EXHIBIT 123

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FEDERAL EXPRESS/TELECOPY

Michael J. Schuit, Esq.
State of New Jersey Department of
Environmental Protection
401 East State Street, CN402
Trenton, New Jersey 08625-0402

Re: Occidental Chemical Corporation
Proposed Administrative Consent Order

Dear Mike:

As you are aware, Maxus Energy Corporation's ("Maxus") Senior Vice President, Noel D. Rietman, wrote to Commissioner Daggett on October 19, 1989 in response to your October 6, 1989 letter to me. In his letter, Mr. Rietman expresses the strong desire to reach an agreement, and sign an Administrative Consent Order, with the New Jersey Department of Environmental Protection ("DEP") by which the sites identified in the DEP's draft Administrative Consent Order can be properly addressed on behalf of Occidental Chemical Corporation ("OCC," as successor to Diamond Shamrock Chemicals Company ["DSCC"]). In addition, the letter addressed five concerns which we have about the DEP's draft which must be satisfied to reach agreement. This letter is to reaffirm our interest, as stated by Mr. Rietman, in an agreeable Administrative Consent Order upon working out issues listed in that letter.

This letter is also to address, for the record, the numerous factual misstatements contained in your October 6, 1989 letter. Before addressing your factual misstatements, however, I must first address your apparent misperception regarding the corporate responsibility for operations at the sites identified in the DEP's proposed Administrative Consent Order which accompanied your letter. Contrary to the statements in your letter, Maxus and Chemical Land Holdings, Inc. ("CLH") are not corporate successors to DSCC.

The DSCC chromite ore processing facility in Kearny ceased operations in 1971. Chromite ore processing residue from this site was used as fill at various Hudson County locations until 1971 or 1972. All other manufacturing and industrial operations at the former DSCC plant site ceased

in 1976. The stock of DSCC, as you know, was purchased by a subsidiary of Occidental Petroleum Corporation in 1986; and DSCC merged into OCC in 1987. CLH, which was not even incorporated until 1986, has never had any interest in DSCC. The only connection which CLH has to the facts as set out in the proposed Administrative Consent Order is that in 1986, almost 10 years after all operations at the DSCC site in Kearny had ceased and nearly 15 years after the last use of chromite ore processing residue from the DSCC Kearny site as off-site fill, CLH took title to the old DSCC site in Kearny. While CLH may arguably be responsible for remediation of the old DSCC site in Kearny to which it took title in 1986, it has no such liability with respect to sites to which DSCC chromite ore processing residue was transported 15 years or more before CLH took title to the old DSCC property or, indeed, even came into existence.

Maxus, as you know, is an entirely different corporate entity from either DSCC or OCC. It did not come into existence until 1983, more than a decade after chromite ore processing operations at the DSCC site had ceased and more than a decade after the last use of chromite ore processing residue from the DSCC plant site for off-site fill. Maxus, therefore, has no legal liability whatsoever under the Spill Compensation and Control Act or any other statute for any of the incidents referred to in the proposed Administrative Consent Order. In light of the foregoing, it is inaccurate to describe either CLH or Maxus as a corporate successor to DSCC.

I would also point out to you that OCC never discharged any chromite ore processing residue as alleged in your letter. While OCC, by purchasing DSCC, may have become legally liable for remediating any such discharges by DSCC, it never participated in such discharges. Indeed, since OCC did not purchase DSCC until almost 10 years after all industrial operations ceased at the DSCC site in Kearny and almost 15 years after use of chromite ore processing residue for off-site fill had ceased, it obviously cannot be alleged that OCC participated in any such discharges. In this instance there is a difference between potential legal liability and actual involvement in the incidents giving rise to such liability.

