



Defendant Repsol YPF, S.A. (“Repsol”), by and through its counsel, submits the following Answer and Defenses to the Second Amended Complaint of Plaintiffs, the New Jersey Department of Environmental Protection (“NJDEP”), the Commissioner of the New Jersey Department of Environmental Protection (“Commissioner”), and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “the State”). In submitting its Answer and Defenses, Repsol does not waive, and continues to assert, its defense and argument that this Court lacks personal jurisdiction over it.

## **I. ANSWER TO THE STATE’S ALLEGATIONS**

### Statement of the Case

1. In response to paragraph 1 of plaintiffs’ Second Amended Complaint, Repsol denies the allegations that pertain to it. Repsol refers to the Answers of Maxus Energy Corporation (“Maxus”), Tierra Solutions, Inc. (“Tierra”), YPF, YPF Holdings, Inc. (“YPFH”), and CLH Holdings, Inc. (“CLHH”) concerning allegations in this paragraph against those entities.

2. Repsol denies the allegations in paragraph 2 of plaintiffs’ Second Amended Complaint.

3. In response to paragraph 3 of plaintiffs’ Second Amended Complaint, Repsol denies that the “consequences of Defendants’ actions are far-reaching and significant.” Repsol denies having ever performed studies that demonstrate the continued consumption of fish and shellfish from the Newark Bay. Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol lacks sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

4. Repsol denies the allegations in paragraph 4 of plaintiffs' Second Amended Complaint.

5. In response to paragraph 5 of plaintiffs' Second Amended Complaint, Repsol admits that the State has brought an action on the grounds stated to seek the relief requested, and denies that the State is entitled to any relief. Repsol denies the remaining allegations in this paragraph.

6. In response to paragraph 6 of plaintiffs' Second Amended Complaint, Repsol admits that the State has brought an action on the grounds stated to seek the relief requested, and further admits that the State disavows asserting certain types of claims. Repsol admits that the State purports to "reserve" certain natural resource damage claims until some unspecified time "in the future," but denies the legal efficacy of the State's unilateral attempt to do so. Repsol further denies that the State is entitled to any relief, and denies the remaining allegations in this paragraph.

#### **THE PARTIES**

7. In response to paragraph 7 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

8. In response to paragraph 8 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

9. In response to paragraph 9 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

10. In response to paragraph 10 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

11. In response to paragraph 11 of plaintiffs' Second Amended Complaint, Repsol admits that Occidental Chemical Corporation ("OCC") is a corporation organized under the laws of the State of New York, with a principal place of business located at 5005 LBJ Freeway, Dallas, Texas, 75380. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

12. In response to paragraph 12 of plaintiffs' Second Amended Complaint, Repsol admits that Maxus is a corporation organized under the laws of the State of Delaware, and that Maxus has a place of business located at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380. Repsol admits that Maxus was formerly known as Diamond Shamrock Corporation ("DSC-II") and, before that, New Diamond Corporation ("New Diamond"). Repsol lacks sufficient knowledge or information to form a belief as to the service of Maxus, but admits that Maxus has appeared in this matter. Repsol refers to the Answer of Maxus concerning allegations in this paragraph against Maxus.

13. In response to paragraph 13 of plaintiffs' Second Amended Complaint, Repsol admits that Tierra was formerly known as Diamond Shamrock Chemical Land Holdings, Inc. ("DSCLH"), and Chemical Land Holdings, Inc. ("CLH"), and that Tierra is a corporation organized under the laws of the State of Delaware. Repsol further admits that Tierra has a place of business located at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816. Repsol lacks sufficient knowledge or information to form a belief as to the service of Tierra, but admits that Tierra has appeared in this matter. Repsol refers to the Answer of Tierra concerning allegations in this paragraph against Tierra.

14. In response to paragraph 14 of plaintiffs' Second Amended Complaint, Repsol admits that it is a Spanish corporation with its principal place of business located at Paseo de la Castellana, 278-280, 28046 Madrid, Spain, and that it has appeared in this matter for the limited purpose of challenging personal jurisdiction. Repsol denies that it either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. Repsol denies the remaining allegations in this paragraph.

