

**TRENK, DiPASQUALE, WEBSTER  
DELLA FERA & SODONO, P.C.**  
347 Mount Pleasant Avenue  
Suite 300  
West Orange, NJ 07052  
(973) 243-8600  
Attorneys for Third-Party Defendant,  
Jersey City Municipal Utilities Authority

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, THE  
COMMISSIONER OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTIONS 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.

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

BAYONNE MUNICIPAL UTILITIES  
AUTHORITY, *et al.*,

Third Party Defendants.

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

Docket No. ESX-L-9868-05

Civil Action

**ANSWER TO THIRD PARTY  
COMPLAINT “A” OF  
DEFENDANTS MAXUS ENERGY  
CORPORATION AND TIERRA  
SOLUTIONS, INC. AND  
AFFIRMATIVE DEFENSES**

Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C., attorneys for Third-Party Defendant, Jersey City Municipal Utilities Authority (“JCMUA”), a body politic of

the State of New Jersey, with a principal place of business at 555 Route 440, Jersey City, New Jersey 07305, by way of Answer to Defendants/Third Party Plaintiffs, Maxus Energy Corporation's and Tierra Solutions, Inc.'s ("Third Party Plaintiffs"), Third Party Complaint "A" (Against Public Entities"), filed February 4, 2009 hereby says:

1. The allegations contained in paragraphs 1 through 14 relate to allegations made by the original plaintiffs and defendants which do not require an answer from the JCMUA.

2. The allegations contained in paragraphs 15 through 51 relate to allegations contained in the original defendants' counterclaim which document speaks for itself and also relate to other third party defendants which do not require an answer from the JCMUA.

3. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 52 and 54 and leave the Third Party Plaintiffs to their proofs.

4. The allegations contained in paragraphs 55 through 99 relate to other third party defendants which require no answer from the JCMUA.

5. The JCMUA denies the allegations contained in paragraph 100 to the extend the JCMUA is a public body duly formed pursuant to the Municipal Utilities Authority Law, N.J.S.A. 40:14B-1 et seq., with its principal place of business at 555 Route 440, Jersey City, New Jersey.

6. The allegations contained in paragraphs 101 through 139 relate to other third party defendants which require no answer from the JCMUA.

7. The allegations contained in paragraphs 140 through 164 are definitions of relevant terms that require no answer from the JCMUA.

8. The allegations contained in paragraphs 165 through 359 relate to other third party defendants which require no answer from the JCMUA.

9. The JCMUA admits the allegations in paragraph 360.

10. The JCMUA admits the allegations in paragraph 361.

11. The JCMUA admits the allegations in paragraph 362.

12. The JCMUA admits the allegations contained in paragraph 363.

13. The JCMUA admits the allegations contained in paragraph 364.

14. The JCMUA admits the allegations in paragraph 365.

15. The JCMUA admits the allegations in paragraph 366.

16. The JCMUA admits the allegations in paragraph 367.

17. The JCMUA denies the allegations in paragraph 368.

18. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 369 through 371 leave the Third Party Plaintiffs to their proofs.

19. The JCMUA admits the allegations contained in paragraph 372 to the extent that the JCMUA constructed a wastewater treatment plant. To the extent that the allegations contained within paragraph 372 differ from the JCMUA's documents, they are denied.

20. The JCMUA denies the allegations contained in paragraph 373.

21. The JCMUA admits the allegations contained in paragraph 374.

22. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 375 and leave the Third Party Plaintiffs to their proofs.

23. The JCMUA denies the allegations contained in paragraph 376.

24. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 377 and leave the Third Party Plaintiffs to their proofs.

25. The allegations contained within paragraph 378 relate to a report prepared by the New Jersey Department of Health ("NJDOH"), which document speaks for itself. To the extent the allegations in paragraph 378 differ from the provisions within the NJDOH report they are denied.

26. The allegations contained within paragraph 379 relate to a report prepared by the New Jersey Department of Health ("NJDOH"), which document speaks for itself. To the extent the allegations in paragraph 379 differ from the provisions within the NJDOH report they are denied.

27. The allegations contained within paragraph 380 relate to a report prepared by the Hudson County Utilities Authority ("HCUA"), which document speaks for itself. To the extent the allegations in paragraph 380 differ from the provisions within the HCUA report they are denied.