Finally, I take issue with the allegation in your letter that the 25 off-site locations in Kearny and Secaucus identified in the proposed Administrative Consent Order were all contaminated by DSCC chromite ore processing residue. While OCC, for settlement purposes, has agreed that it would accept in a mutually satisfactory Order remedial responsibility for these sites, it did so without prejudice and without any admission of liability. DEP has never produced evidence that the chromium conditions at each of these sites is attributable to DSCC. In fact, DEP has not,

to my knowledge, determined the source of the chromium contamination at each of these sites. The offer by OCC to accept remedial responsibility for these sites, notwithstanding this lack of demonstrated nexus in each instance, was made for the purpose of resolving a number of complex issues with the DEP rather than as a result of any demonstrated responsibility for each of these sites.

I now move on to address certain more substantive matters raised in your letter. OCC or DSCC has been negotiating with DEP for some time regarding the investigation and remediation of certain sites in Hudson County that may be affected by chromite ore processing residue from the former DSCC Plant site. Specifically, OCC has been working with DEP to develop an Administrative Consent Order that will both address the remediation of these sites and the valid concerns of OCC with regard to that remediation.

In an effort to facilitate that negotiation process without delaying progress at the Hudson County sites, by letter dated September 15, 1989 I communicated OCC's willingness to enter into an Administrative Consent Order that would allow it immediately to proceed with a site specific RI/FS for certain locations while the terms of a more comprehensive Administrative Consent Order are worked out between OCC and DEP. Since a site specific RI/FS is a necessary next step with regard to these locations, this approach would best serve both the interests of the public and the interest of fairness to OCC. Moreover, because of the commitment that OCC has demonstrated with respect to these locations, this approach is also objectively reasonable.

DEP's response to our proposal, as set forth in your letter of October 6, 1989, was to deliver an ultimatum: OCC must sign the DEP's draft Administrative Consent Order or else. This refusal by DEP to continue negotiations while work at the sites progresses is most disturbing in light of OCC's demonstrated commitment. Even more disturbing, however, is your refusal to recognize the substantial efforts OCC has made with regard to this matter.

Essentially, you accuse OCC of foot-dragging. According to your letter, OCC "totally ignored the impact of its conduct on human health and the environment" despite being aware of the human health concerns that chromium presents. You further assert that it was not until OCC received "the enforcement equivalent of a two-by-four to the back of the head" that it took any action and then, any action taken has been "paralyzed by sloth." These characterizations are, to put it mildly, inaccurate.

In the first instance, any impact to human health and the environment from long-term exposure to chromite ore processing residue contained in soil has not yet been demonstrated. While industry has perhaps been aware of potential health effects due to exposure at specific levels to certain chromium compounds in the work place, it was certainly unaware of such problems associated with exposure to smaller concentrations of chromium residue contained in soil. Your use of the St. Johnsbury Trucking Terminal employee as an example of chromium associated risks is inappropriate. If this is a reference to the late Mr. Trum, there is much unknown thus far about his personal and work history, and the medical information which we have seen is anything but conclusive of chronic chromium poisoning. A preliminary review of medical records by a consulting physician indicates that a more reasonable explanation of the findings pertaining to Mr. Trum is that his osteomyelitis was due to absessed teeth or sinus infection.

The fact of the matter is that DEP itself was aware of the DSCC chromium issue as early as 1971. I refer you again to a letter dated December 29, 1971 from Warren R. Disch to Mr. Douglas M. Clark of DEP (which was previously provided to you by our counsel) indicating the contractor's use of Chrome Ore Waste as industrial fill material. Although the practice of using chromium residue as off-site fill material had stopped in 1971 with the cessation of Diamond Shamrock's sodium bi-chromate production, a stockpile of residue at the Kearny Plant still required removal. In 1971, the DEP approved removal to the Secaucus site of certain material by an independent contractor who had purchased such for removal to Secaucus. (You may be aware that DSCC was dismissed from the case on its Motion for Summary Judgment, the Court finding that DSCC had no responsibility for the movement.) Thus, DEP was aware since at least 1971 that chromite ore processing residue from the Diamond plant site in Kearny was being used as industrial fill material. Not until 1984 did DEP evidence any objection or even concern with respect to the practice. At that time DEP proposed that an RI/FS be conducted with respect to 42 of some 104 identified sites.

