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<p>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,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. AND CLH HOLDINGS</p> <p style="text-align: right;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY</p> <p>DOCKET NO.: L-009868-05</p> <p><u>Civil Action</u></p> <p><b>DEFENDANT OCCIDENTAL CHEMICAL CORPORATION'S ANSWER, AFFIRMATIVE DEFENSES AND CROSSCLAIMS TO PLAINTIFFS' SECOND AMENDED COMPLAINT</b></p>
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Defendant, Occidental Chemical Corporation (hereinafter "Occidental"), by way of Answer to Plaintiffs' Second Amended Complaint (hereinafter the "Complaint"), admits, denies and alleges as follows:

Except as expressly stated below, Occidental answers and responds only to those allegations that are directed toward it. To the extent that an allegation is directed toward parties other than Occidental, no response is required by Occidental.

### **STATEMENT OF THE CASE**

1. Occidental denies the allegations in Paragraph 1 of the Complaint that are directed at Occidental. The remaining allegations in this paragraph directed at parties other than Occidental require no response by Occidental.

2. The allegations in Paragraph 2 of the Complaint are directed at parties other than Occidental and, therefore, no response is required.

3. To the extent that the allegations in Paragraph 3 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

4. To the extent that the allegations in Paragraph 4 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

5. To the extent that the allegations in Paragraph 5 of the Complaint are directed at Occidental, Occidental denies that it caused damages by intentional and egregious conduct or that it discharged TCDD into the Newark Bay. The remainder of Paragraph 5 of the Complaint

contains no factual allegations to which a response is required. To the extent that any response is required, Occidental admits that Plaintiffs purport to bring a civil action on the grounds stated therein, but denies that Plaintiffs are entitled to relief against Occidental on said grounds.

6. To the extent that the allegations in Paragraph 5 of the Complaint are directed at Occidental, Occidental denies that it damaged or destroyed natural resources by discharges. The remainder of Paragraph 6 of the Complaint contains no factual allegations to which a response is required. To the extent that any response is required, Occidental admits that Plaintiffs allege that they are not asserting a claim for natural resource damages or seeking to enforce or recover costs under the 1990 Consent Decree, the December 14, 2005 Directive, or the September 19, 2003 Directive, but denies that Plaintiffs have the right to reserve bringing such claims in the future.

#### **THE PARTIES**

7. Occidental admits that Plaintiff DEP is a department within the Executive Branch of the State government and that its principal office is located at 401 East State Street, Trenton, Mercer County, New Jersey. The remaining allegations in Paragraph 7 of the Complaint constitute legal conclusions for which no response is required.

8. The allegations in Paragraph 8 of the Complaint constitute legal conclusions for which no response is required.

9. Occidental admits that Plaintiff Commissioner is the chief executive officer of the New Jersey Department of Environmental Protection and has her principal office at New Jersey Department of Environmental Protection, 401 East State Street, P.O. Box 028, Trenton, New Jersey. The remaining allegations in Paragraph 9 of the Complaint constitute legal conclusions for which no response is required.

10. Occidental admits that Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund and has his/her principal office at New Jersey Department of Environmental Protection, Environmental Claims Administration, 401 East State Street, P.O. Box 028, Trenton, New Jersey. The remaining allegations in Paragraph 10 of the Complaint constitute legal conclusions for which no response is required.

11. Occidental admits the allegations in Paragraph 10 of the Complaint.

12. The allegations in Paragraph 12 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

13. The allegations in Paragraph 13 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

14. The allegations in Paragraph 14 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

15. The allegations in Paragraph 15 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

16. The allegations in Paragraph 16 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

17. The allegations in Paragraph 17 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

**OWNERSHIP & OPERATIONAL HISTORY OF LISTER SITE**

18. Occidental admits that a former Diamond Shamrock Corporation manufacturing site is located at 80 Lister Avenue, Newark, New Jersey. Occidental denies the remaining allegations in Paragraph 18 directed at Occidental.

19. Occidental admits that properties with addresses of 80 Lister Avenue, Newark, Essex County, New Jersey and 120 Lister Avenue, Newark, Essex County, New Jersey are being referred to as the "Lister Site" in the Complaint. Occidental also admits that the Lister Site is located along the Passaic River. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19 of the Complaint and therefore denies such allegations.

20. Occidental admits that Diamond Alkali Company ("Diamond Alkali") acquired Kolker Chemical Works, Inc. ("Kolker") in 1951 and that Diamond Alkali owned and conducted operations on property located at 80 Lister Avenue from 1951 until 1967. Occidental also admits that in 1967, Diamond Alkali merged with Shamrock Oil & Gas Company and that the company's name was changed to Diamond Shamrock Corporation ("Old Diamond Shamrock"), which continued to conduct operations on property located at 80 Lister Avenue until August 1969. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20 of the Complaint and therefore denies such allegations.

21. Occidental admits that in 1971, Old Diamond Shamrock sold the plant at 80 Lister Avenue to Chemicaland Corporation, which manufactured benzyl alcohol. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint and therefore denies such allegations.

22. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint and therefore denies such allegations.

23. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint and therefore denies such allegations.

24. Occidental admits that a new Diamond Shamrock Corporation was incorporated and became the direct parent company of Old Diamond Shamrock. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 of the Complaint and therefore denies such allegations.

25. Occidental admits that in 1983, Old Diamond Shamrock changed its name to Diamond Chemicals Company, which then changed its name to Diamond Shamrock Chemicals Company ("DSCC"). Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 25 of the Complaint and therefore denies such allegations.

26. Occidental admits that on or about September 4, 1986, Oxy-Diamond Alkali Corporation, an affiliate of Occidental, purchased the stock of DSCC. Occidental further admits that Oxy-Diamond Alkali Corporation merged into Occidental on November 24, 1987, and, after a corporate name change, DSCC merged into Occidental on November 30, 1987. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 26 of the Complaint and therefore denies such allegations.

27. Occidental denies the allegations in Paragraph 27 of the Complaint.

28. Occidental admits that it is entitled to contractual indemnity from Maxus for any liabilities associated with the Lister Site pursuant to the terms of the September 4, 1986 Stock Purchase Agreement. Occidental denies that it is liable as the direct successor to DSCC. The

remaining allegations in Paragraph 28 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

29. The allegations in Paragraph 29 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

30. Occidental admits that it is entitled to contractual indemnity from Maxus for any liabilities associated with the Lister Site pursuant to the terms of the September 4, 1986 Stock Purchase Agreement. The remaining allegations in this paragraph are directed at parties other than Occidental and therefore require no response.

31. The allegations in Paragraph 31 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

32. The allegations in Paragraph 32 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

#### **ALTER-EGO/Common Economic Unit**

33. Upon information and belief, the allegations in Paragraph 33 of the Complaint are admitted.

34. Upon information and belief, the allegations in Paragraph 34 of the Complaint are admitted.

35. Upon information and belief, the allegations in Paragraph 35 of the Complaint are admitted.

36. Upon information and belief, the allegations in Paragraph 36 of the Complaint are admitted.

37. Upon information and belief, the allegations in Paragraph 37 of the Complaint are admitted.

38. Upon information and belief, the allegations in Paragraph 38 of the Complaint are admitted.
39. Upon information and belief, the allegations in Paragraph 39 of the Complaint are admitted.
40. Upon information and belief, the allegations in Paragraph 40 of the Complaint are admitted.
41. Upon information and belief, the allegations in Paragraph 41 of the Complaint are admitted.
42. Upon information and belief, the allegations in Paragraph 42 of the Complaint are admitted.
43. Upon information and belief, the allegations in Paragraph 43 of the Complaint are admitted.
44. Upon information and belief, the allegations in Paragraph 44 of the Complaint are admitted.
45. Upon information and belief, the allegations in Paragraph 45 of the Complaint are admitted.
46. Upon information and belief, the allegations in Paragraph 46 of the Complaint are admitted.
47. Upon information and belief, the allegations in Paragraph 47 of the Complaint are admitted.
48. Upon information and belief, the allegations in Paragraph 48 of the Complaint are admitted.



49. Upon information and belief, the allegations in Paragraph 49 of the Complaint are admitted.

50. Upon information and belief, the allegations in Paragraph 50 of the Complaint are admitted.

51. Upon information and belief, the allegations in Paragraph 51 of the Complaint are admitted.

52. Upon information and belief, the allegations in Paragraph 52 of the Complaint are admitted.

53. Upon information and belief, the allegations in Paragraph 53 of the Complaint are admitted.

**HAZARDOUS SUBSTANCES PRODUCED AT THE LISTER SITE**

54. Occidental admits that Old Diamond Shamrock manufactured agricultural chemicals at a portion of the Lister Site. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 54 of the Complaint and therefore denies such allegations.

55. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint and therefore denies such allegations.

56. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegation that DDT, 2,4-D, 2,4,5-T, and TCDD were used, produced, and discharged at the Lister Site and therefore denies such allegations. The remaining allegations in Paragraph 56 of the Complaint constitute legal conclusions for which no response is required.

## OPERATIONS AND PRACTICES AT THE LISTER SITE

57. The allegations in Paragraph 57 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

58. The allegations in Paragraph 58 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

59. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint and therefore denies such allegations.

60. The allegations in Paragraph 60 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

61. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint and therefore denies such allegations.

62. To the extent that the allegations in Paragraph 62 of the Complaint are directed at Occidental, Occidental denies those allegations.

63. Occidental denies that it is the successor to Old Diamond Shamrock's liability. Occidental also denies that it was a party to, or participated in any way in, the cited case or made any acknowledgements or judicial admissions during the case. The remaining allegations in Paragraph 63 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

64. The allegations in Paragraph 64 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

65. Occidental denies that it discharged TCDD and other hazardous substances. The remaining allegations are either directed at a party other than Occidental or constitute conclusions of law for which no response is required.

66. The allegations in Paragraph 66 of the Complaint constitute legal conclusions for which no response is required. To the extent that any response is required, Occidental denies the allegations insofar as they are directed at Occidental.

### **THE REGULATORY HISTORY**

67. Occidental admits that in 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy targeting facilities that had produced certain herbicides and pesticides for soil sampling and testing for dioxin.

68. Occidental admits that then-New Jersey Governor Thomas H. Kean issued Executive Order 40. Occidental also admits that the NJDEP issued an administrative order on June 13, 1983. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 68 of the Complaint and therefore denies such allegations.

69. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 of the Complaint and therefore denies such allegations.

70. The allegations in Paragraph 70 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

71. To the extent that the allegations in Paragraph 71 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

72. To the extent that the allegations in Paragraph 72 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

73. To the extent that the allegations in Paragraph 73 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

74. To the extent that the allegations in Paragraph 74 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

75. The allegations in Paragraph 75 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

76. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 76 of the Complaint and therefore denies such allegations.

77. Occidental admits to the existence of an Administrative Order on Consent between the Environmental Protection Agency and Occidental with signature dates of February

13, 2004, which speaks for itself. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 77 of the Complaint and therefore denies such allegations.

78. Occidental admits that on September 19, 2003, Plaintiff DEP issued a Spill Act directive to Occidental purportedly pursuant to N.J.S.A. 58:10-23.11 f.a., which speaks for itself.

79. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint and therefore denies such allegations.

80. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 of the Complaint and therefore denies such allegations.

81. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegation that DEP is working to assess the injuries to the State of New Jersey's natural resources. Occidental admits that Plaintiffs purport to seek to recover its assessment costs in this action but denies that Plaintiffs are entitled to such costs from Occidental. Occidental also admits that Plaintiffs contend that they are not at this time seeking natural resource damages for the Newark Bay Complex but denies that Plaintiffs have the right to reserve bringing such claims in the future.

#### **CONTAMINATION OF THE NEWARK BAY COMPLEX**

82. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 of the Complaint and therefore denies such allegations.

83. To the extent that the allegations in Paragraph 83 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

84. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84 of the Complaint and therefore denies such allegations.

**FIRST COUNT**  
Spill Act

85. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-84 of the Complaint as if fully set forth herein.

86. The allegations in Paragraph 86 of the Complaint constitute legal conclusions for which no response is required.

87. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 of the Complaint and therefore denies such allegations.

88. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88 of the Complaint and therefore denies such allegations.

89. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 of the Complaint and therefore denies such allegations.

90. The allegations in Paragraph 90 of the Complaint constitute legal conclusions for which no response is required.

91. Some of the allegations in Paragraph 91 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 91 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

92. Some of the allegations in Paragraph 92 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 92 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

93. The allegations in Paragraph 93 of the Complaint constitute legal conclusions for which no response is required.

**SECOND COUNT**  
Water Pollution Control Act

94. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-93 of the Complaint as if fully set forth herein.

95. The allegations in Paragraph 95 of the Complaint constitute legal conclusions for which no response is required.

96. Some of the allegations in Paragraph 96 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 96 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

97. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97 of the Complaint and therefore denies such allegations.

98. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98 of the Complaint and therefore denies such allegations.

99. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 99 of the Complaint and therefore denies such allegations.

100. The allegations in Paragraph 100 of the Complaint constitute legal conclusions for which no response is required.

**THIRD COUNT**  
Public Nuisance

101. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-100 of the Complaint as if fully set forth herein.

102. The allegations in Paragraph 102 of the Complaint constitute legal conclusions for which no response is required.

103. To the extent that the factual allegations in Paragraph 103 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

104. Some of the allegations in Paragraph 104 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 104 of the Complaint are directed at Occidental, Occidental denies those allegations.



Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

105. To the extent that the factual allegations in Paragraph 105 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

106. Some of the allegations in Paragraph 106 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 106 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

107. Some of the allegations in Paragraph 107 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 107 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

108. Some of the allegations in Paragraph 108 of the Complaint constitute legal conclusions for which no response is required. To the extent that the allegations in Paragraph 108 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

109. To the extent that the allegations in Paragraph 109 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

#### **FOURTH COUNT**

##### Trespass

110. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-109 of the Complaint as if fully set forth herein.

111. Some of the allegations in Paragraph 111 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 111 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

112. Some of the allegations in Paragraph 112 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 112 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

113. To the extent that the allegations in Paragraph 113 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

#### **FIFTH COUNT**

##### Strict Liability

114. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-113 of the Complaint as if fully set forth herein.

115. The allegations in Paragraph 115 of the Complaint constitute legal conclusions for which no response is required.

116. Some of the allegations in Paragraph 116 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 116 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

117. To the extent that the allegations in Paragraph 117 of the Complaint are directed at Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

**SIXTH COUNT**  
Fraudulent Transfers

118. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-117 of the Complaint as if fully set forth herein.

119. Upon information and belief, the allegations in Paragraph 119 of the Complaint are admitted.

120. Upon information and belief, the allegations in Paragraph 120 of the Complaint are admitted.

121. Upon information and belief, the allegations in Paragraph 121 of the Complaint are admitted.

122. Upon information and belief, the allegations in Paragraph 122 of the Complaint are admitted.

123. Upon information and belief, the allegations in Paragraph 123 of the Complaint are admitted.

124. Upon information and belief, the allegations in Paragraph 124 of the Complaint are admitted.

### **SEVENTH COUNT**

#### **Civil Conspiracy/Aiding and Abetting**

125. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-124 of the Complaint as if fully set forth herein.

126. The allegations in Paragraph 126 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

127. The allegations in Paragraph 127 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

128. The allegations in Paragraph 128 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

129. The allegations in Paragraph 129 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

130. The allegations in Paragraph 130 of the Complaint are directed to a party other than Occidental and, therefore, no response is required.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs fail to state a claim against Occidental upon which relief may be granted.

2. Occidental is not a discharger or a person in any way responsible for a discharge under the Spill Act.

3. Plaintiffs have no Spill Act claim against Occidental because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

4. Plaintiffs' claims are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act ("WPCA").

5. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Plaintiffs' incurring of costs not authorized by the Spill Act and Plaintiffs' failure to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

6. Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:28-1.

7. Plaintiffs' claim are barred, in whole or in part, by applicable statutes of limitation or by the doctrine of laches.

8. Plaintiffs' claims are not ripe for adjudication.

9. Plaintiffs' claims are barred or diminished by the doctrines of release, waiver and/or accord and satisfaction.

10. Occidental denies that Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable at law, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Occidental exercised no control and for whose conduct Occidental was not responsible.

11. Plaintiffs' claims are barred by the entire controversy doctrine and/or the principles of *res judicata* and *collateral estoppel*.

12. Plaintiffs' claims are barred insofar as the acts and conduct, as alleged in the Complaint, conformed to and were pursuant to laws, statutes, rules, regulations and industry standards existing at all material times alleged in the Complaint.

13. Plaintiffs have failed to exhaust their administrative remedies.

14. Plaintiff, Administrator of the Spill Compensation Fund, has no viable claim against Occidental and, therefore, should be dismissed from the action, to the extent that no claims have been made against the Spill Compensation Fund with regard to this matter.

15. Some or all of Plaintiffs do not have standing to sue.

16. Any costs allegedly incurred or to be incurred by Plaintiffs, if any, are unreasonable, duplicative, and not cost effective and, therefore, are not recoverable.

17. Plaintiffs are limited to seeking contribution costs under the Spill Act because the State is a "discharger" or a person "in any way responsible" for a discharge of hazardous substances under the Spill Act.

