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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,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION,  
TIERRA SOLUTIONS, INC., MAXUS ENERGY  
CORPORATION, REPSOL YPF, S.A., YPF, S.A.,  
YPF HOLDINGS, INC. and CLH HOLDINGS,  
INC.,

Defendants.

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TIERRA SOLUTIONS, INC. and MAXUS  
ENERGY CORPORATION,

Third-Party Plaintiffs,

v.

TRMI-H LLC, POWER TEST REALTY CO.,  
L.P., GETTY PROPERTIES CORP., GENERAL  
MOTORS CORP., CYTEC INDUSTRIES, INC.  
and LEGACY VULCAN CORP.,

Third-Party Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. ESX-L-9868-05

**DEFENDANTS MAXUS ENERGY  
CORPORATION'S AND TIERRA  
SOLUTIONS, INC.'S  
THIRD PARTY COMPLAINT "C"**

Defendants Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”) bring this Third-Party Complaint against the herein named Third-Party Defendants, and allege as follows:

### **PROCEDURAL BACKGROUND**

1. The Plaintiffs commenced this lawsuit on December 13, 2005, suing Defendants Occidental Chemical Corporation (“Occidental”), Tierra, Maxus, Repsol YPF, S.A., YPF, S.A., YPF Holdings, Inc. and CLH Holdings (collectively, “Defendants”).<sup>1</sup> After several revisions, Plaintiffs’ Complaint seeks to recover from the Defendants past and future “cleanup and removal costs”—as well as unspecified economic damages, punitive damages, damages for alleged “unjust enrichment,” penalties and a variety of other forms of relief—purportedly arising from the alleged discharges into the Passaic River of 2,3,7,8-tetrachlorodibenzo-p-dioxin (a form of dioxin referred to as “TCDD”) and other unspecified “hazardous substances” from a plant that operated at 80 Lister Avenue in Newark, New Jersey (“Lister Plant”) for approximately twenty years before the plant was closed in 1969.

2. Plaintiffs further allege that, after operations at the Lister Plant ceased, hazardous substances purportedly discharged from the plant “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,” which Plaintiffs define collectively as the “Newark Bay Complex.” Plaintiffs contend that Occidental, Maxus and Tierra are

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<sup>1</sup> The Plaintiffs in the original complaint were the New Jersey Department of Environmental Protection (“NJDEP”) and the Administrator of the New Jersey Spill Compensation Fund (the “Administrator”). The Commissioner of NJDEP (“Commissioner”) was added as named plaintiff in the Second Amended Complaint filed in 2008.

“responsible for the liabilities arising from almost forty years of discharges of TCDD, DDT, and other hazardous substances” at 80 Lister Avenue.

3. In an Answer filed on October 6, 2008, Maxus and Tierra have substantially denied the Plaintiffs’ allegations in the Second Amended Complaint. On the same date, moreover, Maxus and Tierra filed a Counterclaim that explained in detail that the longstanding and widespread pollution of the vast waterbody addressed in the Complaint cannot plausibly be blamed on the operations of a single manufacturing facility that opened some 40 years **after** the Governor of New Jersey admitted in his January 1902 inaugural address that “the pollution of the Passaic River from the adjacent population” had already “destroyed the use and beauty of a noble stream and gravely injured manufacturing and property interests on its banks.” *See Counterclaim of Defendants Maxus Energy Corporation and Tierra Solutions, Inc.* (“Counterclaim”), ¶ 2 (citing *New York Times* (1/22/1902)).

4. Indeed, more than a century before Plaintiffs singled out the Defendants in this lawsuit as scapegoats for the pollution that has long plagued the Passaic River and Newark Bay, yet another Governor acknowledged to the Senate and General Assembly that the Passaic River had already “undergone the fate of all similar streams that happen to flow through sections attractive to large populations and manufacturing industries. It has become the receptacle of the wash, the refuse, and the general sewage of the great and rapidly growing populations of the valley, until public comfort and health are threatened from the excess of pollution poured into the stream.” *Id.*, ¶ 1 (citing *Journal of the Fifty-Third Senate of the State of New Jersey Being the One Hundred and Twenty-First Session of the Legislature*, at 17 (1897)).

5. The Counterclaim further explains that significant blame for the polluted condition of the Passaic River and Newark Bay resides with the “several cities whose sewers

empty into the river,” that is, with essentially “every municipal corporation that now exists or may be hereafter created in the Passaic valley from Little Falls to Newark.” *Id.* See also *id.*, ¶ 8 (“the pollution comes from each and every municipality along the river using the Passaic river as a dumping ground”) (citing *Nineteenth Annual Report of the Board of Health of the State of New Jersey* (1895) at 17).

6. In this very litigation, Plaintiffs have acknowledged that there are potentially thousands of sources of the pollution in the Newark Bay Complex that is the subject of this lawsuit. Furthermore, in 2003, just two years before filing this lawsuit, plaintiff NJDEP issued a Directive (“2003 Directive”) identifying 66 companies that NJDEP said were involved in discharges directly traceable to eighteen different sites within the lower seventeen miles of the Passaic River, which the 2003 Directive concludes “are responsible for the hazardous substances in the Lower Passaic River.”

7. None of this should be surprising. As the U.S. Army Corps of Engineers noted in a June 2004 Study Area Report, “[t]he Hackensack River and Passaic River basins and Newark Bay have been a center of industrial activity since the Industrial Revolution. As a result, hundreds of chemical, paint and pigment manufacturing plants, petroleum refineries, and other large industrial facilities have been located along their banks. Effluent from these facilities have caused severe contamination of sediments in the rivers.”

8. The Counterclaim further sought to achieve realistic balance and perspective by pointing out that, whereas the State—notwithstanding its ownership of the submerged lands that, for all intents and purposes, have been used as liquid landfill for more than a century—has done nothing to remediate the problem, Maxus and Tierra have spent many millions of dollars to assess and address contamination in the Newark Bay Complex. *Counterclaim*, ¶¶ 23-26.

