

**WEINER LESNIAK LLP**

**629 Parsippany Road**

**P. O. Box 438**

**Parsippany, New Jersey 07054-0438**

**(973) 403-1100 (973) 403-0010 (fax)**

**Attorneys for Third-Party Defendant, Rahway Valley Sewerage Authority**

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**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, THE  
COMMISSIONER OF THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND THE  
ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION FUND,**

Plaintiffs,

vs.

**OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA SOLUTIONS,  
INC., MAXUS ENERGY 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,

vs.

**BAYONNE MUNICIPAL UTILITIES  
AUTHORITY,  
BOROUGH OF CARTERET,  
BOROUGH OF EAST NEWARK,  
BOROUGH OF EAST RUTHERFORD,  
BOROUGH OF ELMWOOD PARK,  
BOROUGH OF FAIR LAWN,  
BOROUGH OF FANWOOD,  
BOROUGH OF FRANKLIN LAKES,  
BOROUGH OF GARWOOD,  
BOROUGH OF GLEN RIDGE,  
BOROUGH OF GLEN ROCK,**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY**

**Docket No. ESX-L-9868-05 (PASR)**

**CIVIL ACTION**

**ANSWER TO THIRD PARTY  
COMPLAINT "A" OF DEFENDANTS  
MAXUS ENERGY CORPORATION AND  
TIERRA SOLUTIONS, INC.**

**(Against Public Entities) AND  
SEPARATE DEFENSES,  
COUNTERCLAIMS AND  
CROSSCLAIMS**

BOROUGH OF HALEDON,  
BOROUGH OF HASBROUCK HEIGHTS,  
BOROUGH OF HAWTHORNE,  
BOROUGH OF KENILWORTH,  
BOROUGH OF LODI,  
BOROUGH OF MOUNTAINSIDE,  
BOROUGH OF NEW PROVIDENCE,  
BOROUGH OF NORTH ARLINGTON,  
BOROUGH OF NORTH CALDWELL,  
BOROUGH OF NORTH HALEDON,  
BOROUGH OF PROSPECT PARK,  
BOROUGH OF ROSELLE PARK,  
BOROUGH OF ROSELLE,  
BOROUGH OF RUTHERFORD,  
BOROUGH OF TOTOWA,  
BOROUGH OF WALLINGTON,  
BOROUGH OF WEST PATERSON,  
BOROUGH OF WOOD-RIDGE,  
CITY OF BAYONNE,  
CITY OF CLIFTON,  
CITY OF EAST ORANGE,  
CITY OF ELIZABETH,  
CITY OF GARFIELD,  
CITY OF HACKENSACK,  
CITY OF JERSEY CITY,  
CITY OF LINDEN,  
CITY OF NEWARK,  
CITY OF ORANGE,  
CITY OF PASSAIC,  
CITY OF PATERSON,  
CITY OF RAHWAY,  
CITY OF SUMMIT,  
CITY OF UNION CITY,  
HOUSING AUTHORITY OF THE CITY  
OF NEWARK,

JERSEY CITY MUNICIPAL UTILITIES  
AUTHORITY,  
JOINT MEETING OF ESSEX AND  
UNION COUNTIES,  
LINDEN ROSELLE SEWERAGE  
AUTHORITY,