18. Occidental is not jointly and severally liable to Plaintiffs because the State is a "discharger" or a person "in any way responsible" for a discharge of hazardous substances under the Spill Act and therefore Occidental's liability, if any, to Plaintiffs is several.

19. Plaintiffs cannot assess civil penalties under the Spill Act insofar as the acts or omissions purportedly giving rise to the civil penalty predated the effective date of the Spill Act.

20. Plaintiffs do not have a claim under the WPCA insofar as the purported acts or omissions giving rise to a violation predated the effective date of the WPCA.

21. Plaintiffs do not have a claim for monetary relief under a public nuisance claim because a public entity can only obtain an abatement of the public nuisance.

22. Plaintiffs do not have a claim for trespass.

23. Plaintiffs do not have a claim for strict liability because the former operations at the Lister Site were not abnormally dangerous.

24. Plaintiffs do not have a claim for unjust enrichment because there are adequate remedies at law available to Plaintiffs.

25. Any injury or damages suffered by plaintiffs have been increased by plaintiffs' failure to mitigate their damages, in that (1) the policies and activities of the State and its agencies during the period of time for which Plaintiffs seek damages have impacted natural resources greater than what would otherwise have occurred; and (2) the State and its agencies have failed to take reasonable measures available to them to reduce damages.

26. The damages sought by Plaintiffs are wholly speculative and conjectural.

27. If Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Plaintiffs' agents or employees. In the event that Plaintiffs are found to have sustained any injury and are entitled to damages, Plaintiffs' recovery against Occidental, if any, must be reduced by the proportionate damages caused by the acts and conduct of Plaintiffs and/or its agents or employees.

28. Plaintiffs' Complaint is barred to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law.

29. Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

30. Plaintiffs' claims are barred in whole or in part by the doctrine of federal preemption.

31. Plaintiffs suffered no losses or injuries that were proximately caused by Occidental.

32. Plaintiffs' delegation of the power to prosecute these cases to private attorneys on a contingent fee basis is against public policy.

33. The discharges of hazardous substances, if any, from the Lister Site did not cause any tangible or cognizable injury to the Passaic River or the Newark Bay Complex, both of which have been polluted to the point of destruction by industry, public entities and the general population long before operations at the Lister Site commenced.

34. The injuries alleged in the Complaint may be reasonably apportioned among the parties, as each party's alleged acts and omissions are divisible and distinct. Therefore, Occidental is not jointly and severally liable to Plaintiffs for any claim alleged in the Complaint.

35. Plaintiffs' claims for punitive damages violate the provisions of the U.S. Constitution and the New Jersey Constitution, including, but not limited to, those provisions requiring due process of law and prohibiting excessive fines.

36. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because state law governing punitive damages provides inadequate procedural protections against arbitrary or erroneous awards of such damages.

37. Plaintiffs' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because Occidental lacked adequate notice either of the type of conduct that



could warrant an award of punitive damages under state law, or of the amount of such damages that could be awarded. The lack of fair notice bars any award of punitive damages.

38. Plaintiffs' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because state law fails to require that any award of punitive damages bear a close relationship to appropriate civil fines or penalties established by the legislature, or by the administrative agencies under authority delegated by the legislature.

39. Plaintiffs' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because state law may permit the introduction of 'net worth' with respect to the quantum of punitive damages, which would violate Due Process by inviting the jury to award an arbitrary amount of punitive damages based on defendant's status as an industrial enterprise.

40. Plaintiffs' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and the Due Process Clause of the New Jersey Constitution because punitive damages, as awarded in New Jersey may impermissibly discriminate against corporate defendants, including Occidental, that are organized under the laws of other states and that maintain their principal places of business in other states.

41. Plaintiffs' claim for punitive damages is barred by the Excessive Fines Clause of the U. S. Constitution (Amendment VIII) insofar as the State requires that a portion of any award of punitive damages be paid to the State, which would constitute a "fine" subject to the Excessive Fines Clause. Under the circumstances of this case, any amount of punitive damages would be excessive in violation of the Excessive Fines Clause.

42. Plaintiffs' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because the conduct that is alleged to warrant punitive damages is unrelated to the Plaintiffs' harm. Punitive damages may not be awarded to punish and deter conduct that bears no relation to a plaintiff's harm.

43. Plaintiffs' claim for punitive damages is barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because Occidental did not conduct the actions that are alleged to warrant punitive damages. Punitive damages may not be awarded against a successor corporation to punish and deter the conduct of a predecessor corporation.

44. Principles of fundamental fairness preclude an award of punitive damages against a successor corporation to punish and deter the conduct of a predecessor corporation.

45. Occidental invokes each and every applicable federal and/or state common law, statutory and constitutional defense available to it as Occidental's investigation and defense of this matter continues.

46. Occidental incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are not defenses to Occidental's claims and do not impose liability on Occidental.

Occidental reserves the right to assert additional defenses that may be pertinent to Plaintiffs' claims when the precise nature of such claims are ascertained through discovery and based upon facts developed as this matter progresses.

**WHEREFORE**, Occidental demands judgment in its favor dismissing with prejudice Plaintiffs' claims asserted in the Second Amended Complaint.

### **STATEMENT OF DAMAGES**

Pursuant to R. 4:5-2, Occidental requests that Plaintiffs furnish the undersigned with a written statement of the amount of damages claimed.

### **DEMAND FOR DOCUMENTS**

Pursuant to R. 4:18-2, Occidental requests that Plaintiffs furnish the undersigned with a copy of all documents or papers referred to in the Second Amended Complaint.

### **CROSS-CLAIMS**

Defendant/Cross-Claimant Occidental Chemical Corporation (“Occidental”) hereby asserts its Cross-Claims against Defendants Maxus Energy Corporation (“Maxus”), Tierra Solutions, Inc., (“Tierra”), Repsol YPF, S.A. (“Repsol”), YPF, S.A. (“YPF”), YPF Holdings, Inc. (“YPFH”), and CLH Holdings (“CLHH”) (collectively, the “Cross-Claim Defendants”).

### **NATURE OF THE CROSS-CLAIMS**

1. On April 15, 2008, the New Jersey Department of Environmental Protection (“NJDEP”), the Commissioner of the NJDEP (“Commissioner”), and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively “Plaintiffs”) filed a Second Amended Complaint (the “Complaint”) in the present action against Occidental and the Cross-Claim Defendants. Plaintiffs allege claims arising under the New Jersey Spill Compensation and Control Act, the New Jersey Water Pollution Control Act, New Jersey Uniform Fraudulent Transfer Act, Public Nuisance Law, Trespass Law, Strict Liability Law, and Civil Conspiracy/Aiding and Abetting Law. To the extent that Plaintiffs obtain any judgment or otherwise obtain any relief against Occidental arising from any or all of the claims asserted in the Complaint, Occidental is entitled to judgment against the Cross-Claim Defendants, jointly and severally, for indemnification, contribution, recovery of costs and attorneys’ fees and for other declaratory relief. Occidental’s claims are asserted herein by reason of Plaintiffs’ claims against

Occidental in this litigation but are not solely derivative of Plaintiffs' claims or theories of recovery. All of Occidental's claims are properly brought in this action, and this Court has general and specific personal jurisdiction over all of the Cross-Claim Defendants with respect to the Cross-Claims.

### **FACTUAL BASIS FOR THE CROSS-CLAIMS**

#### **OWNERSHIP AND OPERATION OF LISTER SITE**

2. Diamond Alkali Company ("Diamond Alkali") was founded in 1910. In 1951, Diamond Alkali acquired Kolker Chemical Works, Inc. ("Kolker"). As part of the acquisition, Kolker transferred to Diamond Alkali a tract of land located at 80 Lister Avenue in Newark, New Jersey. From 1951 until 1967, Diamond Alkali owned and operated the chemical plant on that site where it manufactured pesticides and herbicides as a part of its agricultural chemical business. Some of the processes involved in these manufacturing activities purportedly formed an impurity known as "dioxin" as a by-product.

3. In 1967, Diamond Alkali merged with Shamrock Oil and Gas Company, and the merged company's name was changed to Diamond Shamrock Corporation ("Old Diamond Shamrock"). Old Diamond Shamrock continued to operate the plant at 80 Lister Avenue until August 1969. In March 1971, Old Diamond Shamrock sold the plant at 80 Lister Avenue to Chemicaland Corporation, which manufactured benzyl alcohol. Upon information and belief, no subsequent purchaser of the plant at 80 Lister Avenue manufactured any dioxin-containing product on the site.

