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City of Linden

-----X	:	
	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION,	:	
et. al.,	:	LAW DIVISION - ESSEX COUNTY
	:	
Plaintiffs,	:	
vs.	:	DOCKET NO. ESX-L-9868-05 (PASR)
	:	
OCCIDENTAL CHEMICAL	:	
CORPORATION, et. al.	:	
	:	
Defendants.	:	ANSWER TO THIRD PARTY
	:	COMPLAINT "A" OF DEFENDANTS
MAXUS ENERGY CORPORATION	:	MAXUS ENERGY CORPORATION AND
and TIERRA SOLUTIONS, INC.,	:	TIERRA SOLUTIONS, INC.
	:	(Against Public Entities) AND
	:	SEPARATE DEFENSES
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
CITY OF LINDEN, et. al.,	:	
	:	
Third-Party Defendants,	:	
-----X	:	

Third-party Defendant, City of Linden ("Linden"), having its principal place of business at 301 North Wood Avenue, Linden, County of Union, New Jersey, 07036, by way of Answer to

Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. (Hereinafter referred to as "Third Party Plaintiffs"), hereby says:

1. The allegations contained in paragraphs 1 through 14 relate to declarations and allegations made by the original plaintiffs and defendants which do not require an answer from Linden. To the extent that any answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1 through 14 and leaves both original plaintiffs and original defendants to their proofs.

2. The allegations contained in paragraph 15 through 51 relate to allegations made in original defendants' counterclaim which document speaks for itself and also relate to other third party defendants and multiple organizations which do not require an answer from Linden. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 15 through 51 and leaves original defendants to their proofs.

3. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 52 through 54 and leaves Third Party Plaintiffs to their proofs.

4. The allegations contained in paragraphs 55 through 90 relate to other third party defendants which require no answer from Linden.

5. Linden admits the allegations set forth in paragraph 91.

6. The allegations contained in paragraphs 92 through 139 relate to other third party defendants which require no answer from Linden.

7. The matters contained in paragraphs 140 through 164 are not factual allegations, and thus no response is required. To the extent that the matters contained in paragraphs 140 through

164 are deemed factual allegations, they are denied.

8. The allegations contained in paragraphs 165 to 420 relate to other third party defendants which do not require an answer. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 165 to 420 and leaves Third Party Plaintiffs to their proofs.

9. Linden admits the allegations set forth in paragraph 421.

10. Linden admits the allegations set forth in paragraph 422.

11. Linden admits the allegations set forth in paragraph 423.

12. Linden admits the allegations set forth in paragraph 424, except that Linden denies the allegations set forth in paragraph 424 insofar as it may be deemed to allege sanitary wastewaters.

13. Linden denies the allegations set forth in paragraph 425 insofar as it may be deemed to allege sanitary outfalls.

14. Linden denies the allegations set forth in paragraph 426 insofar as it may be deemed to allege sanitary wastewaters..

15. Linden denies the allegations set forth in paragraph 427..

16. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 428 and leaves Third Party Plaintiffs to their proofs.

17. Linden denies the allegations contained in paragraphs 429.

18. Linden denies the allegations contained in paragraph 430 and leaves Third Party Plaintiffs to their proofs

19. Linden denies the allegations set forth in paragraph 431.

20. Linden denies the allegations set forth in paragraph 432.

21. The allegations contained in paragraphs 433 to 521 relate to other third party defendants which do not require an answer. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 433 to 521 and leaves Third Party Plaintiffs to their proofs.

22. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 522 through 523 and leaves Third Party Plaintiffs to their proofs.

23. Linden admits that it is a customer of the Joint Meeting, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 524 and leaves Third Party Plaintiffs to their proofs.

24. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 525 through 534 and leaves Third Party Plaintiffs to their proofs.

25. Linden denies the allegations contained in paragraphs 535 through 547 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 535 through 547 and leaves Third Party Plaintiffs to their proofs.

26. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 548 and leaves Third Party Plaintiffs to their proofs.

27. Linden denies the allegations contained in paragraphs 549 through 637 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 549 through 637 and leaves Third Party Plaintiffs to their proofs.

28. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 638 and leaves Third Party Plaintiffs to their proofs.

