PAULA T. DOW
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

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| NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,<br>Plaintiffs,<br><br>v.<br><br>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,<br>Defendants. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION - ESSEX COUNTY<br>DOCKET NO. ESX-L9868-05 (PASR)<br><br>Civil Action<br><br>THIRD AMENDED COMPLAINT<br>AND<br>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 of the Passaic River 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', 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 their TCDD, but the Defendants have not yet removed one teaspoon of TCDD-impacted sediment has been removed as part of a clean-up or restoration effort.

2. Similarly, 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, to transfer all of Maxus's direct and indirect assets and holdings to affiliated companies outside of Maxus's chain of ownership and strand the environmental liabilities associated with the Newark Bay Complex in Tierra and Maxus, thereby leaving them now with no independent ability to satisfy such obligations to the State and others.

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. It is clear that the TCDD concentrations throughout the Newark Bay Complex present a real threat to human health and to the environment.

4. Similarly, 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, as a result of 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 State reserves the 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). 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. Based upon the allegations and facts below, MIEC is subject to the general and specific jurisdiction of the State.

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 has been served and has appeared in this matter. Repsol and its subsidiaries are doing business in New Jersey and are subject to the specific and general jurisdiction of the State.

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 has been served and has appeared in this matter. YPF and its subsidiaries are doing business in New Jersey and are subject to the specific and general jurisdiction of the State.

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. Based upon the allegations and facts below, YPFI is subject to the specific and general jurisdiction of the State.

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.

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 has been served and has appeared in this matter. CLHH and its subsidiary are doing business in New Jersey and are subject to the specific and general jurisdiction of the State.

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. Between 1940 and 1951, Kolker Chemical Works, Inc. ("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. Diamond Alkali Company owned and operated that portion of the Lister Site located at 80 Lister Avenue from 1951 until 1967. In 1967, 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 dismantle or remediate the plant facilities, equipment, or lines that were contaminated with TCDD and other hazardous substances.

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 1945 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 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 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 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.

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 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. While OCC is liable as the direct successor to DSCC, Maxus is also jointly and severally liable with OCC because, through the corporate restructuring from 1983-1986, Maxus assumed and/or retained certain liabilities associated with the operations of Old Diamond Shamrock in connection with the Lister Site and, as such, 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, 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 (a/k/a Old Diamond Shamrock) 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 certain environmental liabilities associated therewith.

34. 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 from the facilities on the Lister Site continued to occur. Maxus is now an indirect subsidiary of Spanish oil giant Repsol, through

YPFH and YPF. Maxus is a "discharger" and a person "in any way responsible" under the Spill Act.

35. 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 holding company, 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 a person "in any way responsible" under the Spill Act.

ALTER-EGO/COHESIVE ECONOMIC UNIT

36. Through a series of related transactions, Defendants Repsol, YPF, YPFI, YPFH, CLHH, Maxus, MIEC and Tierra (the "Repsol Group") coordinated and executed a scheme through complex corporate restructuring to strand the environmental liabilities associated with the Newark Bay Complex in Maxus and Tierra, while systematically stripping Maxus's direct and indirect assets and holdings, thereby extinguishing Maxus's and Tierra's ability to satisfy their obligations and liabilities for the environmental and economic damages caused by the discharges from the Lister Site in New Jersey and elsewhere. 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.

37. 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 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.

38. While Maxus and Tierra continued to be alter-egos of one another, Maxus's role expanded following its 1995 acquisition by YPF, the former Argentinean state-owned oil and gas conglomerate. After YPF's privatization in 1993, YPF embarked on a strategy to become a global force in the oil and gas industry. One of YPF's primary acquisitions was Maxus, which was acquired in 1995 for almost $2 billion in cash and assumed debt, and provided YPF with a strong presence in the United States, including New Jersey.

