EXHIBIT 124

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To (name)	Weldon Honeycutt	From (name)	Stephan R. Petty
At (company)	Dallas Appeals Office	Office number	214/672-8138
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Weldon,

Attached is a letter from Bill Warren. Bill is an attorney who was involved in the negotiations with New Jersey. Please let me know if you need additional information.

Best Regards,

Steve

David A. Wadsworth
Vice President and General Counsel

Maxus Energy Corporation
Town Center Two Bldg.
1330 Lake Robbins Dr., #300
The Woodlands, TX 77380
(281) 681-7200

January 29, 2001

Stephan R. Petty, Esq.
Arthur Andersen LLP
Suite 5600
901 Main Street
Dallas, Texas 75202-3799

By Facsimile 214/572-2750
and U.S. Mail

Re: April 1990 ACO

Dear Steve:

Enclosed is a copy of Bill Warren's letter dated January 24, 2001 addressing certain questions regarding the above-referenced administrative consent order. Please let me know if you have any questions.

Very truly yours,

DAW/dke
enclosure

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January 24, 2001

David A. Wadsworth, Esquire
Maxus Energy Corporation
1330 Lake Robbins Drive, Suite 300
The Woodlands, Texas 77380

RE: Administrative Consent Order with New Jersey Department of Environmental Protection: In The Matter of The Town of Kearny et al

Dear Mr. Wadsworth:

You have asked me about the $2,500,000 payment made pursuant to paragraph 22 of the above captioned Administrative Consent Order dated April, 1990. This Administrative Consent Order was the result of complex negotiations that took place over a lengthy period of time. The respondents wanted, among other things, a cap on their financial assurance obligations as well as certainty that the New Jersey Department of Environmental Protection would not initiate any action against them relating to acts occurring prior to the effective date of the Administrative Consent Order. In order to provide the respondents with this protection, the Department insisted upon an "up front" payment of $2,500,000 from Occidental Chemical Corporation that the Department denominated as a civil penalty. In fact, however, Occidental at all times refused to acknowledge that it was obligated to pay any civil penalty.

> Although it agrees to pay this civil penalty, OCC denies any violation of statute, rule, regulation or ordinance and payment of this penalty is without admission of fact, fault, liability or obligation. [Paragraph 22]

The purpose of the payment from Occidental's perspective was simply to secure the cap on financial assurance and the broad release that it was seeking.

The other respondent, Chemical Land Holdings, Inc., was not required by the Department to make any "up front" payment as it was a respondent simply by virtue of its relatively recent acquisition of the former Diamond Shamrock Chemicals Company site (Diamond Site) in Kearny, New Jersey. The Department sought an "up front" payment from Occidental because it identified Occidental as a successor to Diamond Shamrock Chemicals Company. Chemical Land Holdings was never deemed by the Department to be the successor to Diamond Shamrock Chemicals Company. See paragraphs 1 and 2.

Indeed, as you go through the ACO you will note that, except as they might pertain to the Diamond Site, the majority of its provisions require performance solely by Occidental. So, for example, it is Occidental that is given responsibility for performing the Remedial Investigation, Feasibility Study and Remedial Actions regarding the ACO

Jonathan I. Epstein, Partner responsible for Princeton Office

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Sites (See paragraphs 25 through 44). Likewise, any "Additional Sites" – offsite locations to which material from the Diamond Site had been taken and that were subsequently identified by NJDEP--must be addressed by Occidental. Only limited provisions in the ACO apply to CLH—for example, at paragraph 99, CLH has the sole responsibility of providing notice of the ACO to any successor in interest prior to any ***"transfer of ownership of the Diamond Site"*** (emphasis supplied). Occidental, on the other hand (and only Occidental), has the responsibility of providing the ACO to any contractor performing the remediation work required by the ACO (See Paragraph 98). Similarly, where ownership of the Diamond Site is relevant to ACO requirements in connection with applications for permits, both parties have responsibility (See paragraphs 48-52). In short, the involvement of CLH in the ACO at all times arises solely out of its ownership of the Diamond Site and is limited to that site. The division of responsibility under the ACO is, in fact, specifically recognized at paragraph 94 of the ACO, which provides that the "Respondents hereby consent and agree to comply with the provisions of this Administrative Consent Order **applicable to them, respectively**..." (emphasis supplied).

Notwithstanding the overall structure of the ACO described above, I understand that particular concern has been raised with the language at paragraphs 15 and 17 of the ACO as it relates to the "penalty" provision at paragraph 22. To address that concern, it may be useful carefully to "walk through" those provisions, keeping in mind the basic division of responsibility as between Occidental and CLH that is recognized throughout the ACO. Paragraph 15 states the NJDEP's Finding and Conclusion that

> The Department has determined that the Respondents are responsible for the discharge of hazardous substances at the Diamond Site...

