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Attorneys for Third-Party Defendant,

Township of Clark

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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.

BAYONE MUNICIPAL UTILITIES  
AUTHORITY, et al.,

Third-Party Defendants.

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

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

: **TOWNSHIP OF CLARK'S ANSWER**  
: **TO THIRD-PARTY COMPLAINT "A"**  
: **AFFIRMATIVE DEFENSES AND**  
: **DEMAND FOR JURY TRIAL**

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Third-party Defendant, Township of Clark, with its principal place of business at  
430 Westfield Avenue, in the Township of Clark, County of Union and State of New  
Jersey, by way of Answer to Third-Party Complaint "A", says:

## ANSWER

1. The Township of Clark admits it is a public body and a municipality of the State of New Jersey and a member of the Rahway Valley Sewerage Authority. All other allegations against the Township of Clark are denied. The Township of Clark is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1 through 1147, denies the allegations, and leaves Third-Party Plaintiffs to their proofs at time of trial.

WHEREFORE, the Township of Clark demands judgment dismissing the Third-Party Complaint, awarding attorney's 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. 58:10-23.11f.a.(2)(a))

2. The Township of Clark repeats, reiterates and incorporates its answers contained in paragraph 1 as if set forth at length herein.

3. The Township of Clark 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 time of trial.

WHEREFORE, the Township of Clark demands judgment dismissing the Third-Party Complaint, awarding of attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

### SECOND COUNT

(Statutory Contribution)

4. The Township of Clark repeats, reiterates and incorporates its answers contained in paragraphs 1-3 as if set forth at length herein.

5. The Township of Clark 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 time of trial.

WHEREFORE, the Township of Clark demands judgment dismissing the Third-Party Complaint, awarding attorney's 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. The Township of Clark repeats, reiterates and incorporates its answers contained in paragraphs 1-5 as if set forth at length herein.

7. The Township of Clark 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 time of trial.

WHEREFORE, the Township of Clark demands judgment dismissing the Third-Party Complaint, awarding attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

FOURTH COUNT  
(Nuisance)

8. The Township of Clark repeats, reiterates and incorporates its answers contained in paragraphs 1-7 as if set forth at length herein.

9. The Township of Clark 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 time of trial.

WHEREFORE, the Township of Clark demands judgment dismissing the Third-Party Complaint, awarding attorney's 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. The Township of Clark repeats, reiterates and incorporates its answers contained in paragraphs 1-9 as if set forth at length herein.

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

WHEREFORE, the Township of Clark demands judgment dismissing the Third-Party Complaint, awarding attorney's fees and costs of suit, and such other relief as the Court may deem just and equitable.

AFFIRMATIVE DEFENSES

The Township of Clark 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 Township of Clark is not liable under the New Jersey Spill Act.
7. The Township of Clark 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 Township of Clark do not amount to a discharge or hazardous substances under the New Jersey Spill Act. To the extent that it is proven that the Township of Clark discharged any hazardous substances, the Township 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 Township of Clark had not control.
15. Third-Party Complaint "A" is barred as the Township of Clark is insulated from liability pursuant to the New Jersey Tort Claims Act.

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

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

#### JURY DEMAND

The Township of Clark hereby demands a trial by jury.

#### DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, Joseph J. Triarsi, Esq. shall be designated trial counsel.

#### CERTIFICATION OF FILING AND SERVICE

I hereby certify that an original and one (1) copy of the within pleading has been filed with the Civil Clerk's Office, 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

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.

**TRIARSI, BETANCOURT, WALSH &  
WUKOVITS, LLC**

By: Howard P. Lesnik  
Howard P. Lesnik, Esq.  
Counsel to Third-Party  
Defendant Township of Clark

Dated: 10/29/09