Law Offices
Gordon & Gordon
A Professional Corporation

505 Morris Avenue • Springfield, New Jersey 07081
Tel. (973) 467-2400 • Fax (973) 467-0034
❖ WEBSITE: WWW.LAWGORDON.COM

HARRISON J. GORDON*
MICHAEL GORDON
STEVEN L. SCHEPPS**
JANINE V. MICKENS

OF COUNSEL
WAYNE D. GREENSTONE□

* NJ, NY & DC BARS
** NJ & PA BARS
□ NJ & NY BARS

PARALEGAL
DARLENE A. ABRY

September 28, 2012

Via Hand Delivery
Clerk of the Court
Superior Court of New Jersey
Essex County Courthouse
50 West Market Street, Room 113
Newark, New Jersey 07102

Re: New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation, et al.
Docket No.: ESX-L-9868-05 (PASR)

Dear Sir or Madam:

This firm represents Plaintiffs New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the NJDEP, and the Administrator of the New Jersey Spill Compensation Fund in the above referenced matter. Enclosed for filing please find an original and one copy of the Fourth Amended Complaint and Demand for Trial by Jury.

Since this firm represents the State of New Jersey in this matter, no filing fee is required.

Please return the copy of this document, marked "filed," with the courier, who has been instructed to wait for same.

Thank you for your attention to this matter.

Respectfully submitted,

GORDON & GORDON, P.C.

Janine V. Mickens
Janine V. Mickens

cc: All counsel of record via posting on http://cvg.ctsummation.com.

JOHN J. HOFFMAN
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

GORDON & GORDON
505 Morris Avenue
Springfield, New Jersey 07081

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

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 FOURTH AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiffs, New Jersey Department of Environmental Protection ("DEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator")

(collectively, "Plaintiffs" or the "State"), by way of this Complaint against the above-named Defendants, Occidental Chemical Corporation ("OCC"), Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Maxus International Energy Company ("MIEC"), Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF International S.A. (formerly known as and as successor, at law or in equity, to YPF International Ltd.) ("YPFI"), YPF Holdings, Inc. ("YPFH") and CLH Holdings, Inc. ("CLHH") (collectively, "Defendants"), say:

STATEMENT OF THE CASE

1. This case is about discharges of hazardous substances into the Passaic River from facilities located at 80 and 120 Lister Avenue, Newark, New Jersey and Defendants' efforts to avoid responsibility for the resulting wide-spread contamination. For roughly twenty years of plant operations, Diamond Shamrock Corporation, its predecessors and successors-in-interest, including OCC and/or Maxus, deliberately polluted the Passaic River with 2,3,7,8-tetrachlorodibenzo-p-dioxin ("TCDD"), a particularly potent form of dioxin, dichlorodiphenyltrichloroethane ("DDT"), and various other pesticides and chemicals. For an essentially equivalent period of time, Tierra, Maxus, MIEC, Repsol, YPF, YPFI, YPFH, and CLHH orchestrated and implemented a strategy to delay and impede the clean-up and restoration and strand the associated liabilities in Maxus and Tierra. Moreover, OCC, Maxus and Tierra knowingly allowed additional and ongoing discharges to occur into the Passaic River well into the 1980s from the manufacturing facilities, equipment, and lines they left in place. As a direct result of OCC's, Maxus's, and Tierra's intentional releases and discharges into the Passaic River, and Defendants' feat of delaying any real solution for another twenty-plus years, TCDD has migrated throughout the lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill Van Kull, and into adjacent waters and sediments (collectively, the "Newark Bay Complex"). The sediments in the Newark Bay Complex are

saturated with TCDD, yet, prior to the filing of this suit, the Defendants had not removed one teaspoon of TCDD-impacted sediment.

2. Instead, Maxus and YPF devised a scheme, which was orchestrated and implemented by them and through their subsidiaries and affiliated companies, YPFI, YPFH, CLHH, MIEC and Tierra, and later by Repsol and through its subsidiaries, all acting as alter egos of one another. The scheme involved transferring virtually all of Maxus's valuable and most profitable direct and indirect assets and holdings to affiliated companies outside of Maxus's chain of ownership and stranding the environmental liabilities associated with the Newark Bay Complex in Tierra and Maxus, thereby leaving them with no independent ability to satisfy such obligations to the State.

3. The consequences of Defendants' actions are far-reaching and significant. The Newark Bay Complex has become one of the world's worst sites for TCDD contamination. TCDD concentrations recorded in blue crabs in the Newark Bay Complex may be the highest ever discovered in aquatic animals. Because of this contamination, DEP has issued a complete ban on all fish and shellfish consumption from the Newark Bay Complex, though studies performed by Defendants themselves show that consumption continues in local communities. It is clear that the TCDD concentrations throughout the Newark Bay Complex present a real threat to human health and to the environment.

4. Defendants have caused myriad and substantial economic injuries to the State and the Newark Bay Complex. Defendants' TCDD has impacted commerce, industry, navigation, dredging, and disposal for decades. Likewise, the ecosystem and natural resources of the Newark Bay Complex have been significantly injured.

5. Accordingly, the State now brings this action to recover past and future damages caused by Defendants' intentional and egregious conduct. This civil action is brought pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a to -23.11z (the "Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -37.23 (the "WPCA"), the New Jersey Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 to -34 (the "UFTA"), and New Jersey common law. In this action, the State seeks reimbursement of any and all cleanup and removal costs the State of New Jersey has incurred, and all such costs that the State of New Jersey will incur, alone and working in conjunction with federal agencies, associated with Defendants' discharge of TCDD into the Newark Bay Complex. The State also seeks compensatory damages, punitive damages, declaratory relief, and equitable relief as set forth herein.

6. The State is not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages, including the loss of use of the State's natural resources, although the State does seek the costs of an assessment of the natural resources damaged or destroyed by Defendants' discharges. The Court has reserved, by way of its Order dated April 24, 2012, the State's right to bring claims for natural resource damages for the Passaic River and/or other parts of the Newark Bay Complex in the future. Additionally, the State is not seeking to enforce or recover any costs covered by the 1990 Consent Decree regarding the Lister Site, nor is it seeking to enforce the December 14, 2005 Directive regarding the funding of a source control dredge plan or the September 19, 2003 Directive regarding assessment of natural resource damages.

THE PARTIES

7. Plaintiff DEP is a principal department within the Executive Branch of the State government vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. See N.J.S.A. 13:1D-9; see also

Executive Order 40 (Governor Thomas H. Kean). Accordingly, on behalf of the State of New Jersey, DEP is authorized to seek all costs and damages asserted herein. Plaintiff DEP's principal office is located at 401 East State Street, Trenton, Mercer County, New Jersey 08625-0028.

8. In addition, the DEP is the trustee of all natural resources within the jurisdiction of the State of New Jersey held for the benefit of its citizens and is vested with the authority to protect this public trust. See N.J.S.A. 58:10-23.11a.

9. Plaintiff Commissioner is the chief executive officer of the New Jersey Department of Environmental Protection and is authorized to bring a civil action under the New Jersey Water Pollution Control Act. See N.J.S.A. 58:10A-10. Plaintiff Commissioner's principal office is located at New Jersey Department of Environmental Protection, 401 East State Street, P.O. Box 028, Trenton, New Jersey 08625-0028.

10. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund (the "Spill Fund"). See N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, Plaintiff Administrator is authorized to approve and pay cleanup and removal costs Plaintiff DEP incurs, see N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, see N.J.S.A. 58:10-23.11j.d. Plaintiff Administrator's principal office is located at New Jersey Department of Environmental Protection, Environmental Claims Administration, 401 East State Street, P.O. Box 028, Trenton, New Jersey 08625-0028.

11. Defendant OCC is a corporation organized under the laws of the State of New York, with a principal place of business located at 5005 LBJ Freeway, Dallas, Texas 75380. OCC has been served and has appeared in this matter.

12. Defendant Maxus (f/k/a Diamond Shamrock Corporation, f/k/a New Diamond Shamrock Corporation) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380. Maxus has been served and has appeared in this matter.

13. Defendant MIEC is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380. MIEC is doing business in New Jersey and is subject to the general and specific jurisdiction of the State. MIEC has been served and has appeared in this matter.

14. Defendant Tierra (f/k/a Diamond Shamrock Chemical Land Holdings, f/k/a Chemical Land Holdings, Inc.) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816. Tierra has been served and has appeared in this matter.

15. Defendant Repsol is a Spanish business entity with a principal place of business located at Paseo de la Castellana, 278-280, 28046 Madrid, Spain. Repsol and its subsidiaries are doing business in New Jersey and are subject to the specific and general jurisdiction of the State. Repsol has been served and has appeared in this matter.

16. Defendant YPF is an Argentinean business entity with a principal place of business located at Avenida Presidente Roque Saenz Pena, 777, C.P. 1364 Buenos Aires, Argentina. YPF and its subsidiaries are doing business in New Jersey and are subject to the specific and general jurisdiction of the State. YPF has been served and has appeared in this matter.

17. Defendant YPFI is a Bolivian business entity with a principal place of business located at Av. Jose Estensoro No. 100, Santa Cruz, Bolivia. YPFI, currently known as YPF

International S.A., was formerly known as, and is the successor, at law or in equity, to YPF International Ltd., a Cayman Islands business entity. YPFI and its subsidiaries are doing business in New Jersey and are subject to the specific and general jurisdiction of the State. YPFI has been served and has appeared in this matter.

18. Defendant YPFH is a Delaware corporation with a principal place of business located at 1330 Lake Robbins Drive, The Woodlands, Texas 77380. YPFH has been served and has appeared in this matter. YPFH and its subsidiaries are doing business in New Jersey and are subject to the specific and general jurisdiction of the State. YPFH has been served and has appeared in this matter.

19. Defendant CLHH is a Delaware corporation with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380. CLHH and its subsidiary are doing business in New Jersey and are subject to the specific and general jurisdiction of the State. CLHH has been served and has appeared in this matter.

OWNERSHIP & OPERATIONAL HISTORY OF LISTER SITE

20. The history of ownership and control of the former Diamond Shamrock Corporation manufacturing site at 80 Lister Avenue, Newark, New Jersey, and its accompanying operations is complex due to the numerous real-estate transactions and byzantine corporate restructurings involved. However, it is clear that OCC and Maxus—and Maxus's alter egos—are the parties directly responsible for the liabilities arising from almost forty years of discharges of TCDD, DDT, and other hazardous substances at the site and into the Passaic River.

21. The Old Diamond Shamrock Years. In approximately January 1947, Kolker Realty Company and/or Kolker Chemical Works, Inc. (collectively, "Kolker") acquired, through purchase or lease, an approximate 3.4 acre tract of land located at 80 Lister Avenue, in the Ironbound section of Newark, Essex County, New Jersey, for the production of DDT and

phenoxy herbicides. 80 Lister Avenue, together with the adjacent property at 120 Lister Avenue, is referred to herein as the "Lister Site." The Lister Site is located on the banks of the Passaic River.

22. In 1951, Kolker was acquired by Diamond Alkali Company, and Kolker's name was eventually changed to Diamond Alkali Organic Chemicals Division, Inc. ("DAOCD"). In 1954, DAOCD was dissolved and was merged into Diamond Alkali Company, which assumed all of DAOCD's liabilities. Diamond Alkali Company continued to own and operate that portion of the Lister Site located at 80 Lister Avenue until 1967, when Diamond Alkali Company merged with Shamrock Oil & Gas Company, and the company's name was changed to Diamond Shamrock Corporation ("Old Diamond Shamrock"). Old Diamond Shamrock continued to operate that portion of the Lister Site located at 80 Lister Avenue until August 1969, but it did not adequately dismantle or remediate the plant facilities, equipment, or lines that were contaminated with TCDD and other hazardous substances. Maxus, Tierra and OCC have stipulated that Old Diamond Shamrock is the legal corporate successor to Kolker, DAOCD and Diamond Alkali Company.

23. In 1971, Old Diamond Shamrock sold and/or leased 80 Lister Avenue to a newly-formed company known as Chemicaland Corporation ("Chemicaland"), which was created by and included former Old Diamond Shamrock managers. Chemicaland leased 80 Lister Avenue to Cloray NJ Corporation ("Cloray"). Cloray was under the same management as Chemicaland (which included former managers of Old Diamond Shamrock). From 1971 until at least 1977, Chemicaland and/or Cloray continued to manufacture organic pesticides and herbicides at the Lister Site for and at the direction of Old Diamond Shamrock. Old Diamond Shamrock did not

dismantle or remediate the plant facilities, equipment or lines that were contaminated with TCDD prior to conveying the Site or otherwise.

24. On November 22, 1976, a predecessor to OCC, Occidental Chemical Company, assumed temporary management and operation of the 80 Lister Avenue plant. During that time the plant continued to manufacture pesticides and herbicides. Additional and ongoing discharges of TCDD and other hazardous substances from the facilities at the Lister Site continued during Occidental Chemical Company's control and management of the operations at the Lister Site. On February 24, 1977, Chemicaland resumed management and operation of the 80 Lister Avenue plant. On or about April 22, 1982, Occidental Chemical Company changed its name to Occidental Chemical Agricultural Products, Inc. On or about December 23, 1987, Occidental Chemical Agricultural Products, Inc. was merged into OCC.