28. The allegations contained within paragraph 381 relate to a report prepared by the Hudson County Utilities Authority ("HCUA"), which document speaks for itself. To the extent the allegations in paragraph 381 differ from the provisions within the HCUA report they are denied.

29. The allegations contained within paragraph 382 relate to a report prepared by the Hudson County Utilities Authority (“HCUA”), which document speaks for itself. To the extent the allegations in paragraph 382 differ from the provisions within the HCUA report they are denied.

30. The JCMUA admits the allegations contained in paragraph 383 to the extent they refer to a Consent Judgment with the United States of America, which document speaks for itself. To the extent the allegations in paragraph 383 differ from the provisions in the Consent Judgment they are denied.

31. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 384 through 386 and leave the Third Party Plaintiffs to their proofs.

32. The allegations contained within paragraph 387 relate to a report prepared by the New Jersey Department of Environmental Protection (“NJDEP”), which document speaks for itself. To the extent the allegations in paragraph 387 differ from the provisions within the NJDEP report they are denied.

33. The allegations contained within paragraph 388 relate to a report prepared by the New Jersey Department of Environmental Protection (“NJDEP”), which document speaks for itself. To the extent the allegations in paragraph 388 differ from the provisions within the NJDEP report they are denied.

34. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 389 and leave the Third Party Plaintiffs to their proofs.

35. The allegations contained within paragraph 390 relate to an Administrative Consent Order, which document speaks for itself. To the extent the allegations in paragraph 390 differ from the provisions within the signed Administrative Consent Order they are denied.

36. The allegations contained within paragraph 391 relate to a Consent Decree entered into, which document speaks for itself. TO the extent the allegations in paragraph 391 differ from the provision within the Consent Order they are denied.

37. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 392 and leave the Third Party Plaintiffs to their proofs.

38. The allegations contained within paragraph 393 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 393 differ from the provisions within the NJDEP report they are denied.

39. The JCMUA admits the allegations in paragraphs 394 and 395.

40. The allegations contained within paragraphs 396 through 399 relate to reports prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which documents speak for themselves. To the extent the allegations in paragraphs 396 through 399 differ from the provisions within the NJDEP reports they are denied.

41. The JCMUA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 400 and leave the Third Party Plaintiffs to their proofs.

42. The JCMUA admits the allegations in paragraph 401.

43. The JCMUA admits the allegations contained in paragraph 402 to the extent that the JCMUA owns and operates a combined sewer system. To the extent that the allegations contained within paragraph 402 differ from the JCMUA's documents, they are denied.

44. The JCMUA admits the allegations in paragraph 403.

45. The JCMUA admits the allegations in paragraph 404.

46. The allegations contained within paragraph 405 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 405 differ from the provisions within the NJDEP report they are denied.

47. The JCMUA admits the allegations in paragraphs 406 through 408.

48. The JCMUA denies the allegations in paragraph 409.

49. The JCMUA admits the allegations in paragraph 410.

50. The JCMUA admits the allegations contained in paragraph 411 to the extent the JCMUA was issued NJPDES Permit Numbers NJ0105023 and NJ0108723, which speak for themselves. To the extent the allegations contained in paragraph 411 are contrary to the provisions within these permits they are denied.

51. The allegations contained within paragraph 412 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document speaks for itself. To the extent the allegations in paragraph 412 differ from the provisions within the NJDEP report they are denied.

52. The allegations contained within paragraph 413 relate to a report prepared by the New Jersey Department of Environmental Protection ("NJDEP"), which document

speaks for itself. To the extent the allegations in paragraph 413 differ from the provisions within the NJDEP report they are denied.

53. The JCMUA denies the allegations in paragraph 414 and 415.

54. The JCMUA admits the allegations in paragraphs 416 and 417.

55. The JCMUA admits the allegations in paragraphs 418 through 420.

56. The allegations contained in paragraphs 421 through 1147 relate to other third party defendants which require no answer from the JCMUA.

### FIRST COUNT

57. The JCMUA restates its answers to paragraphs 1 through 1147 and incorporates them as if fully set forth herein.

58. The allegations contained in paragraphs 1149 through 1155 relate to the plaintiffs, defendants and other third-party defendants which do not require an answer by the JCMUA.

