



Defendant YPF, S.A. (“YPF”), 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, YPF 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, YPF denies the allegations that pertain to it. YPF refers to the Answers of Maxus Energy Corporation (“Maxus”), Tierra Solutions, Inc. (“Tierra”), Repsol, YPF Holdings, Inc. (“YPFH”), and CLH Holdings, Inc. (“CLHH”), concerning allegations in this paragraph against those entities.

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

3. In response to paragraph 3 of plaintiffs’ Second Amended Complaint, YPF denies that the “consequences of Defendants’ actions are far-reaching and significant.” YPF denies having ever performed studies that demonstrate the continued consumption of fish and shellfish from the Newark Bay. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities. YPF 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. YPF denies the allegations in paragraph 4 of plaintiffs' Second Amended Complaint.

5. In response to paragraph 5 of plaintiffs' Second Amended Complaint, YPF 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. YPF denies the remaining allegations in this paragraph.

6. In response to paragraph 6 of plaintiffs' Second Amended Complaint, YPF 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. YPF 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. YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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. YPF 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, YPF 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. YPF admits that Maxus was formerly known as Diamond Shamrock Corporation ("DSC-IP") and, before that, New Diamond Corporation ("New Diamond"). YPF lacks sufficient knowledge or information to form a belief as to the service of Maxus, but admits that Maxus has appeared in this matter. YPF refers to the Answer of Maxus concerning allegations in this paragraph against Maxus.

13. In response to paragraph 13 of plaintiffs' Second Amended Complaint, YPF 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. YPF further admits that Tierra has a place of business located at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816. YPF lacks sufficient knowledge or information to form a belief as to the service of Tierra, but

admits that Tierra has appeared in this matter. YPF refers to the Answer of Tierra concerning allegations in this paragraph against Tierra.

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

15. In response to paragraph 15 of plaintiffs' Second Amended Complaint, YPF admits that it 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 it appeared in this matter for the limited purpose of challenging personal jurisdiction. YPF denies that YPF either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. YPF denies the remaining allegations in this paragraph.

16. In response to paragraph 16 of plaintiffs' Second Amended Complaint, YPF 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. YPF denies that YPFH either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. YPF refers to the Answer of YPFH concerning allegations in this paragraph made against it.

17. In response to paragraph 17 of plaintiffs' Second Amended Complaint, YPF 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. YPF denies that CLHH either does business in New Jersey, or is subject to the specific or general jurisdiction of the State. YPF 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, YPF denies that Maxus is the "alter ego" of any other direct or indirect corporate subsidiary. Further, YPF denies that it is the "alter ego" of Maxus, or any other affiliated corporate entity. YPF refers to the Answer of Maxus concerning allegations in this paragraph against Maxus. YPF lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph, and therefore denies same.

19. In response to paragraph 19 of plaintiffs' Second Amended Complaint, YPF admits that 80 Lister Avenue and 120 Lister Avenue are collectively referred to as the "Lister Site" in the Complaint. YPF admits that portions of the Lister Site are located on the banks of the Passaic River. YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF admits that Diamond Shamrock Chemicals Company ("DSCC") was sold to a subsidiary of Occidental Petroleum Corporation ("Occidental") in 1986. YPF 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, YPF 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, YPF admits that, in 1986, DSCC was sold to a subsidiary of Occidental. YPF refers to the Answers of

Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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, YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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, YPF admits that DSCC was sold to a subsidiary of Occidental in 1986. YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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, YPF admits that Maxus is an indirect subsidiary of Repsol and YPF, and a direct subsidiary of YPFH. YPF denies that Maxus and Tierra are or were alter egos of one another or any other corporate entity. YPF refers to the Answers of Repsol, YPFH, Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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, YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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. YPF denies the allegations in paragraph 33 of plaintiffs' Second Amended Complaint.