4. In 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy targeting facilities that had produced certain herbicides and pesticides for soil sampling and testing for dioxin. The study produced a list of contaminated sites, including 80 Lister Avenue and a nearby site, 120 Lister Avenue (collectively referred to in

Plaintiffs' Complaint and herein as the "Lister Site"). The NJDEP subsequently issued an administrative order on June 13, 1983, requiring Old Diamond Shamrock to implement certain partial site stabilization measures designed to prevent further off-site migration of dioxin from the Lister Site.

#### **CORPORATE REORGANIZATION OF OLD DIAMOND SHAMROCK**

5. In 1983, Old Diamond Shamrock underwent a corporate reorganization. First, a new Diamond Shamrock Corporation (hereafter "Diamond Shamrock") was incorporated in Delaware and became the direct parent company of Old Diamond Shamrock. Second, Old Diamond Shamrock changed its name to Diamond Shamrock Chemicals Company ("DSCC").

6. DSCC had previously owned, leased, or operated facilities at numerous plant sites and businesses and had produced numerous former products that were unrelated to DSCC's ongoing chemicals business (the "Discontinued Operations"). These Discontinued Operations included DSCC's former agricultural chemicals business ("Ag Chem"), which had sold Ag Chem products and had owned, leased, or operated plants at the Lister Site and elsewhere. Upon information and belief, as part of the 1983 corporate reorganization of Old Diamond Shamrock (DSCC), Diamond Shamrock acquired the Ag Chem business and other assets and liabilities of DSCC through a series of assignment and assumption agreements.

7. According to Diamond Shamrock's 1984 Annual Statement on Form 10-K, it constituted "the successor to various corporations," including Diamond Alkali and Old Diamond Shamrock (DSCC). Moreover, in each of its Annual Statements for the years 1985 through 1987, Diamond Shamrock continued to represent that it was the "successor to various corporations." Thus, by its own representations and admissions, Diamond Shamrock was the successor to DSCC's Ag Chem business as well as other Discontinued Operations of DSCC.

8. In 1984, DSCC acquired 120 Lister Avenue, and in 1986 it reacquired ownership of 80 Lister Avenue. In August 1986, DSCC transferred ownership of the entire Lister Site to another affiliated company, Diamond Shamrock Chemical Land Holdings, Inc. Upon information and belief, DSCC thereafter held only the active, operating assets of the chemicals business. Upon information and belief, Diamond Shamrock Chemical Land Holdings, Inc. is now known as Tierra, and Tierra continues to own the entire Lister Site today.

9. At the time of its acquisition of title to the Lister Site, Diamond Shamrock Chemical Land Holdings, Inc., now Tierra, had actual knowledge of pre-existing discharges upon these properties. Diamond Shamrock Chemical Land Holdings, Inc., now Tierra, did not comply, and indeed did not attempt to comply, with the requirements of *N.J.S.A. 58: 10-23g (d) (5)*.

**THE 1986 STOCK PURCHASE AGREEMENT BETWEEN OCCIDENTAL AND DIAMOND SHAMROCK AND RESULTING OBLIGATIONS OF MAXUS**

10. In or about 1986, Diamond Shamrock announced its intention to sell DSCC. Because Diamond Shamrock knew that DSCC's Discontinued Operations would deter potential purchasers, Diamond Shamrock informed prospective buyers that it would retain responsibility for liabilities relating thereto, including:

All litigation arising out of DSCC's manufacturing operations at 80 Lister Avenue, Newark, New Jersey, and other sites where manufacturing operations have been permanently abandoned, including claims for property damage and personal injury arising from the cleanup of such sites.

11. Occidental acquired DSCC and its active, ongoing "Chemicals Business" pursuant to a Stock Purchase Agreement dated September 4, 1986 (the "SPA"). The "Chemicals Business" is defined in Section 2.02(b) of the SPA as "the DSCC Companies taken as a whole and the Business Units taken as a whole, and the business being conducted by them in the

aggregate as of the date of this Agreement [September 4, 1986] . . . .” Under the SPA, Diamond Shamrock sold all of the outstanding stock of DSCC to Oxy-Diamond Alkali Corporation, an affiliate of Occidental. Oxy-Diamond Alkali Corporation merged into Occidental on November 24, 1987, and, after a corporate name change, DSCC merged into Occidental on November 30, 1987.

12. Diamond Shamrock’s pre-sale acknowledgement that it, rather than DSCC or DSCC’s buyer, would retain responsibility for the Ag Chem business, the Lister Site, and other Discontinued Operations, was incorporated into the SPA. Section 9.03(a) of the SPA thus required Diamond Shamrock to indemnify, defend and hold harmless Occidental

from and against any and all claims, demands or suits (by any Entity, including, without limitation, any Governmental Agency), losses, liabilities, damages, obligations, payments, costs and expenses, paid or incurred, whether or not relating to, resulting from or arising out of any Third Party claim (including, without limitation, the reasonable cost and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys’ fees in connection therewith), and whether for property damage, natural resource damage, bodily injury (including, without limitation, damage and injury related to products and injury to any person living or dead on the date hereof or born hereafter), governmental fines or penalties (including, without limitation, for the violation of permits), pollution, threat to the environment, environmental remediation, or otherwise (individually and collectively, “Indemnifiable Losses”) relating to, resulting from or arising out of . . . (iii) any . . . Superfund Site . . . , (iv) the “Inactive Sites” . . . [and] (viii) the Historical Obligations. . . .

13. Additionally, Section 9.03(a)(iii) of the SPA requires Diamond Shamrock to “indemnify, defend and hold harmless” Occidental, from and against, among other things, “any and all claims, demands, or suits . . . relating to, resulting from, or arising out of . . . any . . . Superfund Site.”

14. Schedule 2.07(g) to the SPA lists fifteen DSCC sites that were included on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 49 U.S.C. § 6901, *et seq.*, as of July 10, 1986. The Schedule includes three Superfund Sites in New Jersey, including “Diamond Alkali (#488)” in Newark, New Jersey. Based on the allegations in the Second Amended Complaint, Plaintiffs’ underlying action relates to, results from, and arises out of the Diamond Alkali (#488) Superfund Site.

15. Section 9.03(a)(iv) of the SPA contains Diamond Shamrock’s defense and indemnity obligations for “Inactive Sites.” That provision states that Diamond Shamrock must “indemnify, defend and hold harmless” Occidental, among other things, from and against “any and all claims, demands, or suits . . . relating to, resulting from, or arising out of”

the “Inactive Sites” (which for purposes of this Agreement, shall mean those former chemical plants and commercial waste disposal sites listed on Schedule 9.03(a)(iv) and all other properties which were previously, but which, as of the Closing Date, are not owned, leased, operated or used in connection with the business or operations of any Diamond Company, including, without limitations, any of DSCC Company, or any predecessor-in-interest thereof), including, without limitations, any matter relating to any of the Inactive Sites for which (A) any Diamond Company (including, without limitation, any DSCC Company) on or prior to the Closing Date agreed to indemnify, defend or hold harmless any Entity, or (B) any Diamond Company may otherwise be held liable.

16. Schedule 9.03(a)(iv) to the SPA contains a list of the Inactive Sites, including numerous former DSCC plant sites in the State of New Jersey. The Schedule lists a plant site located in Newark, New Jersey, which refers to the Lister Site. Based on the allegations in the Second Amended Complaint, Plaintiffs’ underlying action relates to, results from, and arises out of the Inactive Site of Old Diamond Shamrock (DSCC) in Newark, New Jersey.

17. Section 9.03(a)(viii) sets forth Diamond Shamrock’s obligation to indemnify Occidental for “Historical Obligations.” That section states that Diamond Shamrock must



“indemnify, defend and hold harmless” Occidental from and against, among other things, “any and all claims, demands, or suits . . . relating to, resulting from, or arising out of”

the Historical Obligations and any other obligations or liabilities (absolute or contingent) of any Diamond Company (including, without limitation, any DSCC Company prior to the Closing) or any predecessor-in-interest thereof or of any DSCC Company unrelated to the Chemicals Business, including, without limitations, obligations and liabilities arising out of, resulting from or incurred in connection with, any ownership, use or operation of the business or assets of any Diamond Company other than a DSCC Company, whether before or after the Closing Date.

18. SPA Section 2.23(b) defines Historical Obligations as “those obligations, liabilities, guarantees and contingent liabilities of the DSCC Companies, or any of them, which arose prior to or in connection with the Reorganization and which relate to any business, asset or property other than those of the Chemicals Business.” Under SPA Section 2.23(a), “Reorganization” means the reorganization of Old Diamond Shamrock in 1983 and 1984 whereby the new Diamond Shamrock was formed and DSCC became its wholly-owned subsidiary.