9. Specifically, Maxus and Tierra: (i) have implemented a Remedial Investigation and Feasibility Study (“RI/FS”) under a 1994 Administrative Order On Consent (“AOC”) with the United States Environmental Protection Agency (“EPA”), which addresses the lower 6 miles of the Passaic River (“1994 AOC”); (ii) are funding and are implementing, as part of the “Lower Passaic River Study Area Cooperating Parties Group” (“CPG”), a further RI/FS under two additional AOCs executed by the CPG and EPA in 2004 and 2007, respectively, which address the lower 17 miles of the Passaic River (“CPG AOCs”); and (iii) are funding and are implementing an RI/FS for the Newark Bay under a separate AOC with EPA, also executed in 2004 (“Newark Bay AOC”).

10. Additionally, Maxus and Tierra proposed and negotiated a momentous agreement in 2008 with EPA, pursuant to which 200,000 cubic yards of contaminated sediment will be removed from the portion of the Passaic River directly in front of the Lister Plant, at an estimated cost of \$80 million (“2008 Removal Action AOC”). EPA has described this removal action as “the most significant removal of contaminated material from the Passaic in history.” *See Counterclaim*, ¶ 25 (citing EPA Press Release dated 6/23/08).

11. The claims asserted in this Third-Party Complaint are brought pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.* (“Spill Act”), and the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 *et seq.*), arising from the environmental contamination of the Newark Bay Complex as a result of the actions and omissions of the Third-Party Defendants.

12. Given the multiple sources of the pollution, costs and damages that are the subject of Plaintiffs’ lawsuit, Maxus and Tierra seek to recover in this Third-Party Complaint, as in the

Counterclaim, *inter alia*, all or an equitable share of cleanup and removal costs, damages, or other loss or harm, if any, for which Maxus and Tierra may be held liable in this action.

13. In addition, with one caveat, Maxus and Tierra Maxus also seek to recover from the Third-Party Defendants (as from the Plaintiffs in the Counterclaim) an equitable share of the cleanup and removal costs that Maxus and Tierra have incurred or will incur in the future relating to the Newark Bay Complex, including the cleanup and removal costs incurred in implementing the 1994 AOC, the CPG AOCs, Newark Bay AOC, and the 2008 Removal Action AOC.

14. Pursuant to an agreement with the members of the CPG (identified in Exhibit A, hereto), Maxus and Tierra have agreed not to pursue claims against CPG members to recover costs incurred under the 1994 AOC, the CPG AOCs or Newark Bay AOC, to the extent such costs are attributable to the facilities identified in Exhibit B hereto, unless (among other possible conditions) a court order is issued that requires such claims be brought in this action or be waived. Accordingly, unless and until such an order is issued (or one of the other conditions occurs, which has not yet happened), Maxus and Tierra are currently precluded by contract from asserting the claims described in this paragraph against CPG members in this action, but expressly reserve all rights to pursue such claims as soon as the agreement with the CPG members permits.

### **THE PARTIES**

15. Third-Party Plaintiff Maxus Energy Corporation (“Maxus”) is a corporation organized under the laws of the State of Delaware and is a defendant in this action.

16. Third-Party Plaintiff Tierra Solutions, Inc. (“Tierra”) is a corporation organized under the laws of the State of Delaware and is a defendant in this action.

17. Third-Party Defendant TRMI-H LLC (“TRMI-H”) is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 6001 Bollinger Canyon Rd., San Ramon, CA 94583.

18. TRMI-H was previously known as Getty Refining and Marketing Corporation (“GRMC”) and Texaco Refining and Marketing, Inc. (“TRMI”).

19. Third-Party Defendant Power Test Realty Co., L.P. (“Power Test Realty”) is a limited partnership organized under the laws of the State of New York with its principal place of business at 125 Jericho Turnpike, Jericho, NY 11753.

20. Third-Party Defendant Getty Properties Corp. (“Getty Properties”) is a corporation organized under the laws of the State of Delaware with its principal place of business at 125 Jericho Turnpike, Jericho, NY 11753.

21. Getty Properties was previously known as Power Test Corporation (“PTC”).

22. Third-Party Defendant General Motors Corp. (“GM”) is a corporation organized under the laws of the State of Delaware with its principal place of business at 300 Renaissance Center, Detroit, MI 48265.

23. Third-Party Defendant Cytec Industries, Inc. (“Cytec”) is a corporation organized under the laws of the State of Delaware with its principal place of business at 5 Garrett Mountain Plaza, West Paterson, New Jersey, 07424.

24. Third-Party Defendant Legacy Vulcan Corp. (“Vulcan”) is a corporation organized under the laws of the State of New Jersey with its principal place of business at 1200 Urban Center Drive, Birmingham, AL 35242.

25. Prior to November 16, 2007, Vulcan was named Vulcan Materials Company.

### **THE NEWARK TERMINAL**

26. The Newark Terminal is located at 86 Doremus Avenue, Newark, New Jersey (the "Newark Terminal").

27. The Newark Terminal is bounded on the east by the Passaic River, on the west by Interstate 95, on the north and south by industrial properties, and is bisected by Doremus Avenue.

28. Since 1950, Newark Terminal has received, stored and dispensed petroleum products.

29. In 1950, GRMC, then a subsidiary of Getty Oil Co., acquired ownership and began operating the Newark Terminal.

30. In January 1984, Texaco, Inc. ("Texaco") acquired Getty Oil Co. and changed the name of GRMC to TRMI.

31. In January 1985, Texaco divested certain Getty assets, including the Newark Terminal. The Newark Terminal was sold to Power Test Realty, which still owns the Newark Terminal.

32. Also in January 1985, operations at the Newark Terminal were assumed by PTC, which is now known as Getty Properties and which operated the Newark Terminal until 1997.

33. As a result of its sale of the Newark Terminal, TRMI entered into an Administrative Consent Order with the NJDEP in January 1985 to remediate the Newark Terminal.

34. The Newark Terminal has an extensive history of spills and releases of hazardous substances, spanning at least the period from the 1960s to the 1990s.



35. Hazardous substances discharged directly into the Lower Passaic River during that period include various grades of gasoline, oil, detergents and diesel fuel.

36. Several chemicals detected at the Newark Terminal are associated with dioxin, including: chlorobenzene and hexachlorobenzene.

37. Hazardous substances have been detected in the soil at the Newark Terminal including: PCBs; DDT; TPHC; lead; benzene; toluene; methylene chloride; ethylbenzene; xylenes; naphthalene; benzo(b)fluoranthene; benzo(k)fluoranthene; benzo(a)pyrene; bis(2-ethylhexyl)phthalate; chrysene; n-nitrosodiphenylamine; pyrene; phenols; chromium; copper; zinc; and barium.

