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ATTORNEY FOR THIRD-PARTY DEFENDANT(S) TRMI-H 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,

TIERRA SOLUTIONS, INC. and MAXUS ENERGY
CORPORATION,

Third-Party Plaintiffs,

vs.

TRMI-H LLC, POWER TEST REALTY CO., L.P., GETTY
PROPERTIES CORP., GENERAL MOTORS CORP.,
CYTEC INDUSTRIES, INC. and LEGACY VULCAN
CORP.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**TRMI-H LLC'S ANSWER
TO THIRD-PARTY COMPLAINT "C"**

TRMI-H LLC'S ANSWER TO THIRD-PARTY COMPLAINT "C"

Third-Party Defendant TRMI-H LLC ("TRMI-H"), by and through its undersigned
counsel, and in accordance with this Court's Case Management Order V, Section 9, entered
April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "C" by

Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs"), as follows:

GENERALLY

1. TRMI-H denies each and every allegation contained in Third Party Complaint "C" 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 "C".

AS TO PROCEDURAL BACKGROUND

(Paragraphs 1 through 14)

2. TRMI-H responds that Paragraphs 1 through 14 of the Third-Party Complaint speak for themselves. No response is required pursuant to CMO V.

AS TO THE PARTIES

(Paragraphs 15 through 25)

3. To the extent that the allegations in Paragraphs 15 through 25 relate to other parties, no response is required pursuant to CMO V.

4. TRMI-H admits the allegations of Paragraph 17 of the Third-Party Complaint.

5. TRMI-H admits the allegations of Paragraph 18 of the Third-Party Complaint.

AS TO FACTUAL ALLEGATIONS

(Paragraphs 26 through 120)

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

7. TRMI-H admits the allegations of Paragraph 26 of the Third-Party Complaint.

8. TRMI-H admits the allegations of Paragraph 27 of the Third-Party Complaint.

9. TRMI-H admits that from 1950 through 1984, the Newark Terminal had received, stored and dispensed petroleum products. Except as so admitted, TRMI-H states that it is

without sufficient information to form a belief as to the truth of the matters stated in Paragraph 28 of the Third-Party Complaint.

10. With respect to Paragraph 29 of the Third-Party Complaint, TRMI-H admits that in or about 1950, a predecessor of GRMC acquired ownership and began operating the Newark Terminal.

11. With respect to Paragraph 30 of the Third-Party Complaint, TRMI-H admits that in January 1984, Texaco Inc. acquired Getty Oil Company and thereafter changed the name of GRMC to TRMI.

12. TRMI-H admits that in January 1985, Texaco divested certain Getty assets, including the Newark Terminal. Except as so admitted, TRMI-H is without sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 31 and therefore denies the same.

13. TRMI-H is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 32 of the Third-Party Complaint and therefore denies the same.

14. TRMI-H admits the allegations of Paragraph 33 of the Third-Party Complaint.

15. With respect to Paragraph 34 of the Third-Party Complaint, TRMI-H denies that the Newark Terminal has had an extensive history of spills and releases of hazardous substances during its period of ownership.

16. Except to admit to a minor release of diesel into the Lower Passaic River in or about 1982, which release was contained and remediated to the satisfaction of the relevant regulatory agencies, TRMI-H denies the allegations of Paragraph 35 of the Third-Party Complaint.

17. TRMI-H denies that chlorobenzene and hexachlorobenzene are site-related constituents; neither have been detected in soils at the Site and neither compound, nor any other substance detected at the Newark Terminal, are commonly associated with dioxin. As such, TRMI-H denies the allegations of Paragraph 36 of the Third-Party Complaint.

18. TRMI-H admits that certain substances have been detected in the soil at the Newark Terminal but denies that all of the substances listed in Paragraph 37 have been found at the Terminal or are properly characterized as hazardous substances. Except as so admitted, TRMI-H denies the allegations of Paragraph 37 of the Third-Party Complaint.

19. TRMI-H admits that certain substances have been detected in groundwater at the Newark Terminal, but denies that all of the substances listed in Paragraph 38 have been found at the Terminal or are properly characterized as hazardous substances. Except as so admitted TRMI-H denies the allegations of Paragraph 38 of the Third-Party Complaint.

20. TRMI-H is without knowledge or information sufficient to form a belief as to the truth of the matters stated in Paragraph 39 of the Third-Party Complaint and therefore denies the same.

21. With respect to Paragraph 40 of the Third-Party Complaint, TRMI-H admits that in or about September 2003, the New Jersey Department of Environmental Protection ("NJDEP") issued the 2003 Directive to numerous parties, including affiliates of TRMI-H. TRMI-H refers to the Directive for specificity as to its content. TRMI-H denies the allegations of the Directive i.e., that it is a person "in any way responsible" for the discharge of hazardous substances or that those substances have impacted or otherwise damaged the River.

22. TRMI-H denies the allegations of Paragraph 41 of the Third-Party Complaint.

23. The allegations in Paragraphs 42 through 120 relate to other parties, and as such, no response is required pursuant to CMO V.

AS TO FIRST COUNT

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

24. With respect to Paragraph 121 of the Third-Party Complaint, TRMI-H incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 120 herein.

25. To the extent the allegations of Paragraph 122 of the Third-Party Complaint are directed to TRMI-H, TRMI-H denies that it is a discharger and/or "a person in any way responsible" for the discharge of hazardous substances into the Newark Bay Complex as set forth in the Third-Party Complaint.

26. Paragraph 123 quotes from the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f(a)(2)(a) and as such, TRMI-H refers to the Act for specificity as to its terms.