19. Moreover, Schedule 2.23 to the SPA sets forth a description of certain specific Historical Obligations and describes by category all other Historical Obligations. Item number 12 identifies the following as Historical Obligations, among numerous other examples:

*All liabilities and obligations associated with the discontinued businesses of DSCC or any predecessor in interest* (regardless of whether or not chemical, petroleum or coal related) including, without limitation, all liabilities and obligations associated with any acquisition, disposition and merger agreement relating to such discontinued businesses, including, without limitation to the following: . . . *Ag Chem* . . . .

SPA, Section 2.23, emphasis added.

20. In addition to the requirement to defend, indemnify and hold harmless Occidental from and against liabilities associated with Historical Obligations, the SPA also mandates that

Diamond Shamrock use its best efforts to have Occidental released from any such liabilities.

Specifically, SPA Section 12.11 provides in relevant part as follows:

(a) [Diamond Shamrock] shall, and shall cause or, in the case of less than majority owned Entities, shall use its best efforts to cause, each of the other Diamond Companies to, use its and their best efforts to obtain at the earliest practicable date, whether before or after the Closing Date, any amendments, novations, releases, waivers, consents or approvals necessary to have each of the DSCC Companies released from its obligations and liabilities under the Historical Obligations. Seller shall, and shall cause or, in the case of less than majority owned Entities, shall use its best efforts to cause, each of the other Diamond Companies to, remain in compliance with its and their respective obligations under each of the Historical Obligations to the extent any Diamond Company remains obligated or has any liabilities thereon.

(b) If reasonably necessary in the circumstances, Seller's obligations to use its best efforts shall include, without limitation, providing its guarantee or the guarantee of any of the other appropriate Diamond Companies (other than the DSCC Companies) in consideration for the granting or obtaining of any such amendments, novations, releases, waivers, consents or approvals.

21. In 1987, following execution of the SPA, Diamond Shamrock changed its name to Maxus Energy Corporation. Accordingly, all of the obligations owed to Occidental by Diamond Shamrock under the SPA are, today, the obligations of Maxus.

**THE CROSS-CLAIM DEFENDANTS ARE ALTER EGOS OF EACH OTHER AND TOGETHER CONSTITUTE ONE COHESIVE ECONOMIC UNIT**

22. In 1995, YPF acquired Maxus.

23. In 1999, Repsol acquired a controlling interest in YPF.

24. In its SEC Form 20-F filing for the fiscal year ended December 31, 2000, Repsol represented its management structure as follows:

Repsol YPF has a unified global corporate structure with headquarters in Madrid, Spain and Buenos Aires, Argentina. Repsol YPF manages its business as a single organization at both

the operational and organizational levels. Key functions such as strategic planning, control, finance and human resources are centrally coordinated.

25. All of the Cross-Claim Defendants are alter egos of each other and together constitute a Cohesive Economic Unit. In this regard, Occidental adopts all of allegations in paragraphs 33 – 53 of Plaintiffs' Second Amended Complaint and incorporates them as if fully set forth herein.

**YPF AND REPSOL ACKNOWLEDGE INDEMNIFICATION OBLIGATIONS TO OCCIDENTAL**

26. YPF has consistently acknowledged the indemnification obligations owed to Occidental pursuant to the SPA. For example, YPF's 1998 Form 20-F/A discussed a 1990 consent decree that Maxus and Tierra, not Occidental, negotiated with the NJDEP relating to the Lister Site, stating:

Construction of the final remedial action as contemplated by the consent decree is expected to cost approximately U.S. \$23 million and take at least three years to complete. The work is being supervised and paid for by CLH. . . . YPF International has fully reserved the estimated costs of performing the remedial action plan  
.....

That public filing also stated:

Laws and regulations relating to health and environmental quality in the United States. . . in which YPF International operates, affect nearly all of the operations of YPF International. . . . At December 31, 1998, reserves for the environmental contingencies discussed herein totaled approximately U.S. \$123 million. Management of YPF International believes it has adequately reserved for all environmental contingencies which are probable and can be reasonably estimated . . . .

27. YPF also acknowledged the indemnification obligations to Occidental in its 2006 Form 20-F filing, stating:

In connection with the sale of Diamond Shamrock Chemicals Company ("Chemicals") to a subsidiary of [Occidental] in 1986, Maxus Energy Corporation ("Maxus") agreed to indemnify Chemicals and Occidental from and against certain liabilities

relating to the business and activities of Chemicals prior to the September 4, 1986 Closing Date (the “Closing Date”), including certain environmental liabilities relating to certain chemical plants and waste disposal sites used by Chemicals prior to the Closing Date.

28. In its March 10, 2008 Amendment No. 1 to Form F-3 filing, YPF refers to the current litigation, observing that “Tierra assumed essentially all of Maxus’ aforesaid indemnity obligations to [Occidental]. . . .”

29. Similarly, Repsol has acknowledged the indemnification obligations owed to Occidental pursuant to the SPA. For example, Repsol’s December 31, 2006 Form 20-F states:

In connection with the sale of Maxus’ former chemical subsidiary, Diamond Shamrock Chemicals Company (“Chemicals”) to Occidental Petroleum Corporation (together with its subsidiary Occidental Chemical Corporation, “Occidental”) in 1986, Maxus executed a document whereby it agreed to indemnify Chemicals and Occidental from and against certain liabilities relating to the business and/or activities of Chemicals prior to the September 4, 1986 closing date (the “Closing Date”), including certain environmental liabilities relating to certain chemical plants and waste disposal sites used by Chemicals prior to the Closing Date. Tierra assumed essentially all of Maxus’ aforesaid indemnity obligations to Occidental in respect of Chemicals.

30. Nevertheless, at the same time YPF and Repsol were publicly proclaiming their commitment to fulfill Maxus’ environmental indemnity obligations, they were privately stripping assets out of Maxus until nothing of any value was left in the company. With assistance from advisors, YPF devised the scheme to deplete Maxus’ assets in 1996. Repsol condoned and continued this scheme at all relevant times after it acquired a controlling interest in YPF in 1999.

31. By 2006—eleven years after YPF acquired Maxus, and seven years after Repsol acquired YPF—YPF, Repsol, YPFH, and CLHH had successfully depleted Maxus’ multi-billion dollar assets and turned Maxus into a shell company with a huge negative net worth. In the course of depleting the assets of Maxus, YPF, Repsol, YPFH, and CLHH deliberately and

maliciously targeted the obligations that Maxus owed to Occidental under the SPA—including obligations owed to Occidental in the State of New Jersey—and ensured that Maxus would be stripped of the financial resources necessary to fulfill its obligations to Occidental.

32. According to YPF's March 10, 2008 Amendment No. 1 to Form F-3 filing, as of September 30, 2007, YPFH's reserves for environmental and other contingencies totaled only about \$113.5 million. YPF specifically acknowledged, in its March 10, 2008 Amendment No. 1 to Form F-3 filing, that the reserves might not be sufficient and that material costs in addition to the reserves could be incurred.

[M]any such contingencies are subject to significant uncertainties, including the completion of ongoing studies, the discovery of new facts, or the issuance of orders by regulatory authorities, which could result in material additions to such reserves in the future. It is possible that additional claims will be made, and additional information about new or existing claims (such as results of ongoing investigations, the issuance of court decisions or the signing of settlement agreements) is likely to develop over time. YPF Holdings' reserves for the environmental and other contingencies described below are based solely on currently available information and as a result, YPF Holdings, Maxus and Tierra may have to incur costs that may be material, in addition to the reserves already taken.

33. Indeed, YPF has publicly recognized potential environmental liabilities of Maxus, Tierra, and YPF Holdings far greater than their reserves. In YPF's March 10, 2008, Amendment No. 1 to Form F-3 filing, YPF noted that a Newark, New Jersey consent decree led YPFH to set reserves of \$16.2 million. In addition, YPF noted that, during 2007, the EPA had released a draft Focused Feasibility Study (FSS), which described several alternatives for cleanup of the lower eight miles of the Passaic River. The EPA estimated in its FSS that the cost of such cleanup could range from \$900 million to \$2.3 billion.

34. According to YPF's March 10, 2008, Amendment No. 1 to Form F-3 filing, with regard to actions related to the Passaic River, Newark Bay, and surrounding areas, YPFH had reserved \$16 million as of September 30, 2007. Based on remediation scenarios, reserves were increased to \$25 million in the last quarter of 2007. YPF observed that "[t]he development of new information or the imposition of natural resource damages or remedial actions differing from the scenarios we have evaluated could result in Maxus and Tierra incurring additional costs to the amount currently reserved."