39. In 1996, YPF undertook a series of coordinated and interrelated corporate transactions to: (a) increase its profits from the various oil and gas investments 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 developed by Maxus and YPF and ultimately

approved by the Board of YPF in or around June 1996. YPF and Maxus knew that both Tierra and Maxus were liable for environmental liabilities associated with the Newark Bay Complex, potentially totaling billions of dollars. The transfers of Maxus's direct and indirect assets and holdings were done with the actual intent to hinder, delay, and/or defraud the State of New Jersey and others, and the entities for whose benefit the transfers were made included YPF and later Repsol.

40. As part of this scheme and in order to move Maxus's environmental liabilities and certain income-producing direct and indirect assets and holdings away from Maxus, 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 therefore 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 so that certain assets could be directly transferred to YPFI as "capital contributions." Thereafter, YPF directed that YPFI be transferred 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.

41. In 1996, immediately following the creation of the various intermediate holding companies, YPF furthered the scheme by approving a master restructuring plan aimed at further insulating YPF from liability. YPF directed that Tierra – originally created as a direct subsidiary of Maxus and moved within the YPF corporate chain to be Maxus's sister company as a result of the restructuring – assume all of Maxus's obligations to OCC flowing from the Lister Site as well as other environmental liabilities in New Jersey and elsewhere through an "Assumption Agreement." At the time, Tierra's primary "asset" was the Lister Site itself.

42. The scheme also dictated that YPF, YPFI, YPFH, CLHH, and Maxus act in concert through a "Contribution Agreement" to fund certain environmental liabilities, including those environmental liabilities associated with the Diamond-era production at the Lister Site, and other expenses, such as lobbying in New Jersey and Washington, D.C., regarding the Lister Avenue Site and associated liabilities. Funding under the Contribution Agreement was to occur via direct, cascading capital contributions from YPF to its wholly-owned subsidiary YPFI, from YPFI to its wholly-owned subsidiary YPFH, from YPFH to its wholly-owned subsidiary CLHH, and from CLHH to its wholly-owned subsidiary Tierra.

43. Under the terms of the Contribution Agreement, the obligations of YPF and its wholly-owned subsidiaries to fund Tierra are capped at approximately $111 million for all obligations, including the environmental liabilities addressed herein and several other environmental liabilities in New Jersey and elsewhere, assumed pursuant to the Assumption Agreement. The cap, which is merely reflective of a flawed internal assessment of these liabilities booked by Maxus at the time of the 1996 transaction, grossly under-estimates the true nature and scope of these liabilities. As part of YPF's plan to strand the environmental liabilities associated with the Lister Site and elsewhere, the Contribution Agreement also provides that once the cap is met, YPF, YPFI, YPFH, CLHH, and Maxus have no further obligation to fund Tierra. As was anticipated by YPF at the time of the 1996 transaction, that cap has since been exceeded, thereby arguably extinguishing the contractual obligations of YPF, YPFI, YPFH, CLHH, and Maxus to fund Tierra.

44. Beginning in 1996, YPF advanced the overall scheme to strand the environmental liabilities by also removing essentially all of Maxus's direct and indirect foreign income-producing assets 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 offshore assets (its "crown jewels"), were fraudulently transferred, in some cases for much less than fair market value or at a loss. As a result of these transactions, Maxus and Tierra were left with no independent ability to meet their financial obligations.

45. As part of their scheme, Defendants began to move assets domiciled in the United States outside of the United States. For example, on June 27, 1996, MIEC, a wholly-owned direct subsidiary and alter-ego of Maxus, approved and executed the transfer of jurisdiction for Maxus Bolivia Inc. ("MBI") from Delaware to the Cayman Islands, British West Indies. 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.

46. Thereafter, on or about July 1, 1996, MIEC fraudulently transferred, with actual intent to delay, hinder or defraud and for the benefit of YPF, 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.

47. YPFI then directed and influenced its new subsidiary and alter-ego Maxus to fraudulently transfer, with actual intent to delay, hinder or defraud and for the benefit of YPF and YPFI, Maxus Guarapiche Ltd. to YPF's wholly-owned subsidiary and alter-ego YPFI for $26 million, which represented the carrying amount of Maxus Guarapiche Ltd. on the financial reporting books of Maxus as of August 31, 1996. The sale was recorded as an "intercompany receivable/payable." Prior to this transfer, Maxus forgave approximately $27 million of debt owed to it by Maxus Guarapiche Ltd. by contributing an equal amount to the capital of Maxus Guarapiche Ltd.

