under the Spill Act.

THIRTY-THIRD AFFIRMATIVE DEFENSE

38. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain United States agencies and instrumentalities with liability under the Spill Act, and certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the "Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

THIRTY-FOURTH THIRD AFFIRMATIVE DEFENSE

39. Third-Party Plaintiffs' claims are not ripe for adjudication, inter alia, because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

40. Third-Party Defendants deny that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendants exercised no control and for whose conduct Third-Party Defendants were not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

41. If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs' recovery against Third-Party Defendants, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

42. Although Third-Party Defendants deny that are liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event they are found liable, Third-Party Defendants are entitled to an offset against any such liability on its part for the equitable share

of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

THIRTY-NINTH AFFIRMATIVE DEFENSE

44. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

FORTIETH AFFIRMATIVE DEFENSE

45. The disposal of waste, if any, which allegedly originated from Third-Party Defendants, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which Third-Party Defendants cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

46. Any discharge that allegedly originated from Third-Party Defendants was investigated and remediated by a licensed professional and under the direct oversight of state and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements for which Third-Party Defendants cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

FORTY-THIRD AFFIRMATIVE DEFENSE

48. The damages or other relief that Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

FORTY-FOURTH AFFIRMATIVE DEFENSE

49. Third-Party Plaintiffs' claims are barred due to its own conduct in unilaterally, and without notice to Third-Party Defendants, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

FORTY-FIFTH AFFIRMATIVE DEFENSE

50. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

51. Third-Party Plaintiffs cannot assert contribution claims against Third-Party Defendants because the discharges for which the Plaintiffs are seeking relief are different from Third-Party Defendants' alleged discharges.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

52. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendants are not liable for "the same injury" caused

by Third-Party Plaintiffs' discharges and do not share a common liability to the State of New Jersey.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

53. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Third-Party Defendants liable, in contribution, for any claims for which it would be a violation of public policy to hold Third-Party Defendants liable, including but not limited to punitive damages and penalties.

FORTY-NINTH AFFIRMATIVE DEFENSE

54. Third-Party Plaintiffs' claims are barred, in whole or in part, because no actions or inactions by Third-Party Defendants have resulted in any permanent impairment or damage to a natural resource.

FIFTIETH AFFIRMATIVE DEFENSE

55. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Third-Party Defendants are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendants pertaining to the alleged environmental contamination (including natural resource damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendants. Examples of legal extinguishments that are or may be applicable to Third-Party Defendants include, with respect to each such site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendants;
- B. Any settlement or other compromise between Plaintiffs and Third-Party Defendants;

- C. Any expiration of the statute of limitations or statute of repose governing plaintiffs' right to maintain a claim against Third-Party Defendants;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and Third-Party Defendants, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
- E. Any issuance by Plaintiffs to Third-Party Defendants, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY FIRST AFFIRMATIVE DEFENSE

56. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendants, were it claimed directly by Plaintiffs, would amount to a "taking" of Third-Party Defendants' property in violation of their constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

FIFTY SECOND AFFIRMATIVE DEFENSE

57. Third-Party Plaintiffs' claims are barred to the extent the relief sought by Third-Party Plaintiffs in the Complaint is at odds with Third-Party Defendants' responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendants, thereby exposing Third-Party Defendants to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FIFTY THIRD AFFIRMATIVE DEFENSE

58. To the extent Third-Party Defendants are acting or have acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendants, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY FOURTH AFFIRMATIVE DEFENSE

59. Without admitting liability, Third-Party Defendants allege that if they are found to have been engaged in any of the activities alleged in the Third-Party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

FIFTY FIFTH AFFIRMATIVE DEFENSE

60. Third-Party Defendants incorporate by reference any affirmative defense's asserted by other parties in this action to the extent such affirmative defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on Third-Party Defendants.