38. Hazardous substances have been detected in the groundwater at the Newark Terminal including: benzene; arsenic; chromium; phenol; zinc; lead; acetone; chlorobenzene; ethylbenzene; xylenes; toluene; benzo(b)fluoranthene; benzo(k)fluoranthene; benzo(a)pyrene; bis(2-ethylhexyl)phthalate; chrysene; 2,4-dimethylphenol; naphthalene; hexachlorobenzene; phenanthrene; pyrene; n-nitrosodiphenylamine; tetrachloroethene; methylene chloride; isophorone; 1,2-dichloroethylene; TPHC; tertiary butyl alcohol; and methyl tertiary-butyl ether.

39. Groundwater from the Newark Terminal discharges into the Lower Passaic River.

40. On September 19, 2003, the NJDEP issued the 2003 Directive in which NJDEP found that hazardous substances were discharged at the Newark Terminal and that those hazardous substances are emanating or have emanated into the Lower Passaic River. NJDEP further determined that Getty Properties and TRMI are persons, pursuant to the Spill Act, in any way responsible for the Hazardous Substances that were discharged at the Newark Terminal.

41. TRMI-H is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Newark Terminal and released into the Newark Bay Complex.

42. Power Test Realty is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Newark Terminal and released into the Newark Bay Complex.

43. Getty Properties is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Newark Terminal and released into the Newark Bay Complex.

#### **THE HYATT HARRISON PLANT**

44. In or about 1895, Hyatt Roller Bearing Company (“Hyatt Co.”) acquired property located at 700 Frank E. Rodgers Blvd. South, Harrison, New Jersey, also designated as Block 133, Lot 1 on the tax maps of the City of Harrison, Hudson County (the “Hyatt Harrison Plant”).

45. The Hyatt Harrison Plant is bounded on the north, south and east by railways and on the west by Frank E. Rodgers Blvd.

46. In 1916, GM acquired Hyatt Co., which became a division of GM in 1918.

47. Until 1970, Hyatt Co. and GM owned the Hyatt Harrison Plant where they produced roller bearings for use in machinery, railcars, automobiles and aircraft. Activities included metal working, machining, heat treatment, bearing assembly and fabrication, grinding and recovery of machining fluid and scrap.

48. In the 1958 to 1963 period alone, the Hyatt Harrison Plant purchased over one-quarter million pounds of hydraulic fluids that are used in heat intensive operations like those occurring at the Hyatt Harrison Plant and that contain heavy concentrations of PCBs.

49. Hyatt Co. and GM also handled a variety of petroleum products at the Hyatt Harrison Plant including quench oil, mineral oil, machine oil, fuel oil, diesel and gasoline, and hazardous substances such as ammonia and chlorinated solvents.

50. The activities of Hyatt Co. and GM at the Hyatt Harrison Plant produced wastes containing hazardous substances that included hydraulic, lubricating and soluble oils, scrap metal shavings or chips from the machining processes and sludge from the grinding solutions.

51. Hyatt Co. and GM regularly spilled PCB-laden fluids on the Hyatt Harrison Plant property and, thereby, contaminated the property with hazardous substances.

52. Hyatt Co. and GM used an on-site combined sewer/stormwater system ("CSS") at the Hyatt Harrison Plant that includes manholes and catchbasins.

53. During Hyatt Co. and GM operations, the CSS received direct discharges of industrial wastes containing hazardous substances and stormwater runoff containing hazardous substances.

54. The CSS also received effluent contaminated with hazardous substances from a waste storage area known as the "Chip Pit" which was used by Hyatt Co. and GM and contained discarded metal and bearings, railroad ties, electrical components and motor parts, chlorinated solvents, contaminated soil and rubble.

55. Hazardous substances detected in the Chip Pit include PCBs, volatile organic compounds such as cis-1,2-dichloroethylene and trichloroethylene, priority pollutant metals such as thallium, antimony and arsenic, and total petroleum hydrocarbons. These contaminants also discharged from the Chip Pit into the underlying soil and groundwater.

56. Hazardous substances detected in the CSS include: PCBs; total petroleum hydrocarbons; priority pollutant metals; volatile organic compounds; antimony; cadmium; chromium; copper, lead; nickel; silver; and zinc.

57. The CSS connects into the Middlesex Street Collection System (“MSCS”) of the Passaic Valley Sewerage Commissioners (“PVSC”).

58. The MSCS connects to an overflow chamber that discharges directly into the Passaic River during periods of rainfall.

59. Hazardous substances detected in the soil at the Hyatt Harrison Plant include: PCBs; volatile organic compounds; petroleum hydrocarbons; and priority pollutant metals.

60. Hazardous substances detected in the groundwater at the Hyatt Harrison Plant include: free-phase petroleum; chlorinated volatile organic compounds; priority pollutant metals; vinyl chloride; 1,1-dichloroethane; cis-1,2-dichloroethylene; 1,1,1 trichloroethane; benzene; arsenic; cadmium; nickel; tetrachloroethylene; trichloroethylene; 2-butanone; chloroform; lead; calcium; iron; and magnesium.

61. Upon information and belief, groundwater from the Hyatt Harrison Plant has infiltrated a PVSC sewer line under Frank E. Rodgers Boulevard, within the MSCS, which discharges directly into the Passaic River during periods of rainfall.

62. GM is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Hyatt Harrison Plant and released into the Newark Bay Complex.

### **THE WARNER PLANT**

63. In 1916, American Cyanamid Co. ("American Cyanamid") acquired ownership of a property located at 4900 Tremley Point Road, Linden, New Jersey, also designated as Block 587, Lot 8 on the tax maps of the City of Linden, Union County (the "Warner Plant").

64. The Warner Plant is bounded on the east by the Arthur Kill, on the south by the Rahway River and on the north and west by industrial properties.

65. In 1991, American Cyanamid consolidated its chemicals business including the Warner Plant into Cytec, its subsidiary.

66. In December 1993, Cytec became an independent entity and was no longer a subsidiary of American Cyanamid.

67. Upon information and belief, Cytec assumed the environmental liabilities associated with the Warner Plant that are the subject of this Third Party Complaint.