48. By December 1997, the first phase of the scheme devised by Maxus and YPF to strand the liabilities in Maxus and Tierra and move Maxus's direct and indirect assets and holdings for the benefit of YPF was nearing completion. All that remained was to strip Maxus of its most valued assets and transfer them for the benefit of YPF. 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., a wholly-owned subsidiary of Maxus. 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 and 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"). In 1995, prior to its acquisition by YPF, Maxus received an offer from a third-party energy company to purchase the Indonesian Assets for $585 Million. Maxus rejected the offer because it was substantially less than Maxus Indonesia, Inc. had been valued internally. Indeed, in mid-1997, a third party market analysts' report and publicly available information indicate that Maxus Indonesia, Inc. had a fair market

value in the range of $700 Million to $1.1 Billion based upon the Indonesian Assets. According to YPF's public filings, the Indonesian assets accounted for 74% of YPFI's total net production of crude oil during 1996. Despite the foregoing, YPF and Maxus influenced and directed that their alter-ego Maxus Indonesia, Inc. sell, with the actual intent to hinder, delay and defraud for the benefit of YPF and YPFI, 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 YPF's wholly-owned subsidiary and alter-ego 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. YPF and Maxus directed that the transfer of the Indonesian Assets be for substantially less than fair market value and for the benefit of YPF and YPFI. The transfer of the Indonesian Assets was made to an insider for antecedent debts. Maxus was insolvent at the time of the transfer and its alter-egos, including YPF, YPFI and MIEC, knew or had reasonable cause to believe Maxus was insolvent.

49. Also on December 31, 1997, MIEC fraudulently transferred, with actual intent to delay, hinder or defraud and for the benefit of YPF and YPFI, all of the issued and outstanding shares of stock of its direct wholly-owned subsidiary YPF Ecuador, Inc. to YPF's wholly-owned subsidiary and alter-ego YPFI. 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, YPF and Maxus directed that MIEC transfer the Ecuadorian Assets to YPFI for $183,966,089.52. YPF and Maxus directed that the transfer of the Ecuadorian Assets be for substantially less than fair market value and for the benefit of YPF and YPFI. The transfer of the Ecuadorian Assets was made to an insider for antecedent debts. Maxus was insolvent at the time of the transfer and its alter-egos, including YPF, YPFI and MIEC, had reasonable cause to believe Maxus was insolvent.

50. In 1998, many of Maxus's subsidiaries that once held assets but were left empty by these various transactions, including Maxus Indonesia, Inc. and Maxus Corporate Company, were merged back into Maxus. The merger agreements were executed on behalf of Maxus and each and every 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.

51. Beginning as early as December 1999, and after Repsol had acquired in excess of 95% of YPF's stock, Repsol continued YPF's and Maxus's scheme to strand environmental liabilities in Maxus and Tierra by further transferring valuable assets away from Maxus, YPFI and YPF. Repsol furthered the scheme by moving to Repsol-owned subsidiaries outside of the YPF-ownership chain 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, held at this time for the benefit of YPF through its alter-ego YPFI.

52. For example, and more specifically, in January 2001, Repsol and YPF influenced and directed YPFI, through YPFI's wholly-owned subsidiary and alter-ego YPF Ecuador, Inc., to