29. Linden denies the allegations contained in paragraphs 639 through 662 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 639 through 662 and leaves Third Party Plaintiffs to their proofs.

30. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 663 and leaves Third Party Plaintiffs to their proofs.

31. Linden denies the allegations contained in paragraphs 664 through 706 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 664 through 706 and leaves Third Party Plaintiffs to their proofs.

32. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 707 and leaves Third Party Plaintiffs to their proofs.

33. Linden denies the allegations contained in paragraphs 708 through 728 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 708 through 728 and leaves Third Party Plaintiffs to their proofs.

34. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 729 through 730 and leaves Third Party Plaintiffs to their proofs.

35. Linden denies the allegations contained in paragraphs 731 through 733 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the

remaining allegations contained in paragraph 731 through 733 and leaves Third Party Plaintiffs to their proofs.

36. The matter contained in paragraph 734 is not a factual allegation, and thus no response is required. To the extent that the matter contained in paragraph 734 is deemed a factual allegation, Linden denies the allegation contained in paragraph 734.

37. Linden admits the allegations set forth in paragraph 735.

38. Linden admits the allegations set forth in paragraph 736.

39. Linden denies the allegations contained in paragraph 737.

40. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 738 and leaves Third Party Plaintiffs to their proofs.

41. Linden admits that it receives sanitary wastewaters, and denies the remaining allegations contained in paragraph 739.

42. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 740 and leaves Third Party Plaintiffs to their proofs.

43. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 741 and leaves Third Party Plaintiffs to their proofs.

44. Linden denies the allegations contained in paragraph 742.

45. The matters contained in paragraphs 743 are not factual allegations, and thus no response is required. To the extent that the matters contained in paragraph 743 are deemed factual allegations, they are denied.

46. The allegations contained in paragraphs 744 to 825 relate to other third party defendants which do not require an answer. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in

paragraphs 744 to 825 and leaves Third Party Plaintiffs to their proofs.

47. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 826 through 834 and leaves Third Party Plaintiffs to their proofs.

48. Linden admits the allegations set forth in paragraph 835 with respect to Linden only, and has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraphs 835 and leaves Third Party Plaintiffs to their proofs.

49. Linden denies the allegations contained in paragraph 836 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraphs 836 and leaves Third Party Plaintiffs to their proofs.

50. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 837 through 854 and leaves Third Party Plaintiffs to their proofs.

51. Linden denies the allegations contained in paragraphs 855 through 859 as they relate to Linden, but has insufficient knowledge to form a belief as to the truth or falsity of the remaining allegations contained in paragraphs 855 through 859 and leaves Third Party Plaintiffs to their proofs.

52. The matters contained in paragraphs 860 are not factual allegations, and thus no response is required. To the extent that the matters contained in paragraph 860 are deemed factual allegations, they are denied.

53. The allegations contained in paragraphs 861 to 1147 relate to other third party defendants which do not require an answer. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in

paragraphs 861 to 1147 and leaves Third Party Plaintiffs to their proofs.

FIRST COUNT

54. Linden repeats and realleges its answers to paragraphs 1 through 1147 as if fully set forth herein.

56. The matter contained in paragraph 1149 is not a factual allegation, and thus no response is required. To the extent that the matter contained in paragraph 1149 is deemed a factual allegation, Linden is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 1149 and leaves Third Party Plaintiffs to their proofs.

57. The allegations contained in paragraphs 1150 to 1155 relate to the plaintiffs, defendants, and other third party defendants which do not require an answer. To the extent that an answer is required, Linden is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraphs 1150 through 1155 and leaves Third Party Plaintiffs to their proofs.

58. Linden denies the allegations contained in paragraph 1156.

59. Linden is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 1157 and leaves Third Party Plaintiffs to their proofs.

60. Linden denies the allegations contained in paragraph 1158.

WHEREFORE, Linden demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety; and
- b. Awarding Linden attorney's 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

61. Linden repeats and realleges its answers to paragraphs 1 through 1158 as if fully set forth herein.

62. Linden denies the allegations contained in paragraph 1160.

WHEREFORE, Linden demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety; and
- b. Awarding Linden attorney's 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

63. Linden repeats and realleges its answers to paragraphs 1 through 1160 as if fully set forth herein.

64. The matter contained in paragraph 1162 is not a factual allegation, and thus no response is required. To the extent that the matter contained in paragraph 1162 is deemed a factual allegation, Linden is without sufficient information to form a belief as to the truth or falsity of the allegation contained in paragraph 1162 and leaves Third Party Plaintiffs to their proofs.

