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Tierra Solutions, Inc. and Maxus Energy Corporation**

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.

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION -ESSEX COUNTY
:
: DOCKET NO. ESX-L-9868-05 (PASR)
:
:
: **RESPONSES OF DEFENDANTS**
: **MAXUS ENERGY CORPORATION**
: **AND TIERRA SOLUTIONS, INC. TO**
: **DEFENDANT OCCIDENTAL**
: **CHEMICAL CORPORATION'S**
: **FIRST SET OF**
: **INTERROGATORIES**
:
:
:
:

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-and-

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Attorneys for Occidental Chemical Corporation

PLEASE TAKE NOTICE that, Defendants Maxus Energy Corporation (“Maxus”) and Terra Solutions, Inc. (“Terra”), by and through their undersigned counsel, hereby respond to Defendant Occidental Chemical Corporation’s (“OCC”) First Set of Interrogatories pursuant to the Rules of Court.

DRINKER BIDDLE & REATH LLP
Attorneys for Defendants Terra Solutions,
Inc. and Maxus Energy Corporation



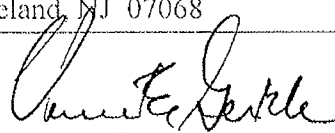
Vincent E. Gentile, Esq.

Dated: December 23, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendants Maxus Energy Corporation and Tierra Solutions, Inc.'s Responses to Defendant Occidental Chemical Corporation's ("OCC") First Set of Interrogatories were served electronically on all parties which have consented to such service by posting on www.sfile.com/njdepvocc on December 23, 2009. The following counsel of record was served on the same date by first class, regular mail:

City of Clifton	Thomas M. Egan, Esq. Assistant Municipal Attorney City of Clifton Law Department 900 Clifton Avenue Clifton, NJ 07013
City of Orange	John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050
Clean Earth of North Jersey, Inc.	Eric S. Aronson Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932
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Vincent E. Gentile, Esq.

Dated: December 23, 2009

**RESPONSES AND OBJECTIONS TO OCC'S FIRST SET OF INTERROGATORIES
TO DEFENDANTS MAXUS AND TIERRA**

GENERAL OBJECTIONS

Maxus and Tierra make the following General Objections to OCC's First Set of Interrogatories and the individual requests made therein.

1. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent that they seek to impose obligations on Maxus and Tierra greater than those provided for in the New Jersey Court Rules.

2. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent that they seek information which (a) falls within the scope of any absolute or qualified privilege, including the attorney-client privilege, joint defense or common interest privilege, (b) falls within the work product doctrine, (c) relates to the identity and work product of non-testifying experts, or (d) comprises information or documents containing the mental impressions, conclusions, opinions, or legal theories of Defendant's attorneys or other representatives concerning the pending litigation.

3. Maxus and Tierra object to the interrogatories to the extent that they seek information that is otherwise privileged, immune or protected from disclosure under the court rules (e.g., R. 4:10-2(d)), court orders or confidentiality agreements, or constitute trade secret or other similar proprietary matter.

4. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent that they seek information that is not related to the claims or defenses of any party or is not reasonably calculated to lead to the discovery of admissible evidence.

5. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent that they are unduly burdensome, overly broad, vague and/or ambiguous.

6. Maxus and Tierra object to the instructions, definitions, and interrogatories purporting to require that Maxus and Tierra “fully explain” “all factual bases” or identify “all” documents” relating to their allegations, contentions, and/or positions to the extent they are overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. As the Rules contemplate, Maxus and Tierra will undertake reasonable good faith efforts to supply information responsive to these interrogatories.

7. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent they seek disclosure of information readily accessible from documents produced in this litigation.

8. Maxus and Tierra object to the instructions, definitions and interrogatories to the extent they are repetitive, redundant or duplicative and/or demand production of information previously disclosed in connection with this litigation.

9. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent they seek documents for an unreasonably long or undefined time period or a time period not relevant to the claims and defenses in the case on the grounds that such requests are overly broad, unduly burdensome and oppressive, and seek information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence.

10. To the extent Maxus and Tierra respond to interrogatories to which they object, such objections are not waived by the furnishing or providing of information. In addition, the responses shall not be deemed to constitute a waiver of any objections relating to underlying documents that have been withheld on grounds of privilege.

11. To the extent these interrogatories may be read to require the review of electronically stored information (“ESI”), Maxus and Tierra have not reviewed or produced such

information pending the parties' agreement and court approval of a protocol governing the scope of the preservation, collection, review and production of such materials in this litigation. Maxus and Tierra accordingly are limiting their responses to information available in hard copy format.

12. Maxus and Tierra object to the instructions, definitions, and interrogatories to the extent they purport to require Maxus and Tierra to disclose information that is not in their possession, custody or control.

13. Maxus and Tierra are continuing their investigation and discovery of this matter and reserve the right to later supplement or amend these responses in accordance with the court rules, case management orders, and agreements of the parties. Maxus and Tierra also reserve the right to amend these responses to the extent the claims brought by or alleged against them in this litigation are amended.

Without waiving any of its general objections, Maxus and Tierra provide the following responses and specific objections to OCC's individually numbered interrogatories.

I. CORPORATE SUCCESSOR

Interrogatory No. 1:

If You contend that Environmental Liabilities arising from or related to ownership of the Lister Site, or any activities conducted at the Lister Site, prior to July 1, 1983, were liabilities which SDS Biotech did not assume in connection with the SDS Biotech Joint Venture, fully explain all factual bases for that contention and identify all Documents supporting it.

RESPONSE:

Maxus and Tierra object to this interrogatory as calling for a legal conclusion to which no response is required. Maxus and Tierra further object on the grounds that the documents relating to the SDS Biotech transaction contain the complete and accurate description of the parties' respective rights and obligations. Pursuant to R. 4:17-4(d), Maxus and Tierra refer OCC to the

documents it has produced in response to OCC's Request to Produce Documents, specifically the documents relating to the SDS Biotech transaction, including the Transfer and Assumption Agreement between SDS Biotech Corporation, DSC-I and Showa Denko K.K. dated as of July 1, 1983.

Subject to these and their General Objections, Maxus and Tierra state that the SDS Biotech Joint Venture did not relieve DSC-I of any Environmental Liabilities relating to the Lister Site. The Lister Plant had been closed in 1969 and the property sold in 1971. SDS Biotech Corporation was a joint venture entered into 12 years later, between DSC-I and Showa Denko K.K., a Japanese corporation. The object of the SDS joint venture was to develop, market and sell animal health and agricultural chemical products. DSC-I contributed assets, including the worldwide assets and businesses then being carried on by its active and ongoing animal health and agricultural chemicals divisions. SDS assumed certain liabilities associated solely with the assets actually conveyed, which were being used in connection with ongoing businesses (generally claims or occurrences arising on or after July 1, 1983). DSC-I retained historic liabilities related to animal health and agricultural chemicals divisions insofar as they related to assets that were not conveyed to SDS and, separately, to the extent SDS's total liabilities under the Transfer and Assumption Agreement were capped at \$15,000,000. Again, no Lister Avenue assets were contributed to the SDS joint venture, because the plant had closed and the property had been sold 12 years earlier, and, thus, SDS did not assume any liabilities related to the Lister Site.