further transfer, with actual intent to delay, hinder or defraud, and for the benefit of Repsol, YPF Ecuador, Inc.'s assets and holdings to Repsol YPF Ecuador S.A., an entity in the Repsol-only-ownership chain. This transaction was booked at a net loss of $2 Million to YPF. In July 2001, Maxus Venezuela S.A. became Repsol YPF Venezuela S.A. Thereafter, Repsol and YPF influenced and directed YPFI to further transfer, with actual intent to delay, hinder or defraud, and for the benefit of Repsol, Repsol YPF Venezuela S.A. from YPF's wholly-owned subsidiary and alter-ego YPFI to Repsol Exploracion S.A., an entity in the Repsol-only ownership chain. In September 2001, Repsol and YPF influenced and directed YPFI to further transfer, with actual intent to delay, hinder or defraud, and for the benefit of Repsol, Maxus Venezuela (C.I.) Ltd. and Maxus Guarapiche Ltd., from YPF's wholly-owned subsidiary and alter-ego YPFI to Repsol Exploracion Venezuela B.V., an entity in the Repsol-only ownership chain. These transactions were booked at a net loss of $78 Million to YPF. In 2002, Repsol and YPF influenced and directed YPFI to further transfer, with actual intent to delay, hinder or defraud, and for the benefit of Repsol, Maxus Bolivia, Inc. (as part of Repsol YPF Santa Cruz S.A, a company spun-off from YPFI and including other valuable assets) to Repsol YPF, S.A.

53. As a result of the scheme orchestrated and implemented by Maxus and YPF and further executed by Repsol, Maxus was left without income-producing assets and holdings sufficient to fund its own operations and liabilities and was forced to rely upon its cash reserves and other funding. By no later than 2005, and likely some time in 2003 or 2004, Maxus had depleted all of its cash reserves and was forced to look to Repsol and YPF and their subsidiaries for all of its funding.

54. In fact, in 2001, YPFI, the then parent and alter-ego of Maxus, submitted a "financial guarantee" on behalf of its alter-ego Maxus in the amount of $20 million to DEP for

chromium-contaminated sites in New Jersey subject to the Assumption and Contribution Agreements because Maxus and its direct parent, YPFH, lacked the financial ability to do so. YPF took over YPFI's role of being Maxus's financial guarantor to DEP in 2002 and 2003 because YPFI no longer had sufficient assets to do so. YPFI's precarious financial situation was due to Repsol's stripping of the former Maxus assets from YPFI and its alter-ego YPF and moving them to Repsol's international subsidiaries that were not part of the YPF-ownership chain.. Repsol influenced and directed that the assets be transferred in an effort to further insulate such assets from Maxus's and Tierra's environmental liabilities in New Jersey. By June 2002, all or substantially all of YPFI's interest in the assets and holdings initially fraudulently transferred to it from Maxus had been transferred to Repsol 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.

55. In similar fashion, Repsol placed Maxus even further in debt by taking Maxus's remaining cash reserves and booking the $325 Million transaction as a "loan." To date, it is unclear whether such loan was ever repaid. As a result of Maxus's and YPF's 1996 plan, as adopted and furthered by Repsol, shareholder equity and retained deficit of the US Group – YPFH, CLHH, Maxus and its subsidiaries, and Tierra – was approximately negative $150 million and negative $650 million, respectively, by March of 2006, a mere ten years later. Currently, neither Maxus, YPFH, CLHH nor Tierra is able to independently meet their financial obligations as they become due, and they must look to YPF and Repsol for funding. To date, YPF, at the direction and approval of Repsol, has provided this funding to temporarily sustain Maxus and Tierra while Repsol and YPF furthered their scheme to remove Maxus's assets and strand

liabilities in Maxus and Tierra. The YPF and Repsol funding is not secured and can stop at any time.

56. Accordingly, starting 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, without the credit facilities, YPF's auditor, Deloitte & Touche, refused to give YPFH and its subsidiaries, including CLHH, Maxus, and Tierra, a clean financial bill of health in YPFH's consolidated financial report.

57. YPFH is currently the top-tiered American subsidiary of YPF. YPFH is merely a holding company, owning the stock of Maxus and CLHH. CLHH is another empty holding company, which owns only 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.

58. YPFH and CLHH do not have any operations or employees. Similarly, YPFH, CLHH, and Tierra do not have any independent income. Rather, they continue to exist solely at the whim and control of YPF and Repsol. Indeed, Maxus and Tierra submit monthly "forecasts" to YPF that estimate their cash needs. YPF thereafter requests approval of the requested amounts from Repsol. Only after Repsol approves the requests for funds are the approved cash allowances transferred into each entity's bank account.