35. Similarly, Repsol, in its December 31, 2006 Form 20-F, recognized sources of environmental liability of Maxus, Tierra, and YPFH, including but not limited to Newark, New Jersey and the Passaic River, that could materially exceed existing reserves:

At December 31, 2006, Repsol YPF, through YPF Holdings Inc., has recorded provisions for approximately US\$117 million to cover all significant risks relating to the environmental liabilities taken on thereunder. However, it is possible that additional claims will be made, and additional information about new or existing claims is likely to be developed over time. As a result, Maxus and Tierra may have to incur costs that may be material, in addition to the reserves already made.

#### **THE CURRENT LITIGATION**

36. In their Complaint, Plaintiffs assert claims against Occidental and the Cross-Claim Defendants pursuant to some or all of the following: the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a to -23.11z (the "Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -37.23 (the "WPCA"), the New Jersey Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-10 to -34 (the "UFTA"), and New Jersey common law. These claims are based in part on Plaintiffs' contention that "[f]or roughly twenty years, Diamond Shamrock Company, its predecessors-in-interest and successors-in-interest, including Occidental and/or Maxus, deliberately polluted the Passaic River with 2,3,7,8-Tetrachlorodibenzo-p-dioxin ("TCDD") . . . ,

dichlorodiphenyltrichloroethane (“DDT”) and various other pesticides and chemicals.” (2d Am. Compl. ¶ 1.) Plaintiffs allege that the purported pollution originated at the Lister Site.

37. Occidental is a Defendant in this action solely by virtue of the 1986 acquisition of DSCC. Occidental has never independently owned or operated the Lister Site. DSCC’s operations at 80 Lister Avenue ceased in the late 1960s. Moreover, in August 1986, *before* Occidental’s affiliate purchased the stock of DSCC, Diamond Shamrock caused DSCC to transfer ownership of 80 and 120 Lister Avenue to Diamond Shamrock Chemical Land Holdings, Inc., now known as Tierra.

38. Plaintiffs’ claims against Occidental thus relate to, result from, and arise out of a Superfund Site, an Inactive Site, and/or a Historical Obligation, as those terms are defined in the SPA. Pursuant to Sections 9.03(a) of the SPA generally, and subsections (iii), (iv), and (viii) of that section specifically, Maxus owes a defense and a full indemnity to Occidental for all of the claims asserted by Plaintiffs against Occidental in the Complaint.

39. Plaintiffs also allege that for twenty years, the Cross-Claim Defendants “have orchestrated and implemented a strategy to delay and impede the clean-up and restoration of the Passaic River and strand the associated liabilities in Maxus and Tierra.” (2d Am. Compl. ¶ 1.) Plaintiffs assert that beginning in 1987, the Cross-Claim Defendants orchestrated a scheme “to shift blame away from their activities on the Lister Site,” “to mislead the regulators,” and “to bias the results of the investigation and testing that they controlled.” *Id.* ¶¶ 71-73. Plaintiffs contend that the delay caused by this alleged conduct has contributed to the purported pollution of the Passaic River and has increased the purported damages.

40. As alleged in the Complaint, the Cross-Claims Defendants—not Occidental—have controlled the environmental response at the Lister Site. That response commenced during

the reorganization of Old Diamond Shamrock (DSCC) in 1983, more than three years before Occidental's affiliate acquired the stock of DSCC. During the time period involved in these allegations, Maxus, and later Tierra, assumed the responsibility of defending and indemnifying Occidental pursuant to Maxus' obligations to indemnify Occidental as set forth in Section 9.03 of the SPA. Occidental justifiably relied on Maxus and Tierra as Occidental's indemnitors to resolve the claims of the NJDEP and the EPA. If Plaintiffs' allegation that there has been a conspiracy to avoid or to delay clean up of the Passaic River is true, then Maxus and Tierra have breached their obligations to Occidental. Accordingly, the Cross-Claim Defendants owe Occidental a common law obligation to indemnify and hold harmless Occidental for any liability Occidental may incur because of their wrongful acts. This common law indemnity is in addition to the contractual indemnities owed by Maxus.

41. In 2005, Occidental tendered defense of this case to Maxus in accordance with the procedures set forth in Section 9.04 of the SPA. Maxus accepted the defense, but it purported to reserve the right to deny its obligation to indemnify Occidental for any final judgment in certain respects.

42. On April 15, 2008, Plaintiffs filed their Complaint, alleging that "[t]hrough a series of related transactions, Defendants Repsol, YPF, YPFH, CLHH, Maxus, and Tierra (the 'Repsol Group') and non-party YPF International Ltd. have worked to strand the environmental liabilities associated with the Newark Bay Complex in Maxus and Tierra, while systematically stripping Maxus' and Tierra's assets and ability to satisfy these obligations in New Jersey and elsewhere." (2d Am. Compl. ¶ 33; *see also id.* ¶¶ 34-53.)

43. On information and belief, Plaintiffs base such allegations in large part on information they obtained during the course of preliminary jurisdictional discovery in this case.



No discovery on the merits has occurred, and thus the parties have not had an opportunity to discover all of the facts showing this scheme and course of conduct.

44. From 1995 through the present, YPF has actively concealed the scheme to strand environmental liabilities in companies incapable of fulfilling the obligations of the SPA, by repeatedly acknowledging YPF's responsibility to indemnify Occidental for all claims related to, resulting from, or arising out of Superfund Sites, among other things. From 1999 through the present, Repsol has continued this concealment and facilitated the scheme begun by YPF.

45. Only after Plaintiffs brought this action and deposed corporate representatives from YPF, YPFH, and CLHH, did Occidental learn of the pervasive dissipation of Maxus' assets by Repsol and YPF and their subsidiaries. Occidental could not have known of this scheme prior to such time.

46. On information and belief, since 1995, the Cross-Claim Defendants have conspired among themselves and otherwise committed various intentional torts against Occidental as alleged herein. These actions have been targeted at Occidental in New Jersey, for the purpose and/or with the effect of rendering Maxus unable to fulfill its indemnification obligations to Occidental that are owed pursuant to Section 9.03 of the SPA, specifically including obligations in respect of the Lister Site. The Cross-Claim Defendants knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular.

47. Notwithstanding the fact that YPF's International Unit was comprised substantially of Maxus' assets and that YPF previously had identified Maxus as a business unit of YPF in disclosure statements, YPF and Repsol have taken the position since the filing of this

case that Maxus is not a business unit of YPF but is rather a wholly separate and independent company.

48. Further, YPF and Repsol have refused to assume responsibility for the obligations that Maxus owes to Occidental, although they collectively have destroyed the independent value of Maxus, have treated it as a part of one cohesive economic unit, and have rendered it unable—due to their tortious acts—of performing its obligations to Occidental.

49. Although Maxus agreed to defend Occidental in the current litigation, Maxus has failed to take reasonable steps to defend Occidental diligently in the current suit, as required by Section 9.04(b) of the SPA by, among other things, failing to provide Occidental with separate counsel in the face of a conflict of interest with respect to certain issues raised in the current suit. Indeed, beginning in approximately February 2007, Maxus instructed counsel retained by Maxus for Occidental and representing Occidental as counsel of record in this action that they could not communicate with Occidental.

50. Because of the conflict of interest that now exists between Occidental and Maxus and Tierra and because Maxus has failed to defend Occidental's interests adequately, Occidental asked Maxus to provide Occidental with separate counsel in this action. Maxus refused this request, and Occidental has been forced to assume its own defense of the claims asserted by Plaintiffs.

## **FIRST COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS**

### **BREACH OF CONTRACT**

51. Occidental repeats each and every allegation of paragraphs 1-50 above as though fully set forth in its entirety herein.

52. The SPA is a valid and existing contract.

53. Section 9.0(3)(a) of the SPA requires Maxus to “indemnify, defend and hold harmless” Occidental for all “Indemnifiable Losses” relating to any of the following:

- (a) Superfund Sites and “Federal Superfund Litigation” (subsection (iii));
- (b) “Inactive Sites,” (subsection (iv)); and
- (c) “Historical Obligations” (subsection (viii)).

54. All of the claims asserted by Plaintiffs against Occidental in this action are subject to one or more of the indemnification provisions in the SPA. Thus, Maxus is required to defend Occidental in this action and to indemnify Occidental for all costs associated with Plaintiffs’ claims against Occidental, including damages, expenses, and attorneys’ fees.

55. Based upon the facts alleged herein, including the adopted and incorporated allegations of paragraphs 33-53 of Plaintiffs’ Complaint, all of the Cross-Claim Defendants are alter egos of each other and together constitute a Cohesive Economic Unit.

56. Because the Cross-Claim Defendants are alter egos of each other and/or comprise a Cohesive Economic Unit, the other Cross-Claim Defendants have the same contractual obligations as Maxus to defend and to indemnify Occidental in this action pursuant to and in accordance with the SPA.

