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**Attorneys for Defendants,  
Tierra Solutions, Inc. and Maxus Energy Corporation**

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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.

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: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION -ESSEX COUNTY  
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: DOCKET NO. ESX-L-9868-05  
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:  
: **DEFENDANTS MAXUS ENERGY**  
: **CORPORATION'S AND TIERRA**  
: **SOLUTIONS, INC.'S OBJECTIONS**  
: **AND RESPONSES TO PLAINTIFFS'**  
: **FIRST SET OF**  
: **INTERROGATORIES TO MAXUS**  
: **ENERGY CORPORATION AND**  
: **TIERRA SOLUTIONS, INC. ON**  
: **DAMAGES**  
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TO: Plaintiffs, by and through their attorney of record, William Jackson, JACKSON GILMOUR & DOBBS, PC, 3900 Essex Lane, Ste. 700, Houston, Texas 77027

Pursuant to Rules 4:17-4 and 4:17-5 of the New Jersey Rules of Court, Defendants Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”) hereby respond to Plaintiffs’ First Set of Interrogatories on Damages.

### **GENERAL OBJECTIONS**

A. Maxus and Tierra object to all instructions, definitions, and interrogatories to the extent that they call for Maxus and Tierra to do more than is required under the rules of this Court. Maxus and Tierra further object to the instructions and definitions accompanying Plaintiffs’ interrogatories to the extent they are overly broad, not relevant, and not reasonably calculated to lead to discoverable evidence.

B. Maxus and Tierra object to each interrogatory to the extent that it calls for disclosure or publication of any information, communication, and/or document:

- (i) which is protected by any absolute or qualified privilege, including, but not limited to, the attorney-client privilege, the work product doctrine, the common interest doctrine, and the identity and work product of non-testifying experts, all of which Maxus and Tierra hereby assert;
- (ii) which is not relevant to the subject matter of this litigation or not reasonably calculated to lead to the discovery of admissible evidence; or
- (iii) which is otherwise not subject to discovery pursuant to the New Jersey Rules of Court.

C. In the event that any information, communication, and/or document that is subject to a claim of privilege or protection is inadvertently produced, upon notice from Maxus and Tierra of the inadvertent disclosure any party receiving the information, communication, and/or

document must promptly return or delete the specified information and any copies made thereof as instructed by Maxus and Tierra and may not disclose or use the information. The party shall provide written confirmation of its compliance with Maxus's and Tierra's request.

D. Maxus and Tierra object to these instructions, definitions, and interrogatories to the extent the Plaintiffs' are requesting that Maxus and Tierra produce information that is not in the possession, custody or control of Maxus or Tierra.

E. Definitions of Parties and Entities

- (i) Maxus and Tierra object to the definitions of "CLH Holdings", "Maxus", "OCC", "Repsol", "Tierra", "YPF Holdings", "YPF International Ltd.", and "YPF" as overly broad, vague, and ambiguous. The definition used in Plaintiffs' interrogatories attempts to combine "each predecessor, successor, parent, subsidiary, divisions or affiliate" into the entity listed in the request. These are separate and distinct legal entities.
- (ii) In response to each interrogatory herein, Maxus and Tierra are limiting their response to only the entity named in the interrogatory.
- (iii) Maxus and Tierra object to the term "Repsol Group" as vague, ambiguous, undefined, and/or unintelligible.

F. Definitions of General Terms

- (i) Maxus and Tierra object to the definitions listed under "General Terms" to the extent the definition includes electronically stored information including, but not limited to, email, voicemail, analog media, magnetic media, and digital media. The scope of electronically stored information required to be preserved, collected, reviewed, and produced in this litigation is still being discussed and reviewed by

the parties, now with the assistance of the Special Master. Therefore, Maxus and Tierra will be limiting their response to information available in hard copy format.

- (ii) Maxus and Tierra object to the definition of the terms “you” and “your” as overly broad, vague, and ambiguous. The definition used in Plaintiffs’ interrogatories attempts to include “successors” and “predecessors” in Maxus’s and Tierra’s responses. In response to each interrogatory herein, Maxus and Tierra are limiting their response to only Maxus and Tierra, their agents, and employees.

G. Definitions of Specific Terms

- (i) Maxus and Tierra object to the definition of “Diamond Shamrock” on the grounds that it is unclear to which entity named “Diamond Shamrock Corporation” Plaintiffs are referring in their interrogatories. Maxus and Tierra object to the definition to the extent Plaintiffs attempt to include and combine “predecessors” in that definition. Maxus and Tierra will be using the following defined terms in their responses:

- “DSC-I” – Refers to the Diamond Shamrock Corporation that resulted from the 1967 merger of Diamond Alkali Company and Shamrock Oil and Gas Corporation; and which changed its name to Diamond Chemicals Company on September 1, 1983, and to Diamond Shamrock Chemicals Company (“DSCC”) on October 26, 1983.
- “DSC-II” – Refers to the Diamond Shamrock Corporation that was first incorporated as New Diamond Shamrock Corporation, a non-operating holding company, in July 1983; and which changed its name to Diamond Shamrock

Corporation on August 31, 1983, and to Maxus Energy Corporation in April 1987.