25. Old Diamond Shamrock and its predecessors owned, leased, and/or operated various portions of the Lister Site from approximately 1947 through 1977 and from 1984 through 1986, during which time discharges of TCDD and other hazardous substances occurred from the facilities at the Lister Site. Moreover, the facilities, equipment, and lines left in place by Old Diamond Shamrock continued to discharge hazardous substances into the Passaic River at least into the 1980s.

26. OCC and its predecessors managed and/or operated various portions of the Lister Site from November 22, 1976 through February 24, 1977, and assumed all costs and expenses associated with such management and operation of the plant, during which time discharges of TCDD and other hazardous substances occurred from the facilities at the Lister Site. Moreover, the facilities, equipment, and lines left in place by OCC after February 24, 1977 continued to discharge hazardous substances into the Passaic River at least into the 1980s.

27. The New Diamond Shamrock Years. In 1983, high levels of TCDD contamination were discovered at 80 Lister Avenue, in adjacent properties, and in the Passaic River adjacent to the Lister Site. Shortly thereafter, Old Diamond Shamrock created and incorporated New Diamond Shamrock Corporation ("New Diamond Shamrock") as its own parent and as the corporate successor-in-interest to certain operations and liabilities of Old Diamond Shamrock.

28. After the creation of New Diamond Shamrock, Old Diamond Shamrock changed its name to Diamond Chemicals Company on or about September 1, 1983. A few days later, New Diamond Shamrock changed its name to Diamond Shamrock Corporation. On or about October 26, 1983, Diamond Chemicals Company changed its name to Diamond Shamrock Chemicals Company ("DSCC").

29. OCC's Liability. On or about September 4, 1986, New Diamond Shamrock sold all of the stock of DSCC (the former owner and operator of portions of, and a discharger of hazardous substances from, the Lister Site) to an affiliate of Occidental Chemical Corporation, Oxy-Diamond Alkali Corporation. DSCC was subsequently renamed Occidental Electrochemicals Corporation. Oxy-Diamond Alkali Corporation and Occidental Electrochemicals Corporation were then merged into Occidental Chemical Corporation effective on or about November 30, 1987.

30. Through both the November 30, 1987 merger agreement and the operation of law, Occidental Chemical Corporation assumed and succeeded to the Kolker/Diamond Alkali/Old Diamond Shamrock/DSCC liabilities now at issue in this case. OCC knowingly accepted the benefits and liabilities of this transaction and is responsible for the prior acts of Old Diamond Shamrock. OCC is a "discharger" and a person "in any way responsible" under the Spill Act.

Accordingly, by Order dated July 19, 2011, the Court ruled that OCC is the legal successor to DSCC, a discharger under the Spill Act and liable for all cleanup and removal costs associated with discharges at and from the Lister Site and into the Passaic River.

31. Maxus's and Tierra's Liability. On April 30, 1987, shortly after the sale of DSCC to OCC, New Diamond Shamrock (Diamond Shamrock Corporation) changed its name to Maxus Energy Corporation. Through a series of transactions and corporate restructurings that occurred between 1983 and 1986, Maxus took the corporate identity of Old Diamond Shamrock and assumed and/or retained certain assets and liabilities of Old Diamond Shamrock. Based upon these transactions and restructurings, OCC has stated that Maxus assumed or retained the DSCC liabilities for the contamination of the Passaic River and the Newark Bay Complex. As part of the transactions and restructurings, Maxus shared continuity of management, personnel, physical locations, assets and general business operations of Old Diamond Shamrock. Maxus also assumed the debts of Old Diamond Shamrock necessary for the uninterrupted continuation of Old Diamond Shamrock's business. Likewise, Maxus had a continuity of ownership and shareholders, with shareholders of Old Diamond Shamrock becoming shareholders of Maxus for no additional consideration or value. While OCC is liable as the direct legal successor to DSCC, Maxus is also jointly and severally liable with OCC. Through the corporate restructuring from 1983-1986, Maxus was the mere continuation and an equitable successor to Old Diamond Shamrock and assumed and/or retained certain liabilities associated with the operations of Old Diamond Shamrock in connection with the Lister Site. As such, Maxus is directly liable for DSCC's ownership of 80 Lister Avenue and discharges of hazardous substances into the Passaic River beginning in the 1940s and continuing through at least the 1980s.

32. Moreover, in 1983, Old Diamond Shamrock created another subsidiary known as "Diamond Shamrock Corporate Company." Diamond Shamrock Corporate Company provided various corporate services to and for Maxus, including the oversight and control of the Lister Site and the environmental impacts flowing from that site. The employees of Diamond Shamrock Corporate Company controlled and/or performed the environmental investigation of the Lister Site and the interactions with the State. Diamond Shamrock Corporate Company changed its name to "Maxus Corporate Company" in 1988 and was merged into Maxus in 1998. Pursuant to the terms of that merger agreement, Maxus assumed and succeeded to the liabilities of Maxus Corporate Company. Accordingly, "Maxus" includes "Maxus Corporate Company" for all purposes.

33. As part of the September 4, 1986 transaction whereby Maxus (a/k/a New Diamond Shamrock) sold DSCC to OCC, Maxus agreed to manage the environmental liabilities at Old Diamond Shamrock's historical sites and to indemnify OCC from certain liabilities associated therewith. Likewise, Tierra was created to facilitate the Maxus/OCC transaction and for the express purpose of acquiring the Lister Site and, later, certain environmental liabilities associated therewith.

34. To effectuate the sale of DSCC's stock, Maxus and OCC executed a September 4, 1986 Stock Purchase Agreement ("SPA") by which OCC acquired DSCC. In the SPA, Maxus agreed to indemnify OCC for certain environmental liabilities. Among the environmental liabilities for which Maxus agreed to indemnify OCC were those related to "Superfund Sites," "Inactive Sites," and "Historical Obligations." Thereafter, in July 1987, Maxus executed an agreement specifying that the Lister Site is an "Inactive Site" under the SPA and that OCC is entitled to indemnification under that provision for liabilities associated with discharges at and

from the Lister Site. Accordingly, by order dated June 19, 2011, the Court ruled that OCC is entitled to indemnification from Maxus for the liabilities associated with discharges at and from the Lister Site, including the claims brought by Plaintiffs.

35. At the time of the execution of the SPA, Maxus, DSCC, and OCC were aware of the significant liabilities associated with the Lister Site and Passaic River. Furthermore, for the years following the SPA, Maxus treated the discharges from the Lister Site and the associated liabilities as Maxus's liabilities. As found by the Court in its order dated May 21, 2012, as a result of the SPA and Maxus's handling of OCC's obligations to Plaintiffs regarding the Lister Site and discharges to the Newark Bay Complex, Plaintiffs have standing to enforce Maxus's indemnity obligations under the SPA.

36. At various times, Maxus (directly and through its alter egos, Tierra and Maxus Corporate Company) owned and controlled all aspects of the Lister Site, including access to the site, security for the site, maintenance and demolition of the facilities on the site, and the environmental investigation and response at the site. During the time of Maxus's ownership and/or control, additional and ongoing discharges of TCDD and other hazardous substances from the facilities on the Lister Site continued to occur. Maxus is a "discharger" and/or a person "in any way responsible" under the Spill Act.

37. After TCDD contamination was discovered at the Lister Site, DSCC (Old Diamond Shamrock) acquired ownership of 120 Lister Avenue in 1984 and reacquired 80 Lister Avenue in 1986. For the nominal consideration of $10, Old Diamond Shamrock then transferred title to both 80 and 120 Lister Avenue to Diamond Shamrock Chemical Land Holdings, Inc., a wholly-owned, undercapitalized and insolvent holding company of Maxus, which subsequently changed its name to Chemical Land Holdings, Inc. and thereafter to Tierra. At the time it

acquired the Lister Site, Tierra had actual and constructive knowledge of the previous discharges of hazardous substances at the Lister Site, as well as the continuing existence and discharge of hazardous substances on and from the Lister Site. Moreover, Tierra did not timely notify DEP of the historical or ongoing discharges from the Lister Site. Tierra continues to own the entire Lister Site today. During the time of Tierra's ownership and control, additional and ongoing discharges of TCDD continued to occur from the facilities on the Lister Site. Tierra is a "discharger" and/or a person "in any way responsible" under the Spill Act. Accordingly, by order dated August 24, 2011, the Court ruled that Tierra is in any way responsible under the Spill Act as owner of the Lister Site and is liable for all cleanup and removal costs associated with discharges at and from the Lister Site and into the Newark Bay Complex.

CORPORATE MISCONDUCT

38. Through a series of related transactions that transpired over the course of several years, Defendants Repsol, YPF, YPFI, YPFH, CLHH, Maxus, MIEC, and Tierra (the "Repsol Group") coordinated and executed a scheme to defraud the State through complex corporate restructurings designed to cap and isolate the environmental liabilities associated with the Newark Bay Complex in Maxus and Tierra. The scheme involved the systematic stripping of Maxus's most valuable and profitable direct and indirect assets and holdings, thereby extinguishing Maxus's and Tierra's ability to satisfy their obligations in New Jersey. At the same time, the scheme involved attempts to artificially cap the exposure to environmental liabilities through a series of contractual manipulations. The members of the Repsol Group are, and at all material times were, acting jointly, as co-conspirators, as one cohesive economic unit, and as alter egos of each other to hinder, delay, and/or defraud the State of New Jersey and others.

39. Maxus and Tierra are Alter Egos. For many years following its September 4, 1986 sale of DSCC to OCC, Maxus managed all of the liabilities and obligations flowing from the Lister Site, while an undercapitalized and insolvent Tierra actually owned the Lister Site. During this era, Maxus was Tierra's parent company, and Maxus controlled all aspects of Tierra's and Maxus Corporate Company's operations. Tierra was created merely to hold the relevant environmental liabilities of Old Diamond Shamrock, including the Lister Site itself. Maxus controlled every aspect of Tierra and Maxus Corporate Company and operated them simply as vehicles to manage and isolate those environmental liabilities. However, Tierra was undercapitalized and wholly dependent upon and controlled by Maxus. Maxus, Maxus Corporate Company, and Tierra have operated as alter egos of one another since at least 1986, and Maxus and Tierra continue to do so today. Accordingly, by order dated August 24, 2011, the Court ruled that Tierra is the alter ego of Maxus, and that Maxus is liable to the same extent as Tierra as owner of the Lister Site for the discharges at and from the Lister Site into the Passaic River.

40. YPF's Acquisition of Maxus. By 1994, Maxus was cash-poor and awash in corporate debt totaling approximately $1 billion. Maxus was also facing "substantial contingent environmental liabilities for various ongoing or potential remediation efforts in the United States," including the Lister Site and Passaic River. As a result, Maxus considered various alternatives, including a potential public offering of a minority interest in the securities of its Indonesian assets, as well as a potential sale of Maxus. Maxus had valuable assets, including its global oil reserves and its know-how as a global leader in exploration and production (i.e., its human capital). Maxus's international assets were of substantial value. Accordingly, several companies, including Amoco and ARCO, showed interest in acquiring Maxus's stock, but were

disinclined to pay Maxus the premium it was seeking due to the potentially devastating reach of its environmental liabilities. Internal documents and communications of Maxus and YPF indicate that Maxus's environmental liabilities were "the main problem." Indeed, Maxus's consultants advised that the Passaic River environmental liabilities alone could cost Maxus up to $2 billion.

41. With this understanding, Maxus's President and Chairman of the Board and YPF's Chief Executive Officer began meeting privately and engaging in confidential negotiations regarding a possible equity investment by YPF in Maxus. YPF, then recently privatized by the government of Argentina, was eager to become an international player in the oil and gas markets and embarked on a strategy to become a global force in the oil and gas industry. Although Maxus publicly announced it was in discussions with various parties concerning a range of possible transactions, in reality, Maxus and YPF were already well on their way to consummating a deal in which YPF would make a bid for the entire company. Maxus and YPF conspired and devised an acquisition and corporate restructuring plan designed to acquire Maxus, at minimum exposure to YPF, and to separate and isolate Maxus's environmental liabilities from its assets—all of which was intended to maximize YPF's profits ultimately at the expense of the State of New Jersey. As a result of this fraudulent scheme, YPF became the successor to Maxus with regard to the environmental liabilities at issue in this case.

42. Rejecting an offer by Amoco to purchase the Midgard Energy Company ("Midgard") and Maxus's Indonesian assets for approximately $1.3 billion, Maxus instead pursued its scheme with YPF. Ultimately, Maxus substantially funded its own acquisition through a series of loan transactions that created significant indebtedness owed by Maxus to YPF. In order to effectuate YPF's leveraged buy-out of Maxus, YPF Acquisition Company

combined approximately $442 million borrowed from Chase ("Purchase Facility") with a $250 million contribution from YPF and additional cash from Maxus itself to acquire Maxus's stock for approximately $700M. As part of this process, Maxus assumed the obligations of the Purchase Facility, and then leveraged its most valuable assets to borrow enough money to pay off the Purchase Facility. Specifically, Maxus Indonesia borrowed $175 million ("Indonesian Credit Facility") and Midgard borrowed $250 million ("Midgard Credit Facility") from Chase Manhattan Bank (collectively "Subsidiary Facilities"), in order to pay off the Purchase Facility. YPF also agreed to capitalize Maxus in an amount necessary to permit Maxus to meet its obligations as they came due, specifically dividend and redemption payments with respect to Maxus's preferred stocks, pursuant to a Keepwell Covenant entered into as part of the acquisition. YPF's obligation under the Keepwell Covenant, however, was limited to the amount of debt service obligations Maxus owed under the Purchase Facility and was also reduced by any capital contributions received by Maxus after the acquisition. In addition, through a separate YPF board resolution on or around March 7, 1995, YPF agreed to guarantee Maxus's outstanding long-term debt as of the acquisition, the principal amount of which was approximately $977 million.

