

CABANA & KING, L.L.C.

104 Elcock Avenue

Boonton, NJ 07005-1112

973-335-7100

973-335-0425 Telecopier

Attorneys for Third-Party Defendants:

Bayonne Municipal Utilities Authority; East Rutherford Borough;

Elmwood Park Borough; Lodi Borough; Lyndhurst Borough;

North Arlington Borough; Rutherford Borough; Saddle Brook Township;

South Hackensack Township; Wallington Borough; Wood-Ridge Borough

and Wyckoff Township

New Jersey Department of Environmental:
Protection, *et al*,

Plaintiffs, :

v. :

Civil Action

Occidental Chemical Corporation, *et al*, :

Defendants, :

and :

Occidental Chemical Corporation, *et al*, :

Third-Party Plaintiffs, :

v. :

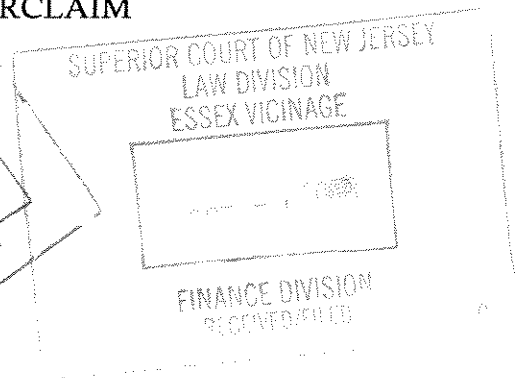
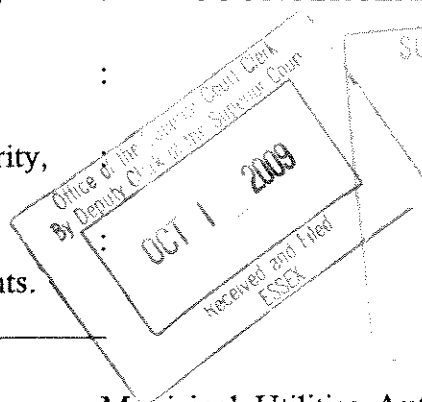
Bayonne Municipal Utilities Authority,
et al,

Third-Party Defendants.

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

AMENDED

ANSWER TO DEFENDANTS MAXUS
ENERGY CORPORATION'S AND
TIERRA SOLUTIONS, INC.'S THIRD
PARTY COMPLAINT "A" (Against
Public Entities) AND SEPARATE
DEFENSES, CROSSCLAIMS AND
COUNTERCLAIM



Third-Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford
Borough, Elmwood Park Borough, Lodi Borough, Lyndhurst Borough, North Arlington

Borough, Rutherford Borough, Saddle Brook Township, South Hackensack Township, Wallington Borough, Wood-Ridge Borough and Wyckoff Borough, by way of Amended Answer to the Third Party Complaint "A" (Against Public Entities) brought by Defendants, Maxus Energy Corporation and Tierra Solutions, Inc., say:

PROCEDURAL BACKGROUND

1. Third Party Defendants admit the allegations contained paragraphs 1 and 2.
2. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 3 through 10.
3. Third Party Defendants admit the allegations contained in paragraph 11 as they relate only to the alleged allegations of actions and omissions of the Third Party Defendants.
4. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 12 through 14.

ADDITIONAL HISTORICAL BACKGROUND

5. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 15 through 51.

THE PARTIES

Third-Party Plaintiffs

6. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 52 through 54.

Third-Party Defendants

7. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 55.

8. Third Party Defendants admits the allegations contained in paragraphs 56 through 139.

DEFINITIONS

9. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 140.

10. Third Party Defendants admits the allegations contained in paragraph 141.

11. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 142 through 146.

12. Third Party Defendants admits the allegations contained in paragraphs 147 and 148.

13. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 149 through 158.

14. Third Party Defendants admits the allegations contained in paragraph 159.

15. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 160 and 161.

16. Third Party Defendants admits the allegations contained in paragraph 162.

17. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 163 and 164.