27. To the event the allegations of Paragraphs 124, 125 and 126 are directed to TRMI-H; TRMI-H denies that it is liable to the Third-Party Plaintiffs for contribution.

AS TO SECOND COUNT

Statutory Contribution

28. With respect to Paragraph 127 of the Third-Party Complaint, TRMI-H incorporates by reference as if fully set forth herein its responses and denials as asserted in Paragraphs 1 through 126 herein.

29. To the event the allegations of Paragraph 128 are directed to TRMI-H, TRMI-H denies that it is liable to Third-Party Plaintiffs for contribution.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

31. Third-Party Defendant 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").

THIRD AFFIRMATIVE DEFENSE

32. 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

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

FIFTH AFFIRMATIVE DEFENSE

34. Third-Party Plaintiffs have no right of contribution against Third-Party Defendant under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

37. 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.

NINTH AFFIRMATIVE DEFENSE

38. 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.

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

41. At common law, Third-Party Defendant 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. Third-Party

Defendant 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 Third-Party Defendant directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

THIRTEENTH AFFIRMATIVE DEFENSE

42. 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.

FOURTEENTH AFFIRMATIVE DEFENSE

43. 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.

FIFTEENTH AFFIRMATIVE DEFENSE

44. At all relevant times, Third-Party Defendant 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.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

46. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Third-Party Defendant.

EIGHTEENTH AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs' claims against Third-Party Defendant 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.

NINETEENTH AFFIRMATIVE DEFENSE

48. 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.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

50. 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-SECOND AFFIRMATIVE DEFENSE

51. 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-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

54. 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.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

55. 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.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

56. 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.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

57. 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.

TWENTY-NINTH AFFIRMATIVE DEFENSE

58. 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 Defendant, 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.

THIRTIETH AFFIRMATIVE DEFENSE

59. Although Third-Party Defendant denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Third-Party Defendant is 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-FIRST AFFIRMATIVE DEFENSE

60. 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-SECOND AFFIRMATIVE DEFENSE

61. 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.

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

65. 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.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

66. 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.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

67. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) 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.

THIRTY-NINTH AFFIRMATIVE DEFENSE

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

FORTIETH AFFIRMATIVE DEFENSE

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

FORTY-FIRST AFFIRMATIVE DEFENSE

70. Third-Party Plaintiffs’ claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to a “taking” of Third-Party Defendant’s property in violation of its 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.

FORTY-SECOND AFFIRMATIVE DEFENSE

71. 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 Defendant’s 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

Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FORTY-THIRD AFFIRMATIVE DEFENSE

72. To the extent Third-Party Defendant is acting or has 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 Defendant, 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.

FORTY-FOURTH AFFIRMATIVE DEFENSE

73. Without admitting liability, Third-Party Defendant alleges that if it is 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.

FORTY-FIFTH AFFIRMATIVE DEFENSE

74. Third-Party Defendant 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 Third-Party Defendant.

FORTY SIXTH AFFIRMATIVE DEFENSE

75. Third-Party Defendant reserves 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

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

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

77. 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 of 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 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 Myers has filed with the Special Master, a list of over 1,000 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 parties or others not yet identified, should be joined in this case.

RULE 4:6 CERTIFICATION

78. The undersigned hereby certifies that this Answer to the Complaint is being served within the time permitted by Case Management Order V.

DESIGNATION OF TRIAL COUNSEL

79. In accordance with Rule 4:25-4 you are hereby notified that Louis M. DeStefano is hereby designated as trial counsel.

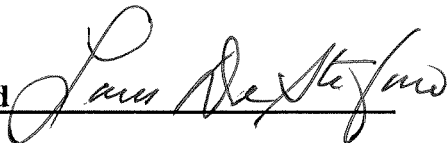
WHEREFORE, Third-Party Defendant TRMI-H respectfully requests that the Court enter an Order dismissing the Third-Party Complaint "C" with prejudice, and awarding costs, attorney fees and any other relief the Court deems just and proper.

Dated: October 14, 2009

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, LLP
Attorney for Third-Party Defendant(s)
TRMI-H LLC
550 Broad Street, Suite 810
Newark, New Jersey 07102
Tel: (973) 273-9800
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Signed

A handwritten signature in dark ink, appearing to read "Louis M. DeStefano", written over a horizontal line.

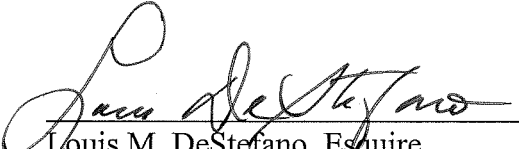
CERTIFICATE OF SERVICE

I, Louis M. DeStefano, an attorney at law of the State of New Jersey, do hereby state upon my oath as follows:

1. I am a partner in the law firm of Buchanan Ingersoll & Rooney, LLP, 550 Broad Street, Suite 810, Newark, New Jersey 07102, which represents Third-Party Defendant TRMI-H LLC in the above-captioned matter.

2. I hereby certify that TRMI-H LLC's Answer to Third-Party Complaint "C" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. was served upon the Clerk of Court, Superior Court of New Jersey, Essex County, 50 W. Market Street, Newark, New Jersey 07102, via overnight dated October 14, 2009.

3. I hereby certify that TRMI-H LLC's Answer to Third-Party Complaint "C" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. was served electronically on October 14, 2009 on all parties which have consented to service by posting on the following website, <http://njdepvocc.sfile.com>. All other Counsel of Record were served on October 14, 2009 via first class, regular mail.


Louis M. DeStefano, Esquire

Dated: October 14, 2009