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Joint Meeting of Essex & Union Counties

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, Joint Meeting of Essex & Union Counties (“Joint Meeting”), a body politic of the State of New Jersey, with a principal place of business at 500 South First

Street, Elizabeth, New Jersey 07202, 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 Joint Meeting.

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 Joint Meeting.

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

4. The allegations contained in paragraphs 55 through 100 relate to other third party defendants which require no answer from the Joint Meeting.

5. The Joint Meeting admits the allegations in paragraph 101.

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

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

8. The allegations contained in paragraphs 165 through 521 relate to other third party defendants which require no answer from the Joint Meeting.

9. The Joint Meeting admits the allegations in paragraph 522.

10. The Joint Meeting admits the allegations in paragraphs 523 through 526.

11. The Joint Meeting admits the allegations contained in paragraph 527 to the extent that the Joint Meeting constructed a wastewater treatment plant. To the extent that the allegations contained within paragraph 527 differ from the Joint Meeting's documents, they are denied.

12. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 528 and leaves the Third Party Plaintiffs to their proofs.

13. The Joint Meeting admits the allegations in paragraphs 529 through 530.

14. The Joint Meeting denies the allegations in paragraph 531.

15. The Joint Meeting admits the allegations in paragraph 532.

16. The Joint Meeting denies the allegations in paragraph 533.

17. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 534 and 544 and leaves the Third Party Plaintiffs to their proofs.

18. The allegations within paragraph 545 relate to an inspection conducted by the New Jersey Department of Environmental Protection ("NJDEP") and accompanying report, which document speaks for itself. To the extent the allegations in paragraph 545 differ from the findings within the NJDEP report they are denied.

19. The allegations within paragraph 546 relate to a memorandum prepared by the NJDEP, which document speaks for itself. To the extent the allegations in paragraph 546 differ from the memorandum prepared by the NJDEP they are denied.

20. The allegations within paragraph 547 relate to an inspection conducted by the New Jersey Department of Environmental Protection ("NJDEP") and accompanying report, which document speaks for itself. To the extent the allegations in paragraph 547 differ from the findings within the NJDEP report they are denied.

21. The allegations within paragraph 548 relate to a memorandum prepared by the NJDEP, which document speaks for itself. To the extent the allegations in paragraph 548 differ from the memorandum prepared by the NJDEP they are denied.

22. The Joint Meeting denies the allegations in paragraph 549.

23. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 550 and leaves the Third Party Plaintiffs to their proofs.

24. The allegations within paragraph 551 relate to an inspection conducted by the New Jersey Department of Environmental Protection ("NJDEP") and accompanying report, which document speaks for itself. To the extent the allegations in paragraph 551 differ from the findings within the NJDEP report they are denied.

25. The allegations contained in paragraph 552 relate to a report provided by the Joint Meeting, which speaks for itself. To the extent the allegations contained in paragraph 552 differ from the language in the Joint Meeting's report they are denied.

26. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 553 through 556 and leaves the Third Party Plaintiffs to their proofs.

27. The allegations within paragraph 557 relate to an inspection conducted by the New Jersey Department of Environmental Protection ("NJDEP") and accompanying

report, which document speaks for itself. To the extent the allegations in paragraph 557 differ from the findings within the NJDEP report they are denied.

28. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 558 through 565 and leaves the Third Party Plaintiffs to their proofs.

29. The allegations contained in paragraph 566 relate to an Administrative Order and Notice of Civil Administrative Penalty dated February 6, 1989, which speaks for itself. To the extent the allegations contained in paragraph 566 differ from the language in the Administrative Order and Notice of Civil Administrative Penalty they are denied.

30. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 567 through 586 and leaves the Third Party Plaintiffs to their proofs.

31. The allegations contained in paragraph 587 relate to a report provided by the Joint Meeting, which speaks for itself. To the extent the allegations contained in paragraph 587 differ from the language in the Joint Meeting's report they are denied.

32. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 588 through 591 and leaves the Third Party Plaintiffs to their proofs.

