

**FOX ROTHSCHILD LLP**

Formed in the Commonwealth of Pennsylvania

Princeton Pike Corporate Center

By: Joel M. Ferdinand, Esq.

997 Lenox Drive, Building 3

Lawrenceville, New Jersey 08648-2311

(609) 896-3600

*Attorneys for Third-Party Defendant S&A Realty  
Associates, Inc.*

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.

3M COMPANY,  
A.C.C., INC.,  
ACH FOOD COMPANIES, INC.,  
ACTIVE OIL SERVICE,  
ADCO CHEMICAL COMPANY,  
AGC CHEMICALS AMERICAS, INC.,  
ALDEN-LEEDS, INC.,  
ALLIANCE CHEMICAL, INC.,  
ALUMAX MILL PRODUCTS, INC.,  
AMCOL REALTY CO.,  
AMERICAN INKS AND COATINGS CORPORATION,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**ANSWER OF THIRD-PARTY  
DEFENDANT S&A REALTY  
ASSOCIATES, INC. TO THIRD PARTY  
COMPLAINT "B" OF DEFENDANTS  
MAXUS ENERGY CORPORATION  
AND TIERRA SOLUTIONS, INC. AND  
SEPARATE DEFENSES,  
COUNTERCLAIMS, AND  
CROSSCLAIMS**

APEXICAL, INC.,  
APOLAN INTERNATIONAL, INC.,  
ARKEMA, INC.,  
ASHLAND INC.,  
ASHLAND INTERNATIONAL HOLDINGS, INC.,  
ASSOCIATED AUTO BODY & TRUCKS, INC.,  
ATLAS REFINERY, INC.,  
AUTOMATIC ELECTRO-PLATING CORP.,  
AKZO NOBEL COATINGS, INC.,  
BASF CATALYSTS LLC,  
BASF CONSTRUCTION CHEMICALS INC.,  
BASF CORPORATION,  
BAYER CORPORATION,  
BEAZER EAST, INC.,  
BELLEVILLE INDUSTRIAL CENTER,  
BENJAMIN MOORE & COMPANY,  
BEROL CORPORATION,  
B-LINE TRUCKING, INC.,  
BORDEN & REMINGTON CORP.,  
C.S. OSBORNE & CO.,  
CAMPBELL FOUNDRY COMPANY,  
CASCHEM, INC.,  
CBS CORPORATION,  
CELANESE LTD.,  
CHEMICAL COMPOUNDS INC.,  
CHEMTURA CORPORATION,  
CLEAN EARTH OF NORTH JERSEY, INC.,  
COSMOPOLITAN GRAPHICS CORPORATION,  
CIBA CORPORATION,  
COLTEC INDUSTRIES INC.,  
COLUMBIA TERMINALS, INC.,  
COMO TEXTILE PRINTS, INC.,  
CONAGRA PANAMA, INC.;  
CONOPCO, INC.,  
CONSOLIDATED RAIL CORPORATION,  
COOK & DUNN PAINT CORPORATION,  
COSAN CHEMICAL CORPORATION,  
COVANTA ESSEX COMPANY,  
CRODA, INC.,  
CRUCIBLE MATERIALS CORPORATION,  
CURTISS-WRIGHT CORPORATION,  
CWC INDUSTRIES, INC.,  
DARLING INTERNATIONAL, INC.,  
DAVANNE REALTY CO.,

