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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, vs. OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., AND CLH HOLDINGS, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION -ESSEX COUNTY DOCKET NO. ESX-L-9868-05 **ANSWER AND SEPARATE DEFENSES OF DEFENDANTS MAXUS ENERGY CORPORATION AND TIERRA SOLUTIONS, INC.**

Defendants Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra"), by way of answer to the Second Amended Complaint and Demand for Trial by Jury ("Complaint") filed by plaintiffs New Jersey Department of Environmental Protection

("NJDEP"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and The Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the State" or "Plaintiffs") in the above-captioned matter, say and aver as follows:

I. ANSWER TO THE STATE'S ALLEGATIONS

Statement of the Case

1. Maxus and Tierra admit that TCDD, as well as many other pollutants, has been detected at various points within the lower 17 miles of the Passaic River, Newark Bay, the Hackensack River, the Arthur Kill, and the Kill Van Kull. Maxus and Tierra do not know to which "lower reaches" and "adjacent waters and sediments" the State intends to refer in ¶ 1 of the Complaint, and thus lack knowledge or information sufficient to form a belief as to the truth of the allegations made regarding such "lower reaches" and "adjacent waters and sediments" and, on this ground, deny such allegations. Maxus and Tierra deny the remaining allegations in ¶ 1 of the Complaint.

2. Maxus and Tierra deny the allegations made in ¶ 2 of the Complaint.

3. Maxus and Tierra deny the allegations made in the first and last sentences in ¶ 3 of the Complaint. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in the second and third sentences of ¶ 3 of the Complaint and, on this ground, deny those allegations. Maxus and Tierra admit that NJDEP has issued multiple fishing bans relating to the Newark Bay Complex, regarding multiple contaminants, the terms of which speak for themselves. Maxus and Tierra deny that such fishing bans were first implemented because of any TCDD contamination, and further deny that such fishing bans are attributable solely to TCDD contamination. Maxus and Tierra deny that the Defendants have

performed studies that show that crab and fish consumption in the Newark Bay Complex continues, but admit that Tierra provided financial support for a Creel/Angler Survey conducted on a 6-mile stretch of the lower Passaic River, the terms of which speak for themselves and demonstrated no continuing consumption of crabs.

4. Maxus and Tierra deny the allegations in ¶ 4 of the Complaint.

5. The allegations in ¶ 5 of the Complaint constitute conclusions of law or are a characterization of the State's own claims, to which no response is required. To the extent a response is deemed required, Maxus and Tierra admit that the State purports to bring an action on the grounds stated and to seek the relief requested. Maxus and Tierra deny that the State is entitled to such relief, and otherwise deny each and every remaining allegation in ¶ 5 of the Complaint.

6. The allegations made in ¶ 6 of the Complaint constitute conclusions of law or are a characterization of the State's own claims, to which no response is required. To the extent a response is deemed required, Maxus and Tierra admit that the State purports to bring an action on the grounds stated, that the State disavows asserting other types of claims, and that the State purports to "reserve" certain natural resource damage claims until some unspecified time "in the future." Maxus and Tierra deny that the State is entitled to any relief in this action, admit that the State has affirmatively disclaimed certain claims for relief, deny the legal efficacy of the State's unilateral attempt to "reserve" claims for the future, and otherwise deny any remaining allegations in ¶ 6 of the Complaint.

The Parties

7. Maxus and Tierra admit the allegations made in ¶ 7 of the Complaint.

8. Maxus and Tierra admit the allegations made in ¶ 8 of the Complaint.

9. Maxus and Tierra admit the allegations made in ¶ 9 of the Complaint.

10. Maxus and Tierra admit the allegations made in ¶ 10 of the Complaint.

11. Maxus and Tierra admit the allegations made in ¶ 11 of the Complaint.

12. Maxus and Tierra admit that Maxus is a corporation organized under the laws of the State of Delaware with its principal place of business located at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380. Maxus and Tierra admit that Maxus was formerly known as Diamond Shamrock Corporation ("DSC-II") and, before that, New Diamond Corporation, and that Maxus has been served and has appeared in this matter. Maxus and Tierra deny that Maxus is the same entity as, or the successor to, the Diamond Shamrock Corporation that is sometimes known as "DSC-I", and that is defined as "Old Diamond Shamrock" in the Complaint.

13. Maxus and Tierra admit that Tierra was formerly known as Diamond Shamrock Chemical Land Holdings, Inc. ("DSCLH"), and Chemical Land Holdings, Inc. ("CLH"), and that Tierra is a corporation organized under the laws of the State of Delaware. Maxus and Tierra admit that Tierra has a place of business located at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816, but deny that such location is Tierra's principal place of business. Maxus and Tierra admit that Tierra has been served and has appeared in this matter.

14. Maxus and Tierra admit that Repsol YPF, S.A. ("Repsol") is a Spanish corporation with its principal place of business located at Paseo de la Castellana, 278-280, 28046 Madrid, Spain, that Repsol has been served and has appeared in this matter for the limited purpose of challenging the assertion of personal jurisdiction over Repsol, and that Repsol has denied that it does business in New Jersey or is subject to the specific or general jurisdiction of the State. Maxus and Tierra deny the remaining allegations of ¶ 14 of the Complaint.

15. Maxus and Tierra admit that YPF, S.A. ("YPF") is an Argentinean corporation with its principal place of business located at Avenida Presidente Roque Saenz Pena, 777 C.P. 1364 Buenos Aires, Argentina, that YPF has been served and has appeared in this matter for the limited purpose of challenging the assertion of personal jurisdiction over YPF, and that YPF has denied that it does business in New Jersey or is subject to the specific or general jurisdiction of the State. Maxus and Tierra deny the remaining allegations in ¶ 15 of the Complaint.

16. Maxus and Tierra admit that YPH Holdings, Inc. ("YPFH"), is a Delaware corporation with its principal place of business located at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380, that YPFH has been served and has appeared in this matter for the limited purpose of challenging the assertion of personal jurisdiction over YPFH, and that YPFH has denied that it does business in New Jersey or is subject to the specific or general jurisdiction of the State. Maxus and Tierra deny that YPFH and its subsidiaries do business in New Jersey, but YPFH's subsidiary, Maxus, has not challenged the assertion of personal jurisdiction over Maxus in this case. Maxus and Tierra otherwise deny the remaining allegations in ¶ 16 of the Complaint.

17. Maxus and Tierra admit that CLH Holdings, Inc. ("CLHH"), is a Delaware corporation with its principal place of business located at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380, that CLHH has been served and has appeared in this matter for the limited purpose of challenging the assertion of personal jurisdiction over CLHH, and that CLHH has denied that it does business in New Jersey or is subject to the specific or general jurisdiction of the State. Maxus and Tierra admit that CLHH's subsidiary, Tierra, does business in New Jersey and has not challenged the assertion of personal jurisdiction over Tierra in this action. Maxus and Tierra deny the remaining allegations made in ¶ 17 of the Complaint.

Ownership & Operational History of the Lister Site

18. Maxus and Tierra deny the allegations made in ¶ 18 of the Complaint.

19. Maxus and Tierra admit that Kolker Chemical Works, Inc. ("Kolker"), leased a portion of the property located at 80 Lister Avenue in the Ironbound Section of Newark, Essex County, New Jersey from 1947 until 1950, at which time Kolker acquired the portion of the property at 80 Lister Avenue which it had previously leased. Maxus and Tierra admit that Kolker produced DDT and phenoxy herbicides at the location it leased and subsequently purchased. Maxus and Tierra admit that 80 Lister Avenue, together with 120 Lister Avenue, are collectively referred to in the Complaint as the "Lister Site." Maxus and Tierra admit that portions of the 80 and 120 Lister parcels are located on the banks of the Passaic River. Maxus and Tierra otherwise deny the allegations in ¶ 19 of the Complaint.

