

Joseph Patella, Esq.
Thomas E. Starnes, Esq.
Charles M. Crout, Esq.
ANDREWS KURTH LLP

450 Lexington Ave.
New York, NY 10017
Tel: (212) 850-2800
Fax: (212) 850-2929

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

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: ESSEX COUNTY
	:	
	:	DOCKET NO. L-9868-05
	:	
Plaintiffs	:	
v.	:	CIVIL ACTION
	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,	:	DEFENDANTS MAXUS ENERGY CORPORATION'S AND TIERRA SOLUTION, INC.'S CROSS-CLAIM
	:	
Defendants.	:	
	:	

Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra") file this Cross-Claim against Occidental Chemical Corporation ("OCC") and allege as follows:

INTRODUCTION

1. On April 15, 2008, the 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 (collectively, the "State") filed their Second Amended Complaint ("Complaint") in the present action against Defendants OCC, Maxus, Tierra, Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF Holdings, Inc. ("YPFH") and CLH Holdings ("CLHH") (collectively, "Defendants").

2. The Complaint purports to assert claims arising under the New Jersey Spill Compensation and Control Act, the New Jersey Water Pollution Control Act, the New Jersey Uniform Fraudulent Transfer Act, as well as the common law claims of public nuisance, trespass, strict liability, civil conspiracy and aiding and abetting.

3. By their Complaint, the State seeks to recover from the Defendants past and future costs and damages purportedly arising from the alleged discharge of 2,3,7,8-tetrachlorodibenzo-p-dioxin (a form of dioxin referred to as "TCDD") and other unspecified "hazardous substances" into the Passaic River from a chemical manufacturing plant operating at 80 Lister Avenue in Newark, New Jersey ("Lister Plant"). The State contends that, after their alleged discharge into the river, these substances allegedly "migrated" throughout the lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, "and into adjacent waters and sediments," which massive area the State defines collectively as the "Newark Bay Complex."

4. The Complaint's "Statement of the Case" contends that "OCC and/or Maxus" are the alleged "successors-in-interest" to Diamond Shamrock Corporation and its predecessors, which owned and operated the Lister Plant in the 1950s and 1960s. The Complaint alleges that the operations at the Lister Plant during that period polluted the Passaic River with "TCDD" and "various other pesticides and chemicals." The Complaint further alleges that "OCC, Maxus and Tierra knowingly allowed additional discharges to occur into the Passaic River well into the 1980s from the manufacturing facilities, equipment and lines they left in place" at the Lister Plant.

5. Defendants Maxus and Tierra have substantially denied the State's allegations in the Complaint.

6. To the extent the State obtains a judgment against Maxus or Tierra arising from any or all of the claims asserted in the Complaint, and insofar as Maxus and Tierra have incurred costs or expenses relating to OCC's conduct, then Maxus and Tierra are entitled to the entry of judgment against Cross-Claim Defendant OCC for indemnification, contribution, recovery of costs and attorneys' fees, and to other relief deemed just. Maxus and Tierra's Cross-Claims arise out of the State's claims and are properly brought in this action.

THE PARTIES

7. Cross-Claimant Maxus is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380. Maxus is a party to this matter.

8. Cross-Claimant Tierra is a corporation organized under the laws of the State of Delaware. Tierra has offices at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380, and at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816. Tierra is a party to this matter.

9. Cross-Defendant OCC is a corporation organized under the laws of the State of New York with a principal place of business at 5005 LBJ Freeway, Dallas, Texas 75380. OCC is a party to this matter.

JURISDICTION AND VENUE

10. This Court has jurisdiction and venue over this proceeding pursuant to New Jersey Court Rule 4:7-5.

FACTUAL ALLEGATIONS

The Lister Plant's Operations and Ownership

11. In 1951, the Diamond Alkali Company ("Diamond Alkali") acquired the stock of Kolker Chemical Works, Inc. ("Kolker"), which owned and operated the Lister Plant. In 1955,

Diamond Alkali assumed ownership of the Lister Plant, which Diamond Akali then operated from 1955 until 1967, manufacturing pesticides and herbicides at the facility.