59. The JCMUA denies the allegations contained in paragraph 1156.

60. The JCMUA is without sufficient 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.

61. The JCMUA denies the allegations contained in paragraph 1158.

**WHEREFORE**, the JCMUA demands judgment against Third Party Defendants as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the JCMUA attorneys' fees, interest and costs; and

c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

### **SECOND COUNT**

62. The JCMUA restates its answers to paragraphs 1 through 1158 and incorporates them as if fully set forth herein.

63. The JCMUA denies the allegations contained in paragraph 1160.

**WHEREFORE**, the JCMUA demands judgment against Third Party Defendants as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the JCMUA attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

### **THIRD COUNT**

64. The JCMUA restates its answers to paragraphs 1 through 1160 and incorporates them as if fully set forth herein.

65. The JCMUA denies the allegations in paragraph 1162.

66. The allegations contained in paragraph 1163 relate to provisions contained in N.J.S.A. 58:14-7, which statute speaks for itself. To the extent that the allegations in paragraph 1163 are different from the statute they are denied.

67. The allegations contained in paragraph 1164 relate to provisions contained in N.J.S.A. 58:14-8, which statute speaks for itself. To the extent that the allegations in paragraph 1164 are different from the statute they are denied.

68. The JCMUA denies the allegations in paragraph 1165.

69. The allegations contained in paragraph 1166 through 1177 relate to other third party defendants which do not require an answer from the JCMUA.

70. The allegations contained in paragraph 1178 relate to provisions contained in N.J.S.A. 58:14-33 which statute speaks for itself. TO the extent that the allegations in paragraph 1178 are different from the statute they are denied.

71. The JCMUA denies the allegations in paragraphs 1179 through 1181.

72. The allegations contained in paragraph 1182 relate to provisions contained in N.J.S.A. 2A:35A-4, which statute speaks for itself. To the extent that the allegations in paragraph 1182 are different from the statute they are denied.

73. The allegations contained in paragraph 1183 relate to other third party defendants which do not require an answer from the JCMUA.

74. The allegations contained in paragraph 1184 relate to provisions contained in N.J.S.A. 58:14-7 and 58:14-8, which statutes speak for themselves. To the extent that the allegations in paragraph 1184 are different from the statutes they are denied.

75. The allegations contained in paragraph 1185 relate to provisions contained in N.J.S.A. 2A:35A-4.a, which statute speaks for itself. To the extent that the allegations in paragraph 1185 are different from the statute they are denied.

76. The JCMUA denies the allegations contained in paragraph 1186.

**WHEREFORE**, the JCMUA demands judgment against Third Party Defendants as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the JCMUA attorneys' fees, interest and costs; and

c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

#### **FOURTH COUNT**

77. The JCMUA restates its answers to paragraphs 1 through 1186 and incorporates them as if fully set forth herein.

78. The JCMUA denies the allegations contained in paragraphs 1188 through 1195.

**WHEREFORE**, the JCMUA demands judgment against Third Party Defendants as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the JCMUA attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

#### **FIFTH COUNT**

79. The JCMUA restates its answers to paragraphs 1 to 1195 and incorporates them as if fully set forth herein.

80. The allegations contained in paragraph 1197 relate to provisions contained in N.J.S.A. 58:10-23.11a, which statute speaks for itself. To the extent that the allegations in paragraph 1197 are different from the statute they are denied.

81. The allegations contained in paragraphs 1198 through 1229 relate to other Third Party Defendants which do not require an answer from the JCMUA.

**WHEREFORE**, the JCMUA demands judgment against Third Party Defendants as follows:

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the JCMUA attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

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

#### **SECOND AFFIRMATIVE DEFENSE**

Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties, including, but not limited to, federal natural resource damages trustees, thereby exposing the JCMUA to the risk of duplicative and inconsistent determinations.

#### **THIRD AFFIRMATIVE DEFENSE**

Any wrongful conduct alleged in Third Party Complaint "A" resulted from or was proximately caused by the conduct of persons other than or by the conduct of persons over whom the JCMUA had no control, or by the superseding intervention, criminal, illegal or tortious acts of others outside the control of the JCMUA.

#### **FOURTH AFFIRMATIVE DEFENSE**

Third Party Complaint "A" is barred in whole or in part by N.J.S.A. 58:10-23.11v to the extent that it seeks compensation for damages or cleanup costs barred by that statute.