- (ii) Maxus and Tierra object to Plaintiffs' definition of the term "DSCC" as overly broad, vague, and ambiguous. The definition used in Plaintiffs' interrogatories attempts to include "predecessors" in that definition. In response to each interrogatory herein, Maxus and Tierra are limiting their response to only DSCC, its agents, and employees.
- (iii) Maxus and Tierra object to the term "Lister Plant" because the chemical manufacturing facility at issue in this litigation was not located at 120 Lister Avenue. Plaintiffs' definition of "Lister Avenue property" explicitly relied on in the definition of "Lister Plant" includes both 80 Lister Avenue and 120 Lister Avenue.
- (iv) Maxus and Tierra object to the term "Maxus v. OCC" as vague and ambiguous. Maxus and Tierra do not know what litigation Plaintiffs are referring to in their definitions and interrogatories. The litigation with cause number 02-09156 in the District Court of Dallas County, Texas, A-14th Judicial Court was styled Occidental Chemical Corporation vs. Maxus Energy Corporation and Tierra Solutions, Inc.

H. Maxus's and Tierra's investigation in this matter is continuing. Accordingly, they reserve the right to supplement, clarify, and revise these responses to the extent additional information becomes available or is obtained through discovery. Further, Maxus and Tierra reserve the right to amend these responses to the extent the claims brought by or alleged against Maxus and Tierra in this litigation are amended.

I. To the extent Plaintiffs' interrogatories seek information that is beyond the scope of discovery allowed under Case Management Order III, Maxus and Tierra reserve the right to assert any additional applicable objections if Plaintiffs' interrogatories are served on Maxus and Tierra at a later date.

J. Maxus and Tierra expressly assert the foregoing objections to each and every interrogatory below and specifically incorporate the general objections enumerated above to each and every response made below as though they were stated in full.

As to Objections:

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Attorneys for Defendants Tierra Solutions,  
Inc. and Maxus Energy Corporation

William Warren (by MMB)  
William L. Warren, Esq.

ANDREWS KURTH LLP  
Attorneys for Defendants Tierra Solutions,  
Inc. and Maxus Energy Corporation

Charles Crout (by MMB)  
Charles M. Crout, Esq.

Dated: March 16, 2009

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Defendants Maxus Energy Corporation's and Tierra Solutions, Inc.'s Objections and Responses to Plaintiffs' First Set of Interrogatories on Damages was served via electronic mail and first class regular mail to the following counsel of record:

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Charles Crout (by MNR)  
Charles M. Crout, Esq.

Dated: March 16, 2009

**MAXUS'S AND TIERRA'S OBJECTIONS AND RESPONSES TO PLAINTIFFS'  
FIRST SET OF INTERROGATORIES ON DAMAGES**

**INTERROGATORY NO. 1:**

Please identify each person who assisted in the preparation of the responses to these Interrogatories and for each such person, identify the interrogatory response with which that person assisted.

**RESPONSE:**

Subject to and without waiving the General Objections above, Maxus and Tierra answer as follows:

Tierra employees Paul Brzozowski, Paul Bluestein, and Carlie Thompson assisted in the preparation of the responses regarding the cleanup and removal activities and related costs identified in the responses to Interrogatories Nos. 2, 5, and 6. Sammy Saleh, an independent contract employee who works for Tierra, and Teresa Jordan of TERSCO Environmental Consulting participated in the preparation of the responses relating to the cleanup and removal costs associated with the cleanup and removal activities identified in the responses to Interrogatories Nos. 2, 5, and 6. Sammy Saleh participated in the preparation of the response to Interrogatory No. 10. Clifford Firstenberg of Firstenberg Consulting, LLC assisted in the preparation of the response to Interrogatory No. 6 with respect to the cleanup and removal activities undertaken in connection with the orders and/or agreements relating to the Passaic River. Counsel for Maxus and Tierra assisted in preparing these responses which were verified by David Rabbe, President, Tierra Solutions, Inc. and Sara Galley, Environmental Counsel, Maxus Energy Corporation.