DELEET MERCHANDISING CORPORATION,  
DELVAL INK AND COLOR,  
INCORPORATED,DILORENZO PROPERTIES  
COMPANY, L.P.,  
E.I. DU PONT DE NEMOURS AND COMPANY,  
EASTMAN KODAK COMPANY,  
EDEN WOOD CORPORATION,  
ELAN CHEMICAL COMPANY, INC.,  
EM SERGEANT PULP & CHEMICAL CO.,  
EMERALD HILTON DAVIS, LLC,  
ESSEX CHEMICAL CORPORATION,  
EXXON MOBIL  
F.E.R. PLATING, INC.,  
FINE ORGANICS CORPORATION,  
FISKE BROTHERS REFINING COMPANY,  
FLEXON INDUSTRIES CORPORATION,  
FLINT GROUP INCORPORATED,  
FORT JAMES CORPORATION,  
FOUNDRY STREET CORPORATION,  
FRANKLIN-BURLINGTON PLASTICS, INC.,  
GARFIELD MOLDING COMPANY, INC.,  
GENERAL CABLE INDUSTRIES, INC.;  
GENERAL DYNAMICS CORPORATION,  
GENERAL ELECTRIC COMPANY,  
GENTEK HOLDING LLC,  
GIVAUDAN FRAGRANCES CORPORATION,  
G. J. CHEMICAL CO.,  
GOODY PRODUCTS, INC.,  
GORDON TERMINAL SERVICE CO. OF N.J., INC.,  
HARRISON SUPPLY COMPANY,  
HARTZ MOUNTAIN CORPORATION,  
HAVENICK ASSOCIATES L.P.,  
HEXCEL CORPORATION,  
HEXION SPECIALTY CHEMICALS, INC.,  
HOFFMANN-LA ROCHE INC.,  
HONEYWELL INTERNATIONAL INC.,  
HOUGHTON INTERNATIONAL INC.,  
HUDSON TOOL & DIE COMPANY, INC,  
HY-GRADE ELECTROPLATING CO.,  
ICI AMERICAS INC.,  
INNOSPEC ACTIVE CHEMICALS LLC,  
INX INTERNATIONAL INK CO.,  
ISP CHEMICALS INC.,  
ITT CORPORATION,

KEARNY SMELTING & REFINING CORP.,  
KAO BRANDS COMPANY,  
KOEHLER-BRIGITT STAR, INC.,  
LINDE, INC.,  
LUCENT TECHNOLOGIES, INC.,  
MACE ADHESIVES & COATINGS COMPANY, INC.,  
MALLINCKRODT INC.,  
MERCK & CO., INC.,  
METAL MANAGEMENT NORTHEAST, INC.,  
MI HOLDINGS, INC.,  
MILLER ENVIRONMENTAL GROUP, INC.,  
MORTON INTERNATIONAL, INC.,  
N L INDUSTRIES, INC.,  
NAPPWOOD LAND CORPORATION,  
NATIONAL FUEL OIL, INC.,  
NATIONAL-STANDARD, LLC,  
NELL-JOY INDUSTRIES, INC.,  
NESTLE U.S.A., INC.,  
NEW JERSEY TRANSIT CORPORATION,  
NEWS AMERICA, INC.,  
NEWS PUBLISHING AUSTRALIA LIMITED,  
NORPAK CORPORATION,  
NOVELIS CORPORATION,  
ORANGE AND ROCKLAND UTILITIES, INC.,  
OTIS ELEVATOR COMPANY,  
PRC-DESOTO INTERNATIONAL, INC.,  
PASSAIC PIONEERS PROPERTIES COMPANY,  
PFIZER INC.,  
PHARMACIA CORPORATION,  
PHELPS DODGE INDUSTRIES, INC.,  
PHILBRO, INC.,  
PITT-CONSOL CHEMICAL COMPANY,  
PIVOTAL UTILITY HOLDINGS, INC.,  
PPG INDUSTRIES, INC.,  
PRC-DESOTO INTERNATIONAL, INC.,  
PRAXAIR, INC.,  
PRECISION MANUFACTURING GROUP, LLC,  
PRENTISS INCORPORATED,  
PROCTER & GAMBLE MANUFACTURING COMPANY,  
PRYSMIAN COMMUNICATIONS CABLES AND  
SYSTEMS USA LLC,  
PSEG FOSSIL LLC,  
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,  
PURDUE PHARMA TECHNOLOGIES, INC.,