57. The Cross-Claim Defendants have failed to provide a diligent defense to Occidental, thus breaching the contractual obligations owed to Occidental pursuant to the SPA. Accordingly, pursuant to SPA Section 9.04(b), Occidental has retained separate counsel to defend it in this action.

58. The Cross-Claim Defendants knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular.

59. As a result of the Cross-Claim Defendants' breach of their contractual duty to defend Occidental in this action, Occidental has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

60. In the event that Plaintiffs obtain a judgment or otherwise obtain any relief against Occidental on any or all of the claims in this case, the Cross-Claim Defendants are contractually required to pay the same. Should the Cross-Claim Defendants fail to pay, such failure would cause further damage to Occidental.

### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment declaring that the Cross-Claim Defendants are alter egos of each other, and together constitute a Cohesive Economic Unit.
- b. Enter judgment declaring that the Cross-Claim Defendants owe a contractual obligation to defend and to indemnify Occidental in this case and are jointly and severally liable to Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees, and any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Second Amended Complaint.
- c. Enter judgment declaring that any judgment awarded against Maxus is also a judgment against all of the Cross-Claim Defendants.
- d. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action, and for any judgment or other relief obtained by Plaintiffs

against Occidental in respect of any of the claims asserted in the Second Amended Complaint.

- e. Enter judgment declaring that the Cross-Claim Defendants are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Second Amended Complaint.
- f. Enter judgment declaring that Occidental was entitled to retain separate counsel in this action and to file its cross-claims, and that such actions were not in breach of any duty Occidental owed to Maxus under the SPA.
- g. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

## **SECOND COUNT – AGAINST REPSOL AND YPF**

### **TORTIOUS INTERFERENCE WITH CONTRACT**

61. Occidental repeats each allegation of paragraphs 1-60 above as though fully set forth in its entirety herein.

62. Occidental pleads this Second Count in the alternative to the First Count insofar as the First Count is alleged against Repsol and YPF.

63. From the date of its execution in 1986 to the present, the SPA has been and continues to be a valid and existing contract. During that time period, and pursuant to the SPA, Maxus owed and continues to owe certain indemnification obligations to Occidental, including the duty to defend and to indemnify Occidental for all losses, (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed

on Occidental in the future, relating to, resulting from, or arising out of Plaintiffs' Second Amended Complaint, the Lister Site, or other sites in New Jersey.

64. At all times relevant to this Second Count, Repsol and YPF had actual knowledge of the SPA and of the defense and indemnification obligations owed by Maxus to Occidental under the SPA.

65. Prior to YPF's acquisition of Maxus, Maxus had concluded that its liabilities related to the Lister Site and the Passaic River ultimately could be far more than the amount Maxus had reserved for such liabilities. From and after YPF's acquisition of Maxus, both Maxus and YPF knew or should have known that the costs of the defense and indemnification obligations owed to Occidental under the SPA, including obligations relating to, resulting from, or arising out the Lister Site, were likely to exceed the amount Maxus had reserved for those obligations.

66. With actual knowledge of Maxus' indemnification obligations to Occidental pursuant to the SPA, YPF devised and implemented a scheme to interfere with Maxus' ability to fulfill those obligations.

67. YPF caused Tierra to assume Maxus' obligations to Occidental, yet YPF only agreed to fund Tierra up to the amount Maxus then had reserved for losses in connection with the duty to indemnify Occidental. YPF knew or should have known that such amount was wholly inadequate under the circumstances.

68. In addition to orchestrating Tierra's assumption of Maxus' obligations to Occidental, YPF systematically stripped Maxus of its assets and caused them to be held by other corporations YPF controlled, including YPF International.

69. Repsol acquired control of YPF in 1999, and thereafter continued and perpetuated the scheme to deprive Maxus of the ability to fulfill its obligations to Occidental, as alleged above.

70. The actions of Repsol and YPF described herein were intentional and were significant factors in causing Maxus to breach its contractual obligations to Occidental.

71. The actions of Repsol and YPF described herein were without justification.

72. The tortious interference commenced by YPF and continued by Repsol has left Maxus unable to fulfill its indemnification obligations to Occidental, including its obligations pursuant to SPA Sections 9.03 and 12.11.

73. Repsol and YPF knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular.

74. As a result of the tortious interference of Repsol and YPF, Occidental has incurred damages in the form of its attorneys' fees and expenses in this action and will continue to incur such damages.

75. Moreover, Occidental will be further damaged by YPF's and Repsol's tortious interference in the event that Plaintiffs obtain a judgment or otherwise obtain any relief against Occidental on any or all of the claims in this case and Maxus is unable to pay the amount of the judgment or to reimburse Occidental for its attorneys' fees and expenses incurred in this action.

### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment declaring that Repsol and YPF have tortiously interfered with Maxus' ability to perform duties owed to Occidental pursuant to the SPA.

- b. Enter judgment requiring Repsol and YPF to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Second Amended Complaint.
- c. Enter judgment declaring that Repsol and YPF are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Second Amended Complaint.
- d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

### **THIRD COUNT – AGAINST MAXUS, REPSOL AND YPF**

#### **FRAUDULENT TRANSFERS**

76. Occidental repeats each allegation of paragraphs 1-75 above as though fully set forth in its entirety.

77. Repsol, YPF, YPFH, CLHH and Tierra are affiliates of Maxus as defined in *N.J.S.A. 25:2-21*.

78. Commencing in or about 1996, YPF and Maxus engaged in a scheme to enrich YPF, and later Repsol, by transferring substantially all of Maxus' assets to YPF affiliates, and subsequently to Repsol affiliates, for less than fair market value and by isolating the environmental liabilities associated with the Lister Site in companies wholly unable to fulfill obligations owed to Occidental under the SPA. Such transfers include the 1997 transfers of



Maxus' Ecuadorian Assets and its Indonesian Assets as alleged in Plaintiffs' Second Amended Complaint.

79. Subsequently, in 2001, Repsol furthered the scheme by directing that the Ecuadorian Assets and Indonesian Assets be transferred from YPF's international subsidiaries to Repsol's international subsidiaries that are not within YPF's corporate structure. YPF thereafter did so.

80. When they transferred Maxus' former assets, Repsol and YPF were fully aware of the obligations that Maxus owed to Occidental under the SPA. Repsol and YPF acted with the actual intent to hinder, delay, or defraud Occidental. Maxus did not receive reasonably equivalent value in the transfers of assets, including but not limited to the Indonesian Assets and the Ecuadorian Assets. Maxus had liabilities beyond its ability to pay, and Maxus, YPF and ultimately Repsol, knew that Maxus was going to incur further liabilities beyond Maxus' ability to pay.

81. All of the above-described transfers constitute fraudulent transfers as defined in the New Jersey codification of the Uniform Fraudulent Transfer Act, *N.J.S.A. 25:2-20 to -34*.

82. Maxus, Repsol and YPF knew or should have known that their conduct, as alleged herein, would have an impact upon and cause an effect upon the obligations and liabilities of Occidental in New Jersey, including as to the Lister Site in particular.

83. Occidental did not discover and could not have reasonably discovered the material facts regarding such fraudulent transfers until after this action was filed by Plaintiffs.

### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment voiding the fraudulent transfers to the extent necessary to satisfy all damages awarded to Occidental.
- b. Award any and all other equitable relief necessary to put Occidental in the position it would have been but for the fraudulent transfers.
- c. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

#### **FOURTH COUNT – AGAINST REPSOL AND YPF**

##### **UNJUST ENRICHMENT**

84. Occidental repeats each allegation of paragraphs 1-83 above as though fully set forth in its entirety.

85. Repsol and YPF have received a benefit through their scheme of transferring Maxus' assets to other entities controlled by Repsol and YPF, in an attempt to prevent those assets from being used to fulfill the indemnification obligations owed by Maxus to Occidental under the SPA.

86. Under the circumstances, as alleged herein, the retention of that benefit without paying the indemnification obligations contractually owed by Maxus to Occidental would unjustly enrich Repsol and YPF.

87. The unjust enrichment of Repsol and YPF has caused damages to Occidental.

#### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment declaring that Repsol and YPF have been unjustly enriched at the expense of and to the detriment of Occidental.
- b. Enter judgment requiring Repsol and YPF to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs,

expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Second Amended Complaint.

- c. Enter judgment declaring that Repsol and YPF are jointly and severally liable for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Second Amended Complaint.
- d. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

#### **FIFTH COUNT– AGAINST ALL CROSS-CLAIM DEFENDANTS**

##### **CONTRACTUAL INDEMNIFICATION**

88. Occidental repeats each allegation of paragraphs 1-87 above as though fully set forth in its entirety.

89. As a result of Maxus' breach of its contractual duty to defend Occidental in this action, Occidental has incurred damages in the form of its attorneys' fee and expenses in this action and will continue to incur such damages.