**INTERROGATORY NO. 2:**

To the extent not already covered in these interrogatories, please specify the activities, injuries, damages and losses for which you seek to hold the NJDEP, the Commissioner or the Administrator liable, and the amount of the alleged damages attributable to each such injury, as specified in Section 4(b) of Case Management Order III. For each alleged injury or damage, please specify which Plaintiff or counterclaim defendant to whom you attribute the injury and from whom you seek to recover the damages and the amount of damages you are seeking from each of the Plaintiffs. This request includes, but is not limited to, the above information for Maxus and Tierra's allegations that Plaintiffs are liable for ownership of submerged lands, breach of the public trust, the issuance of permits, spraying or allowing the spraying of DDT, operation or takeover of the Kearny South Treatment Plant, NJDOT's ownership and control of the Kearny Oil Lake Site and failure to enforce the environmental laws of New Jersey.

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory to the extent it mischaracterizes the Counterclaim filed by Maxus and Tierra,



including, but not limited to, the contention that Maxus and Tierra have filed a claim alleging “a failure to enforce the environmental laws of New Jersey.”

Subject to and without waiving this objection and the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra repeat and incorporate by reference herein the computation of damages set forth in their Amended Initial Disclosures served on February 17, 2009. The damages and losses sought by Maxus and Tierra from Plaintiffs fall within two broad categories: (i) contribution for an equitable share of any cleanup and removal costs, damages or other form of monetary relief, if any, for which Maxus and/or Tierra may be found liable in this lawsuit; and (ii) all or part of the cleanup and removal costs incurred by Maxus and Tierra in connection with various orders and/or regulatory agreements relating to the Newark Bay Complex including:

- Administrative Order on Consent; In the Matter of the Diamond Alkali Superfund Site (Passaic River Study Area), dated April 20, 1994;
- Administrative Order on Consent for Remedial Investigation and Feasibility Study; In the Matter of the Diamond Alkali Superfund Site (Newark Bay Study Area), dated February 13, 2004;
- Agreement; In the Matter of the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, dated April 6, 2004;
- Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study; In the Matter of the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, dated May 8, 2007;
- Administrative Settlement Agreement and Order on Consent for Removal Action; In the Matter of the Lower Passaic River Study Area of the Diamond Alkali Superfund Site, dated June 19, 2008; and
- Interim Cooperative Assessment Funding Agreement for the Diamond Alkali Superfund Site, New Jersey and Interim Cooperative Assessment Agreement for the Diamond Alkali Superfund Site, New Jersey (2008).

Maxus and Tierra seek these damages from each of the Plaintiffs, who have repeatedly held themselves out as constituting and representing the State of New Jersey in this litigation. The activities giving rise to the damages sought from the Plaintiffs are set out in more detail in the Counterclaim, which is incorporated herein by reference, and include: (i) ownership and control of the submerged lands of the Passaic River, the Hackensack River and Newark Bay, as well as portions of the submerged lands of the Kill van Kull and Arthur Kill, during times when hazardous substances were discharged on the State’s property; (ii) breach of the public trust by failing to preserve the Natural Resources of the Newark Bay Complex (used herein as that term is defined in the Plaintiffs’ Second Amended Complaint); (iii) violating N.J.S.A. 58:14-7 and 58:14-8; (iv) funding, spraying, and/or contracting for the spraying of DDT that was discharged into the Newark Bay Complex; (v) discharging hazardous substances from the Kearny South Treatment Plant during control over that plant; and (vi) discharging hazardous substances from the Kearny Oil Lake Site during ownership and control over that site.

In addition to these costs, Maxus and Tierra seek “a penalty of one hundred dollars, and a further penalty of twenty-five dollars a day for each day the offense is continued” from the New Jersey Department of Environmental Protection in accordance with N.J.S.A. 58:14-8, as set forth in the Counterclaim filed by Maxus and Tierra.

To the extent the Plaintiffs attempt to disavow that they constitute and represent the State of New Jersey in this lawsuit, Maxus and Tierra have filed third-party claims against the State of New Jersey and certain of its agencies as a protective measure as set forth more fully in Maxus’s and Tierra’s Third-Party Complaint “A”.

**INTERROGATORY NO. 3:**

Please explain and provide the legal bases for Your contention that Plaintiffs the NJDEP, the Commissioner and the Administrator are liable or can be held liable for the alleged activities of NJDOT, including NJDOT’s ownership of the Kearny Oil Lake site.

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory to the extent it seeks a legal conclusion.