65. The matters contained in paragraphs 1163 to 1164 are not a factual allegations, and thus no response is required. To the extent that the matters contained in paragraphs 1163 to 1164 are deemed factual allegations, Linden is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraphs 1163 to 1164 and leaves Third Party Plaintiffs to their proofs.

66. The allegations contained in paragraphs 1165 through 1177 relate to other third party defendants which do not require an answer. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1165 through 1177 and leaves Third Party Plaintiffs to their proofs.

67. The matter contained in paragraph 1178 is not a factual allegation, and thus no response is required. To the extent that the matter contained in paragraph 1178 is deemed a factual allegation, Linden is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraphs 1178 and leaves Third Party Plaintiffs to their proofs.

68. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1179 through 1181 and leaves Third Party Plaintiffs to their proofs.

69. The matters contained in paragraphs 1182 through 1185 are not factual allegations, and thus no response is required. To the extent that the matters contained in paragraphs 1182 through 1185 are deemed factual allegations, Linden is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraphs 1182 through 1185 and leaves Third Party Plaintiffs to their proofs.

70. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1186 and leaves Third Party Plaintiffs to their proofs.

WHEREFORE, Linden demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety; and
- b. Awarding Linden attorney's 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.

FOURTH COUNT

71. Linden repeats and realleges its answers to paragraphs 1 through 1186 as if fully set forth herein.

72. The allegations contained in paragraphs 1188 to 1190 relate to other third party defendants which do not require an answer. To the extent that an answer is required, Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1188 through 1190 and leaves Third Party Plaintiffs to their proofs.

73. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1191 through 1195 and leaves Third Party Plaintiffs to their proofs.

WHEREFORE, Linden demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety; and
- b. Awarding Linden attorney's 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.

FIFTH COUNT

74. Linden repeats and realleges its answers to paragraphs 1 through 1195 as if fully set forth herein.

75. The matters contained in paragraph 1197 are not factual allegations, and thus no response is required. To the extent that the matters contained in paragraph 1197 are deemed factual allegations, Linden is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 1197 and leaves Third Party Plaintiffs to their

proofs.

76. The allegations contained in paragraph 1198 refer to provisions contained in plaintiff's Complaint which document speaks for itself. Thus, to the extent that the allegations in paragraph 1198 differ from the Complaint, they are denied.

77. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1199 through 1201 and leaves Third Party Plaintiffs to their proofs.

78. The allegations contained in paragraphs 1202 and 1203 constitute legal argument to which no response is required.

79. Linden has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1204 through 1229 as they relate to other parties and leaves Third Party Plaintiffs to their proofs.

WHEREFORE, Linden demands judgment against Third Party Plaintiffs as follows:

- a. Dismissal of the third party complaint with prejudice in its entirety; and
- b. Awarding Linden attorney's 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.

AFFIRMATIVE DEFENSES

1. Third Party Plaintiffs' claims are barred for failure to state a claim upon which relief may be granted.
2. Third Party Plaintiffs, claims are barred by the equitable doctrine of laches.
3. Third Party Plaintiffs' claims are barred for failure to file the within action within the applicable statute of limitations.

4. Third Party Plaintiffs' claims are barred as a result of said claims having been untimely filed.

5. Third Party Plaintiffs' complaint is barred by the doctrine of res judicata.

6. Third Party Plaintiffs' complaint is barred by the doctrine of collateral estoppel.

7. The damages claimed by Third Party Plaintiffs were caused by a force majeure and are therefore barred.

8. Third Party Plaintiffs' claims are barred because they failed to exhaust all of their administrative remedies.

9. Third Party Plaintiffs' 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.

10. The complained of occurrence was caused by third parties over whom Linden had no control.

11. Third Party Plaintiffs failed to provide notice to Linden that it was considered a potentially responsible party. This has resulted in a deprivation of Linden's substantive and procedural due process rights under the Federal Constitution.