43. YPF's Scheme to Avoid Maxus's Liabilities. By the time YPF's acquisition of Maxus was completed in June 1995, Maxus and YPF management were already plotting to divorce Maxus's assets from Maxus's environmental liabilities for the benefit of YPF and to the detriment of the State of New Jersey. Documents produced by YPF from late 1995 and early 1996 reflect a plan to limit YPF's exposure to Maxus's environmental liabilities. Indeed, YPF recognized that if Maxus's environmental liabilities ascended to YPF, it could cost YPF as much as $6 billion.

44. In January 1996, YPF unveiled its corporate reorganization plan, which involved three separate but interrelated purposes—an environmental reorganization, a tax reorganization and a debt restructuring plan. YPF intended that these objectives be interrelated and would eventually isolate Maxus's environmental liabilities, including those associated with the Lister Site and Passaic River, in Maxus and Tierra. At the same time, YPF intended to systematically strip Maxus's most valuable and profitable direct and indirect assets and put them in a wholly-owned YPF subsidiary outside of Maxus's chain of ownership, specifically, YPFI.

45. Indeed, by June 1996, YPF had undertaken a series of coordinated and interrelated corporate transactions to: (a) increase its profits from the various assets and operations owned by Maxus prior to YPF's acquisition of Maxus and (b) isolate the environmental liabilities associated with the Newark Bay Complex and various other sites in New Jersey and elsewhere (the "scheme"). The scheme was crafted and developed by Maxus, YPF, and certain of YPF's lawyers and financial advisors, approved by YPF's board of directors, and implemented by Maxus's board of directors and officers in or around June 1996. According to documents produced by YPF, one of the central purposes of the reorganizations was "to streamline its international properties and isolate its environmental liabilities from the international oil and gas properties." Similarly, another YPF document explains that the reorganization "will eliminate the Indonesian properties from being subject to Maxus's lingering environmental liabilities and the U.S. Foreign Corrupt Practices Act." As a result of the scheme, Maxus was left undercapitalized and insolvent, much to the detriment of unsecured creditors such as Plaintiffs.

46. As part of the scheme, and in order to move Maxus's environmental liabilities and certain of Maxus's valuable and income-producing direct and indirect assets and holdings

outside the reach of Maxus's creditors, YPF and Maxus first created a series of intermediate holding companies in the Cayman Islands, Texas, and elsewhere to further insulate YPF from Maxus's and Tierra's liabilities. YPF directed the creation of multiple intermediate business enterprises—specifically, YPFI, YPFH and CLHH—between it and Maxus and Tierra. YPFI was initially created as a direct subsidiary of MIEC—an existing Maxus subsidiary—so that certain assets could be directly transferred to YPFI as "capital contributions." Thereafter, YPF directed Maxus directors and officers to transfer YPFI directly to YPF. YPFH was and is the intermediate holding company between YPF and Maxus. CLHH was and is the intermediate holding company between YPFH and Tierra. YPF's documents provide that CLHH was created specifically so that Maxus and YPF could circumvent certain environmental laws in New Jersey.

47. The Assumption Agreement. Immediately following the creation of the various intermediate holding companies, YPF directed that Tierra—originally created as a direct subsidiary of Maxus—be transferred out of Maxus and into CLHH, thus becoming Maxus's sister company. YPF then directed Tierra to assume all of Maxus's obligations to OCC flowing from the Lister Site as well as all of Maxus's other environmental liabilities "whether known or unknown, contingent or absolute, accrued or not accrued . . . to the extent that Maxus . . . may become liable for such Obligations." Tierra's assumption of Maxus's liabilities was memorialized through the Assumption Agreement, dated August 14, 1996. Tierra's assumption of Maxus's environmental liabilities includes Maxus's joint and several Spill Act liability as well as any other potential liability and damages in this case. At or near the time of the Assumption Agreement's execution, Tierra was undercapitalized, insolvent and incapable of paying any prospective judgment on Maxus's environmental liabilities, in this case or otherwise, and its chief "asset" was the Lister Site itself.

48. The Contribution Agreement. Funding for the assumed liabilities was to occur pursuant to the Contribution Agreement, dated August 14, 1996, and its amendment, dated February 5, 1997, which required direct, cascading capital contributions from YPF down through its wholly-owned subsidiaries YPFI, YPFH, and CLHH to Tierra. The Contribution Agreement also: (1) provided that YPF, YPFI, YPFH, and CLHH were "jointly and severally" required to make cash contributions to the equity capital of Tierra, as requested by Tierra, which was limited to 110% of the aggregate amount of approved Expenses budgeted for any annual period, (2) placed restrictions on when advances and loans could be utilized in lieu of capital contributions required for the Assumed Liabilities, and (3) required Maxus to acknowledge that any contributions to the equity capital of Tierra made pursuant to the Contribution Agreement would reduce the obligation of YPF to capitalize Maxus as required by Section 5.15, the Keepwell Covenant. Additionally, as a known creditor of the Lister Site, the State of New Jersey was and is an intended third party beneficiary of the Contribution Agreement, as the payments to Tierra for its assumption of the significant liabilities stemming from the Lister Site were a material part of the agreement.

49. Under the terms of the Contribution Agreement, the obligations of YPF and its wholly-owned subsidiaries to fund Tierra are capped at $111.5 million for all obligations, including the environmental liabilities addressed herein and several other environmental liabilities in New Jersey. The cap, which is merely reflective of an internal assessment of Maxus's liabilities booked at the time of the reorganization, severely under-estimates the true nature and scope of these liabilities. According to their own documents created at or near the creation of the Contribution Agreement, YPF and Maxus knew the environmental liabilities could cost billions. Nevertheless, YPF and Maxus executed the Assumption Agreement and

Contribution Agreement despite the fact that neither Maxus nor Tierra would have sufficient assets to pay the anticipated liabilities once the cap was reached. Additionally, as part of YPF and Maxus's scheme to strand the environmental liabilities, the Contribution Agreement provides that once the cap is met, YPF, YPFI, YPFH, CLHH, and Maxus have no further obligation to fund Tierra. YPF's documents expressly provide that the Contribution Agreement was "intended as a means of cutting off YPF's direct liability for Maxus' environmental liabilities . . . " including the Lister Site and Passaic River.

50. As was planned by YPF at the time of the Contribution Agreement's creation, YPF now claims that the funding cap has been exceeded, thereby extinguishing the self-defined contractual obligations of YPF, YPFI, YPFH, and CLHH to fund the environmental liabilities assumed by Tierra, to the detriment of the State of New Jersey.

51. The Settlement Agreement. In order to take this position, Repsol used its domination and control of YPF, YPFI, YPFH, CLHH, Maxus and Tierra to cause those parties to enter into the October 8, 2007 Settlement Agreement and its amendments, exhibits and the related Closing Agreement of March 31, 2008 (the "Settlement Agreement"). The Settlement Agreement terminated the Contribution Agreement and the Assumption Agreement. This was done notwithstanding the fact that Repsol and YPF knew that most of the capital contributions required pursuant to the Contribution Agreement for the assumed liabilities were not paid by YPF as required. In fact, after Repsol acquired YPF in 1999, no capital contributions were made by YPF, YPFI, YPFH or CLHH pursuant to the terms of the Contribution Agreement. To the contrary, documents produced in this case indicate that, after Repsol acquired YPF, all of the capital contributions owed to Tierra by YPF, YPFI, YPFH and CLHH pursuant to the

Contribution Agreement were instead financed by Maxus, thereby further leveraging Maxus's financial condition to the detriment of the State.

52. While YPF had attempted to artificially cap such liabilities through the terms of the Contribution Agreement in 1996, the Settlement Agreement in 2007 was designed to terminate both the Contribution Agreement and the Assumption Agreement. Pursuant to the terms of the Settlement Agreement, and in connection with a complex accounting of intercompany accounts payable and receivable between YPF, YPFI, YPFH, Maxus and Tierra, the Assumption Agreement and the Contribution Agreement were terminated. Documents produced in this case indicate that the Settlement Agreement was mandated despite the Repsol Group's continued failure to properly comply with, and account for, the express provisions of the Contribution Agreement discussed above, and that, Maxus alone, still woefully undercapitalized and insolvent due to the schemes, would be saddled with all responsibility for the environmental liabilities, including those owed to the State.

53. Self-dealing between Maxus and YPF. Back in 1996, having implemented an arbitrary funding cap to try to cut off YPF's exposure to Maxus's environmental liabilities, Maxus and YPF turned to the process of stripping Maxus's valuable and income-producing assets for the benefit of YPF. However, Maxus and YPF needed to remove certain hurdles before Maxus's assets could be transferred to YPF entities.

54. First, Maxus's Certificate of Incorporation (the "Maxus Certificate") generally prevented self-dealing, defined as transfers of assets to a major shareholder such as YPF or its affiliates. However, if a majority of disinterested directors approved the transaction, self-dealing could be achieved. In order to facilitate such a vote, YPF directed that Charles Blackburn, R.A. Walker and George L. Jackson, Maxus senior executives and board members at the time of the

YPF acquisition of Maxus, hold-over to serve as the "disinterested" directors. However, none of these three directors were actually disinterested. Rather, they served and were paid and controlled by YPF. For example, Mr. Blackburn, the former CEO and Chairman of the Board of Maxus, played an instrumental role in YPF's acquisition of Maxus. Upon YPF's acquisition of Maxus, Mr. Blackburn received a golden parachute payment of approximately $2.7 million and stock option payouts of almost $1.1 million. Immediately thereafter, YPF hired Blackburn as an "international consultant," for a minimum of two years, with a base salary of $180,000 for 60 days of work per year, and $3,000 per day for any days of work above 60.

55. Second, Maxus's $4.00 Preferred Stock was voting stock that could preclude the transfer of substantially all of Maxus's assets. Therefore, the scheme required the redemption of the $4.00 Preferred Stock to pave the way for YPF's stripping away substantially all of Maxus's assets. To do this, YPF directed the transfer of certain of Maxus's assets to YPFI in exchange for cash to be used to redeem Maxus's $4.00 Preferred Stock. In furtherance of the scheme, and as directed by YPF, Maxus's disinterested-in-name-only directors approved the transfers in order to redeem Maxus's $4.00 Preferred Stock, as detailed in the scheme. These and other actions allowed YPF to dismantle Maxus, asset by asset, to the detriment of Maxus's creditors.

56. Third, YPF and Maxus recognized that Maxus's $2.50 Preferred Stock also precluded the transfer of substantially all of Maxus's assets. Although this stock carried a provision preventing redemption before December 1, 1998, Maxus resolved through its directors, common stock holder (YPFH), and the $2.50 Preferred Stock holders to eliminate the voting rights for this stock with respect to the transfer of substantially all assets. To persuade the preferred stockholders to eliminate these voting rights, YPF guaranteed the obligations owed to the preferred shareholders and provided a special distribution payment. The proxy statement

noted that "the Company has no present agreement or commitment to sell or transfer any material amount of its assets other than in the ordinary course of business" despite the scheme to move assets out of Maxus and into YPF's control that had already been put in place. In December 1997, Maxus amended the Maxus Certificate to eliminate the voting rights of the holders of the $2.50 Preferred Stock, paving the way for YPF to pull the Indonesian and Ecuadorian assets out of Maxus.

57. Having addressed these potential roadblocks, YPF directed that essentially all of Maxus's direct and indirect foreign income-producing assets be transferred to offshore entities owned by YPF that were the alter egos of one another and directed Maxus to sell key domestic operations to third parties. A substantial portion of Maxus's direct and indirect assets and holdings, including its most valuable key offshore assets, its "crown jewels," were fraudulently transferred under the domination and control of YPF. In connection with these transactions, Maxus and Tierra were left undercapitalized and/or insolvent and completely dependent on their parent companies to meet their financial obligations.

58. For example, on June 27, 1996, MIEC, a wholly-owned direct subsidiary and alter ego of Maxus, executed the transfer of jurisdiction for Maxus Bolivia Inc. ("MBI") from Delaware to the Cayman Islands, British West Indies, at the direction of Maxus's directors and alter ego YPF. Likewise, MIEC then contributed to the capital of YPFI all of the issued and outstanding stock of MBI, Maxus Venezuela (C.I.) and Maxus Venezuela S.A. The assets of MBI consisted of all of the assets and operations in Bolivia, including interests of Maxus in the Surubi Field and Secure and Caipipendi Blocks. The assets of Maxus Venezuela (C.I.) and Maxus Venezuela S.A. consisted of all of the assets and operations of Maxus in Venezuela,

except those held through Maxus Guarapiche Ltd., another Maxus indirect asset that would be fraudulently transferred later.