PASSAIC VALLEY SEWERAGE  
COMMISSIONERS,  
PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY,  
RAHWAY VALLEY SEWERAGE  
AUTHORITY,  
THE NEW JERSEY DEPARTMENT OF  
AGRICULTURE,  
THE NEW JERSEY DEPARTMENT OF  
TRANSPORTATION,  
THE STATE OF NEW JERSEY,  
TOWN OF BELLEVILLE,  
TOWN OF HARRISON,  
TOWN OF KEARNY,  
TOWN OF NUTLEY,  
TOWN OF WESTFIELD,  
TOWN OF WOODBRIDGE,  
TOWNSHIP OF BERKELEY HEIGHTS,  
TOWNSHIP OF BLOOMFIELD,  
TOWNSHIP OF CEDAR GROVE,  
TOWNSHIP OF CLARK,  
TOWNSHIP OF CRANFORD,  
TOWNSHIP OF HILLSIDE,  
TOWNSHIP OF IRVINGTON,  
TOWNSHIP OF LITTLE FALLS,  
TOWNSHIP OF LIVINGSTON,  
TOWNSHIP OF LYNDHURST,  
TOWNSHIP OF MAPLEWOOD,  
TOWNSHIP OF MILLBURN,  
TOWNSHIP OF MONTCLAIR,  
TOWNSHIP OF ORANGE,  
TOWNSHIP OF SADDLE BROOK,  
TOWNSHIP OF SCOTCH PLAINS,  
TOWNSHIP OF SOUTH HACKENSACK,  
  
TOWNSHIP OF SOUTH ORANGE  
VILLAGE,  
TOWNSHIP OF SPRINGFIELD,  
TOWNSHIP OF UNION,  
TOWNSHIP OF WEST ORANGE,  
TOWNSHIP OF WINFIELD PARK,  
TOWNSHIP OF WYCKOFF,

**VILLAGE OF RIDGEWOOD,**

Third-Party Defendants.

Third-party Defendant, Rahway Valley Sewerage Authority (the "RVSA"), having its main offices at 1050 East Hazelwood Avenue, Rahway, New Jersey, 07065, 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 the RVSA. To the extent that an answer is required, the RVSA 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 the RVSA. To the extent that an answer is required, the RVSA 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. The RVSA 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 106 relate to other third-party defendants which require no answer from the RVSA.

5. The RVSA admits the allegations contained in paragraph 107 to the extent that the RVSA is a publicly owned sewerage authority, formed pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 *et seq.*, with its principal place of business at 1050 East Hazelwood Avenue, Rahway, New Jersey, 07065.

6. The allegations contained in paragraphs 108 through 139 relate to other third-party defendants which require no answer from the RVSA.

7. The RVSA admits the allegations contained in paragraph 140.

8. The RVSA admits the allegations contained in paragraph 141.

9. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegation contained in paragraph 142 and leaves Third-Party Plaintiffs to their proofs.

10. The RVSA admits the allegations contained in paragraph 143.

11. The RVSA admits the allegations contained in paragraph 144.

12. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraphs 145 through 146 and leaves Third-Party Plaintiffs to their proofs.

13. The RVSA admits the allegations contained in paragraph 147.

14. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraphs 148 through 150 and leaves Third-Party Plaintiffs to their proofs.

15. The RVSA admits the allegations contained in paragraph 151.

16. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraphs 152 through 154 and leaves Third-Party Plaintiffs to their proofs.

17. The RVSA admits the allegations contained in paragraphs 155 through 164.

18. The allegations contained in paragraphs 165 to 825 relate to other third-party defendants which do not require an answer. To the extent that an answer is required, the RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraphs 165 to 825 and leaves Third-Party Plaintiffs to their proofs.

19. The RVSA admits the allegations contained in paragraph 826 to the extent that the RVSA is a publicly owned sewerage authority, formed pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 *et seq.*, with its principal place of business at 1050 East Hazelwood Avenue, Rahway, New Jersey, 07065, and operates a trunk sewer line and a wastewater treatment plant for its member municipalities consisting of Clark, Cranford, Garwood, Kenilworth, Mountainside, Rahway, Roselle Park, Scotch Plains, Springfield, Westfield, and Woodbridge and operates said trunk sewer line and wastewater treatment plant in accordance with its New Jersey Discharge Pollutant Elimination System permit as issued by the New Jersey Department of Environmental Protection (the "NJDEP").

20. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraph 827 and leaves Third-Party Plaintiffs to their proofs.

