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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,

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.

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

Civil Action

**PLAINTIFFS' AMENDED STATEMENT
OF DAMAGES AND FOURTH
SUPPLEMENT TO THEIR INITIAL
DISCLOSURES**

To: All counsel of record via CT Summation.

**PLAINTIFFS' AMENDED STATEMENT OF DAMAGES AND
FOURTH SUPPLEMENT TO INITIAL DISCLOSURES**

Plaintiffs, the New Jersey Department of Environmental Protection (“NJDEP”), the Commissioner of the New Jersey Department of Environmental Protection (the “Commissioner”) and the Administrator of the New Jersey Spill Compensation Fund (the “Administrator”) (collectively, “Plaintiffs”), provide this fourth supplement to their previously exchanged initial disclosure statements and amended statement of damages as requested in the amended answers of certain original parties. Plaintiffs reserve the right to amend and/or supplement these disclosures and statement of damages as additional information is obtained through investigation and discovery.

B. AMENDED STATEMENT OF DAMAGES

The categories of damages Plaintiffs are seeking for each cause of action are set forth in detail in Plaintiffs’ Third Amended Complaint. As set forth in the Third Amended Complaint, Plaintiffs are not seeking natural resource damages at this time. Plaintiffs incorporate their Motion to Reserve Natural Resource Damages in its entirety by reference. Plaintiffs also are not seeking to recover any costs covered by the 1990 Consent Decree regarding the Lister Site.

The amount and type of damages Plaintiffs seek to hold Defendants jointly and severally liable for are set forth below.

1. State of New Jersey Past Costs

Plaintiffs identified \$39,401,638 in costs the New Jersey Department of Environmental Protection has incurred as a result of the discharges of hazardous substances from the Lister Site. Such costs include litigation expenses, experts’ fees and attorneys’ fees, which continue to accrue. A chart of the costs incurred by the New Jersey Department of Environmental Protection

and documentation supporting the compilation of such costs were provided in Plaintiffs' Supplement to Their Initial Disclosures and in Plaintiffs' document production.

In addition, Plaintiffs have assembled and identified additional costs incurred by other State agencies and departments as a result of the discharges of hazardous substances from the Lister Site, and have provided documentation of these costs to the Defendants in this case. Plaintiffs have identified \$78,548,732.72 in costs the New Jersey Department of Transportation has incurred as a result of the discharges of hazardous substances from the Lister Site. An amended and revised chart of the costs incurred by the New Jersey Department of Transportation is attached as Appendix 6-A (Revised) and documentation supporting the compilation of such costs was provided in Plaintiffs' Supplement to Their Initial Disclosures and in Plaintiffs' document production. The documentation supporting the costs detailed in Appendix 6-A (Revised) demonstrates that the State of New Jersey has incurred increased costs for dredging and dredge material disposal associated with sediments contaminated with discharges of hazardous substances from the Lister Site.

2. *Future Costs of the State of New Jersey*

a. Investigation, Remediation and Mitigation Costs

NJDEP is currently working with the United States Environmental Protection Agency, Region 2, to develop a Focused Feasibility Study and Proposed Plan for the remediation of the lower eight to twelve miles of the Passaic River. It is anticipated that the final Focused Feasibility Study and Proposed Plan will be issued to the public in 2011. Previous estimates for remediation of the Lower Passaic River range from \$840,000,000.00 to \$4,055,000,000.00 and could be significantly more. Plaintiffs anticipate that the State of New Jersey may, separately or in conjunction with federal agencies, be called upon to contribute some or all of the money required to implement any selected remedial action for the Passaic River, which could include

implementing the entire remedy or providing a 10% share of the cost under 42 U.S.C. § 9604 (c) and the costs of long term maintenance of any remedial action. Plaintiffs believe that all, or a substantial portion, of the cost of the Focused Feasibility Study and anticipated remedy will be attributable to discharges of hazardous substances from the Lister Site.

Estimates for the remediation of Newark Bay and upper reaches of the lower Passaic River have not yet been developed.

NJDEP will also incur additional future oversight costs associated with its work with the United States Environmental Protection Agency associated with contamination caused by discharges of hazardous substances from the Lister Site. Furthermore, as indicated by the State of New Jersey's past costs, the State has, and will continue to, spend significant amounts as a result of hazardous substances discharged from the Lister Site, including, but not limited to, activities and studies consistent with those listed on Appendix 4-A to Plaintiffs' prior supplements to their initial disclosures.

b. WRDA Costs

The Passaic River has also been the subject of a feasibility phase study for environmental restoration under the federal Water Resources Development Act ("WRDA"). 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 associated with discharges of hazardous substances from the Lister Site.