59. Thereafter, on or about July 1, 1996, MIEC was influenced and directed by its parent and alter ego Maxus (through its directors) and alter ego YPF to fraudulently transfer all of the issued and outstanding shares of stock of its direct wholly-owned subsidiary YPFI, to YPF pursuant to a Stock Purchase and Sale Agreement by and between MIEC and YPF. The sale was recorded as a $266,366,663 "intercompany receivable/payable." YPFI's assets at the time of the transaction were all of the issued and outstanding shares of stock of MBI, Maxus Venezuela (C.I.) Ltd and Maxus Venezuela S.A. that YPFI had received from MIEC by way of capital contribution only days before.

60. YPF and YPFI then directed and influenced Maxus and its directors to rubberstamp the sale of Maxus Guarapiche Ltd. Accordingly, Maxus caused its alter ego MIEC to fraudulently transfer Maxus Guarapiche Ltd. to YPFI in September 1996. The sale was recorded as an "intercompany receivable/payable."

61. The transfers of the Bolivian,Venezuelan and Guarapiche assets were undertaken by Maxus while outstanding shares of Maxus' Preferred Stock series were held by minority shareholders unrelated to YPF. Although Maxus's Certificate provided minority shareholders, including preferred shareholders, with protections against transfers to major shareholders and transfers of all or substantially all of Maxus's assets (i.e., "self-dealing"), YPF and Maxus's directors conspired to and did circumvent such protections in order to transfer Maxus's assets to the single largest shareholder, YPF. Maxus's directors resolved to transfer these assets following a so-called "disinterested director" vote conducted by the three disinterested-in-name-only

directors. Certain of Maxus's Preferred Shares remained outstanding throughout YPF's stripping of Maxus's assets until 1999.

62. By December 1997, the first phase of the scheme devised by Maxus and YPF was nearing completion. Maxus's directors and YPF turned their attention to Maxus Indonesia, Inc., a wholly-owned subsidiary of Maxus and its most valued asset. Maxus's "crown jewel" assets at this time were Maxus Southeast Sumatra, LLC and YPF Java Baratlaut, B.V., which were held in Maxus Indonesia, Inc. YPF Java Baratlaut, B.V. consisted, at that time, of an undivided 24.2705% interest in the Northwest Java Production Sharing Contract, and Maxus Southeast Sumatra, LLC consisted, at that time, of an undivided 45.6752% interest in the Southeast Sumatra Production Sharing Contract as well as all shares of YPF Sumatera Tenggara B.V. (which also owned a 10% interest in the Southeast Sumatra Production Sharing Contract) (collectively, the "Indonesian Assets").

63. Prior to its acquisition by YPF, Maxus had received an offer from Amoco to purchase the Indonesian Assets for $585 Million. Maxus rejected the offer because it was substantially less than the $900 million that Maxus believed Maxus Indonesia, Inc. was worth. Indeed, in mid-1997, a third party market analysts' report and publicly available information indicated that Maxus Indonesia, Inc. had a fair market value of over $700 million and up to $1.1 billion, based upon the Indonesian Assets. According to YPF's public filings, the Indonesian assets accounted for 74% of YPFI's (through consolidation) total net production of crude oil during 1996. Despite the foregoing, YPF and Maxus's directors conspired to direct and control the actions of Maxus Indonesia, Inc. by causing it to fraudulently transfer all of the issued and outstanding shares of capital stock of YPF Java Baratlaut B.V. and all of the limited liability company interest in Maxus Southeast Sumatra LLC to YPFI, effective December 31, 1997. The

sales were recorded as $224,001,378.37 for YPF Java Baratlaut, B.V. and $246,504,946 for Maxus Southeast Sumatra, LLC, and a $41,154,266.29 promissory note. On June 30, 1998, the Stock Purchase Agreement relating to the Indonesian Assets was amended to increase the purchase price for YPF Java Baratlaut, B.V. to $282,800,569.03. The purchase price for Maxus Southeast Sumatra, LLC was also adjusted slightly upwards. Nevertheless, YPF and Maxus directed that the transfer of the Indonesian Assets be for substantially less than fair market value, not for reasonably equivalent value and for the benefit of YPF and YPFI.

64. Next, through their continued domination and control, YPF and Maxus's directors caused MIEC, a wholly-owned subsidiary and alter ego of Maxus, to fraudulently transfer all of the issued and outstanding shares of stock of YPF Ecuador, Inc. to YPFI, effective December 31, 1997. The assets of YPF Ecuador, Inc. consisted, at that time, of an undivided thirty-five percent (35%) interest in the Block 16 Production Sharing Contract, the Bogi-Capiron Operating Agreement, and the Contract for Specific Services for the Tivacuno Area, each lying within the Orient Region of the Republic of Ecuador (the "Ecuadorian Assets"). Publicly available information indicates that the Ecuadorian Assets had a fair market value of approximately $300 to $400 Million in 1997. Despite the foregoing, the Ecuadorian Assets were transferred for $183,966,089.52, substantially less than fair market value, not reasonably equivalent value and for the benefit of YPF.

65. Effective November 30, 1998, YPF and Maxus's directors, through their continued domination and control, caused Maxus Corporate Company, a wholly-owned subsidiary and alter ego of Maxus, to fraudulently transfer all of the issued and outstanding shares of stock of Greenstone Assurance Limited to YPFI. Greenstone was a wholly-owned captive insurance company that provided insurance coverage, on a direct basis and as a reinsurer,

to affiliated and non-affiliated companies. Greenstone was transferred for substantially less than fair market value, not reasonably equivalent value and for the benefit of YPF.

66. Moreover, Maxus and/or MIEC may not have received any value for some or all of the assets transferred. For example, when purchase money was conveyed to Maxus or MIEC as consideration for the transfer of the Bolivian, Venezuelan and Guarapiche assets, the purchase money was transferred according to the control and domination of YPF, which dictated that the purchase money be used only to redeem the $4.00 Preferred Stock that stood in the way of YPF taking the remainder of Maxus's assets. Similarly, YPF and/or YPFI extinguished intercompany debts as consideration for the transfers of the Indonesian Assets and the Ecuadorian Assets. However, such intercompany debt arose as a result of Maxus's assumption of YPF's debt incurred in the acquisition of Maxus or in connection with subsequent reorganization efforts required by the scheme. More specifically, the consideration for the transfer of the Indonesian Assets consisted almost entirely of satisfaction of intercompany debt to YPFI that arose in direct connection with the Purchase Facility whereby YPF acquired Maxus in 1995. In these and other ways, YPF caused Maxus to incur substantial debts to fund YPF's acquisition of Maxus, only to later take Maxus's assets to satisfy those intercompany debts.

67. All of the transfers described herein were in furtherance of the scheme and were made: (1) with actual intent to hinder, delay, or defraud creditors; and/or (2) without receiving reasonably equivalent value and (a) the debtor was engaged or about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, (b) the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due or (c) the debtor was insolvent at the time of the transfer or became insolvent as a

result of the transfer; and/or (3) to an insider for an antecedent debt, the debtor was insolvent at the time and the insider had reasonable cause to believe that the debtor was insolvent. Each transaction described herein violated the New Jersey Uniform Fraudulent Transfer Act. N.J.S.A. 25:2-20 to 34. All of the transfers, as well as all of the transactions and occurrences surrounding the acquisition and reorganization of Maxus, were undertaken because of the domination and control of YPF. In all transfers and transactions described above, YPF, Maxus, MIEC, YPFI, YPFH, CLHH, and Tierra were co-conspirators and the alter egos of one another.

68. Under YPF's control, nearly all of Maxus's oil and gas assets and operations were transferred to and amassed in YPFI. In many ways, YPFI became the "new" Maxus, with many of Maxus's officers and directors also serving on the board of YPFI. Many of Maxus's subsidiaries that once held valuable assets were left empty by these various transactions, including Maxus Indonesia, Inc. and Maxus Corporate Company, and were then merged back into Maxus in 1998. The merger agreements were executed on behalf of Maxus and each and every one of its merged subsidiaries by their common vice-president, David Wadsworth, and adopted by their common secretary, H. R. Smith. During this time period, Mr. Wadsworth was also the vice-president of MIEC, YPFI, YPFH, CLHH and Tierra. Similarly, during this time period, Mr. Smith was also the secretary of MIEC, YPFI, YPFH, CLHH, and Tierra.

69. The Repsol Era. In January 1999, Repsol began to acquire shares in YPF. By December 1999, Repsol had accumulated in excess of 95% of YPF's stock. In becoming the majority shareholder of YPF's stock, Repsol obtained indirect equitable interests in assets fraudulently transferred during YPF's control.

70. At or near this time, Repsol became increasingly concerned with Maxus's contingent environmental liabilities. Understanding that the liabilities could potentially cost

billions of dollars, Repsol and YPF continued and/or devised new plans to complete the scheme originally implemented by YPF and Maxus in 1996-1999. Repsol's plan was aimed at further isolating the environmental liabilities, including those associated with the Lister Site and Passaic River, and protecting assets from those liabilities.

71. Repsol and YPF, knowing that Repsol had acquired an indirect equitable interest in fraudulently transferred assets, advanced the scheme by moving Maxus's former direct and indirect assets and holdings, including YPF Ecuador, Inc., Maxus Venezuela (C.I.) Ltd., Maxus Venezuela S.A., Maxus Guarapiche Ltd., and MBI, which were held at the time for the benefit of YPF through its alter ego YPFI, to Repsol-owned subsidiaries outside of the YPF-ownership chain. In doing so, Repsol dominated and controlled both sides of the transactions for its own benefit.

72. According to YPF and the Argentine government's "Informe Mosconi" (the "Mosconi Report"), Repsol undertook a massive process to transfer assets from YPF to Repsol's affiliates, and/or in some instances, to sell YPF's assets to third parties. According to the Mosconi Report, approximately $3 billion worth of asset transfers were recorded in YPF's accounting books. Repsol later recaptured any consideration paid to YPF for the assets through the declaration of extraordinary dividends from YPF to Repsol. "[N]ot only did Repsol take advantage of its position in YPF to keep strategic assets, but it also appropriated the funds arising from those sales."

73. For example, at year-end 1999, Repsol stripped away one of the few remaining assets in Maxus. Midgard's interests in Crescendo LP were sold to third parties, resulting in a cash distribution to Midgard. From this distribution, Repsol paid certain debt for its own benefit and then directed that $325 million in cash—cash that should have been, and but for Repsol's

domination and control, would have been, available in total to Maxus—be transferred to a wholly-owned Repsol subsidiary outside of the YPF ownership chain, Repsol International Finance, B.V. ("RIF"). Despite Maxus's dire financial condition, Repsol deprived Maxus of the full use of its funds. Repsol directed and controlled Maxus to enter into a one-year Credit Facility Agreement to support RIF's general business needs. However, instead of repaying Maxus, Repsol continued to control the funds, extending repayment of the credit facility for three consecutive years, during which time regular fixed loan repayments were not made. Instead, Repsol provided Maxus with barely enough funding for Maxus to maintain its now-minimal operations, and accounted for such varying contributions as repayment of the $325 million it purportedly borrowed from Maxus.

74. Additionally, in January 2001, under Repsol's domination and control, Repsol and YPF directed and caused YPFI, through YPF Ecuador, Inc., to fraudulently transfer YPF Ecuador, Inc.'s assets and holdings to a Repsol alter ego and wholly-owned subsidiary outside the YPF ownership chain, Repsol YPF Ecuador S.A.

75. In July 2001, under Repsol's domination and control, Maxus Venezuela S.A. became Repsol YPF Venezuela S.A. Thereafter, Repsol and YPF, through their continued domination and control, directed and caused YPFI to fraudulently transfer Repsol YPF Venezuela S.A. to Repsol's alter ego and wholly-owned subsidiary outside the YPF ownership chain, Repsol Exploracion S.A.

76. In September 2001, under Repsol's domination and control, Repsol and YPF directed and caused YPFI to fraudulently transfer Maxus Venezuela (C.I.) Ltd. and Maxus Guarapiche Ltd. from YPFI to Repsol's alter ego and wholly-owned subsidiary outside the YPF ownership chain, Repsol Exploracion Venezuela B.V.

77. In July 2002, under Repsol's domination and control, YPF and YPFI fraudulently transferred their interests in MBI (as part of Repsol YPF Santa Cruz S.A.) directly to Repsol YPF, S.A.

78. In December 2006, under Repsol's domination and control, Repsol and YPF directed and caused YPFI to fraudulently transfer Greenstone Assurance Limited to Repsol's alter ego and wholly-owned subsidiary outside the YPF ownership chain, Gaviota RE, S.A.

79. Moreover, it appears that Repsol did not pay any valid consideration to YPF or YPFI for the assets transferred to Repsol entities, described above. According to publicly-available documents, including YPF's public documents, the consideration paid by Repsol for such assets ended up going right back to Repsol through extraordinary dividend payments required by Repsol. Under such domination and control by Repsol, Repsol caused YPF to dividend up approximately $13-14 billion over the last decade.

80. Maxus's Financial Dependence. In connection with the schemes orchestrated and implemented by Maxus and YPF in 1996-1999, and later by Repsol, Maxus was left without assets sufficient to fund its own operations and liabilities. Maxus was entirely dependent on funding from Repsol and/or YPF and their subsidiaries to continue as a going concern.