A generic RI/FS was conducted at these sites and partially funded by OCC pursuant to the terms of a DEP Directive issued on December 27, 1984 and a subsequently executed Administrative Consent Order. However, the statement in your October 6, 1989 letter that "it was only after the Department issued its 1984 Directive that the companies reluctantly came forward to fund part of the Remedial Investigation Feasibility Study (RI/FS) for some of the contaminated sites" is both misleading and inaccurate. The fact of the matter is that the 1984 Directive can be characterized more readily as a means of administrative

expedience than as "the enforcement equivalent of a two-by-four to the back of the head."

I need not remind you that OCC is not the only party identified by DEP as potentially responsible for conditions at these sites. The administrative effectiveness of using a Directive when dealing with such a large number of sites and other, possibly recalcitrant, PRPs is apparent. The Directive did not have its genesis in any recalcitrance by DSCC. In fact, the Administrative Consent Order signed pursuant to the Directive specifically acknowledges that Diamond Shamrock Chemicals Company, ". . . is willing to cooperate with DEP, without prejudice and without admission of any liability . . . such cooperation to be evidenced by participation and contribution toward the RI/FS conducted by DEP, as provided for herein. . .."

The fact that OCC only partially funded the RI/FS is also not attributable to any recalcitrance on the part of OCC or DSCC. Rather, it is directly attributable to the recognition by DEP at the time of signing that Order that DSCC was not the only party potentially responsible for these sites and that it need only contribute its proportionate fair share toward the RI/FS. Likewise, the fact that the RI/FS addresses only some of the sites is also attributable to a choice made by DEP and not the result of any action or inaction by OCC or DSCC. In a letter sent by DEP to certain Hudson County property owners, DEP stated that "[i]n 1984, New Jersey Department of Environmental Protection (NJDEP) evaluated the growing list of suspected sites and determined that a manageable number of sites would be investigated through the Remedial Investigation/ Feasibility Study (RI/FS) Process." (Emphasis supplied.) The number of "manageable" sites identified in the letter is 42. Thus, the fact that OCC funded only a "part" of the RI/FS for "some" sites is no indication of any alleged lack of commitment by OCC. In fact, just the opposite is true; since no more than 3 of the 42 sites (less than 8%) involve DSCC residues, it actually contributed (33%) or over four times its proportionate fair share.

Even prior to DEP's determination of the manner in which these sites should be addressed, and continuing through the present time, DSCC followed by OCC has consistently and steadfastly moved toward an expedient resolution of the problem either through actions taken at its own initiative and expense or through actions taken in cooperation with others, including DEP. Specifically, even prior to the issuance of the 1984 generic RI/FS Directive, DSCC evaluated the feasibility of capping the old DSCC Kearny Plant site. Proposals to cap the plant site were subsequently made in 1983 and 1985 to DEP which, after very limited discussion of site closure requirements, rejected the offers.

Subsequently, after DEP formulated its generic RI/FS plan, DSCC again moved to the forefront by offering to perform such RI/FS itself. DEP, however, rejected DSCC's offer in favor of hiring an outside consultant. Immediately after DEP contracted with Environmental Science Engineering, Inc. (ESE) to perform the RI/FS, DSCC affirmatively expressed its willingness to cooperate with respect to various sites, despite reservations about the ability of ESE adequately to perform its task. Thereafter, OCC kept the bargain as to funding its share of the RI/FS, at a cost of almost $370,000, and also attempted to engage in cooperative oversight of the RI/FS process (an attempt which was substantially futile due to limitations imposed by the DEP's management actions).