QUALA SYSTEMS, INC.,  
QUALITY CARRIERS, INC.,  
RECKITT BENCKISER, INC.,  
REICHHOLD, INC.,  
REVERE SMELTING & REFINING CORPORATION,  
REXAM BEVERAGE CAN COMPANY,  
ROMAN ASPHALT CORPORATION,  
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,  
R.T. VANDERBILT COMPANY, INC.,  
RUTHERFORD CHEMICALS LLC,  
S&A REALTY ASSOCIATES, INC.,  
SCHERING CORPORATION,  
SEQUA CORPORATION,  
SETON COMPANY,  
SIEMENS WATER TECHNOLOGIES CORP.  
SINGER SEWING COMPANY  
SPECTRASERV, INC.,  
STWB, INC.,  
SUN CHEMICAL CORPORATION,  
SVP WORLDWIDE, LLC,  
TATE & LYLE INGREDIENTS AMERICAS, INC.,  
TEVA PHARMACEUTICALS USA, INC.,  
TEVAL CORP.,  
TEXTRON INC.,  
THE DIAL CORPORATION,  
THE DUNDEE WATER POWER AND LAND COMPANY,  
THE NEWARK GROUP, INC.,  
THE OKONITE COMPANY, INC.,  
THE SHERWIN-WILLIAMS COMPANY,  
THE STANLEY WORKS,  
THE VALSPAR CORPRATION,  
THIRTY-THREE QUEEN REALTY INC.,  
THREE COUNTY VOLKSWAGEN CORPORATION,  
TIDEWATER BALING CORP.,  
TIFFANY & CO.,  
TIMCO, INC.,  
TRIMAX BUILDING PRODUCTS, INC.,  
TROY CHEMICAL CORPORATION, INC.,  
UNIVERSAL OIL PRODUCTS COMPANY,  
V. OTTILIO & SONS, INC.,  
VELSICOL CHEMICAL CORPORATION,  
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,  
VERTELLUS SPECIALTIES INC.,  
VITUSA CORP.,

VULCAN MATERIALS COMPANY,  
W.A.S. TERMINALS CORPORATION,  
W.A.S. TERMINALS, INC.,  
W.C. INDUSTRIES,  
WHITTAKER CORPORATION,  
WIGGINS PLASTICS, INC.,  
ZENECA INC.,

Third-Party Defendants.

Third-Party Defendant, S&A Realty Associates, Inc. (“S&A”), through its attorneys, Fox Rothschild LLP, and in accordance with this Court’s Case Management Order V (“CMO V”), Section 9, entered April 16, 2009, by way of Answer to Third-Party Complaint B of Defendants/Third-Party Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. (collectively, the “Third-Party Plaintiffs”), state as follows:

**GENERALLY**

1. S&A denies each and every allegation contained in Third Party Complaint B that is not otherwise herein addressed, including, without limitations, any allegations concerning the relief sought in the First and Second Counts and all headings and titles used in Third Party Complaint B.

**AS TO THE ALLEGATIONS ENTITLED PROCEDURAL BACKGROUND**

2. The allegations contained in Paragraphs 1 through 15 of Third-Party Complaint B speak for themselves. No response is required pursuant to CMO V. To the extent a response is required, S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 1 through 15 of Third-Party Complaint B, and the same are therefore denied.

### **AS TO THE ALLEGATIONS ENTITLED PARTIES**

3. To the extent that the allegations contained in Paragraphs 16 through 168 of Third-Party Complaint B relate to other parties, no response is required pursuant to CMO V. To the extent an answer is required, S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 16 through 168 of Third-Party Complaint B, and the same are therefore denied.

4. S&A denies the allegations of Paragraph 169 of Third-Party Complaint B, but admits that it is a corporation organized under the laws of the State of New Jersey.

5. To the extent that the allegations contained in Paragraphs 170 through 209 of Third-Party Complaint B relate to other parties, no response is required pursuant to CMO V. To the extent a response is required, S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 170 through 209 of Third-Party Complaint B, and the same are therefore denied.

6. The allegations contained in Paragraph 210 of Third-Party Complaint B state legal conclusions to which no response is required.

### **AS TO THE ALLEGATIONS ENTITLED DEFINITIONS**

7. Paragraphs 211 through 236 of Third Party Complaint B contain definitions to which no response is required pursuant to CMO V.

