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Attorney for Third-Party Defendant,
Township of West Orange

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

Plaintiffs,

vs.

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

Defendants,

and

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

BAYONNE MUNICIPAL UTILITIES
AUTHORITY, . . . TOWNSHIP OF WEST
ORANGE, et al.,

Third-Party Defendants.

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

DOCKET NO. ESX-L-9868-05

Civil Action

**ANSWER OF THE TOWNSHIP OF
WEST ORANGE TO DEFENDANTS
MAXUS ENERGY CORPORATION'S
AND TIERRA SOLUTIONS, INC.'S
THIRD PARTY COMPLAINT "A"
(Against Public Entities), SEPARATE
DEFENSES AND JURY DEMAND**

Third Party Defendant, Township of West Orange ("West Orange"), a municipal

corporation of the State of New Jersey with its principal business address at West Orange Town Hall, 66 Main Street, West Orange, New Jersey 07052, answering the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc., says:

Other than to admit that West Orange is a public body and municipality of the State of New Jersey, with its principal place of business at Town Hall, 66 Main Street, West Orange, New Jersey (paragraph no. 135 of the Third Party Complaint "A" is admitted except that the principal place of business of the Township of West Orange is located in West Orange, not South Orange), that West Orange is a member of the Joint Meeting of Essex and Union Counties (paragraph no. 523 of the Third Party Complaint "A" is admitted) and a contributing municipality to the Passaic Valley Sewage Commission through the City of Orange Township (paragraph no. 762 of the Third Party Complaint "A" is admitted), West Orange denies, or denies knowledge sufficient to form a belief as to the truth of all other allegations contained in the Third Party Complaint, almost all of which allegations appear to be against other entities or persons over which West Orange has no control and for which West Orange has no responsibility.

WHEREFORE, Third Party Defendant Township of West Orange demands judgment as follows:

1. Dismissing Third Party Plaintiffs' Complaint;
2. Awarding attorney's fees and costs of suit;
3. For such other and further relief as the Court may deem just and equitable.

SEPARATE DEFENSES

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

2. The Third Party Plaintiffs lack standing to maintain the causes of action set forth in their Third Party Complaint "A".
3. Any wrongful conduct alleged in the Third Party Complaint "A" resulted from and was proximately caused by the conduct of persons other than the Township of West Orange, or by the conduct of persons over whom the Township of West Orange had no control, or by the superseding intervention, or by the superseding intervention of others acting illegally and outside the control of the Township of West Orange.
4. The claims asserted in the Third Party Complaint "A" are barred by the applicable statutes of limitation.
5. Plaintiffs' and Third Party Plaintiffs' costs incurred or to be incurred at the site are unreasonable, duplicative, not cost effective, and not consistent with the National Contingency Plan.
6. To the extent the Township of West Orange is found liable in this case, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harm suffered.
7. The Township has at all times acted in good faith and complied with and not violated any laws, regulations, standards, or governmental approvals relevant to the facts and circumstances underlying this cause of action.
8. Plaintiffs and Defendants/Third Party Plaintiffs failed to provide notice to the Township of West Orange that it was considered a potentially responsible party resulting in deprivation of the Township's substantive and procedural due process rights under the Federal Constitution.

9. Plaintiffs and Defendants/Third Party Plaintiffs Complaint and Third Party Complaint respectively include claims for future costs not recoverable under the Spill Act and therefore such claims are premature and not ripe for adjudication.
10. Third Party Complaint "A" constitutes an unauthorized and unconstitutional retroactive application of the Spill Act and other applicable case law.
11. The Township of West Orange had no duty of care with respect to Plaintiffs/Third Party Defendants and, even if it had such a duty, the duty was not breached by West Orange.
12. The Township of West Orange is not a responsible party under the Spill Act and is not liable under the Spill Act because any release or threat of release of any hazardous substance was an act or omission of a third party other than an employee or agent of the Township of West Orange, the Township at all times exercised due care with respect to any alleged hazardous substance and took proper precautions against foreseeable acts or omissions of any third party and the consequences which would foreseeably result.
13. Plaintiffs' and Defendants/Third Party Plaintiffs's claims for relief are barred by the doctrines of waiver, estoppel and laches.
14. In the event Plaintiffs' and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, then any recovery by said parties should be reduced in the proportion that such parties' acts or omissions bear to the facts or omissions that cause the alleged injuries or damages.
15. The Township of West Orange cannot be held liable under the Spill Act or the Comprehensive Environmental Response Compensation and Liability Act for adopting regulations and/or ordinances authorizing waste pick-up in its municipality.

16. Defendants/Third-Party Plaintiffs' claims for indemnification are barred because any liability of the Township of West Orange would be secondary, indirect, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Third Party Plaintiffs are direct, active and primary.
17. The Township of West Orange hereby asserts and adopts all other defenses which have been or will be asserted at any time by any other party in this action to the extent said defenses are applicable to West Orange and not inconsistent with the defenses asserted by it.
18. The Township of West Orange reserves the right to assert additional defenses as same may be discovered during the course of discovery and litigation of this case.

JURY DEMAND

The Township of West Orange hereby demands a trial by jury in this matter.

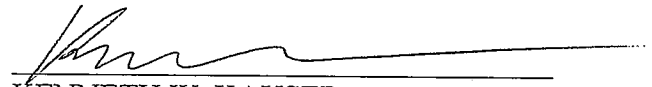
DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, Kenneth W. Kayser, Esq., is designated trial counsel in this case on behalf of the Township of West Orange.

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified that the specific matter in controversy is not, to my knowledge, the subject of any other action pending in any court, nor of any pending arbitration proceeding. There are no other actions or arbitration proceedings contemplated at this time. There are no other parties known who should be joined in this action. I hereby certify that the foregoing

statements made by me are true and I am aware that if any of such statements are knowingly false, I am subject to punishment.



KENNETH W. KAYSER
Attorney for Third Party Defendant
Township of West Orange

Dated: October 8, 2009

CERTIFICATION OF SERVICE

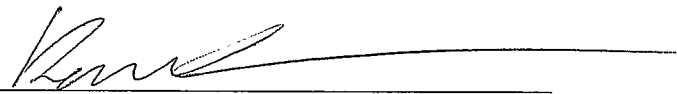
I certify that the original and one copy of the within Answer and Separate Defenses to Third Party Complaint "A" (Against Public Entities), brought by Defendants Maxus Energy Corporation and Tierra Solutions, Inc., is being delivered for filing to the Clerk of the Superior Court of New Jersey, Law Division, Essex County, at the Veterans Courthouse, 50 W. Market Street, Newark, NJ 07102, within the time provided by Case Management Order V, paragraph 9(c)(ii), dated April 16, 2009, and a copy of same has been served via regular mail on this date to Defendants/Third Party Plaintiffs' attorneys as follows:

William L. Warren, Esq.
Drinker Biddle & Reath, LLP
105 College Road East, Suite 300
Princeton, NJ 08542-0627

Thomas E. Starnes, Esq.
Andrews Kurth, LLP
1350 I Street NW - Suite 1100
Washington, DC 20005

I further certify that a copy of the Answer and Separate Defenses has been forwarded for delivery on this date to the Hon. Sebastian P. Lombardi, J.S.C., Superior Court of New Jersey, Essex County Historic Courthouse, Chambers 109, 470 Martin Luther King, Jr., Blvd., Newark, NJ 07102.

I further certify that a copy of the Answer and Separate Defenses has been posted to the electronic platform for service as provided by Case Management Order V.


KENNETH W. KAYSER
Attorney for Third Party Defendant
Township of West Orange

Dated: October 9, 2009