The extensive monitoring conducted by OCC included the submission of comments on site delineation reports, ground water investigation reports, very extensive commenting on the RI Report, the Risk Assessment element and, most recently, the Feasibility Study portion of the RI/FS. Comments were always submitted within the time constraints imposed by DEP, despite the fact that these deadlines were often unreasonably short for completion of the task. Consequently, the delay that DEP alleges is plaguing the investigation and remediation process at these sites cannot be blamed on OCC. (It should be noted that the DEP suspended all meetings, progress reports, and contacts between DSCC or OCC and ESE, for over two years, from mid-1987 until mid-1989.)

With respect to the Risk Assessment ("RA") alone, OCC has spent more than $400,000 over and above the $370,000 which it paid to DEP to finance the DEP study. It engaged the services of five (5) separate outside consulting firms to conduct an exhaustive scientific review of the RA. This extensive review was designed to insure the scientific integrity of the RA and further to insure that any remedial activity taken will be premised on sound scientific assumptions. These efforts by DSCC or OCC have not occurred as afterthoughts, or too late in the process to be timely. The record will show over 10 requests by DSCC or OCC, over four years, for dialogue concerning the Risk Assessment prior to its publication; none of those requests was honored by DEP. Finally, OCC has continuously offered toxicological support and, most recently, has offered to fund an independent Scientific Peer Review of ESE's Risk Assessment in order to eliminate the serious scientific deficiencies in that document. Yet, despite this significant effort and commitment by OCC, DEP has refused to consider seriously OCC's comments in evaluating the Risk Assessment.

Throughout this process OCC has responded to most of DEP's remedial proposals in a forthright and positive manner. Specifically, OCC has implemented and continues to

implement Interim Remedial Measures ("IRM") at 24 sites in Kearny and Secaucus, including the Diamond Site, in an effort to eliminate any potential unacceptable impact on the public health and environment.

The attempt in your letter to demonstrate OCC's alleged inadequate response by noting that only 6 of 26 IRMs have been completed is entirely misleading. First, there are 24 IRMs addressed by our cooperative program, not 26. But more importantly, the DEP's IRM Directive was only issued in December of 1988. Implementation of the IRMs required preparation of detailed Work Plans to be submitted for comment and approval by DEP. This is obviously a process that takes time, and is in fact proceeding in accordance with the approved and agreed upon schedule.

OCC submitted its initial IRM Work Plans on January 5, 1989, within the 30 day time limit imposed by the 1988 Directive. After receiving DEP's review and comments on those Work Plans, OCC then submitted its revised Work Plans as modified in accordance with DEP's comments. Again, all submissions were timely. DEP's conditional approval of the modified IRM Work Plans was received mid-July 1989. All of these Work Plans contemplated that OCC would begin site specific plans upon successfully obtaining access to all sites, a goal which, although not fully achieved before OCC commenced work, has proven to be extremely beneficial to expediting work. Therefore, given that the Directive is less than a year old and that necessary approvals were granted only three months ago, the fact that six IRMs have been completed is, under the circumstances, very substantial progress. In fact, OCC has thus far expended approximately $490,000 to implement the IRMs at those sites that have been completed. Similar measures are ongoing at an additional five sites at an estimated cost of $500,000. Most important, however, is that OCC remains committed to implementing the IRMs for the remaining sites at a projected cost of several million dollars. It should be noted that the IRMs currently being implemented, including those for the Plant site, are very similar to the measures proposed by DSCC back in August of 1984 for the Plant site; a proposal that was summarily rejected at that time by DEP.

In contrast to these actions taken by OCC are those of DEP. Throughout the entire RI/FS process, OCC's opportunities for meaningful participation have been constantly hampered by both the actions and unreasonable demands of DEP. For example, pursuant to the terms of the RI/FS Administrative Consent Order, OCC was guaranteed cooperative participation in the RI/FS process through representation on the Chromium Sites Study Committee ("Committee"). In order to ensure that this representation be meaningful, the Administrative Consent Order further provided that all Committee members, including OCC's

