

WILLIAM R. HOLZAPFEL
CITY ATTORNEY - CITY OF ELIZABETH
50 WINFIELD SCOTT PLAZA
ELIZABETH, NEW JERSEY 07201
wholzapfel@elizabethnj.org
dtravisano@elizabethnj.org
(908)820-4009
Attorney for Third-Party Defendant
City of Elizabeth

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,

-vs-

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

Defendants.

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

-vs-

BAYONNE MUNICIPAL UTILITIES
AUTHORITY,

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - ESSEX COUNTY
:
: DOCKET NO. ESX-L-9868-05 (PASR)

:
:
: CITY OF ELIZABETH'S
: ANSWER TO THIRD-PARTY
: COMPLAINT "A"
: and
: AFFIRMATIVE DEFENSES
: and
: DEMAND FOR JURY TRIAL

| | |
|----------------------------------|---|
| BOROUGH OF CARTERET, | : |
| BOROUGH OF EAST NEWARK, | : |
| BOROUGH OF EAST RUTHERFORD, | : |
| BOROUGH OF ELMWOOD PARK, | : |
| BOROUGH OF FAIR LAWN, | : |
| BOROUGH OF FANWOOD, | : |
| BOROUGH OF FRANKILIN 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, :
VILLAGE OF RIDGEWOOD, :

Third-Party Defendants. :
:

Third-Party Defendant, City of Elizabeth ("City), with its principal place of business located at City Hall, 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201, by way of Answer to Defendants/Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (hereinafter known as "Third-Party Plaintiffs"), hereby says:

1. Other than to admit that the City of Elizabeth is a public body and a municipality of the State of New Jersey, with its principal place of business at 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201 and is a customer of the Joint Meeting of Essex and Union Counties, all other allegations against the City of Elizabeth are denied.

SEPARATE AFFIRMATIVE DEFENSES

1. The Third Party Complaint fails to state a claim and/or cause of action upon which relief may be granted.

2. The Third Party Defendant is free of any and all negligence.

3. Third Party Plaintiff's claims are barred by the applicable statute of limitations.

4. Any injuries and/or damages allegedly sustained were caused by the joint or several negligence and/or intentional acts of co-defendants and third parties over whom this defendant has no control.

5. This third party defendant is insulated from liability by the provisions of the New Jersey Tort Claims act. N.J.S.A. 59:1-1, et seq.

6. The court lacks jurisdiction over the answering defendants.

7. Third Party Plaintiff's complaint is barred by the doctrines of res judicata, collateral estoppel, waiver, unclean hands and laches.

8. The damages claimed by the third party plaintiffs were caused by an Act of God and are therefore barred.

9. Third Party Plaintiff's claims are barred because they failed to exhaust all administrative remedies.

10. Third party Plaintiff's claims are barred, or in the alternative, the damages to which they are entitled must be reduced under the doctrine of comparative negligence. N.J.S.A. 2A:15-5.1.

11. Third Party Plaintiff's claims are barred to the extent they seek relief for conduct occurring or damaged incurred prior to the effective date of the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq.

12. To the extent that this action is brought pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., the City is not liable because any release or threat of release of any hazardous substance was an

omission of a third party other than an employee or agent of the City of Elizabeth. The City of Elizabeth exercised due care with respect to any such alleged hazardous substance, in light of all relevant facts and circumstances. The City of Elizabeth took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

13. The City of Elizabeth is not liable under the Spill Act.

14. Runoff from the City of Elizabeth's combined sewer system, and sewage in general, are excepted under the Spill Act.

15. The City of Elizabeth's alleged actions or omissions, if any, or the alleged actions or omission of others, if any, which are the subject of this action are consistent and compliant with all applicable federal and state permits and plans.

16. Although the City of Elizabeth denies that it is liable for the contamination described in its complaint, in the event the City of Elizabeth 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 not joined as defendant in this action that would be liable to the State.

17. The activities alleged against the City of Elizabeth do not amount to a discharge of hazardous substances under the Spill Act or any other local, state or federal law, rule or regulation.

