

CASTANO QUIGLEY LLC
1120 Bloomfield Avenue
West Caldwell, N.J. 07007
(973) 808-1234
Attorneys for the Third Party Defendant
Town of Kearny

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

Plaintiffs,

v.

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 - HUDSON COUNTY

DOCKET NO. ESX-L-9868-05 (PASR)

Civil Action

**TOWN OF KEARNY'S ANSWER TO
THIRD-PARTY COMPLAINT "A"
AFFIRMATIVE DEFENSES AND
DEMAND FOR JURY TRIAL**

Third-Party Defendant, Town of Kearny, with its principal place of business at Town
Hall, 402 Kearny Avenue, Kearny, New Jersey, by way of Answer to Third-Party Complaint "A"

brought by Defendants Maxus Energy Corporation and Tierra Solutions, Inc. (“Third-Party Plaintiffs”), hereby says:

Other than to admit that the Town of Kearny is a public body and a municipality in the State of New Jersey, with its principal place of business at 402 Kearny Avenue, Kearny, New Jersey and is a customer of the Passaic Valley Sewage Commission, all other allegations against the Town of Kearny are denied. The Town of Kearny is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the paragraphs of Third Party Complaint “A” and leaves Third Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, the Town of Kearny demands judgment dismissing Third Party Complaint “A”, awarding attorney’s fees and costs of suit, and such other relief as the Court may deem just and equitable.

AFFIRMATIVE DEFENSES

The Town of Kearny sets forth the following Affirmative Defenses without waiving its right to put Third Party Plaintiffs to their proofs and without assuming any burden of proof not imposed by law.

1. Third Party Complaint “A” fails to state a claim and/or cause of action upon which relief may be granted.
2. Third Party Complaint “A” is barred by the statute of limitations.
3. Third Party Complaint “A” is barred by the doctrine of res judicata, collateral estoppel, waiver, laches and unclean hands.
4. Third Party Complaint “A” is barred as Third Party Plaintiffs lack standing to bring this action.

5. Third Party Complaint “A” is barred as Third Party Plaintiffs have failed to exhaust all administrative remedies.
6. Third Party Complaint “A” is barred as the Town of Kearny is not liable under the New Jersey Spill Act.
7. The Town of Kearny is not a “responsible party” under the New Jersey Spill Act.
8. Sewage and sewage sludge are not hazardous substances under the New Jersey Spill Act.
9. The activities alleged against the Town of Kearny do not amount to a discharge or hazardous substances under the New Jersey Spill Act. To the extent that it is proven that the Town of Kearny discharged any hazardous substances, the Town would not be liable because the discharges would have been pursuant to federal and or state permits.
10. Third Party Complaint “A” is barred as to the extent it alleges conduct occurring or damage incurred prior to the effective date of the New Jersey Spill Act.
11. Third Party Complaint “A” is barred, or in the alternative, the damages sought must be reduced under the doctrine of comparative negligence.
12. Third Party Complaint “A” is barred, or in the alternative, the damages sought are subject to contribution or any reduction or offset from other parties.
13. Third Party Complaint “A” allegations pursuant to the New Jersey Spill Act are not ripe for adjudication.
14. Third-Party Complaint “A” is barred as any injuries and or damages allegedly sustained were caused by negligence and or intentional acts of co-defendants or third parties over whom the Town of Kearny had not control.
15. Third-Party Complaint “A” is barred as the Town of Kearny is insulated from liability pursuant to the New Jersey Tort Claims Act.

16. The Town of Kearny adopts all Defenses asserted by other parties in this action to the extent the defenses are applicable.

17. The Town of Kearny reserves the right to amend this Answer to assert any additional defense discovered during the course of this action.

JURY DEMAND

The Town of Kearny hereby demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, Norma Garcia shall be designated trial counsel.