68. Cytec retained ownership of the Warner Plant until May 2000.

69. From 1916 to 1998, American Cyanamid and later Cytec manufactured a wide variety of chemicals containing hazardous substances at the Warner Plant, including: sulfuric acid; acrylamide; polyacrylamide; surfacants; water and wastewater treatment chemicals; paper and fabric treatment chemicals; mining and ore production chemicals; and non-persistent organophosphate insecticides.

70. Several chemicals handled at the Warner Plant are associated with dioxin, including: maleic anhydride; 2,4,5-trichlorophenol; chlorobenzene; and parathion.

71. A number of additional hazardous substances and materials containing hazardous substances were also handled at the Warner Plant, including: malathion; toluene; sodium cyanide; 1,1,1-trichloroethane; phenolics; cyanide; temephos; phorate; and cygon.

72. The Warner Plant has a history of spills and releases of hazardous substances, many directly into the Arthur Kill or the Rahway River in close proximity to the Arthur Kill.

73. As described in a September 1990 Administrative Consent Order between the NJDEP and American Cyanamid and an NJDEP site assessment, there were over thirty separate, identifiable spills and releases at the Warner Plant from 1975 to 1985. Hazardous substances were discharged directly into the Arthur Kill or the Rahway River in close proximity to the Arthur Kill during that period including: sulfuric and other acids; toluene; No. 6 fuel oil; acrylamide; sodium hydroxide; and malathion.

74. In addition, hazardous substances have been detected in the soil at the Warner Plant including: 4,4'-DDT; 4,4'-DDD; 4,4'-DDE; arsenic; copper; lead; and zinc.

75. Hazardous substances have been detected in the groundwater at the Warner Plant including: benzene; chlorobenzene; methylene chloride; acetone; carbon disulfide; xylenes; aluminum; arsenic; iron; lead; manganese and sodium.

76. Groundwater from the Warner Plant discharges into the Arthur Kill and the Rahway River in close proximity to the Arthur Kill.

77. Numerous outfalls from the Warner Plant stormwater system discharged directly into the Arthur Kill or the Rahway River in close proximity to the Arthur Kill.

78. Hazardous substances have been detected in the stormwater system at the Warner Plant including: chlorobenzene; phenolics; 1,1,1-trichloroethane; malathion; temephos; cygon; cytolane; copper; zinc; and cyanide.

79. Sediment in the Rahway River adjacent to the Warner Plant and in close proximity to the Arthur Kill has been found to have elevated levels of hazardous substances

including: methylene chloride, chlorobenzene, benzene, toluene, xylenes, DDT, DDD, DDE, antimony, cadmium, chromium, copper, lead, mercury, nickel, silver and zinc.

80. Cytec is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Warner Plant and released into the Newark Bay Complex.

#### **THE CYTEC LINDEN LANDFILL**

81. In the 1940’s, American Cyanamid acquired ownership of a property located at 3301B Tremley Point Road, Linden, New Jersey, also designated as Block 522, Lot 2 on the tax maps of the City of Linden, Union County (the “Cytec Linden Landfill”).

82. The Cytec Linden Landfill is bounded on the north and east by the Piles Creek, on the south by a warehouse owned by Cytec and on the west by industrial property.

83. Piles Creek is a tributary of the Arthur Kill.

84. American Cyanamid disposed of bulky dry hazardous wastes, dry nonhazardous chemicals, industrial wastes and liquid chemical wastes at the Cytec Linden Landfill, beginning in 1948 and concluding in 1980.

85. Cytec took ownership of the Cytec Linden Landfill when it became independent from American Cyanamid in 1993.

86. Upon information and belief, Cytec assumed all environmental liabilities associated with the Cytec Linden Landfill that are the subject of this Third Party Complaint.

87. Hazardous substances have been detected in the soil at the Cytec Linden Landfill including: 4,4’-DDD; arsenic; chromium; chrysene; benzo(k)fluoranthene; benzo(a)pyrene; indeno(1,2,3-cd)pyrene; and benzo(g,h,i)perylene.

88. Hazardous substances have been detected in the groundwater at the Cytec Linden Landfill including: malathion; mercury; arsenic; phenol; benzene; chlorobenzene; ethyl benzene; 2,4-dimethylphenol; acrolein and toluene.

89. Groundwater from the Cytec Linden Landfill discharges into the Piles Creek.

90. The Cytec Linden Landfill has a history of spills and releases of hazardous substances, some directly into the Piles Creek.

91. As described in a June 19, 1987 NJDEP Division of Hazardous Waste Management ("DHWM") Site Inspection and a March 22, 1991 NJDEP DHWM Preliminary Assessment, spills and releases from the Cytec Linden Landfill into the Piles Creek include: active seepage of black leachate on the northern face of the Cytec Linden Landfill into Piles Creek; white discharge containing malathion into a drainage ditch; and empty drums in contact with the Piles Creek.

92. Cytec is a "discharger" and/or a Person "in any way responsible" for the hazardous substances that were discharged at the Cytec Linden Landfill and released into the Newark Bay Complex.

#### **THE CYTEC CARTERET LANDFILL**

93. In 1939, American Cyanamid acquired ownership of a property designated as Block 9.03, Lot 21; Block 10, Lots 8, 9, 10, and 12-21; and Block 11.01, Lots 8, 10-14 and 28, on the tax maps of the Borough of Carteret, Middlesex County (the "Cytec Carteret Landfill").

94. The Cytec Carteret Landfill is bounded on the north by the Rahway River, approximately 2,000 feet before its confluence with the Arthur Kill, and on the south-west and south-east by wetlands and industrial sites.



95. Oyster Creek and Deep Creek flow through the eastern portion of the Cytec Carteret Landfill and Cross Creek is located on the western boundary – all three creeks discharge into the Rahway River.

96. From 1939 to 1973, American Cyanamid disposed of sludge wastes generated by production at the Warner Plant at the Cytec Carteret Landfill.

97. Sludge waste was transported from the Warner Plant to the Cytec Carteret Landfill by way of pipelines crossing the Rahway River.

98. Cytec assumed ownership of the Cytec Carteret Landfill when it became independent from American Cyanamid in 1993.

99. Upon information and belief, Cytec assumed all environmental liabilities associated with the Cytec Carteret Landfill that are the subject of this Third Party Complaint.