Additionally, Defendants have proposed that WRDA be used to partially offset the cost of remediation and restoration of the Passaic River. In the event WRDA funds are used to

remediate or restore the Passaic River as a result of the discharge of hazardous substances from the Lister Site, the State of New Jersey may be required to contribute 35% to 50% of the total costs. Such costs could exceed \$100,000,000.00.

c. NRDA Costs

Plaintiffs estimate that the costs of assessing the natural resource damages caused by discharges of hazardous substances from the Lister Site will be approximately \$10,000,000.00, to \$20,000,000.00.

d. Future Litigation Costs

Plaintiffs will also incur future costs and expenses associated with the prosecution of this action, including, but not limited to, expert witness fees, attorneys' fees, and other litigation costs and expenses. Some or all of these expenses may be recoverable under the environmental statutes described in these disclosures.

3. *Other Damages Associated with Lost State Income, Lost Property Value and Increased State Expenditures.*

Plaintiffs have retained experts to identify and estimate other losses suffered by the State of New Jersey as a consequence of the discharges of hazardous substances from the Lister Site. The theories and work product of these experts are subject to the work product privilege. Such experts will be designated and their opinions produced according to a schedule set by the Court.

Notwithstanding the foregoing, the losses suffered by the State of New Jersey include, but are not limited to the following:

- Over the course of many years, the State of New Jersey lost revenues attributable to the diminution in industrial, commercial and vacant property values near the Lister Site. Analysis establishes that – even upon controlling for other factors that influence the valuation of property, including other contaminants and alleged actions of third parties – the commercial and industrial properties within three miles of the Lister Site lost measurable value that can be attributed directly to their proximity to the Lister Site, a notorious dioxin site. The loss in property values translates into lost property tax revenues, lost income tax revenues and lost

sales tax revenues. Lost income and sales tax revenues translate directly into lost revenues for the State of New Jersey. A portion of lost property tax revenues translates directly into lost revenues for the State of New Jersey. A portion of lost property tax revenues translates into lost State income because it is associated with an increase in State financing of local governmental services (schools, public safety, etc.) to communities near the Lister Site due to shortfalls in their tax base resulting from the contamination associated with the Lister Site. This analysis also takes into account that:

- The State of New Jersey has suffered damages associated with lost industrial, manufacturing, commercial and mixed residential development and navigation and port facilities caused by the discharge of hazardous substances from the Lister Site.
- The State of New Jersey has suffered other damages, to the extent they can be quantified, associated with an inability to dredge the Passaic River due to hazardous substances discharged from the Lister Site.
- Plaintiffs further believe that some or all state-owned properties located up to three miles from the Lister Site have lost value due to their close proximity to the Lister Site and the intentional discharges of hazardous substances from the Lister Site.

4. *Disgorgement*

Plaintiffs seek the disgorgement of Defendants' excess profits as statutory, restitutionary and punitive measures of damages. Disgorgement would include the actual amount of economic benefit that accrued and continues to accrue to Defendants as a result of their manufacturing, environmental and disposal practices, including the intentional discharges of TCDD, DDT and other hazardous substances from the Lister Site and into the Passaic River and a knowing failure to properly stop such discharges through proper closure of the Lister Plant. The economic benefits sought include, but are not limited to, the amount of any savings realized from avoided capital or non-capital costs resulting from Defendants' actions, the return earned or that may be earned on the amount of avoided costs; any benefits accruing to Defendants as a result of a competitive market advantage enjoyed by reason of Defendants' actions, and any other benefits resulting from Defendants' actions, together with interest.

Discovery is needed to calculate the estimated total value of these profits, though the facts supporting these damages are notorious. As shown in the Aetna Litigation, Defendants were aware of manufacturing process modifications which would have dramatically reduced dioxin formation in their 2,4,5-T process. Defendants failed to implement these modifications as indicated in the Aetna Litigation and records concerning the Boehringer correspondence. Furthermore, Defendants' expert in the Aetna Litigation, Anthony Wolfskill, testified that Defendants utilized improper waste disposal practices as well as failing to close, clean and dismantle their manufacturing operations at the site. Such failures resulted in a significant costs savings and competitive market advantage for Defendants and catastrophic pollution and costs for the public.

The record of the Aetna Litigation provides only some information concerning income in the form of Defendants' Agent Orange contracts with the United States Government, which detail quantities purchased and monies paid to Defendants. Plaintiffs requested additional information and documents to support these damage claims over 14 months ago but not one document has yet been produced by the Defendants regarding these damages or in response to the requests for production seeking these categories of documents. Plaintiffs apparently will have to seek the assistance of the Court to obtain these documents timely, and Plaintiffs will do so through motion and submitted trial plans.