20. Maxus and Tierra admit that Diamond Alkali Company ("Diamond Alkali") acquired the stock of Kolker in 1951, and that Diamond Alkali owned and operated a portion of the 80 Lister Avenue property from 1955 until 1967. Maxus and Tierra admit that Diamond Alkali leased another portion of the 80 Lister Avenue property in 1957, and operated on the leased portion until 1967. Maxus and Tierra admit that Diamond Alkali merged with Shamrock Oil & Gas Company in 1967, and that the company's name was changed to Diamond Shamrock Corporation ("DSC-I"). Maxus and Tierra admit that DSC-I continued to operate on 80 Lister Avenue until August 1969, but deny the remaining allegations made in ¶ 20 of the Complaint.

21. Maxus and Tierra admit that, in 1971, DSC-I sold a portion of the 80 Lister Avenue property, as well as all personal property and improvements located at 80 Lister Avenue, to Chemicaland Corporation ("Chemicaland"), and further assigned to Chemicaland DSC-I's lease with Walter R. Ray Holding Co. Inc. for the remaining portion of the 80 Lister Avenue

property. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of, and on that basis deny, the allegations that (i) Chemicaland was created by and included former Old Diamond Shamrock managers; (ii) Chemicaland leased 80 Lister Avenue to Cloray NJ Corporation ("Cloray"), and (iii) Cloray was under the same management as Chemicaland. Maxus and Tierra admit that Chemicaland and/or Cloray attempted to manufacture specialty chemicals and herbicides, but lack knowledge or information sufficient to form a belief as to when or if such products were actually manufactured. Maxus and Tierra admit that DSC-I had a contract with Chemicaland for the formulation of an herbicide, but deny that pesticides and herbicides were manufactured at DSC-I's direction or ever delivered to DSC-I. Maxus and Tierra deny the allegations made in the last sentence in ¶ 21 of the Complaint and any remaining allegations.

22. Maxus and Tierra deny the allegations made in ¶ 22 of the Complaint.

23. Maxus and Tierra deny the allegations made in ¶ 23 of the Complaint.

24. Maxus and Tierra admit that TCDD was detected at 80 and 120 Lister Avenue in 1983. Maxus and Tierra admit that preliminary sampling results in 1984 indicated the presence of TCDD in a portion of the Passaic River, but lack knowledge or information sufficient to form a belief as to the truth of the allegation that TCDD was detected in the Passaic River in 1983. Maxus and Tierra do not know to which other "adjacent properties," if any, the State intends to refer, and thus lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in the first sentence of ¶ 24 of the Complaint and, on this ground, deny such allegations. Maxus and Tierra admit that New Diamond Corporation was incorporated in 1983 and became the non-operating holding company of DSC-I. Maxus and Tierra otherwise deny the remaining allegations made in ¶ 24 of the Complaint.

25. Maxus and Tierra admit that on September 1, 1983, DSC-I changed its name to Diamond Chemicals Company. Maxus and Tierra admit that on September 1, 1983, New Diamond Corporation changed its name to Diamond Shamrock Corporation ("DSC-II"). Maxus and Tierra admit that on October 26, 1983, Diamond Chemicals Company changed its name to Diamond Shamrock Chemicals Company ("DSCC"). Maxus and Tierra otherwise deny any remaining allegations made in ¶ 25 of the Complaint.

26. With respect to the allegations in the first sentence of ¶ 26 of the Complaint, Maxus and Tierra admit that, pursuant to a Stock Purchase Agreement dated September 4, 1986 ("1986 SPA"), DSC-II sold all of the stock of DSCC to Oxy-Diamond Alkali Corporation, an affiliate of OCC, that DSCC was renamed Occidental Electrochemicals Corporation on September 29, 1986, and that Occidental Electrochemicals Corporation was merged into OCC on or about November 30, 1987. Maxus and Tierra admit that, after the Lister Site came under regulatory control, DSCC acquired 120 Lister Avenue in 1984 and 80 Lister Avenue in 1986. Maxus and Tierra admit that Diamond Alkali/DSC-I had previously owned a portion of the Lister Site, and leased other portions. The remaining allegations in ¶ 26 of the Complaint state ultimate legal conclusions, regarding another defendant, to which no response by Maxus or Tierra is required. To the extent a response is deemed to be required, Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of such allegations and, on that ground, deny such allegations.

27. Maxus and Tierra admit that Diamond Alkali became DSC-I in 1968, that DSC-I became DSCC in 1983, that DSCC's stock was sold to Oxy-Diamond Alkali Corporation in 1986, that DSCC was renamed Occidental Electrochemicals Corporation in 1986, and that Occidental Electrochemicals Corporation was merged into OCC on or about November 30, 1987.

Maxus and Tierra do not know to which "transaction" the State is referring in the second sentence of ¶ 27 of the Complaint and, therefore, lack knowledge or information sufficient to form a belief as to the truth of such allegations. The allegations in ¶ 27 otherwise state legal conclusions regarding another defendant, to which no response by Maxus or Tierra is required.

28. Maxus and Tierra admit that, on April 28, 1987, DSC-II, formerly named New Diamond Corporation, changed its name to Maxus Energy Corporation. Maxus and Tierra deny the allegations in the second sentence of ¶ 28 of the Complaint. The third sentence in ¶ 28 of the Complaint characterizes statements allegedly made by OCC, which Maxus and Tierra deny. Maxus and Tierra deny that any corporate restructuring resulted in Maxus' assuming or retaining any liabilities associated with the ownership or operations of the Lister Site, or that Maxus otherwise has any liability to the State—joint, several, direct or otherwise. Insofar as the allegations in ¶ 28 of the Complaint state legal conclusions regarding OCC, no response by Maxus or Tierra is required. Maxus and Tierra deny any remaining allegations in ¶ 28 of the Complaint.

29. Maxus and Tierra admit that Diamond Shamrock Corporate Company ("Corporate Company") was created in 1983 as a subsidiary of DSCC, and later became a subsidiary of DSC-II, and provided various corporate services to and for DSC-II and DSC-II's other subsidiaries, including but not limited to DSCC. Maxus and Tierra admit that, under the state and federal regulators' direction and supervision, Corporate Company performed certain environmental response actions at the Lister Site on behalf of DSCC/OCC. Maxus and Tierra admit the allegations in the fourth sentences in ¶ 29 of the Complaint. Maxus and Tierra admit that Maxus assumed the liabilities of Corporate Company pursuant to an Agreement and Plan of Merger, the terms of which speak for themselves. Maxus and Tierra deny any remaining

allegations made in ¶ 29 of the Complaint, and specifically state that, since 1983, the regulators, not any private party, have "controlled" the Lister Site, the "environmental investigation" and all other activities at or in connection with the Lister Site.

30. Maxus and Tierra admit that the 1986 SPA includes indemnification provisions, the terms of which speak for themselves. Maxus and Tierra admit that Tierra was created to acquire title to certain real property, including the Lister Site, in order to facilitate environmental response actions, under the direction of regulators. Maxus and Tierra deny the remaining allegations made in ¶ 30.

31. Maxus and Tierra admit that Tierra has owned the Lister Site since August 28, 1986. Maxus and Tierra admit that Maxus is an indirect subsidiary of Repsol YPF, S.A. and YPF, and a direct subsidiary of YPFH. Maxus and Tierra deny all remaining allegations made in ¶ 31 of the Complaint.

32. Maxus and Tierra admit that, after TCDD was detected at the Lister Site in 1983, and the State had taken control of the Site and the response actions thereon, DSCC acquired title to 120 Lister Avenue in 1984 and to 80 Lister Avenue in 1986. Maxus and Tierra admit that, to facilitate continued environmental response actions after the 1986 SPA, DSCC transferred title to both 80 and 120 Lister Avenue to DSCLH, a real estate title-holding subsidiary of DSCC at the time, the name of which was subsequently changed to CLH, and then to Tierra. This transfer of title was consummated on August 28, 1986 for the consideration of ten dollars for each property. Maxus and Tierra admit that DSCLH (later CLH/Tierra) had knowledge of the presence of some hazardous substances on the Lister Site at the time it acquired such property and that Tierra continues to own the Lister Site today. Maxus and Tierra deny all remaining allegations made in ¶ 32 of the Complaint.