15. In response to paragraph 15 of plaintiffs' Second Amended Complaint, Repsol admits that YPF is an Argentine corporation with its principal place of business located at Avenida Presidente Roque Saenz Pena, 777 C.P. 1364 Buenos Aires, Argentina, and that YPF appeared in this matter for the limited purpose of challenging personal jurisdiction. Repsol denies that YPF either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. Repsol denies the remaining allegations in this paragraph.

16. In response to paragraph 16 of plaintiffs' Second Amended Complaint, Repsol admits that YPFH is a Delaware corporation with its principal place of business located at 1330

Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380, and that YPFH appeared in this matter for the limited purpose of challenging personal jurisdiction. Repsol denies that YPFH either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations, and therefore denies same.

17. In response to paragraph 17 of plaintiffs' Second Amended Complaint, Repsol admits that CLHH is a Delaware corporation with its principal place of business located at 1330 Lake Robbins Drive, Suite 300, The Woodlands, Texas 77380, and that CLHH appeared in this matter for the limited purpose of challenging personal jurisdiction. Repsol denies that CLHH either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. Repsol further refers to the Answer of CLHH concerning allegations in this paragraph against CLHH.

#### **OWNERSHIP & OPERATIONAL HISTORY OF LISTER SITE**

18. In response to paragraph 18 of plaintiffs' Second Amended Complaint, Repsol denies that Maxus is the "alter ego" of any other direct or indirect corporate subsidiary. Further, Repsol denies that it is the "alter ego" of Maxus or any other affiliated corporate entity. Repsol refers to the Answer of Maxus concerning allegations in this paragraph against Maxus. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

19. In response to paragraph 19 of plaintiffs' Second Amended Complaint, Repsol admits that 80 Lister Avenue and 120 Lister Avenue are collectively referred to as the "Lister Site" in the Complaint. Repsol admits that portions of the Lister Site are located on the banks of

the Passaic River. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

20. In response to paragraph 20 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

21. In response to paragraph 21 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

22. In response to paragraph 22 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

23. In response to paragraph 23 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

24. In response to paragraph 24 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

25. In response to paragraph 25 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

26. In response to paragraph 26 of plaintiffs' Second Amended Complaint, Repsol admits that a subsidiary of Occidental Petroleum Corporation ("Occidental") acquired DSCC in 1986. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

27. In response to paragraph 27 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

28. In response to paragraph 28 of plaintiffs' Second Amended Complaint, Repsol admits that, in 1986, DSCC was sold to a subsidiary of Occidental. Repsol refers to the Answers of Maxus and Tierra concerning allegations in this paragraph made against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

29. In response to paragraph 29 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

30. In response to paragraph 30 of plaintiffs' Second Amended Complaint, Repsol admits that a subsidiary of Occidental acquired DSCC in 1986. Repsol refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.



31. In response to paragraph 31 of plaintiffs' Second Amended Complaint, Repsol admits that Maxus is an indirect subsidiary of Repsol and YPF, and a direct subsidiary of YPFH. Repsol admits that it is a Spanish oil and gas company headquartered in Madrid. Repsol denies that Maxus and Tierra are or were alter egos of one another or any other corporate entity. Repsol refers to the Answers of Maxus, Tierra, YPF and YPFH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

32. In response to paragraph 32 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

#### **ALTER-EGO/COMMON ECONOMIC UNIT**

33. Repsol denies the allegations in paragraph 33 of plaintiffs' Second Amended Complaint.

34. In response to paragraph 34 of plaintiffs' Second Amended Complaint, Repsol admits that Tierra was formed to acquire title to certain properties, including the Lister Site, that Occidental was not acquiring under the 1986 SPA. Repsol denies that Maxus and Tierra are or were alter egos of one another or any other corporate entity. Repsol refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