Furthermore, any notion that liabilities associated with Lister Site operations were transferred to SDS is incongruent with the fact that DSCC (and later OCC), not SDS, executed AOCs and a judicial Consent Decree to address the Lister Site, the Passaic River and Newark

Bay. Throughout the more than 20-year history of Spill Act and/or CERCLA proceedings that pre-dated the filing of this lawsuit, OCC reaffirmed that it was the true successor of any environmental liabilities associated with the Lister Site and never suggested that the company whose stock it bought in 1986 was not the true successor of those liabilities.

Finally, to the extent that pre-July 1983 liabilities included liabilities arising from OCC's independent activities at the Lister Site after the Lister Plant had been sold by DSC-I in 1971, those alleged liabilities are attributable solely to OCC's own conduct after that date and could not have been assumed by SDS in its joint venture with DSC-I.

Interrogatory No. 2:

With respect to the statement, made in DSC-II's 10-K for the year ended December 31, 1983, that "Diamond Shamrock Corporation ('the Company') was incorporated in Delaware in 1983 as the successor to various corporations, the oldest of which was founded in 1910" identify each of such "various corporations" and, without limitation, specifically indicate whether such "various corporations" included Diamond Alkali and DSCC.

RESPONSE:

Maxus and Tierra object on the grounds that OCC has purported to quote only portions of the 1983 Form 10-K and the document itself contains the complete and accurate wording used. Subject to this and their General Objections, Maxus and Tierra respond, first that 1983 Form 10-K specifically defined "Company" to include both DSC-II (beginning on August 31, 1983) and DSC-I (prior to August 31, 1983) "as well as their subsidiaries and predecessors." Second, DSC-I was a single juridical entity, which operated various business segments as divisions, most of which were established as distinct corporations in connection with the reorganization that resulted in DSC-I being renamed DSCC and DSC-II being established. The predecessors to DSC-I included Diamond Alkali, Kolker Chemical Works, Inc., and Shamrock Oil and Gas Corp. With regard to DSC-II, DSC-II never existed prior to July 1983, when it was first formed

as a non-operating, stockholding company, and was not the successor of any other corporation as that term is understood in corporate law. Thus, the word "successor," as used in the 1983 Form 10-K, and referring as it does to the entire "Company" as broadly defined, does not indicate or establish that DSC-II was the corporate successor of any prior corporation, including Diamond Alkali and DSCC.

Interrogatory No. 3:

Fully explain all factual bases for, and identify all Documents supporting the assertions --- made in ¶2 of the January 7, 1988 Affidavit of James F. Kelley (SVP and General Counsel of Maxus) in connection with Kidder Peabody v. Maxus (DE) --- that DS Corporate Co. "is the successor in interest to the corporation that suffered the injuries alleged in the Texas case" and that "a corporation which until August 2, 1983 was known as Diamond Shamrock Corporation" is the predecessor in interest of DS Corporate Co.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous and overly broad. Maxus and Tierra further object to the extent that this interrogatory purports to quote certain language out of context from a larger document. Further, Maxus and Tierra object on the grounds that discovery is on-going and as a result Maxus and Tierra cannot at present explain "all" reasons or identify "all" documents that support the alleged assertions.

Subject to these objections and to their General Objections, Maxus and Tierra respond as follows: Although it has not discussed this matter with Mr. Kelley, the basis for such statements made in Mr. Kelley's affidavit was presumably the Assignment and Assumption Agreement between DSCC and DS Corporate Co. dated January 1, 1984. Under that Agreement, DS Corporate Co. acquired various assets from DSCC, was assigned certain claims of DSCC, and assumed certain liabilities of DSCC, but only insofar as those liabilities were associated with the assets actually conveyed.

DS Corporate Co., however, did not acquire the Lister Plant under the Assignment and Assumption Agreement, since that plant had been closed in 1969 and the property sold in 1971, thirteen years earlier. Thus, since DS Corporate Co. assumed liabilities only for the assets actually conveyed in 1984, liabilities associated with the Lister Site remained with DSCC.

Interrogatory No. 4:

Identify all Documents, including all Documents filed or submitted in any litigation or administrative proceeding, in which, after July 1, 1983, You have ever stated or alleged, or any court or other tribunal has found, that DSC-I and/or DSCC is a predecessor of any Person other than OCC, or that any Person other than OCC is a successor to DSC-I and/or DSCC.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive, and encompassing documents that may be privileged or otherwise protected. Specifically, the terms “predecessor” and “successor” are undefined, and susceptible of more than one meaning. Maxus and Tierra respond in accordance with their own understanding of those terms. Subject thereto and to their General Objections, Maxus and Tierra are not aware of any Documents in which they have ever stated or alleged, or any court or other tribunal has found, that DSC-I and/or DSCC is a predecessor of any Person other than OCC, or that any Person other than OCC is a successor to DSC-I and/or DSCC.

Interrogatory No. 5:

Identify and fully describe all business(es), assets and/or liabilities which constituted the “industrial and process chemicals business” of DSCC, as the term “industrial and process chemicals business” was used in the DSCC/DS Corporate Co. Assignment and Assumption Agreement dated January 1, 1984; identify all Documents supporting Your description; and if You contend that such “industrial and process chemicals business” included any Environmental Liabilities arising from or related to any ownership of the Lister Site before January 1, 1984 or any activities at the Lister Site that were discontinued before January 1, 1984, fully explain all factual bases for that contention.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous and overly broad. Maxus and Tierra object to the quoted language, which differs from that in the DSCC/DS Corporate Co. Assignment and Assumption Agreement, and refer to that document for its complete and accurate terms. Maxus and Tierra note further that the DSCC/DS Corporate Co. Assignment and Assumption Agreement uses the terms “industrial and proprietary chemicals businesses.”

Subject to these objections and to their General Objections, Maxus and Tierra respond that, in general, DSC-II's 1983 Form 10-K, among many other documents, describes the “industrial and proprietary chemicals” business segment as comprising the manufacture and sale of commodity chemicals (primarily chlor-alkali chemicals, including chlorine, caustic soda, potassium chemicals and chlorinated paraffins, and soda products, including sodium silicates and chromium chemicals and other commodity chemicals) and specialty chemicals (primarily process chemicals, functional polymers, metal coatings and various other chemical products).