81. For these reasons, in 2001, YPFI submitted a "financial guarantee" on behalf of Maxus in the amount of $20 million to DEP for chromium-contaminated sites in New Jersey. In 2002 and 2003, YPF took over YPFI's role of being Maxus's financial guarantor to DEP because Repsol had stripped most of the former Maxus assets out of YPFI. By June 2002, all or substantially all of YPFI's interest in the assets and holdings initially fraudulently transferred to it from Maxus and/or MIEC had been transferred to Repsol or its subsidiaries outside of the YPF-ownership chain. At or near the same time, Repsol and YPF directed that their alter ego

YPFI be repatriated from the Cayman Islands to Bolivia. It was at this time that YPF International Ltd. became known as YPF International S.A.

82. Similarly, in 2004, Repsol guaranteed a $20 million obligation owed by its subsidiary Maxus for Tierra to Banco Bilbao Vizcaya Argentina, S.A. ("BBVA"). This $20 million obligation was associated with the "Passaic Trust" established in connection with the on-going environmental liabilities related to the Passaic River. The $20 million Standby Letter of Credit was issued in favor of the Plaintiff, DEP.

83. As a result of Repsol, YPF and Maxus's schemes, shareholder equity and retained deficit of the Maxus US Group—YPFH, CLHH, Maxus and its subsidiaries, and Tierra—was approximately negative $150 million and negative $650 million, respectively, by March of 2006. Each of Maxus, YPFH, YPFI, CLHH and Tierra is unable to independently meet its financial obligations as they become due and must look to YPF and Repsol for funding. YPF, at the direction and approval of Repsol, has generally provided this funding to temporarily sustain Maxus and Tierra while Repsol and YPF furthered their schemes to remove Maxus's assets and strand liabilities in Maxus and Tierra. This YPF and Repsol funding is not secured or guaranteed and can stop at any time.

84. Beginning in 2005, YPF made other funding arrangements via inter-company credit facilities to permit YPFH and its subsidiaries, CLHH, Maxus and its subsidiaries, and Tierra, to continue as going concerns. In August 2005, YPF extended the first credit facility to YPFH in an amount of $35 million. By May 2006, a mere nine months later, YPF had amended the credit facility with YPFH no less than three times, raising the amount "loaned" to $190 million. YPFH distributed the funds for the benefit of Maxus and Tierra. These credit facilities are unsecured, and neither Maxus nor Tierra have any apparent ability to repay the "loans."

Moreover, YPFH was wholly dependent upon financial support from YPF. Consequently, YPF's auditor, Deloitte & Touche, refused to rate YPFH and its subsidiaries, including CLHH, Maxus, and Tierra, as going concerns without letters of financial support from YPF.

85. YPFH is currently the top-tiered American subsidiary of YPF, as the result of the transfer of all of YPFH's stock to YPF in 2001. YPFH is merely a holding company, owning the stock of Maxus and CLHH. CLHH is another empty holding company, which only owns the stock of Tierra. For almost a decade, since the inception of the Assumption Agreement and Contribution Agreements, YPFI, YPF and its American subsidiaries have operated jointly, as co-conspirators, as one cohesive economic unit and as alter egos.

86. YPFH and CLHH do not have any operations or employees. Similarly, YPFH, CLHH, and Tierra do not have any independent income. Rather, until recently, they continued to exist solely at the whim and control of YPF and Repsol. Indeed, Maxus and Tierra submitted monthly "forecasts" to YPF that estimated their cash needs. YPF thereafter requested approval of the requested amounts from Repsol. Only if and when Repsol approved the requests were cash allowances transferred into each entity's bank account.

87. The officers and directors of YPFI, YPFH, CLHH, Tierra, MIEC and Maxus significantly overlap, and in some instances have been identical for years. Moreover, the vast majority of officers and directors of YPFI, YPFH, CLHH, Tierra and MIEC came from Maxus, YPF, and/or Repsol.

88. Even after this suit was filed, Repsol continued to abuse what was left of Maxus, running parts of Repsol's offshore oil and gas exploration and production with Maxus personnel, without formalized contracts, and typically without payment to Maxus for years. When Repsol finally paid Maxus for its services, the full amount owed was not paid. As late as 2009, Repsol

and its subsidiaries outside of the YPF ownership chain owed Maxus millions of dollars for past services and use of software, data and other intellectual property dating back as far 2007. On or about July 8, 2009, Repsol dominated and controlled Maxus, causing it to enter into a settlement agreement whereby various Repsol entities claimed to offset the amount owed to Maxus according to numerous intercompany receivables claimed against Maxus. The settlement agreement resulted in payment to Maxus well below the reasonable equivalent value for the assets and services provided.

89. Repsol also fraudulently transferred Maxus's remaining most valuable asset—its human capital—out of Maxus and into a newly created Repsol dominated and controlled subsidiary outside of the YPF ownership chain. Maxus's personnel, technical resources and oil and gas "know how" were highly valuable and recognized as such by both Repsol and YPF. In early 2007, Repsol, through its domination and control, directed and caused the transfer of most of Maxus's employees to Repsol's wholly-owned subsidiary and alter ego, Repsol Services Company.

90. All of the foregoing transfers and transactions were made: (1) with actual intent to hinder, delay, or defraud creditors; and/or (2) without receiving reasonably equivalent value and (a) the debtor was engaged or about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, (b) the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due or (c) the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer; and/or (3) to an insider for an antecedent debt, the debtor was insolvent at the time and the insider had reasonable cause to believe that the debtor was insolvent. Each transaction described herein as a

fraudulent transfer violated the New Jersey Uniform Fraudulent Transfer Act. N.J.S.A. 25:2-20 to 34. All of the transfers, as well as all of the transactions and occurrences surrounding the acquisition and reorganization of Maxus, were undertaken because of the domination and control of Repsol. In all transfers and transactions described above, Repsol, YPF, Maxus, MIEC, YPFI, YPFH, CLHH, and Tierra were co-conspirators and the alter egos of one another.

91. Throughout the course of these events, and beginning at the latest in 1996, YPF and its subsidiaries wholly failed to adhere to corporate formalities regarding separateness. Maxus, MIEC, YPFI, YPFH, CLHH, and Tierra were dominated and controlled by and for the benefit of YPF, as one cohesive economic unit, and to the detriment of Maxus's creditors. Beginning in 1999, Repsol and its subsidiaries wholly failed to adhere to corporate formalities regarding separateness. YPF, Maxus, MIEC, YPFI, YPFH, CLHH and Tierra were dominated and controlled by and for the benefit of Repsol, as one cohesive economic unit, and to the detriment of Maxus's creditors. According to documents produced by Defendants, Repsol's domination and control of Maxus from 1999–2005 was so pervasive that Maxus failed to hold even a single board meeting during that time. All the while, Repsol manipulated YPF and Maxus to enrich itself to the detriment of New Jersey. Indeed, similar allegations are made in the Mosconi Report, wherein YPF and the Argentine government find the State's alter ego allegations to be "[s]urprisingly" accurate. During this same time period, the environmental practices and operations of Maxus and Tierra were also controlled directly by Repsol. Repsol directed and controlled the policies, procedures, funding, and actions of YPF, YPFI, YPFH, CLHH, MIEC, Maxus, and Tierra, including having a high degree of involvement in the management, direction, and conduct of their environmental practices and operations as well as their day-to-day business operations. It was not until after this suit was filed that Repsol began

to try and divorce itself from its alter ego Maxus. Beginning in 2007, Repsol undertook an initiative to disconnect itself from Maxus, implementing plans to separate everything from assets and personnel to internet domains and corporate credit card accounts. These separation efforts included the 2009 Settlement Agreement described above.

92. The Repsol Group is, and at all material times was, acting jointly, as co-conspirators and as one cohesive economic unit, and its members are alter egos of one and another, resulting in inequity that can only be avoided through disregarding the corporate fiction. In particular, YPF and Repsol dominated and abused the corporate forms of their subsidiaries, including Maxus, Tierra, MIEC, YPFH, CLHH and YPFI, such that each was rendered incapable of satisfying its environmental obligations to the State. As such, each member of the Repsol Group is jointly and severally liable as and for the other members of the group, including all of Tierra's and Maxus's environmental liabilities and obligations for discharges at and from the Lister Site.

HAZARDOUS SUBSTANCES PRODUCED AT THE LISTER SITE

93. Old Diamond Shamrock owned and controlled the Lister Site from approximately 1947 through 1971 and from 1984 through 1986 and also exercised control over, and periodically managed the operations at, the Lister Site, between 1971 and 1977. From the mid-1940s through 1969, Old Diamond Shamrock manufactured agricultural chemicals at a portion of the Lister Site, including DDT and phenoxy herbicides. DDT production continued through the late-1950s when Old Diamond Shamrock's DDT operations were consolidated at its Greens Bayou Plant in Houston, Texas. The Greens Bayou Plant was also extensively contaminated with hazardous substances intentionally discharged by Old Diamond Shamrock.

94. Production of phenoxy herbicides commenced in 1948 and continued through the summer of 1969 and thereafter. Two of the chemicals manufactured at the Lister Site were 2,4-

dichlorophenoxyacetic acid ("2,4-D") and 2,4,5-trichlorophenoxyacetic acid ("2,4,5-T"). TCDD (or 2,3,7,8-tetrachlorodibenzo-p-dioxin) is a particularly toxic form of dioxin that was formed as a by-product of the 2,4,5-T process.

95. Like the many other constituents used, produced, and discharged at and from the Lister Site, DDT, 2,4-D, 2,4,5-T, and TCDD all constitute "hazardous substances," as defined in N.J.S.A. 58:10-23.11b, and together the hazardous substances discharged from the Lister Site constitute significant drivers of the ecological and human health risk, the remedial actions, and the cleanup and removal costs in the Passaic River and the Newark Bay Complex (collectively, the "Lister Hazardous Substances").

OPERATIONS AND PRACTICES AT THE LISTER SITE

96. As has been previously held by our courts, Old Diamond Shamrock's operations at the Lister Site offer a glimpse of an exceedingly rare type of corporate citizen: one that both undertook a "deliberate course of pollution [constituting] intentional conduct" and one that had the "subjective knowledge of harm" posed by the TCDD in its discharges and emissions. Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167, 215-16 (App. Div. 1992).

97. As explained by the Appellate Division, Old Diamond Shamrock's production practices at the Lister Site were notorious:

a. Almost from the day production of the phenoxy herbicides commenced in 1948, the workers at the Lister Site experienced chloracne (a disfiguring disease typically involving open and closed comedones, pustules, cysts and blisters on the face, armpits, and groin);

b. By 1955, Old Diamond Shamrock was aware that its processes were causing the chloracne and was advised to reduce its air contamination and to insist upon personnel and plant cleanliness. These suggestions were either ignored or poorly implemented;

c. In the Autumn of 1959, Old Diamond Shamrock was advised that a German chemical manufacturer had discovered that TCDD was the causative agent of chloracne and that decreasing Old Diamond Shamrock's reaction temperature in the 2,4,5-T manufacturing process would substantially reduce the production of TCDD. Old Diamond Shamrock was offered a two-step process by which TCDD could be eliminated—or at least appreciably reduced—in the 2,4,5-T manufacturing process. Old Diamond Shamrock instead decided to run the process at a higher temperature than recommended because reducing the autoclave temperature also would reduce production volumes and, therefore, Old Diamond Shamrock's profits;

d. In 1960, a reaction in the autoclave—whose temperature was "out of control"—caused an explosion that destroyed the larger of the two process buildings on the Lister Site. Following the explosion, Old Diamond Shamrock rebuilt the destroyed manufacturing process building. Old Diamond Shamrock had the opportunity to employ improved processes and techniques to lower the TCDD production, but again chose not to do so to avoid incurring capital costs and ensure increased profitability;

e. Throughout its years of operation, vapors produced by the 2,4,5-T process were vented into the atmosphere on a daily basis. Old Diamond Shamrock's emissions from the scrubber unit would literally "pit" the paint on the cars in the parking lot—appearing as if acid had been thrown on them. Only in 1967 did Old Diamond Shamrock construct a carbon tower designed to remove TCDD in its process and finished product at or below a level of one part per million. Even after the carbon tower was installed, there was no decrease in the chloracne among the workers: monitoring reports from 1968 and 1969 showed dioxin levels in Old Diamond Shamrock's process and finished product at up to 9.6 parts per million, and employees recall finished product with up to 80 parts per million.

See Diamond Shamrock Chems. Co., 258 N.J. Super. at 181-87, 212-13.

98. Old Diamond Shamrock's production processes were not reflective of the industry norm at the time. In fact, records indicate that Old Diamond Shamrock's products consistently contained more TCDD than their competitors' products.