### **AS TO THE ALLEGATIONS ENTITLED FACTUAL ALLEGATIONS**

8. To the extent that the allegations contained in Paragraphs 237 through 386 relate to other parties, no response is required pursuant to CMO V. To the extent a response is required, S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 237 through 386 of Third-Party Complaint B, and the same are therefore

denied.

9. S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 387 through 395 of Third-Party Complaint B, and the same are therefore denied.

10. S&A admits the allegations contained in Paragraph 396 of Third-Party Complaint B.

11. S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 397 through 403 of Third-Party Complaint B, and the same are therefore denied.

12. S&A admits the allegations contained in Paragraph 404 of Third-Party Complaint B.

13. S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 405 through 406 of Third-Party Complaint B, and the same are therefore denied.

14. Paragraphs 407 states legal conclusions to which no response is required, and the same are therefore denied.

15. To the extent that the allegations contained in Paragraphs 408 through 3445 of Third Party Complaint B relate to other parties, no response is required pursuant to CMO V. To the extent a response is required, S&A lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 408 through 3445 of Third-Party Complaint B, and the same are therefore denied.

**AS TO THE ALLEGATIONS OF THE FIRST COUNT**

16. S&A repeats and incorporates by reference the answers set forth in the prior



paragraphs of this Answer as if set forth at length herein.

17. S&A is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3447 through 3448 of Third Party Complaint B, and the same are therefore denied.

18. S&A denies that it is liable to Third-Party Plaintiffs for contribution. S&A is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3449 through 3451 of Third Party Complaint B, and the same are therefore denied.

**WHEREFORE**, defendant, S&A Realty Associates, Inc., respectfully requests judgment dismissing Third-Party Plaintiffs' claims together with attorneys' fees, costs, and any other relief that the Court may deem equitable and just.

#### **AS TO THE ALLEGATIONS OF THE SECOND COUNT**

19. S&A repeats and incorporates by reference the answers set forth in the prior paragraphs of this Answer as if set forth at length herein.

20. S&A denies that it is liable to Third-Party Plaintiffs for contribution. S&A is without knowledge or information sufficient to form a belief as to the truth of the matters alleged in Paragraphs 3452 through 3453, and the same are therefore denied.

**WHEREFORE**, defendant, S&A Realty Associates, Inc., respectfully requests judgment dismissing Third-Party Plaintiffs' claims together with attorneys' fees, costs, and any other relief that the Court may deem equitable and just.

#### **AFFIRMATIVE DEFENSES**

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

2. Third-Party Plaintiffs' Complaint is barred by the application of the doctrines of

laches, unclean hands, collateral estoppel, promissory estoppel, and/or estoppel.

3. Third-Party Plaintiffs' Complaint is barred by the applicable statute of limitations.

4. Third-Party Plaintiffs' Complaint is barred because they failed to exhaust all administrative remedies.

5. Third-Party Plaintiffs' claims are barred, or, in the alternative, the damages to which they are entitled, if any, must be reduced under the doctrine of comparative negligence pursuant to N.J.S.A. 2A:15-5.1.

6. The complained of occurrence was caused by third-parties over whom S&A had no control.

7. Third-Party Plaintiffs' claims are barred, or, in the alternative, the damages to which they are entitled, if any, must be reduced as a result of statutory defenses available under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and similar environmental legislation.

8. Third-Party Plaintiffs' claims against S&A are subject to setoff and recoupment and therefore must be reduced accordingly.

9. S&A's alleged actions or omissions, if any, which are the subject of this action, complied with all applicable federal and state permits and plans.

10. Although S&A denies that it is liable for the contamination described in the Complaint, in the event S&A is found liable, it is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity joined as a Third-Party Defendant in this action that would be liable to the State of New Jersey.

11. Third-Party Plaintiffs' claims are barred by lack of standing to bring an action against S&A.

12. Any injuries and/or damages allegedly sustained by the original Plaintiffs were caused by the joint or several negligence and/or intentional acts of Third-Party Plaintiffs and other Third-Party Defendants over whom S&A had no control.

13. Third-Party Plaintiffs' claims against S&A should be dismissed because Third-Party Plaintiffs' injuries, if any, were due to supervening events for which S&A had no control or responsibility.