Subject to and without waiving this objection and the General Objections above, Maxus and Tierra answer as follows:

Since the outset of this litigation, the Plaintiffs have repeatedly held themselves out as constituting and representing the State of New Jersey in pleadings and at hearings. For example, in the first two versions of their complaint in this action, the NJDEP and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) sought “reimbursement of any and all cleanup and removal costs the State of New Jersey has incurred, and all such costs that the State of New Jersey will incur . . . .” *Complaint* ¶ 4; *First Amended Complaint*, ¶ 4. In the Second Amended Complaint, NJDEP, the Administrator, and the Commissioner of the New Jersey Department of Environmental Protection (“Commissioner”) refer to themselves as the “State” (*Second Amended Complaint*, at 2) and assert that the “State seeks reimbursement of any and all cleanup and removal costs the State of New Jersey has incurred, and all such costs that the State of New Jersey will incur” (*id.*, ¶ 5), and further allege that “the State does seek the costs of an assessment of the natural resources damaged or destroyed by Defendants’ discharges.” *Id.* ¶ 6.

Plaintiffs also allege in their Second Amended Complaint that the New Jersey Department of Transportation (“NJDOT”) is to contribute to the cost of the study of “the 17-mile stretch of the Passaic River from Dundee Dam to Newark Bay” (*id.* ¶ 76) and has investigated and is investigating “the nature and extent of the contamination in the Newark Bay Complex, remediation options, and disposal techniques.” *Id.* ¶ 79. In addition, in the “Damages” section of Plaintiffs’ Supplement to Their Initial Disclosures Previously Filed in District Court Pursuant to Rule 26 of the Federal Rules of Civil Procedure dated February 17, 2009, Plaintiffs again refer to themselves as the “State” and contend that the “New Jersey Department of Transportation and/or Department of Environmental Protection have acted as the local non-federal sponsor for the WRDA projects on the Passaic River. As the local non-federal sponsor, the State spent and

may continue to spend matching funds for the study and cleanup of TCDD contaminated sediments in the Passaic River.”

To the extent the Plaintiffs attempt to disavow that they constitute and represent the State of New Jersey and NJDOT in this lawsuit, Maxus and Tierra have filed third-party claims against the State of New Jersey and NJDOT as a protective measure as set forth more fully in Maxus’s and Tierra’s Third-Party Complaint “A”.

**INTERROGATORY NO. 4:**

Please provide the following information, by year, for each year from 1940 up to and including 1969:

1. the amount of Agent Orange or other related products which contain TCDD produced by any Defendant at the Diamond Facility;
2. the costs of producing the product;
3. the income derived from the sale of the product; and
4. the profit realized by any Defendants from the sale of Agent Orange or other related products which contain TCDD produced at the Lister Plant.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under Case Management Order III (“CMO III”), which was clearly not intended to allow the Plaintiffs to elicit evidence or other information from Maxus and Tierra regarding Plaintiffs’ alleged damages.

**INTERROGATORY NO. 5:**

Please identify all “cleanup and removal” costs and other expenses you have incurred in the investigation and remediation of the Passaic River and the Newark Bay Complex, detailing each activity or action undertaken by or on behalf of Maxus, Tierra or OCC, the amount of money spent on such activity or action, and whether such activity or action was taken pursuant to an order or agreement with a governmental agency (identifying such agency and agreement or order). Please provide specific payment information including date, invoice number, check number and associated project number.

**RESPONSE:**

Subject to and without waiving the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra have incurred cleanup and removal costs in connection with various orders and/or regulatory agreements relating to the Newark Bay Complex including:

- Administrative Order on Consent; In the Matter of the Diamond Alkali Superfund Site (Passaic River Study Area), dated April 20, 1994;

- Administrative Order on Consent for Remedial Investigation and Feasibility Study; In the Matter of the Diamond Alkali Superfund Site (Newark Bay Study Area), dated February 13, 2004;
- Agreement; In the Matter of the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, dated April 6, 2004;
- Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study; In the Matter of the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, dated May 8, 2007;
- Administrative Settlement Agreement and Order on Consent for Removal Action; In the Matter of the Lower Passaic River Study Area of the Diamond Alkali Superfund Site, dated June 19, 2008; and
- Interim Cooperative Assessment Funding Agreement for the Diamond Alkali Superfund Site, New Jersey and Interim Cooperative Assessment Agreement for the Diamond Alkali Superfund Site, New Jersey (2008).

As explained in their Amended Initial Disclosures served on February 17, 2009, which are incorporated herein by reference, Maxus and Tierra are in the process of bringing the tabulation of the cleanup and removal costs incurred in connection with these orders and agreements up-to-date, but the cleanup and removal costs incurred by Maxus and Tierra exceed \$51 million. Further, Maxus and Tierra will seek the recovery of future costs that they will incur, including, but not limited to, the approximately \$80 million in future cleanup and removal costs that Tierra has already committed to incurring in connection with the latter two agreements listed above. Maxus and Tierra have also incurred costs associated with identifying parties responsible for discharges of hazardous substances into the Newark Bay Complex. In addition, Maxus and Tierra have incurred recoverable attorneys' fees and expenses, which are presently being tabulated. Maxus and Tierra reserve their right to amend and/or supplement this response after their analysis of their costs is complete.

