

1 CITY OF CLIFTON LAW DEPARTMENT
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City of Clifton

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

Plaintiffs,

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA
SOLUTIONS, INC., MAXUS
ENERGY CORPORATION,
REPSOL YFP HOLDING, INC.,
AND CLH HOLDINGS,

Defendants.

MAXUS ENERGY CORPORATION
AND TIERRA SOLUTIONS, INC.

Third-Party Plaintiffs,

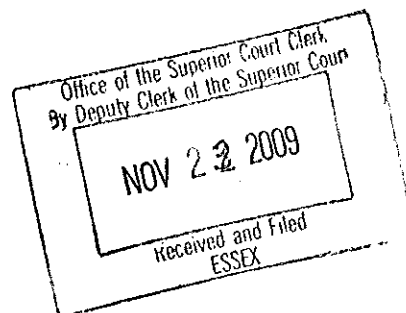
v.

BAYONNE MUNICIPAL
UTILITIES AUTHORITY,
BOROUGH OF CARTERET,
BOROUGH OF EAST NEWARK,
BOROUGH OF EAST RUTHERFORD,
BOROUGH OF ELMWOOD PARK,

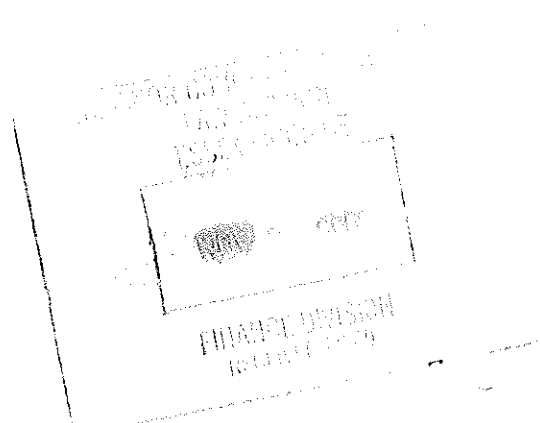
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY

DOCKET NO.: ESX-9868-05

DEFENDANT CITY OF CLIFTON'S
ANSWER TO THIRD-PARTY
COMPLAINT "A", AFFIRMATIVE
DEFENSES AND DEMAND FOR TRIAL
BY JURY



BOROUGH OF FAIR LAWN, :
 BOROUGH OF FANWOOD, :
 BOROUGH OF FRANKLIN LAKES, :
 BOROUGH OF GARWOOD, :
 BOROUGH OF GLEN RIDGE, :
 BOROUGH OF GLEN ROCK, :
 BOROUGH OF HALEDON, :
 BOROUGH OF HASBROUCK :
 HEIGHTS, :
 BOROUGH OF HAWTHORNE, :
 BOROUGH OF KENILWORTH, :
 BOROUGH OF LODI, :
 BOROUGH OF MOUNTAINSIDE, :
 BOROUGH OF NEW PROVIDENCE, :
 BOROUGH OF NORTH ARLINGTON, :
 BOROUGH OF NORTH CALDWELL, :
 BOROUGH OF NORTH HALEDON, :
 BOROUGH OF PROSPECT PARK, :
 BOROUGH OF ROSELLE PARK, :
 BOROUGH OF ROSELLE, :
 BOROUGH OF RUTHERFORD, :
 BOROUGH OF TOTOWA, :
 BOROUGH OF WALLINGTON, :
 BOROUGH OF WEST PATERSON, :
 BOROUGH OF WOOD-RIDGE, :
 CITY OF BAYONNE, :
 CITY OF CLIFTON, :
 CITY OF EAST ORANGE, :
 CITY OF ELIZABETH, :
 CITY OF GARFIELD, :
 CITY OF HACKENSACK, :
 CITY OF JERSEY CITY, :
 CITY OF LINDEN, :
 CITY OF NEWARK, :
 CITY OF ORANGE, :
 CITY OF PASSAIC, :
 CITY OF PATERSON, :
 CITY OF RAHWAY, :
 CITY OF SUMMIT, :
 CITY OF UNION CITY, :
 HOUSING AUTHORITY OF THE :
 CITY OF NEWARK, :
 JERSEY CITY MUNICIPAL :
 UTILITIES AUTHORITY, :