Alter-Ego/Cohesive Economic Unit

33. Maxus and Tierra deny the allegations made in ¶ 33 of the Complaint.

34. Maxus and Tierra admit that Maxus has fulfilled its obligations under the 1986 SPA. Maxus and Tierra admit that Tierra has owned the Lister Site since August 28, 1986. Maxus and Tierra deny that Maxus was Tierra's parent company. Maxus and Tierra admit that Tierra (previously known as DSCLH/CLH) was created to acquire title to certain real estate, including the Lister Site. Maxus and Tierra deny the remaining allegations in ¶ 34 of the Complaint.

35. Maxus and Tierra deny that they are or ever have been alter egos of one another. Maxus and Tierra do not know to what "role" the State refers in the allegations in the first sentence of ¶ 35 of the Complaint and, on this ground, deny the allegation that "Maxus' role expanded." Maxus and Tierra admit that YPF was formerly a governmental entity of the Republic of Argentina involved in the oil and gas business, and that YPF acquired the stock of Maxus in 1995 for approximately $760 million, and agreed to guarantee approximately $1 billion of Maxus' third party debt. Maxus and Tierra deny that YPF's acquisition of the stock of Maxus provided YPF with a strong presence in the United States or New Jersey. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in ¶ 35 of the Complaint and, on this ground, deny such allegations.

36. Maxus and Tierra deny the allegations made in ¶ 36 of the Complaint.

37. Maxus and Tierra admit that Maxus is a subsidiary of YPFH, which is a subsidiary of YPF. Maxus and Tierra admit that Tierra is a subsidiary of CLHH, which is a subsidiary of YPFH. Maxus and Tierra admit that YPFH and CLHH are Delaware corporations with their principal places of business in Texas. Maxus and Tierra deny that any actions were

taken "to move" away from Maxus any "liabilities," environmental or otherwise. Maxus denies that it has ever had any direct "environmental liabilities" associated with the former operations of Diamond Alkali/DSC-I/DSCC, and denies that it ever sought to "move" any alleged contractual liabilities under the 1986 SPA. Maxus and Tierra do not know to which "certain income-producing assets" the State is referring in this paragraph, but denies that Maxus ever transferred any assets without receiving fair value in return. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in ¶ 37 of the Complaint and, on this ground, deny such allegations.

38. Maxus and Tierra admit that Tierra (previously known as DSCLH/CLH) was a direct subsidiary of Corporate Company and became a direct subsidiary of CLHH in 1996. Maxus and Tierra admit that they entered into an Assumption Agreement in 1996, pursuant to which Tierra agreed to perform certain of Maxus' obligations under the 1986 SPA, the terms of which Assumption Agreement speak for themselves. Maxus and Tierra deny the remaining allegations made in ¶ 38 of the Complaint.

39. Maxus and Tierra admit that YPF, YPF International Ltd., YPFH, CLHH, Maxus, and Tierra (then known as Chemical Land Holdings, Inc.) entered into a Contribution Agreement in 1996 ("Contribution Agreement"), which provided for capital contributions to enable Tierra to perform obligations under the Assumption Agreement. The terms of the Contribution Agreement and Assumption Agreement speak for themselves. Maxus and Tierra deny the remaining allegations made in ¶ 39 of the Complaint.

40. The allegations in the first and third sentences in ¶ 40 of the Complaint purport to characterize the terms of the Contribution Agreement, which speak for themselves. Maxus and Tierra admit that the amount of the reserves booked by Maxus at the time the Contribution

Agreement was executed was considered in establishing the "Assumed Liability Accrued Amount" referenced in the Contribution Agreement. Maxus and Tierra deny all remaining allegations made in ¶ 40 of the Complaint.

41. Maxus and Tierra deny the allegations made in ¶ 41 of the Complaint.

42. Maxus and Tierra admit that Maxus Indonesia, Inc., was a wholly-owned subsidiary of Maxus in 1996, and that Maxus Indonesia, Inc., owned the stock of YPF Java Baratlaut, B.V., and all of the limited liability company interest in Maxus Southeast Sumatra, LLC in 1997. Maxus and Tierra admit that Maxus' records indicate that Maxus' financial advisor reported to Maxus in 1995 that a party had made an offer to purchase Maxus' "Indonesia properties" for $585 million. Maxus and Tierra admit that Maxus' management and financial advisor believed the $585 million proposed purchase price was substantially below the valuation placed on those properties by Maxus' management and financial advisor at that time. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in the fourth sentence of ¶ 42 of the Complaint. Maxus and Tierra admit that Maxus Indonesia, Inc., sold the stock of YPF Java Baratlaut, B.V., a note, and the limited liability interest in Maxus Southeast Sumatra, LLC for in excess of $505 million (subject to adjustment as stated in the Purchase and Sale Agreement) to YPF International Ltd. on December 31, 1997. Maxus and Tierra admit that the purchase price of the note and the shares of YPF Java Baratlaut, B.V. was adjusted in 1998 and that the purchase price for the stock of YPF Java Baratlaut, B.V., a note, and the limited liability interest in Maxus Southeast Sumatra, LLC was adjusted. Maxus and Tierra deny the remaining allegations made in ¶ 42 of the Complaint.

43. Maxus and Tierra deny the allegations made in the first sentence of ¶ 43 of the Complaint. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the

truth of the allegations made in the second sentence of ¶ 43 of the Complaint and, on this ground, deny such allegations. Maxus and Tierra admit that Maxus International Energy Company sold the stock of YPF, Ecuador, Inc. to YPF International Ltd. for in excess of $183 million, pursuant to a Stock Purchase and Sale Agreement dated as of December 31, 1997, the terms of which speak for themselves. Maxus and Tierra deny the remaining allegations made in ¶ 43 of the Complaint.

44. Maxus and Tierra admit that Maxus Indonesia, Inc., and Maxus Corporate Company were merged into Maxus in 1998. Maxus and Tierra admit that Mr. David Wadsworth executed the Agreement and Plan of Merger dated as of December 14, 1998 as vice-president of each of the parties to the agreement and that Mr. H.R. Smith executed the certificates of the secretary adopting the agreement as secretary to each of the parties to the agreement. Maxus and Tierra admit that in 1998, Mr. Wadsworth was a vice-president of YPFH and CLHH and that Mr. H.R. Smith was a secretary of YPFH, CLHH, and Tierra. Maxus and Tierra deny any remaining allegations made in ¶ 44 of the Complaint.

45. Maxus and Tierra admit that by 2001, the income produced by Maxus' non-cash assets was insufficient to fund all of Maxus' operations and liabilities, and Maxus used available cash to cover the shortfall. Maxus and Tierra deny any and all remaining allegations made in ¶ 45 of the Complaint.

46. Maxus and Tierra admit that YPF, S.A. provided a self-guarantee on behalf of Maxus in 2002 and 2003 for certain chromium sites in New Jersey. Maxus and Tierra deny the remaining allegations made in ¶ 46 of the Complaint.

47. Maxus and Tierra admit that, in January 2001, Maxus and Repsol International Finance B.V., not Repsol, entered into a $325 Million Credit Facility Agreement, the terms of

which speak for themselves. Maxus and Tierra admit that YPF, while observing all corporate formalities, has from time to time provided funds to YPFH, which funds have ultimately been used by Maxus and Tierra. Maxus and Tierra deny the remaining allegations made in ¶ 47 of the Complaint.

48. Maxus and Tierra admit that YPFH is an U.S.-based subsidiary of YPF. Maxus and Tierra admit that YPFH is a holding company that owns the stock of Maxus and CLHH. Maxus and Tierra admit that CLHH is a holding company that owns the stock of Tierra. Maxus and Tierra admit that YPFH and YPF entered into a Credit Contract effective August 1, 2005 ("Credit Contract") providing for a credit facility in an amount up to $35 million as stated in the Credit Contract. Maxus and Tierra admit that the Credit Contract was amended three times and provided for a credit facility in an amount up to $190 million, as stated in the Third Amendment to the Credit Contract effective May 3, 2006. Maxus and Tierra admit that the credit facility under the Credit Contract is unsecured. Maxus and Tierra admit that in connection with the Deloitte & Touche LLP's ("Deloitte & Touche") Independent Accountants' Review Report of the Consolidated Financial Statements of YPFH and Subsidiaries as of March 31, 2006 and December 31, 2005 and for the Three-Month Periods Ended March 31, 2006 and 2005, Deloitte & Touche stated that certain financial uncertainties would raise substantial doubt as to YPFH's ability to continue as a going concern absent the support letter provided by YPF. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the allegation that Deloitte & Touche was YPF's auditor, and on this ground, deny such allegation. Maxus and Tierra deny the remaining allegations made in ¶ 48 of the Complaint.