Pursuant to New Jersey Rule 4:17-4(d), further answer to this Interrogatory may be ascertained from the invoices to be produced by Maxus and Tierra relating to the cleanup and removal costs that they have incurred, which detail each activity or action undertaken by or on behalf of Maxus, Tierra or OCC and the amount of money spent on such activity or action. Please also see Maxus's and Tierra's response to Interrogatory No. 4, which is incorporated by reference.

**INTERROGATORY NO. 6:**

Please identify all cleanup and removal activities, including investigations, assessments, mitigation and remediation activities conducted by or on behalf of Maxus, Tierra or OCC relating to the Passaic River or Newark Bay Complex. Please indicate whether such activity or action was taken pursuant to an order or agreement with a governmental agency (identifying such agency and agreement or order).

**RESPONSE:**

Subject to and without waiving the General Objections above, Maxus and Tierra answer as follows:

The cleanup and removal activities conducted by Maxus and Tierra in connection with various orders and/or regulatory agreements include the activities summarized below. These activities are also summarized in publicly available submissions to the appropriate regulator.

- Administrative Order on Consent; In the Matter of the Diamond Alkali Superfund Site (Passaic River Study Area), dated April 20, 1994. Activities undertaken to date pursuant to this Order on Consent include, but are not limited to the following:
  - Preparation of a Remedial Investigation/Feasibility Study Workplan;
  - Implementation of the Remedial Investigation Workplan;
  - Implementation of a Hydrodynamic and Sediment Transport Model;
  - Preparation of an Ecological Sampling Plan;
  - Implementation of the Ecological Sampling Plan;
  - Implementation of a Combined Sewer Overflow (CSO) – Trial Run Program;
  - Preparation of CSO Investigation Workplan and Field Sampling Plan; and
  - Preparation of a Creel Angler Survey Workplan.
- Administrative Order on Consent for Remedial Investigation and Feasibility Study; In the Matter of the Diamond Alkali Superfund Site (Newark Bay Study Area), dated February 13, 2004. Activities undertaken to date pursuant to this Administrative Order on Consent include, but are not limited to the following:
  - Preparation of Remedial Investigation Workplan (includes Inventory and Overview Report of Historical Data);
  - Implementation of Remedial Investigation Workplan;
  - Report on Investigation of Sources of Pollutants and Contaminants;
  - Preparation of Investigation Derived Waste Management Plan;
  - Implementation of Investigation Derived Waste Management Plan for Phase I IDW;
  - Preparation of Phase II Remedial Investigation Workplan; and
  - Implementation of Phase II Remedial Investigation Workplan (work underway).
- Agreement; In the Matter of the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, dated April 6, 2004. Maxus and Tierra, together with the Lower Passaic River Study Area Cooperating Parties (“Cooperating Parties Group”), agreed to pay the United States Environmental Protection Agency certain costs associated with a remedial investigation/feasibility study as set forth in this agreement.

- Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study; In the Matter of the Lower Passaic River Study Area Portion of the Diamond Alkali Superfund Site, dated May 8, 2007. Activities undertaken to date with the Cooperating Parties Group pursuant to this Administrative Settlement Agreement and Order on Consent include, but are not limited to the following:
  - Development of a Remedial Investigation Workplan;
  - Implementing Remedial Investigations (work underway);
  - Preparation of a Feasibility Study Workplan (work underway);
  - Finalizing a Modeling Workplan (work underway);
  - Implementing the Modeling Workplan;
  - Finalizing a Human Health Risk Assessment Workplan (work underway); and
  - Finalizing an Ecological Risk Assessment Workplan (work underway).
- Administrative Settlement Agreement and Order on Consent for Removal Action; In the Matter of the Lower Passaic River Study Area of the Diamond Alkali Superfund Site, dated June 19, 2008. Activities undertaken to date pursuant to this Agreement and Order on Consent include, but are not limited to the following:
  - Engineering Evaluation/Cost Analysis (EE/CA) Work Plan and revisions;
  - EE/CA revisions, presentations to Partner Agencies and public meeting;
  - Removal Design, Quality Assurance Project Planning (“QAPP”), revisions, field work, and laboratory work;
  - Removal Design, Health and Safety Plan and revisions; and
  - Removal Design Work Plan.
- Interim Cooperative Assessment Funding Agreement for the Diamond Alkali Superfund Site, New Jersey and Interim Cooperative Assessment Agreement for the Diamond Alkali Superfund Site, New Jersey (2008). Activities undertaken to date pursuant to these Agreements include, but are not limited to the following:
  - Maxus and Tierra have committed to reimburse the Federal Trustees for a \$300,000 portion of their past assessment costs incurred in connection with the Lower Passaic River Study Area (“LPRSA”), and to fund the Federal Trustee’s administrative, oversight and assessment costs in an amount not to exceed \$500,000 incurred as part of the Interim Cooperative Assessment Agreement and have committed to undertaking a cooperative assessment of the LPRSA as set forth more fully in these agreements.