35. In response to paragraph 35 of plaintiffs' Second Amended Complaint, Repsol denies that Maxus and Tierra are or were alter egos of one another or any other corporate entity. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegation that Maxus's "role expanded" when YPF acquired it in 1995, and therefore denies same, and further refers to the Answers of Maxus, Tierra and YPF concerning allegations in this paragraph made against those entities. Repsol further admits that YPF was formerly a governmental entity of the Argentine Republic, involved in the oil and gas business. Repsol admits that YPF acquired Maxus stock in 1995 for approximately \$760 million, and agreed to guarantee approximately \$1 billion of Maxus's third party debt. Repsol refers to the Answers of Maxus, Tierra and YPF concerning allegations in this paragraph against those entities. Repsol denies the remaining allegations in this paragraph.

36. In response to paragraph 36 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers filed by YPF concerning the allegations in this paragraph against YPF. Repsol denies that it or, to its knowledge, YPF, ever "undertook a series of transactions" as alleged in this paragraph, and denies any remaining allegations in this paragraph.

37. In response to paragraph 37 of plaintiffs' Second Amended Complaint, Repsol denies that it or, to its knowledge, any affiliated corporate entity, ever engaged in any "scheme" to "move" any "environmental liabilities and certain income-producing assets away from Maxus." Repsol further refers to the Answer filed by YPF concerning allegations in this paragraph against YPF. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

38. In response to paragraph 38 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of YPF, Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

39. In response to paragraph 39 of plaintiffs' Second Amended Complaint, Repsol denies that it or, to its knowledge, any affiliated corporate entity, ever engaged in any "scheme" or that any such entity ever "act[ed] in concert" as alleged in the first sentence of this paragraph. Repsol further refers to the Answers of defendants YPF, YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

40. In response to paragraph 40 of plaintiffs' Second Amended Complaint, Repsol denies that it or, to its knowledge, any affiliated corporate entity, ever took any action to "strand" any environmental liabilities as alleged in this paragraph. Repsol further refers to the Answers of defendants YPF, YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

41. In response to paragraph 41 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers filed by YPF and Maxus concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

42. In response to paragraph 42 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of defendants YPF, YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same

43. In response to paragraph 43 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of defendants YPF, YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

44. In response to paragraph 44 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of defendants YPF, YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

45. In response to paragraph 45 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of Maxus and YPF concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

46. In response to paragraph 46 of plaintiffs' Second Amended Complaint, Repsol denies that it moved "former Maxus assets" from YPF's international subsidiaries to its own international subsidiaries. Repsol further denies that it moved or "stripped" any assets to insulate

them from Maxus and Tierra's liabilities. Repsol refers to the Answers of Maxus, Tierra, YPF and YPFH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

47. In response to paragraph 47 of plaintiffs' Second Amended Complaint, Repsol admits that, in January 2001, Maxus entered into a \$325 million Credit Facility Agreement with Repsol International Finance B.V., not Repsol. The terms of the Credit Facility Agreement speak for themselves. Repsol denies engaging in a "scheme" to remove Maxus's assets or strand liabilities in Maxus and Tierra. Repsol denies the remaining allegations in this paragraph.

48. In response to paragraph 48 of plaintiffs' Second Amended Complaint, Repsol denies that YPF has operated jointly, as co-conspirators, as one cohesive economic unit, or as alter-egos with its American subsidiaries. Repsol further refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph made against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations, and therefore denies same.

49. In response to paragraph 49 of plaintiffs' Second Amended Complaint, Repsol admits that YPFH and CLHH do not have any employees, but deny that those companies have no operations; they operate as shareholders of other companies. Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol denies the remaining allegations in this paragraph.

50. In response to paragraph 50 of plaintiffs' Second Amended Complaint, Repsol does not know to which "officers or directors" the State refers, nor does Repsol know what time period the State references in this paragraph. As a result, Repsol, lacks sufficient knowledge or information to form a belief as to the allegations in this paragraph, and therefore denies same.