JOINT MEETING OF ESSEX :
 AND UNION COUNTIES, :
 LINDEN ROSELLE SEWERAGE :
 AUTHORITY, :
 PASSAIC VALLEY SEWERAGE :
 COMMISSIONERS, :
 PORT AUTHORITY OF NEW YORK :
 AND NEW JERSEY, :
 RAHWAY VALLEY SEWERAGE :
 AUTHORITY, :
 THE NEW JERSEY DEPARTMENT :
 OF AGRICULTURE, :
 THE NEW JERSEY DEPARTMENT :
 OF TRANSPORTATION, :
 THE STATE OF NEW JERSEY, :
 TOWN OF BELLEVILLE, :
 TOWN OF HARRISON, :
 TOWN OF KEARNY, :
 TOWN OF NUTLEY, :
 TOWN OF WESTFIELD, :
 TOWN OF WOODBRIDGE, :
 TOWNSHIP OF BERKELEY :
 HEIGHTS, :
 TOWNSHIP OF BLOOMFIELD, :
 TOWNSHIP OF CEDAR GROVE, :
 TOWNSHIP OF CLARK, :
 TOWNSHIP OF CRANFORD, :
 TOWNSHIP OF HILLSIDE, :
 TOWNSHIP OF IRVINGTON, :
 TOWNSHIP OF LITTLE FALLS, :
 TOWNSHIP OF LIVINGSTON, :
 TOWNSHIP OF LYNDHURST, :
 TOWNSHIP OF MAPLEWOOD, :
 TOWNSHIP OF MILLBURN, :
 TOWNSHIP OF MONTCLAIR, :
 TOWNSHIP OF ORANGE, :
 TOWNSHIP OF SADDLE BROOK, :
 TOWNSHIP OF SCOTCH PLAINS, :
 TOWNSHIP OF SOUTH :
 HACKENSACK, :
 TOWNSHIP OF SOUTH ORANGE :
 VILLAGE, :
 TOWNSHIP OF SPRINGFIELD, :
 TOWNSHIP OF UNION, :
 TOWNSHIP OF WEST ORANGE, :
 TOWNSHIP OF WINFIELD PARK, :

TOWNSHIP OF WYCKOFF, and :
VILLAGE OF RIDGEWOOD. :

Third-Party Defendants :
:

Third-Party Defendant, the CITY OF CLIFTON, a Municipal Corporation of the State of New Jersey, located at 900 Clifton Avenue, Clifton, New Jersey (hereinafter "City of Clifton") by way of its Answer to the Third-Party Complaint of Third-Party Plaintiffs/Defendants, Maxus Energy Corporation and Tierra Solutions, Inc. (hereinafter "Third-Party Plaintiffs") states as follows:

PROCEDURAL BACKGROUND

1. The allegations contained in paragraphs 1 through 14 of the Third-Party Complaint relate to allegations made by the original plaintiffs and defendants, which do not require an answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 1 through 14 and leaves the parties to their proofs.

ADDITIONAL HISTORICAL BACKGROUND

2. The allegations contained in paragraphs 15 through 51 of the Third-Party Complaint relate to allegations made in the original defendants' counterclaim and do not relate to or require an answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 15 through 51 and leaves the parties to their proofs.

THE PARTIES

Third-Party Plaintiffs

3. Third-Party Defendant City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 52 through 54 of the Third-Party Complaint and leaves Third-Party Plaintiffs to their proofs.

Third-Party Defendants

4. The allegations contained in paragraphs 55 through 84 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations and leaves Third-Party Plaintiffs to their proofs.