5. Fraudulent Transfers/Conspiracy/Aiding & Abetting

Plaintiffs have retained experts to identify and estimate the damages suffered by the State of New Jersey as a consequence of Defendants' (excepting Defendant Occidental Chemical Company) scheme to defraud the State by transferring substantially all of Defendant Maxus Energy Corporation's assets out of the company and isolating substantial environmental liabilities in Defendants Maxus Energy Corporation and Tierra Solutions, Inc. The theories and

work product of these experts are subject to the work product privilege. Such experts will be designated and their opinions produced according to a schedule set by the Court.

Notwithstanding the foregoing, and as outlined in more detail in Plaintiffs' Third Amended Complaint, Plaintiffs have identified numerous substantial assets fraudulently transferred by defendants. Based upon the discovery produced by defendants to date, which is incomplete, the fraudulently transferred assets comprised substantially all of Maxus Energy Corporation's direct and indirect assets and holdings as of 1996, the time period immediately prior to the implementation of the scheme detailed in Plaintiffs' Third Amended Complaint. However, not all of the critical information requested by Plaintiffs in its written discovery to defendants has been produced. Supplemental discovery responses are needed from defendants in order for Plaintiffs to complete their analysis of the various complex fraudulent transfers and damages resulting from the allegations described in Plaintiffs' Third Amended Complaint.

Pursuant to New Jersey law, the relief available for such conduct is designed to place the Plaintiffs in the position they would have been but for the fraudulent transfers, and includes awarding Plaintiffs a judgment against defendants in an amount equal to the full value of all assets fraudulently transferred. According to the limited information to date, certain of the assets were worth approximately \$1.5 Billion at the time the transfers occurred. The value of all the fraudulently transferred assets may total in excess of \$2 Billion.

6. *Pre-Judgment and Post Judgment Interest*

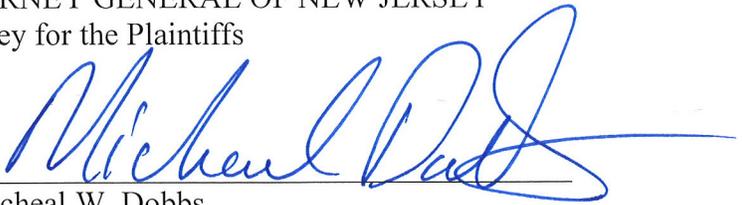
Plaintiffs seek pre-judgment and post judgment interest on all damages awarded.

7. *Punitive Damages*

Plaintiffs seek punitive damages as found by the trier of fact.

Plaintiffs reserve the right to supplement these disclosures as additional information is developed or as otherwise ordered by the Court.

PAULA T. DOW
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Attorney for the Plaintiffs

By: 

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Dated: November 1, 2010

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CERTIFICATE OF SERVICE

I hereby certify that Plaintiffs' Amended Statement of Damages and Fourth Supplement to Their Initial Disclosures was served electronically on all parties which have consented to service by posting on <https://cvg.ctsummation.com> on November 1, 2010. The following counsel of record were served on November 1, 2010 via first class, regular mail:

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Steven A. Weiner
O'Toole Fernandez Weiner Van Lieu
60 Pompton Avenue
Verona, NJ 07044



Micheal W. Dobbs

NEW JERSEY DEPARTMENT OF TRANSPORTATION REVISED COSTS

Description of Costs	Approximate Totals
Claremont PROPAT Demo	\$4,132,849.00
Environmental Restoration/Passaic Project	\$2,933,756.00
HRF Harbor Contaminant Modeling	\$2,900,000.00
HRF Quality Assurance Officer	\$160,000.00
NJDEP Toxics Workplan	\$9,500,000.00
NJDEP Landfill Demonstration Project	\$0.00
NJDOT Public Outreach	\$0.00
NJDOT Roadway Embankment Project	\$5,202,000.00
Toxic WP/CARP model	\$112,973.00
Rutgers Task Order #154, Deep Soil Mixing	\$418,000.00
Rutgers Task Order #157, Passaic River Hydro-dynamics	\$316,244.00
Newark Bay Confined Disposal Facility	\$14,500,000.00
NJDEP PROPAT Pilot	\$867,151.00
NJDEP Zero Valence Iron Powder Demo	\$110,000.00
NJDOT Demonstration Project (SDMT)	\$117,000.00
Pennsylvania Mines Reclamation-Phase I	\$1,923,757.00
Reaches B, C, D-PA Mines Reclamation	N/A
KVK Contract 7 differential costs	\$4,000,000.00
Sediment Decontamination Technologies Project Pursuant to 1996 Port Revitalization Bond Act	\$20,000,000.00
Pennsylvania Mines Reclamation Project Pursuant to 1996 Port Revitalization Bond Act	\$10,000,000.00
	\$50,000.00
Center for Advanced Infrastructure Technology (CAIT) beneficial use project	
Air Quality Monitoring Project/Volatilization Project	\$1,211,478
NJMR Air Guard Project	\$94,515.72

TOTAL:

\$78,549,723.72