51. In response to paragraph 51 of plaintiffs' Second Amended Complaint, Repsol admits that it acquired over 95% of YPF's stock, and is the majority owner of YPF. Repsol denies the allegations in the second sentence of this paragraph. Further answering, Repsol admits that, in 2005, it organized its worldwide operations into three divisions: upstream, downstream, and ABB. Repsol admits that YPF, Maxus and Tierra are part of the ABB division. Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol denies the remaining allegations in this paragraph.

52. Repsol denies the allegations in paragraph 52 of plaintiffs' Second Amended Complaint.

53. Repsol denies the allegations in paragraph 53 of plaintiffs' Second Amended Complaint.

#### **HAZARDOUS SUBSTANCES PRODUCED AT THE LISTER SITE**

54. In response to paragraph 54 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

55. In response to paragraph 55 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

56. In response to paragraph 56 of plaintiffs' Second Amended Complaint, Repsol does not know to which "other constituents" the State refers, and thus denies the allegations concerning "other constituents." Repsol denies the remaining allegations contained therein.

#### **OPERATIONS AND PRACTICES AT THE LISTER SITE**

57. In response to paragraph 57 of plaintiffs' Second Amended Complaint, Repsol admits that the State purports to quote portions of the opinion in Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 258 N.J. Super. 167, 215-16 (App. Div. 1992) ("Aetna Opinion"), and states that The Aetna Opinion speaks for itself. To the extent that this paragraph calls for further answer, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations concerning "Old Diamond Shamrock's operations at the Lister Site," and therefore denies same.

58. In response to paragraph 58 of plaintiffs' Second Amended Complaint, Repsol admits that the State purports to quote portions of The Aetna Opinion, and states that The Aetna Opinion speaks for itself. To the extent that this paragraph calls for further answer, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations concerning Old Diamond Shamrock's "production practices," and therefore denies same.

59. In response to paragraph 59 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

60. In response to paragraph 60 of plaintiffs' Second Amended Complaint, Repsol admits that the State purports to quote portions of The Aetna Opinion, and states that The Aetna Opinion speaks for itself. To the extent that this paragraph calls for further answer, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

61. In response to paragraph 61 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

62. In response to paragraph 62 of plaintiffs' Second Amended Complaint, Repsol denies that it engaged in any "conduct" at the Lister Site that caused TCDD to be detected in the soil at and around the Lister Site, in the groundwater at and around the Lister Site, and in the Newark Bay. Repsol further denies having failed to timely notify DEP of any discharge of TCDD or other hazardous substance. Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the remaining allegations in this paragraph, and therefore denies same.

63. In response to paragraph 63 of plaintiffs' Second Amended Complaint, Repsol admits that the State purports to quote portions of The Aetna Opinion, and states that The Aetna Opinion speaks for itself. To the extent that this paragraph calls for further answer, Repsol denies the remaining allegations in this paragraph.

64. In response to paragraph 64 of plaintiffs' Second Amended Complaint, Repsol denies that YPF joined any effort to "strip Maxus's assets away" from "the liabilities at issue."



Repsol refers to the Answer of Maxus concerning allegations in this paragraph against Maxus. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

65. In response to paragraph 65 of plaintiffs' Second Amended Complaint, Repsol denies that it "conducted" any operations on the Lister Site that involved the generation, storage, or handling of hazardous substances. Repsol refers to the Answer of Maxus, Tierra, YPF, YPFH and CLHH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

66. Repsol denies the allegations in paragraph 66 of plaintiffs' Second Amended Complaint.

#### **THE REGULATORY HISTORY**

67. In response to paragraph 67 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

68. In response to paragraph 68 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same

69. In response to paragraph 69 of plaintiffs' Second Amended Complaint, Repsol admits that, in 1990, the United States District Court of New Jersey entered a consent decree for

DSCC's former Lister Avenue plant. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

70. In response to paragraph 70 of plaintiffs' Second Amended Complaint, Repsol refers to the Answer of Tierra concerning allegations in this paragraph made against Tierra. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

71. In response to paragraph 71 of plaintiffs' Second Amended Complaint, Repsol denies that it entered into the 1994 AOC, or that it "agreed to undertake a proper investigation" of the lower six-miles of the Passaic River. Repsol further denies that it engaged in, or attempted to shift blame from, "activities" at the Lister Site. Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the remaining allegations in this paragraph, and therefore denies same.