12. In 1967, Shamrock Oil and Gas Company was merged into Diamond Alkali, and Diamond Alkali changed its name to Diamond Shamrock Corporation ("Old Diamond Shamrock"). Old Diamond Shamrock continued to operate the Lister Plant until August 1969, when all manufacturing operations at the Lister Plant ceased.

13. In anticipation of the closure of the Lister Plant in August 1969, Old Diamond Shamrock converted the raw materials in the facility's storage tanks to finished product. Remaining raw materials and finished product at the Lister Plant were then transferred or sold and shipped from the Lister Plant.

14. Starting in late July 1969, and for several months thereafter, Old Diamond Shamrock cleaned the tanks, lines and equipment at the Lister Plant, and residues from the facility's chemical manufacturing operations were removed. Some of the equipment at the Lister Plant was dismantled and transferred to other Old Diamond Shamrock facilities. No drummed products were left at the Lister Plant. The only materials remaining at the Lister Plant after the facility was cleaned and shut down were storage tanks containing kerosene and Bunker "C" fuel for heating the facility, and carbon black and calcium chloride, which were stored in the Lister Plant warehouse.

15. In March 1971, Old Diamond Shamrock sold the still-inactive Lister Plant to Chemicaland Corporation ("Chemicaland"). Under the terms of the sale, Chemicaland acquired a portion of the 80 Lister Avenue property, as well as all personal property and improvements located at 80 Lister Avenue, and was assigned Old Diamond Shamrock's lease with Walter R. Ray Holding Co., Inc. ("Walter Ray") for the remaining portion of the 80 Lister Avenue

property. At or about the time it acquired the Lister Plant, Chemicaland had the facility inspected and acknowledged that the equipment, last used in 1969 before Old Diamond Shamrock's orderly closure of the Lister Plant, was clean.

16. In or about August 1975, Chemicaland entered into a series of agreements with OCC, pursuant to which Chemicaland was to manufacture herbicides at the Lister Plant for OCC, including 2,4-dichlorophenoxyacetic acid ("2,4-D"). In addition, OCC was granted a first-lien security interest in Chemicaland's 80 Lister Avenue facilities in connection with a series of promissory notes from Chemicaland to OCC, including a \$750,000 loan by OCC to Chemicaland to recondition and reactivate the Lister Plant. Under the terms of those agreements, Chemicaland also granted OCC an exclusive option to purchase the Lister Plant.

17. As of about September 1975 and thereafter, OCC effectively controlled Chemicaland's manufacturing operations at the Lister Plant, in that OCC was: (i) paying the creditors and vendors of Chemicaland; (ii) providing the raw materials for the Lister Plant's operations by either buying them or supplying them through intra-company transfers; (iii) obtaining and paying for insurance for the Lister Plant's operations; and (iv) paying for repairs and replacement equipment for the Lister Plant's manufacturing line.

18. From about November 1975 to November 1976, Chemicaland produced 2,4-D at the Lister Plant for OCC. The costs of the raw materials used by Chemicaland in producing the 2,4-D for OCC were billed to, and paid by, OCC. In producing the 2,4-D for OCC, Chemicaland used the previously cleaned equipment from the 2,4,5-T manufacturing line used in Old Diamond Shamrock's operations prior to the Lister Plant's closure in 1969. On information and belief, during the period when Chemicaland owned the Lister Plant several drums of Agent Orange and/or 2,4,5-T were brought to the Lister Plant for use.

19. On November 22, 1976, OCC and Chemicaland agreed in principle that OCC would acquire the Lister Plant facilities on or before February 28, 1977. OCC and Chemicaland further agreed that, effective November 22, 1976, OCC would take over the management and operation of the Lister Plant until the closing of OCC's acquisition of the facility. OCC sent notices to all creditors of Chemicaland advising them that OCC had assumed control of the management and operation of the Lister Plant, as of November 22, and that all purchases were to be to OCC's account. Consistent with these agreements and announcements, OCC did, in fact, assume physical, on-site control of the management and operation of the Lister Plant, as of November 22, 1976. During the next three months, OCC managed and operated the Lister Plant, which continued to produce 2,4-D for OCC, and all expenses arising from the operation and management of the facility were borne by OCC.