99. Similarly, Old Diamond Shamrock's waste management and environmental practices were not reflective of industry standards at the time. In fact, New Jersey's courts have determined that Old Diamond Shamrock's waste management and environmental practices underscore the intentional nature of its behavior:

a. A number of former plant workers testified that Old Diamond Shamrock's waste management policy was reduced to a verb—"riverize"—which essentially amounted to "dumping everything" into the Passaic River;

b. From the mid-1940s through 1955, all waste products from chemical processes were either directly discharged or ultimately released into the Passaic River;

c. In 1956, discharges from the Lister Site plant were directed to an industrial sewer line, but the evidence demonstrates that not all of the effluent from the plant was actually directed into the line;

d. In fact, so much DDT waste water was directed into the Passaic River that a mid-river "mountain" of DDT was created. Employees were directed to wade surreptitiously into the Passaic River at low tide and "chop up" the deposits so that they would not be seen by passing boats;

e. In the old—but undamaged—building where Old Diamond Shamrock manufactured 2,4-D and 2,4,5-T, Old Diamond Shamrock's "heedless indifference to the environmental damage which resulted from its manufacturing operations" continued after the 1960 explosion. The floors of the old building would accumulate so much 2,4-D and 2,4,5-T that twice-monthly they would be washed down with sulfuric acid, with the waste water flowing into trenches that ran outside the building and into the Passaic River. Routine blockages in the trenches and waste water pits also would cause effluent to back up and migrate into the Passaic River. The concrete floor would be replaced every few years because it was turned to "dust" through the acid-washing process;

f. The "sloppy practices" tolerated by Old Diamond Shamrock management were also evident from the various leaks in the autoclave room and the pipes that ran between the two manufacturing buildings. Likewise, the pipelines along the 2,4,5-T process units constantly became clogged. Employees were then directed to break and steam clean the clogged lines. The material washed from the pipelines was discharged onto the ground or directly into the Passaic River;

g. The 10,000 gallon storage tanks on the Lister Site routinely were cleaned of amine, butyl-T, 2,4-D, and 2,4,5-T by shoveling out the residue at the bottoms of the tanks once or twice a month. In this process, both liquid and solid waste fell onto the ground where the waste would be washed away into the Passaic River.

See Diamond Shamrock Chems. Co., 258 N.J. Super. at 181-87.

100. Although Old Diamond Shamrock first ceased production at the Lister Site in 1969 and later conveyed the property in 1971, additional and ongoing discharges of TCDD and other Lister Hazardous Substances produced by Old Diamond Shamrock's operations continued

from the facilities on the Lister Site into the 1980s. Old Diamond Shamrock did not properly dismantle the process units and other facilities when it ceased operations on the Lister Site. In fact, extremely high levels of TCDD and other Lister Hazardous Substances remained in and on the process buildings, tanks, sumps, drains, sewers, pipes and other equipment, which were simply left on the Lister Site. The TCDD and other Lister Hazardous Substances continued to discharge into the environment from the process buildings, tanks, sumps, drains, sewers, pipes and other equipment throughout the 1970s and 1980s.

101. As a result of the Defendants' conduct at the Lister Site, TCDD has been found in the soil at and around the Lister Site, in the groundwater under and around the Lister Site, and in the Newark Bay Complex. Defendants failed to timely notify Plaintiff DEP of the discharges of TCDD and other Lister Hazardous Substances at and from the Lister Site as required by N.J.S.A. 58:10-23.11e.

102. Based upon the foregoing, the New Jersey courts already have found that the subjective knowledge of Old Diamond Shamrock was proven, as a matter of fact: Old Diamond Shamrock knew "the nature of the chemicals it was handling," knew that "they were being continuously discharged into the environment," and knew that "they were doing at least some harm." Diamond Shamrock Chems. Co., 258 N.J. Super. at 210-15 (Old Diamond Shamrock's "deliberate course of pollution constituted intentional conduct with the corresponding intentional injury inextricably intertwined"). In that litigation, OCC and Maxus—which had become the successors to Old Diamond Shamrock's liability—acknowledged and judicially admitted that ongoing discharges of TCDD and other Lister Hazardous Substances continued at and from the Lister Site into the 1980s and beyond. OCC and Maxus sought insurance coverage for their extensive environmental harm caused by the discharges at the Lister Site, and offered testimony

showing that additional and ongoing discharges of TCDD and other Lister Hazardous Substances continued through the 1980s.

103. Likewise, when Maxus brought suit against the United States government alleging that the government was liable for a portion of the remediation costs associated with its former agent orange and pesticides production, Maxus put forward evidence indicating that hazardous substances continued to be released and/or discharged from the Lister Site into the 1980s. Maxus's suit was dismissed prior to YPF's acquisition of Maxus and their joint efforts to strip Maxus's assets away from the liabilities at issue.

104. OCC and Maxus clearly "discharged" TCDD and other Lister Hazardous Substances within the meaning of N.J.S.A. 58:10-23.11b. Defendants have also conducted operations on the Lister Site that involved the generation, storage, and handling of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b.

105. By the judgment of the trial court and the affirming decision of the Appellate Division in Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167 (App. Div. 1992), Defendants are collaterally estopped from relitigating the nature and extent of the intentional discharges at the Lister Site and into the Passaic River and Newark Bay Complex.

THE REGULATORY HISTORY

106. The Lister Site. In 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy, targeting facilities that produced 2,4,5-T and its herbicide derivatives for soil sampling and testing for dioxins.

107. After DEP learned of the TCDD contamination at the Lister Site, then-New Jersey Governor Thomas H. Kean issued Executive Order 40, authorizing DEP to engage in emergency measures "necessary to fully and adequately protect the health, safety and welfare of New Jersey citizens." Pursuant to Executive Order 40, DEP issued an administrative order on June 13, 1983,

requiring Old Diamond Shamrock to implement certain stabilization measures at the Lister Site to prevent further TCDD migration off-site. Two subsequent administrative consent orders were entered between DEP and DSCC in 1984 to address the Lister Site itself.

108. In 1987, EPA selected an interim remedy for the Lister Site. Under a 1990 Consent Decree with EPA and DEP, OCC and Tierra submitted designs for the interim remedy on the Lister Site. The construction of the interim remedy was completed in 2001. The interim remedy is still periodically reevaluated.

109. The Newark Bay Complex. Under an Administrative Order on Consent ("AOC") executed with EPA on April 20, 1994, Tierra agreed to study a six-mile stretch of the Passaic River and to determine: (1) the spatial distribution and concentrations of TCDD and other contaminants in the Passaic River; (2) the primary human and ecological receptors of the contaminated sediments; and (3) the transport of contaminated sediment within the six-mile stretch.

110. By entering into the 1994 AOC, Tierra and the other Defendants agreed to undertake a proper investigation of the extent and impacts of the TCDD contamination emanating from the Lister Site into the lower six miles of the Passaic River. Defendants instead devoted their resources to various efforts to shift blame away from their activities on the Lister Site and onto other parties and chemicals.

111. Defendants concentrated their resources on manipulating the focus of the investigation away from TCDD and to mislead the regulators. When Defendants initially conducted sampling and reported data to the Government, they did not even include or mention TCDD—the driving force behind the entire study. Likewise, in maps submitted to the regulators

as part of the investigation, the Lister Site was inexplicably left off the map and not even identified.

112. Defendants also have attempted to bias the results of the investigation and testing that they controlled. For example, EPA instructed Defendants not to undertake certain studies because EPA was concerned that the results would be misleading and incorrect and would understate the risk to human health and the environment caused by Defendants' TCDD. Defendants nonetheless conducted the studies. Similarly, Defendants have paid to have dozens if not hundreds of manuscripts published in an effort to move the peer reviewed literature and "own the science" of dioxins, just like they set out to do with Chromium.

113. Defendants' efforts appear geared to justify a predetermined conclusion that there is no increased risk to human health or the environment posed by the TCDD and, therefore, that the TCDD may remain in the Newark Bay Complex.

114. Likewise, by stripping Maxus of its assets during this period of delay, the Repsol Group has—by design—ensured that Maxus and Tierra do not and will not have the resources to remediate and otherwise comply with their obligations and liabilities concerning the Newark Bay Complex.

115. Certain key aspects of the investigation of the lower six miles of the Passaic River were removed from Defendants' control by EPA letter dated January 30, 2001. However, effective June 22, 2004, EPA entered into a new AOC with OCC and about 30 other parties to fund $10 million of a $19 million study of the 17-mile stretch of the Passaic River from the Dundee Dam to Newark Bay. Pursuant to a separate agreement, the United States Army Corps of Engineers ("USACE") and New Jersey Department of Transportation ("NJDOT") agreed to

contribute $9 million of the cost of this study. NJDOT's obligations under this agreement have been met.

116. Following the filing of a notice of Citizen's Suit for the TCDD impacts in Newark Bay, OCC entered into a separate AOC with EPA on February 13, 2004 to begin another study of the impacts of the Lister Site, this time focusing on Newark Bay and adjacent waters. By entering into the AOC, Defendants deprived courts of jurisdiction to hear the Citizen's Suit. This AOC provides that EPA will maintain oversight control of the Newark Bay investigation.

117. On September 19, 2003, Plaintiff DEP issued a Spill Act directive to OCC, Maxus, Tierra, and others pursuant to N.J.S.A. 58:10-23.11f.a. directing these entities to assess any natural resource that has been, or may be, injured as a result of the discharges of TCDD from the Lister Site.

118. Plaintiff DEP, in conjunction with EPA and other federal agencies, has investigated and is investigating the nature and extent of the contamination in the Newark Bay Complex, remediation options, and disposal techniques.

119. Sampling results from investigations reveal the presence of TCDD at extremely high concentrations.

120. DEP is working to assess the injuries to the State of New Jersey's natural resources and seeks to recover its assessment costs in this action. However, Plaintiffs are not, at this time, seeking natural resources damages for the Newark Bay Complex in this action, and the State reserves the right to bring such claims in the future.

CONTAMINATION OF THE NEWARK BAY COMPLEX

121. The Newark Bay Complex now constitutes one of the worst TCDD contaminated sites in the world. TCDD is a persistent substance that remains in the environment long after discharge. Further, it bioaccumulates and/or biomagnifies in the food chain and the

environment. The levels of TCDD in the Newark Bay Complex, and in its fish and shellfish, present an endangerment to human health, the environment, and the well-being of the people of the State of New Jersey.

122. TCDD in the Newark Bay Complex is clearly traceable to the Lister Site. There is a clear TCDD signal in the Passaic River, Newark Bay and beyond, which is unmistakably tied to the Lister Site and the actions of Defendants. However, while it is known that the TCDD in the Newark Bay Complex is from the Lister Site and caused by the actions of Defendants, the TCDD contamination cannot be segregated between the discharges that occurred before or after 1971, 1977 or 1983.

123. Portions of the Passaic River near the Lister Site constitute an ongoing source of TCDD contamination throughout the remainder of the Newark Bay Complex. High levels of TCDD are intermittently released from the Passaic River in storm and other high water events that scour the river bottom. Unacceptable levels of TCDD are persistently discharged from the surface sediments in the Passaic River to the remainder of the Newark Bay Complex.

FIRST COUNT

Spill Act

124. Plaintiffs repeat each allegation of paragraphs 1 through 123 above as though fully set forth in its entirety herein.

125. Each Defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

126. The State of New Jersey has incurred, and will continue to incur, costs as a result of the discharge of TCDD and other Lister Hazardous Substances into the Newark Bay Complex. These costs include, but are not limited to, the costs of investigation, cleanup and removal, costs of assessing injuries to the natural resources of New Jersey, reasonable costs of preparing and

successfully litigating this action, and any other costs incurred pursuant to the Spill Act, N.J.S.A. 58:10-23.11a to -23.11z.

127. The State of New Jersey has incurred, and will continue to incur, damages as a result of the Defendants' discharge of TCDD and other Lister Hazardous Substances at and from the Lister Site and into the Newark Bay Complex. These damages include, but are not limited to, damages to and loss of value of real or personal property and the lost income associated therewith.

128. Plaintiff Administrator has certified, and may certify for payment, valid claims made against the Spill Fund concerning the Defendants' discharges of TCDD and other Lister Hazardous Substances at and from the Lister Site and to the Newark Bay Complex, and further has approved, and may approve, other disbursements from the Spill Fund to address the Defendants' discharges of TCDD and other Lister Hazardous Substances at and from the Lister Site and to the Newark Bay Complex.

129. The costs and damages the State of New Jersey has incurred, and will incur, for the Newark Bay Complex are "cleanup and removal costs," within the meaning of N.J.S.A. 58:10-23.11b, including: all costs associated with (1) the removal or attempted removal of Lister Hazardous Substances, or (2) taking reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources. The cleanup and removal costs include the costs of assessing the injuries to the natural resources of New Jersey, those program costs directly related to the cleanup and removal of the discharge and, with respect to the

recovery of past costs, any indirect costs incurred by the State of New Jersey. N.J.S.A. 58:10-23.11b.

130. The Court has already determined that OCC, Maxus and Tierra are "dischargers" and/or persons "in any way responsible" for hazardous substances, including TCDD, discharged to the Newark Bay Complex, and therefore are strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs, including, but not limited to, the costs of investigation, cleanup and removal, the costs of assessing the injuries to the natural resources of New Jersey, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, the reasonable costs of preparing and successfully litigating this action, any other costs incurred pursuant to the Spill Act, and expenditures made by the State of New Jersey. The remainder of the Defendants are also liable as "dischargers" and/or persons "in any way responsible" under the Spill Act.

131. Defendants' discharges of TCDD and other Lister Hazardous Substances into the Newark Bay Complex were the result of Defendants' gross negligence and/or willful misconduct, within the knowledge and privity of the owner, operator, or person in charge, and the Lister Site was a major facility as defined by N.J.S.A. 58:10-23.11b. Therefore, the $50,000,000 maximum limitation codified at N.J.S.A. 58:10-23.11g.b. is inapplicable to any action against Defendants. Further, Defendants are jointly and severally liable for the full amount of damages.