72. In response to paragraph 72 of plaintiffs' Second Amended Complaint, Repsol denies that it or, to its knowledge, any other defendant, manipulated the focus of "the investigation" away from TCDD, or that it misled "the regulators." Repsol further denies that it "conducted sampling" or "reported data to the Government." Repsol denies that it submitted maps to regulators as part of "the investigation." Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

73. In response to paragraph 73 of plaintiffs' Second Amended Complaint, Repsol denies that it or, to its knowledge, any other defendant, attempted to bias the results of "the investigation." Repsol denies ever receiving instructions from EPA. Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph against those entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

74. Repsol denies the allegations in paragraph 74 of plaintiffs' Second Amended Complaint.

75. Repsol denies the allegations in paragraph 75 of plaintiffs' Second Amended Complaint.

76. In response to paragraph 76 of plaintiffs' Second Amended Complaint, Repsol denies that it ever had any "control" as alleged in this paragraph and further lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

77. In response to paragraph 77 of plaintiffs' Second Amended Complaint, Repsol denies that it ever "entered into the AOC" or "deprived courts of jurisdiction" and further lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

78. In response to paragraph 78 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those

entities. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

79. In response to paragraph 79 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

80. In response to paragraph 80 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

81. In response to paragraph 81 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of this paragraph. The second sentence of this paragraph is a characterization of the State's claims, and does not require a response. To the extent that this paragraph calls for further answer, Repsol admits that the State disavows asserting natural resource damage claims in this action, and purports to "reserve" such claims until some unspecified time "in the future," but denies the legal efficacy of the State's unilateral attempt to do so. Repsol denies the remaining allegations in this paragraph.

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

82. In response to paragraph 82 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

83. In response to paragraph 83 of plaintiffs' Second Amended Complaint, Repsol denies that its "actions" discharged TCDD, caused any TCDD contamination or caused TCDD to be detected in the Newark Bay Complex or the Passaic River. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

84. In response to paragraph 84 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

#### **FIRST COUNT - SPILL ACT**

85. In response to paragraph 85 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each and every response contained in paragraphs 1 through 84 above, as if fully recited herein

86. The allegations in paragraph 86 of plaintiffs' Second Amended Complaint call for a legal conclusion, and, therefore, Repsol denies same.

87. In response to paragraph 87 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

88. In response to paragraph 88 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

89. In response to paragraph 89 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

90. In response to paragraph 90 of plaintiffs' Second Amended Complaint, Repsol denies that all of the costs and damages sought in this case are "clean up and removal costs" within the meaning of N.J.S.A. 58:10-23.11b, and denies the remaining allegations in this paragraph.

91. In response to paragraph 91 of plaintiffs' Second Amended Complaint, Repsol denies that it is a discharger of TCDD, and, thus, denies the allegations as to itself. With respect to allegations against any other defendants, Repsol refers to those defendants' Answers to such allegations. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

92. In response to paragraph 92 of plaintiffs' Second Amended Complaint, Repsol denies that it is a discharger of TCDD, and, thus, denies the allegations as to itself. With respect to allegations against any other defendants, Repsol refers to those defendants' Answers to such allegations. Repsol lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

93. In response to paragraph 93 of plaintiffs' Second Amended Complaint, Repsol states that the Spill Act speaks for itself, and denies that the State is entitled to the relief requested, and further denies the remaining allegations in this paragraph.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

**SECOND COUNT - WATER POLLUTION CONTROL ACT**

94. In response to paragraph 94 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each and every response contained in paragraphs 1 through 93 above, as if fully recited herein.