20. On or about February 10, 1977, OCC notified Chemicaland's creditors that OCC would not consummate its pending acquisition of the Lister Plant, and would relinquish its responsibilities for managing and operating the facility as of February 24, 1977. OCC also advised Chemicaland's creditors that OCC would remain responsible for all costs and expenses associated with the management of the Lister Plant incurred prior to 8 a.m. on February 24, 1977. The Lister Plant's last day of operation was February 23, 1977. OCC abandoned the facility in "as is" condition.

21. In abandoning the Lister Plant, OCC failed to conduct any cleanup of the facility's tanks, lines or equipment. Chemicaland conducted no such cleanup or closure activities either. Chemicaland's failure and inability to conduct any cleanup of the facility's tanks, lines or equipment was, or should reasonably have been, foreseen by OCC at the time it abandoned its operations at the Lister Plant. As a result of the immediate and precipitous

abandonment of the Lister Plant by OCC and Chemicaland in February 1977, raw materials, residue and/or product related to OCC's and Chemicaland's operations of the Lister Plant were left at the site.

22. In December 1978, OCC obtained a final judgment in the Superior Court of New Jersey, Chancery Division, Essex County, against Chemicaland for foreclosure and possession of the Lister Plant and related property. Pursuant to the judgment, the Lister Plant and related property were to be "sold to raise and satisfy the monies due plaintiff [OCC]"

23. In March 1979, Walter Ray purchased a portion of the 80 Lister Avenue parcel from the City of Newark in a tax sale. The Lister Plant had remained inoperative since its abandonment in February 1977.

24. On June 4, 1981, Walter Ray sold the entirety of 80 Lister Avenue, including the Lister Plant, to Marisol, Inc. ("Marisol"), which, on information and belief, conducted salvage operations, including removal of certain materials at the Lister Plant to off-site locations. In the course of cleaning and clearing the Lister Plant site, Marisol discovered that herbicides, including those manufactured at the Lister Plant during the period when OCC managed and operated the facility, had been left in the equipment after the facility was abruptly abandoned in February 1977. Materials that OCC and Chemicaland had neglected to remove were placed in drums, of which 570 remained at the site through at least 1985.

OCC Acquires Stock of Old Diamond Shamrock

25. As part of a corporate reorganization by Old Diamond Shamrock in 1983, a new, non-operating stockholding company named New Diamond Corporation was formed and acquired all of the stock of Old Diamond Shamrock. At that time, Old Diamond Shamrock neither owned nor operated any portion of the Lister Plant or related property, and had not done so since 1971. On or about September 1, 1983, the non-operating stockholding company

changed its name from New Diamond Corporation to Diamond Shamrock Corporation ("DSC-II"). The separate operating company, Old Diamond Shamrock, changed its name, first to Diamond Chemicals Company, and then to Diamond Shamrock Chemicals Company ("DSCC") on or about October 26, 1983.

26. On April 19, 1984, DSCC acquired 120 Lister Avenue, the parcel adjacent to 80 Lister Avenue, where the Lister Plant was located. On January 27, 1986, DSCC acquired 80 Lister Avenue from Marisol. On August 26, 1986, DSCC sold 80 and 120 Lister Avenue to Diamond Shamrock Chemical Land Holdings, Inc. (now Tierra).

27. On September 4, 1986, DSCC's parent holding company, DSC-II, sold all of the capital stock of DSCC to Oxy-Diamond Alkali Corporation ("Oxy-Diamond"), an affiliate of OCC, pursuant to a Stock Purchase Agreement ("SPA"). DSC-II changed its name to Maxus on or about April 28, 1987. DSCC was subsequently renamed Occidental Electrochemicals Corporation, and it and Oxy-Diamond were merged into OCC effective on or about November 30, 1987.

The Stock Purchase Agreement's Indemnity Provisions

28. The SPA includes indemnification provisions with respect to the Pre-Closing acts of the Buyer. Section 9.03(b) of the SPA states, in part:

Buyer shall indemnify, defend and hold harmless each of the Diamond Companies . . . from and against any and all Indemnifiable Losses relating to, resulting from or arising out of . . . any obligations or liabilities of Buyer or any subsidiary of Buyer (other than any DSCC Company) prior to the Closing Date.