21. The RVSA admits the allegations contained in paragraph 828 to the extent that it operates a trunk sewer line and a wastewater treatment plant that is comprised of certain wastewater treatment infrastructure. Thus, to the extent that the allegations of paragraph 828 differ from the RVSA's records, they are denied.

22. The RVSA admits the allegations contained in paragraph 829.

23. The RVSA admits the allegation contained in paragraph 830 to the extent that they refer to a Judicial Consent Order that was executed between the RVSA and the

NJDEP, which document speaks for itself. Thus, to the extent that the allegations contained in paragraph 830 differ from the provisions contained in the Judicial Consent Order as well as the RVSA's and the NJDEP's records, they are denied.

24. The RVSA admits the allegations contained in paragraph 831 to the extent that the Original RVSA Members organized in 1928 to form a Joint Meeting. Thus, to the extent that the allegations contained in paragraph 831 differ from the RVSA's records, they are denied.

25. The RVSA admits the allegations contained in paragraph 832 to the extent that the Original RVSA Members organized in 1928 to form a Joint Meeting. Thus, to the extent that the allegations contained in paragraph 832 differ from the RVSA's records, they are denied.

26. The RVSA admits the allegations contained in paragraph 833 to the extent that the Original RVSA members entered into an agreement pursuant to the New Jersey Sewerage Authorities Law based upon an agreement dated 1951, which document speaks for itself. Thus, to the extent that the allegations of paragraph 833 differ from the provisions contained in the 1951 Agreement, they are denied.

27. The RVSA admits the allegations contained in paragraph 834.

28. The RVSA admits the allegations contained in paragraph 835 to the extent that the RVSA provides treatment services to Winfield Park, Fanwood, and portions of Linden as non-members municipalities. Thus to the extent that the allegations contained in paragraph 835 differ from the RVSA's records, they are denied.

29. The RVSA denies the allegations contained in paragraph 836.

30. The RVSA admits the allegations contained in paragraph 837 to the extent that the original Joint Meeting trunk line was operational in 1931 as evidenced by RVSA

historical records. Thus, to the extent that the remaining allegations contained in paragraph 837 differ from the RVSA's records, they are denied.

31. The RVSA admits the allegations contained in paragraph 838.

32. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraph 839 as they relate to conditions that existed prior to the formation of the Joint Meeting and leaves Third-Party Plaintiffs to their proofs.

33. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraph 840 and leaves Third-Party Plaintiffs to their proofs.

34. The RVSA has insufficient knowledge to form a belief of the truth or falsity of the allegations contained in paragraph 841 and leaves Third-Party Plaintiffs to their proofs.

35. The RVSA admits the allegations contained in paragraph 842.

36. The RVSA admits the allegations contained in paragraph 843 to the extent that it services part of Rahway but has insufficient knowledge to form a belief of the truth or falsity of the remaining allegations and leaves Third-Party Plaintiffs to their proofs.

37. The RVSA admits the allegations contained in paragraph 844.

38. The allegations contained in paragraph 845 refer to provisions contained in the RVSA's NJPDES permit which document speaks for itself. Thus, to the extent that the allegations differ from the provisions contained in the RVSA's NJPDES permit, they are denied.

39. The allegations contained in paragraph 846 refer to provisions contained in the RVSA's NJPDES permit which document speaks for itself. Thus, to the extent that the allegations differ from the provisions contained in the RVSA's NJPDES permit, they are denied.



40. The RVSA denies the allegations contained in paragraph 847.

41. The RVSA admits the allegations contained in paragraph 848 to the extent that outfall DSN004 discharges into a tributary of the Rahway River but has insufficient information to form a belief of the truth or falsity of the allegations involving the EPA and leaves Third-Party Plaintiffs to their proofs. The RVSA denies the remaining allegations of paragraph 848.

42. The RVSA denies the allegations contained in paragraph 849.

43. The RVSA has insufficient information to form a belief of the truth or falsity of the allegations contained in paragraph 850 and leaves Third-Party Plaintiffs to their proofs.

44. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 851 and leaves Third-Party Plaintiffs to their proofs.

