EXHIBIT 81

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MAXUS ENERGY CORPORATION
LAW DEPARTMENT

Richard Gimello, Assistant Commissioner
New Jersey Department of Environmental Protection
Site Remediation Program
CN 028
401 East State Street, Floor 6
Trenton, New Jersey 08625-0028

RE: Hudson County Chromite Ore Processing Residue Sites

Dear Mr. Gimello:

This firm represents Occidental Chemical Corporation ("OCC") and Maxus Energy Corporation ("Maxus") in connection with the above referenced matter.

It is my understanding that the New Jersey Department of Environmental Protection ("NJDEP") will issue shortly a second "Orphan Sites Directive" against entities that the NJDEP alleges are responsible for the presence of chromite ore processing residue ("COPR") at certain locations in Hudson County. At various times in the past, the NJDEP has referred to Maxus as such a responsible party. The purpose of this letter is to correct this erroneous conclusion which we believe arises from a misunderstanding of the corporate transactions which gave rise to the Maxus entity and to ask the NJDEP to confirm that Maxus will not be named in any such Directive.

The NJDEP has at various times asserted that Maxus is liable as the successor to the Diamond Shamrock Chemicals Company ("DSCC"), which operated a chromate chemical production facility in Kearny, New Jersey, or that Maxus is otherwise a person in any way responsible for the alleged discharges of COPR that the NJDEP attributes to DSCC. The NJDEP's assertion is based on a flawed analysis of both the facts and law relevant to this issue.

Maxus is now and from the beginning of its existence in 1983 has always been an entirely separate and legally distinct corporate entity from both DSCC or OCC. Unlike

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OCC, which through a series of mergers became the successor to DSCC, the slender relationship between Maxus and DSCC was limited to a short period of time during the mid-1980s when the two companies existed as holding company and subsidiary, respectively. Thus, not only did Maxus and DSCC always exist as two distinct entities, but this relationship between the two did not begin until more than a decade after the occurrence of any events which may have resulted in the alleged COPR contamination in Hudson County. As a brief review of the corporate history of DSCC, OCC and Maxus, as well as applicable legal principles clearly demonstrate, Maxus is **NOT** a corporate successor to DSCC nor in any way responsible for the activities which allegedly contaminated any sites.

Initial Transactions: In or about 1948, the Diamond Alkali Company acquired a sodium bichromate production facility in Kearny, New Jersey (the "Diamond Site"). Upon a merger with Shamrock Oil and Gas Company in 1967, the Diamond Alkali Company became known as Diamond Shamrock Corporation ("DSC-I"). [See Exhibit A]. Beginning in 1948, the Diamond Alkali Company, thereafter DSC-I, engaged in operations at the Diamond Site including the production of sodium bichromate through the processing of chromite ore as well as the production of other chrome specialty chemicals. By November 1971, all chromite ore processing operations at the Diamond Site (the only production operations that resulted in formation of the COPR) had ceased. By the end of 1976, all operations at the Diamond Site had ceased. The plant facilities were razed two years later.

New Corporate Structure: In or around July 1983, an oil company known as the Natomas Company was available for acquisition. As part of the decision to acquire the Natomas Company, a new corporate structure was adopted in July 1983 by which a company named New Diamond Corporation was formed to serve as a non-operating stockholding company. It is this new holding company that eventually, after further name changes, became Maxus. With the reorganization in July 1983, New Diamond Corporation acquired 100% of the stock of DSC-I as well as the stock of other newly-formed subsidiaries whose purposes were to own and operate the non-chemical businesses (e.g. coal, oil and gas exploration and production, oil and gas refining and marketing). Thereafter, DSC-I and those other entities existed as separate subsidiaries to the newly created holding company, the New Diamond Corporation. On September 1, 1983, DSC-I, which eventually merged with OCC, changed its name to Diamond Chemicals Company ("DCC"). On the same date, the New Diamond Corporation, which eventually became Maxus, changed its name to Diamond Shamrock Corporation ("DSC-II"). In November 1983, DCC (formerly DSC-I) changed its name to Diamond Shamrock Chemicals Company ("DSCC"). [See Exhibit B].

OCC's Successorship to DSC-I: DSC-II, which eventually became Maxus, held the stock of DSCC for approximately three years, until September 1986, when the stock of DSCC was purchased by Oxy-Diamond Alkali Corporation, an indirect, wholly owned subsidiary of Occidental Petroleum Corporation ("OPC"). DSCC thereafter changed its name to Occidental Electrochemicals Corporation ("OEC"). In November 1987, Oxy-Diamond Alkali Corporation and OEC were both merged into OCC, another indirect, wholly owned subsidiary of OPC. As such, OCC became the successor by merger of the chemicals manufacturing company known successively as Diamond Alkali Company, Diamond Shamrock Corporation ("DSC-I"), Diamond Chemicals Company ("DCC"), Diamond Shamrock Chemicals Company ("DSCC"), and Occidental Electrochemicals Corporation ("OEC"). In the meantime, shortly after the sale of the DSCC stock, DSC-II changed its name to Maxus in April 1987. [See Exhibit C].