29. As defined by the SPA, the term Diamond Companies includes the Seller, DSC-II (now Maxus), of DSCC's stock.

Maxus' and Tierra's Remediation Efforts

30. Maxus and Tierra have denied any direct liability with respect to the State's claims. Nevertheless, Maxus and Tierra, on behalf of OCC, have been engaged in extensive cleanup efforts since 1986 involving the Lister Plant in conjunction with the United States Environmental Protection Agency ("USEPA") and the State. Tierra acquired title to 80 and 120 Lister Avenue in 1986 to facilitate environmental response actions under the direction of regulators.

31. Since the time TCDD was detected at 80 and 120 Lister Avenue in 1983, Maxus and Tierra have completed a remedial investigation and feasibility study for the Lister Plant site. Maxus and Tierra then undertook and completed remedial activities on the Lister Plant site pursuant to a 1990 Consent Decree executed with the State.

32. Since 1983, Maxus and Tierra have expended tens of millions of dollars on remediation studies and cleanup costs in connection with 80 and 120 Lister Avenue, the Passaic River and Newark Bay Complex. Maxus and Tierra have agreed to fund and implement an additional \$80 million project to remove 200,000 cubic yards of contaminated sediment from the Passaic River.

33. The State has renounced any suggestion that it has "alleged a cause of action based upon Maxus' or Tierra's conduct in implementing 'response actions' with the USEPA or any other State or federal agency." Thus, in the event that the State obtains a judgment against OCC – or against Maxus and/or Tierra – on any of the State's claims in this case, Maxus and Tierra have a claim against OCC for indemnification and/or contribution, which would include the costs and expenses that Maxus and Tierra have incurred and will continue to incur in connection with their remediation and cleanup activities since 1983.

First Count

(Declaratory Judgment on OCC's Direct Liability)

34. Cross-Claimants Maxus and Tierra repeat each allegation of Paragraphs 1-33 above as though fully set forth in its entirety herein.

35. In Paragraphs 21 and 61 of the State's Second Amended Complaint, the State alleges that the facilities and equipment at the Lister Plant were not properly dismantled or remediated after operations at the plant had ceased, and that "extremely high levels of TCDD and other hazardous substances remained in and on the process buildings, tanks, sumps, drains, sewers, pipes and other equipment, which were simply left on the Lister Site." The State further alleges that "TCDD and other hazardous substances continued to discharge into the environment from the process buildings, tanks, sumps, drains, sewers, pipes and other equipment throughout the 1970s and 1980s."

36. Maxus and Tierra have denied the State's allegations that discharges of TCDD and other hazardous substances continued from facilities at the Lister Site through the 1980s.

37. The State admits that Old Diamond Shamrock operated the Lister Plant only until August 1969, when manufacturing operations at the Lister Plant ceased. Old Diamond Shamrock cleaned the Lister Plant's tanks, lines and equipment as part of its orderly shutdown of the facility, and removed manufactured product and raw materials from the site.

38. After acquiring the inactive Lister Plant from Old Diamond Shamrock in March 1971, Chemicaland executed a series of agreements with OCC in 1975, giving OCC an exclusive option to purchase the Lister Plant. OCC provided funding to recondition and reactivate the Lister Plant and assumed control of Chemicaland's manufacturing operations at the Lister Plant in September 1975, covering the expenses relating to its operations. In November 1976, OCC assumed sole responsibility for managing and operating the Lister Plant, where OCC continued

to manufacture herbicides, including 2,4-D produced for OCC, until the facility's last day of operation on February 23, 1976. No cleanup of the Lister Plant's tanks, lines or equipment was performed by OCC or Chemicaland in connection with the facility's precipitous abandonment, and raw materials, residue, waste and herbicide products from OCC's operation of the Lister Plant from 1975 to 1977 were left in the tanks, lines, equipment, and on the Lister Plant site.