12. The Third Party Plaintiffs' claims are subject to a specific regulatory scheme or schemes that require resolution of issues within the specific expertise of administrative agencies and there is a paramount need for specialized and consistent agency fact-finding and oversight, therefore, this action should be dismissed or stayed, in whole or in part, pending determinations by the administrative agencies that are relevant to this case.

13. Third Party Plaintiffs' claims against Linden are subject to setoff and recoupment and therefore must be reduced accordingly.

14. Linden's alleged acts or omissions, if any, or the alleged actions or omissions of others, if any, which are the subject of this action, complied with all applicable federal and state permits and plans.

15. Although Linden denies that it is liable for the contamination described in the complaint, in the event that Linden 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.

16. Linden hereby adopts the Separate Defenses heretofore and hereinafter asserted by all other Third Party Defendants to the extent that such defenses are not otherwise set forth herein.

17. Third Party Plaintiffs' claims are barred for lack of standing to bring an action against Linden.

18. Third Party Plaintiffs' claims are barred by the equitable doctrine of estoppel, collateral estoppel, promissory estoppel and/or waiver.

19. 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 Linden has no control.

20. Third Party Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

21. Third Party Plaintiffs' claims against Linden should be dismissed because Third Party Plaintiffs' injuries, if any, were due to supervening events for which Linden had no control or responsibility.

22. Without admitting any liability, if it is determined that Linden engaged in any of the activities alleged in the Third Party Complaint "A", such activities were *de minimus*.

23. 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.

24. To the extent that Linden is found liable in this matter, joint and several liability is inappropriate because there are distinct harms or a reasonable basis for apportionment of the harm suffered.

25. At all times relevant, Linden complied with all applicable laws, regulations or standards and government approvals.

26. Third Party Plaintiffs' claims are barred, or in the alternative, the damages to which they are entitled 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.

27. Third Party Plaintiffs' Complaints include claims for costs not yet expended. The Spill Act does not authorize Third Party Plaintiffs to recover future costs. Therefore, Third Party Plaintiffs' claims are premature and not yet ripe for adjudication.

28. The Third Party Complaint "A" represents an unauthorized and unconstitutional retroactive application of the Spill Act and other applicable case law.

29. Linden has at all times acted in good faith.

30. To the extent that this action is brought pursuant to the Spill Act, Linden 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 Linden. Linden exercised due care with respect to any such alleged hazardous substance, in light of all relevant facts and circumstances. Linden took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. Consequently, Linden is not liable under the Spill Act.

31. In the event that Third Party Plaintiffs' claims are not barred by their own conduct, then any recovery by these parties should be reduced in the proportion that such parties' acts or omissions bear to the acts or omissions that caused the alleged injuries or damages.

32. Third Party Plaintiffs have failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act.

33. Linden is not a "responsible party" under the Spill Act.

34. Certain of the costs incurred or to be incurred by the Third Party Plaintiffs in connection with the site are not "response costs", recoverable from Linden, within the meaning of section 101(23), (24), and (25) of CERCLA, 42 U.S.C. § 9601 (23), (24), and (25), as applied to the Spill Act.

35. Certain of the actions taken to date by Third Party Plaintiffs for which Third Party Plaintiffs are making a claim against Linden were not consistent with the National Contingency Plan because, among other things, Linden was not provided with notice or an opportunity to comment.

36. Certain of the claims for relief herein are time barred by the express terms of the Spill Act.

37. Linden cannot be held liable under the Spill Act or Comprehensive Environmental Response, Compensation and Liability Act for adopting regulations and/or ordinances authorizing waste pick-up in its municipality.

38. Third Party Plaintiffs' claims against Linden are barred, in whole or in part, by Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3) because any releases, or threats of releases of hazardous substances, including those allegedly attributable to Linden, an allegation that Linden denies, were caused by the acts or omissions of third parties other than Linden's

employees or agents, or other than one with whom Linden had a direct or indirect contractual relationship, and Linden exercised due care with respect to the alleged hazardous substance is concerned, an allegation Linden denies, taking into consideration the characteristics thereof, in light of all the relevant facts and circumstances, and took precautions against foreseeable acts or omissions of any such third party and the consequences that could be foreseeable from such acts or omissions.

39. Third Party Plaintiffs have not paid more than their fair share of any damages, costs or other relief sought by the Plaintiffs, 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, and are, therefore, not entitled to contribution from Linden.