In other words, both CLH and Occidental have responsibility for the Diamond Site. In comparison, at paragraph 16 of the ACO the Department determines that it is Occidental (and only Occidental) that is responsible for the discharges of chromite ore processing residue at the Off-site locations covered by the ACO (the "Sites").

The Department's Findings and Conclusions are based on the Department's interpretation of the liability provision of the Spill Compensation and Control Act ("Spill Act" or "Act"). That provision imposes strict, joint and several liability, without regard to fault, against any person who has discharged a hazardous substance, or is in any way responsible for any hazardous substance discharged, **for all cleanup and removal costs.** *N.J.S.A.* 58:10-23.11g.c.(1). (emphasis supplied). At the time the ACO was entered, the prevailing view of the Department was that CLH's mere ownership of the Diamond Site gave rise to liability under the statute with respect to that site because ownership made

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CLH "a person in any way responsible" for the Diamond Site . Although the concept of "person in any way responsible" was not defined in the Spill Act, and we disputed the Department's conclusion, the term was broadly construed in existing case law and it made sense to include CLH in the settlement of the Department's allegations of potential liability as to the Diamond Site. Occidental, on the other hand, was deemed liable by the Department as "a person in any way responsible" by virtue of its status as successor to Diamond and hence was found responsible for conditions at both the Diamond Site and off-Site locations.

Paragraph 17 of the ACO, which finds that "the Respondents are strictly liable, jointly and severally, without regard to fault, for all costs of clean-up and removal of hazardous substances discharged at the Sites and the Diamond Site..." merely, states the Department's interpretation of the liability provision of the Act. While inartfully expressed to group the allegation of Respondents' liability together as to both the Sites and the Diamond Site, that paragraph must be read in *pari materia* with the preceding findings at paragraphs 15 and 16 which distinguish CLH's responsibility and make it clear that such responsibility is as to the Diamond Site only.

Understanding that the basis for CLH's responsibility is limited solely to the Diamond Site by virtue of its status as the current owner, we should now examine the "penalty" provision at paragraph 22. That paragraph provides that "**Occidental** agrees to pay.... a civil penalty...for all violations of the [Spill Act]...". The question then is for what alleged violations is Occidental being assessed the penalty. The facts relevant to the ACO involved discharges of hazardous substances that occurred prior to the date the Spill Act became effective (April 1, 1977)—a so-called "pre-Act discharge." This distinction is important because, although it is a violation of the Act to discharge a hazardous substance, prevailing case law construing the Department's penalty authority makes it clear that penalties may not be imposed for pre-Act violations of the statute's prohibition against discharges. *New Jersey DEP v. J.T. Baker Co.*, 234 –*N.J. Super.* 234 (Ch. Div 1989). This is true despite the fact that liability can be imposed under the Act for remediating pre-Act discharges. As the court in *J.T. Baker* observed in addressing the issue of retroactive application of the penalty provision:

> Each provision [of the Spill Act] must be examined separately. Thus, the fact that the Spill Act was held by the *Ventron* court to impose liability for abatement costs related to past discharges does not mean the penalties were intended to be imposed for such contamination. [*J.T. Baker,* 234 *N.J. Super.* At 242]

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Thus, the Department's authority to issue penalties under the Spill Act is separate and apart from its authority to impose liability for cleanup and removal costs. Moreover, the fact that CLH was alleged to have liability for the pre-Act discharges at the Diamond Site did not mean that CLH could be liable for penalties under the Act for such pre-Act discharges. Indeed, it could not be so liable. The particular alleged violation giving rise to the penalty against Occidental was not for violating the prohibition against discharging but rather for the alleged post-Act violation by its predecessor in failing to report the discharges of that predecessor at the off-Site locations (hence the reference in Paragraph 22 to "discharges of chromite ore processing residue **from** the Diamond Site"). Obviously, CLH could have no responsibility for the violation giving rise to the penalty as it was not a successor to Diamond and did not even exist when the obligation to report first accrued.

Were the law to the contrary, any person or entity purchasing property in the State of New Jersey would be obligated to report all transportation of contaminated materials from the purchased site that took place before the purchase. This clearly is not the law in New Jersey, and the Department has never suggested that it is. If you view the liability of Occidental as a successor to Diamond Shamrock and the liability of CLH arising solely from its acquisition of the Diamond Site, the language of the ACO makes perfect sense as does the application of the Spill Act to these two companies. Any other view of the liability of these two companies is inconsistent with the language of the ACO and with both case law and the Department's interpretation of the Spill Act.

If I can be of any further assistance, please do not hesitate to contact me.

Yours very truly,

William L. Warren

WLW:np

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1/24/2001 12:17 PM

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FACSIMILE COVER SHEET

DATE: January 29, 2001

TO: Steve Petty
Arthur Andersen

FAX: 214/572-2750

FROM: David A. Wadsworth

NO. PAGES: 6
(including cover)

RE: April 1990 ACO

If this fax is not received properly, please contact Deborah at 281/681-7204.