FACTUAL ALLEGATIONS

WASTEWATER DISPOSAL ENTITIES

Borough of Carteret

18. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 165 through 189.

City of Bayonne

19. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 190 through 292, denies same and leaves Third Party Plaintiffs to its proofs at time of trial.

City of Elizabeth

20. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 293 through 359.

City of Jersey City

21. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 360 through 364.

Jersey City West System

22. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 365 through 400.

Jersey City East System

23. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 401 through 407.

Jersey City System

24. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 408 through 420.

City of Linden

25. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 421 through 432.

City of Newark

26. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 433 through 441.

Drainage Districts and Basins

27. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 442 through 454.

Combined Sewer and Storm Sewer Outfalls

28. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 455 through 483.

The Peripheral Ditch

29. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 484 through 495.

Other Discharges from the Newark System

30. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 496 through 507.

City of Rahway

31. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 508 through 521.

Joint Meeting of Essex and Union Counties

32. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 522 through 734.

Linden Roselle Sewerage Authority

33. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 735 through 743.

Passaic Valley Sewerage Commissioners

34. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 744 through 825.

Rahway Valley Sewerage Authority

35. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 826 through 860.

Town of Kearny

36. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 861 and 862.

Kearny South System

37. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 883 through 895.

Kearny North System

38. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 896 through 905.

Kearny System

39. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 906 through 912.

**OWNERS AND OPERATORS OF SUBMERGED LANDS WITHIN THE NEWARK
BAY COMPLEX**

The State of New Jersey

40. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 913 through 918.

The Port Authority and the City of Newark

41. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 919 through 931.

**THE STATE OF NEW JERSEY AND NEW JERSEY DEPARTMENT OF
AGRICULTURE MOSQUITO AND PEST CONTROL PRACTICES**

42. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 932 through 947.

COMMERCIAL SITES

80 Lister Avenue

43. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 948 through 952.

Newark Airport Site

44. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 953 through 983.

Newark Seaport Sites

45. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 984 through 1001.

Revere Site

46. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1002 through 1012.

Housing Authority of the City Newark McCarter Highway Site

47. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1013 through 1016.

American Ref-Fuel Sites

48. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1017 through 1031.

NJDOT Kearny Oil Lake Site

49. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1032 through 1066.

LANDFILL SITES

The Keegan Landfill Site

50. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1067 through 1085.

The MSLA 1-D Landfill Site

51. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1086 through 1122.

Avenue P Landfill Site

52. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1123 through 1147.

FIRST COUNT

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

53. Third Party Defendants repeat and reallege their answers contained in paragraphs 1 through 1147 as if set forth at length herein.

54. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1149 through 1158, denies the allegations against answering parties, and leaves Third Party Plaintiffs to its proofs at time of trial.

WHEREFORE, Third Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford Borough; Elmwood Park Borough; Lodi Borough; Lyndhurst Borough; North Arlington Borough; Rutherford Borough; Saddle Brook Township; South Hackensack Township; Wallington Borough; Wood-Ridge Borough and Wyckoff Township, demand judgment as follows:

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

SECOND COUNT

(Statutory Contribution)

55. Third Party Defendants repeat and reallege their answers contained in paragraphs 1 through 1158 as if set forth at length herein.

56. Third Party Defendants deny the allegations contained in paragraph 1160 and leave Plaintiffs to its proofs at time of trial.

WHEREFORE, Third Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford Borough; Elmwood Park Borough; Lodi Borough; Lyndhurst Borough; North Arlington Borough; Rutherford Borough; Saddle Brook Township; South Hackensack Township; Wallington Borough; Wood-Ridge Borough and Wyckoff Township, demand judgment as follows:

1. dismissing Third Party Plaintiff's Complaint;
2. awarding attorney's 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 and
Environmental Rights Act Claim)**

57. Third Party Defendants repeat and reallege their answers contained in paragraphs 1 through 1160 as if set forth at length herein.

58. Third Party Defendants deny the allegations contained in paragraphs 1162 through 1164 and leave Plaintiffs to its proofs.

59. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1165 through 1176.