45. The RVSA has insufficient information to form a belief of the truth or falsity of the allegations contained in paragraph 852 and leaves Third-Party Plaintiffs to their proofs.

46. The allegations contained in paragraph 853 refer to a report purportedly partially funded by the EPA which document speaks for itself but to which the RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations involving the report. Thus, to the extent that the allegations contained in paragraph 853 differ from the report, they are denied.

47. The RVSA admits the allegations contained in paragraph 854 to the extent that it is subject to the provisions contained in the Judicial Consent Order which document speaks for itself. Thus, to the extent that the allegations contained in

paragraph 854 differ from the provisions contained in the Judicial Consent Order, they are denied.

48. The RVSA denies the allegations contained in paragraph 855.

49. The RVSA denies the allegations contained in paragraph 856.

50. The RVSA denies the allegations contained in paragraph 857.

51. The RVSA admits the allegations contained in paragraph 858 to the extent that the RVSA is required to operate pursuant to its NJPDES permit. The RVSA denies the remaining allegations contained in paragraph 858.

52. The RVSA denies the allegations contained in paragraph 859.

53. The RVSA denies the allegations contained in paragraph 860.

54. 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, the RVSA 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**

55. The RVSA restates its answers to paragraphs 1 through 55 and reallege and incorporate them as if fully set forth at length herein.

56. The allegations contained in paragraphs 1149 through 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, the RVSA is without sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 1149 through 1155 and leaves Third-Party Plaintiffs to their proofs.

57. The RVSA denies the allegations contained in paragraph 1156.

58. The RVSA is has insufficient knowledge 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.

59. The RVSA denies the allegations contained in paragraph 1158.

**WHEREFORE**, the Rahway Valley Sewerage Authority demands judgment against third-party defendants as follows:

- a. Dismissal of the third-party complaint with prejudice in its entirety; and
- b. Awarding the RVSA's attorney's fees, interest and costs; and
- c. For all other equitable relief as the court may deem necessary, just and/or appropriate under the circumstances of this case.

#### **SECOND COUNT**

60. The RVSA restates its answers to paragraphs 1 through 60 and reallege and incorporate them as if fully set forth at length herein.

61. The RVSA denies the allegations contained in paragraph 1160.

**WHEREFORE**, the Rahway Valley Sewerage Authority demands judgment against third-party defendants as follows:

- a. Dismissal of the third-party complaint with prejudice in its entirety; and
- b. Awarding the RVSA's attorney's fees, interest and costs; and
- c. For all other equitable relief as the court may deem necessary, just and/or appropriate under the circumstances of this case.

#### **THIRD COUNT**

62. The RVSA restates its answers to paragraphs 1 through 62 and reallege and incorporate them as if fully set forth at length herein.

63. The allegations contained in paragraph 1162 relate to other third-party defendants which do not require an answer from the RVSA.

64. The allegations contained in paragraph 1163 refer to provisions contained in N.J.S.A. 58:14-7 which statute speaks for itself. Thus, to the extent that the allegations in paragraph 1163 differ from the statute, they are denied.

65. The allegations contained in paragraph 1164 refer to provisions contained in N.J.S.A. 58:14-8 which statute speaks for itself. Thus, to the extent that the allegations in paragraph 1164 differ from the statute, they are denied.

66. The allegations contained in paragraph 1165 through 1177 relate to other third-party defendants which do not require an answer from the RVSA.

67. The allegations contained in paragraph 1178 refer to provisions contained in N.J.S.A. 58:14-33 which statute speaks for itself. Thus, to the extent that the allegations in paragraph 1178 differ from the statute, they are denied.

68. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1179 and leaves Third-Party Plaintiffs to their proofs.

69. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1180 and leaves Third-Party Plaintiffs to their proofs.

70. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1181 and leaves Third-Party Plaintiffs to their proofs.

