

MARC-PHILIP FERZAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street, PO Box 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs

By: John F. Dickinson, Jr.
Deputy Attorney General
(609) 984-4863

JACKSON GILMOUR & DOBBS, PC
3900 Essex Lane, Suite 700
Houston, Texas 77027

By: William J. Jackson, Special Counsel
(713) 355-5000

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
THE COMMISSIONER OF THE
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and THE
ADMINISTRATOR OF THE NEW
JERSEY SPILL COMPENSATION
FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA
SOLUTIONS, INC., MAXUS ENERGY
CORPORATION, MAXUS
INTERNATIONAL ENERGY
COMPANY, REPSOL YPF, S.A.,
YPF, S.A., YPF HOLDINGS, INC., YPF
INTERNATIONAL S.A. (f/k/a YPF
INTERNATIONAL LTD.) and
CLH HOLDINGS,

Defendants.

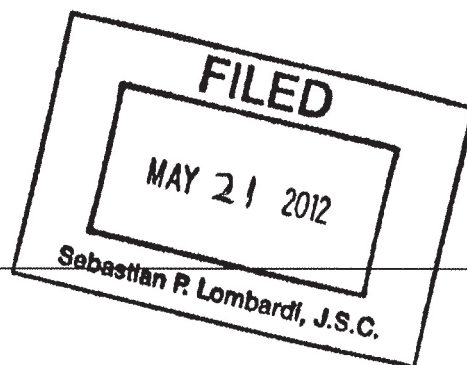
MAXUS ENERGY CORPORATION
AND TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, et al.,

Third-Party Defendants.



GORDON & GORDON
505 Morris Avenue
Springfield, New Jersey 07081

By: Michael Gordon, Special Counsel
(973) 467-2400

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

ORDER GRANTING PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST MAXUS ENERGY
CORPORATION AND DENYING MAXUS
ENERGY CORPORATION'S TRACK III
CROSS-MOTION FOR PARTIAL SUMMARY
JUDGMENT

This matter having come before the Court on the motion of Marc-Philip Ferzan, Acting Attorney General; and Jackson Gilmour and Dobbs, P.C. and Gordon & Gordon, P.C., Special Counsel to the Acting Attorney General; attorneys for Plaintiffs, the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and Administrator of the New Jersey Spill Compensation Fund ("Plaintiffs"); and on the cross-motion of Drinker Biddle & Reath LLP, attorneys for Maxus Energy Corporation; and the Court, having reviewed the papers submitted by the parties, and having heard oral argument thereon, and for other good cause shown, is of the opinion for the reasons expressed on the record that Plaintiffs' motion should be granted and that Maxus Energy Corporation's cross-motion should be denied; in particular, the Court makes the following findings:

- ~~Maxus Energy Corporation is, as a matter of law, a successor to Diamond Alkali Company and Diamond Shamrock Corporation a/k/a "Old Diamond," the owner and operator of the chemicals manufacturing facility at 80 Lister Avenue, commonly known as the "Lister Plant," from 1946 through 1969; and~~ *Denied;*
except was to. Punitive Damages the matter is not decided and left open.
~~Tierra Solutions, Inc. f/k/a Chemical Land Holdings, Inc. and Diamond Shamrock Chemical Land Holdings, Inc., the current owner of the "Lister Site," located at 80 and 120 Lister Avenue in Newark, New Jersey, is the alter ego of Maxus Energy Corporation as a matter of law;~~
- ~~Plaintiffs are an intended third-party beneficiary of the September 4, 1986 Stock Purchase Agreement, requiring, inter alia, Maxus Energy Corporation to pay directly all cleanup and removal costs imposed upon Occidental Chemical Corporation associated with the Lister Site; and~~ *DENIED*

- Maxus Energy Corporation is in any way responsible under the Spill Compensation and Control Act for the hazardous substances discharged at and/or from the Lister Plant from 1946 until 1969.

IT IS therefore, on this 21st day of May, 2012,

on facts found by court for Maxus being alter ego of Lister..

ORDERED that Plaintiffs' motion for partial summary judgment on Count I of Plaintiffs' Third Amended Complaint against Defendant Maxus Energy Corporation is hereby GRANTED; that Maxus Energy Corporation is strictly, jointly and severally liable under the Spill Compensation and Control Act for all past cleanup and removal costs incurred by Plaintiffs associated with the discharges of hazardous substances at and from the Lister Plant, commonly known to be located at 80 Lister Avenue in Newark, New Jersey, into the Passaic River, from 1946 through 1969; IT IS FURTHER,

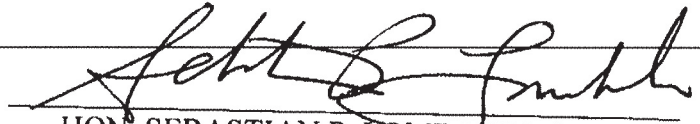
ORDERED that a declaratory judgment is hereby entered against Defendant Maxus Energy Corporation, finding it strictly, jointly and severally liable under the Spill Compensation and Control Act for all future cleanup and removal costs incurred by Plaintiffs associated with the discharges of hazardous substances at and from the Lister Plant, commonly known to be located at 80 Lister Avenue in Newark, New Jersey, into the Passaic River from 1946 through 1969; IT IS FURTHER,

ORDERED that Defendant Maxus Energy Corporation's Track III cross-motion for partial summary judgment is hereby DENIED; and IT IS FURTHER, *in part (see other order of this date).*

ORDERED that counsel for Plaintiffs shall serve a copy of this Order on all counsel of record within seven (7) days of the date of entry of this Order by posting on the CT Summation electronic platform.

Opposed

Unopposed



HON. SEBASTIAN P. LOMBARDI, J.S.C.

SEBASTIAN P. LOMBARDI, J.S.C.

For reasons stated on
the record on May 17, 2012