Maxus and Tierra do not contend that such “industrial and process chemicals business” included any purported liabilities arising from or related to any ownership or any activities associated with the Lister Site. DSC-I closed the Lister Plant in 1969 and sold the plant property in 1971. Thus, the Lister Avenue property and related assets were not included in the assets conveyed under the January 1, 1984 Assignment and Assumption Agreement between DSCC and DS Corporate Co. Because under that Agreement the only liabilities DS Corporate Co. assumed were those associated with assets it acquired, DS Corporate Co. never acquired any liabilities associated with the Lister Site and any such liabilities remained with DSCC.

Interrogatory No. 6:

State whether You contend that the business(es), assets and/or liabilities constituting the "industrial and process chemicals business" of DSCC, as the term "industrial and process chemicals business" was used in the DSCC/DS Corporate Co. Assignment and Assumption Agreement dated January 1, 1984, were the same business(es), assets and/or liabilities constituting the Chemicals Business; and if You do not so contend, fully explain and describe the differences.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous and overly broad.

Maxus and Tierra object to the quoted language, which differs from that in the DSCC/DS Corporate Co. Assignment and Assumption Agreement, and refer to that document for its complete and accurate terms. Maxus and Tierra note that the DSCC/DS Corporate Co. Assignment and Assumption Agreement uses the terms "industrial and proprietary chemicals businesses" and "Chemicals Businesses."

Subject to these and their General Objections, Maxus and Tierra respond that, given the definitional differences and the passage of time, it stands to reason that the "business(es), assets and/or liabilities" on January 1, 1984 likely were not precisely the same more than 2-1/2 years later, on September 4, 1986. Maxus and Tierra, however, do not dispute that the then ongoing "industrial and process chemicals businesses" of DSCC, as defined in the 1984 DSCC/DS Corporate Co. Assignment and Assumption Agreement, were essentially the same businesses, in character, that comprised the "Chemicals Business" defined in the 1986 SPA.

Maxus and Tierra further state that as of September 4, 1986, DSCC retained certain liabilities associated with former businesses and operations of DSCC. In particular, as of September 4, 1986, DSCC still held the liabilities associated with Lister Site because there is no document or transaction pursuant to which DSCC ever purported to transfer those liabilities to any other entity. As explained in response to Interrogatories Nos. 1, 3 and 5 (the answers to

which are incorporated herein by reference), the Lister plant had been closed and sold long before DSCC conveyed any assets to other entities in association with the 1983-84 restructuring, and the entities involved in those transactions assumed only such liabilities as were associated with assets actually conveyed. Maxus and Tierra refer OCC to the documents it has produced in response to OCC's Request to Produce Documents, including the documents relating to the SDS Biotech transaction and the 1984 DSCC/DS Corporate Co. Assignment and Assumption Agreement.

Furthermore, as previously explained, any notion that liabilities associated with Lister Avenue operations were ever transferred by DSCC before the 1986 SPA is incongruent with the more than 20-year history of having DSCC (and later OCC)—not SDS, not DS Corporate Co. and not Maxus—execute AOCs and a judicial Consent Decree to address the Lister Site, the Passaic River and Newark Bay.

Interrogatory No. 7:

Identify and fully describe all acquisitions, dispositions and merger agreements that occurred prior to September 4, 1986 and related to "Ag Chem" as the term "Ag Chem" was used in paragraph 12 of Schedule 2.23 to the SPA, and identify all Documents pertaining to all such acquisitions, dispositions and/or merger agreements.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous and overly broad. Maxus and Tierra further object that the term "Ag Chem" is not defined in the SPA. Maxus and Tierra understand the interrogatory to refer to mergers and/or acquisitions (or similar comprehensive transactions) involving all or a substantial portion of the so-called "Ag Chem" business, as opposed to any sale or purchase of relatively isolated assets.

Subject to these objections and to their General Objections, Maxus and Tierra identify the July 1983 SDS Biotech Joint Venture transaction (including the Transfer and Assumption

Agreement) and the January 1, 1984 DSCC-DS Corporate Company Assignment and Assumption Agreement. The terms of these documents “fully describe” the nature of those transactions and, pursuant to R. 4:17-4(d), the burden of deriving this information from the documents is substantially the same for OCC as for Maxus and Tierra. Maxus and Tierra have produced or agreed to produce all documents relating to the disposition of DSCC’s Ag Chem business prior to September 4, 1986.

Interrogatory No. 8:

Fully explain all reasons why DSCC acquired ownership of 120 Lister Avenue in 1984 and of 80 Lister Avenue in 1986, and identify all Documents which list, describe or discuss such reasons.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous, and overly broad. Further, Maxus and Tierra object on the grounds that discovery is on-going and as a result Maxus and Tierra cannot at present explain “all” reasons or identify “all” documents. Subject to these objections and to their General Objections, Maxus and Tierra respond as follows:

In June 1983, DSC-I was under an NJDEP order to take certain actions at the 80 Lister Avenue property. Regulators then claimed to have found hazardous substances at 120 Lister Avenue as well. At that time, both properties were owned by third parties, and therefore were not within the control of DSCC. DSCC acquired ownership of 120 Lister Avenue in 1984, and 80 Lister Avenue in 1986, in order to facilitate environmental response actions under the direction of state and federal regulators. Acquiring direct ownership of both properties promised to avoid disputes and delays that might otherwise have impeded, delayed or made more costly DSCC’s environmental response actions and, hence, its ability to investigate and remediate properties. The facts relating to this answer are contained in numerous documents, which have previously been produced, including the purchase and sale documents relating to the property

conveyances, the EPA and DEP orders and consent orders requiring environmental responses at the properties.

Interrogatory No. 9:

Fully explain all reasons why DSCC transferred ownership of 80 Lister Avenue and of 120 Lister Avenue to DSCLH in August 1986, and identify all Documents which list, describe or discuss and such reasons.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous and overly broad. Further, Maxus and Tierra object on the grounds that discovery is on-going and as a result Maxus and Tierra cannot at present explain "all" reasons or identify "all" documents. As of 1983, DSCC was under a NJDEP order to take certain response actions at 80 Lister Avenue. As indicated in response to Interrogatory No. 8, which is incorporated herein by reference, DSCC thereafter acquired the Lister Site parcels in order to more effectively carry out the required environmental response actions. In August 1986, DSCC transferred ownership of both parcels to DSCLH, a subsidiary established to hold title to certain sites, including those under regulatory oversight and control, such as Lister Avenue, thereby assuring the continued effectiveness of response actions. Among the many documents supporting this response are the formational documents relating to DSCLH and documents relating to the 1986 SPA, which are among the documents that Maxus and Tierra are producing, on a rolling basis, in response to OCC's Request to Produce Documents. Pursuant to Rule 4:17-4(d), documents responsive to this interrogatory will be specifically identified upon production, so that the burden of deriving or ascertaining an answer to this interrogatory will be substantially the same for OCC as for Maxus or Tierra.