FIFTY SIXTH AFFIRMATIVE DEFENSE

61. Third-Party Defendants reserve the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

62. No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

DESIGNATION OF TRIAL COUNSEL

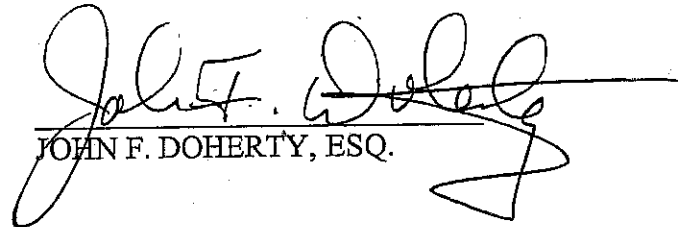
63. In accordance with Rule 4:25-4 you are hereby notified that **John F. Doherty** is assigned to try this case.

WHEREFORE, Third-Party Defendants, PSEG Fossil, LLC and Public Service Electric and Gas Company, respectfully request that the Court enter an Order dismissing the Third-Party Complaint "B" with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

Law Offices of William E. Frese
Attorney for Third-Party Defendants,
PSEG Fossil, LLC and Public
Electric and Gas Company

Dated: June 21, 2010

By:


JOHN F. DOHERTY, ESQ.

CERTIFICATION OF SERVICE

I, John F. Doherty, an attorney-at-law of the State of New Jersey, do hereby state upon my oath as follows:

1. I am an Associate General Environmental Attorney with the Law Offices of William E. Frese, 80 Park Plaza, Newark, New Jersey 07102, which represent Third-Party Defendants, PSEG Fossil, LLC and Public Service Electric and Gas Company in the above captioned matter.

2. I hereby certify that PSEG Fossil, LLC and Public Service Electric and Gas Company's Answer to Third-Party Complaint "B" of Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. was served upon the Clerk of Court, Superior Court of New Jersey, Essex County, 50 West Market Street, Newark, New Jersey 07102, via overnight mail on June 21, 2010.

3. I hereby certify that Defendants, PSEG Fossil, LLC and Public Service Electric and Gas Company's Answer to Third-Party Complaint "B" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. was served electronically on June 21, 2010 on all parties which have consented to service by posting on the following website, <http://njdepvocc.sfile.com>.

4. The following Counsel of Record was served on June 21, 2010 via first class, regular mail.

John P. McGovern, Esq.
Assistant City Attorney
City of Orange
29 North Day Street
Orange, NJ 07050
Counsel for Third-Party
Defendant, City of Orange

Richard J. Dewland, Esq.
Coffey & Associates
465 South Street
Morristown, NJ 07960
Counsel for Third-Party Defendant,
Borough of Hasbrouck Heights

Twp of Winfield Park
Steven A. Weiner
O'Toole Fernandez Weiner
Van Lieu
60 Pompton Avenue
Verona, NJ 07044


JOHN F. DOHERTY, ESQ.

Dated: June 21, 2010

Certification Pursuant to R.4:5-1(b) (2)

Pursuant to R.4:5-1(b)(2), the undersigned hereby certifies that:

- (a) The matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of a third party defendant for the claims set forth in the Third-Party Complaint is several, only, there are no non-parties which should be joined in the action pursuant to R.4:28; but that
- (c) In the event the Court shall determine that the potential liability of a third-party defendant, if any, for the claims set forth in the Third-Party Complaint is in any respect joint and several (which is denied), then the undersigned states that there are other non-parties that may have discharged hazardous substances into the Newark Bay Complex contributing to the harm alleged by the Third-Party Plaintiffs. O'Melveny and Meyers has filed with the Special Master, a list of over 1,000 non-parties who, according to the New Jersey Department of Environmental Protection, discharged hazardous substances into the Newark Bay Complex. Subsequent investigation/discovery will determine which, if any of those non-parties or others not yet identified should be joined in this case.

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PSEG Fossil, LLC and Public
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By:


JOHN F. DOHERTY, ESQ.