Dated: October 22, 2009

CASTANO QUIGLEY LLC

BY: 

Norma Garcia



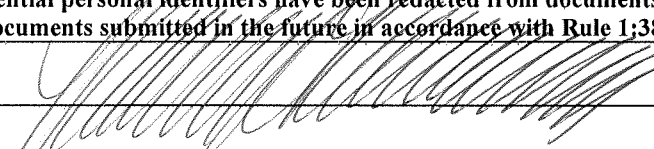
1120 Bloomfield Avenue

West Caldwell, New Jersey 07006

Attorneys for Third-Party Defendant

Town of Kearny

Appendix XII-B1

 <p>CIVIL CASE INFORMATION STATEMENT (CIS)</p> <p>Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed or if attorney's signature is not affixed.</p>		FOR USE BY CLERK'S OFFICE ONLY	
		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
		CHG/CK NO.	
		AMOUNT:	
		OVERPAYMENT:	
		BATCH NUMBER:	
ATTORNEY/PRO SE NAME Norma Garcia		TELEPHONE NUMBER (973) 808-1234	COUNTY OF VENUE Essex
FIRM NAME (if applicable) Castano Quigley LLC		DOCKET NUMBER (When available) ESX-L-9868 (PAR)	
OFFICE ADDRESS 1120 Bloomfield Avenue West Caldwell NJ 07006		DOCUMENT TYPE Answer	
		JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Town of Kearny, Third Party Defendant		CAPTION NJDEP, et al. v. Occidental Chemical Corp., et al. Third party Complaint "A" ads. Town of Kearny	
CASE TYPE NUMBER (See reverse side for listing) 156	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, IS THAT RELATIONSHIP <input type="checkbox"/> EMPLOYER-EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, FOR WHAT LANGUAGE:		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).			
ATTORNEY SIGNATURE: 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I — 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

Track II — 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE – PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 699 TORT – OTHER

Track III — 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES
- 620 FALSE CLAIMS ACT

Track IV — Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- 280 Zelnorm
- 285 Stryker Trident Hip Implants

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 279 GADOLINIUM |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 271 ACCUTANE | 282 FOSAMAX |
| 272 BEXTRA/CELEBREX | 283 DIGITEK |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 284 NUVARING |
| 275 ORTHO EVRA | 286 LEVAQUIN |
| 277 MAHWAH TOXIC DUMP SITE | 601 ASBESTOS |
| 278 ZOMETA/AREXIA | 619 VIOXX |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category:

☐ Verbal Threshold

☐ Putative Class Action

☐ Title 59

CERTIFICATION OF FILING AND SERVICE

I hereby certify that an original and one (1) copy of the within pleading has been
filed with the:

Clerk of the Civil Division
Essex County Courthouse
50 West Market Street
Newark, New Jersey 07102

I further certify that one copy of the pleading has been sent via overnight mail to:

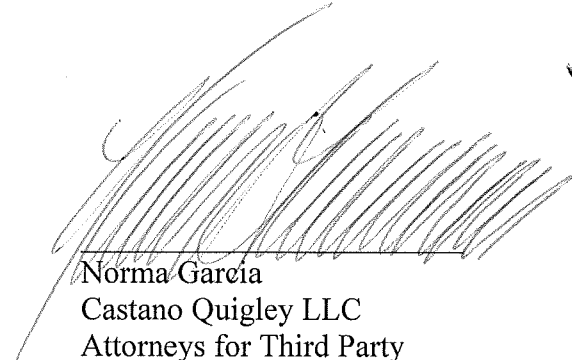
Hon. Sebastian P. Lombardi, J.S.C.
Superior Court of New Jersey
Essex County Historic Courthouse
470 Martin Luther King, Jr. Boulevard
Newark, New Jersey 07102

William L. Warren, Esq.
Drinker Biddle & Reath, LLP
105 College Road East, Suite 300
Princeton, New Jersey 08542; and

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

I further certify that a copy of this pleading has been posted on the electronic
platform and or served via electronic email.

Dated: October 22, 2009



Norma Garcia
Castano Quigley LLC
Attorneys for Third Party
Defendant Town of Kearny