33. The Joint Meeting denies the allegations in paragraph 592.

34. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 593 and leaves the Third Party Plaintiffs to their proofs.

35. The allegations contained in paragraph 594 relate to a report provided by the Joint Meeting, which speaks for itself. To the extent the allegations contained in paragraph 594 differ from the language in the Joint Meeting's report they are denied.

36. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 595 through 607 and leaves the Third Party Plaintiffs to their proofs.

37. The allegations contained in paragraphs 608 and 609 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraphs 608 and 609 differ from the language in the Joint Meeting's report they are denied.

38. The allegations within paragraph 610 relate to an inspection conducted by the New Jersey Department of Environmental Protection ("NJDEP") and accompanying report, which document speaks for itself. To the extent the allegations in paragraph 610 differ from the findings within the NJDEP report they are denied.

39. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 611 through 614 and leaves the Third Party Plaintiffs to their proofs.

40. The allegations contained in paragraph 615 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 615 differ from the language in the Joint Meeting's report they are denied.

41. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 616 and leaves the Third Party Plaintiffs to their proofs.

42. The allegations contained in paragraph 617 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 617 differ from the language in the Joint Meeting's report they are denied.

43. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 618 through 620 and leaves the Third Party Plaintiffs to their proofs.

44. The allegations contained in paragraphs 621 through 625 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 621 through 625 differ from the language in the Joint Meeting's report they are denied.

45. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 626 through 630 and leaves the Third Party Plaintiffs to their proofs.

46. The allegations contained in paragraphs 631 through 634 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 631 through 634 differ from the language in the Joint Meeting's report they are denied.

47. The allegations contained in paragraph 638 relate to an Order issued by the NJDEP dated December 23, 1991, which speaks for itself. To the extent the allegations contained in paragraph 638 differ from the language in the Order they are denied.

48. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 639 through 642 and leaves the Third Party Plaintiffs to their proofs.

49. The allegations contained in paragraphs 643 and 644 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 643 and 644 differ from the language in the Joint Meeting's report they are denied.

50. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 645 through 649 and leaves the Third Party Plaintiffs to their proofs.

51. The allegations contained in paragraphs 650 through 654 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 650 through 654 differ from the language in the Joint Meeting's report they are denied.

52. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 655 and 656 and leaves the Third Party Plaintiffs to their proofs.

53. The allegations contained in paragraphs 657 through 660 relate to reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraph 657 through 660 differ from the language in the Joint Meeting's report they are denied.



54. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 661 and 662 and leaves the Third Party Plaintiffs to their proofs.

55. The allegations in paragraph 663 relate to a report prepared by the NJDEP following a Compliance Evaluation Inspection on June 11, 1992, which speaks for itself. To the extent the allegations contained in paragraph 663 differ from the language in the NJDEP report they are denied.

56. The allegations in paragraph 664 relate to a report provided by the Joint Meeting, which speaks for itself. To the extent the allegations contained in paragraph 664 differ from the language in the Joint Meeting report they are denied.

57. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 665 and 676 and leaves the Third Party Plaintiffs to their proofs.

58. The allegations in paragraphs 677 through 700 relate to various reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraphs 677 through 700 differ from the language in the Joint Meeting report they are denied.

59. The allegations in paragraph 701 relate to a report prepared by the NJDEP following a Compliance Evaluation Inspection on February 17, 1999, which speaks for itself. To the extent the allegations contained in paragraph 701 differ from the language in the NJDEP report they are denied.

60. The allegations in paragraphs 702 through 706 relate to various reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations

contained in paragraphs 702 through 706 differ from the language in the Joint Meeting report they are denied.

61. The allegations in paragraph 707 relate to an Administrative Order and Notice of Civil Administrative Penalty Assessment dated May 25, 2000, which speaks for itself. To the extent the allegations contained in paragraph 707 differ from the language in the Administrative Order and Notice of Civil Administrative Penalty Assessment.

62. The allegations in paragraphs 708 through 717 relate to various reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraphs 708 through 717 differ from the language in the Joint Meeting report they are denied.