59. 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.

60. In 2003, Repsol implemented its own plan of reorganization whereby it divided its worldwide operations, including YPF and its wholly-owned subsidiaries, into three divisions: Upstream, Downstream, and "ABB" (Argentina, Bolivia and Brazil). YPF and its wholly-owned subsidiaries – including Maxus and Tierra – are owned under the ABB Division. However, Maxus is controlled by Repsol through its Upstream Group. Likewise, because it is not an operating company but merely designed to hold the liabilities at issue, Tierra directly reports to and is controlled by Repsol in Madrid.

61. Beginning at the latest in 1996, YPF and its subsidiaries wholly failed to adhere to corporate formalities regarding separateness. Beginning at the latest in 1999, Repsol and its divisions wholly failed to adhere to corporate formalities regarding separateness. While the funding of the US Group continues to flow through YPF at the direction of Repsol, the environmental practices and operations of Maxus and Tierra are controlled directly by Repsol. Repsol directs and controls 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.

62. The Repsol Group is, and at all material times was, acting jointly, as co-conspirators, as one cohesive economic unit, and its members are alter-egos of one and another. As such, each member of the Repsol Group is liable as and for the other members of the group,

including all of Tierra's and Maxus's environmental liabilities and obligations for discharges of TCDD at and from the Lister Site.

HAZARDOUS SUBSTANCES PRODUCED AT THE LISTER SITE

63. Old Diamond Shamrock owned and controlled the Lister Site from 1940 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 began before the end of World War II and 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.

64. Production of phenoxy herbicides commenced in 1948 and continued through the summer of 1969 and thereafter. Two 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.

65. Like many other constituents used, produced, and discharged at 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.

OPERATIONS AND PRACTICES AT THE LISTER SITE

66. As has been previously held by the courts of New Jersey, 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).

67. As explained by the New Jersey 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.

68. 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.

69. 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 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.

70. 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 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 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 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.

71. 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 hazardous substances at and from the Lister Site as required by N.J.S.A. 58:10-23.11e.

72. 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 hazardous substances continued at and from the Lister 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 hazardous substances continued through the 1980s.

73. 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.

74. OCC and Maxus clearly "discharged" TCDD and other 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.

75. 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

76. 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.

77. 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.

78. 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 to be periodically reevaluated.

79. 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.

80. However, after approximately fourteen years, this study has not yet been completed. 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.

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

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

90. 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

91. 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.

92. 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.

93. 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

94. Plaintiffs repeat each allegation of paragraphs 1 through 93 above as though fully set forth in its entirety herein.

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

96. The State of New Jersey has incurred, and will continue to incur, costs as a result of the discharge of TCDD 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.

97. The State of New Jersey has incurred, and will continue to incur, damages as a result of the discharge of TCDD 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.

98. Plaintiff Administrator has certified, and may certify for payment, valid claims made against the Spill Fund concerning the discharges of TCDD to the Newark Bay Complex, and further has approved, and may approve, other appropriations from the Spill Fund to address the discharges of TCDD to the Newark Bay Complex.

99. 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 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.

100. Defendants are "dischargers" and persons "in any way responsible" for hazardous substances (TCDD) discharged to the Newark Bay Complex, and 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.

101. Defendants' discharges of TCDD 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 $50,000,000.00 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.

102. 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, as a result of the discharges of TCDD, 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 discharges of TCDD, 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, 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 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

103. Plaintiffs repeat each allegation of paragraphs 1 through 102 above as though fully set forth in its entirety herein.

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

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

106. 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.

107. The State of New Jersey has incurred, and will continue to incur, costs as a result of the discharge of TCDD 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 unauthorized discharge of TCDD, and the reasonable direct and indirect costs of preparing and litigating this action.

108. The State of New Jersey has incurred, and will continue to incur, damages as a result of the discharge of TCDD into the Newark Bay Complex.

109. 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, 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, 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, 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 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

110. Plaintiffs repeat each allegation of paragraphs 1 through 109 above as though fully set forth in its entirety herein.