Pursuant to New Jersey Rule 4:17-4(d), further answer to this Interrogatory may be ascertained from the invoices to be produced by Maxus and Tierra relating to the cleanup and removal costs that they have incurred, which detail each activity or action undertaken by or on

behalf of Maxus, Tierra or OCC and the amount of money spent on such activity or action, as well as publicly available documents that were submitted to the appropriate regulatory entity. Please also see Maxus's and Tierra's response to Interrogatory No. 3, which is incorporated by reference.

**INTERROGATORY NO. 7:**

Please identify all cleanup and removal costs you believe any Defendant is legally required to reimburse the State of New Jersey for actions taken to address the contamination of the Passaic River or Newark Bay Complex.

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III, which was clearly not intended to allow the Plaintiffs to elicit evidence or other information from Maxus and Tierra regarding Plaintiffs' own alleged damages.

Subject to and without waiving this objection and the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra state that they are not yet in a position to identify "all cleanup and removal costs" the State has allegedly incurred "for actions taken to address the contamination of the Passaic River or Newark Bay Complex," and the State has not yet established that any defendant is "legally required to reimburse the State of New Jersey" for any such costs.

**INTERROGATORY NO. 8:**

Please identify all OPRA requests submitted by each Defendant regarding expenses, costs, or reimbursement of such expenses and/or costs associated with the Diamond Facility or contamination of the Passaic River or Newark Bay Complex.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

**INTERROGATORY NO. 9:**

Please identify all real property in or around the Lister Plant that was cleaned, vacuumed, swept, decontaminated or otherwise remediated during 1983-1985.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III. Maxus and Tierra are not seeking recovery of any costs incurred by Maxus during the period 1983-1985 in connection with such upland properties, and to the extent the interrogatory seeks information regarding Plaintiffs' own

alleged damages or injuries, CMO III was not intended to allow the Plaintiffs to elicit such information from Maxus and Tierra.

**INTERROGATORY NO. 10:**

Please identify all cleanup and removal costs or other direct or indirect costs for which you believe you have reimbursed the State for contamination of the Newark Bay Complex or the Diamond Facility.

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory to the extent it seeks information that is beyond the scope of CMO III and that is not the subject of this litigation. Neither the State, nor Maxus and Tierra, are seeking cleanup and removal costs or other costs associated with the "Diamond Facility" to the extent that phrase refers solely to the upland site defined in the Complaint as the "Lister Site" and includes no part of the "Newark Bay Complex." Further, this interrogatory seeks information that is beyond the scope of discovery allowed under CMO III to the extent it seeks information regarding Plaintiffs' own alleged damage or cost claims.

Subject to and without waiving these objections and the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra timely submitted payment of all properly rendered bills for past oversight costs provided that the information in the invoice was sufficient to determine that the invoiced costs were proper and attributable to the "Diamond Facility" and Newark Bay Complex. Maxus and Tierra continued this practice until notified in an email from Mark Ritter with NJDEP to disregard an invoice dated December 5, 2006 in the amount of \$22,905.21 for oversight costs for the Lister Site from April 7, 2000 to June 9, 2006 sent to Tierra because "this case is currently in litigation and any costs incurred by NJDEP relative to this case should be included in the litigation proceedings".

Maxus and Tierra have reimbursed the State in excess of \$107,762.00 since 1996 that the State has incurred in alleged oversight costs or otherwise in connection with alleged contamination of the Newark Bay Complex. Additionally Maxus and Tierra have reimbursed the State in excess of \$207,314.06 since 1996 that the State has incurred in alleged oversight costs or otherwise in connection with the alleged contamination of the "Diamond Facility". Maxus and Tierra are in the process of tabulating the amount of costs reimbursed to the State as oversight costs prior to 1996, including those costs associated with the Supplemental Administrative Consent Order In the Matter of Occidental Electrochemicals Corporation, dated July 10, 1987.

**INTERROGATORY NO. 11:**

Please identify all sources (other than the Diamond Facility) of dioxin, DDT and PCBs to the Passaic River and Newark Bay Complex. Please include the location of each source, the company or person responsible for the source and the circumstances surrounding the discharge of hazardous substances from the source.