Interrogatory No. 10:

Fully explain any and all actions taken by DSCLH to comply with the requirements of N.J.S.A. 58:10-23g(d)(5) in connection with its 1986 acquisition of 80 Lister Avenue and 120 Lister Avenue and any and all factual bases supporting Your denial (in paragraph 9 of Your answer to the OCC Cross-Claims) that DSCLH failed to comply with the requirements of that statute; and identify all Documents reflecting such actions or otherwise supporting such denial.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive, and encompassing matters that are irrelevant to the issues in this lawsuit and that may be privileged or otherwise protected. Maxus and Tierra further object to the extent this interrogatory is based on the assumption that DSCLH was obligated to comply with a statute whose citation appears to be erroneous. Subject to these objections, Maxus and Tierra respond that DSCLH did not “fail to comply” with N.J.S.A. 58:10-23g(d)(5).

To the extent the interrogatory intends to ask about NJSA 58-10:23.11g(d)(5), Maxus and Tierra state that NJSA 58-10:23.11g(d)(5) was effectively satisfied in that both NJDEP and the USEPA had notice when DSCLH acquired the properties comprising the Lister Site. By time Tierra (then DSCLH) acquired the properties comprising the Lister Site, the site had been under regulatory control and orders for more than two years, and both DEP and USEPA were already contending that hazardous substances had previously been discharged on the site and were requiring response actions. Under these circumstances, it would have been redundant, to say the least, for DSCLH, which took title solely to facilitate the effective continuation of environmental response actions under the control of DEP and EPA, to provide additional “notice” to DEP and EPA.

Interrogatory No. 11:

Fully describe the reasons and purposes for the formation of DS Corporate Co., its functions and roles with respect to any business(es) or operation(s) of DSC-I, DSCC, DSC-II or Maxus, all business(es), assets and liabilities it owned, operated, or controlled, or that it acquired or assumed from DSC-I, DSCC, DSC-II or Maxus at any time prior to the SPA, and identify all Documents supporting Your answer.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive, and encompassing matters that are irrelevant to the issues in this lawsuit and that may be privileged or otherwise protected. Subject thereto and to their General Objections, Maxus and Tierra respond that DS Corporate Company was one of several subsidiary corporations formed in 1983 as part of a corporate restructuring of DSC-I. As part of the restructuring, operations of DSC-I which had previously operated as divisions within DSC became distinct corporations that, by the end of the restructuring process, were all subsidiaries of DSC-II, which was to serve solely as a non-operating holding company that held all the stock of the operating subsidiaries. DS Corporate Company was established primarily to provide certain services (e.g., legal, accounting and some environmental services) that several or all of the subsidiaries might require, but that could be most efficiently provided on an enterprise-wide basis. In addition, DS Corporate Company acquired from DSCC certain assets, and assumed the liabilities linked to those assets, pursuant to the DSCC/DS Corporate Co. Assignment and Assumption Agreement (which has been previously produced in this lawsuit as MAXUS022033-022038). As a further response, Maxus and Tierra also incorporate their response to Interrogatory 5. Pursuant to Rule 4:17-4(d), the “businesses, assets and liabilities” that DS Corporate Company acquired and/or assumed can be derived or ascertained as readily by OCC as by Maxus or Tierra by consulting the express terms of MAXUS022033-022038.

II. OCC CROSS-CLAIMS

Interrogatory No. 12:

Fully describe any and all efforts ever considered or undertaken by "Seller" (as that term is defined in the SPA) or by any of the "Diamond Companies" (as that term is defined in the SPA) to comply with any of the provisions of Section 12.11(a) and/or Section 12.11(b) of the SPA, and identify all Documents relating to such efforts.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive, and encompassing matters that are irrelevant to the issues in this lawsuit and that may be privileged or otherwise protected. Maxus and Tierra also object to the scope of this interrogatory and limit their response to liabilities associated with the Lister Site. Maxus and Tierra also object to having to "fully describe" the contents of voluminous documents that have previously been produced to OCC over many years and have been produced in this litigation. Pursuant to R. 4:17-4(d), Maxus and Tierra refer OCC to the contents of those documents, the nature of which are briefly described below, and the burden of deriving or ascertaining the information from those documents is substantially the same for OCC as for Maxus and Tierra. Subject to these objections and to their General Objections, Maxus and Tierra respond that DSCC made efforts prior to execution of the SPA, and DSC-II/Maxus and Tierra have long since made efforts, to reduce, contain, or resolve DSCC's liabilities associated with the Lister Site by, among other things:

- engaging in good faith negotiations with state and federal regulators for terms of AOCs and a judicial Consent Decree that OCC approved in every instance and that limited OCC's potential financial exposure and resolved certain liabilities;
- addressing the environmental issues in a cost-effective, technically feasible and scientifically efficacious manner;

- performing extensive and costly investigative and remedial measures that addressed the pre-existing contamination and eliminated the potential for further releases of hazardous substances at, onto or from the Lister Site.
- taking the lead and making extensive efforts to identify other parties who may be potentially responsible for Environmental Liabilities that the regulators were attributing to the Lister operations, and inducing them to cooperatively and jointly fund certain remedial activities, which had the effect of reducing OCC's share of those liabilities; and
- otherwise implementing, at the costs of hundreds of millions of dollars, environmental response actions at the Lister Site, the Passaic River and Newark Bay, all as reflected in voluminous documents, many of which are already in the possession of OCC.

Interrogatory No. 13:

If You contend that, separate and apart from anything alleged in the Maxus/Tierra Cross-Claims, You have no obligation whatsoever to indemnify OCC, pursuant to the SPA, for any liability OCC may incur to Plaintiffs in the Lawsuit, fully explain all factual bases for such contention and identify all Documents supporting such contention.

RESPONSE:

Maxus and Tierra object to this interrogatory as calling for a legal conclusion to which no response is required. Maxus and Tierra further object to this interrogatory as premature because discovery has not been completed, and factual support for their contentions will continue to develop. In addition, Maxus and Tierra object to this interrogatory on the grounds that it requires Maxus and Tierra to fully explain "all factual bases" and identify "all supporting documents," despite the facts that Maxus and Tierra have yet to receive all documents sought in discovery from OCC and other parties or taken any depositions to further develop their legal defenses. Finally, Maxus and Tierra object to this interrogatory insofar as it calls for information protected

by the attorney-client privilege or attorney-work-product doctrine and New Jersey Rules of Court R. 4-17-1(b)(3).