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

112. Defendants released and discharged hazardous substances (TCDD) into the Newark Bay Complex and surrounding areas and have an affirmative obligation to remedy the results of such discharges.

113. The TCDD contamination of the Newark Bay Complex and surrounding areas resulting from Defendants' releases and discharges of TCDD 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.

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

115. Defendants' releases and discharges, and failure to remedy the releases and discharges, of TCDD were in violation of New Jersey law at the time of the releases, discharges and inaction.

116. As long as the Newark Bay Complex and surrounding areas remain contaminated with Defendants' TCDD, the public nuisance continues.

117. 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.

118. 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 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 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 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 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

119. Plaintiffs repeat each allegation of paragraphs 1 through 118 above as though fully set forth in its entirety herein.

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

121. As long as the Newark Bay Complex and surrounding areas remain contaminated with Defendants' TCDD, Defendants' trespass continues.

122. 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 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

123. Plaintiffs repeat each allegation of paragraphs 1 through 122 above as though fully set forth in its entirety herein.

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

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

126. 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 (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

127. Plaintiffs repeat each allegation of paragraphs 1 through 126 above as though fully set forth in its entirety herein.

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

129. Each is liable for the environmental and economic damages caused by the discharges from the Lister Site, and therefore each is, and at all relevant times has been, a debtor to Plaintiffs.

130. YPF and Maxus engaged in a scheme to enrich YPF, and subsequently Repsol, by transferring, with actual intent to delay, hinder or defraud and for the benefit of YPF and thereafter Repsol, substantially all of Maxus's direct and indirect assets and holdings to YPF affiliates, and subsequently to Repsol affiliates, in some cases, for less than fair market value and

to isolate the environmental liabilities associated with the Lister Site and Newark Bay Complex in companies wholly unable to meet those obligations to the State of New Jersey and others, to wit, Maxus and Tierra. 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, and the 1997 transfer of the Indonesian Assets, discussed above.

131. Subsequently, Repsol furthered the scheme in 1999 and thereafter. Repsol influenced and directed that MBI, Maxus Venezuela (CI) Ltd., Maxus Venezuela SA, Maxus Guarapiche Ltd., and the Ecuadorian Assets be transferred from YPF's international subsidiaries to Repsol's international subsidiaries that are not within YPF's corporate structure. YPF thereafter transferred the foregoing former-Maxus assets from YPF's international subsidiaries to Repsol's international subsidiaries that are not within YPF's corporate structure.

132. YPF, YFPI, Maxus, MIEC, and Repsol acted as alter-egos of one another and with the actual intent to hinder, delay, or defraud the State and for the benefit of YPF and Repsol. Maxus did not receive reasonably equivalent value in the transfers of assets, including but not limited to the Indonesian Assets and the Ecuadorian Assets. Maxus had liabilities beyond its ability to pay and YPF, Maxus, and Repsol knew that Maxus was going to incur further liabilities beyond Maxus's ability to pay. The transfers were to an insider and were for antecedent debts. Maxus was insolvent at the time of the transfers and its alter-egos, including YPF, YPFI and MIEC, knew or had reasonable cause to believe Maxus was insolvent.

133. All of the transfers 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 Defendants have, through concealment

and inaccurate and misleading statements, fraudulently concealed the transfers or other facts giving rise to fraudulent transfer claims. Much of the information relating to these transfers is solely within the possession of Defendants and/or their agents and has not yet been produced. Plaintiffs reserve the right to provide additional evidence and examples as that information is discovered.

134. 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 voiding the fraudulent transfers to the extent necessary to satisfy all costs and damages awarded to Plaintiffs;

b. 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, including awarding Plaintiffs a judgment against YPF, YPFI, Maxus, MIEC, and Repsol for the full value of all assets fraudulently transferred from Maxus;

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

d. 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

135. Plaintiffs repeat each allegation of paragraphs 1 through 134 above as though fully set forth in its entirety herein.