95. In response to paragraph 95 of plaintiffs' Second Amended Complaint, the allegations in this paragraph call for a legal conclusion, and, therefore, Repsol denies same.

96. In response to paragraph 96 of plaintiffs' Second Amended Complaint, Repsol denies that it is a discharger of TCDD, and, thus, denies the allegations as to itself. With respect to allegations against any other defendants, Repsol refers to those defendants' Answers to such allegations.

97. In response to paragraph 97 of plaintiffs' Second Amended Complaint, Repsol refers to the Answers of Maxus, Tierra, YPF, YPFH, and CLHH concerning allegations in this paragraph made against those entities. Repsol denies that the Commissioner determined that it violated provisions of the WPCA.

98. In response to paragraph 98 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

99. In response to paragraph 99 of plaintiffs' Second Amended Complaint, Repsol lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

100. In response to paragraph 100 of plaintiffs' Second Amended Complaint, Repsol denies that the State is entitled to the relief requested, and denies the remaining allegations contained therein.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

### **THIRD COUNT - PUBLIC NUISANCE**

101. In response to paragraph 101 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each and every response contained in paragraphs 1 through 100 above, as if fully recited herein.

102. The allegations in paragraph 102 of plaintiffs' Second Amended Complaint call for a legal conclusion, and, therefore, Repsol denies same.

103. In response to paragraph 103 of plaintiffs' Second Amended Complaint, Repsol denies that it is a discharger of TCDD, and, thus, denies the allegations as to itself. With respect to allegations against any other defendants, Repsol refers to those defendants' Answers to such allegations.



104. In response to paragraph 104 of plaintiffs' Second Amended Complaint, Repsol denies that it released or discharged TCDD into the Newark Bay Complex and surrounding areas, and denies the remaining allegations in this paragraph

105. Repsol denies the allegations in paragraph 105 of plaintiffs' Second Amended Complaint.

106. In response to paragraph 106 of plaintiffs' Second Amended Complaint, Repsol denies that it released or discharged TCDD into the Newark Bay Complex and surrounding areas, and denies the remaining allegations in this paragraph.

107. In response to paragraph 107 of plaintiffs' Second Amended Complaint, Repsol denies that it caused TCDD contamination in the Newark Bay Complex or surrounding areas, and denies the remaining allegations in this paragraph.

108. Repsol denies the allegations in paragraph 108 of plaintiffs' Second Amended Complaint.

109. Repsol denies the allegations in paragraph 109 of plaintiffs' Second Amended Complaint.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

#### **FOURTH COUNT - TRESPASS**

110. In response to paragraph 110 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each response contained in paragraphs 1 through 109 above, as if fully recited herein.

111. Repsol denies the allegations in paragraph 111 of plaintiffs' Second Amended Complaint.

112. In response to paragraph 112 of plaintiffs' Second Amended Complaint, Repsol denies that it caused TCDD contamination in the Newark Bay Complex and surrounding areas, and denies the remaining allegations in this paragraph.

113. Repsol denies the allegations in paragraph 113 of plaintiffs' Second Amended Complaint.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

#### **FIFTH COUNT - STRICT LIABILITY**

114. In response to paragraph 114 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each response contained in paragraphs 1 through 113 above, as if fully recited herein.

115. Repsol denies the allegations in paragraph 115 of plaintiffs' Second Amended Complaint.

116. In response to paragraph 116 of plaintiffs' Second Amended Complaint, Repsol denies that it released, disposed of, or discharged TCDD, and denies the remaining allegations in this paragraph.

117. Repsol denies the allegations in paragraph 117 of plaintiffs' Second Amended Complaint.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

#### **SIXTH COUNT - FRAUDULENT TRANSFERS**

118. In response to paragraph 118 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each response contained in paragraphs 1 through 117 above, as if fully recited herein.