71. The allegations contained in paragraph 1182 refer to provisions contained in N.J.S.A. 2A:35A-3.a which statute speaks for itself. Thus, to the extent that the allegations in paragraph 1182 differ from the statute, they are denied.

72. The allegations contained in paragraph 1183 refer to provisions contained in N.J.S.A. 2A:35A-3.a which statute speaks for itself. Thus, to the extent that the allegations in paragraph 1183 differ from the statute, they are denied.

73. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1184 and leaves Third-Party Plaintiffs to their proofs.

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

75. The RVSA 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 Rahway Valley Sewerage Authority demands judgment against third-party defendants as follows:

- a. Dismissal of the third-party complaint with prejudice in its entirety; and
- b. Awarding the RVSA's attorney's fees, interest and costs; and
- c. For all other equitable relief as the court may deem necessary, just and/or appropriate under the circumstances of this case.

#### **FOURTH COUNT**

76. The RVSA restates its answers to paragraphs 1 through 76 and reallege and incorporate them as if fully set forth at length herein.

77. 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, the RVSA has insufficient knowledge to form a belief as to the truth or falsity of

the allegations contained in paragraphs 1188 to 1190 and leaves Third-Party Plaintiffs to their proofs.

78. The RVSA 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**, the Rahway Valley Sewerage Authority demands judgment against third-party defendants as follows:

- a. Dismissal of the third-party complaint with prejudice in its entirety; and
- b. Awarding the RVSA's attorney's fees, interest and costs; and
- c. For all other equitable relief as the court may deem necessary, just and/or appropriate under the circumstances of this case.

#### **FIFTH COUNT**

79. The RVSA restates its answers to paragraphs 1 through 79 and reallege and incorporate them as if fully set forth at length herein.

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

81. 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 statute, they are denied.

82. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1199 and leaves Third-Party Plaintiffs to their proofs.

83. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1200 and leaves Third-Party Plaintiffs to their proofs.

84. The RVSA has insufficient knowledge to form a belief as to the truth or falsity of the allegations contained in paragraph 1201 and leaves Third-Party Plaintiffs to their proofs.

85. The allegations contained in paragraph 1202 constitute legal argument to which no response is required.

86. The allegations contained in paragraph 1203 constitute legal argument to which no response is required.

87. The RVSA 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**, the Rahway Valley Sewerage Authority demands judgment against third-party defendants as follows:

- a. Dismissal of the third-party complaint with prejudice in its entirety; and
- b. Awarding the RVSA's attorney's fees, interest and costs; and
- c. For all other equitable relief as the court may deem necessary, just and/or appropriate under the circumstances of this case.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred for failure to state a claim upon which relief may be granted.

## **SECOND AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred by the equitable doctrine of laches.

## **THIRD AFFIRMATIVE DEFENSE**

The RVSA is already subject to a Judicial Consent Order for the same relief requested by the Third-Party Plaintiffs.

## **FOURTH AFFIRMATIVE DEFENSE**

The Judicial Consent Order that the RVSA is subject to acts as a bar for subsequent actions against the RVSA for the same matters addressed therein.

## **FIFTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred for failure to file the within action within the applicable statute of limitations.

## **SIXTH AFFIRMATIVE DEFENSE**

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

## **SEVENTH AFFIRMATIVE DEFENSE**

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

## **EIGHTH AFFIRMATIVE DEFENSE**

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

## **NINTH AFFIRMATIVE DEFENSE**

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

## **TENTH AFFIRMATIVE DEFENSE**



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

#### **ELEVENTH AFFIRMATIVE DEFENSE**

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.

#### **TWELFTH AFFIRMATIVE DEFENSE**

The complained of occurrence was caused by third-parties over whom the RVSA had no control.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

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.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

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.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims against the RVSA are subject to setoff and recoupment and therefore must be reduced accordingly.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

The RVSA's alleged actions 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.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

#### **NINETEENTH AFFIRMATIVE DEFENSE**

Third-Party Plaintiffs' claims are barred for lack standing to bring an action against the RVSA.