136. As described earlier, Maxus, MIEC, YPFI, Tierra, CLHH, YPF, YPFH, and Repsol acted together and/or agreed or knowingly participated in a scheme to enrich YPF, and subsequently Repsol, by transferring substantially all of Maxus's assets to YPF affiliates, and subsequently to Repsol affiliates, with the actual intent to hinder, delay or defraud and for the benefit of YPF and subsequently Repsol and isolating the environmental liabilities associated with the Lister Site and Newark Bay Complex in companies wholly unable to meet those obligations to the State of New Jersey and others, to wit, Maxus and Tierra. Repsol, YPF, Maxus, and Tierra, and each of the Defendants has engaged in, inter alia, the following acts in furtherance of the conspiracy:

a. Maxus conspired with YPF and other Defendants to create various intermediate holding companies, including YPFI, YPFH, and CLHH, to isolate Maxus and Tierra far down in the corporate structure;

b. Maxus conspired with YPF and other Defendants to contractually transferred its environmental liabilities, including those owed to the State of New Jersey, to Tierra. Such transfer was made for inadequate consideration;

c. YPFI, YPF, YPFH, CLHH, and Maxus conspired to and did limit the funding to Tierra for environmental expenses, including environmental liabilities in New Jersey;

d. YPFI, YPF, YPFH, CLHH, and Maxus conspired to and did provide limited funding to Tierra for other expenses, including lobbying efforts in and having an effect in New Jersey, as well as other activities in New Jersey;

e. YPF, YPFI, MIEC and Maxus conspired to and caused Maxus and MIEC to transfer substantially all of Maxus's and MIEC's direct and indirect assets and holdings

to YPF's international subsidiary YPFI with the actual intent to hinder, delay or defraud, and for the benefit of YPF, and for less than fair market value;

f. Maxus, MIEC and other Defendants conspired to and did transfer substantially all of its assets to YPF's international subsidiary YPFI with the actual intent to hinder, delay or defraud and, for the benefit of YPF and YPFI, and for less than fair market value;

g. YPFI and YPF submitted financial guarantee applications and guaranteed certain of Maxus's environmental liabilities in New Jersey that had been contractually assumed by Tierra;

h. Repsol knowingly and willfully joined in YPF's and Maxus's scheme to isolate assets from environmental liabilities, including the environmental liabilities at issue in this lawsuit;

i. Repsol continued to execute and substantially assisted YPF's and Maxus's scheme by directing YPF and YPFI to transfer the previously-transferred Maxus and MIEC direct and indirect assets and holdings from YPFI to Repsol's international subsidiaries that are not within YPF's corporate structure;

j. YPF and YPFI conspired to and transferred the previously-transferred Maxus and MIEC direct and indirect assets and holdings from YPF's international subsidiary YPFI to Repsol's international subsidiaries that are not within YPF's corporate structure, further distancing Maxus's former assets from the environmental liabilities parked in Maxus and Tierra, including those owed to the State of New Jersey;

k. In 2003, Repsol stripped substantially all of Maxus's cash reserves leaving Maxus without the ability to meet any of its financial obligations independently.

137. The State of New Jersey was harmed by the conduct of Defendants Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH, and Repsol.

138. Defendants Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH, and Repsol are jointly and severally liable as co-conspirators.

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

140. 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 judgment for all costs and damages, jointly and severally, against Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH, and Repsol;

b. Order Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH, and Repsol to pay Plaintiffs for the full value of all assets fraudulently transferred from Maxus in order to put Plaintiffs in the position they would have been in, but for the fraudulent transfers;

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 conspiracy orchestrated and implemented by Maxus, MIEC, Tierra, CLHH, YPF, YPFI, YPFH, and Repsol; and

d. 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.

PAULA T. DOW
ATTORNEY GENERAL
Attorney for Plaintiffs

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

Dated: August 26, 2010

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), Fifth Count (Strict Liability), Sixth Count (Fraudulent Transfers), and the Seventh Count (Civil Conspiracy/Aiding and 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.

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), Fifth Count (Strict Liability), Sixth Count (Fraudulent Transfers), and the Seventh Count (Civil Conspiracy/Aiding and 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).