This recitation of corporate history reveals the following undisputed facts:

- Maxus (then DSC-II) and DSCC (formerly DSC-I) were related as holding company/subsidiary only between July 1983 and September 1986. Such relationship arose as a result of the 1983 reorganization, whereby DSC-I (later DSCC) became a subsidiary of the newly formed non-operating stockholding company DSC-II (now Maxus).

- With the sale of DSCC's stock to Oxy-Diamond Alkali Corporation in 1986, any ownership or subsidiary relationship between DSC-II (now Maxus) and DSC-I (later DSCC) was extinguished.

- The creation of Maxus and its brief period of holding company/subsidiary relationship with DSCC, occurred seven years after all operations has ceased at the Diamond Site, more than a decade after chromite ore processing operations had ceased at the Diamond Site, and many years after the chromite ore processing residue from DSCC plant site was last used for off-site fill.

- Maxus (formerly DSC-II) neither operated nor even existed at the time of operations at the Diamond Site.

- Neither Maxus (formerly DSC-II) nor DSCC (formerly DSC-I) ever owned or conducted any chromate manufacturing operations or related waste handling activities in New Jersey between 1983, the date Maxus was incorporated, and 1986, the date that the stock of DSCC was purchased by Oxy-Diamond Alkali Corporation.

- It is OCC and not Maxus which is the corporate successor to DSCC.

- Maxus did not exist at the time any activities resulting in alleged discharges could have taken place.
- Even after Maxus came into existence, DSCC remained a separate and legally distinct corporate entity until it (DSCC) was merged into OCC.
- Given that DSCC was a subsidiary of Maxus beginning well after all processing or manufacturing operations ceased at the Diamond Site, Maxus could neither have controlled nor influenced any activities relating to any discharges which occurred at any sites.

Maxus and OCC have no corporate relationship with each other whatsoever. Further, as stated above, the corporate relationship between Maxus and DSCC is limited to a brief period during which Maxus and DSCC were related as holding company and subsidiary, at a time well after any of the activities causing alleged chromium contamination could have taken place. Clearly, this brief relationship in the 1980s does not accord Maxus the status of corporate successor, nor can it provide the basis of liability against Maxus.

The only reason Maxus is involved at all in the chromite ore processing residue sites is as a result of a private agreement between Maxus and the various Occidental entities involved in acquiring the stock of DSCC. In this 1986 private agreement, Maxus agreed to indemnify the Occidental entities for certain environmental conditions relating to historical DSCC operations. In addition, Maxus can elect to defend such matters. Pursuant to that private agreement, Maxus has elected to defend/act on behalf of OCC to address certain Hudson County COPR Sites. This private agreement has nothing whatsoever to do with the NJDEP. In fact, except in the context of certain private disputes between Maxus and OCC, the agreement provides no legally cognizable basis for establishing liability against Maxus for the activities that allegedly resulted in the chromium contamination at the sites.

Analysis: There are only two ways that the NJDEP might attempt to impose liability upon Maxus - (1) by piercing the corporate veil of the holding company (DSC-II and later Maxus) to hold the holding company liable for the acts of its subsidiary (DSC-I and later DSCC) or (2) by proving Maxus is a person "in any way responsible" for a discharge of a hazardous substances under the New Jersey Spill Compensation and Control Act ("Spill Act"). The NJDEP, however, can do neither; and this is clear from the public record.

A corporation is an entity legally separate and distinct from its shareholders. As a general rule, the corporate entity should be recognized and upheld. *Zubik v. Zubik*, 384 F.2d 267, 273 (3d Cir. 1967). A primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise. *State, Dept. of Environ.*

Protection v. Ventron Corp., 94 N.J. 473, 500 (1983). Even in the case of a parent corporation and its wholly-owned subsidiary, limited liability normally will not be abrogated. *Id.*; *Mueller v. Seaboard Commercial Corp.*, 5 N.J. 28, 34 (1950). Indeed, even in the presence of corporate dominance, liability generally is imposed only when the parent has abused the privilege of incorporation by using the subsidiary to perpetrate a fraud or injustice, or otherwise to circumvent the law. *Ventron*, 94 N.J. at 501; *Mueller*, 5 N.J. at 34-35. Absent fraud or injustice, courts will not pierce the corporate veil. *Ventron*, 94 N.J. at 500; *Lyon v. Barrett*, 89 N.J. 294, 300 (1982). As stated in *Ventron*:

> The purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, *Telis v. Telis*, 132 N.J. Eq. 25 (E & A 1942), to perpetrate fraud, to accomplish a crime, or otherwise to evade the law, *Trachman v. Trugman*, 117 N.J. Eq. 167, 170 (Ch. 1934).