60. Third Party Defendants deny the allegations contained in paragraph 1177 as it relates to "the PVSA Municipalities" and leave Third Party Plaintiffs to its proofs at time of trial.

61. Third Party Defendants deny the allegations contained in paragraph 1178 and leave Third Party Plaintiffs to its proofs at time of trial.

62. Third Party Defendants deny the allegations contained in paragraphs 1179 through 1181 as it relates to “the PVSA Municipalities” and leave Third Party Plaintiffs to its proofs at time of trial.

63. Third Party Defendants deny the allegations contained in paragraphs 1182 through 1186 and leave Third Party Plaintiffs to its proofs at time of trial.

WHEREFORE, Third Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford Borough; Elmwood Park Borough; Lodi Borough; Lyndhurst Borough; North Arlington Borough; Rutherford Borough; Saddle Brook Township; South Hackensack Township; Wallington Borough; Wood-Ridge Borough and Wyckoff Township, demand judgment as follows:

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

FOURTH COUNT

(Nuisance)

64. Third Party Defendants repeat and reallege their answers contained in paragraphs 1 through 1186 as if set forth at length herein.

65. Third Party Defendants deny the allegations contained in paragraph 1188.

66. Third Party Defendants deny the allegations contained in paragraphs 1189 through 1195 as they relate to Bayonne Municipal Utilities Authority and “the PVSA” Municipalities, and leave Third Party Plaintiffs to its proofs at time of trial.

WHEREFORE, Third Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford Borough; Elmwood Park Borough; Lodi Borough; Lyndhurst Borough;

North Arlington Borough; Rutherford Borough; Saddle Brook Township; South Hackensack Township; Wallington Borough; Wood-Ridge Borough and Wyckoff Township, demand judgment as follows:

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

COUNT V [*sic*]

BREACH OF THE PUBLIC TRUST

67. Third Party Defendants repeat and reallege their answers contained in paragraphs 1 through 1195 as if set forth at length herein.

68. Third Party Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1197 through 1229 and leave Third Party Plaintiffs to its proofs at time of trial.

WHEREFORE, Third Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford Borough; Elmwood Park Borough; Lodi Borough; Lyndhurst Borough; North Arlington Borough; Rutherford Borough; Saddle Brook Township; South Hackensack Township; Wallington Borough; Wood-Ridge Borough and Wyckoff Township, demand judgment as follows:

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

FIRST SEPARATE DEFENSE

The Third Party Complaint "A" fails to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

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

THIRD SEPARATE DEFENSE

Any wrongful conduct alleged in the Third Party Complaint "A" resulted from and was proximately caused by the conduct of persons other than Answering Municipalities or by the conduct of persons over whom Answering Municipalities had no control, or by the superseding intervention, criminal, illegal or tortuous acts of others outside the control of Answering Municipalities.

FOURTH SEPARATE DEFENSE

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

FIFTH SEPARATE DEFENSE

The claim asserted in the Third Party Complaint "A" are barred, in whole or in part, by the applicable statutes of limitations.

SIXTH SEPARATE 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 SEPARATE DEFENSE

To the extent that Answering Municipalities are 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.

EIGHTH SEPARATE DEFENSE

At all times relevant, Answering Municipalities complied with all applicable laws, regulations or standards and government approvals.

NINTH SEPARATE DEFENSE

Plaintiffs and Defendants/Third Party Plaintiffs failed to provide notice to Answering Municipalities that it was considered a potentially responsible party prior to undertaking numerous response actions relating to the site, which has precluded Answering Municipalities from commenting upon or participation in the selection of the remedial action at the site. This has resulted in a deprivation of Answering Municipalities' substantive and procedural due process rights under the Federal Constitution.

TENTH SEPARATE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' Complaints include claims for costs not yet expended. The Spill Act does not authorize Plaintiffs and/or Defendants/Third Party Plaintiffs to recover future costs. Therefore, Plaintiffs and Defendants/Third Party Plaintiffs' claims are premature and not yet ripe for adjudication.

ELEVENTH SEPARATE DEFENSE

The Third Party Complaint "A" represents an unauthorized and unconstitutional retroactive application of the Spill Act and other applicable case law.