49. Maxus and Tierra admit that YPFH and CLHH do not have any employees, but deny that those companies have no operations; they operate as shareholders of other companies.

Maxus and Tierra admit that, strictly speaking, Tierra currently has no "income" from "operations," but Tierra has always received all the funding it needs in consideration for the services its performs on Maxus' behalf under the Assumption Agreement. Tierra has also received, through cost recovery litigation and/or settlement agreements, contributions from potentially responsible parties for environmental response costs that Tierra incurs as part of its operations. Maxus and Tierra admit that, on a monthly basis, Maxus and Tierra previously submitted six-month cash-need forecasts, which were transmitted to YPF. Currently, Tierra and Maxus no longer submit such monthly forecasts to YPF. Maxus and Tierra deny all remaining allegations made in ¶ 49 of the Complaint.

50. Maxus and Tierra do not know to which officers and directors or to which years the State is referring, and thus lack knowledge or information sufficient to form a belief as to the allegations made in ¶ 50 of the Complaint, and on this ground deny such allegations.

51. Maxus and Tierra admit the allegations made in the first sentence of ¶ 51 of the Complaint and deny the remaining allegations made in ¶ 51 of the Complaint.

52. Maxus and Tierra deny the allegations made in ¶ 52 of the Complaint.

53. Maxus and Tierra deny allegations made in ¶ 53 of the Complaint.

Hazardous Substances Produced at the Lister Site

54. Maxus and Tierra deny the allegations made in the first sentence of ¶ 54 of the Complaint. Maxus and Tierra admit that Diamond Alkali/DSC-I manufactured agricultural chemicals at a portion of the Lister Site, including DDT and phenoxy herbicides, at various times during the period of 1955 until 1969. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 54 of the Complaint concerning when DDT production began, and on this ground deny such allegations. Maxus and

Tierra admit that DDT was produced at a portion of 80 Lister Avenue until similar operations were commenced at Diamond Alkali's Greens Bayou Plant in Houston, Texas, in the late-1950s. Maxus and Tierra admit that hazardous substances were detected at the Greens Bayou Plant and otherwise deny the remaining allegations made in ¶ 54 of the Complaint.

55. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 55 of the Complaint regarding when production of phenoxy herbicides commenced at a portion of 80 Lister Avenue, and on this ground deny such allegations. Maxus and Tierra admit that the production of phenoxy herbicides at 80 Lister Avenue by DSC-I ceased by no later than August 1969. Maxus and Tierra admit that both 2,4-dichlorophenoxyacetic acid ("2,4-D") and 2,4,5-trychlorophenoxyacetic acid ("2,4,5-T") were manufactured at the 80 Lister Avenue parcel. Maxus and Tierra deny that such products were ever manufactured at 120 Lister Avenue. Maxus and Tierra admit that TCDD is a form of dioxin that may be toxic at certain levels for certain organisms, and is a byproduct of, among many other things, the 2,4,5-T process. Maxus and Tierra deny any remaining allegations made in ¶ 55 of the Complaint.

56. Maxus and Tierra do not know what "other constituents" the State intends to refer to in ¶ 56 of the Complaint and, on this ground, deny the allegations concerning such "other constituents." Maxus and Tierra admit that DDT, 2,4-D, and 2,4,5-T were produced at the 80 Lister Avenue parcel, and that TCDD was a byproduct of the 2,4,5-T process, but deny that such substances were produced at the 120 Lister Avenue parcel. Maxus and Tierra admit that DDT, 2,4-D, 2,4,5-T and TCDD are on the list of hazardous substances adopted by United States Environmental Protection Agency ("USEPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and, therefore, fall within the definition of

"hazardous substances" in N.J.S.A. 58:10-23.11b. Maxus and Tierra deny any remaining allegations of ¶ 56 of the Complaint.

Operations and Practices at the Lister Site

57. Maxus and Tierra admit that the State purports to quote portions of the opinion in Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167, 215-16 (App. Div, 1992) ("Aetna Opinion"), and state that the terms of that opinion speak for themselves. Maxus and Tierra otherwise deny the allegations made in ¶ 57 of the Complaint.

58. Maxus and Tierra admit that the State purports to characterize portions of the Aetna Opinion and state that the terms of that opinion speak for themselves.

59. Maxus and Tierra deny the allegations made in the first sentence in ¶ 59 of the Complaint. Maxus and Tierra do not know to which records the State intends to refer in the second sentence of ¶ 59, and thus lack knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, on this ground, deny such allegations.

60. Maxus and Tierra deny the allegations made in the first sentence in ¶ 60 of the Complaint. Maxus and Tierra admit that the State purports to characterize portions of the Aetna Opinion in the remaining allegations made in ¶ 60 and state that the terms of the Aetna Opinion speak for themselves.

61. Maxus and Tierra admit that DSC-I ceased production at 80 Lister Avenue in 1969. Maxus and Tierra admit that, in 1971, DSC-I sold a portion of 80 Lister Avenue, and assigned the lease to another portion of 80 Lister Avenue. Maxus and Tierra otherwise deny the remaining allegations made in ¶ 61 of the Complaint.

62. Maxus and Tierra admit that TCDD was detected in the soil and groundwater at the 80 Lister Avenue parcel and in the soil at the 120 Lister Avenue parcel. Maxus and Tierra

admit that TCDD has been detected in portions of the Newark Bay Complex. Maxus and Tierra deny the remaining allegations made in ¶ 62 of the Complaint.

63. Maxus and Tierra admit that the State purports to characterize portions of the Aetna Opinion in the first sentence in ¶ 63 of the Complaint and state that the terms of the Aetna Opinion speak for themselves. Maxus and Tierra deny the remaining allegations made in ¶ 63 of the Complaint.

64. Maxus and Tierra admit that Maxus brought suit against the United States in August 1992 seeking recovery of past and future response costs and contribution for approximately $31.5 million in remedial costs that Maxus had already expended in cleanup activities conducted on behalf of OCC. Maxus and Tierra admit that a decision was rendered in the matter in 1995. Maxus and Tierra deny the remaining allegations made in ¶ 64 of the Complaint.

65. The allegations made in the first sentence of ¶ 65 of the Complaint are denied insofar as they are intended to apply to Maxus. Otherwise, the allegations in the first sentence state ultimate legal conclusions, regarding another defendant, to which no response is required by Maxus or Tierra. Maxus and Tierra deny the allegations in the second sentence of ¶ 65.

66. Maxus and Tierra deny the allegations made in ¶ 66 of the Complaint.

The Regulatory History

67. Maxus and Tierra admit that the EPA issued a National Dioxin Strategy memorandum in 1983, the terms of which speak for themselves. Maxus and Tierra otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 67 and, on this ground, deny such allegations.

68. Maxus and Tierra deny that TCDD was detected at 120 Lister Avenue prior to the issuance of Executive Order 40, but admit that such order was issued and that the terms of such order speak for themselves. Maxus and Tierra admit that NJDEP issued an order dated June 13, 1983 to DSC-I relating to 80 Lister Avenue, the terms of which speak for themselves. Maxus and Tierra admit that the orders referenced in the third sentence of ¶ 68 of the Complaint were entered into between NJDEP, DSCC, and other parties, the terms of which speak for themselves. Maxus and Tierra deny any remaining allegations made in ¶ 68 of the Complaint.