63. The allegations in paragraph 718 relate to a draft NJPDES permit issued by the NJDEP, which speaks for itself. To the extent the allegations in paragraph 718 differ from the language in the draft permit they are denied.

64. The allegations in paragraphs 719 through 728 relate to various reports provided by the Joint Meeting, which speak for themselves. To the extent the allegations contained in paragraphs 719 through 728 differ from the language in the Joint Meeting report they are denied.

65. The allegations in paragraph 729 relate to a report prepared by the NJDEP following a Compliance Evaluation Inspection on March 8, 2004, which speaks for itself. To the extent the allegations contained in paragraph 729 differ from the language in the NJDEP report they are denied.

66. The allegations in paragraph 730 relate to a letter dated November 9, 2004 from the NJDEP, which speaks for itself. To the extent the allegations contained in paragraph 730 differ from the language in the NJDEP letter they are denied.

67. The Joint Meeting denies the allegations in paragraph 731.

68. The Joint Meeting denies the allegations in paragraph 732.

69. The Joint Meeting denies the allegations in paragraph 733.

70. The Joint Meeting denies the allegations in paragraph 734.

71. The allegations contained in paragraphs 735 through 1147 relate to other third party defendants which require no answer from the Joint Meeting.

#### **FIRST COUNT**

72. The Joint Meeting restates its answers to paragraphs 1 through 1147 and incorporates them as if fully set forth herein.

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

74. The Joint Meeting denies the allegations contained in paragraph 1156.

75. The Joint Meeting 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.

76. The Joint Meeting denies the allegations contained in paragraph 1158.

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

a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;

- b. Awarding the Joint Meeting attorneys' fees, interest and costs; and
- c. For all other equitable relief as the Court may deem necessary, just and/or appropriate.

### **SECOND COUNT**

77. The Joint Meeting restates its answers to paragraphs 1 through 1158 and incorporates them as if fully set forth herein.

78. The Joint Meeting denies the allegations contained in paragraph 1160.

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

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

### **THIRD COUNT**

79. The Joint Meeting restates its answers to paragraphs 1 through 1160 and incorporates them as if fully set forth herein.

80. The allegations contained in paragraph 1162 relate to other third-party defendants that do not require an answer from the Joint Meeting.

81. 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.

82. 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.

83. The allegations contained in paragraphs 1165 through 1177 relate to other third party defendants that do not require an answer from the Joint Meeting.

84. 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.

85. The Joint Meeting 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.

86. 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.

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

88. 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.

89. 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.

90. The Joint Meeting 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**, the Joint Meeting demands judgment against Third Party Defendants as follows:

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

#### **FOURTH COUNT**

91. The Joint Meeting restates its answers to paragraphs 1 through 1186 and incorporates them as if fully set forth herein.

92. The Joint Meeting has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 1188 through 1195 as they relate to other Third Party Defendants and leaves Third Party Plaintiffs to their proofs.

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

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

## **FIFTH COUNT**

93. The Joint Meeting restates its answers to paragraphs 1 to 1195 and incorporates them as if fully set forth herein.

94. 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.

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

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

- a. Dismissal of Third Party Plaintiff complaint with prejudice in its entirety;
- b. Awarding the Joint Meeting 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 Joint Meeting 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 Joint Meeting had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of the Joint Meeting.

### **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 Joint Meeting 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 Joint Meeting 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 Joint Meeting 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 Joint Meeting 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 Joint Meeting 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 Joint Meeting 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.

#### **NINETEENTH 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 Joint Meeting are subject to contribution or any reduction or offset from other parties, any damages recovered against the Joint Meeting should be reduced accordingly.

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

The Joint Meeting'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 Joint Meeting relate to permits issued by the New Jersey Department of Environmental Protection, the Joint Meeting has permit immunity under N.J.S.A. 59:2-5.

#### **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

#### **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The Joint Meeting 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.

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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, Joint Meeting of Essex and Union Counties.

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:

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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  
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