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Our File No. 9173.3003

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, ET.
AL.,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL
CORPORATION, ET. AL.,

Defendants,

and

MAXUS ENERGY CORPORATION AND
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

BAYONNE MUNICIPAL UTILITIES
AUTHORITY, ET. AL.,

Third-Party Defendants.

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

Civil Action

**ANSWER OF PASSAIC VALLEY
SEWERAGE COMMISSIONERS TO
DEFENDANTS MAXUS ENERGY
CORPORATION'S AND TIERRA
SOLUTIONS, INC.'S
THIRD PARTY COMPLAINT "A"
(Against Public Entities)**

Third-Party Defendant Passaic Valley Sewerage Commissioners ("PVSC"), for its Answer to Defendants Maxus Energy Corporation's and Tierra Solutions, Inc.'s Third Party Complaint "A" (Against Public Entities), hereby states:

**ELECTION TO ANSWER ALLEGATIONS
WHICH RELATE SPECIFICALLY TO PVSC**

PVSC hereby elects to answer only those allegations of Defendants Maxus Energy Corporation's and Tierra Solutions, Inc.'s Third Party Complaint "A" (Against Public

Entities)(hereinafter “Third Party Complaint”) which relate specifically to PVSC without waiver of any kind, as provided in Paragraph 9(c)(iv) of Case Management (“CMO”) V, and reserves its right to answer the remaining allegations of the Third Party Complaint at a later time as permitted by the Court.

**ANSWER TO ALLEGATIONS
WHICH RELATE SPECIFICALLY TO PVSC**

744. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 744 of the Third Party Complaint, and states that no response is required concerning the legal conclusions of the New York v. New Jersey case, the contents of which speak for itself.

745. PVSC admits that PVSC was created in 1902 by an act of the New Jersey Legislature and that the Legislature gave it statutory authority to institute civil actions to prevent the discharge of polluting matter into the waters of the Passaic River, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 745 of the Third Party Complaint.

746. PVSC admits the allegations of Paragraph 746 of the Third Party Complaint.

747. PVSC admits the allegations of Paragraph 747 of the Third Party Complaint.

748. PVSC admits the allegations of Paragraph 748 of the Third Party Complaint.

749. PVSC admits the allegations of Paragraph 749 of the Third Party Complaint.

750. PVSC admits the allegations of Paragraph 750 of the Third Party Complaint.

751. PVSC admits the allegations of Paragraph 751 of the Third Party Complaint.

752. PVSC admits the allegations of Paragraph 752 of the Third Party Complaint.

753. PVSC admits the allegations of Paragraph 753 of the Third Party Complaint.

754. PVSC admits the allegations of Paragraph 754 of the Third Party Complaint.

755. PVSC denies that secondary treatment technologies, including chlorination, were not installed at the PVSC treatment plant until at least 1981, denies knowledge or information sufficient to form a belief as to the truth of the allegations that the PVSC treatment plant was originally designed to handle up to 150 million gallons of wastewater per day and that the capacity of the plant was later expanded to handle up to 225 million gallons of wastewater per day, and otherwise admits the allegations of Paragraph 755 of the Third Party Complaint.

756. PVSC admits the allegations of Paragraph 756 of the Third Party Complaint.

757. PVSC denies the allegations of Paragraph 757 of the Third Party Complaint.

758. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations that in 1972 PVSC reported that the main outfall line was designed to handle wastewater flows of up to 360 million gallons per day and otherwise admits the allegations of Paragraph 758 of the Third Party Complaint.

759. PVSC admits that if the main outfall line is closed, all waste water effluent discharging from the PVSC treatment plant is directed into Newark Bay through DSN002, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 759 of the Third Party Complaint.

760. PVSC denies the allegations of Paragraph 760 of the Third Party Complaint.

761. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 761 of the Third Party Complaint.

762. PVSC admits the allegations of Paragraph 762 of the Third Party Complaint.

763. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 763 of the Third Party Complaint.

764. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 764 of the Third Party Complaint.

765. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 765 of the Third Party Complaint.

766. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 766 of the Third Party Complaint.

767. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 767 of the Third Party Complaint.

768. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 768 of the Third Party Complaint.

769. PVSC denies the allegations of Paragraph 769 of the Third Party Complaint.

770. PVSC denies the allegations of Paragraph 770 of the Third Party Complaint.

771. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 771 of the Third Party Complaint.

772. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 772 of the Third Party Complaint.

773. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 773 of the Third Party Complaint.

774. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 774 of the Third Party Complaint.

775. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 775 of the Third Party Complaint.

776. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 776 of the Third Party Complaint.

777. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 777 of the Third Party Complaint.

778. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 778 of the Third Party Complaint.

779. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 779 of the Third Party Complaint.

780. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 780 of the Third Party Complaint.

781. PVSC denies the allegations of Paragraph 781 of the Third Party Complaint.

782. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 782 of the Third Party Complaint.

783. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 783 of the Third Party Complaint.

784. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 784 of the Third Party Complaint.

785. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 785 of the Third Party Complaint.

786. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 786 of the Third Party Complaint.

787. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 787 of the Third Party Complaint.

788. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 788 of the Third Party Complaint.

789. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 789 of the Third Party Complaint.

790. PVSC admits that all wastewater entering the main intercepting sewer upstream of the junction of the Third River and the Passaic River passes through the Yancataw Street Bypass in Clifton designated as Outfall DSN003, that the Yancataw Street Bypass is owned by PVSC and otherwise denies the remaining allegations of Paragraph 790 of the Third Party Complaint.

791. PVSC admits that the Yancataw Pumping Station designated as Outfall DSN004 is owned by PVSC and provides emergency relief for the Rutherford/Lyndhurst Branch Intercepting Sewer at the point where the branch interceptor crosses the Passaic River and enters the Yancataw Pumping Station, and otherwise denies the remaining allegations of Paragraph 791 of the Third Party Complaint.

792. PVSC admits that the Wallington Pump Station designated as Outfall DSN005 provides emergency relief for the Garfield/Wallington/Passaic Branch Intercepting Sewer, but otherwise denies the remaining allegations of Paragraph 792 of the Third Party Complaint.

793. PVSC admits that the North Arlington Branch Overflow designated as Outfall DSN006 provides emergency relief for the Kearny/North Arlington Branch Intercepting Sewer, but otherwise denies the remaining allegations of Paragraph 793 of the Third Party Complaint.

794. PVSC admits that the Second River Joint Meeting Bypass is also known as the Union Outlet Overflow or Outfall DSN074 and is operated by manually opening and closing a

series of gates, but otherwise denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 794 of the Third Party Complaint.

795. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 795 of the Third Party Complaint.

796. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 796 of the Third Party Complaint.

797. PVSC denies the allegations of Paragraph 797 of the Third Party Complaint.

798. PVSC denies the allegations of Paragraph 798 of the Third Party Complaint.

799. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 799 of the Third Party Complaint.

800. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 800 of the Third Party Complaint.

801. PVSC admits the allegations of Paragraph 801 of the Third Party Complaint.

802. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 802 of the Third Party Complaint.

803. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 803 of the Third Party Complaint.

804. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 804 of the Third Party Complaint.

805. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 805 of the Third Party Complaint.

806. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 806 of the Third Party Complaint.

807. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 807 of the Third Party Complaint.

808. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 808 of the Third Party Complaint.

809. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 809 of the Third Party Complaint.

810. PVSC admits the allegations of Paragraph 810 of the Third Party Complaint.

811. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 811 of the Third Party Complaint.

812. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 812 of the Third Party Complaint.

813. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 813 of the Third Party Complaint.

814. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 814 of the Third Party Complaint.

815. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 815 of the Third Party Complaint.

816. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 816 of the Third Party Complaint.

817. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 817 of the Third Party Complaint.

818. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 818 of the Third Party Complaint.

819. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 819 of the Third Party Complaint.

820. PVSC denies the allegations of Paragraph 820 of the Third Party Complaint and states that no response is required concerning the legal interpretations of N.J.S.A. 58:14-7 and 58:14-8.

821. PVSC asserts that the December 17, 2004 letter from Bradley M. Campbell, then Commissioner of NJDEP, speaks for itself and otherwise denies the allegations of Paragraph 821 of the Third Party Complaint.

822. PVSC denies the allegations of Paragraph 822 of the Third Party Complaint.

823. PVSC denies the allegations of Paragraph 823 of the Third Party Complaint.

824. PVSC denies the allegations of Paragraph 824 of the Third Party Complaint.

825. PVSC denies the allegations of Paragraph 825 of the Third Party Complaint.

FIRST COUNT

(New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a))

1148. PVSC repeats and realleges its answers contained in Paragraphs 744 through 825 of the Third Party Complaint as if set forth at length herein.

1149. PVSC denies the allegations of Paragraph 1149 of the Third Party Complaint.

1150. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1150 of the Third Party Complaint.

1151. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1151 of the Third Party Complaint.

1152. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1152 of the Third Party Complaint.

1153. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1153 of the Third Party Complaint.

1154. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1154 of the Third Party Complaint.

1155. The allegations contained in Paragraph 1155 refer to provisions contained in N.J.S.A. 58:10-23.11.f.a.(2)(a) which statute speaks for itself. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1155 of the Third Party Complaint.

1156. PVSC denies the allegations of Paragraph 1156 of the Third Party Complaint.

1157. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1157 of the Third Party Complaint.

1158. PVSC denies the allegations of Paragraph 1158 of the Third Party Complaint.

WHEREFORE, Third Party Defendant, Passaic Valley Sewerage Commissioners, demands judgment as follows:

1. dismissing Third Party Plaintiffs' Complaint;
2. awarding attorneys' fees and costs of suit; and
3. for such other relief as the Court may deem just and equitable.

SECOND COUNT

(Statutory Contribution)

1159. PVSC repeats and realleges its answers contained in Paragraphs 744 through 825 and 1148 through 1158 of the Third Party Complaint as if set forth at length herein.

1160. PVSC denies the allegations of Paragraph 1160 of the Third Party Complaint.

WHEREFORE, Third Party Defendant, Passaic Valley Sewerage Commissioners, demands judgment as follows:

1. dismissing Third Party Plaintiffs' Complaint;
2. awarding attorneys' fees and costs of suit; and
3. for such other relief as the Court may deem just and equitable.

THIRD COUNT

(Enforcement of N.J.S.A. 58:14-7 and N.J.S.A. 58:14-8 an Environmental Rights Act Claim)

1161. PVSC repeats and realleges its answers contained in Paragraphs 744 through 825 and 1148 through 1160 of the Third Party Complaint as if set forth at length herein.

1162. PVSC denies the allegations of Paragraph 1162 of the Third Party Complaint.

1163. The allegations contained in Paragraph 1163 of the Third Party Complaint refer to provisions contained in N.J.S.A. 58:14-7 which statute speaks for itself. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1163 of the Third Party Complaint.

1164. The allegations contained in Paragraph 1164 of the Third Party Complaint refer to provisions contained in N.J.S.A. 58:14-8 which statute speaks for itself. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1164 of the Third Party Complaint.

1165. PVSC denies the allegations of Paragraph 1165 of the Third Party Complaint.

1166. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1166 of the Third Party Complaint.

1167. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1167 of the Third Party Complaint.

1168. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1168 of the Third Party Complaint.

1169. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1169 of the Third Party Complaint.

1170. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1170 of the Third Party Complaint.

1171. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1171 of the Third Party Complaint.

1172. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1172 of the Third Party Complaint.

1173. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1173 of the Third Party Complaint.