#### **TWENTIETH AFFIRMATIVE DEFENSE**

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

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

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 the RVSA has no control.

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

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

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

#### **DENIAL OF UNKNOWN OR UNRAISED CLAIMS**

The RVSA denies any liability for any and all unknown or unasserted, counterclaims and crossclaims, whether or not yet filed, and third-party claims for contribution and/or for indemnification.

#### **COUNTERCLAIMS AND CROSS CLAIMS**

Pursuant to Case Management Order, and subsequent directives of the Court, the RVSA 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. For this reason, the RVSA does not specifically plead

such cross claims and counterclaims herein. The RVSA reserves the right to assert affirmative claims.

**CLAIMS FOR CONTRACTUAL INDEMNIFICATION AND HOLD HARMLESS  
AGREEMENTS ARISING OUT OF CONTRACTUAL OBLIGATIONS TO INCLUDE  
POLICIES OF INSURANCE**

Pursuant to both common law obligations and contractual obligations as found in contracts for waste hauling, waste disposal, wastewater treatment or sewage treatment and disposal between the RVSA, its member municipalities and municipal users, the customers serviced by the RVSA, the residents of the RVSA's member municipalities and municipal users, any public, private or other entities, and any and all haulers of municipal, hazardous, industrial or bulk waste or sewage or septic waste and effluents generated publicly, privately or otherwise, from the RVSA's facilities or from within the borders of the RVSA's member municipalities and user municipalities, a demand is made on said haulers of waste or treatment facilities for all costs for the defense and indemnification for any and all obligations asserted against the RVSA arising from this litigation. The haulers and treatment facilities owing an obligation to the RVSA include and are not limited to those parties named in plaintiffs' complaint, the third-party complaints, and any future amended complaints, and are not limited to the regional sewerage authorities and commissions. In addition, the RVSA reserves the right to make claims against any current or prior owners and/or operators who may be responsible for any damages and/or injuries claimed by either plaintiffs, defendants/Third-Party Plaintiffs, third-party defendants, the RVSA or any other party or entity, public or private, who may be joined as a party to this litigation or who have not yet been joined as a party to this litigation.

### **DEMAND FOR STATEMENT OF DAMAGES**

Pursuant to R. 4:5-2, Third-Party Defendant Rahway Valley Sewerage Authority demands that Defendants/ Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. furnish the Authority, 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 Rahway Valley Sewerage Authority demands that Defendants/ Third-Party Plaintiffs 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, Brian M. Hak, Esq. is hereby designated as trial counsel.

### **RESERVATION OF RIGHTS**

Third-Party Defendant Rahway Valley Sewerage Authority 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.

WEINER LESNIAK LLP  
Attorneys for Third-Party Defendant,  
Rahway Valley Sewerage Authority

By: 

Brian M. Hak, Esq.

Dated: September 24, 2009

### CERTIFICATION OF SERVICE

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

1. I am a partner of the law firm of Weiner Lesniak LLP, 629 Parsippany Road, Parsippany, New Jersey, which law firm represents the Third-Party Defendant, Rahway Valley Sewerage Authority in the above captioned matter.

2. I hereby certify that the Rahway Valley Sewerage Authority's Answer to Third-Party Complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) and Separate Defenses, Counterclaims and Crossclaims was served electronically on all parties which have consented to service by posting on [www.sfile.com/njdepvocc](http://www.sfile.com/njdepvocc) on September 24, 2009.

3. I hereby certify that the Rahway Valley Sewerage Authority's Answer to Third-Party Complaint "A" of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (Against Public Entities) and Separate Defenses, Counterclaims and Crossclaims was served upon the Clerk of Court via Federal Express on September 24, 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 willingly false, I am subject to punishment.

WEINER LESNIAK LLP  
Attorneys for Third-Party Defendant,  
Rahway Valley Sewerage Authority

By: 

Brian M. Hak, Esq.

Dated: September 24, 2009