69. Maxus and Tierra admit that EPA issued a Record of Decision ("ROD") in 1987, which set forth an interim remedy for 80 Lister Avenue. Maxus and Tierra admit that OCC entered into a Consent Decree in 1990 with EPA and NJDEP to implement the ROD, and that Tierra was also a signatory to the Consent Decree, but only for the limited purpose of allowing access to the Lister Site, to which Tierra held title, to facilitate remediation. Maxus and Tierra admit that, on OCC's behalf, Maxus personnel (up to 1996) and Tierra personnel (thereafter) submitted designs for the interim remedy, that construction of the cap was completed in 2001, that groundwater treatment operations commenced in 2001, and that achievement of the design goal of hydraulic control was certified completed in 2004. Maxus and Tierra admit that, under the terms of the 1990 Consent Decree, the completed interim remedy at the Lister Site is to be re-evaluated every two years to determine if it remains protective of human health and the environment and that, to date, regulatory officials have not determined otherwise. Maxus and Tierra deny any remaining allegations made in ¶ 69 of the Complaint.

70. Maxus and Tierra deny that Tierra executed the April 20, 1994 administrative order on consent ("1994 AOC") referenced in ¶ 70 of the Complaint, but admit that OCC executed the 1994 AOC, the terms of which speak for themselves. Maxus and Tierra admit that,

from 1994 until 1996, Maxus would have been implementing the 1994 AOC on OCC's behalf, and that Tierra agreed in a contract with Maxus in 1996 to henceforth undertake to implement the 1994 AOC on OCC's behalf.

71. Maxus and Tierra admit that OCC executed the 1994 AOC, thereby agreeing to undertake a remedial investigation and feasibility study of the lower six miles of the Passaic River, as set forth by the terms of the 1994 AOC. Maxus and Tierra admit that, from 1994 until 1996, Maxus would have been implementing the 1994 AOC on OCC's behalf, and that Tierra agreed in a contract with Maxus in 1996 to henceforth undertake to implement the 1994 AOC on OCC's behalf. Maxus and Tierra admit that the 1994 AOC has not been completed because it was suspended by USEPA when USEPA determined to expand the investigation to encompass the lower seventeen miles of the Passaic River. Maxus and Tierra deny the remaining allegations made in ¶ 71 of the Complaint.

72. Maxus and Tierra deny the allegations made in the first and second sentences of ¶ 72 of the Complaint. Maxus and Tierra do not know to which map or map s the State is referring in the third sentence of ¶ 72 and, therefore, lack knowledge or information sufficient to form a belief as to the truth of the allegations and, on this ground, deny such allegations.

73. Maxus and Tierra admit that EPA stated that it had concerns regarding a work plan for a creel/angler survey that EPA had long asked Tierra to conduct, but later agreed to consider a report of the results of the survey after acknowledging that Tierra had made improvements to the work plan. Maxus and Tierra otherwise deny the allegations made in ¶ 73 of the Complaint.

74. Maxus and Tierra deny the allegations made in ¶ 74 of the Complaint.

75. Maxus and Tierra deny the allegations made in ¶ 75 of the Complaint.

76. Maxus and Tierra admit that, in a letter dated January 30, 2001, USEPA directed Tierra to suspend certain work under the 1994 AOC, but otherwise deny the allegations in the first sentence of ¶ 76. Maxus and Tierra admit USEPA entered into an AOC in June 2004 with OCC and some 30 other parties to provide $10 million in funding for an expanded remedial investigation and feasibility study within the lower 17 miles of the Passaic River ("2004 Funding AOC"), which was later amended to include additional parties. Maxus and Tierra admit that the United States Army Corps of Engineers ("USACE") and the State of New Jersey agreed to fund $9 million of the cost of the 17-mile study, but lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in the third sentence of ¶ 76 and, on this ground, deny such allegations.

77. Maxus and Tierra admit that a notice of a Citizen's Suit for the TCDD impacts in Newark Bay was filed. Maxus and Tierra admit that OCC entered an AOC with USEPA on February 13, 2004 ("Newark Bay AOC"), to conduct a remedial investigation and feasibility study of Newark Bay, the terms of which speak for themselves. Maxus and Tierra admit that, by law, USEPA's decision to issue the Newark Bay AOC barred the aforementioned Citizen's Suit. Maxus and Tierra admit that USEPA has maintained oversight and control over the Newark Bay investigation conducted pursuant to the Newark Bay AOC. Maxus and Tierra otherwise deny the remaining allegations made in ¶ 77 of the Complaint.

78. Maxus and Tierra admit the DEP issued a directive to OCC, Maxus, Tierra, and multiple other parties on September 19, 2003, the terms of which speak for themselves.

79. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 79 of the Complaint and, on this ground, deny such allegations.

80. Maxus and Tierra do not know to which sampling results or to which investigations the State intends to refer to in ¶ 80 of the Complaint, and, thus, lack knowledge or information sufficient to form a belief as to the truth of the allegations and, on this ground, deny such allegations.

81. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in the first sentence of ¶ 81 of the Complaint and, on this ground, deny such allegations. The allegations made in the second sentence of ¶ 81 are a characterization of the State's claims, to which no response is required. To the extent a response is deemed required, Maxus and Tierra admit that the State disavows asserting natural resource damage claims in this action, and purports to "reserve" such claims until some unspecified time "in the future," but Maxus and Tierra deny the legal efficacy of the State's unilateral attempt to "reserve" such claims for the future and otherwise deny the remaining allegations of ¶ 81.

Contamination of the Newark Bay Complex

82. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in the first sentence of ¶ 82 of the Complaint and, on this ground, deny such allegations. Maxus and Tierra admit that TCDD can remain in the environment after it has been released and may bioaccumulate and/or biomagnify in the food chain. Maxus and Tierra do not know what the State means when it refers to bioaccumulation and/or biomagnification in "the environment" and, on this ground, deny this allegation. Maxus and Tierra deny the remaining allegations in¶ 82 of the Complaint.

83. Maxus and Tierra deny that "TCDD detected in the Newark Bay Complex is clearly traceable to the Lister Site," or that there is "a clear TCDD signal in the Passaic River, Newark Bay and beyond, which is unmistakably tied to the Lister Site and the actions of

Defendants." Maxus and Tierra deny that any TCDD was discharged from 80 Lister Avenue after 1969. Maxus and Tierra lack knowledge or information sufficient to admit or deny whether discharges of TCDD can be "segregated" by date of discharge, and otherwise deny any remaining allegations made in ¶ 83 of the Complaint.

84. Maxus and Tierra deny the allegations made in ¶ 84 of the Complaint.

First Count - Spill Act

85. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in Paragraphs 1 through 84 above, as if fully recited herein.

86. The allegations made in ¶ 86 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Maxus and Tierra admit that they are persons within the meaning of N.J.S.A. 58:10-23.11b, but deny that they have any liability in this action.

87. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and, on this ground, deny such allegations.

88. Maxus and Tierra deny that any damages caused by any alleged "discharge of TCDD into the Newark Bay Complex" include "damages to and loss of value of real or personal property and the lost income associated therewith." Maxus and Tierra otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and, on this ground, deny such allegations.

89. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in this paragraph and, on this ground, deny such allegations.

90. The allegations made in ¶ 90 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Maxus and Tierra

deny that all of the costs and damages sought in this case are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

91. Maxus and Tierra deny the allegations in ¶ 91 of the Complaint.

92. Maxus and Tierra deny the allegations made in ¶ 92 of the Complaint.

93. The allegations made in ¶ 93 of the Complaint recite the State's characterization of a statute and/or conclusions of law to which no response is required. To the extent a response is deemed required, Maxus and Tierra deny that the State is entitled to the relief requested in ¶ 93 of the Complaint, including subparagraphs a-f.

Second Count - Water Pollution Control Act

94. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in ¶¶ 1 through 93 above, as if fully recited herein.

95. The allegations made in ¶ 95 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Maxus and Tierra admit that they are persons within the meaning of N.J.S.A. 58:10A-3.l, but deny that they have any liability in this action.

96. Maxus and Tierra deny the allegations made in ¶ 96 of the Complaint.

97. Maxus and Tierra deny that any Defendant violated the provisions of the Water Pollution Control Act, do not know to which "predecessors" the State is referring, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations made in ¶ 97 of the Complaint and, on this ground, deny such allegations.

98. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 98 of the Complaint and, on this ground, deny such allegations.

99. Maxus and Tierra lack knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 99 of the Complaint and, on this ground, deny such allegations.

100. The allegations made in ¶ 100 of the Complaint recite the State's characterization of a statute and/or constitute conclusions of law to which no response is required. To the extent a response is deemed required, Maxus and Tierra deny that the State is entitled to the relief requested in ¶ 100 of the Complaint, including subparagraphs a-e.

Third Count - Public Nuisance

101. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in ¶¶ 1 through 100 above, as if fully recited herein.

102. The allegations made in ¶ 102 of the Complaint constitute conclusions of law to which no response is required.

103. Maxus and Tierra deny the allegations in ¶ 103 of the Complaint.

104. Maxus and Tierra deny the allegations made in ¶ 104 of the Complaint.

105. Maxus and Tierra deny the allegations made in ¶ 105 of the Complaint.

106. Maxus and Tierra deny the allegations made in ¶ 106 of the Complaint.

107. Maxus and Tierra deny the allegations made in ¶ 107 of the Complaint.

108. Maxus and Tierra deny the allegations made in ¶ 108 of the Complaint.

109. Maxus and Tierra deny the allegations of this paragraph and deny that the State is entitled to the relief requested in subparagraphs a-f of ¶ 109 of the Complaint.

Fourth Count - Trespass

110. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in ¶¶ 1 through 109 above, as if fully recited herein.

111. Maxus and Tierra deny the allegations of ¶ 111 of the Complaint.

112. Maxus and Tierra deny the allegations of ¶ 112 of the Complaint.

113. Maxus and Tierra deny the allegations of this paragraph and deny that the State is entitled to the relief requested in subparagraphs a-f of ¶ 113 of the Complaint.

Fifth Count - Strict Liability

114. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in ¶¶ 1 through 113 above, as if fully recited herein.

115. The allegations made in ¶ 115 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Maxus and Tierra deny the allegations of this paragraph.

116. Maxus and Tierra deny the allegations of ¶ 116 of the Complaint.

117. Maxus and Tierra deny the allegations of this paragraph and deny that the State is entitled to the relief requested in subparagraphs a-f of ¶ 117 of the Complaint.

Sixth Count - Fraudulent Transfers

118. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in ¶¶ 1 through 117 above, as if fully recited herein.

119. Maxus and Tierra deny the allegations made in ¶ 119 of the Complaint.

120. Maxus and Tierra deny the allegations made in ¶ 120 of the Complaint.

121. Maxus and Tierra deny that there was any "scheme." Maxus and Tierra otherwise lack knowledge or information regarding the alleged transfers referenced in ¶ 121 of the Complaint and, on this ground, deny such allegations.

122. Maxus and Tierra deny the allegations made in ¶ 122 of the Complaint.

123. Maxus and Tierra deny the allegations in ¶ 123 of the Complaint.

124. Maxus and Tierra deny the allegations of this paragraph and deny that the State is entitled to the relief requested in subparagraphs a-c of ¶ 124 of the Complaint.

Seventh Count - Civil Conspiracy/Aiding and Abetting

125. Maxus and Tierra hereby repeat and incorporate by reference each and every response contained in ¶¶ 1 through 124 above, as if fully recited herein.

126. Maxus and Tierra deny the allegations made in ¶ 126 of the Complaint, including the allegations made in the subparagraphs a-k of ¶ 126 of the Complaint.

127. Maxus and Tierra deny the allegations made in ¶ 127 of the Complaint.

128. Maxus and Tierra deny the allegations made in ¶ 128 of the Complaint.

129. Maxus and Tierra deny the allegations made in ¶ 129 of the Complaint.

130. Maxus and Tierra deny the allegations of this paragraph and deny that the State is entitled to the relief requested in subparagraphs a-d of ¶ 130 of the Complaint.

II. SEPARATE DEFENSES

1. The Complaint is barred in whole or in part as it fails to state a cause of action against Maxus and Tierra upon which relief can be granted.

2. The State's claims against Maxus and Tierra are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

3. The State's claims are barred in whole or in part by the doctrines of waiver, consent, estoppel, release and/or assumption of risk.

4. Some or all of the State's claims are preempted by federal law.

5. Some or all of the State's claims violate due process rights protected by the Fifth Amendment, as incorporated in the Fourteenth Amendment, of the United States Constitution.

6. The State's selective pursuit of narrow group of parties it associated with just one plant, disregarding hundreds if not thousands of sources of pollution to the vast Newark Bay Complex, constitutes unlawful selective enforcement that violates Constitutional Due Process Rights and/or the doctrine of Fundamental Fairness.

7. The obligations, damages, costs and/or penalties the State seeks to impose violate Maxus' and Tierra's Constitutional Due Process Rights, their rights under the Eighth Amendment to the U.S. Constitution, and the New Jersey doctrine of Fundamental Fairness.

8. The State's claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, judicial estoppel, and/or accord and satisfaction.

9. The State's claims against Maxus and Tierra are subject to setoff and recoupment and therefore must be reduced accordingly.

10. The State's claims are barred, in whole or in part, by the doctrine of unclean hands, including by way of the State's actions or omissions in breach of their fiduciary obligations under the public trust doctrine and other acts and omissions that exacerbated contamination of the Newark Bay Complex.

11. The State's claims contravene fundamental notions of public policy.

12. The State seeks relief in excess of its statutory authority or otherwise seeks to impose obligations that are *ultra vires*.

13. The State is not entitled to recover attorneys' fees or costs and fees of litigation.

14. The State's claims are barred by the statutory defenses to liability provided by the Spill Compensation and Control Act ("Spill Act") and the Water Pollution Control Act ("WPCA").

15. The State's claims are barred to the extent they seek relief for conduct occurring or damages incurred prior to the effective date of the Spill Act.

16. The State had notice and was aware of the discharges it alleges in its complaint prior to the time either Maxus or Tierra came into existence, and as such neither entity can be subject to penalties for the alleged failure to timely notify the State of such discharges.

17. Plaintiff Administrator cannot recover monies paid from the Spill Fund in excess of $3,000,000 in any one year period, as alleged discharges occurred prior to the effective date of the Spill Act.

18. In the event the State is entitled to relief under the Spill Act, such relief is capped by the limitation on liability set forth in N.J.S.A. 58:10-23.11g.b.

19. Maxus and Tierra did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA, N.J.S.A., 58:10A-1 et seq.

20. The WPCA cannot be applied retroactively, and any such application is constitutionally impermissible.

21. The State has failed to join parties needed for just adjudication and in whose absence complete relief cannot be accorded.

22. The State's claims are barred or diminished because the State was guilty of negligence or otherwise culpable conduct and/or contributory negligence.

23. The State's injuries and/or damages were caused by pre-existing, superseding, and intervening acts and/or negligence of other parties over whom Maxus and Tierra had no control.

24. Although Maxus and Tierra deny that they are liable for the contamination described in the State's Complaint, in the event they are found liable, Maxus and Tierra are

entitled to an offset against any such liability on their part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to the State.

25. The State's costs and/or damages, if any, are divisible and, as a result, the State has no claim for joint and several liability.

26. Any claims asserted by the State based on an allegation of joint and several liability are barred or limited because: (1) the acts and omissions of all other parties were separate and distinct from those, if any, of Maxus and Tierra; (2) under the facts of this case, neither the common law nor any statute renders Maxus or Tierra jointly and severally liable for the acts or omissions of other defendants; (3) the State is liable for all or a portion of the relief it seeks; and (4) the injury, harm and costs that are the subject of the State's claims are subject to apportionment.

27. The State cannot, consistent with the Constitutions of the United States and the State of New Jersey, prosecute claims of third parties with whom the State has no relationship.

28. The costs, damages and penalties the State seeks to recover and/or impose are unreasonable, excessive and/or arbitrary and capricious.

29. Some or all of the State's claims are barred because the State failed to exhaust administrative remedies available in connection with the federal oversight of cleanup with respect to the Newark Bay Complex.