1174. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1174 of the Third Party Complaint.

1175. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1175 of the Third Party Complaint.

1176. PVSC denies the allegations of Paragraph 1176 of the Third Party Complaint.

1177. PVSC denies the allegations of Paragraph 1177 of the Third Party Complaint.

1178. The allegations contained in Paragraph 1178 of the Third Party Complaint refer to provisions contained in N.J.S.A. 58:14-33, which statute speaks for itself. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1178 of the Third Party Complaint.

1179. PVSC denies the allegations of Paragraph 1179 of the Third Party Complaint.

1180. PVSC denies the allegations of Paragraph 1180 of the Third Party Complaint.

1181. PVSC denies the allegations of Paragraph 1181 of the Third Party Complaint.

1182. The allegations contained in Paragraph 1182 refer to provisions contained in N.J.S.A. 2A:35A-4, which statute speaks for itself. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1182 of the Third Party Complaint.

1183. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1183 of the Third Party Complaint.

1184. The allegations contained in Paragraph 1184 refer to provisions contained in N.J.S.A. 58:14-7 and 58:14-8, which statutes speak for themselves. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1184 of the Third Party Complaint.

1185. The allegations contained in Paragraph 1185 refer to provisions contained in N.J.S.A. 2A:35A-4.a, which statute speaks for itself. PVSC otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1184 of the Third Party Complaint.

1186. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1186 of the Third Party Complaint.

WHEREFORE, Third Party Defendant, Passaic Valley Sewerage Commissioners, demands judgment as follows:

1. dismissing Third Party Plaintiffs' Complaint;
2. awarding attorneys' fees and costs of suit; and
3. for such other relief as the Court may deem just and equitable.

FOURTH COUNT

(Nuisance)

1187. PVSC repeats and realleges its answers contained in Paragraphs 744 through 825 and 1148 through 1186 of the Third Party Complaint as if set forth at length herein.

1188. PVSC denies the allegations of Paragraph 1188 of the Third Party Complaint.

1189. PVSC denies the allegations of Paragraph 1189 of the Third Party Complaint.

1190. PVSC denies the allegations of Paragraph 1190 of the Third Party Complaint.

1191. PVSC denies the allegations of Paragraph 1191 of the Third Party Complaint.

1192. PVSC denies the allegations of Paragraph 1192 of the Third Party Complaint.

1193. PVSC denies the allegations of Paragraph 1193 of the Third Party Complaint.

1194. PVSC denies the allegations of Paragraph 1194 of the Third Party Complaint.

1195. PVSC denies the allegations of Paragraph 1195 of the Third Party Complaint.

WHEREFORE, Third Party Defendant, Passaic Valley Sewerage Commissioners, demands judgment as follows:

1. dismissing Third Party Plaintiffs' Complaint;
2. awarding attorneys' fees and costs of suit; and
3. for such other relief as the Court may deem just and equitable.

FIFTH COUNT

(Breach of the Public Trust)

1196. PVSC repeats and realleges its answers contained in Paragraphs 744 through 825 and 1148 through 1195 of the Third Party Complaint as if set forth at length herein.

1197. The allegations in Paragraph 1197 refer to provisions contained in N.J.S.A. 58:10-23.11a, which statute speaks for itself. PVSC otherwise denies knowledge or information

sufficient to form a belief as to the truth of the allegations of Paragraph 1197 of the Third Party Complaint.

1198. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1198 of the Third Party Complaint.

1199. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1199 of the Third Party Complaint.

1200. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1200 of the Third Party Complaint.

1201. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1201 of the Third Party Complaint.

1202. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1202 of the Third Party Complaint.

1203. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1203 of the Third Party Complaint.

1204. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1204 of the Third Party Complaint.

1205. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1205 of the Third Party Complaint.

1206. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1206 of the Third Party Complaint.

1207. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1207 of the Third Party Complaint.

1208. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1208 of the Third Party Complaint.