39. OCC was the sole manager and operator of the Lister Plant when all manufacturing operations at the facility ended in February 1977. The State has alleged that, as a result of the Lister Plant not being properly dismantled or remediated after it ceased operations, "TCDD and other hazardous substances remained in and on the process buildings, tanks, sumps, drains, sewers, pipes and other equipment, which were simply left on the Lister Site." The State further alleges that the "TCDD and other hazardous substances continued to discharge into the environment from the process buildings, tanks, sumps, drains, sewers, pipes and other equipment throughout the 1970s and 1980s." OCC denies that it ever independently operated the Lister Plant.

40. There exists an actual controversy between the Cross-Claimants, Maxus and Tierra, and Cross-Defendant, OCC, with respect to whether OCC controlled the manufacturing operations at the Lister Plant and managed and operated the Lister Plant in its own right during the period when the State contends the Lister Plant discharged hazardous substances and was not properly dismantled or remediated after it ceased operations, thus allegedly resulting in continuing discharges. A declaration as to OCC's status and liability as the entity controlling the manufacturing operations at the Lister Plant and as manager and operator of the Lister Plant during this period is necessary to settle and relieve the uncertainty caused by the State's allegations of responsibility for these purported discharges.

41. In the event the State's allegations that discharges of hazardous substances from the Lister Plant continued "throughout the 1970s and 1980s" are true, then Maxus and Tierra are entitled to a declaration that OCC is liable for such discharges as a result of its control over manufacturing operations at the Lister Plant and its activities as manager and operator of the Lister Plant at the time when the facility was last operated from 1975 to 1977.

Prayer for Relief

WHEREFORE, Maxus and Tierra pray that this Court:

- a. Enter a declaratory judgment against OCC holding that it controlled the manufacturing operations at the Lister Plant since September 1975 and was the sole manager and operator of the Lister Plant from November 1976 to February 1977, and, as such, is liable for any damages the State may be awarded that arise out of or relate to: (i) the manufacturing activities conducted at the Lister Plant from September 1975 to February 23, 1977; (ii) any discharges from the Lister Plant as a result of the facility's equipment not being dismantled or remediated after operations at the Lister Plant ceased in February 1977; and/or (iii) any additional obligations or liabilities of OCC or any subsidiary of OCC prior to the Closing Date of the SPA pursuant to Section 9.03(b) of the SPA.
- b. Award damages, cost, expenses and attorneys' fees to Maxus and Tierra and other relief deemed just.

Second Count

Contribution Under the Spill Act

42. Cross-Claimants Maxus and Tierra repeat each allegation of Paragraphs 1-41 above as though fully set forth in its entirety herein.

43. The Spill Act, N.J.S.A. § 58:10-23.11f.a.(2), provides that a person who cleans up and removes a discharge of a hazardous substance has a right of contribution against all dischargers and persons in any way responsible for the hazardous substance. Under this provision, the contribution plaintiff need prove only that a discharge occurred for which the contribution defendant is liable pursuant to N.J.S.A. § 58:10-23.11g.c.(1).

44. OCC controlled manufacturing operations at the Lister Plant since September 1975 and was the sole operator and manager of the Lister Plant from at least November 22, 1976 to February 23, 1977, during which time the facility manufactured herbicides, including 2,4-D. OCC abandoned the Lister Plant, without removing or remediating its tanks, lines or equipment, after the facility's last day of operations on February 23, 1977. In the event the State's allegations that discharges of hazardous substances from the Lister Plant continued "throughout the 1970s and 1980s" are true, then OCC is a discharger or person in any way responsible for a discharge of hazardous substances under the Spill Act.

45. Without admitting liability, in the event Maxus and/or Tierra are found to be liable with respect to hazardous substances that were discharged as a result of OCC's acts or omissions as manager and operator of the Lister Plant and when OCC controlled Chemicaland's manufacturing operations at the Lister Plant, then Maxus and Tierra are entitled to contribution under the Spill Act from OCC for any such damages and the cleanup and removal costs that Maxus and Tierra have already incurred and will incur in the future, including, but not limited to costs and expenses related to Maxus' and Tierra's investigations, remediation and cleanup efforts involving the Lister Plant in conjunction with the USEPA and the State.