30. Maxus and Tierra cannot be liable for or be required to pay the State's damages that arise out of conduct lawfully undertaken in compliance with permits issued by relevant government agencies, including the State and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, directives, and other requirements of all federal, state and local government entities.

31. The claims asserted against Maxus and Tierra in the Complaint are barred because at all relevant times Maxus and Tierra exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property, took precautions against foreseeable acts or omissions of others and the consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Maxus and Tierra had no control, whether by contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

32. At all relevant times, Maxus and Tierra complied with all applicable federal, state or local laws, regulations, standards and ordinances, and otherwise conducted themselves reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

33. The disposal of waste, if any, which allegedly originated from Maxus and Tierra, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements.

34. The State is not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

35. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

36. The State's claims are barred for its failure to use an adequate and independent scientific basis to support its claims for assessment of injuries to natural resources.

37. The damages that the State seeks, if awarded, would amount to an unlawful double recovery.

38. The State's claims for natural resource damages assessment costs are barred because the State's method of assessing natural resource damages was not adopted in a manner consistent with the Administrative Procedures Act.

39. The State's claims are barred, in whole or in part, by the doctrine of "coming to the nuisance."

40. The damages the State seeks, if awarded, would result in unjust enrichment to the State.

41. The State has failed to mitigate damages, or to take reasonable precautions to prevent any further damages, and claims for monetary relief against Maxus and Tierra must be reduced accordingly.

42. The State's claims are barred, in whole or in part, as the State legally cannot establish the requisite elements of its claims.

43. The State is not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress the State's claims.

44. Some or all of the State's claims are not ripe for adjudication.

45. The State's claims are barred due to its own conduct in unilaterally, and without notice to Maxus or Tierra, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

46. Maxus and Tierra incorporate by reference the defenses pled, now or in the future, by any other Defendant or Third-Party Defendant to the extent applicable to them.

47. Maxus and Tierra reserve the right to assert additional defenses that may be uncovered during the course of this action.

III. PRAYER

Maxus and Tierra reserve the right to amend this answer.

WHEREFORE, Maxus and Tierra respectfully pray that:

(i) judgment against the Plaintiffs on their claims against Maxus and Tierra be entered;

(ii) the Plaintiffs' claims against Maxus and Tierra be dismissed with prejudice at the Plaintiffs' costs;

(iii) the Plaintiffs recover nothing by this suit;

(iv) Maxus and Tierra be awarded their costs of court, expenses and attorneys' fees; and

(v) Maxus and Tierra be granted such other relief, both special and general, at law or in equity, to which it may show itself to be justly entitled.

IV. CROSS-CLAIM FOR CONTRIBUTION AND INDEMNITY AGAINST OCCIDENTAL CHEMICAL CORPORATION

Pursuant to R. 4:7-5(b), Maxus and Tierra hereby demand contribution and indemnity from OCC under the New Jersey Spill Compensation and Control Act, N.J.S.A. § 58:10-23.11f.a.(2) and all other applicable statutory and common law. These and additional cross-claims against OCC are included in a separate Cross-Claim being filed by Maxus and Tierra contemporaneously with this Answer, which is incorporated herein by reference.

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
Attorneys for Defendants
Maxus Energy Corporation and
Tierra Solutions, Inc.

By: _____
William L. Warren, Esq.

ANDREWS KURTH LLP
Attorneys for Defendants
Maxus Energy Corporation and
Tierra Solutions, Inc.

By: _____
Thomas E. Starnes, Esq.

Dated: October 6, 2008

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Thomas E. Starnes is hereby designated as trial counsel for Maxus and Tierra in this action.

DRINKER BIDDLE & REATH LLP
A Pennsylvania Limited Liability Partnership
Attorneys for Defendant Maxus Energy Corporation and Tierra Solutions, Inc.

By: _____
William L. Warren, Esq.

Dated: October 6, 2008

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending action in any court or arbitration proceeding known to Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") at this time, but may become the subject of a federal action pursuant to certain federal environmental statutes. The non-parties known to Maxus and Tierra who should be joined in this action pursuant to R. 4:28, or who are subject to joinder pursuant to R. 4:29-1 are listed below:

3M COMPANY,
A.C.C., INC.,
ACH FOOD COMPANIES, INC.,
ACTIVE OIL SERVICE,
ADCO CHEMICAL COMPANY,
AIRCRAFT ENGINEERING PRODUCTS, INC.,
ALCAN ALUMINUM CORPORATION,
ALDEN-LEEDS, INC.,
ALFRED HELLER HEAT TREATING CO.,
ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERADA HESS CORPORATION,
AMERICAN INKS AND COATINGS CORPORATION,
AMERICAN REF-FUEL COMPANY LLC,
APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS, INC.,
ASSOCIATED AUTO BODY & TRUCKS, INC.,
ATLANTIC REFINING COMPANY,
ATLANTIC RICHFIELD COMPANY,
ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AZKO NOBEL COATINGS, INC.,
BASF CATALYSTS LLC,
BASF CONSTRUCTION CHEMICALS INC.,
BASF CORPORATION,
BAYER CORPORATION,
BAYONNE BARREL & DRUM,
BAYONNE MUNICIPAL UTILITIES AUTHORITY,
BEAZER EAST, INC.,
BELLEVILLE INDUSTRIAL CENTER,
BENJAMIN MOORE & COMPANY,
BEROL CORPORATION,
B-LINE TRUCKING, INC.,
BORDEN & REMINGTON CORP.,
BOROUGH OF CARTERET,
BOROUGH OF EAST NEWARK,
BOROUGH OF EAST RUTHERFORD,
BOROUGH OF FAIRLAWN,
BOROUGH OF FANWOOD,
BOROUGH OF FRANKLIN LAKES,
BOROUGH OF GARWOOD,
BOROUGH OF GLEN RIDGE,
BOROUGH OF HALEDON,
BOROUGH OF HASBROUCK HEIGHTS,
BOROUGH OF HAWTHORNE,
BOROUGH OF KENILWORTH,
BOROUGH OF MOUNTAINSIDE,

BOROUGH OF NEW PROVIDENCE,
BOROUGH OF NORTH ARLINGTON,
BOROUGH OF NORTH CALDWELL,
BOROUGH OF NORTH HALEDON,
BOROUGH OF PROSPECT PARK,
BOROUGH OF ROSELLE PARK,
BOROUGH OF ROSELLE,
BOROUGH OF RUTHERFORD,
BOROUGH OF TOTOWA,
BOROUGH OF WALLINGTON,
BOROUGH OF WEST PATERSON,
BOROUGH OF WOOD-RIDGE,
BRISTOL-MYERS SQUIBB COMPANY,
BP MARINE TERMINALS,
C.S. OSBORNE & CO.,
CAMPBELL FOUNDRY COMPANY,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMICAL LEAMAN TANK LINES, INC.,
CHEMTURA CORPORATION,
CHEVRON ENVIRONMENTAL MANAGEMENT CO.,
CLEAN EARTH OF NORTH JERSEY, INC.,
COLONIAL PRINTING INK CORPORATION,
CONVERTERS INK COMPANY,
COSAN CHEMICAL CORP.,
COSMOPOLITAN GRAPHICS CORPORATION,
COURTALDS AEROSPACE, INC.,
CIBA CORPORATION,
CITY OF BAYONNE,
CITY OF CLIFTON,
CITY OF EAST ORANGE,
CITY OF ELIZABETH,
CITY OF GARFIELD,
CITY OF HACKENSACK,
CITY OF JERSEY CITY,
CITY OF LINDEN,
CITY OF NEWARK,
CITY OF ORANGE,
CITY OF PASSAIC,
CITY OF PATERSON,
CITY OF RAHWAY,
CITY OF SUMMIT,
CITY OF UNION CITY,
COLTEC INDUSTRIES INC.,
COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC.,
CONAGRA PANAMA, INC.,
CONGOLEUM CORPORATION,
CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COVANTA ESSEX COMPANY,
CRODA, INC.,
CROMPTON COLORS INCORPORATED,
CRUCIBLE MATERIALS CORPORATION,
CURTISS-WRIGHT CORP.,
CWC INDUSTRIES, INC.,
CYTEC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,
D.A. STUART COMPANY,
DAVANNE REALTY CO.,
DELEET MERCHANDISING CORPORATION,
DELVAL INK AND COLOR, INCORPORATED,
DILORENZO PROPERTIES COMPANY, L.P.,
DUNDEE WATER POWER AND LAND COMPANY,
E.I. DU PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY,
EDEN WOOD CORPORATION,
ELAN CHEMICAL COMPANY, INC.,
ELMWOOD PARK BOROUGH,
EM SERGEANT PULP & CHEMICAL CO.,
EMERALD HILTON DAVIS, LLC,
EPEC OIL COMPANY LIQUIDATING TRUST,
EPEC POLYMERS, INC.,
ESSEX CHEMICAL CORP.,
EXXONMOBIL CORPORATION,
F.E.R. PLATING, INC.,