1209. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1209 of the Third Party Complaint.

1210. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1210 of the Third Party Complaint.

1211. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1211 of the Third Party Complaint.

1212. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1212 of the Third Party Complaint.

1213. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1213 of the Third Party Complaint.

1214. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1214 of the Third Party Complaint.

1215. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1215 of the Third Party Complaint.

1216. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1216 of the Third Party Complaint.

1217. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1217 of the Third Party Complaint.

1218. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1218 of the Third Party Complaint.

1219. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1219 of the Third Party Complaint.

1220. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1220 of the Third Party Complaint.

1221. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1221 of the Third Party Complaint.

1222. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1222 of the Third Party Complaint.

1223. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1223 of the Third Party Complaint.

1224. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1224 of the Third Party Complaint.

1225. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1225 of the Third Party Complaint.

1226. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1226 of the Third Party Complaint.

1227. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1227 of the Third Party Complaint.

1228. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1228 of the Third Party Complaint.

1229. PVSC denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1202 of the Third Party Complaint.

WHEREFORE, Third Party Defendant, Passaic Valley Sewerage Commissioners, demands judgment as follows:

1. dismissing Third Party Plaintiffs' Complaint;
2. awarding attorneys' fees and costs of suit; and
3. for such other relief as the Court may deem just and equitable.

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 PVSC 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 PVSC or by the conduct of persons over whom PVSC had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of PVSC.

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 PVSC 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, PVSC 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, N.J.S.A. 58:10-23.11b.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants/Third Party Plaintiffs' claims against PVSC 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

PVSC 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 PVSC 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, PVSC 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 PVSC are subject to contribution or any reduction or offset from other parties, any damages recovered against PVSC should be reduced accordingly.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

PVSC'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 PVSC relate to permits issued by PVSC, PVSC has permit immunity under N.J.S.A. 59:2-5.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

PVSC 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 to PVSC.

DESIGNATION OF TRIAL COUNSEL


In accordance with Rule 4:25-4, John M. Scagnelli, Esq. and Mitchell L. Pascual, Esq. are hereby designated as trial counsel.

CERTIFICATION PURSUANT TO RULE 4:25-1

It is hereby certified in accordance with Rule 4:25-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any court nor of any pending arbitration proceeding. Other than the above referenced actions, there are no other actions or arbitration proceedings in existence contemplated at this time; and the joinder of other parties in this action is governed by Case Management Order (CMO) V entered in this action.

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

SCARINCI & HOLLENBECK, LLC
Attorneys for Third-Party Defendant
Passaic Valley Sewerage Commissioners

By: 
JOHN M. SCAGNELLI
MITCHELL L. PASCUAL

DATED: October 16, 2009

CERTIFICATION OF SERVICE

I, John M. Scagnelli, an attorney at law of the State of New Jersey, do hereby state upon my oath as follows:

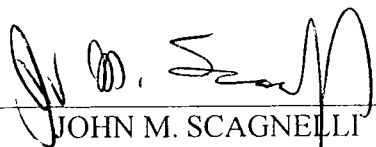
1. I am a partner in the law firm of Scarinci Hollenbeck, 1100 Valley Brook Avenue, Lyndhurst, New Jersey, which law firm represents Third Party Defendant Passaic Valley Sewerage Commissioners in the above-captioned matter.

2. I hereby certify that the Passaic Valley Sewerage Commissioners' Answer to Third Party Complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) was served electronically on all parties which have consented to service by posting on www.sfile.com/njdepvocc on October 16, 2009.

3. I hereby certify that the Passaic Valley Sewerage Commissioners' Answer to Third Party Complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) was served upon the Clerk of the Court by regular mail on October 16, 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 willfully false, I am subject to punishment.

SCARINCI & HOLLENBECK, LLC
Attorneys for Third-Party Defendant
Passaic Valley Sewerage Commissioners

By: 
JOHN M. SCAGNELLI

DATED: October 16, 2009