100. Cytec has transferred ownership of the Cytec Carteret Landfill to Carteret Development, LLC, a subsidiary of Cytec.

101. Hazardous substances have been detected in the soil at the Cytec Carteret Landfill including: complex cyanides; total cyanides; alpha-chlordane; dibenzofuran; phenanthrene; benzo(a)anthracene; pyrene; and chrysene.

102. Hazardous substances have been detected in the groundwater at the Cytec Carteret Landfill including: benzene; chlorobenzene; toluene; trichloroethylene; 1,1-dichloroethane; ethylbenzene; methylene chloride; isophorone; 2-chlorophenol; 2,4-dichlorophenol; naphthalene; nitrobenzene; cyanides; sulfates; chlorides; ammonia; iron; arsenic; cadmium; and phenol.

103. Groundwater from the Cytec Carteret Landfill directly or indirectly discharges into the Rahway River in close proximity to the Arthur Kill.

104. The Cytec Carteret Landfill has a history as a source of spills and releases of hazardous substances into the Rahway River or its tributaries.

105. As described in a March 15, 1993 memorandum from the NJDEP Division of Responsible Party Site Remediation, the spills and releases of hazardous substances from the Cytec Carteret Landfill include: overflow of waste sludge into the Rahway River from the pipelines carrying the sludge to the Cytec Carteret Landfill; erosion of the Cytec Carteret Landfill suspected of causing sludge to discharge into the Rahway River and its tributaries; and an outfall to the Rahway River from the Cytec Carteret Landfill that discharged cyanides, aluminum, arsenic, barium, cadmium, chromium, copper, lead, mercury, nickel, silver and zinc.

106. Cytec is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Cytec Carteret Landfill and released into the Newark Bay Complex.

#### **THE VULCAN PLANT**

107. In 1952, Kolker Chemical Corporation (“Kolker”) acquired ownership of a property located at 600 Doremus Avenue, Newark, New Jersey (the “Vulcan Plant”).

108. The Vulcan Plant is bounded on the east by the upper reaches of the Newark Bay, on the west by Doremus Avenue, and on the north and south by industrial properties.

109. In 1962, Kolker merged into Vulcan.

110. In 1974, Vulcan sold the Vulcan Plant.

111. From 1952 to 1962, Kolker produced industrial organic and inorganic chemicals, plasticizers and solvents at the Vulcan Plant.

112. Hazardous substances handled by Kolker at the Vulcan Plant include: chlorine; chloroform; methyl bromide; muriatic acid; methyl chloride; and methylene chloride.

113. From 1962 to 1975, Vulcan operated scrap steel and tin recovery processes at the Vulcan Plant.

114. Hazardous substances handled by Vulcan at the Vulcan Plant include: methyl alcohol; methylene chloride; methyl chloride; chloroform; chlorine; liquid bleach; hydrogen; hydrochloric acid; and sodium hydroxide.

115. Direct discharges of effluent into the Newark Bay by Kolker and Vulcan contained hazardous substances including zinc, lead, volatile organics and chlorinated hydrocarbons.

116. Hazardous substances have been detected in the soil at the Vulcan Plant including: PCBs; methylene chloride; 1,1-dichloroethane; chloroform; benzene; toluene; chlorobenzene; xylene; 1,3-dichlorobenzene; 1,4-dichlorobenzene; 1,2-dichlorobenzene; cadmium; and lead.

117. Hazardous substances have been detected in the groundwater at the Vulcan Plant including: benzene; ethyl benzene; toluene; 1,1,2-trichloroethane; chlorobenzene; xylene; methylene chloride; 1,1-dichloroethane; chloroform; vinyl chloride; 1,1,2,2-tetrachloroethane; 1,1,1-trichloroethane; acetone; carbon disulfide; 1,2-dichloroethane; carbon tetrachloride; and methyl chloride.

118. Groundwater from the Vulcan Plant discharges into the Newark Bay.

119. On August 13, 2004, the EPA issued a General Notice Letter to Vulcan Materials Company in which EPA stated its belief that hazardous substances were being released from the Vulcan Plant into the Lower Passaic River Study Area.

120. Vulcan is a “discharger” and/or a Person “in any way responsible” for the hazardous substances that were discharged at the Vulcan Plant and released into the Newark Bay Complex.

### **FIRST COUNT**

(New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a))

121. Maxus and Tierra repeat and incorporate Paragraphs 1 through 120 of this Third-Party Complaint by reference herein.

122. Pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 *et seq.*, each of the Third-Party Defendants is a discharger and/or “a person in any way responsible” for the discharge of hazardous substances into the Newark Bay Complex as set forth in detail above.

123. The New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f.a.(2)(a), provides that “[w]henver one or more dischargers or persons cleans up and removes a discharge of a hazardous substance, those dischargers and persons shall have a right of contribution against all other dischargers and persons in any way responsible for a discharged hazardous substance or other persons who are liable for the cost of the cleanup and removal of that discharge of a hazardous substance.”

124. Maxus and Tierra are entitled to contribution from each of the Third-Party Defendants to recover a proportionate share of any cleanup and removal costs or damages, if any, for which Maxus or Tierra may be found liable under the Spill Act in this lawsuit.

125. Maxus and Tierra have incurred and will continue to incur “cleanup and removal costs” within the meaning of the Spill Act, N.J.S.A. § 58:10-23.11b.d, in connection with implementing the 1994 AOC, the CPG AOCs, the Newark Bay AOC, and the 2008 Removal

Action AOC identified in ¶¶ 9, 10 of this Third-Party Complaint, and in otherwise addressing environmental contamination in the Newark Bay Complex.

126. Maxus and Tierra are entitled to contribution from the Third-Party Defendants to recover a proportionate share of cleanup and removal costs that the Maxus and Tierra have incurred and will incur in the future.

WHEREFORE, as for this Count I, Maxus and Tierra respectfully request:

a. a judgment finding each of the Third-Party Defendants liable for contribution under the Spill Act for an equitable share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable under the Spill Act in this lawsuit;

b. an order requiring each of the Third-Party Defendants to pay Maxus and Tierra an equitable share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable under the Spill Act in this lawsuit;

c. an order requiring each of the Third-Party Defendants to pay Maxus and Tierra an equitable share of cleanup and removal costs incurred and to be incurred by Maxus and Tierra in connection with the discharges of hazardous substances within the Newark Bay Complex, as well as pre-and post-judgment interest, except that, as explained in ¶ 14, above, Maxus and Tierra are not seeking to recover from any member of the CPG an equitable share of costs incurred under the 1994 AOC, the CPG AOCs or Newark Bay AOC, to the extent such costs are attributable to the facilities identified in Exhibit B hereto, but expressly reserve the right to seek such relief if the Court requires that such claims be brought in this action or be waived, or as soon as any of the other pre-conditions set forth in the agreement with the CPG for asserting such claims is satisfied;

d. all costs incurred and to be incurred by Maxus and Tierra in connection with this action; and

e. such other and further relief that the Court deems just and proper.