5. Third-Party Defendant City of Clifton admits the allegations contained in paragraph 85 of the Third-Party Complaint.

6. The allegations in paragraphs 86 through 138 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraphs 86 through 138, and leaves Third-Party Plaintiffs to their proofs.

7. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 139 of the Third-Party Complaint to the extent they refer to the City of Clifton.

DEFINITIONS

8. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraphs 140 through 164 of the Third-Party Complaint inasmuch as these are not factual allegations, and leaves Third-Party Plaintiffs to their proofs.

FACTUAL ALLEGATIONS

WASTEWATER DISPOSAL ENTITIES

Borough of Carteret

9. The allegations in paragraphs 165 through 761 of the Third-Party Complaint relate to other Third-Party Defendants and therefore, do not require an answer from Third-Party Defendant City of Clifton. To the extent an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 165 through 761, and leaves the Third-Party Plaintiffs to their proofs.

10. Except to admit that it is a member municipality in the Passaic Valley Sewerage Commission, Third-Party Defendant City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the remaining allegations contained in paragraphs 762, and leaves the Third-Party Plaintiffs to their proofs.

11. The allegations in paragraphs 763 through 912 of the Third-Party Complaint relate to other Third-Party Defendants and therefore, do not require an answer from Third-Party Defendant City of Clifton. To the extent an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 763 through 912, and leaves the Third-Party Plaintiffs to their proofs.

OWNERS AND OPERATORS OF SUBMERGED WITHIN THE NEWARK BAY COMPLEX

The State of New Jersey

12. The allegations in paragraphs 913 through 918 of the Third-Party Complaint relate to other Third-Party Defendants and therefore, do not require an answer from Third-Party Defendant

City of Clifton. To the extent an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 913 through 918, and leaves the Third-Party Plaintiffs to their proofs.

The Port Authority and the City of Newark

13. The allegations contained in paragraphs 919 through 931 of the Third-Party Complaint relates to other Third-Party Defendants and therefore, do not require an answer. To the extent that an answer is required, Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations in paragraphs 919 through 931 and leaves the Third-Party Plaintiffs to their proofs.

**THE STATE OF NEW JERSEY AND NEW JERSEY DEPARTMENT OF
AGRICULTURE MOSQUITO AND PEST CONTROL PRACTICES**

14. The allegations contained in paragraphs 932 through 947 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 932 through 947 and leaves Third-Party Plaintiffs to their proofs.

COMMERCIAL SITES

80 Lister Avenue

15. The allegations contained in paragraphs 948 through 952 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs

948 through 952 and leaves Third-Party Plaintiffs to their proofs.

Newark Airport Site

15. The allegations contained in paragraphs 953 through 983 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 953 through 983 and leaves Third-Party Plaintiffs to their proofs.

Newark Seaport Site

16. The allegations contained in paragraphs 984 through 1001 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 948 through 1001 and leaves Third-Party Plaintiffs to their proofs.

Revere Site

17. The allegations contained in paragraphs 1002 through 1012 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1002 through 1012 and leaves Third-Party Plaintiffs to their proofs.

Housing Authority of the City of Newark McCarter Highway Site

18. The allegations contained in paragraphs 1013 through 1016 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party

Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 948 through 952 and leaves Third-Party Plaintiffs to their proofs.

American Ref-Fuel Site

19. The allegations contained in paragraphs 1017 through 1031 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1017 through 1031 and leaves Third-Party Plaintiffs to their proofs.

NJDOT Kearny Oil Lake Site

20. The allegations contained in paragraphs 1032 through 1066 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1032 through 1066 and leaves Third-Party Plaintiffs to their proofs.

LANDFILL SITES

The Keegan Landfill Site

21. The allegations contained in paragraphs 1067 through 1085 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs

1067 through 1085 and leaves Third-Party Plaintiffs to their proofs.

The MSLA 1-D Landfill Site

22. The allegations contained in paragraphs 1086 through 1122 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1086 through 1122 and leaves Third-Party Plaintiffs to their proofs.