**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

**INTERROGATORY NO. 12:**

If you believe you or any other Defendant has been released from liability for any matters covered in Plaintiffs' Second Amended Complaint, please identify [sic] each settlement agreement, memorandum of agreement or understanding, administrative order on consent, consent order or decree or other Document or agreement which You contend releases any Defendant from liability for the Passaic River or Newark Bay Complex or limits the amount of cleanup and removal costs that can be recovered from any Defendant.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

**INTERROGATORY NO. 13:**

What dollar amount, percentage or other quantitative factor do you contend represents each individual Plaintiff's "proportionate share of any cleanup and removal costs or damages" for which Maxus and Tierra may be found to be liable under the Spill Act, as you allege in paragraphs 224, 225, 226, 227, 228, 229 of the Counterclaim?

**RESPONSE:**

Subject to and without waiving the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra have not yet determined the "dollar amount, percentage or other quantitative factor" that represents the State's or each individual Plaintiff's "proportionate share of any cleanup and removal costs or damages" for which Maxus and Tierra may be found to be liable under the Spill Act. Determining those amounts will depend on a variety of factors such as: (i) the amount, if any, of cleanup and removal costs or damages for which Maxus and Tierra may be found liable, (ii) what types of cleanup and removal costs or damages that the State is seeking to recover in this action; (iii) joinder of and potential motion practice with third parties; and (iv) merits discovery on the State and other parties which has not yet begun.

**INTERROGATORY NO. 14:**

What is the amount by which you contend that the costs of implementing the AOCs referenced in paragraphs 24 and 25 of the Counterclaim have been enhanced by the issuance of permits to municipalities and sewerage authorities, as you allege in paragraph 292 of the Maxus and Tierra Counterclaim? Please identify the enhanced costs with particularity by type and amount and describe the basis for each element of such enhanced costs.

**RESPONSE:**

Subject to and without waiving the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra have not yet determined the amount by which the costs of implementing the AOCs referenced in paragraphs 24 and 25 of the Counterclaim have been enhanced by NJDEP's violations of N.J.S.A. 58:14-7 and 58:14-8, whereby NJDEP permitted municipalities and local and regional sewerage authorities, including the PVSC, to place or discharge sewage, waste and other polluting matter into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay. The type of enhanced costs, however, include those associated with the additional volumes and types of wastes, including but not limited to hazardous substances, that were discharged into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay as a result of NJDEP's illegal conduct.

**INTERROGATORY NO. 15:**

Please describe the activities or provide other factual bases supporting your allegation that the State of New Jersey has been and will be benefited by the activities that have caused contamination of the Newark Bay Complex. For each such activity or basis, please identify the benefit you claim the State of New Jersey has or will receive as a result and provide the amount of the benefit.

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory insofar as it seeks an expert opinion.

Subject to and without waiving this objection and the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra have not yet identified in detail all of the activities and other factual bases supporting the allegation that the State has been and will be benefited by the activities that have caused contamination of the Newark Bay Complex, but Maxus and Tierra generally answer that the massive urbanization, industrialization and commercialization that resulted in the contamination of the Newark Bay Complex produced benefits to the State in the form of, among other things, income tax, sales tax, and other tax revenues.

**INTERROGATORY NO. 16:**

How much money in total do you contend the State of New Jersey has received directly or indirectly as a "benefit" from the activities at the Lister Plant from the time the Lister Plant first began operations until the present?

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory as vague and ambiguous insofar as it does not specify the context in which Maxus and Tierra purportedly contended that the State of New Jersey has received a benefit directly or indirectly from the activities at the "Lister Plant" from the time the "Lister Plant" first began operations until the present.

Subject to and without waiving this objection and the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra have not yet quantified any amounts by which the State of New Jersey has benefited directly or indirectly from the activities at the chemical manufacturing facility formerly located at 80 Lister from the time the it first began operations until the present, but any such benefit that the State received would include tax revenues from the economic activity associated with the operations and activities that have occurred at the facility.

**INTERROGATORY NO. 17:**

Please identify each contaminant or Hazardous Substance you contend is being or has been discharged into the Newark Bay Complex as a result of the activities described in paragraphs 167-221 of the Counterclaim that resulted in the levels of the contaminant or Hazardous Substance exceeding the permitted levels for such contaminants or Hazardous Substance, and provide information about the date of each such discharge you contend exceed the permitted levels and the dollar amount by which you contend each such discharge damaged you.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

**INTERROGATORY NO. 18:**

Please specify the date and contents of each Tort Claims Act notice you provided to NJDEP and NJDOL which raise the allegations set forth in the Maxus and Tierra Counterclaim.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

**INTERROGATORY NO. 19:**

Other than (1) the State's ownership of the submerged lands of the Passaic and other bodies of water, (2) the issuance of NJPDES permits by the NJDEP, (3) activities undertaken to control mosquitoes, (4) the State's operation of the Kearny South Treatment Plant and (5) the NJDOT's ownership of the Kearny Oil Lake Site, do you allege that any other status, property ownership, activity, act or omission by the State, the NJDEP, the Commissioner or the

Administrator has caused you an injury for which you seek relief in this lawsuit or that would entitle you to contribution or offset?

