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Attorneys for Defendant Occidental Chemical 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.

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

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

:
: CIVIL ACTION

FILED

FEB - 7 2012

Sebastian P. Lombardi, J.S.C.

OCCIDENTAL CHEMICAL CORPORATION, :
TIERRA SOLUTIONS, INC., MAXUS : **CONSENT ORDER ON TRACK III**
ENERGY CORPORATION, MAXUS : **KOLKER-ERA ISSUES**
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.

The Court having filed on July 19, 2011 an "Order Partially Granting Plaintiffs' Motion for Partial Summary Judgment Against Occidental Chemical Corporation, Maxus Energy Corporation and Tierra Solutions, Inc." for the reasons stated on the record on July 15, 2011 and July 19, 2011, and the undersigned counsel for the Track III Parties—Plaintiffs, Occidental Chemical Corporation ("OCC"), Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra")—having stipulated to the following facts:

1. There were discharges of hazardous substances as defined in the Spill Act at and/or from the Lister Plant into the Passaic River at various times during the operations of each of Kolker Chemical Works, Inc., Diamond Alkali Organic Chemicals Division, Inc., Diamond Alkali Company, and Diamond Shamrock Corporation ("DSC-1") from 1946-1969;
2. Kolker Realty Company owned the real property where the Lister Plant was located from January 1947 until March 1950, at which time Kolker Realty Company merged into and consolidated with Kolker Chemical Works, Inc.;
3. DSC-1 is the corporate successor to Kolker Realty Company, Kolker Chemical Works, Inc., Diamond Alkali Organic Chemicals Division, Inc., and Diamond Alkali Company; and
4. These stipulations shall only be used by Plaintiffs, except Plaintiffs may not use Stipulation No. 1 for purposes of establishing any claim for punitive damages; furthermore, nothing in these stipulations shall preclude Maxus, Tierra and OCC from asserting that punitive damages are not awardable against a successor corporation for direct assumption of liabilities or as a mere continuation or de facto merger of the predecessor company or otherwise as a matter of law or equity.

The Track III Parties, therefore, agree that this Consent Order is appropriate in order to obviate the present need for certain additional discovery and motion practice during Track III, and the undersigned counsel having further agreed that notwithstanding this Consent Order it is specifically understood and agreed that: (i) any and all rights of appeal and review by OCC, Maxus or Tierra of the Court's July 19, 2011 Order are fully preserved; and (ii) Plaintiffs shall not raise or assert this Consent Order as a defense or bar to any such appeal or review sought by OCC, Maxus or Tierra, therefore:

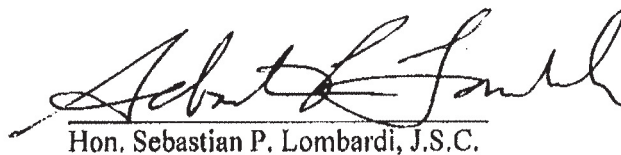
IT IS HEREBY ORDERED that:

1. Diamond Shamrock Corporation (DSC-1) is strictly, jointly and severally liable under the Spill Compensation and Control Act for all past and future cleanup and removal costs that were or may be incurred by Plaintiffs associated with the discharges of hazardous substances at and/or from the Lister Plant property, commonly known to be located at 80 Lister Avenue in Newark, New Jersey, into the Passaic River from 1946-1969; provided that, in the event the Court's July 19, 2011 Order is reversed or vacated, this paragraph shall have no effect. The factual stipulations of this Consent Order shall be effective notwithstanding the fact that the Court's July 19, 2011 Order may be reversed or vacated.

2. IT IS FURTHER ORDERED that any and all rights of appeal and review by OCC, Maxus or Tierra of the Court's July 19, 2011 Order are fully preserved; and Plaintiffs shall not raise or assert this Consent Order as a defense or bar to any such appeal or review sought by OCC, Maxus or Tierra.

3. IT IS FURTHER ORDERED that a copy of this Consent Order shall be served by counsel for Plaintiffs on all other parties by posting on the CT Summation electronic platform.

2/7/12



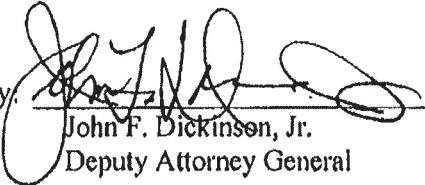
Hon. Sebastian P. Lombardi, J.S.C.

SEBASTIAN P. LOMBARDI, JSC

Consented to as to form and entry:

MARC-PHILIP FERZAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

DRINKER BIDDLE & REATH LLP
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By: 
John F. Dickinson, Jr.
Deputy Attorney General

By: _____
Vincent E. Gentile

January 17, 2012

January __, 2012

ARCHER & GREINER, P.C.
Attorneys for OCC

By: _____
Robert T. Lehman

January __, 2012

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Consented to as to form and entry:

MARC-PHILIP FERZAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
John F. Dickinson, Jr.
Deputy Attorney General

January __, 2012

DRINKER BIDDLE & REATH LLP
Attorneys for Maxus and Tierra

By: 
Vincent E. Gentile

January 18, 2012 .

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Robert T. Lehman

January 18, 2012