132. Pursuant to the Spill Act, Plaintiffs may bring an action in the Superior Court for injunctive relief, for unreimbursed costs of investigation, cleanup or removal costs, including the costs of assessing the injuries to the natural resources of New Jersey, reasonable direct and indirect costs of preparing and successfully litigating the action, damages to and loss of value of

real or personal property and lost income associated therewith, for any unreimbursed costs or damages paid from the Spill Fund, and for any other unreimbursed costs or damages the State of New Jersey incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(1), (2), (3) and (5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

a. Order Defendants to pay or reimburse Plaintiffs for all unreimbursed costs that the State of New Jersey has incurred, separately or in conjunction with federal agencies, associated with the Defendants' discharges of TCDD and other Lister Hazardous Substances at and from the Lister Site, including, but not limited to, all cleanup and removal costs, other costs of investigation, cleanup and removal, the costs of assessing the injuries to the natural resources of New Jersey, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare as a result of the discharges, any unreimbursed costs or damages paid from the Spill Fund, and any other costs incurred pursuant to the Spill Act, N.J.S.A. 58:10-23.11a to -23.11z, with applicable interest;

b. Enter declaratory judgment against Defendants for all unreimbursed costs that the State of New Jersey may incur in the future, separately or in conjunction with federal agencies, as a result of the Defendants' discharges of TCDD and other Lister Hazardous Substances at and from the Lister Site, including, but not limited to, all cleanup and removal costs, other costs of investigation, cleanup and removal, the costs of assessing the injuries to the natural resources of New Jersey, the costs of all reasonable measures taken to mitigate damage to the public health, safety or welfare associated with the discharges, any unreimbursed costs or damages paid from the Spill Fund, reasonable costs of preparing and successfully litigating this action, and any other costs incurred pursuant to the Spill Act, N.J.S.A. 58:10-23.11a to -23.11z;

c. Order Defendants to pay and reimburse Plaintiffs for all damages that the State of New Jersey has incurred, and may incur in the future, including, but not limited to, damages to and loss of use of real or personal property and the lost income associated therewith, with applicable interest;

d. Assess civil penalties as provided by N.J.S.A. 58:10-23.11u and its predecessors against Defendants for Defendants' failure to timely notify Plaintiff DEP of the discharges of TCDD and other Lister Hazardous Substances as required by N.J.S.A. 58:10-23.11e;

e. Award Plaintiffs their reasonable direct and indirect costs and fees for preparing and successfully litigating this action; and

f. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resources damages. The State reserves the right to bring such claim for natural resources damages for the Passaic River and/or other parts of the Newark Bay Complex in the future. Additionally, Plaintiffs are not seeking to enforce or recover any costs covered by the 1990 Consent Decree regarding the Lister Site, nor are they seeking to enforce the December 14, 2005 Directive regarding the funding of a source control dredge plan or the September 19, 2003 Directive regarding assessment of natural resources damages.

SECOND COUNT

Water Pollution Control Act

133. Plaintiffs repeat each allegation of paragraphs 1 through 132 above as though fully set forth in its entirety herein.

134. Each Defendant is a "person" within the meaning of N.J.S.A. 58:10A-3.

135. Defendants discharged pollutants, including TCDD, into the Newark Bay Complex within the meaning of N.J.S.A. 58:10A-3 & 58:10A-6.

136. The Commissioner has determined that Defendants violated provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 to 37.23 and its predecessors.

137. The State of New Jersey has incurred, and will continue to incur, costs as a result of the discharge of TCDD and other pollutants at and from the Lister Site and into the Newark Bay Complex. These costs include, but are not limited to, the cost of any investigation, inspection, or monitoring survey which led to the establishment of the violation, the cost incurred in removing, correcting or terminating the adverse effects upon water quality resulting from the Defendants' unauthorized discharge of TCDD and other pollutants, and the reasonable direct and indirect costs of preparing and litigating this action.

138. The State of New Jersey has incurred, and will continue to incur, damages as a result of the Defendants' discharge of TCDD and other pollutants at and from the Lister Site and into the Newark Bay Complex.

139. Pursuant to N.J.S.A. 58:10A-10c., Plaintiffs may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10A-10c.(1); for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, N.J.S.A. 58:10A-10c.(2); for the reasonable costs of preparing and litigating this case, N.J.S.A. 58:10A-10c.(2); for any reasonable cost incurred by the State of New Jersey in removing, correcting or terminating the adverse effects upon water quality, N.J.S.A. 58:10A-10c.(3); for actual damages caused by the unauthorized discharge, N.J.S.A. 58:10C.(4); and for the actual amount of any economic benefits accruing to the violator from a violation, N.J.S.A. 58:10A-10c.(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

a. Order Defendants to pay or reimburse Plaintiffs for all unreimbursed costs that the State of New Jersey has incurred, separately or in conjunction with federal agencies, as a result of Defendants' discharges of TCDD and other pollutants at and from the Lister Site, including, but not limited to, the cost of any investigation, inspection, or monitoring survey which led to the establishment of the violation and the cost incurred in removing, correcting, or terminating the adverse effects upon water quality resulting from the unauthorized discharge of TCDD and other pollutants, with applicable interest, and the costs of assessing the injuries to the natural resources of New Jersey;

b. Enter declaratory judgment against Defendants for all unreimbursed costs that the State of New Jersey may incur, separately or in conjunction with federal agencies, as a result of Defendants' discharges of TCDD and other pollutants at and from the Lister Site, including, but not limited to, the cost of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and the cost incurred in removing, correcting, or terminating the adverse effects upon water quality resulting from the unauthorized discharge of TCDD and other pollutants, and the costs of assessing the injuries to the natural resources of New Jersey;

c. Order Defendants to pay Plaintiffs in an amount equal to the actual amount of economic benefit that accrued, and continues to accrue, to Defendants as a result of the violations of the Water Pollution Control Act, with applicable interest. Such economic benefits include, but are not limited to, the amount of any savings realized from avoided capital or non-capital costs resulting from the violations, the return earned or that may be earned on the amount of avoided costs, and any benefits accruing to Defendants as a result of a competitive market advantage enjoyed by reason of the violations, and any other benefits resulting from the violations.

d. Award Plaintiffs the reasonable direct and indirect costs and fees for preparing and litigating this action; and

e. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resources damages. Plaintiffs reserve the right to bring such claim for natural resources damages for the Passaic River and/or other parts of the Newark Bay Complex in the future. Additionally, Plaintiffs are not seeking to enforce or recover any costs covered by the 1990 Consent Decree regarding the Lister Site, nor are they seeking to enforce the December 14, 2005 Directive regarding the funding of a source control dredge plan or the September 19, 2003 Directive regarding assessment of natural resources damages.

THIRD COUNT

Public Nuisance

140. Plaintiffs repeat each allegation of paragraphs 1 through 139 above as though fully set forth in its entirety herein.

141. The use, enjoyment, and existence of the Newark Bay Complex and surrounding areas are rights common to the general public.

142. Defendants released and discharged Lister Hazardous Substances, including TCDD, into the Newark Bay Complex and surrounding areas and have an affirmative obligation to remedy the results of such discharges.

143. The contamination of the Newark Bay Complex and surrounding areas resulting from Defendants' releases and discharges of TCDD and other Lister Hazardous Substances

constitutes a physical invasion of public and private property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to the use and enjoyment of the Newark Bay Complex and surrounding areas.

144. Defendants' releases and discharges, and failure to remedy the releases and discharges, of TCDD and other Lister Hazardous Substances have caused and continue to cause a significant interference with the public health, public safety, public peace, public good and the public convenience.

145. Defendants' releases and discharges, and failure to remedy the releases and discharges, of TCDD and other Lister Hazardous Substances were in violation of New Jersey law at the time of the releases, discharges and inaction.

146. As long as the Newark Bay Complex and surrounding areas remain contaminated with Defendants' TCDD and other Lister Hazardous Substances, the public nuisance continues.

147. Until the Newark Bay Complex and surrounding areas are remediated, Defendants are liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common rights.

148. Defendants' conduct was willful, wanton, and without regard to the rights of the Plaintiffs and the citizens of New Jersey.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DEP prays that this Court:

a. Order Defendants to pay and/or reimburse Plaintiffs for all costs the State of New Jersey has incurred, separately or in conjunction with federal agencies, as a result of the public nuisance caused by Defendants' releases and discharges of TCDD and other Lister Hazardous Substances, and their failure to remedy the releases and discharges, with applicable interest;

b. Enter declaratory judgment against Defendants for all costs that the State of New Jersey may incur, separately or in conjunction with federal agencies, as a result of the public nuisance caused by Defendants' releases and discharges of TCDD and

other Lister Hazardous Substances, and their failure to remedy the releases and discharges;

c. Order Defendants to pay and/or reimburse Plaintiffs for all damages that the State of New Jersey has incurred, and may incur in the future, as a result of the public nuisance caused by Defendants' releases and discharges of TCDD and other Lister Hazardous Substances, and their failure to remedy the releases and discharges, with applicable interest.

d. Order Defendants to make restitution for their unjust enrichment and pay Plaintiffs in an amount equal to the actual amount of economic benefits that accrued and continue to accrue to Defendants as a result of Defendants' manufacturing and environmental practices, releases and discharges of Lister Hazardous Substances to the Newark Bay Complex, and the nuisance created thereby, with applicable interest. Such economic benefits 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;

e. Order Defendants to pay Plaintiffs punitive damages in an amount to be determined by the trier of fact; and

f. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resources damages. The State reserves the right to bring such claim for natural resources damages for the Passaic River and/or other parts of the Newark Bay Complex in the future. Additionally, Plaintiffs are not seeking to enforce or recover any costs covered by the 1990 Consent Decree regarding the Lister Site, nor are they seeking to enforce the December 14, 2005 Directive regarding the funding of a source control dredge plan or the September 19, 2003 Directive regarding assessment of natural resources damages.

FOURTH COUNT

Trespass

149. Plaintiffs repeat each allegation of paragraphs 1 through 148 above as though fully set forth in its entirety herein.

150. Defendants are liable for trespass, and continued trespass, because Defendants released, discharged, and failed to remedy the releases and discharges of TCDD and other Lister Hazardous Substances into the Newark Bay Complex and surrounding areas.

151. As long as the Newark Bay Complex and surrounding areas remain contaminated with Defendants' TCDD and other Lister Hazardous Substances, Defendants' trespass continues.

152. Defendants' conduct was willful, wanton, and without regard to the rights of the Plaintiffs and the citizens of New Jersey.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DEP prays that this Court:

a. Order Defendants to pay and/or reimburse Plaintiffs for all costs the State of New Jersey has incurred as a result of the trespass to the Newark Bay Complex and surrounding areas, with applicable interest;

b. Enter declaratory judgment against Defendants for all costs that the State of New Jersey may incur as a result of the trespass to the Newark Bay Complex and surrounding areas;

c. Order Defendants to pay Plaintiffs for all damages the State of New Jersey has incurred, and may incur in the future, as a result of the trespass to the Newark Bay Complex and surrounding areas, with applicable interest;

d. Order Defendants to make restitution for their unjust enrichment and pay Plaintiffs in an amount equal to the actual amount of economic benefits that accrued and continue to accrue to Defendants as a result of Defendants' manufacturing and environmental practices, releases and discharges of Lister Hazardous Substances to the Newark Bay Complex and surrounding areas, and the trespass created thereby, with applicable interest. Such economic benefits 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;

e. Order Defendants to pay Plaintiffs punitive damages in an amount to be determined by the trier of fact; and

f. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to

seek, that Defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex in response to this Complaint. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resources damages. Plaintiffs reserve the right to bring such claim for natural resources damages for the Passaic River and/or other parts of the Newark Bay Complex in the future. Additionally, Plaintiffs are not seeking to enforce or recover any costs covered by the 1990 Consent Decree regarding the Lister Site, nor are they seeking to enforce the December 14, 2005 Directive regarding the funding of a source control dredge plan or the September 19, 2003 Directive regarding assessment of natural resources damages.

FIFTH COUNT

Strict Liability

153. Plaintiffs repeat each allegation of paragraphs 1 through 152 above as though fully set forth in its entirety herein.

154. Toxic wastes are inherently abnormally dangerous and their release, disposal, and/or discharge is an abnormally dangerous activity.

155. Defendants are strictly liable for their abnormally dangerous activity because Defendants released, disposed of, and discharged toxic wastes, including TCDD, from and at the Lister Site and into the Newark Bay Complex and surrounding areas.

156. Defendants' conduct was willful, wanton, and without regard to the rights of the Plaintiffs and the citizens of New Jersey.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that this Court:

a. Order Defendants to pay and/or reimburse Plaintiffs for all costs that the State of New Jersey has incurred as a result of the release, disposal and/or discharge of toxic wastes, including TCDD, to the Newark Bay Complex and surrounding areas, with applicable interest;

b. Enter declaratory judgment against Defendants for all costs that the State of New Jersey may incur in the future as a result of the release, disposal, and/or discharge of toxic wastes to the Newark Bay Complex and surrounding areas;

c. Order Defendants to pay Plaintiffs for all damages that the State of New Jersey has incurred, and may incur in the future, as a result of the release, disposal, and/or discharge of toxic wastes to the Newark Bay Complex and surrounding areas, with applicable interest;

d. Order Defendants to make restitution for their unjust enrichment and pay Plaintiffs in an amount equal to the actual amount of economic benefits that accrued and continue to accrue to Defendants as a result of Defendants' manufacturing and environmental practices, disposal, releases, and/or discharges of toxic wastes to the Newark Bay Complex and surrounding areas, with applicable interest. Such economic benefits 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;

e. Order Defendants to pay Plaintiffs punitive damages in an amount to be determined by the trier of fact; and

f. Award Plaintiffs such other monetary relief as this Court deems appropriate, except that nothing herein is intended to seek, and should not be interpreted to seek, that Defendants undertake any cleanup, removal, or remedial action within the Newark Bay Complex or on the Lister Site in response to this Complaint. Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resources damages. Plaintiffs reserve the right to bring such claim for natural resources damages for the Passaic River and/or other parts of the Newark Bay Complex in the future. Additionally, Plaintiffs are not seeking to enforce or recover any costs covered by the 1990 Consent Decree regarding the Lister Site, nor are they seeking to enforce the December 14, 2005 Directive regarding the funding of a source control dredge plan or the September 19, 2003 Directive regarding assessment of natural resources damages.