PAULA T. DOW
ATTORNEY GENERAL
Attorney for Plaintiffs

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

Dated: August 26, 2010

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street, PO Box 093
Trenton, NJ 08625-0093
Attorney for Plaintiffs

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



JACKSON GILMOUR & DOBBS, P.C.
3900 Essex, Suite 700
Houston, Texas 77027

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

GORDON & GORDON, P.C.
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,<br>Plaintiffs,<br><br>v.<br><br>OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., and CLH HOLDINGS,<br>Defendants. | : | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION - ESSEX COUNTY<br>DOCKET NO. ESX-L-9868-05 (PASR)<br><br>CIVIL ACTION<br><br>**CERTIFICATION OF SERVICE OF THIRD AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY** |

I, Kelly-Ann Norgaard, do hereby certify as follows:

1. Plaintiffs' Third Amended Complaint and Demand for Trial by Jury was served electronically on all parties which have consented to service by posting on

https://cvg.ctsummation.com on August 27, 2010. The following counsel of record was served on August 27, 2010 via first class, regular mail:

| | | |
|---|---|---|
| Richard J. Dewland, Esq.<br>Coffey & Associates<br>465 South Street<br>Morristown, NJ 07960<br>Borough of Hasbrouck Heights | John P. McGovern, Esq.<br>Assistant City Attorney<br>City of Orange Township<br>29 North Day St.<br>Orange, NJ 07050 | Steven A. Weiner<br>O'Toole Fernandez<br>Van Lieu<br>60 Pompton Avenue<br>Verona, NJ 07044<br>Twp. of Winfield Pk. |

2. I further certify that on August 27, 2010, a true copy of Plaintiffs' Third Amended Complaint and Demand for Trial by Jury was forwarded via hand delivery to the Honorable Sebastian P. Lombardi, J.S.C., at Historic Courthouse, Chambers 109, 470 Dr. Martin Luther King Jr., Blvd., Newark, New Jersey, 07102.

3. I further certify that on August 27, 2010, a true copy of Plaintiffs' Third Amended Complaint and Demand for Trial by Jury was forwarded via electronic mail to the Honorable Marina Corodemus (Ret.), Special Master, at mc@ccesqs.com.

4. I further certify that on August 27, 2010, a true copy of Plaintiffs' Third Amended Complaint and Demand for Trial by Jury was forwarded to all current members of the Management Committee as set forth on the attached Exhibit "A" via electronic mail.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

**GORDON & GORDON, P.C.**
Attorneys for Plaintiffs

Kelly-Ann Norgaard
Special Counsel to the Attorney General

Dated: August 27, 2010

**EXHIBIT A**

**Management Committee**
**(As of July 15, 2010)**

SPECIAL MASTER: JUDGE CORODEMUS
mc@ccesqs.com

| NAME | EMAIL |
|---|---|
| Alice Brown | alice.brown@exxonmobil.com |
| Andrew Kassof | akassof@kirkland.com |
| Bernard J. Reilly | bernard.j.reilly@usa.dupont.com |
| Daren Eppley* | deppley@decotiislaw.com |
| David Isabel* | disabel@golub-isabel.com |
| Eric E. Tomaszewski | eric@golub-isabel.com |
| Glen Harris | harrisg@ballardspahr.com |
| John Dorsey* | tammy@dks-law.com |
| John Gilmour | jgilmour@jgdpc.com |
| John M. Scagnelli* | iscagnelli@scarincihollenbeck.com |
| Lee Henig-Elona* | lhenigelona@woffsamson.com |
| Mark S. Lillie | mlillie@kirkand.com |
| Marc A. Rollo | mrollo@archerlaw.com |
| Mark Sobel | msobel@greenbaumlaw.com |
| Michael Gordon | Gordonlaw7@aol.com |
| Peter J. King* | pjk@kingpetracca.com |
| Robert Lehman | rlehman@archerlaw.com |
| Thomas Starnes | thomas.starnes@dbr.com |
| William J. Jackson | bjackson@jgdpc.om |
| William L. Warren | william.warren@dbr.com |

*Third Party Defendant Liaison