#### **FIFTH AFFIRMATIVE DEFENSE**

The claims asserted in Third Party Complaint "A" are barred, in whole or in part, by the applicable statutes of limitations.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/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.

#### **SEVENTH AFFIRMATIVE DEFENSE**

To the extent that the JCMUA 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 harms suffered.

#### **EIGHTH AFFIRMATIVE DEFENSE**

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

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints include claims for costs not yet expended under the New Jersey Spill Act which does not allow Plaintiffs and/or Defendants/Third Party Plaintiffs to recover future costs. Therefore, Plaintiffs' and Defendants/Third Party Plaintiffs' Spill Act claims for costs not yet expended are premature and not ripe for adjudication.

#### **TENTH AFFIRMATIVE DEFENSE**

Third Party Complaint "A" is barred in whole or in part by the doctrines of laches, estoppel, unclean hands and/or waiver.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/Third Party Plaintiffs' Third Party Complaint "A" is barred in whole or in part by the Due Process, Equal Protection and Supremacy Clauses of the United States Constitution.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints are preempted, in whole or in part, by federal law.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

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

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

Defendants/Third Party Plaintiffs' claims against the JCMUA are barred in whole or in part under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Defendants/Third Party Plaintiffs' claims are barred in whole or in part to the extent they represent an unauthorized and unconstitutional retroactive application of the New Jersey Spill Act and applicable case law.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

The JCMUA is not a discharger or a person in any way responsible for discharge of hazardous substances under the New Jersey Spill Act.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

While the JCMUA denies that it is a discharger or a person in any way responsible for discharge of hazardous substances under the New Jersey Spill Act, to the

extent that discharges of hazardous substances occurred, the JCMUA is not liable under the New Jersey Spill Act for such discharges, because they were pursuant to and in compliance with the conditions of a federal or state permit.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

If Plaintiffs' and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, 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.

**NINETEETH AFFIRMATIVE DEFENSE**

Defendants/Third Party Plaintiffs' New Jersey Spill Act claims are barred by the statutory defenses to liability provided by that statute.

**TWENTIETH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The JCMUA's waste water treatment system has plan or design immunity under N.J.S.A. 59:4-6.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The JCMUA's operation and maintenance of its waste water treatment system has discretionary judgment immunity under N.J.S.A. 59:2-3.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

To the extent that Defendants/Third Party Plaintiffs' claims against the JCMUA relate to permits issued by the New Jersey Department of Environmental Protection, the JCMUA has permit immunity under N.J.S.A. 59:2-5.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The JCMUA reserves the right to assert such additional defenses as are discovered during the course of this action.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The JCMUA 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

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Sam Della Fera, Jr. is hereby 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 of a pending arbitration proceeding and that no such action or arbitration proceeding is contemplated by these Third Party Defendants. I am not aware of any other party who is not presently joined who should be joined in the above caption.

**TRENK, DiPASQUALE, WEBSTER  
DELLA FERA & SODONO, P.C.**  
347 Mount Pleasant Avenue, Suite 300  
West Orange, NJ 07052  
(973) 243-8600  
Attorneys for Third-Party Defendant,  
Joint Meeting of Essex & Union Counties

By:   
Joni Noble McDonnell

Dated: October 16, 2009

## CERTIFICATION OF SERVICE

I, **JODI LUCIANI**, of full age, hereby certifies as follows:

I am an attorney employed by the firm of Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C., counsel for Third Party Defendant, Jersey City Municipal Utilities Authority.

I certify that the original and copy of the within Answer and Affirmative Defenses have been sent by hand delivery for filing to the Clerk of the Superior Court of New Jersey, Law Division, Essex County, at the Veterans Courthouse, 50 West market Street, Newark, New Jersey 07102, and a copy of same has been sent via regular mail this date to Third Party Plaintiffs' attorneys as follows:

William L. Warren, Esq.  
Drink, Biddle & Reath, LLA  
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

Michelle Blythe, Esq.  
Andrews Kurth, LLP  
10001 Woodloch Forest Drive  
Suite 200  
The Woodlands, TX 77380

I certify that a copy of said document has been posted on the electronic platform provided by Defendants at <http://njdepvocc.sfile.com>.

  
JODI M. LUCIANI

Dated: October 19, 2009  
F:\WPDOCSA-MJCMUA\Occidental Chemical\CertificationofService.doc