Subject to their specific objections and the General Objections, Maxus and Tierra state that the SPA does not indemnify OCC “for any liability OCC may incur to Plaintiffs in the Lawsuit.” Apart from Maxus and Tierra’s Cross-Claims, Maxus and Tierra have identified in their Separate Defenses to OCC’s Cross-Claim other potential bases that would excuse, negate or deny indemnification to OCC. These include the fact that, as applied to the claims in the present lawsuit, the SPA indemnification provisions are ambiguous and unclear, or are inapplicable or void as against public policy, or have expired by virtue of the lapse of any reasonable period of time for the indemnification provisions to remain operative.

Maxus and Tierra identify the following documents of which they are aware to date as examples of responsive documents to this request: the SPA, SPA drafts, documents and correspondence involving the SPA, documents and correspondence involving the negotiation of the SPA, transcripts of witness testimony in previous trials and depositions regarding the SPA, and documents produced in prior litigation involving the SPA, documents relating to OCC’s independent management and operation of the Lister Site in the 1970s, documents relating to OCC’s relationship with Chemicaland, documents relating to OCC’s bad faith or lack of cooperation with Maxus (including, without limitation, OCC’s assertion of theories for Maxus’s alleged direct liability—such as Maxus’s alleged “successor liability”—which theories are not supported by the facts and are contradicted by a 25-year course of conduct by OCC itself), documents from Plaintiffs regarding the Lister Site and other documents relating to the Plaintiffs’ knowledge of certain allegations and claims affecting statute of limitations defenses.

By way of further response, Maxus and Tierra incorporate by reference their response to Interrogatory No. 16, below.

Interrogatory No. 14:

Fully explain all factual bases for Your Separate Defense number 5 to OCC's Cross-Claims, in which You allege that OCC's claims are barred "by the doctrines of waiver, consent, estoppel, release, and assumption of risk," and identify all supporting Documents.

RESPONSE:

Maxus and Tierra object to this interrogatory as calling for a legal conclusion to which no response is required. Maxus and Tierra further object to this interrogatory as premature because discovery has not been completed, and factual support for their contention that OCC's claims are barred by the doctrines of waiver, consent, estoppel, release, and assumption of the risk will continue to develop. In addition, Maxus and Tierra object to this interrogatory on the grounds that it requires Maxus and Tierra to fully explain "all factual bases" and identify "all supporting documents," despite the facts that Maxus and Tierra have yet to receive all documents sought in discovery from OCC and other parties or taken any depositions to further develop their legal defenses. Finally, Maxus and Tierra object to this interrogatory insofar as it calls for information protected by the attorney-client privilege or attorney-work-product doctrine and New Jersey Rules of Court R. 4-17-1(b)(3).

Subject to their specific objections and the General Objections, Maxus and Tierra state that, upon information and belief, OCC may have allowed chemicals from the Lister Site to enter the Passaic River during OCC's relationship with Chemicaland, OCC's operational and management activities at the Lister Site, or other culpable conduct by OCC involving the closure of the site. These facts, which are still being developed in discovery, support Maxus and Tierra's defenses to certain of Plaintiffs' claims and OCC's cross-claims, including that OCC has waived

its right to seek recovery from Maxus for, or is estopped from recovering against Maxus for, or has assumed the risk of, liabilities that result from OCC's own conduct at the Lister Site. Documents supporting these facts, as well as Maxus/ and Tierra's information and beliefs, include a letter by W.H. Hunt, Jr., Vice President and General Manager, Eastern Division, of Occidental Chemical Company to the Creditors of Chemicaland Corporation, stating that "on November 22, 1976 Occidental Chemical Company assumed temporary management and operation of the plant facility owned by Chemicaland Corporation located at 80 Lister Avenue, Newark, New Jersey." Also, on information and belief, OCC negligently ceased its activities at the Lister Site, which may have caused discharges of hazardous substances. This negligent conduct includes but is not limited to conducting a "Sheriff sale" of 80 Lister Avenue, which is described in the December 22, 1978 letter to Marc J. Kennedy, Division Counsel for Occidental Chemical Company.

In addition, OCC purchased the stock of DSCC from DSC-II. Through OCC's merger with DSCC, OCC acquired the assets and liabilities of DSCC. As OCC admitted in ¶ 26 of OCC's Answer and Cross-Claim Complaint, "Occidental further admits that Oxy-Diamond Alkali Corporation merged into Occidental on November 24, 1987, and, after a corporate name change, DSCC merged into Occidental on November 30, 1987." Among the supporting documents are certifications/affidavits executed by OCC's attorneys, including John R. Wheeler, Associate General Counsel, dated May 27, 1993, ("Occidental became the successor by merger of the chemicals manufacturing company known successively as Diamond Alkali Company, Diamond Shamrock Corporation (not the same entity now known as Maxus), Diamond Shamrock Chemicals Company (DSCC), and Occidental Electrochemicals Corporation.") and Gerald H. Rubin, Assistant General Counsel, dated May 11, 1995 ("OCC is the successor, by

merger effective November 30, 1987, to Occidental Electrochemical Corporation (“OEC” formerly named Diamond Shamrock Chemicals Company [“Diamond I” formerly named Diamond Chemical Company and, before that, Diamond Shamrock Corporation and, before that, Diamond Alkali Company, incorporated in Delaware in 1928])).

OCC’s more recent theory—that Maxus itself is the successor of the Lister Avenue liabilities—is inconsistent with these statements and a more than 20-year history in which DSCC and OCC have executed AOCs and a judicial Consent Decree to address the Lister Site, the Passaic River and Newark Bay, without OCC raising any suggestion that it was not the proper party to execute such documents or that the company whose stock it bought in 1986 was not the true successor of any environmental liabilities associated with the Lister Site. On these grounds, the doctrines of waiver, consent, estoppel and release bar OCC from asserting that Maxus is the successor to DSCC with respect to any liabilities associated with Lister Site.

Subject to its objections as stated above, Maxus and Tierra identify the following documents they are aware of to date as examples of responsive documents to this request: the SPA, SPA drafts, documents and correspondence involving the SPA, documents and correspondence involving the negotiation of the SPA, trial transcripts of witness testimony and documents produced in prior litigation involving the SPA, documents relating to OCC’s management and operation of the Lister Site, documents relating to OCC’s relationship with Chemicaland, documents relating to OCC’s bad faith or lack of cooperation with Maxus, documents from Plaintiffs regarding the Lister Site and other documents relating to the Plaintiffs’ knowledge of certain allegations and claims affecting statutes of limitations defenses, documents produced on the “successor liability” issue, including the certification of John R. Wheeler and the affidavit of Gerald H. Rubin, and all Spill Act and CERCLA documents

reflecting OCC's explicit and implicit acknowledgement that OCC, not Maxus, was responsible as the successor of any Diamond-era liabilities associated with Lister Site.

Interrogatory No. 15:

Fully explain all factual bases for Your Separate Defense number 6 to OCC's Cross-Claims, alleging that OCC's claims are barred "by the doctrines of collateral estoppel, res judicata, judicial estoppel, and accord and satisfaction," and identify all supporting Documents.