119. Repsol denies the allegations paragraph 119 of plaintiffs' Second Amended Complaint.

120. Repsol denies the allegations in paragraph 120 of plaintiffs' Second Amended Complaint.

121. Repsol denies the allegations in paragraph 121 of plaintiffs' Second Amended Complaint.

122. Repsol denies the allegations in paragraph 122 of plaintiffs' Second Amended Complaint.

123. Repsol denies the allegations in paragraph 123 of plaintiffs' Second Amended Complaint.

124. Repsol denies the allegations in paragraph 124 of plaintiffs' Second Amended Complaint.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

**SEVENTH COUNT - CIVIL CONSPIRACY/AIDING AND ABETTING**

125. In response to paragraph 125 of plaintiffs' Second Amended Complaint, Repsol hereby repeats and incorporates by reference each response contained in paragraphs 1 through 124 above, as if fully recited herein.

126. Repsol denies the allegations in paragraph 126 of plaintiffs' Second Amended Complaint.

127. Repsol denies the allegations in paragraph 127 of plaintiffs' Second Amended Complaint.

128. Repsol denies the allegations in paragraph 128 of plaintiffs' Second Amended Complaint.

129. Repsol denies the allegations in paragraph 129 of plaintiffs' Second Amended Complaint.

130. Repsol denies the allegations in paragraph 130 of plaintiffs' Second Amended Complaint.

**WHEREFORE**, Repsol demands judgment dismissing plaintiffs' Second Amended Complaint with prejudice, together with costs, disbursements and attorneys' fees in the full amount provided by the law.

## II. SEPARATE DEFENSES

Without assuming the burden of proof where such burden is otherwise on the State as a matter of applicable substantive or procedural law, Repsol asserts the following defenses. Repsol reserves the right to assert additional defenses as information becomes available to it.

1. The Court lacks personal jurisdiction over Repsol.
2. The Complaint is barred in whole or in part as it fails to state a cause of action against Repsol upon which relief can be granted.
3. The State's claims against Repsol are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and the equitable doctrines of laches and estoppel.
4. The State's claims are barred, in whole or in part, by the doctrines of waiver, consent, estoppel, release and assumption of risk.
5. Federal law preempts some or all of the State's claims.
6. Some or all of the State's claims violate due process rights protected by the Fifth Amendment, as incorporated in the Fourteenth Amendment, of the United States Constitution.
7. The State's selective pursuit of the narrow group of parties, disregarding hundreds if not thousands of sources of pollution to the vast Newark Bay Complex, constitutes unlawful selective enforcement that violates Constitutional Due Process Rights and the New Jersey Doctrine of Fundamental Fairness.

8. The obligations, damages, costs and penalties the State seeks to impose violate Repsol's Constitutional Due Process Rights, their rights under the Eighth Amendment to the U.S. Constitution, and the New Jersey Doctrine of Fundamental Fairness.

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

10. The State's claims against Repsol are subject to setoff and recoupment and therefore must be reduced accordingly.

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

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

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

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

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

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

17. The State had notice, and was aware of, the discharges it alleges in its Complaint before Repsol became a direct or indirect parent company of any defendant.

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

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

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

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

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

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

24. The pre-existing, superseding, and intervening acts and negligence of other parties over whom Repsol had no control caused the State's injuries and damages.

25. Although Repsol denies that it is liable for the contamination described in the State's Complaint, in the event it is found liable, Repsol is entitled to an offset against any such



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

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

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

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

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

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

31. Repsol cannot be liable for, or be required to pay, the State's damages that arise out of conduct lawfully undertaken in compliance with permits issued by relevant government agencies, including the State and the United States, or in compliance with applicable laws,

regulations, rules, orders, directives, and other requirements of all federal, state and local government entities.

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

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

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

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

36. To the extent the State's claims are subject to contribution or any reduction or offset from other parties, any damages recovered against Repsol shall be reduced accordingly.

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

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

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

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

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

42. The State's claims are barred, in whole or in part, by the law of foreign jurisdictions.

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

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

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

46. Repsol reserves the right to incorporate by reference the defenses pled, now or in the future, by any other Defendant or Third-Party Defendant, to the extent applicable to Repsol.