FEDERAL PACIFIC ELECTRIC COMPANY,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORP.,
FLINT GROUP INCORPORATED,
FMC CORP.,
FORD MOTOR COMPANY,
FORT JAMES CORPORATION,
FOUNDRY STREET CORPORATION,
FRANKLIN-BURLINGTON PLASTICS, INC.,
GATX TERMINALS,
GARDEN STATE PAPER CO., INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.,
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY,
GENERAL MOTORS CORPORATION,
GENTEK HOLDING LLC,
GETTY PROPERTIES CORP.,
GIVAUDAN FRAGRANCES CORPORATION,
G. J. CHEMICAL CO.,
GLEN ROCK BOROUGH,
GOODRICH CORPORATION,
GOODY PRODUCTS, INC.,
GORDON TERMINAL SERVICE CO. OF N.J., INC.,
HALLIBURTON COMPANY,
HARRISON SUPPLY COMPANY,
HAVENICK ASSOCIATES L.P.,
HERCULES CHEMICAL COMPANY, INC.,
HESS CORPORATION,
HEXCEL CORPORATION,
HEXION SPECIALTY CHEMICALS, INC.,
HOFFMANN-LA ROCHE INC.,
HONEYWELL INTERNATIONAL, INC.,
HOUGHTON INTERNATIONAL INC.,
HOUSING AUTHORITY OF THE CITY OF NEWARK,
HUDSON TOOL & DIE COMPANY, INC,
HY-GRADE ELECTROPLATING CO.,
ICI AMERICAS, INC.,
INDOPCO, INC.,
INNOSPEC ACTIVE CHEMICALS LLC,
INTERNATIONAL SPECIALTY PRODUCTS, INC.,
INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC.,
ISP ENVIRONMENTAL SERVICES, INC.,
ITT CORPORATION,
JERSEY CITY MUNICIPAL UTILITIES AUTHORITY,
JOINT MEETING OF ESSEX AND UNION COUNTIES,
KALAMA SPECIALTY CHEMICALS, INC.,
KAO BRANDS COMPANY,
KEARNY SMELTING & REFINING CORP.,
KINDER MORGAN TERMINALS LLC,
KOEHLER-BRIGHT STAR, INC.,
LEEMILT'S PETROLEUM, INC.
LINDEN ROSELLE SEWERAGE AUTHORITY,
LODI BOROUGH,
LUCENT TECHNOLOGIES, INC.,
LYONDELL CHEMICAL, CO.,
MACE ADHESIVES & COATINGS COMPANY, INC.,
MALLINCKRODT INC.,
MCNEIL-PPC, INC.,
MERCK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLENIUM CHEMICALS, INC.,
MILLENIUM PETROCHEMICALS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC.,
NAPPWOOD LAND CORPORATION,
NATIONAL FUEL OIL OIL, INC.,
NATIONAL-STANDARD, LLC,
NATIONAL STARCH & CHEMICAL CORP.,

NESTLE U.S.A., INC.,
NEW JERSEY TRANSIT CORPORATION,
NEWS AMERICA, INC.,
NEWS PUBLISHING AUSTRALIA LIMITED,
NORPAK CORPORATION,
NPEC INC.,
ORANGE AND ROCKLAND UTILITIES, INC.,
OTIS ELEVATOR COMPANY,
PASSAIC PIONEERS PROPERTIES COMPANY,
PASSAIC VALLEY SEWERAGE COMMISSIONERS;
PFIZER INC.,
PHARMACIA CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
POWER TEST REALTY COMPANY LIMITED PARTNERSHIP,
PPG INDUSTRIES, INC.,
PRAXAIR, INC.,
PRC-DESOTO INTERNATIONAL,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING COMPANY,
PRODUCTS RESEARCH & CHEMICAL CORP.,
PRYSMIAN COMMUNICATIONS CABLES AND SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,
QUALA SYSTEMS, INC.,
RAHWAY VALLEY SEWERAGE AUTHORITY,
RECKITT BENCKISER PLC,
REICHHOLD, INC.,
REVERE SMELTING & REFINING CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC,
S&A REALTY ASSOCIATES, INC.,
SAFETY-KLEEN ENVIROSYSTEMS COMPANY,
SANTA FE BRAUN INC.,
SCHERING CORPORATION,
SCOTCH PLAINS TOWNSHIP,
SEQUA CORPORATION,
SETON COMPANY,
SHERWIN WILLIAMS COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.,
SINGER SEWING COMPANY,
SOLVENT RECOVERY SERVICES OF NEW JERSEY, INC.,
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SUNOCO, INC. (R&M),
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS, INC.,
TECHNICAL COATINGS CO.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE BOC GROUP, INC.,
THE DIAL CORPORATION,
THE HARTZ MOUNTAIN CORPORATION,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE STANLEY WORKS,
THE VALSPAR CORPORATION,
THIRTY-THREE QUEEN REALTY INC.,
THOMAS & BETTS CORP.,
THREE COUNTY VOLKSWAGEN,
TIDEWATER BALING CORP.,

TIFFANY & CO.,
TIMCO, INC.,
TOWN OF BELLEVILLE,
TOWN OF HARRISON,
TOWN OF KEARNY,
TOWN OF NUTLEY,
TOWN OF WESTFIELD,
TOWN OF WOODBRIDGE,
TOWNSHIP OF BERKELEY HEIGHTS,
TOWNSHIP OF BLOOMFIELD,
TOWNSHIP OF CEDAR GROVE,
TOWNSHIP OF CLARK,
TOWNSHIP OF CRANFORD,
TOWNSHIP OF HILLSIDE,
TOWNSHIP OF IRVINGTON,
TOWNSHIP OF LITTLE FALLS,
TOWNSHIP OF LIVINGSTON,
TOWNSHIP OF LYNDHURST,
TOWNSHIP OF MAPLEWOOD,
TOWNSHIP OF MILLBURN,
TOWNSHIP OF MONTCLAIR,
TOWNSHIP OF ORANGE,
TOWNSHIP OF SADDLE BROOK,
TOWNSHIP OF SOUTH HACKENSACK,
TOWNSHIP OF SOUTH ORANGE VILLAGE,
TOWNSHIP OF SPRINGFIELD,
TOWNSHIP OF UNION,
TOWNSHIP OF WEST ORANGE,
TOWNSHIP OF WINFIELD PARK,
TOWNSHIP OF WYCKOFF,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
TUSCAN/LEHIGH DAIRIES, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
U.S. INK CORPORATION (SUN CHEMICAL COMPANY),
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,
VILLAGE OF RIDGEWOOD,
VITUSA CORP.,
VOLKSWAGEN OF AMERICA, INC.,
VULCAN MATERIALS COMPANY,
W.A.S. TERMINALS CORPORATION,
W.A.S. TERMINALS, INC.,
W.C. INDUSTRIES,
WASTE MANAGEMENT OF NEW JERSEY, INC.,
WEISSMAN REALTY, L.L.C.,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
WYETH,
ZENECA, INC.

If additional non-parties later become known to Maxus and Tierra, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2). Conflicts counsel will be utilized where appropriate.

ANDREWS KURTH LLP
Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.

Thomas E. Starnes, Esq.

Dated: October 6, 2008