SIXTH COUNT

Fraudulent Transfers

157. Plaintiffs repeat each allegation of paragraphs 1 through 156 above as though fully set forth in its entirety herein.

158. Repsol, YPF, YPFH, YPFI, MIEC, CLHH, and Tierra, are affiliates of Maxus, as defined in N.J.S.A. 25:2-21.

159. YPF and Maxus, in concert with their alter egos and co-conspirators, MIEC and YPFI, engaged in schemes to transfer Maxus's assets, with actual intent to delay, hinder or defraud and for the benefit of YPF, substantially all of Maxus's assets to YPF affiliates and alter egos. All of the transfers and transactions listed below were in furtherance of the scheme and made: (1) with actual intent to hinder, delay, or defraud creditors; and/or (2) without receiving reasonably equivalent value and (a) the debtor was engaged or about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, (b) the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due or (c) the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer; and/or (3) to an insider for an antecedent debt, the debtor was insolvent at the time and the insider had reasonable cause to believe that the debtor was insolvent. Each transaction described herein violated the New Jersey Uniform Fraudulent Transfer Act. N.J.S.A. 25:2-20 to 34. All of the transfers, as well as all of the transactions and occurrences surrounding the acquisition and reorganization of Maxus, were undertaken because of the domination and control of YPF. In all transfers and transactions listed below, YPF, Maxus, MIEC, YPFI, YPFH, CLHH, and Tierra were co-conspirators and the alter egos of one another. Maxus is wholly incapable of funding the environmental liabilities associated with the Lister Site and Newark Bay Complex.

160. Such transfers include the 1996 transfers of MBI, Maxus Venezuela (CI) Ltd., Maxus Venezuela SA, Maxus Guarapiche Ltd., the 1997 transfer of the Ecuadorian Assets, the 1997 transfer of the Indonesian Assets, and the 1998 transfer of Greenstone Assurance Limited, alleged above.

161. Repsol, YPF, YPFI, and Maxus, in concert with their alter egos and co-conspirators, further transferred assets and/or engaged in new schemes to transfer assets, with actual intent to delay, hinder or defraud and for the benefit of Repsol. All of the transfers and transactions listed below were in furtherance of the scheme and made: (1) with actual intent to hinder, delay, or defraud creditors; and/or (2) without receiving reasonably equivalent value and (a) the debtor was engaged or about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, (b) the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due or (c) the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer; and/or (3) to an insider for an antecedent debt, the debtor was insolvent at the time and the insider had reasonable cause to believe that the debtor was insolvent. Each transaction described herein violated the New Jersey Uniform Fraudulent Transfer Act. N.J.S.A. 25:2-20 to 34. All of the transfers, as well as all of the transactions and occurrences surrounding the acquisition and reorganization of Maxus, were undertaken because of the domination and control of Repsol. In all transfers and transactions listed below, Repsol, YPF, Maxus, MIEC, YPFI, YPFH, CLHH, and Tierra were co-conspirators and the alter egos of one another. Maxus and YPFI are wholly incapable of funding the environmental liabilities associated with the Lister Site and Newark Bay Complex.

162. Such transfers include the transfer of the Crescendo distribution, the 2001 transfers of Maxus Venezuela (CI) Ltd., Maxus Venezuela SA, Maxus Guarapiche Ltd., and the Ecuadorian Assets, the 2002 transfer of MBI, and the 2006 transfer of Greenstone Assurance Limited, alleged above. Such transfers also include the transfer of other domestic and

international assets, such as Maxus's human capital and cash, from Maxus and/or YPF entities to Repsol and its affiliates, alleged above. At the time of these transactions, Maxus and/or YPFI had liabilities beyond its ability to pay, and Repsol, YPF, YPFI and Maxus knew that Maxus and/or YPFI was going to realize further contingent liabilities beyond its ability to pay.

163. At all times relevant to these allegations, the Repsol Group was acting as one cohesive economic unit, and its members are alter egos of one and another, resulting in inequity that can only be avoided through piercing the corporate veil and disregarding the corporate fiction. In particular, YPF and Repsol dominated and abused the corporate forms of their subsidiaries and affiliates, including Maxus, Tierra and YPFI, such that each was rendered incapable of satisfying its environmental obligations to the State. Consequently, law and equity require that the Repsol Group be held jointly and severally liable in all respects.

164. All of the transfers alleged above constitute fraudulent transfers as defined in the New Jersey Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 to 34. Plaintiffs did not discover these transfers or associated fair market values until after this suit was filed and could not have reasonably discovered them prior to such time because the Repsol Group has, through concealment and inaccurate and misleading statements, fraudulently concealed the transfers or other facts giving rise to fraudulent transfer claims. Further, much of the information detailing these transfers is solely within the possession of the Repsol Group and/or their agents. Although some information regarding these transfers has been produced by the Repsol Group, much information has been withheld as privileged or otherwise has yet to be produced. Plaintiffs reserve the right to provide additional evidence and examples as that information is discovered.

165. Defendants' conduct was willful, wanton, and without regard to the rights of Plaintiffs and the citizens of New Jersey.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

a. Enter a judgment finding Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol liable under the New Jersey Uniform Fraudulent Transfer Act;

b. Enter a judgment for damages against YPF, YPFI, Maxus, MIEC and Repsol for the full value of all fraudulently transferred assets or an amount proper pursuant to N.J.S.A. 25:2-29-30, to the extent necessary to satisfy the State's claims;

c. Enter other equitable relief, or any other type of relief available, under N.J.S.A. 25:2-29 or otherwise to put Plaintiffs in the position they would have been in but for the fraudulent transfers, such as imposing a constructive trust or receivership over assets of the transferors or transferees of fraudulently transferred assets;

d. Enter a levy of execution pursuant to N.J.S.A. 25:2-29b upon the assets transferred, or proceeds therefrom, in the possession of any party against whom the State has obtained a judgment on its claims;

e. Order Defendants to pay Plaintiffs punitive damages in an amount to be determined by the trier of fact; and

f. Award Plaintiffs reimbursement of attorneys' fees and costs, and such further relief as the Court may deem just and proper.

SEVENTH COUNT

Civil Conspiracy/Aiding and Abetting

166. Plaintiffs repeat each allegation of paragraphs 1 through 165 above as though fully set forth in its entirety herein.

167. As described herein, the Repsol Group acted together and/or agreed or knowingly participated in furtherance of schemes to enrich YPF, and subsequently Repsol, by transferring substantially all of Maxus's assets to YPF affiliates, and subsequently transferring assets from YPF affiliates to Repsol affiliates, in violation of the New Jersey Uniform Fraudulent Transfers Act, as well as the common law of New Jersey and equity. The Repsol Group undertook acts in furtherance thereof. Therefore, Defendants Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol are jointly and severally liable as co-conspirators.

168. Similarly, the Repsol Group is liable for aiding and abetting one another. Defendants Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol knew about the schemes to strip assets and isolate environmental liabilities, and knowingly provided substantial assistance or encouragement to each other. In aiding and abetting each other and further advancing the scheme, the Repsol Group caused Plaintiffs to suffer damages.

169. Defendants' conduct was willful, wanton, and without regard to the rights of the Plaintiffs and the citizens of New Jersey.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that this Court:

a. Enter a judgment finding that Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol conspired and/or aided and abetted in schemes to isolate liabilities and strip assets in an effort to avoid liabilities to creditors;

b. Enter judgment for all past and future costs and damages, jointly and severally, against Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol for all damages caused by the schemes to isolate liabilities and strip assets or otherwise resulting from the conspiracy and/or aiding and abetting caused by Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol; and

c. Order Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH and Repsol to pay Plaintiffs' punitive damages in an amount to be determined by the trier of fact.

EIGHTH COUNT

Breach of Fiduciary Duty/Aiding and Abetting

170. Plaintiffs repeat each allegation of paragraphs 1 through 169 above as though fully set forth in its entirety herein.

171. Repsol, YPF and YPFI, as the parent companies and controlling shareholders of Maxus, MIEC and Tierra, each owed fiduciary duties to the State as a creditor of Maxus, MIEC and/or Tierra. Repsol and YPF, as the parent companies and controlling shareholders of YPFI, owed fiduciary duties to the State, as a creditor of YPFI and also due to the fact that YPFI was

the recipient of fraudulently transferred assets from Maxus and MIEC. Repsol, YPF and YPFI each breached its fiduciary duties owed to the State and/or aided and abetted one or more of each other in the breach of fiduciary duties by engaging in self-dealing, preferential treatment and/or oppressive conduct, failing to exercise the requisite level of care, loyalty, and/or prudence in the management of their subsidiaries, and/or breaching their duties of good faith and fair dealing.

172. Repsol, YPF and YPFI's actions were specifically directed at the State of New Jersey and were expressly designed to avoid and/or place an artificial cap on the damages at issue in this case. Repsol, YPF and YPFI's actions hindered, further impaired and/or rendered Maxus, Tierra and/or YPFI wholly incapable of funding the environmental liabilities associated with the Lister Site and Newark Bay Complex. At all relevant times, Maxus, Tierra and YPFI were insolvent, were in the zone of insolvency or were made insolvent by the Repsol Group's actions.

173. As a result of Repsol, YPF and YPFI's breaches of fiduciary duty, the State has incurred actual damages, compensatory damages, and damages in the form of its attorneys' fees and expenses, which the State will continue to incur as it prosecutes this action. The State is also entitled to punitive damages as Repsol, YPF and YPFI's conduct was willful, wanton, and without regard to the rights of the Plaintiffs and the citizens of New Jersey.

174. In the alternative, the boards of directors of Maxus, Tierra and YPFI owed fiduciary duties to the State as creditors of Maxus, Tierra and YPFI. The boards of directors of Maxus, Tierra and YPFI each breached the fiduciary duties owed to the State by engaging in self-dealing, preferential treatment and/or oppressive conduct, failing to exercise the requisite level of care, loyalty and/or prudence in the management of Maxus, Tierra and YPFI, and breaching their duties of good faith and fair dealing. Repsol, YPF and YPFI each aided and

abetted the board of directors' breaches of fiduciary duties by directing, controlling and knowingly participating in the board of directors' breaches.

175. The board of directors' breaches of fiduciary duties, which were aided and abetted by Repsol, YPF and YPFI, hindered, further impaired and/or rendered Maxus, Tierra and/or YPFI incapable of satisfying its obligations and liabilities owed to the State of New Jersey. At all relevant times, Maxus, Tierra and YPFI were insolvent, were in the zone of insolvency or were made insolvent by the combined actions of their boards of directors and the Repsol Group.

176. As a result of Repsol, YPF and YPFI's aiding and abetting the directors of Maxus, Tierra and/or YPFI in their breaches of fiduciary duty, the State has incurred actual damages, compensatory damages, and damages in the form of its attorneys' fees and expenses, which the State will continue to incur as it prosecutes this action. The State is also entitled to punitive damages as Repsol, YPF and YPFI's conduct was willful, wanton, and without regard to the rights of the Plaintiffs and the citizens of New Jersey.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

a. Enter a judgment:

   1. holding that Repsol, YPF and YPFI are liable for their breaches of fiduciary duty; and/or

   2. holding that Repsol, YPF and YPFI are liable for aiding and abetting one or more of each other in their breaches of fiduciary duty; or in the alternative to (a.)(1.) and (a.)(2.)

   3. holding that Repsol, YPF and YPFI are liable for aiding and abetting the directors of Maxus, Tierra and/or YPFI in their breaches of fiduciary duties.

b. Enter a judgment for all damages owed to Plaintiffs, including but not limited to the full amount of all debts owed to the State in this case, for punitive damages, and for all costs, expenses, and attorneys' fees that Plaintiffs' have incurred and will continue to incur; and

c. Enter a judgment for any other equitable relief, or any other type of relief available, to put Plaintiffs in the position they would have been in but for the breaches of fiduciary duties.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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

Dated: September 28, 2012

Of Counsel:

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

GORDON & GORDON
505 Morris Avenue
Springfield, New Jersey 07081

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues involving the causes of action in the Third Count (Public Nuisance), Fourth Count (Trespass), and Fifth Count (Strict Liability), and have agreed to a bench trial as to the issues involved in the causes of action in the Sixth Count (Fraudulent Transfers), Seventh Count (Civil Conspiracy/Aiding and Abetting), and Eighth Count (Breach of Fiduciary/Aiding & Abetting).

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that William J. Jackson, Special Counsel to the Attorney General, is hereby designated as trial counsel for Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to Plaintiffs at this time, nor is any non-party known to Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

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

Dated: September 28, 2012