TWELFTH SEPARATE DEFENSE

Answering Municipalities have at all times acted in good faith.

THIRTEENTH SEPARATE DEFENSE

Answering Municipalities hereby assert and adopt 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 Answering Municipalities.

FOURTEENTH SEPARATE DEFENSE

To the extent that this action is brought pursuant to the Spill Act, Answering Municipalities is not liable because any release or threat of release of any hazardous substance was an omission of a third party other than an employee or agent of Answering Municipalities. Answering Municipalities exercised due care with respect to any such alleged hazardous substance, in light of all relevant facts and circumstances. Answering Municipalities took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeable result from such acts or omissions. Consequently, Answering Municipalities are not liable under the Spill Act.

FIFTEENTH SEPARATE DEFENSE

Plaintiffs' and Defendants/Third Party Plaintiffs' claims for relief are barred by waiver, estoppels and/or latches.

SIXTEENTH SEPARATE DEFENSE

In the event Plaintiff's and/or Defendants/Third Party Plaintiffs' claims are not barred by their own conduct, then 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.

SEVENTEENTH SEPARATE DEFENSE

Plaintiffs and Defendants/Third Party Plaintiffs have failed to comply with the necessary conditions precedent for the maintenance of a claim under the Spill Act.

EIGHTEENTH SEPARATE DEFENSE

Answering Municipalities are not a "responsible party" under the Spill Act.

NINETEENTH SEPARATE DEFENSE

Certain of the costs incurred or to be incurred by Plaintiffs and/or Defendants/Third Party Plaintiffs in connection with the site are not "response costs", recoverable from Answering Municipalities, within the meaning of section 101 (23), (24) and (25) of CERCLA, 42 U.S.C. §101 (23), (24) and (25), as applied to the Spill Act.

TWENTIETH SEPARATE DEFENSE

Certain of the actions taken to date by Plaintiffs and/or Third Party Plaintiffs for which Third Party Plaintiffs are making a claim against Answering Municipalities were not consistent with the National Contingency Plan because, among other things Answering Municipalities were not provided with notice or an opportunity to comment.

TWENTY FIRST SEPARATE DEFENSE

Answering Municipalities 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 averred herein.

TWENTY SECOND SEPARATE DEFENSE

Certain of the claims for relief herein are time barred by the express terms of the Spill Act.

TWENTY THIRD SEPARATE DEFENSE

Answering Municipalities cannot be held liable under the Spill Act or Comprehensive Environmental Response, Compensation and Liability Act for adopting regulations and/or ordinances authorizing waste pick-up in their municipalities.

TWENTY FOURTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims against Answering Municipalities 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 Answering Municipality, an allegation Answering Municipalities deny, were caused by the acts or omissions of third parties other than Answering Municipalities' employees or agents, or other than one with whom Answering Municipalities had a direct or indirect contractual relationship, and Answering Municipalities exercised due care with respect to the alleged hazardous substance is concerned, an allegation Answering Municipalities deny, 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 that could be foreseeable from such act or omissions.

TWENTY FIFTH SEPARATE DEFENSE

Defendants/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 Fund, and are, therefore, not entitled to contribution from Answering Municipalities.

TWENTY SIXTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims for indemnification are barred because any alleged liability of Answering Municipalities, liability Answering Municipalities deny, would be secondary, in direct, 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 SEVENTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs are not entitled to recover attorneys' fees or costs, or fees of litigation.

TWENTY EIGHTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs are not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress Defendants/Third Party Plaintiffs' claims.

TWENTY NINTH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims are barred by the statutory defenses to liability provided by the Spill Compensation and Control Act ("Spill Act").

THIRTIETH SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims are barred to the extent they seek relief for conduct occurring, or damages incurred, before the effective date of the Spill Act.

THIRTY FIRST SEPARATE DEFENSE

Defendants/Third Party Plaintiffs' claims for indemnification and otherwise are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy and applicable laws.

THIRTY SECOND SEPARATE DEFENSE

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

THIRTY THIRD SEPARATE DEFENSE

Answering Municipalities reserve the right to assert additional defenses that may be uncovered during the course of this action.