RESPONSE:

Maxus and Tierra object to this interrogatory as calling for a legal conclusion to which no response is required. Maxus and Tierra further object to this interrogatory as premature because discovery has not been completed, and factual support for their contention that OCC's claims are barred by the doctrines of collateral estoppel, res judicata, judicial estoppel, and accord and satisfaction will continue to develop. In addition, Maxus and Tierra object to this interrogatory on the grounds that it requires Maxus and Tierra to fully explain "all factual bases" and identify "all supporting documents," despite the facts that Maxus and Tierra have yet to receive all documents sought in discovery from OCC and other parties or taken any depositions to further develop their legal defenses. Finally, Maxus and Tierra object to this interrogatory to the extent that it calls for information protected by the attorney-client privilege or attorney-work-product doctrine and New Jersey Rules of Court R. 4-17-1(b)(3).

Subject to their specific objections and the General Objections below, Maxus and Tierra state that through the 1986 SPA, OCC acquired the stock of DSCC and thereby acquired the assets and liabilities of DSCC. Therefore, OCC is now estopped from denying that it is the entity responsible for the alleged discharges from the Lister Site. Maxus and Tierra state that in 1984, after the reorganization, DSCC acquired 120 Lister Avenue, and re-acquired 80 Lister

Avenue two years later, in 1986. These facts are inconsistent with OCC's assertion that DSCC had, by that time, purported to transfer away its liabilities relating to the Lister Site.

Furthermore, since the SPA was executed in 1986, OCC and Maxus have been adversaries in several lawsuits regarding the scope, interpretation and application of various provisions of the SPA and Maxus's alleged responsibility for various of Diamond's historical liabilities. OCC has never raised in any of those lawsuits the contentions it is raising now, namely, that Maxus is the successor of DSCC with respect to "Ag Chem" liabilities, or that Maxus was breaching any alleged obligations to OCC with respect to the Lister Site. To the contrary, OCC has repeatedly represented that it was the successor to DSCC and its predecessors, including in certifications/affidavits executed by OCC's attorneys, including John R. Wheeler, Associate General Counsel, dated May 27, 1993, ("Occidental became the successor by merger of the chemicals manufacturing company known successively as Diamond Alkali Company, Diamond Shamrock Corporation (not the same entity now known as Maxus), Diamond Shamrock Chemicals Company (DSCC), and Occidental Electrochemical Corporation.") and Gerald H. Rubin, Assistant General Counsel, dated May 11, 1995 ("OCC is the successor, by merger effective November 30, 1987, to Occidental Electrochemical Corporation ("OEC" formerly named Diamond Shamrock Chemicals Company ["Diamond I" formerly named Diamond Chemical Company and, before that, Diamond Shamrock Corporation and, before that, Diamond Alkali Company, incorporated in Delaware in 1928]).").

Subject to its objections as stated above, Maxus and Tierra identify the following documents it is aware of to date as examples of responsive documents to this request: Maxus and Tierra state that the SPA, SPA drafts, documents and correspondence involving the SPA, documents and correspondence involving the negotiation of the SPA, trial transcripts of witness

testimony and documents produced in prior litigation involving the SPA, documents relating to OCC's management and operation of the Lister Site, documents relating to OCC's relationship with Chemicaland, documents produced on the "successor liability" issue, including the certification of John R. Wheeler and affidavit of Gerald H. Rubin, documents relating to OCC's entry into various administrative orders and consent orders relating to the Lister Site, documents relating to OCC's bad faith or lack of cooperation with Maxus, documents from Plaintiffs regarding the Lister Site and other documents relating to the Plaintiffs' knowledge of certain allegations and claims affecting statute of limitations defenses.

Interrogatory No. 16:

Fully explain all factual bases for Your Separate Defense number 18 to OCC's Cross-Claims, alleging that OCC is not entitled to any recovery based upon the provisions of the SPA (including, but not limited to Article IX) because, as You allege, "those provisions are invalid or inapplicable," and identify all supporting Documents.

RESPONSE:

Maxus and Tierra object to this interrogatory to the extent it calls for a legal conclusion to which no response is required. Maxus and Tierra further object to this interrogatory as premature because discovery has not been completed, and factual support for their contentions will continue to develop. In addition, Maxus and Tierra object to this interrogatory on the grounds that it requires Maxus and Tierra to fully explain "all factual bases" and identify "all supporting documents," despite the facts that Maxus and Tierra have yet to receive all documents sought in discovery from OCC and other parties or taken any depositions to further develop their legal defenses. Finally, Maxus and Tierra object to this interrogatory insofar as it calls for information protected by the attorney-client privilege or attorney-work-product doctrine and New Jersey Rules of Court R. 4-17-1(b)(3).

Subject to their specific objections and the General Objections, Maxus and Tierra state as follows: SPA Section 9.01(b) provides that, subject to certain exceptions, the SPA's provisions shall remain in effect "indefinitely," which is limited to a reasonable period of time, not perpetually or without end. In addition, other bases include the fact that, as applied to the claims in the present lawsuit, the SPA indemnification provisions are ambiguous and unclear, or are inapplicable or void as against public policy, or have expired by virtue of the lapse of any reasonable period of time for the indemnification provisions to remain operative. At a minimum, the meaning of the term "indefinitely" raises questions of fact regarding, among other things, the prejudice to the indemnitor from the passage of time, the death and unavailability of witnesses, fading recollections and the existence or absence of documents.

Furthermore, the fact that OCC alleges three different provisions of Section 9.03(a) as its basis for a claim of indemnification indicates that OCC itself perceives ambiguity in the provisions, requiring a full opportunity for discovery and a close review of the documents, witness testimony and other facts potentially pertinent to interpreting the various provisions invoked by OCC and others, and ultimately requiring decisions of fact to determine the applicability of the indemnification provisions in 1986 SPA, if any, to the particular claims made by the State in this litigation.

In addition, Maxus and Tierra have asserted Cross-Claims and Separate Defenses to OCC's Cross-Claim that would excuse, negate or deny any indemnification responsibility that Maxus might otherwise have to OCC regarding this litigation. The factual bases for these include OCC's independent management and operation of the Lister Site in the 1970s and OCC's relationship with Chemicaland (see Response to Interrogatory No. 17, which is incorporated herein by reference), and OCC's bad faith or lack of cooperation with Maxus, including, without

limitation, OCC's assertion of theories for Maxus's alleged direct liability—such as Maxus's alleged “successor liability”—which have no credible basis in fact and are inconsistent with OCC's prior representations and longstanding course of conduct (see Response to Interrogatory No. 18, which is incorporated herein by reference).