90. In the event that Plaintiffs obtain a judgment or otherwise obtain any relief against Occidental on any or all of the claims in this case, Maxus would be contractually required to pay the amount of such judgment or other relief against Occidental. Should Maxus fail to pay, this would cause further damage to Occidental.

91. Repsol, YPF, YPFH, Tierra and CLHH, as alter egos of Maxus and/or as part of a Cohesive Economic Unit with Maxus, would be contractually required to pay the amount of such

judgment or other relief against Occidental. Should Repsol, YPF, YPFH, Tierra and CLHH fail to pay, this would cause further damage to Occidental.

### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment declaring that the Cross-Claim Defendants are the alter egos of each other, and together constitute a Cohesive Economic Unit.
- b. Enter judgment requiring Cross-Claim Defendants to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action, and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Second Amended Complaint.
- c. Enter judgment declaring that Cross-Claim Defendants are contractually obligated to indemnify Occidental for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) incurred by Occidental relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Second Amended Complaint.
- d. Enter judgment declaring that Occidental was entitled to retain separate counsel in this action and file its cross-claims, and that such actions were not in breach of any duty Occidental owed to Maxus under the SPA.
- e. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

## **SIXTH COUNT - AGAINST ALL CROSS-CLAIM DEFENDANTS**

### **Common Law Indemnification**

92. Occidental repeats each allegation of paragraphs 1-91 above as though fully set forth in its entirety.

93. Without admitting liability, Occidental's liability, if any, arising out of this action is vicarious, secondary, passive, and without wrongful conduct, while the liability (if proven by Plaintiffs) of Maxus and Tierra is direct, primary, active, and wrongful.

94. Occidental is therefore entitled to common law indemnification from Maxus and Tierra for any liability imposed on or damages incurred by Occidental relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint at this time or at any time in the future.

95. Occidental is also entitled to common law indemnification from Repsol, YPF, YPFH and CLHH, as alter egos of Maxus and Tierra and/or as part of a Cohesive Economic Unit with Maxus and Tierra.

### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Order Cross-Claim Defendants to pay or reimburse Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment entered in favor of Plaintiffs and against Occidental on any of the claims asserted in the Complaint.
- b. Enter a declaratory judgment against Cross-Claim Defendants holding that they are required to indemnify Occidental for all losses (including, but not limited to damages, costs, expenses, and attorneys' fees) that Occidental may incur or that may be imposed on Occidental in the future as a result of the actions and

omissions of Cross-Claim Defendants relating to, resulting from, or arising out of the investigation, clean-up, or restoration of the Lister Site or Plaintiffs' Complaint.

- c. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

## **SEVENTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS**

### **CONTRIBUTION UNDER THE SPILL ACT**

96. Occidental repeats each allegation of paragraphs 1-95 above as though fully set forth in its entirety.

97. The Spill Act, N.J.S.A. 58:10-23.11f.a.(2), provides that whenever a person cleans up and removes a discharge of a hazardous substance, that person shall have a right of contribution against all 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.

98. The Spill Act, N.J.S.A. 58:10-23.11f.a.(2), also provides that in an action for contribution, the contribution plaintiff need prove only that a discharge occurred for which the contribution defendant or defendants are liable pursuant to N.J.S.A. 58:10-23.11g.c.(1).

99. The Cross-Claim Defendants are “dischargers” or “persons in any way responsible for a discharge of hazardous substances” under the Spill Act.

100. While Occidental denies liability, in the event and to the extent that Occidental is held liable and incurs cleanup and removal costs and/or damages with regard to hazardous substances that the Cross-Claim Defendants discharged and/or for which they are responsible

pursuant to the Spill Act, Occidental is entitled to contribution under the Spill Act from the Cross-Claim Defendants.

**PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment declaring that in the event and to the extent that Occidental is found liable to Plaintiffs or any other person or party under the Spill Act for cleanup, removal, and restoration costs and/or damages, if any, attributable to discharges of hazardous substances at or from the Lister Site, then the Cross-Claim Defendants are jointly and severally liable to Occidental to pay for any and all such liability.
- b. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all damages, if any (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Second Amended Complaint.
- c. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all cleanup, removal, and restoration costs incurred by Occidental in connection with the Lister Site.
- d. Enter judgment declaring that the Cross-Claim Defendants are jointly and severally liable to Occidental for any cleanup and removal costs incurred by, or damages imposed on Occidental, in the future relating to, resulting from, or

arising out of the Lister Site or Plaintiffs' Second Amended Complaint, including costs or damages to be incurred after the conclusion of this action.

- e. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

## **EIGHTH COUNT – AGAINST ALL CROSS-CLAIM DEFENDANTS**

### **STATUTORY CONTRIBUTION**

101. Occidental repeats each allegation of paragraphs 1-100 above as though fully set forth in its entirety.

102. While Occidental denies any liability for any costs incurred by any party in connection with this action, in the event and to the extent that Occidental is found liable to any person or party for any such costs, Occidental is entitled to contribution from the Cross-Claim Defendants for all such damages incurred or to be incurred, pursuant to the New Jersey Joint Tortfeasors Act, *N.J.S.A. 2A:53A-1, et seq.*, and the Comparative Negligence Act, *N.J.S.A. 2A:15-5.1, et seq.*

### **PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter judgment declaring that in the event and to the extent that Occidental is found liable to Plaintiffs or any other person or party for cleanup, removal, and restoration costs and/or damages attributable to discharges of hazardous substances at or from the Lister Site, then the Cross-Claim Defendants are jointly and severally liable to Occidental to pay for any and all such liability.
- b. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all damages (including, but not limited to, punitive damages), costs, expenses, and attorneys' fees that Occidental incurs in the defense of this



action and for any judgment or other relief obtained by Plaintiffs against Occidental in respect of the claims asserted in the Second Amended Complaint.

- c. Enter judgment requiring the Cross-Claim Defendants to pay and to reimburse Occidental for all cleanup, removal, and restoration costs incurred by Occidental in connection with the Lister Site.
- d. Enter judgment declaring that the Cross-Claim Defendants are jointly and severally liable to Occidental for any cleanup, removal, and restoration costs incurred by, or damages imposed on Occidental in the future relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Second Amended Complaint, including costs or damages to be incurred after the conclusion of this action.
- e. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

### **NINTH COUNT - AGAINST MAXUS**

#### **Declaratory Judgment**

103. Occidental repeats each allegation of paragraphs 1-102 above as though fully set forth in its entirety herein.

104. Maxus has admitted publicly, both before and after September 4, 1986 (*i.e.*, the closing date of the SPA) that it is the successor to DSCC with respect to sites, businesses, or operations unrelated to the Chemicals Business, including, without limitation, discontinued operations of Old Diamond Shamrock.

105. Occidental had a reasonable basis for relying on these public statements.

106. Maxus is now estopped from denying that it is the successor to DSCC with respect to sites, businesses, or operations unrelated to the Chemicals Business, including, without limitation, discontinued operations of Old Diamond Shamrock.

107. To the extent that Occidental is determined to be liable for Plaintiffs' claims because it is the successor to DSCC, Occidental is entitled to a declaratory judgment holding that between Occidental and Maxus, Maxus is the true successor to DSCC, relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.

**PRAYER FOR RELIEF**

WHEREFORE, Occidental prays that this Court:

- a. Enter an Order declaring that if Occidental is found liable as the successor to DSCC with respect to the claims asserted by Plaintiffs, then Occidental is entitled to a judgment against Maxus for all losses (including, but not limited to, damages, costs, expenses, and attorneys' fees) incurred by Occidental or imposed on Occidental relating to, resulting from, or arising out of the Lister Site or Plaintiffs' Complaint.
- b. Enter declaratory judgment against Maxus holding that Occidental was justified in retaining separate counsel in this action and in filing these Cross-Claims and that by taking these actions, Occidental did not breach any duty it owed to Maxus under the SPA.

- c. Award Occidental reimbursement of counsel fees and costs of suit, and such further relief as the Court may deem just and proper.

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Occidental Chemical Corporation



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DATED: 10-03-08

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**CERTIFICATE OF SERVICE**

This is to certify that on October 6, 2008, defendant Occidental Chemical Corporation's Answer, Affirmative Defenses and Cross-Claims to Plaintiffs' Second Amended Complaint was filed via hand-delivery with the Clerk of the Superior Court of Essex County located at Essex County Courthouse, 50 West Market Street, Newark 07102 and served on the following:

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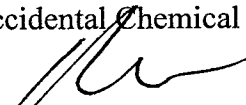
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DATED: 10/6/08