CROSS CLAIMS AND COUNTERCLAIMS

Pursuant to the Case Management Order, and succeeding directives of the Court, Third Party Defendants, Bayonne Municipal Utilities Authority, East Rutherford Borough, Elmwood Park Borough, Lodi Borough, Lyndhurst Borough, North Arlington Borough, Rutherford Borough, Saddle Brook Township, South Hackensack Township, Wallington Borough, Wood-Ridge Borough and Wyckoff Township (collectively, "Answering Municipalities"), preserving without waiver of any rights and limitations, at a time to be determined by this Court, are 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, Answering Municipalities do not specifically plead such cross claims and counterclaims herein. Answering Municipalities reserve 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 and disposal or treatment between the Answering Municipalities, its residents, 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 within the borders of the Answering 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 Answering Municipalities arising from this litigation. The haulers and treatment facilities owing an obligation to the Answering Municipalities include and are not limited to those parties named in Plaintiffs Complaint, the Third Party Complaint, and any future amended Complaints, and are not limited to the Regional Sewerage Authorities and Commissions. In addition, Answering Municipalities reserve the right to make claims against any current or prior owners and/or operators of the Keegan Landfill, MSLA 1-D Landfill, and Avenue P Landfill.

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, you are hereby notified that Peter J. King, Esquire, is assigned to try this case.

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified in accordance with R. 4:5-1 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 or contemplated at this time; and I

know of no other party who should be joined in this action. I hereby certify that these statements made by me are true and that I am aware that if any of these statements is willfully false, I am subject to punishment.

CABANA & KING, L.L.C.
Attorneys for Third Party Defendants,
Bayonne Municipal Utilities Authority; East
Rutherford Borough; Elmwood Park Borough;
Lodi Borough; Lyndhurst Borough; North
Arlington Borough; Rutherford Borough;
Saddle Brook Township; South Hackensack
Township; Wallington Borough; Wood-Ridge
Borough and Wyckoff Township

Dated: September 29, 2009

By 
PETER J. KING

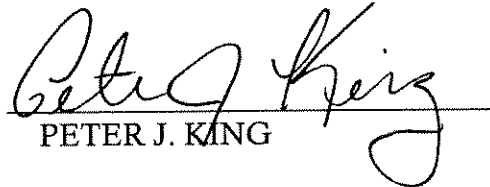
FILING CERTIFICATION

I certify that the original and copy of the within Amended Answer and Separate Defenses, Crossclaims and Counterclaims have been sent by regular mail 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, NJ 07102, and a copy of same has been sent *via* email and regular mail to Defendants/Third Party Plaintiffs' attorneys as follows:

William L. Warren, Esq.
Drinker Biddle & Reath, LLP
105 College Road East, Suite 300
Princeton, NJ 08542-0627

Thomas E. Starnes, Esq.
Andrews Kurth, LLP
1350 I Street NW – Suite 1100
Washington, DC 20005

I further certify that a copy of said document has been sent this day *via* email, to all counsel on the attached service list.


PETER J. KING

Dated: September 29, 2009

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, *et al* v.
OCCIDENTAL CHEMICAL CORPORATION, *et al* v. MAXUS ENERGY
CORPORATION, *et al* v. BAYONE MUNICIPAL UTILITIES AUTHORITY, *et al*
DOCKET NO. L-9868-05**

**NEWARK BAY/LOWER PASSAIC RIVER
SERVICE LIST**

Attorneys for Plaintiff:

Anne Milgram, Attorney General of New Jersey
John F. Dickinson, Jr., Esq., DAG
State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
P. O. Box 112
Trenton, NJ 08625-0112
609-984-4863
609-984-9315 Fax
john.dickinson@dol.lps.state.nj.us

Special Counsel to Attorney General

Michael Gordon, Esq.
Gordon & Gordon
505 Morris Avenue
Springfield, NJ 07081
973-467-2400
973-467-0034 Fax
gordonlaw7@aol.com