Avenue P Landfill Site

23. The allegations contained in paragraphs 1123 through 1147 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1123 through 1147 and leaves Third-Party Plaintiffs to their proofs.

FIRST COUNT

24. In response to paragraph 1148 of the Third-Party Complaint, Third-Party Defendant City of Clifton restates its answers to paragraphs 1 through 1147 and incorporates them as if more fully set forth herein.

25. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1149 of the Third-Party Complaint.

26. The allegations contained in paragraphs 1150 through 1155 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has

insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1150 through 1155 and leaves Third-Party Plaintiffs to their proofs.

27. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1156 of the Third-Party Complaint as it applies to it and has insufficient information to form a belief as to the truth or accuracy of the allegations as they apply to other Third-Party Defendants, and leaves Third-Party Plaintiffs to their proofs.

28. Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1157 of the Third-Party Complaint.

29. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1158 of the Third-Party Complaint.

WHEREFORE, Third-Party Defendant City of Clifton demands judgment as against Third-Party Plaintiffs as follows:

- a) Dismissal of the Third-Party Complaint with prejudice in its entirety; and
- b) Awarding Third-Party Defendant City of Clifton attorneys' fees, interest and costs; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

SECOND COUNT

30. In response to paragraph 1159 of the Third-Party Complaint, Third-Party Defendant City of Clifton restates its answers to paragraphs 1 through 1158 of the Third-Party Complaint and incorporates them as if fully set forth at length herein.

31. Third-Party Defendant City of Clifton denies the allegations contained in paragraph

1160 of the Third-Party Complaint.

WHEREFORE, Third-Party Defendant City of Clifton demands judgment against Third-Party Plaintiffs as follows:

- a) Dismissal of the Third-Party Complaint with prejudice in its entirety; and
- b) Awarding Third-Party Defendant City of Clifton attorneys' fees, interest and costs; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

THIRD COUNT

32. In response to paragraph 1161 of the Third-Party Complaint, Third-Party Defendant City of Clifton restates its answers to paragraph 1 through 1160 and incorporates them as if fully set forth at length herein.

33. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1162 of the Third-Party Complaint.

34. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraphs 1163 and 1164 of the Third-Party Complaint, inasmuch as they are not factual allegations, but purport to quote N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 and Third-Party Defendant City of Clifton respectfully refers all questions of law to the Court.

35. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1165 of the Third-Party Complaint.

36. The allegations contained in paragraph 1166 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to

form a belief as to the truth or accuracy of these allegations in paragraphs 1166 and leaves Third-Party Plaintiffs to their proofs.

37. The allegations contained in paragraphs 1167 through 1176 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraphs 1167 through 1176 and leaves Third-Party Plaintiffs to their proofs.

38. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1177 of the Third-Party Complaint.

39. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraph 1178 of the Third-Party Complaint, inasmuch as they are not factual allegations, but purport to quote N.J.S.A. 58:14-33 and Third-Party Defendant City of Clifton respectfully refers all questions of law to the Court.

40. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1179 of the Third-Party Complaint.

41. Except to deny that it placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay, Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1180 of the Third-Party Complaint.

42. Except to deny that it placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great

Falls and the mouth of the Passaic River at Newark Bay, Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1181 of the Third-Party Complaint.

43. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraph 1182 of the Third-Party Complaint, inasmuch as they are not factual allegations, but purport to quote N.J.S.A. 2A:35A-4 and Third-Party Defendant City of Clifton respectfully refers all questions of law to the Court.

44. The allegations contained in paragraph 1183 of the Third-Party Complaint relate to other Third-Party Defendants, and therefore require no answer from Third-Party Defendant City of Clifton. To the extent that an answer is required, the City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of these allegations in paragraph 1183 and leaves Third-Party Plaintiffs to their proofs.

45. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraphs 1184 and 1185 of the Third-Party Complaint, inasmuch as they are not factual allegations but legal contentions concerning Third-Party Defendants with respect to N.J.S.A. 58:14-7, N.J.S.A. 58:14-8 and N.J.S.A. 2A:35A-4.a, and Third-Party Defendant City of Clifton respectfully refers all questions of law to the Court.

46. Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1186 of the Third-Party Complaint.

WHEREFORE, Third-Party Defendant City of Clifton demands judgment against Third-Party Plaintiffs as follows:

- a) Dismissal of the Third-Party Complaint with prejudice in its entirety; and
- b) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

FOURTH COUNT

47. In response to paragraph 1187 of the Third-Party Complaint, Third-Party Defendant City of Clifton restates its answers to paragraphs 1 through 1186 and incorporates them as if fully set forth herein.

48. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraph 1188 of the Third-Party Complaint, inasmuch as they are not factual allegations but legal contentions concerning Third-Party Defendants with respect to N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8, and Third-Party Defendant City of Clifton respectfully refers all questions of law to the Court.

49. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1189 of the Third-Party Complaint.

50. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1190 of the Third-Party Complaint.

51. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1191 of the Third-Party Complaint.

52. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1192 of the Third-Party Complaint.

53. Except to deny that it placed or discharged sewage, waste and other polluting matter

containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay, Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1193 of the Third-Party Complaint.

54. Except to deny that it placed or discharged sewage, waste and other polluting matter containing pathogens, solids and toxic pollutants into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay, Third-Party Defendant City of Clifton has insufficient information to form a belief as to the truth or accuracy of the allegations contained in paragraph 1194 of the Third-Party Complaint.

55. Third-Party Defendant City of Clifton denies the allegations contained in paragraph 1195 of the Third-Party Complaint.

WHEREFORE, Third-Party Defendant City of Clifton demands judgment against Third-Party Plaintiffs as follows:

- a) Dismissal of the Third-Party Complaint with prejudice in its entirety; and
- b) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case.

FIFTH COUNT

56. In response to paragraph 1196 of the Third-Party Complaint, Third-Party Defendant City of Clifton restates its answers to paragraphs 1 through 1195 of the Third-Party Complaint.

57. Third-Party Defendant City of Clifton neither admits nor denies the allegations contained in paragraph 1197 of the Third-Party Complaint inasmuch as they are not factual

allegations, but contentions of law referring to N.J.S.A. 58:10-23-11a, and Third-Party Defendant City of Clifton respectfully refers all questions of law to the Court.

58. The allegations contained in paragraphs 1198 through 1229 of the Third-Party Complaint relate to other third-party defendants and therefore, require no response. To the extent that an answer is required, Third-Party Defendant City of Clifton has insufficient knowledge to form a belief as to the truth or accuracy of the allegations contained in paragraphs 1198 through 1229 and leaves Third-Party Plaintiffs to their proofs.

WHEREFORE, Third-Party Defendant City of Clifton demands judgment against third-party plaintiffs as follows:

- a) Dismissal of the Third-Party Complaint with prejudice in its entirety; and
- b) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case; and
- c) For such other equitable relief as the Court may deem necessary, just and/or appropriate under the circumstances of this case

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by the doctrine of res judicata, collateral estoppel, waiver, laches and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Third-Party Defendant City of Clifton is immune from suit because it was acting at all times as a state governmental agency.

FIFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs lack standing to bring the instant action.

SIXTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by their failure to exhaust all administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred as the City of Clifton is not liable under the New Jersey Spill Act.

EIGHTH AFFIRMATIVE DEFENSE

The City of Clifton is not a "responsible party" under the New Jersey Spill Act.

NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by the federal doctrine of preemption and the applicable federal statutes.

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims must be reduced by their own culpable conduct as provided under the comparative negligence statute N.J.S.A. 2A:15-5.1.

