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Three Gateway Center

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Attorneys for Third-Party Defendant, Township of Cedar Grove

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,

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA SOLUTIONS,
INC., MAXUS ENERGY CORPORATION,
RESPOL YPF, S.A., YPF, YPF
HOLDINGS, INC., AND CLH
HOLDINGS,

Defendants,

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

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,
BOROUGH OF HALEDON,

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

Civil Action

THIRD-PARTY DEFENDANT TOWNSHIP
OF CEDAR GROVE'S ANSWER AND
AFFIRMATIVE DEFENSES TO THIRD-
PARTY COMPLAINT "A"
(Against Public Entities)

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| 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 | |
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AGRICULTURE,
THE NEW JERSEY DEPARTMENT OF
TRANSPORTATION,
THE STATE OF NEW JERSEY,
TOWN OF BELVILLE,
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 Township of Cedar Grove ("Cedar Grove"), with its principal place of business at 525 Pompton Avenue, Cedar Grove, New Jersey, 07009, hereby Answers Third-

Party Plaintiffs' Third-Party Complaint "A" (Against Public Entities).

ANSWER

1. Pursuant to Case Management Order V, Sect. 9 (c)(iv), third-party defendant, Cedar Grove, answers only those allegations in the third party complaint that relate to Cedar Grove specifically and any allegations concerning parcel(s) or site(s) with which Cedar Grove is allegedly associated.

Therefore, Cedar Grove admits the allegations in paragraph 117 of the third party complaint that Cedar Grove is a Township and public body and has its principal place of business at 525 Pompton Avenue, Cedar Grove, New Jersey.

Further, Cedar Grove admits that it is a contributing municipality to the Passaic Valley Sewerage Commission. As to the remainder of the allegations contained in paragraph 762, Cedar Grove has insufficient information to form a belief as to their truth and leaves the third party plaintiffs to their proofs regarding same.

As to the truth of the remaining paragraphs in Third-Party Complaint "A", or the allegations in the remaining paragraphs that do not pertain to Cedar Grove, it lacks sufficient knowledge of information to form a belief as to the truth of such allegations and leaves third-party plaintiffs to their proofs.

WHEREFORE, Cedar Grove demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

FIRST COUNT

(New Jersey Spill Compensation and Control Act,

N.J.S.A. 58:10-23.11 f.a. (2) (a))

2. Cedar Grove repeats and re-alleges its answers previously set forth herein.

3. Cedar Grove is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1148-1158, denies the allegations and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Cedar Grove demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

SECOND COUNT

(Statutory Contribution)

4. Cedar Grove repeats and re-alleges its answers previously set forth herein.

5. Cedar Grove is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1159-1160, denies the allegations, and

leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Cedar Grove demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and 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 and
Environmental Rights Act Claim)

6. Cedar Grove repeats and re-alleges its answers previously set forth herein.

7. Cedar Grove is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1161-1186, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Cedar Grove demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

FOURTH COUNT

(Nuisance)

8. Cedar Grove repeats and re-alleges its answers previously set forth herein.

9. Cedar Grove is without sufficient knowledge or information to form a belief as to the truth of the allegations

contained in paragraphs 1187-1195, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Cedar Grove demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

FIFTH COUNT

(Breach of the Public Trust)

10. Cedar Grove repeats and re-alleges its answers previously set forth herein.

11. Cedar Grove is without sufficient knowledge or information to form a belief as the truth of the allegations contained in paragraphs 1196-1229, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at the time of trial.

WHEREFORE, Cedar Grove demands judgment dismissing the Third-Party Complaint, awarding counsel fees and costs of suit, and such other relief as the Court may deem just and equitable.

AFFIRMATIVE DEFENSES

Cedar Grove, as and for Affirmative Defenses to each and every allegation in the Complaint, says as follows:

FIRST AFFIRMATIVE DEFENSE

Third-Party Plaintiffs fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Third Party Complaint "A" must be dismissed for failure to join necessary and indispensable parties.

THIRD AFFIRMATIVE DEFENSE

Third-Party Plaintiffs lack standing to maintain this cause of action as set forth in Third Party Complaint "A".

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for relief are barred by the applicable statutory authority of the Municipal Land Use Law.

FIFTH AFFIRMATIVE DEFENSE

Third-Party Complaint "A" is the result of actions by Third-Party Plaintiffs or other parties over whom Cedar Grove exercises no control and for which Cedar Grove cannot be held legally responsible.

SIXTH AFFIRMATIVE DEFENSE

Any claim of Third Party Plaintiffs is barred by contributory negligence and/or limited by comparative negligence.

SEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for relief should be dismissed because they suffered no damages as a result of any action or inaction by Cedar Grove.

EIGHTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for relief are barred by the applicable statute of limitations, repose, waiver, estoppel, and/or laches.

NINTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims for relief are barred by the applicable General Codes of the Township of Cedar Grove.

TENTH AFFIRMATIVE DEFENSE

Cedar Grove is insulated from liability by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1. Further, the Third-Party complaint is barred by the notice provisions in the New Jersey Tort Claims Act, N.J.S.A. 59:8-1, et seq.

ELEVENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims are barred by the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11, and are also barred to the extent that Third-Party Plaintiffs seek relief for conduct occurring prior to the effective date of the New Jersey Spill Compensation and Control Act. Third-Party Plaintiffs have also failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act. Finally, Cedar Grove is not a "responsible party" under the Spill Act.

TWELFTH AFFIRMATIVE DEFENSE

Third-Party Plaintiff's claims against Cedar Grove are barred, in whole or in part, by Section 107 (b)(3) of CERCLA, 42 U.S.C. 9607 (b)(3) because any releases, or threats of releases of hazardous substances, including those allegedly attributable to Cedar Grove, were caused by the acts or omissions of third parties other than Cedar Grove's employees or agents, or other than with whom Cedar Grove had a direct or indirect contractual relationship, and Cedar Grove exercised due care with respect to the alleged hazardous substances taking into consideration the characteristics thereof, in light of all the relevant facts and circumstances and took precautions against foreseeable acts or omissions of any such third party and the consequences result from such act or omissions.

THIRTEENTH AFFIRMATIVE DEFENSE

Any disposal of waste by Cedar Grove was done in accordance with the prevailing legal requirements of the State of New Jersey.

FOURTEENTH AFFIRMATIVE DEFENSE

Without admitting any liability, if it is determined that Cedar Grove engaged in any of the activities alleged in Third-Party Complaint "A", such activities were *de minimis*.

FIFTEENTH AFFIRMATIVE DEFENSE

Cedar Grove, at all times, acted in good faith.

SIXTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Cedar Grove for indemnification are barred to the extent they seek recovery for any punitive damages because such claims are barred by public policy.

SEVENTEENTH AFFIRMATIVE DEFENSE

Third-Party Plaintiffs' claims against Cedar Grove for any injuries and or damages allegedly sustained are barred to the extent such injuries and or damages were caused by negligence and or intentional acts of co-defendants or third parties, over whom Cedar Grove had no control.

EIGHTEENTH AFFIRMATIVE DEFENSE

To the extent that Third-Party Plaintiffs' claims against Cedar Grove are subject to contribution, or any reduction or offset from other parties, any damages recovered against Cedar Grove shall be reduced accordingly.

NINETEENTH AFFIRMATIVE DEFENSE

To the extent that Cedar Grove 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 harm suffered.

TWENTIETH AFFIRMATIVE DEFENSE

Cedar Grove exercised reasonable care under all the circumstances herein. Consequently, it is not liable to

Plaintiffs or Defendants/Third Party Plaintiffs under the common law or any statutory theory of recovery awarded herein.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Any injuries or damages allegedly sustained by Plaintiffs were caused by the joint or several negligence and or intentional acts of Third Party Plaintiffs and other parties over whom Cedar Grove has no control.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Third Party Plaintiffs have not paid more than their fair share of any damages, costs or other relief sought by the Plaintiffs, 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, and are, therefore, not entitled to contribution from Cedar Grove.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Third Party Plaintiffs' claims for indemnification are barred because any alleged liability of Cedar Grove, the liability Cedar Grove denies, would be secondary, indirect, passive, precarious, constructive, technical and/or imputed, and the liability of all or some of the Defendants/Third-Party Plaintiffs are direct, active and primary.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Cedar Grove reserves the right to plead any additional affirmative defenses of which might come to light in this action progresses.

JURY DEMAND


Cedar Grove hereby demands a trial by jury.

DESIGNATION OF TRIAL COUNSEL

Cedar Grove designates Thomas P. Scrivo, Esq. as trial attorney.

McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP
Attorneys for Defendant,
Township of Cedar Grove

By:



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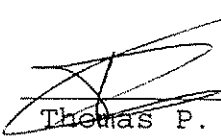
November 4, 2009

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned hereby certifies that to the best of the undersigned's knowledge and belief, the within action is not presently the subject of any other action pending in any court or of a pending arbitration proceeding to date, nor is any other action or arbitration proceeding contemplated at this time.

McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP
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Township of Cedar Grove

By:


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November 4, 2009

FILING CERTIFICATION

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

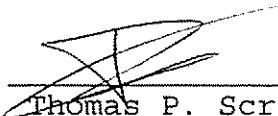
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I certify that a copy of said document has been posted on the electronic platform provided by Defendants
(<http://njdepvocc.sfile.com>).

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November 4, 2009