Kelly-Ann Pokrywa, Esq.
Gordon & Gordon, P.C.
kelesq@hotmail.com

William Jackson, Esq., *Pro Hac Vice*
Jackson Gilmour & Dobbs, PC
3900 Essex Lane – Suite 700
Houston, TX 77027
713-355-5000
713-355-5001 Fax
bjackson@jgdpc.com

Michael W. Dobbs, Esq.
mdobbs@jgdpc.com

John D. S. Gilmour, Esq.
jgilmour@jgdpc.com

Victor L. Cardenas, Jr., Esq.
vcardenas@jgdpc.com

Attorneys for Defendant Occidental Chemical Corporation:

Robert T. Lehman, Esq.
Archer & Greiner
One Centennial Square
P. O. Box 3000
Haddonfield, NJ 08033-0968
856-795-2121
856-795-0574 Fax
rlehman@archerlaw.com

Phil Cha, Esq.
pcha@archerlaw.com

Zara K. Davis, Esq.
zdavis@archerlaw.com

Oliver S. Howard, Esq., *Pro Hac Vice*
Gable Gotwals
1100 ONEOK Plaza
100 West 5th Street
Tulsa, OK 74103-4217
ohoward@gablelaw.com

Scott R. Rowland, Esq.
srowland@gablelaw.com

David L. Bryant, Esq.
dbryant@gablelaw.com

**Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.
(and as Third-Party Plaintiffs in Complaints "A" and "C"):**

William L. Warren, Esq.
Drinker Biddle & Reath, LLP
105 College Road East – Suite 300
Princeton, NJ 08542-0627
609-716-6500
609-799-7000 Fax
william.warren@dbr.com

Thomas E. Starnes, Esq.
thomas.starnes@dbr.com

Lori A. Mills, Esq.
Lori.mills@dbr.com

Ross A. Lewin, Esq.
Ross.lewin@dbr.com

**Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.
(and as Third-Party Plaintiffs in Complaints "A" and "B"):**

Charles M. Crout, Esq.
Andrews Kurth LLP
1350 I Street, NW – Suite 1100
Washington, DC 20005
ccrout@andrewskurth.com

Michele R. Blythe, Esq.
Andrews Kurth, LLP
Waterway Plaza Two
10001 Woodloch Forest Drive
The Woodlans, TX 77380
micheleblythe@andrewskurth.com

Joseph Patella, Esq.
Andrews Kurth, LLP
450 Lexington Avenue
New York, NY 10017
josephpatella@andrewskurth.com

Attorneys for Third-Party Plaintiffs, Maxus Energy Corporation and Tierra Solutions, Inc. – as to Certain Third-Party Defendants in Complaints “D”:

Domenick Carmagnola, Esq.
Carmagnola & Ritardi, LLC
60 Washington Street
Morristown, NJ 07960
dcarmagnola@cr-law.net

Blake T. Hannafan, Esq.
Hannafan & Hannafan, LTD
One East Wacker Drive – Suite 2800
Chicago, IL 60601
bth@hannafanlaw.com

Michael T. Hannafan, Esq.
mth@hannafanlaw.com

Attorneys for Defendants: Repsol YPF, S.A.; YPF, S.A.; YPF Holdings, Inc.; and CLH Holdings:

Mark H. Sobel, Esq.
Greenbaum, Rowe, Smith & Davis, LLP
75 Livingston Avenue – Suite 301
Roseland, NJ 07068-3701
973-535-1600
973-535-1698
msobel@greenbaumlaw.com

Marc J. Gross, Esq.
mgross@greenbaumlaw.com

Gregg H. Hilzer, Esq.
ghilzer@greenbaumlaw.com

Ellen A. Silver, Esq.
esilver@greenbaumlaw.com

Carlton T. Spiller, Esq.
cspiller@greenbaumlaw.com

Attorneys for Defendants, YPF, S.A. and Repsol YPF, S.A.