representative, would be given five (5) days prior written notice of any meetings along with a proposed agenda for the meeting. Without recounting every violation of this provision, suffice it to say numerous meetings were scheduled on less than the required five days notice or without an accompanying agenda. On at least one occasion, OCC did not receive the notice until a day after the meeting had been held. On other occasions, meeting agenda were not provided until the day of the meeting itself. Most disturbing, however, was DEP's discontinuance of the Committee meetings in May of 1987, in flagrant disregard of the RI/FS Administrative Consent Order, for a period of more than two years. Meetings were recommenced solely for the purpose of accommodating DEP's desire to adopt the RA; adoption which took place without any consideration of the concerns expressed by OCC. Thus, the assertion in your letter that DEP has expanded OCC's participation by offering it input at each review and critical decision-making juncture is, to say the least, flagrantly inaccurate. The impediment to meaningful participation posed by DEP's actions is self-evident, and has been specifically documented in other correspondence within the last six months.

Another example of DEP's refusal to work with OCC has been DEP's failure to ensure that its consultant provided the monthly progress reports required by the terms of the Administrative Consent Order. Specifically, the Administrative Consent Order provides that "the [RI/FS] Project Manager shall forward to all committee members the monthly 'Progress Reports' submitted to the DEP by ESE." During the almost four years that it has taken ESE to complete the RI/FS, the required reports were submitted to DSCC or OCC on only a very few sporadic occasions. At one point, more than 14 months passed between the submission of such reports.

DEP's response to OCC's RA comments is characteristic of its allegedly "cooperative" attitude. In 1987, OCC was required to provide detailed comments to an extensive and very complex RA in less than seven weeks. Despite the presence of substantial scientific deficiencies which required exhaustive review and comment, OCC was able to meet this deadline. After four months, the DEP responded to only some of these comments; and it did not provide the comments to the contractor. The DEP produced another draft RA in June 1988, but did not furnish it to OCC. It was then January 1989 before the third draft of the RA was received from DEP. DEP insisted that all comments on this revised draft be received within 48 days. With enormous effort and some considerable difficulty (including DEP's and ESE's refusal to supply complete bibliographic references), this deadline was met. Yet, notwithstanding the enormous effort put forth, it soon became apparent that no serious

consideration whatsoever was being given to the comments which had been produced at such great expense. Indeed, at a meeting requested by OCC subsequent to the adoption of the RA, for the specific purpose of discussing its comments, DEP expressly refused to engage in any such discussion, and OCC's representatives and consultants, who were allowed to give a summary presentation, were instructed to "keep it brief." In fact, no substantive feedback from DEP regarding OCC's comments on the revised RA was received until almost six months after they were initially submitted and three months after the RA was adopted. Such actions by DEP clearly do not comport with the general intent of the Administrative Consent Order that supposedly entitles OCC "to receive full and fair consideration of its views and recommendations."

Dealings with DEP with respect to the Feasibility Study ("FS") have become, if anything, less satisfactory than the dealings with respect to the RA previously discussed. On one occasion, DEP gave OCC just three days to read, review, generate, organize, type and transmit comments to a 350-400 page document. The DEP only allowed two days to make the same review on the final draft FS and refused to provide a second copy to our consultant. The unreasonableness of such demands is patently obvious.

The history of cooperative and responsible behavior by OCC, even in the face of the barriers erected by DEP, is evidence of OCC's good faith commitment. It is a clear indication of OCC's desire and willingness to move forward to address the environmental conditions at issue in the most responsible manner feasible. OCC is sensitive to DEP's concerns over unnecessary delay. However, those concerns at this point are unfounded. Because any remediation alternative chosen by DEP must necessarily await the result of a site specific RI/FS, there would be no prejudice or undue delay if DEP were to allow OCC to proceed with the RI/FS at this point in time. Contrary to the suggestion in your letter, OCC is not reneging on any responsibility it may have for these sites. OCC desires to remediate these sites in a manner consistent with the NCP and to a level protective of human health and the environment. It is merely asking that DEP appreciate the concerns OCC has with respect to being required to agree in advance to implement an unknown remedy with no objectively verifiable guideline for selection of the remedy (i.e., protectiveness levels) or procedures for resolving disputes.