14. S&A is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23 et seq. ("Spill Act").

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

16. Third-Party Plaintiffs have no Spill claim against S&A because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

17. Third-Party Plaintiffs have no right to contribution against S&A under the WPCA.

18. Third-Party Plaintiffs' claimed are barred, in whole or in part, by the application of the entire controversy doctrine.

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

20. 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.

21. 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.

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

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

24. At common law, S&A held, and still holds, a usufructuary interest allowing it, 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. S&A has at all relevant times acted in accordance with its 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 S&A directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

25. The State of New Jersey is legally barred from asserting direct claims against S&A 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 well, including the claims set forth in Third-Party Complaint B.

26. 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.

27. 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.

28. The claims asserted against S&A in Third-Party Complaint B are barred because at all relevant times S&A 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 S&A 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.

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

30. 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.

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

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

hands” doctrine.

33. 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.

34. 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.

35. S&A did not own or operate a “Major Facility” as defined by the Spill Act or the WPCA.

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.

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.

38. 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 liability.

39. 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.

40. 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, 556 U.S. \_\_\_\_; 129 S.Ct. 1870 (2009), and other comparable decisional law.

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

42. Without admitting liability, S&A alleges that if it is found to have been engaged in any of the activities alleged in Third-Party Complaint B, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Plaintiffs.

43. S&A reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

44. S&A incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmation defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on S&A.

45. S&A reserves the right to raise any other affirmative defenses.

#### **DENIAL OF UNKNOWN OR UNRAISED CLAIMS**

S&A denies any liability for any and all unknown or unasserted counterclaims and cross claims, whether or not yet filed, and third-party claims for contribution and/or indemnification.

#### **COUNTERCLAIMS AND CROSS CLAIMS**

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

### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rs. 4:25-4 and 4:5-1(c), Joel M. Ferdinand, Esq. is designated as trial counsel on behalf of Third-Party Defendant S&A Realty Associates, Inc.

### **DEMAND FOR STATEMENT OF DAMAGES**

Third-Party Defendant S&A Realty Associates, Inc. hereby demands that Third-Party Plaintiffs issue to Answering Third-Party Defendant's counsel, Joel M. Ferdinand, Esq., a statement of damages within five (5) days of service of this Answer pursuant to R. 4:5-2.

### **RESERVATION OF RIGHTS**

Third-Party Defendant, S&A Realty Associates, Inc. reserves its right to amend this Answer to assert any additional defenses it may have which further investigation reveals to be appropriate.

### **CERTIFICATION OF FILING AND SERVICE**

Joel M. Ferdinand, Esq., states as follows:

1. I am an Attorney-at-Law in the State of New Jersey, associated with the law firm Fox Rothschild LLP, counsel to Third-Party Defendant S&A Realty Associates, Inc.
2. Third-Party Defendant S&A Realty Associates, Inc.'s Answer to Third-Party Complaint "B" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. and Separate Defenses, Counterclaims and Cross Claims was served electronically on all parties who have consented to service by posting on [www.sfile.com/njdepvocc](http://www.sfile.com/njdepvocc) on December 21, 2009.
3. Third-Party Defendant S&A Realty Associates, Inc.'s Answer to Third-Party Complaint "B" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. and Separate Defenses, Counterclaims and Cross Claims was served upon the Clerk of Court via Federal Express on this date.



**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

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

The matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceedings and no action or arbitration proceeding is contemplated by the undersigned. 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 "B" is several only, there are no non-parties which should be joined in the action pursuant to R. 4:28; but that

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 "B" is in any respect joint and several (which is denied), then all or some of the non-parties listed on the attachments to the letter dated October 7, 2009 from Eric Rothenberg, Esq. of O'Melveny and Myers to the Honorable Marina Corodemus, filed on the Sfile system, may constitute non-parties who should be joined in the action pursuant to R. 4:28. In either event, some or all of such non-parties are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

FOX ROTHSCHILD LLP  
*Attorneys for Third-Party Defendant, S&A Realty  
Associates, Inc.*

By: \_\_\_\_\_

JOEL M. FERDINAND

Dated: December 21, 2009