## **SECOND COUNT**

### **(Statutory Contribution)**

127. Maxus and Tierra repeat and incorporate Paragraphs 1 through 126 of this Third-Party Complaint by reference herein.

128. Pursuant to the New Jersey statutory provisions for contribution (including N.J.S.A. 2A:53A-1 et seq.), Maxus and Tierra are entitled to contribution from the Third-Party Defendants for all or a proportionate share of Response costs, cleanup and removal costs, damages, or other loss or harm, if any, for which Maxus and Tierra may be held liable, or which they have incurred or will incur in the future, relating to the Newark Bay Complex.

WHEREFORE, as for this Count II, Maxus and Tierra respectfully request:

a. a judgment finding each of the Third-Party Defendants liable for contribution for a pro rata share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable in this lawsuit;

b. an order requiring each of the Third-Party Defendants to pay Maxus and Tierra a pro rata share of any cleanup and removal costs, damages, or other form of monetary relief, if any, for which Maxus or Tierra may be found liable in this lawsuit;

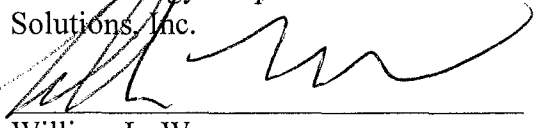
c. an order requiring each of the Third-Party Defendants to pay Maxus and Tierra a pro rata share of cleanup and removal costs incurred and to be incurred by Maxus and Tierra in connection the Newark Bay Complex, as well as pre-and post-judgment interest, except that, as explained in ¶ 14, above, Maxus and Tierra are not seeking to recover from any member of the CPG a pro rata share of costs incurred under the 1994 AOC, the CPG AOCs or Newark

Bay AOC, to the extent such costs are attributable to the facilities identified in Exhibit B hereto, but expressly reserve the right to seek such relief if the Court requires that such claims be brought in this action or be waived, or as soon as any of the other pre-conditions set forth in the agreement with the CPG for asserting such claims is satisfied;

d. all costs incurred and to be incurred by Maxus and Tierra in connection with this action; and

e. such other and further relief that the Court deems just and proper.

DRINKER BIDDLE & REATH LLP  
Attorneys for Defendants  
Maxus Energy Corporation and Tierra  
Solutions, Inc.

  
\_\_\_\_\_  
William L. Warren

Dated: February 4, 2009

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the Court is advised that William L. Warren is hereby designated as trial counsel for Maxus and Tierra as to the claims asserted in Third Party Complaint C.

DRINKER BIDDLE & REATH LLP  
Attorneys for Defendants  
Maxus Energy Corporation and Tierra  
Solutions, Inc.

  
\_\_\_\_\_  
William L. Warren

Dated: February 4, 2009

## EXHIBIT A

<b>MEMBERS OF THE LOWER PASSAIC RIVER STUDY AREA COOPERATING PARTIES GROUP COMPANY</b>	
1.	Alliance Chemical, Inc. on behalf of itself and Pfister Chemical, Inc.
2.	Arkema Inc.
3.	Ashland Inc.
4.	Atlantic Richfield Company
5.	BASF Corporation, on its own behalf and on behalf of BASF Catalysts
6.	Belleville Industrial Center
7.	Benjamin Moore & Co.
8.	Bristol Myers-Squibb
9.	CBS Corporation, a Delaware corporation f/k/a Viacom, Inc. successor by merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corp.
10.	Celanese Ltd.
11.	Chemtura Corporation and Raclaur, LLC as current and former owner of the property f/k/a Atlantic Industries
12.	Chevron Environmental Management Co.
13.	Coltec Industries
14.	Conopco, Inc. d/b/a Unilever (as successor to the Penick Corporation)
15.	Covanta Essex Company
16.	Croda Inc.
17.	DiLorenzo Properties Company on behalf of itself and the Goldman /Goldman/DiLorenzo Properties Partnerships
18.	Eden Woods Company
19.	E. I. du Pont de Nemours and Company



## EXHIBIT A

MEMBERS OF THE LOWER PASSAIC RIVER STUDY AREA COOPERATING PARTIES GROUP	
COMPANY	
20.	Elan Chemical Company
21.	El Paso (EPEC Polymers, Inc. on behalf of itself and EPEC Oil Company Liquidating Trust)
22.	Essex Chemical Corporation
23.	Flexon Industries Corp.
24.	Franklin-Burlington Plastics, Inc.
25.	Garfield Molding Co., Inc.
26.	General Electric Company
27.	General Motors Corporation
28.	Givaudan Fragrances Corporation (Fragrances North America)
29.	Goodrich Corporation on behalf of itself and Kalama Specialty Chemicals, Inc.
30.	Hercules Chemical Corp, Inc.
31.	Hess Corporation, on its own behalf and on behalf of Atlantic Richfield Company
32.	Hexcel Corporation
33.	Hoffmann-La Roche Inc. on its own behalf, and on behalf of its affiliate Roche Diagnostics
34.	Honeywell International Inc.
35.	ISP Chemicals LLC
36.	ITT Corporation
37.	Kao Brands Company
38.	Leemilt's Petroleum, Inc. (successor to Power Test of New Jersey, Inc.), on its behalf and on behalf of Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership

**EXHIBIT A**

<b>MEMBERS OF THE LOWER PASSAIC RIVER STUDY AREA COOPERATING PARTIES GROUP</b>	
<b>COMPANY</b>	
39.	Lucent Technologies Inc.
40.	Mallinckrodt, Inc.
41.	Millennium Chemicals, Inc. affiliated entities MHC, Inc. (on behalf of itself and Walter Kidde & Company, Inc.), Millennium Petrochemicals, Inc. (f/k/a Quantum Chemical Corporation) and Equistar Chemicals LP
42.	National-Standard LLC
43.	Newell Rubbermaid Inc., on behalf of itself and its wholly owned subsidiaries Goody Products, Inc., and Berol Corporation (as successor by merger to Faber-Castell Corporation)
44.	News Publishing Australia Ltd. (successor to Chris-Craft Industries)
45.	Novelis Corporation (f/k/a Alcan Aluminum Corporation)
46.	NPEC Inc.
47.	Otis Elevator Company
48.	Pfizer, Inc.
49.	Pharmacia Corporation (f/k/a Monsanto Company)
50.	PPG Industries, Inc.
51.	Public Service Electric and Gas Company
52.	Purdue Pharma Technologies, Inc.
53.	Quality Carriers, Inc. as successor to Chemical Leaman Tank Lines, Inc., its affiliates and parents
54.	Reichhold Chemicals, Inc.
55.	Revere Smelting & Refining Corporation
56.	Safety-Kleen Envirosystems Company by McKesson, and McKesson Corporation for itself

**EXHIBIT A**

<b>MEMBERS OF THE LOWER PASSAIC RIVER STUDY AREA COOPERATING PARTIES GROUP COMPANY</b>	
57.	Sequa Corporation
58.	Sun Chemical Corporation
59.	Tate & Lyle Ingredients Americas, Inc. (f/k/a A.E. Staley Manufacturing Company, including its former division Staley Chemical Company)
60.	Teva Pharmaceuticals USA Inc. (f/k/a Biocraft Laboratories, Inc.)
61.	Teval Corporation
62.	Textron Inc.
63.	The BOC Group, Inc.
64.	The Hartz Consumer Group, Inc., on behalf of The Hartz Mountain Corporation
65.	The Newark Group
66.	The Sherwin-Williams Company
67.	The Stanley Works
68.	Three County Volkswagen
69.	Tiffany & Co.
70.	Tierra Solutions, Inc. (Maxus & Occidental)
71.	Vertellus Specialties, Inc. f/k/a/ Reilly Industries, Inc.
72.	Vulcan Materials Company
73.	Wyeth, on behalf of Shulton, Inc.

**Exhibit B**  
**List of Covered Facilities**  
**Lower Passaic River Study Area site Cooperating Parties Group**

<b>[A] Group Member</b>	<b>[B] Facility Located Within LPRSA with Alleged Direct and/or Indirect Discharge Nexus (Approximate River Mile or Tributary Location)</b>
Alliance Chemical, Inc. (1)	33 Avenue P, Newark (RM 1.3)
Ashland Inc.	221 Foundry Street, Newark (RM 1.2) 400 Doremus Avenue., Newark (RM 0.7) 1106 Harrison Ave., Harrison (RM 3.4)
Atlantic Richfield Company	1111 Delancy St. Newark (RM 0) 88 Doremus Ave., Newark (RM 1.5)
BASF Corporation	50 Central Avenue, South Kearny (RM 1) 150 Wagaraw Rd., Hawthorne (LPR Above Dundee Dam) Gregg Street Route 17, Lodi (Saddle River, 3.8) 85 Third St., Clifton (Weasel Brook) 1 West Central Ave., East Newark (RM 6)
Belleville Industrial Center	681 Main St. Belleville (RM 9.8)
Benjamin Moore & Co.	134 Lister Ave., Newark (RM 3)
BOC Group	681 Main Street, Belleville (RM 9.5)
CBS Corporation	95 Orange St., Newark (RM 5.7) McArthur Avenue, Bloomfield (RM 9.5)
Celanese Ltd.	354 Doremus Ave., Newark (RM 0.8) 290 Ferry Street, Newark (RM 4.2)
Chevron Environmental Management Co.	86 Doremus Ave., Newark (RM 1.5) 354 Doremus Ave., Newark (RM 0.8) 80 Doremus Ave., Newark (RM 1.5)
Coltec Industries	1000 S 4 <sup>th</sup> St., Harison (RM 4.5)
Conopco, Inc. d/b/a Unilever	540 New York Ave., Lyndhurst (RM 11.5)
Covanta Essex Company	183 Raymond blvd., Newark (RM 1.8)
Croda Inc.	185 Foundry Street, Newark (RM 1.2)
DiLorenzo Properties Company (American Modern Metals)	44 Passaic Ave, Kearny (a/k/a 25 Belgrove Dr.) RM 6.1)
E. I. Du Pont (Pitt Consol)	191 Doremus Ave., Newark (RM 1.2)
Eden Wood Corp. (Whippany Paper Board)	1 Ackerman Ave., Clinton (RM 17)

**Exhibit B**  
**List of Covered Facilities**  
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El Paso (EPEC Polymers (3)	290 River Dr., Garfield (RM 15.9) 347 Main Ave., Belleville (RM 8) Foot of Harrison Ave., Harrison (RM 4) 678 Doremus Ave., Newark (RM 0)
Elan Chemical Company	268 Doremus Ave., Newark (RM 1)
Essex Chemical Corp.	330 Doremus Ave., Newark (RM 0.9) 268 Doremus Ave., Newark (RM 1)
Flexon Industries Corp.	666 Washington Ave., Belleville (RM 9.5)
Franklin-Burlington Plastics, Inc.	113 Passaic Ave., Kearny (RM 6.3)
Garfield Molding Co., Inc.	10 Midland Ave., Wallington (RM 14.5)
General Electric	415 South 5 <sup>th</sup> Street, Harrison (RM 5.2) McArthur Avenue, Bloomfield (RM 9.5)
General Motors Corporation	700 F. Rogers Blvd., Harrison (RM 5)
Givaudan Fragrances Corporation	125 Delawanna Ave., Clifton (RM 12.1)
Goodrich Corporation (thru El Paso) (3)	290 River Dr., Garfield (RM 15.9)
Hercules Chemical Company	111 South Street, Passaic (RM 15)
Hess Corporation	111 Delancy St., Newark (RM 0)
Hexcel Corporation	205 Main St., Lodi (Saddle River, 3.5)
Hoffmann-La Roche	340 Kingsland Avenue, Nutley (3rd River, 12) 1 Franklin Ave., Belleville (2 <sup>nd</sup> River, 2.5)
Honeywell (General Chemical)	65 Lodi and 8 <sup>th</sup> Streets, Passaic (RM 15)
ISP Chemicals LLC	11 William St., Belleville (RM 8.4)
ITT Corporation	100 Kingsland Rd., Clifton (RM 12)
Kao Brands Company (The Andrew Jergens Co.)	1 Franklin Ave., Belleville (2 <sup>nd</sup> River, 2.5)
Leemilt's Petroleum, Inc.	86 Doremus Ave., Newark (RM 1.5)
Legacy Site Services (Agent for Arkema)	25 Main Street, Belleville (RM 8)
Lucent Technologies Inc.	100 Central Ave., Kearny (RM 1.3)