Prayer for Relief

WHEREFORE, Maxus and Tierra pray that this Court:

- a. Enter a declaratory judgment against OCC that it is required to indemnify Maxus and/or Tierra for any losses, damages, costs, expenses and attorneys' fees (including, but not limited to, those related to Maxus' and Tierra's investigations, remediation and cleanup efforts involving the Lister Plant in conjunction with the USEPA and the State) that Maxus and Tierra has incurred or may incur, or that may be imposed on Maxus and Tierra for which OCC or any subsidiary or affiliate of OCC is responsible by law, by contract or otherwise.
- c. Award damages, cost, expenses and attorneys' fees to Maxus and Tierra on the indemnification owed by OCC herein and other relief deemed just.

Third Count

Common Law Indemnification

46. Cross-Claimants Maxus and Tierra repeat each allegation of Paragraphs 1-45 above as though fully set forth in its entirety herein.

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

48. Maxus and Tierra are therefore entitled to common law indemnification from OCC for any liability imposed on or damages incurred by Maxus and Tierra (including, but not limited to, those related to Maxus' and Tierra's investigations, remediation and cleanup efforts involving the Lister Plant in conjunction with the USEPA and the State) relating to, resulting from, or arising out of the actions and omissions of OCC as manager and operator of the Lister Plant, and when OCC controlled Chemicaland's manufacturing operations at the Lister Plant.

Prayer for Relief

WHEREFORE, Maxus and Tierra pray that this Court:

- a. Enter a declaratory judgment against OCC that it is required to indemnify Maxus and Tierra for any losses, damages, costs, expenses and attorneys' fees (including, but not limited to, those related to Maxus' and Tierra's investigations, remediation and cleanup efforts involving the Lister Plant in conjunction with the USEPA and the State) that Maxus and Tierra have incurred or may incur, or that may be imposed on Maxus and Tierra for which OCC or any subsidiary or affiliate of OCC is responsible by law, by contract or otherwise.
- b. Award damages, cost, expenses and attorneys' fees to Maxus and Tierra on the indemnification owed by OCC herein and other relief deemed just.

Fourth Count

Contractual Indemnity

49. Cross-Claimants Maxus and Tierra repeat each allegation of Paragraphs 1-48 above as though fully set forth in its entirety herein.

50. Without waiving any of Maxus' prior reservation of rights with respect to the SPA, Maxus avers that, pursuant to the SPA, and followed by a series of corporate mergers and realignments, OCC became responsible for the obligations under Section 9.03(b) of the SPA as "Buyer" as follows:

Buyer shall indemnify, defend and hold harmless each of the Diamond Companies ... from and against any and all Indemnifiable Losses relating to, resulting from or arising out of ... any obligations or liabilities of Buyer or any subsidiary of Buyer (other than any DSCC Company) prior to the Closing Date.

51. The SPA defines the "Diamond Companies" to include what is now Maxus.

52. As a result, OCC is obligated to indemnify, defend and hold harmless Maxus for all or part of the damages, costs, expenses and attorneys' fees, if any, which may be proved by the State in this action.

Prayer for Relief

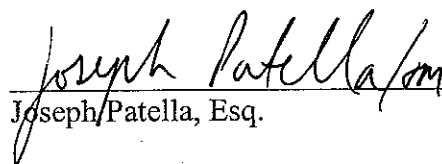
WHEREFORE, Maxus and Tierra pray that this Court:

- a. Enter a declaratory judgment against OCC that it is required to indemnify Maxus for any losses, damages, costs, expenses and attorneys' fees (including, but not limited to, those related to Maxus' investigations, remediation and cleanup efforts involving the Lister Plant in conjunction with the USEPA and the State) that Maxus has incurred or may incur, or that may be imposed on Maxus, for which OCC or any subsidiary or affiliate of OCC is responsible by law, by contract or otherwise.
- b. Award damages, cost, expenses and attorneys' fees to Maxus on the indemnification owed by OCC herein and other relief deemed just.

Dated: October 6, 2008

Respectfully submitted,

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



Joseph Patella, Esq.