18. The City of Elizabeth is not a "responsible party" under the Spill Act.

19. The City of Elizabeth exercised reasonable care under all circumstances herein.

20. Third-Party Plaintiffs lack standing to bring this claim against the City of Elizabeth.

21. Third Party Plaintiffs failed to satisfy their burden of demonstrating a connection or nexus between the alleged contamination at the sites in question and the City of Elizabeth.

22. The City of Elizabeth hereby adopts the Separate Defenses heretofore and hereinafter asserted by all co-defendants to the extent such defenses are not otherwise set forth herein.

23. The City of Elizabeth reserves the right to amend this Answer to assert any additional defense it may have which further investigation reveals to be appropriate.

WHEREFORE, Third Party Defendant, City of Elizabeth,
demands judgment as follows:

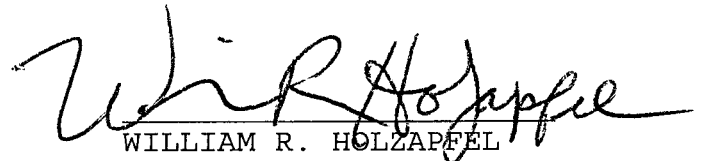
1. Dismissal of the Third Party Complaint;
 2. Attorneys' fees, interest and costs of suit; and
- Other such relief as the Court may deem just and equitable.

JURY DEMAND

The City of Elizabeth hereby demands trial by jury.

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, William R. Holzapfel shall
be designated trial counsel.

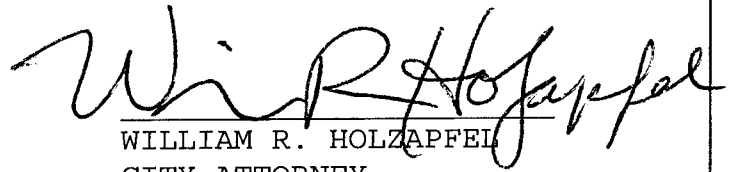
A handwritten signature in dark ink, appearing to read 'W. R. Holzapfel', is written over the printed name.

WILLIAM R. HOLZAPFEL
CITY ATTORNEY
Attorney for Third Party
Defendant City of Elizabeth

Dated: October 15, 2009

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the within matter is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. This Certification is submitted pursuant to the provisions of Rule 4:5-1.

A handwritten signature in black ink, appearing to read "W. R. Holzappel", is written over a horizontal line.

WILLIAM R. HOLZAPFEL
CITY ATTORNEY
Attorney for Third Party
Defendant City of Elizabeth

Dated: October 15, 2009

CERTIFICATION OF FILING AND SERVICE

I hereby certify that an original and one (1) copy of the within pleading has been filed with the

Clerk, Civil Division
Essex County Courthouse
50 West Market Street
Newark, New Jersey 07102.

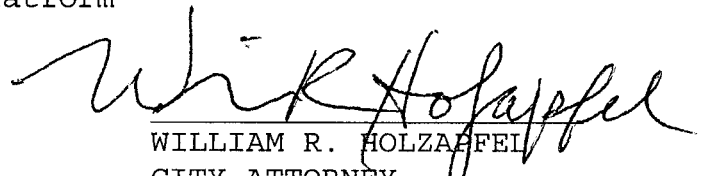
I further certify that one copy of this pleading has been sent via regular mail to

Hon. Sebastian P. Lombardi, J.S.C.
Superior Court of New Jersey
Essex County Historic Courthouse
470 MLK, Jr. Boulevard
Newark, New Jersey 07102;

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

Michelle Blythe, Esq.
ANDREWS KURTH LLP
10001 Woodloch Forest Dr.
Suite 200
The Woodlands, TX 77380

I further certify that one copy of this pleading has been posted on the electronic platform


WILLIAM R. HOLZAPFEL
CITY ATTORNEY
Attorney for Third Party
Defendant City of Elizabeth

Dated: October 15, 2009