**Exhibit B**  
**List of Covered Facilities**  
**Lower Passaic River Study Area site Cooperating Parties Group**

Mallinckrodt, Inc.	165-167 main St. Lodi (Saddle River, 3.5) 11 Williams St., Belleville (RM 8.4)
Millennium Chemical	300 Doremus Avenue, Newark (RM 0.9) 675 Main Street, Belleville (RM 9.5) 400 Doremus Ave., Newark (RM 0.7)
National-Standard (6)	714 Clifton Ave., Clifton (weasel Brook)
Newark Group, Inc	17 Blanchard Street, Newark (RM 1.8)
Newell Rubbermaid	969 Newark Turnpike, Kearny (RM 2.2) 41 Dickerson St., Newark (RM 5.9)
News Publishing Australia Ltd. (successor to Chris-Craft Industries)	100 Lister Ave., Newark (RM 3.1)
NPEC Inc. (Sterling Winthrop, Hilton-Davis)	120 Lister Ave., Newark (RM 3)
Novelis Corporation (f/k/a Alcan Aluminum Corporation)	Jacobus Ave., Kearny (RM 1.5)
Otis Elevator Company	1000 First St., Harrison (RM 4.9)
Pfizer, Inc.	230 Brighton Rd., Clifton (McDonald Brook)
Pharmacia (Monsanto Company)	Foot of Pennsylvania Ave., Kearny (RM 2.1)
PPG Industries, Inc.	29 Riverside Ave., Newark (RM 7)
PSEG Co./Public Service Enterprise Group, Inc.	155 Raymond Blvd., Newark (RM 1.8) 4 <sup>th</sup> St., Harrison (RM 4.7) Market Street Gas Works, Newark (RM 5.4) Front Street Gas Works, Newark (RM 5.8)
Purdue Pharma (Napp Technologies)	199 Main St., Lodi (Saddle River, 3.5)
Quality Distribution Inc. (Chemical Leaman)	80 Doremus Ave., Newark (RM 1.5) 10 Morton Street, East Rutherford (RM 13.1)
Raclaur/Chemtura (Atlantic Chemical)	10 Kingsland Road, Nutley (RM 11.9)
Reichhold Chemicals, Inc.	400 Doremus Ave., Newark (RM 0.7) 46 Albert Avenue, Newark (RM 3.3) 185 Foundry Street, Newark (RM 1.2)

**Exhibit B**  
**List of Covered Facilities**  
**Lower Passaic River Study Area site Cooperating Parties Group**

Revere Smelting & Refining	387 Avenue P, Newark (RM 0.9)
Safety-Kleen McKesson/Bristol-Myers Squibb	600 Doremus Ave., Newark (RM 0.3)
Sequa Corporation	185 Foundry Street, Newark (RM 1.2)
Sun Chemical Corporation	185 Foundry St., Newark (RM 1.2)
Tate & Lyle Ingredients Americas, Inc	320 Schulyer Ave., Kearney (RM 3.1)
Teva Pharmaceuticals USA Inc. (f/k/a Biocraft Laboratories, Inc.)	12 Industrial park, Waldwick (Saddle River, 13.5)
Teval Corporation	1000 S. 4 <sup>th</sup> St., Harrison (RM 4.5)
Textron Inc.	400 Doremus Ave., Newark (RM 0.7)
Tierra Solutions, Inc./Maxus/Occidental (4)	80 and 120 Lister Ave., Newark (RM 3.2)
Tiffany & Company	820 Highland Avenue, Newark (2nd River, 1)
The Hartz Consumer Group, Inc.,	700 F. Rogers Blvd., Harrison (RM 5)
The Sherwin-Williams Company	60 Lister Ave., Newark (RM 3.4)
The Stanley Works	140 Chapel St., Newark (RM 3.5)
Three County Volkswagen	701 Riverside Ave., Lundhurst (RM 10.1)
Vertellus Specialities Inc. f/k/a Reilly Industries, Inc.	191 Doremus Ave., Newark (RM 1.2)
Vulcan Materials Company	600 Doremus Ave., Newark (RM 0.3)
Wyeth.	697 Route 46, Clifton (Weasel Brook)

## CERTIFICATION OF SERVICE

SUSAN SCHLECK KLEINER, in lieu of oath or affidavit, certifies and says:

1. I am an attorney-at-law and an associate at the law firm of Drinker Biddle & Reath LLP, co-counsel for Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") in connection with the above-captioned matter.

2. I hereby certify that, on this date, Maxus and Tierra's Third Party Complaint "C" was served upon the Clerk of Court via hand delivery.

3. I hereby certify that, on this date, copies of Maxus and Tierra's Third Party Complaint "C" was served upon Honorable Donald S. Goldman, J.S.C. 410 Historic Courthouse, 470 Dr. Martin Luther King Jr., Blvd., Chambers 410, Newark, NJ 07102 and upon the following counsel of record via Federal Express:

<b>Attorneys for Plaintiff New Jersey Department of Environmental Protection, Commissioner, New Jersey Department of Environmental Protection, and Administrator, New Jersey Spill Compensation Fund:</b>	
ANNE MILGRAM ATTORNEY GENERAL OF NEW JERSEY John F. Dickinson, Jr., Esq. Deputy Attorney General Richard J. Hughes Justice Complex 25 Market Street, PO Box 093 Trenton, NJ 08625-0093	Michael Gordon, Esq. GORDON & GORDON 505 Morris Ave. Springfield, NJ 07081
William J. Jackson, Esq. JACKSON GILMOUR & DOBBS, PC 3900 Essex Lane, Ste. 700 Houston, TX 77027 <i>Special Counsel to the Attorney General</i> <i>(pro hac vice)</i>	



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(*pro hac vice*)

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

  
\_\_\_\_\_  
Susan Schleck Kleiner

Dated: February 4, 2009