Richard Godfrey, Esq.
Kirkland & Ellis, LLP
300 North LaSalle
Chicago, IL 60654
rgodfrey@kirkland.com

James N. Nowacki, Esq.
jnowacki@kirkland.com

Mark S. Lillie, Esq.
mlillie@kirkland.com

Andrew A. Kassof, Esq.
akassof@kirkland.com

Attorneys for YPF Holdings, Inc. and CLH Holdings, Inc.

Ileana M. Blanco, Esq.
DLA Piper US LLP
1000 Louisiana Street – Ste. 2800
Houston, TX 77002-5005
Ileana.blanco@dlapiper.com

Christina E. Ponig, Esq.
Christina.ponig@dlapiper.com

**Attorneys for Third Party Defendants: Teval Corporation, Spectraserv, Inc.;
Curtiss-Wright Corporation; IMTT/Bayonne Industries, Inc.; Superior MPM LLC,
Norpak Corporation; ISP Chemicals, Inc.; Goodrich Corporation; Hexion Specialty
Chemicals, Inc.; Elan Chemical Company, Inc.; CBS Corporation; Kalama
Specialty Chemicals, Inc.; and F.E.R. Plating, Inc.**

Lee Henig-Elona, Esq.
Wolff & Samson, OPC
One Boland Drive
West Orange, NJ 07052
lhenigelona@wolffsamson.com

Diana L. Buongiorno, Esq.
dbuongiorno@wolffsamson.com

Attorney for Third Party Defendant, Township of Maplewood

Roger J. Desiderio, Esq.
Bendit Weinstock, P.A.
80 Main Street
West Orange, NJ 07052
rdesiderio@benditweinstock.com

Christine M. Tiritilli, Esq.
ctiritilli@benditweinstock.com

Attorney for Third Party Defendant, Township of Clark

Howard P. Lesnik, Esq.
Triarsi, Betancourt, Walsh & Wukovits, LLC
Centennial Plaza
186 North Avenue, East
P. O. Box 985
Cranford, NJ 07016-0985
hpl@tbwwlaw.com

Attorney for Third Party Defendant, Passaic Valley Sewerage Commissioners

Mitchell L. Pascual, Esq.
Scarinci Hollenbeck
1100 Valley Brook Avenue
P. O. Box 790
Lyndhurst, NJ 07071-0790
mpascual@scarincihollenbeck.com

John M. Scagnelli, Esq.
jscagnelli@scarincihollenbeck.com

Attorney for Third Party Defendant, Rahway Valley Sewerage Authority

Brian M. Hak, Esq.
Weiner Lesniak, LLP
629 Parsippany Road
P. O. Box 0438
Parsippany, NJ 07054-0438
bhak@weinerlesniak.com

Attorney for Third Party Defendant, City of Orange

John P. McGovern, Esq.
City of Orange Township
Department of Law
29 North Day Street
Orange, NJ 07050
jmcgovern@ci.orange.nj.us

Attorney for Third Party Defendants, NJ Department of Transportation and NJ Department of Agriculture

Dale Laster Lessne, Esq., D.A.G.
NJ Division of Law – Transportation Section
Richard J. Hughes Justice Complex
25 Market Street, P. O. Box 114
Trenton, NJ 08625-0114
dale.lessne@dol.lps.state.nj.us

Attorneys for Third-Party Defendants: Millburn Township; South Orange Village Township; Summit (City); Scotch Plains Township; Westfield (Town); and Woodbridge (Town)

Francis J. Borin, Esq.
DeCotiis Fitzpatrick Cole & Wisler, LLP
500 Frank W. Burr Boulevard
Teaneck, NJ 07666
201-928-1100
201-928-0588 Fax
fborin@decotiislaw.com

Attorneys for Third-Party Defendants: Belleville Township; Bloomfield Township; Fair Lawn Borough; Franklin Lakes Borough; Garfield (City); Glen Rock Borough; Haledon Borough; Hawthorne Borough; North Caldwell Borough; Nutley (Town); Prospect Park Borough; and Ridgewood Village:

Fred Semrau, Esq.
Dorsey and Semrau, Esqs.
714 Main Street- PO Box 228
Boonton, NJ 07005
973-334-1900
973-334-3408 Fax
dorseykingsemrau@dks-law.com