**RESPONSE:**

Subject to and without waiving the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra state: (1) it is not merely the State's ownership and control of the Newark Bay Complex sediments, but its ownership and control during a time when discharges of hazardous substances were occurring on the State's property with the State's knowledge and encouragement, (2) the claims in Count II of the Counterclaim are not directed merely at the illegal issuance of formal permits by NJDEP purporting to allow discharges of materials that a New Jersey statute plainly prohibits, but all permits issued by the State of New Jersey and/or its agencies and other actions and activities pursuant to which the State has effectively permitted such discharges to occur, notwithstanding their patent illegality; (3) the State's DDT spraying program was not directed solely at controlling mosquitoes; (4) liability relating to Kearny South Treatment Plant is not merely limited to NJDEP's operation of the plant, but includes discharges from the plant during the State's control of the plant; and (5) liability relating to the Kearny Oil Lake Site is not merely limited to NJDOT's ownership of the site, but includes discharges from the site during the State's ownership and control of the site.

Maxus and Tierra further state that their investigation of the facts of this case is ongoing. Maxus and Tierra expect that merits discovery, which has not yet begun, including discovery on the State and other parties, may disclose additional action or inactions by the State for which Maxus and Tierra seek relief. Maxus and Tierra specifically reserve the right to supplement their response to this Interrogatory.

**INTERROGATORY NO. 20:**

Please identify, with particularity (including identifying the date of the discharge, the substances discharged, and the location from which the discharge occurred), all discharges from the Diamond Facility, into the Newark Bay Complex.

**RESPONSE:**

Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

**INTERROGATORY NO. 21:**

Please identify, with particularity each permit issued by NJDEP you believed N.J.S.A. 58:14-7 and 58:14-8. Please include the date issued, the permit number and the entity receiving the permit.

**RESPONSE:**

In addition and subject to their General Objections, Maxus and Tierra object to this interrogatory as vague and unclear. Maxus and Tierra do not know what Plaintiffs mean by "each permit issued by NJDEP you believed N.J.S.A. 58:14-7 and 58:14-8." Further, Maxus and Tierra object to this interrogatory on the grounds that it seeks information that is beyond the scope of discovery allowed under CMO III.

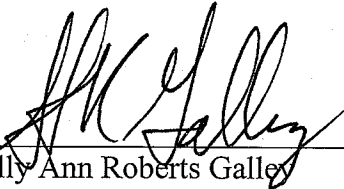
Subject to and without waiving these objections and the General Objections above, Maxus and Tierra answer as follows:

Maxus and Tierra have not yet identified all of the dates, permit numbers and entities receiving each illegal permit issued by NJDEP. However, Maxus and Tierra believe any permit issued by NJDEP which purports to allow the discharge of sewage, waste and other polluting matter into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay violates N.J.S.A. 58:14-7 and 58:14-8, including, but not limited to New Jersey Pollutant Discharge Elimination System ("NJPDES") General Permit NJ0105023 for Combined Sewer Systems. This permit appears to have been reissued on more than one occasion, dating back to at least February 28, 2000. Maxus and Tierra believe individual authorizations may have been issued under this permit and/or similar permits by which NJDEP has permitted the City of Newark, East Newark Borough, the Town of Harrison, the Town of Kearny, the City of Paterson, and the Passaic Valley Sewerage Commissions to place or discharge sewage, waste and other polluting matter into the Passaic River in the area between Great Falls and the mouth of the Passaic River at Newark Bay in violation of N.J.S.A. 58:14-7 and 58:14-8.

Maxus and Tierra believe that NJDEP also may have issued point source and stormwater permits purporting to permit entities to place or discharge sewage, waste and other polluting matter into the Passaic River and its tributaries in the area between Great Falls and the mouth of the Passaic River at Newark Bay in violation of N.J.S.A. 58:14-7 and 58:14-8.

## CERTIFICATION

I hereby certify that, to the best of my knowledge or belief, the foregoing Objections and Responses to Plaintiffs' First Set of Interrogatories to Maxus Energy Corporation and Tierra Solutions, Inc. on Damages are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


  
\_\_\_\_\_  
Sally Ann Roberts Galley  
On Behalf of Maxus Energy Corporation

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David E. Rabbe  
On Behalf of Tierra Solutions, Inc.

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