40. Third Party Plaintiffs' claims for indemnification are barred because any alleged liability of Linden, liability that Linden denies, would be secondary, in direct, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Third Party Plaintiffs are direct, active and primary.

41. Third Party Plaintiffs are not entitled to recover attorneys' fees or costs, or fees of litigation.

42. Third Party Plaintiffs are not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress Third Party Plaintiffs' claims.

43. Third Party Plaintiffs' claims are barred to the extent that they seek relief for conduct occurring, or damages incurred, before the effective date of the Spill Act.

44. Third Party Plaintiffs' claims for indemnification and otherwise are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy

and applicable laws.

45. To the extent that Third Party Plaintiffs' claims against Linden are subject to contribution, or any reduction or offset from other parties, any damages recovered against Linden shall be reduced accordingly.

46. Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties.

47. Linden reserves the right to assert additional defenses that may be uncovered during the course of this action.

48. Linden exercised reasonable care under all of the circumstances herein. Consequently, it is not liable to Third Party Plaintiffs under the common law or any statutory theory of recovery averred herein.

CROSS CLAIMS AND COUNTERCLAIMS

Pursuant to the Case Management Order, and succeeding directives of the Court, Third Party Defendant, the City of Linden, is deemed to have denied all cross claims and counterclaims and asserted all available cross claims and counterclaims for cost recovery, contribution and common law indemnity against all other parties. Linden reserves the right to assert affirmative claims.

JURY DEMAND

The City of Linden hereby demands a trial by jury.

DEMAND FOR STATEMENT OF DAMAGES

Pursuant to R. 4:5-2, Third Party Defendant City of Linden demands that Defendants/Third Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. furnish Linden, within five days after service hereof, with a written statement of damages claimed in

each Count of their Third Party Complaint.

DEMAND FOR DOCUMENTS

Pursuant to R. 4:18-2, Third Party Defendant City of Linden demands that Defendants/Third Party Plaintiff's furnish the undersigned, within five days after service hereof, with copies of each document referenced in the Complaint.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, David A. Schwartz, Esq. is hereby designated as trial counsel.

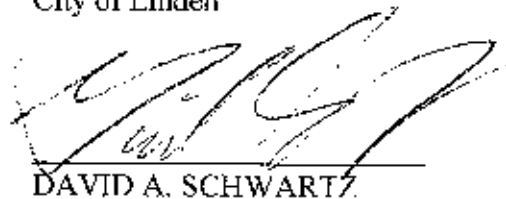
RESERVATION OF RIGHTS

Third Party Defendant City of Linden reserves its right to amend this Answer to assert any additional defenses it may have which further investigation reveals to be appropriate.

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 of 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 who should be joined in the above caption.

SCHWARTZ & POSNOCK
Attorneys for Third-Party Defendant,
City of Linden

A handwritten signature in black ink, appearing to read 'D.A. Schwartz', is written over a horizontal line.

DAVID A. SCHWARTZ

Dated: October 8, 2009

CERTIFICATION OF SERVICE

I, David A. Schwartz, an attorney at law of the State of New Jersey, do hereby state upon

my oath as follows:

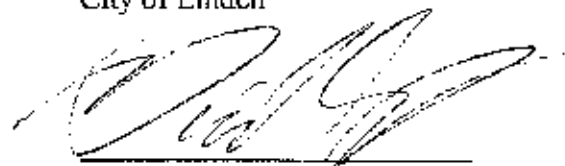
1. I am in a partner in the law firm of Schwartz & Posnock, 901 West Park Avenue, Suite 2-E, Ocean, New Jersey, which law firm represents the Third Party Defendant City of Linden in the above-captioned matter.

2. I hereby certify that the City of Linden's Answer to Third Party Complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) and Separate Defenses was served electronically on all parties which have consented to service by posting on www.sfile.com/njdepvoec on October 8, 2009.

3. I hereby certify that the City of Linden's Answer to Third Party Complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) and Separate Defenses was served upon the Clerk of the Court via regular mail on October 8, 2009.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

SCHWARTZ & POSNOCK
Attorneys for Third-Party Defendant,
City of Linden


DAVID A. SCHWARTZ