Maxus and Tierra identify the following documents of which they are aware to date as examples of responsive documents to this request: the SPA, SPA drafts, documents and correspondence involving the SPA, documents and correspondence involving the negotiation of the SPA, transcripts of witness testimony in previous trials and depositions regarding the SPA, and documents produced in prior litigation involving the SPA, documents relating to OCC's independent management and operation of the Lister Site in the 1970s, documents relating to OCC's relationship with Chemicaland, documents relating to OCC's assertion of theories for Maxus's alleged direct liability, documents relating to OCC's prior representations on successorship issues and OCC's prior course of conduct regarding its status as successor of DSCC regarding Lister Avenue liabilities, documents from Plaintiffs regarding the Lister Site and other documents relating to the Plaintiffs' knowledge of certain allegations and claims affecting statute of limitations defenses.

Maxus and Tierra reserve the right to supplement their response to this interrogatory as discovery proceeds.

Interrogatory No. 17:

Fully explain all factual bases for Your Separate Defense number 19 to OCC's Cross-Claims, alleging that OCC's claims “are barred or diminished because Occidental was guilty of negligence, or otherwise culpable conduct, and contributory negligence,” and identify all supporting Documents.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive. Maxus and Tierra also object that discovery is on-going and they cannot at this time “fully explain” or provide “all” documents or other factual support for the allegations that OCC’s claims “are barred or diminished because Occidental was guilty of negligence, or otherwise culpable conduct, and contributory negligence” Subject to these objections and their General Objections, Maxus and Tierra contend that, to the extent that any alleged discharges of hazardous substances from the Lister Site occurred, OCC and/or its predecessors engaged in conduct at the Lister Site during the 1970s making it responsible for those alleged discharges. Under applicable law, OCC cannot be indemnified against losses resulting from its own actively wrongful and/or negligent conduct. In addition, Section 9.03(b) of the SPA expressly provides that OCC is required to indemnify Maxus for any liabilities flowing from OCC’s own activities at the Lister Site.

Maxus and Tierra identify the following documents of which they are aware to date as examples of responsive documents to this request: documents relating to OCC’s independent management and operation of the Lister Site in the 1970s, documents relating to OCC’s relationship with Chemicaland, documents from Plaintiffs regarding the Lister Site.

Interrogatory No. 18:

Fully explain all factual bases for Your Separate Defense number 20 to OCC’s Cross-Claims, alleging that OCC’s claims “are barred or diminished because Occidental was guilty of failure to act in good faith or failure to provide appropriate cooperation,” and identify all supporting Documents.

RESPONSE:

Maxus and Tierra object to this interrogatory as calling for a legal conclusion to which no response is required. Maxus and Tierra further object to this interrogatory as premature because

discovery has not been completed, and factual support for their contention that OCC's claims "are barred or diminished because Occidental was guilty of failure to act in good faith or failure to provide appropriate cooperation" will continue to develop. In addition, Maxus and Tierra object to this interrogatory on the grounds that it requires Maxus and Tierra to fully explain "all factual bases" and identify "all supporting documents," despite the facts that Maxus and Tierra have yet to receive all documents sought in discovery from OCC and other parties or taken any depositions to further develop their legal defenses. Finally, Maxus and Tierra object to this interrogatory insofar as it calls for information protected by the attorney-client privilege or attorney-work-product doctrine and New Jersey Rules of Court R. 4-17-1(b)(3).

Subject to their specific objections and the General Objections below, Maxus and Tierra state that OCC was guilty of a failure to act in good faith as required by the express terms of the SPA in Section 9.04. OCC failed to proceed in good faith and to provide appropriate cooperation by taking claims and positions without a credible basis in fact and that are inconsistent with OCC's own representations and OCC's own course of conduct for more than 25 years; by taking steps in this litigation intended to induce or impel the Plaintiffs to amend their complaint to include claims against Maxus and its parent companies based on the same baseless theories; and by retaining separate counsel for all purposes in this lawsuit (not merely to assert cross claims) even though counsel selected by Maxus was providing a vigorous and adequate defense of OCC. All of these actions have materially increased Maxus' and Tierra's litigation costs, and have unnecessarily complicated the issues in this case, and have exacerbated the risk that a disproportionate and inequitable share of responsibility may be assigned to Lister Site operations.

Subject to their objections as stated above, Maxus and Tierra identify the following documents they are aware of to date as examples of responsive documents to this request: the SPA, SPA drafts, documents and correspondence involving the SPA, documents and correspondence involving the negotiation of the SPA, trial transcripts of witness testimony and documents produced in prior litigation involving the SPA, documents relating to OCC's management and operation of the Lister Site, documents relating to OCC's relationship with Chemicaland, documents relating to above-mentioned facts regarding OCC's attempt to reverse its own prior representations as reflected in the certification of John R. Wheeler and affidavit of Gerald H. Rubin, documents relating to OCC's bad faith or lack of cooperation with Maxus, OCC's pleadings and filings in this case, OCC's discovery requests served on the other Defendants in this case, documents from Plaintiffs regarding the Lister Site and other documents relating to the Plaintiffs' knowledge of certain allegations and claims affecting statute of limitations defenses.

Interrogatory No. 19:

If You contend that some or all of the Environmental Liability that Plaintiffs allege against OCC in the Lawsuit constitute, within the meaning of Section 9.03(b) of the SPA, "Indemnifiable Losses relating to, resulting from or arising out of . . . any obligations of Buyer or any subsidiary of Buyer (other than any DSCC Company) prior to the Closing Date," fully explain all factual bases for such contention, fully describe the nature and extent of the alleged Environmental Liability You contend falls within the ambit of Section 9.03(b), and identify all Documents supporting such contention.

RESPONSE:

See Response and Objections to Interrogatories 14 and 16 above. Maxus and Tierra further respond that, if it is ultimately determined Plaintiffs' are entitled to judgment in this action, which Maxus and Tierra dispute, then any damages or costs awarded to Plaintiffs would be attributable to conduct by OCC and/or its predecessors at the Lister Site during the 1970s, not to conduct by OCC as successor of DSC-I or DSCC, and certainly not to any conduct by Maxus

or Tierra. Losses that relate to the independent conduct of OCC, rather than from the historic operations of DSCC, are within Section 9.03(b). Maxus and Tierra have generally described that conduct in their cross-claim (see ¶¶ 16-24) and Maxus and Tierra have previously produced documents in their possession, custody and control that are related to these allegations, namely: MAXUS016712; MAXUS016771; MAXUS016772; MAXUS016773. Maxus and Tierra anticipate that discovery, including discovery from OCC, will reveal further support for those allegations.