34. In response to paragraph 34 of plaintiffs' Second Amended Complaint, YPF admits that Tierra was formed to acquire title to certain properties, including the Lister Site, that Occidental was not acquiring under the 1986 SPA. YPF denies that Maxus and Tierra are or were alter egos of one another or any other corporate entity. YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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, YPF denies that Maxus and Tierra are or were alter egos of one another or any other corporate entity. YPF 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. YPF admits that it was formerly a governmental entity of the Argentine Republic, involved in the oil and gas business. YPF further admits that it acquired Maxus stock in 1995 for approximately \$760 million, and agreed to guarantee approximately \$1 billion of Maxus's third party debt. YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF denies the remaining allegations in this paragraph.

36. YPF denies the allegations in paragraph 36 of plaintiffs' Second Amended Complaint.

37. In response to paragraph 37 of plaintiffs' Second Amended Complaint, YPF admits that Tierra is a subsidiary of CLHH, which is a subsidiary of YPFH, and that Maxus is a

subsidiary of YPFH, which is a subsidiary of YPF. YPF further admits that YPFH and CLHH are Delaware corporations with principal places of business in Texas. YPF denies that it engaged in a “scheme” to move environmental liabilities away from Maxus. YPF admits that it formed intermediate holding companies, but denies the remaining allegations in this paragraph.

38. In response to paragraph 38 of plaintiffs’ Second Amended Complaint, YPF admits that Maxus and Tierra entered into an Assumption Agreement in 1996, the terms of which speak for themselves. YPF denies that it “had” Tierra assume Maxus’s obligations to OCC. YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations, and therefore denies same.

39. In response to paragraph 39 of plaintiffs’ Second Amended Complaint, YPF admits that YPF, YPF International Ltd., YPFH, CLHH, Maxus and Tierra entered into a Contribution Agreement in 1996 (“Contribution Agreement”), the terms of which speak for themselves. YPF refers to the Answers of defendants YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph made against those entities. YPF denies the remaining allegations in this paragraph.

40. In response to paragraph 40 of plaintiffs’ Second Amended Complaint, YPF states that the terms of the Contribution Agreement speak for themselves. YPF admits that it considered the amount of Maxus’s reserves when establishing the “Assumed Liability and Accrued Amount” referenced in the Contribution Agreement. YPF refers to the Answers of defendants YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. YPF denies the remaining allegations in this paragraph.

41. YPF denies the allegations in paragraph 41 of plaintiffs' Second Amended Complaint.

42. In response to paragraph 42 of plaintiffs' Second Amended Complaint, YPF admits that the interest in Maxus Southeast Sumatra, LLC, and the stock of YPF Java Baratlaut, B.V. were sold to a subsidiary of YPF on December 31, 1997. YPF denies that the transfer occurred for "substantially less than fair market value." YPF refers to the Answers of defendants YPFH, CLHH, Maxus and Tierra concerning allegations in this paragraph against those entities. YPF lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

43. In response to paragraph 43 of plaintiffs' Second Amended Complaint, YPF admits that Maxus International Energy Company sold YPF, Ecuador, Inc.'s stock to YPF International Ltd. The terms of the 1997 Stock Purchase and Sale Agreement speak for themselves. YPF denies that it "directed" any transfer of assets by Maxus, and further refers to the Answer of Maxus concerning allegations in this paragraph made against Maxus. YPF further denies that Maxus "transferred the Ecuadorian Assets at substantially less than fair market value as directed by YPF effective December 31, 1997," and denies the remaining allegations in this paragraph.