TWELFTH AFFIRMATIVE DEFENSE

Any damages and/or injuries sustained by Third-Party Plaintiffs were caused by the negligence of other parties or persons over whom Third-Party Defendant City of Clifton has no control.

THIRTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred or in the alternative, the damages to which they are entitled must be reduced by the statutory defenses to which Third-Party Defendant City of Clifton is entitled under applicable New Jersey Law.

FOURTEENTH AFFIRMATIVE DEFENSE

The activities alleged against the City of Clifton do not amount to a discharge of hazardous substances under the New Jersey Spill Act. To the extent that it may be proven that the City of Clifton discharged any hazardous substances, The City of Clifton would not be liable because any such discharges would have been pursuant to federal and/or state permits.

FIFTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred to the extent they allege conduct occurring or damage incurred prior to the effective date of the New Jersey Spill Act.

SIXTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred, or in the alternative, the damages sought are subject to contribution and/or reduction or offset from other parties.

SEVENTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred as they are not ripe for adjudication under the New Jersey Spill Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred as any damages and/or injuries allegedly sustained were caused by negligence and/or the intentional acts of co-defendants or other third parties over whom the City of Clifton has no control.

NINETEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred as the City of Clifton is immune from liability pursuant to the New Jersey Tort Claims Act.

TWENTIETH AFFIRMATIVE DEFENSE

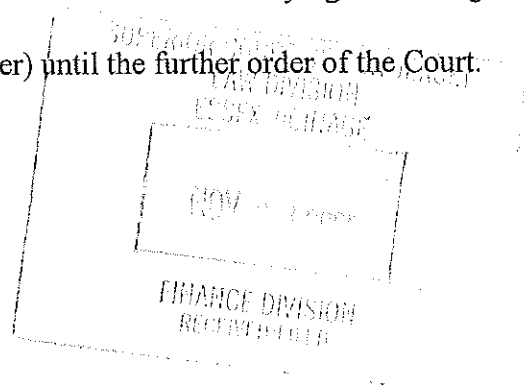
The City of Clifton adopts by reference all Affirmative Defenses asserted by all other parties to this action to the extent the defenses are applicable.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The City of Clifton reserves the right to Amend its Answer to assert any additional defenses that may be discovered during the course of this action.

**RESERVATION OF COUNTERCLAIMS,
CROSSCLAIMS AND FOURTH-PARTY CLAIMS**

Pursuant to the Case Management Order and subsequent directives of the Court, Third-Party Defendant City of Clifton is deemed to have reserved the right to assert any and all affirmative claims, crossclaims and counterclaims regarding other parties and potential parties as may be applicable under the law, and to have preserved said claims without waiver of any rights existing as of April 16, 2009 (the date of the Case Management Order) until the further order of the Court.



DEMAND FOR STATEMENT OF DAMAGES

Pursuant to R. 4:5-2, Third-Party Defendant City of Clifton demands that Third-Party Plaintiffs furnish the undersigned within five (5) days after service hereof with copies of each document referenced in the Third-Party Complaint.

DEMAND FOR DOCUMENTS

Pursuant to R. 4:18-2, Third-Party Defendant City of Clifton demands that Third-Party Plaintiffs furnish the undersigned within five (5) days after service hereof with copies of each document referenced in the Third-Party Complaint.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Matthew T. Priore, Esq., Municipal Attorney, City of Clifton is designated as trial counsel.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge, the subject matter of the within controversy is not the subject of any other action presently pending in any court or if a pending arbitration proceeding and that no such action or arbitration proceeding is contemplated by this Third-Party Defendant. I am not aware of any other party who is not presently joined or who should be joined in the above-captioned action at this time.

**CITY OF CLIFTON LAW DEPARTMENT
MATTHEW T. PRIORE, ESQ.
MUNICIPAL ATTORNEY
Attorneys for Third-Party Defendant City of Clifton**

Dated: 11/20/09

By: 
THOMAS M. EGAN
Assistant Municipal Attorney