Ventron, 94 N.J. at 500. Unless the corporate structuring was done deliberately with the specific intent to escape liability for a specific tort or class of torts, the cause of justice does not require disregarding the corporate entity. *Zubik*, 384 F.2d at 273.

In short, the doctrine of piercing the corporate veil requires the one seeking to assert it to meet an extraordinarily high burden. First, a whole series of very difficult proofs demonstrating complete domination are required. Even if these proofs can be presented, however, the Department will still have to make a clear showing of fraud or injustice. Under applicable case law, the NJDEP's theory that Maxus may somehow be liable for the acts of DSCC is doomed to fail; even if the NJDEP could somehow prove the necessary element of overwhelming dominance, and it cannot, there are simply no facts which could support a finding of fraud or injustice.

- The fact is that at the time of the activities which arguably could give rise to liability upon DSCC for COPR activities, DSCC (then known as Diamond Alkali or DSC-I) was an entity organized for and engaged in a legitimate business with a legitimate business purpose.

- The fact is that Maxus had no involvement in DSCC's business, that Maxus was not using DSCC to perpetrate any fraud or injustice, and, in fact, that Maxus did not even exist during the period of time the disposal of COPR allegedly took place.

- The fact is that it was not until long after the conclusion of the allegedly offending disposal activity that a corporate reorganization was implemented

under which distinct business ventures would exist as individual subsidiaries to a common parent, with DSCC continuing to operate as one of those subsidiaries as a substantial chemicals company.

- The fact is that after Maxus terminated the holding company/subsidiary relationship through the 1986 stock sale, DSCC (subsequently known as OEC) continued to exist as a separate corporation under a new parent until the 1987 merger which made OCC the corporate successor to DSCC.

- The fact is that following the merger of DSCC into OCC, OCC has repeatedly acknowledged its status as the corporate successor to DSCC.

- The fact is that OCC, a corporation with gross sales of almost $3 billion and which is wholly unrelated to Maxus, has obligated itself to the NJDEP under an ACO to resolve liability for the alleged acts of its predecessor.

The basic facts set forth above cannot be controverted. Indeed, there is not a single shred of evidence in the public record, in the NJDEP's files, in the various Directives that have been issued, or elsewhere, to suggest that Maxus used its briefly held subsidiary as a veil behind which it could hide the perpetration of fraud or injustice. Without proof of such fraud or injustice, the corporate veil may not be pierced to hold Maxus liable for the acts of DSCC. Moreover, in any case, it is undisputed that the allegedly offending acts of DSCC predated by many years the three year stockholding relationship between Maxus and DSCC.

Without the ability to pierce the corporate veil, the NJDEP's assertion that Maxus is responsible for the acts of DSCC must rest on an even more tenuous position: that Maxus is liable under the Spill Act as a person "in any way responsible for any hazardous substance" that has been discharged. N.J.S.A. 58:10-23.11g.c.(1). However, because Maxus did not exist at the time of the alleged discharges at any of the sites, it is clear that Maxus cannot fall under that category of liable person.

Although the Spill Act does not define the phrase "in any way responsible," the regulations promulgated under it and the relevant caselaw provide insight as to the limits of such liability. Clearly, the authorities suggest that proof of some level of a causal relationship or causal nexus between the discharge and the allegedly responsible party is an absolute prerequisite to Spill Act liability. The regulations promulgated by the NJDEP pursuant to the Spill Act suggest that the Department itself recognizes that some level of causal nexus is necessary to impose liability under the "person in any way responsible" standard. The NJDEP defines "person responsible for a discharge" as:

1. Any person whose act or omission *results or has resulted* in a discharge;

2. Each owner or operator of any facility, vehicle or vessel *from which* a discharge has occurred;

3. Any person who *owns or controls* any hazardous substance which is discharged;

4. Any person who has directly or indirectly *caused* a discharge;

5. Any person who has *allowed* a discharge to occur; or

6. Any person who *brokers, generates or transports the* hazardous substance discharged.

N.J.A.C. 7:1E-1.6. (Emphasis supplied). The basic theme underlying this definition, as shown by the italicized portions of the text, is the existence of some causal nexus between the conduct, act or omission of a party and a corresponding discharge of hazardous substances. Similarly, the courts have held persons or entities to be persons "in any way responsible" (even if they did not cause discharge) only if they owned or controlled property at the time of discharge. *Ventron*, 94 N.J. at 502; *Tree Realty, Inc. v. Department of Treasury*, 205 N.J. Super. 346, 348 (App. Div. 1985); *State Dept. of Envtl. Protection v. Exxon Corp.*, 151 N.J. Super. 464, 470-474 (Ch. Div. 1977). Given that Maxus was neither incorporated nor a parent to DSCC until a decade or more after the alleged discharges could have taken place, and many years after operations at the Diamond Site had ceased, it cannot be said that acts or omissions by Maxus have, or could have, resulted in a discharge. Similarly, it also cannot be said that Maxus owned or operated the facility or vessel from which the discharge occurred. It cannot be said that Maxus owned or controlled the hazardous substances discharged. It cannot be said that Maxus had the opportunity to allow, prevent or otherwise control the occurrence of the discharge. In fact, no connection can be even remotely established between Maxus and the activities at the sites allegedly resulting in chromium contamination, because Maxus was not in existence at the time such discharges took place. Spill Act liability may be broad. It is clear, however, that the mere acquisition and temporary ownership of stock many years after the alleged discharges have occurred will not suffice to impose Spill Act liability.

Conclusion: By naming Maxus on the previously issued "Orphan Sites Directive," and continuing to name Maxus as a respondent on subsequently issued "Orphan Sites Directives," the NJDEP is causing significant injury to Maxus. Directives such as the one already issued raise questions with the lenders whose support is necessary for Maxus to continue its operations. They also raise questions within other elements of the financial community, not to mention that they adversely impact Maxus' reputation. It is ironic that

the NJDEP should be acting in this manner in light of the fact that it was Maxus on OCC's behalf which first broke the deadlock which permitted COPR site remedial activity to go forward and that it is Maxus on OCC's behalf which has worked with the Department to advance the science necessary to ensure a cost-effective remediation of COPR sites. Moreover, if the allegations contained in the Orphan Site Directive as to Occidental Chemical Corporation, a company with almost four times the gross sales of Maxus, are correct, it is hard to see how the Department could ever be injured by not naming Maxus in the Directive (of course, if the allegations against OCC are not correct, Maxus could have no liability to the NJDEP under any theory).

Directives have an enormous impact on the private sector. I have heard Department representatives explain that a Directive is not a lawsuit but is merely a piece of paper. Such statements are disingenuous in the extreme, and I challenge any representative of the Department to make them during the course of a serious colloquy with representatives of the lending community or the financial community. Indeed, in *Broadwell Realty Services, Inc v. The Fidelity & Casualty Company of New York*, 281 N.J. Super. 516, 527 (App. Div. 1987), the Appellate Division explicitly recognized the "*in terrorem* and coercive effect" of a Directive. I am not suggesting that the test for issuance of a Directive should be a determination that the NJDEP has made out a *prima facie* case against the alleged responsible party. In light of the enormous impact of the Directive, however, I do suggest that before a Directive is issued management in the Department be satisfied that there is a reasonable case to be made against the alleged responsible party, that the NJDEP understands the case to be made and, most importantly, that issuance of a Directive against the alleged responsible party is necessary to protect the legitimate interests of the NJDEP.

Both the public record and the explanation in this letter clearly demonstrate that Maxus cannot be a responsible party with respect to the COPR sites. It is very difficult to see how anyone can dispute the facts (i) that the only relationship between Maxus and DSCC occurred many years after the DSCC site in Kearny was closed, (ii) that the relationship was a holding company/subsidiary relationship designed for legitimate corporate purposes so that the chemical business under DSCC and other unrelated business interests could be separately pursued, (iii) that the relationship was limited to a three-year period, and, finally, (iv) that the successor of DSCC is Occidental Chemical Corporation, an entity almost four times the size of Maxus.

Under these circumstances, whether evaluated from either a legal perspective or a policy perspective, why would the Department even consider issuing a Directive against Maxus. I suggest that it should not and request confirmation that Maxus will not be named on future Orphan Sites Directives. This is a matter of significant importance to Maxus which Maxus believes can and must be resolved. In the event that the Department disagrees

with the analysis set out in this letter, then Maxus requests the opportunity to meet with you in an effort to bring this matter to a satisfactory conclusion.

Thank you for your kind attention to this matter.

Yours very truly,

William L. Warren

WLW

cc: Ronald Corcory, Assistant Director
George Schlosser, Esquire
Wanda Chin-Monahan, Esquire

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