Interrogatory No. 20:

With respect to every Hazardous Substance You claim was manufactured or held at the Lister Site or Lister Plant, during any period You contend Occidental Chemical Company and/or OCC owned, operated or controlled the Lister Site or Lister Plant or any manufacturing activities conducted thereon, identify the Hazardous Substance, the quantity You claim was manufactured or held at the Lister Site or Lister Plant, and the time period during which You claim the Hazardous Substance was manufactured or held at the Lister Site or Lister Plant, and identify all Documents supporting Your claims.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive. Maxus and Tierra also object that discovery is on-going and they cannot at this time “fully explain” or provide “all” documents or other factual support for the allegations in their cross-claim. Subject to these objections and their General Objections, Maxus and Tierra contend that OCC or its predecessors may have manufactured hazardous substances, including but not limited to 2,4-dichlorophenoxyacetic acid (“2,4-D”) at the Lister Site. Maxus and Tierra have generally described that conduct in their cross-claim (see ¶¶ 16-24), and Maxus and Tierra anticipate that further discovery, including discovery from OCC, will reveal further support for those allegations. Maxus and Tierra have previously agreed to provide responsive documents in their possession, custody and control that are related to these allegations.

Interrogatory No. 21:

Fully describe every Discharge of any Hazardous Substance You claim resulted from any events, acts or omissions at the Lister Site or Lister Plant during any period You contend Occidental Chemical Company and/or OCC owned, operated or controlled the Lister Site or Lister Plant or any manufacturing activities conducted thereon.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague, ambiguous, overly broad, burdensome and oppressive. Maxus and Tierra also object that discovery is on-going and they cannot at this time “fully explain” or provide “all” documents or other factual support for the allegations in their cross-claim. Subject to these objections and their General Objections, Maxus and Tierra contend that OCC or its predecessors engaged in conduct at the Lister Site during the 1970s that resulted may have resulted in discharges of hazardous substances, including but not limited to 2,4-D, to the property and the adjacent waterways. Maxus and Tierra have generally described that conduct in their cross-claim (see ¶¶ 16-24), and Maxus and Tierra anticipate that discovery, including discovery from OCC, may reveal further support for those allegations. Maxus and Tierra have previously agreed to provide responsive documents in their possession, custody and control that are related to these allegations.

Interrogatory No. 22:

Fully describe any and all disclosures You made to any party to the SPA (excluding the “Seller” as defined therein), concerning any actual or possible Environmental Liability arising from or related to any ownership or operation of the Lister Site or Lister Plant during the Chemicaland Era.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive and argumentative. Maxus and Tierra further object to the extent this interrogatory suggests that Maxus and Tierra were under any obligation to make disclosures about OCC’s own operations and conduct with respect to the Lister Site. Maxus and Tierra also

object that discovery is on-going and they cannot at this time “fully describe any and all disclosures” that were made. Subject to these objections, Maxus and Tierra respond that, pursuant to R. 4:17-4(d), they will provide and specifically identify documents so that the burden of ascertaining or deriving the answer to this interrogatory will be substantially the same for OCC as for Maxus and Tierra.

Interrogatory No. 23:

Identify and fully describe all components and amounts of damages or other relief You seek from OCC under each count of the Maxus/Tierra Cross- Claims, and identify all Documents supporting such damages or other claimed relief.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive. Maxus and Tierra further object that because discovery is on-going and the State has not yet specified all of the damage components and amounts it is seeking, Maxus and Tierra are unable at present to “fully describe all components of damages” or identify “all” documents. Subject to these objections and their General Objections, Maxus and Tierra respond that each of their cross-claims seeks to hold OCC responsible for its equitable share of the total damages and other liabilities in the event Maxus and Tierra are found liable. Those damages include, among other amounts, an equitable share of the costs, expenses, attorneys fees and other liabilities which have already been incurred by Maxus and Tierra relating to their investigations, remediation and cleanup efforts involving the Lister Site and Newark Bay Complex, as well as a share of any future such costs, expenses, attorneys fees and other and liabilities for which Maxus and Tierra may be found liable in this action. By way of further response, Maxus and Tierra incorporate by reference their Amended Initial Disclosures, which describe the damage components and amounts to the extent they can be described (given the still undefined nature of Plaintiffs’ damage claims and the fact that discovery has not yet occurred on

damage issues). At this point, Maxus and Tierra seek recovery for their already incurred cleanup and removal costs, in excess of \$50 million as well as recovery for the substantial future costs they expect to incur, including, but not limited to, the approximately \$80 million in future cleanup and removal costs that Tierra has already committed to incur in connection with the 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 the Interim Cooperative Assessment Funding Agreement for the Diamond Alkali Superfund Site, New Jersey (2008). In addition, Maxus and Tierra have incurred substantial attorneys' fees and expenses, a portion of which is recoverable against OCC. Maxus and Tierra reserve the right to supplement this response in light of discovery.

Interrogatory No. 24:

Regarding every Person You expect to call at trial as an expert witness, disclose all information that, pursuant to R. 4:10-2(d)(1), OCC may require You to disclose by interrogatory, and provide all expert report(s) and related information in accordance with R. 4:17-4(e).

RESPONSE:

Maxus and Tierra object that this interrogatory is premature. Maxus and Tierra have not decided which Persons to call at trial as expert witnesses and the court's case management orders have not required such disclosures. When the court rules and case management orders require Maxus and Tierra to make disclosures regarding their expert witnesses, Maxus and Tierra will respond appropriately.

III. RESPONSES TO LATER OCC REQUESTS FOR ADMISSION

Interrogatory No. 25:


If and to the extent that Your response to any request for admission subsequently served upon You by OCC is anything other than an unqualified admission, fully explain all factual bases for Your response, and identify all Documents supporting Your response.

RESPONSE:

Maxus and Tierra object to this interrogatory as vague and ambiguous, overly broad, burdensome and oppressive, hypothetical and premature. Maxus and Tierra also object that this interrogatory actually encompasses multiple separate interrogatories and therefore violates the limitation on the number of interrogatories that may be propounded on a party under CMO VII. Further, Maxus and Tierra object on the grounds that discovery is on-going and they cannot at this time “fully explain” “all” factual bases or provide “all” documents or other factual support for any responses to OCC’s requests for admission that are anything “other than an unqualified admission.” There are many valid reasons for not admitting the substance of any particular OCC request for admission (including, inter alia, that the request is objectionable). Maxus and Tierra will respond to any request for admission served by OCC in accordance with the rules of court.

CERTIFICATION

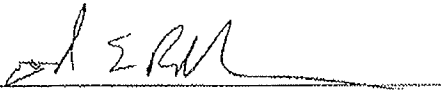
I hereby certify that, to the best of my knowledge or belief, the foregoing Objections and Responses of Defendant Maxus Energy Corporation to Defendant Occidental Chemical Corporation's First Set of Interrogatories are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Sally Ann Roberts Galley
On Behalf of Maxus Energy Corporation

CERTIFICATION

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

A handwritten signature in black ink, appearing to read "D. E. Rabbe", is written over a horizontal line.

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