OCC assumed that the 1984 Directive RI/FS that it helped to fund would produce remedial standards. In fact, Finding No. 6 of the Administrative Consent Order signed pursuant to the 1984 Directive specifically provides that:

> [i]n order to determine the nature and extent of the problems presented by the discharge of hazardous substances at the chromium sites, including but not limited to what the "action" level at the sites will be, and to develop environmentally sound remedial actions, it is necessary to conduct an RI/FS of the sites.

Both the contract between DEP and ESE, and correspondence as recent as March 1989, indicate that the study process would use CERCLA/NCP guidance and methods. However, ESE stopped developing "protectiveness" based clean-up levels in response to the DEP's written comments in March 1989. Thus, after five years and many hundreds of thousands of dollars spent, there still are no objective standards by which sound remedial alternatives can be developed. After all this time, effort and money, there is simply no justification for insisting that OCC agree to accomplish some unknown remedial activity in the absence of any specific objective remedial guidelines by which that remedial activity will be selected. Continuation of negotiations on these issues while an RI/FS is conducted will not, as you assert, result in "unreasonable and unacceptable delay in the cleanup." Because it is a necessary prerequisite to any cleanup, allowing performance of a site specific RI/FS now assures continued progress.

Under all of these circumstances I am, quite frankly, hard pressed to understand DEP's current position. Why won't DEP allow prompt commencement of an OCC conducted site specific RI/FS? How can DEP assert that $50,000,000.00 is the minimal amount necessary to ensure OCC's good faith compliance with its proposed Administrative Consent Order in light of the substantial commitment OCC has demonstrated thus far and the fact that a stabilization study and remedy could reasonably be expected to cost approximately $17,000,000? (We must point out that our Mr. Hutton never agreed to a $50,000,000 financial assurance. The conversation to which you allude involved Mr. Hutton's responding to your suggestion of $100,000,000 in security, and his expression that the remedial cost would be less than $50,000,000, but that a more educated estimate would be made later.) Why would the DEP want to risk the needless use of public funds for remediation and extensive litigation when OCC has demonstrated its good faith commitment and asks only that the DEP address the valid concerns of OCC through continued good faith negotiations?

I urge you to withdraw the DEP's ultimatum and let OCC proceed now with an RI/FS for these sites. Further, we are willing to proceed under an Administrative Consent Order which addresses the key issues which are outlined in the letter of October 19, 1989 from Mr. Rietman, to Commissioner Daggett.

Most importantly, as indicated in Mr. Rietman's letter, OCC is willing to commit right now to finance the RI/FS and remediation in the range of $15,000,000 to $17,000,000 which should be sufficient to remediate these sites. Again, such estimate can be better defined at the completion of the RI/FS stage. We believe the Department should not abandon the negotiation process when such significant and meaningful work can be proceeding cooperatively without adversely affecting anyone's perceived schedule for ultimate remediation of these sites.

As Mr. Rietman has stated in his letter, OCC is committed to working with DEP. There are a few issues which still separate us, but we believe that with good faith and flexibility on both sides, these issues can be resolved. As a sign of good faith, OCC is willing immediately to commence the site specific RI/FS so that not even a day will be lost during the negotiation process. Mr. Rietman's mandate, as is pointed out in his letter, is to resolve this matter and he is willing to meet with Commissioner Daggett at the Commissioner's earliest convenience. All of us who are representing OCC stand ready to go the extra mile in order to reach agreement with the DEP. Let's both forget any past differences or misunderstandings and look to the future.

We will appreciate your careful consideration of our proposals and your cooperation in allowing us to proceed with the work at hand.

Yours truly,

Paul W. Herring /JR

Paul W. Herring

PWH:jer

cc: Assistant Commissioner Burke
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