47. Repsol reserves the right to assert additional defenses that may be uncovered during the course of this action.

### III. PRAYER

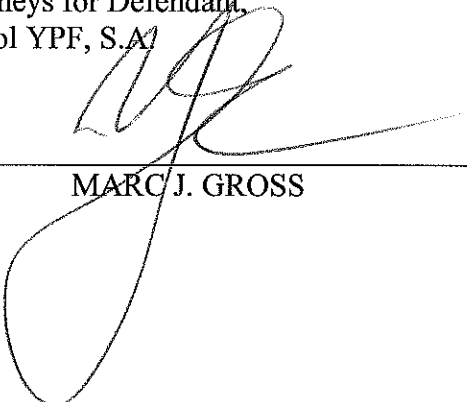
Repsol reserves the right to amend this answer.

**WHEREFORE**, Repsol respectfully prays that:

- (i) judgment against the State on its claims against Repsol be entered;
- (ii) the State's claims against Repsol be dismissed with prejudice at the State's cost;
- (iii) the State recover nothing by this suit;
- (iv) Repsol be awarded its costs of court, expenses, and attorneys' fees; and
- (v) Repsol be granted such other relief, both special and general, at law or in equity, to which it is justly entitled.

**GREENBAUM, ROWE, SMITH & DAVIS LLP**  
Attorneys for Defendant,  
Repsol YPF, S.A.

By

  
\_\_\_\_\_  
MARC J. GROSS

Dated: October 24, 2008

**DEMAND FOR STATEMENT OF DAMAGES**

PLEASE TAKE NOTICE that Repsol YPF, S.A., pursuant to the provisions of Rule 4:5-2, demands that it be furnished with a statement of the monetary amounts of all damages claimed herein within five (5) days of the date of this pleading.

**DEMAND FOR PRODUCTION OF DOCUMENTS**

PLEASE TAKE NOTICE that Repsol YPF, S.A., pursuant to the provisions of Rule 4:18-2, demands that all parties furnish it with a copy of all documents and papers referred to in their pleadings within five (5) days of the date of this pleading.

**CERTIFICATION PURSUANT TO R. 4:5-1**

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending action in any court or arbitration proceeding known to Repsol at this time, but may become the subject of a federal action pursuant to certain federal environmental statutes. Repsol is not aware of any parties who should be joined in this action pursuant to R. 4:28 in addition to those identified in the Answers filed by defendants Maxus and Tierra. If additional non-parties later become known to Repsol, an amended certification shall be filed and served on all other parties, and with this Court, in accordance with R. 4:5-1(b)(2).

**GREENBAUM, ROWE, SMITH & DAVIS LLP**  
Attorneys for Defendant,  
Repsol YPF, S.A.

By \_\_\_\_\_  
MARC J. GROSS

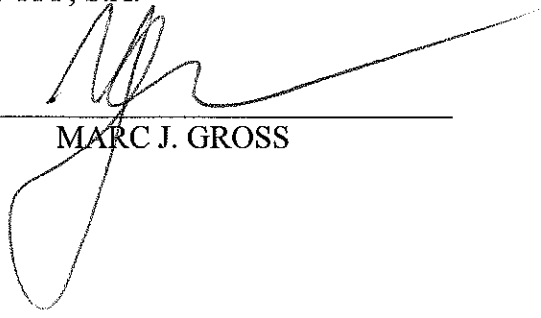
Dated: October 24, 2008

**CERTIFICATION PURSUANT TO R. 4:6-1**

I hereby certify pursuant to R. 4:6-1 that the Answer to plaintiffs' Second Amended Complaint on behalf of defendant Repsol YPF, S.A. has been served within the time and manner provided by the Court's Order of September 19, 2008.

**GREENBAUM, ROWE, SMITH & DAVIS LLP**  
Attorneys for Defendant,  
Repsol YPF, S.A.

By

  
\_\_\_\_\_  
MARC J. GROSS

Dated: October 24, 2008