44. In response to paragraph 44 of plaintiffs' Second Amended Complaint, YPF refers to the Answers of YPFH, CLHH, and Maxus concerning allegations in this paragraph made against those entities. YPF denies that it or any other corporate entity took any actions that "left" Maxus "empty." YPF 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, YPF denies that Maxus "was forced to look to YPF and its subsidiaries for all of its funding." YPF further refers to the Answer of Maxus concerning allegations in this paragraph made against Maxus. YPF 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, YPF denies that it ever acted as Maxus's "financial guarantor" to DEP. YPF admits that, in 2002 and 2003, YPF submitted self-guarantees to DEP for the chromium-related sites. YPF denies that Repsol moved "former Maxus assets" from YPF's international subsidiaries to Repsol's international subsidiaries. YPF further denies that Repsol moved or "stripped" any assets to insulate them from any of Maxus and Tierra's liabilities. YPF refers to the Answers of Repsol, Maxus, Tierra, and YPFH concerning allegations in this paragraph against those entities. YPF 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, YPF admits that, while observing, and consistent with, all corporate formalities, it has occasionally provided funds to YPFH, and that Maxus and Tierra ultimately used those funds. YPF denies engaging in a "scheme" to remove Maxus's assets or strand liabilities in Maxus and Tierra. YPF refers to the Answers of Maxus, Tierra, and Repsol concerning allegations in this paragraph made against those entities. YPF lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence of this paragraph, and therefore denies same. YPF denies the remaining allegations in this paragraph.

48. In response to paragraph 48 of plaintiffs' Second Amended Complaint, YPF admits that YPFH is a holding company that owns Maxus and CLHH's stock. YPF admits that CLHH is a holding company that owns Tierra's stock. YPF admits that YPFH and YPF entered into a Credit Contract, effective August 1, 2005 ("Credit Contract"), that the Credit Contract was amended three times, and that the Third Amendment to the Credit Contract became effective May 3, 2006. YPF states that the terms of the Credit Contract speak for themselves. YPF admits that Deloitte & Touche was its auditor. Answering further, YPF states that Deloitte & Touche LLP's ("Deloitte & Touche) Independent Accountants' Review Report of the Consolidated Financial Statements of YPFH and Subsidiaries as of March 31, 2006 and December 31, 2005, and for the Three-Month Periods Ended March 31, 2006 and 2005, speaks for itself. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities. YPF denies that it has operated jointly, as co-conspirators, as one cohesive economic unit, or as alter-egos with its American or other subsidiaries, or with affiliated corporate entities. YPF admits that YPFH is a U.S. based subsidiary of YPF. YPF further denies the remaining allegations in this paragraph.

49. In response to paragraph 49 of plaintiffs' Second Amended Complaint, YPF 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. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities. YPF denies the remaining allegations in this paragraph.

50. In response to paragraph 50 of plaintiffs' Second Amended Complaint, YPF does not know to which "officers or directors" the State refers, nor does YPF know what time period the State references in this paragraph. As a result, YPF lacks sufficient knowledge or

information to form a belief as to the allegations in this paragraph, and therefore denies same. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities.

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

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

53. YPF 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, YPF 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, YPF 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, YPF does not know to which "other constituents" the State refers, and thus denies the allegations concerning "other constituents." YPF denies the remaining allegations contained therein.

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

57. In response to paragraph 57 of plaintiffs' Second Amended Complaint, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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, YPF 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. YPF further denies having failed to timely notify DEP of any discharge of TCDD or other hazardous substance. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities. YPF 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, YPF 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, YPF denies the remaining allegations in this paragraph.

64. In response to paragraph 64 of plaintiffs' Second Amended Complaint, YPF denies joining an effort to "strip Maxus's assets away" from "the liabilities at issue." YPF refers to the Answer of Maxus concerning allegations in this paragraph made against Maxus. YPF 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, YPF denies that it "conducted" any operations on the Lister Site that involved the generation, storage, or handling of hazardous substances. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH and CLHH concerning allegations in this paragraph against those entities. YPF 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. YPF 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, YPF 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, YPF 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, YPF admits that, in 1990, the United States District Court of New Jersey entered a consent decree for DSCC's former Lister Avenue plant. YPF 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, YPF refers to the Answer of Tierra concerning allegations in this paragraph made against Tierra. YPF

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, YPF 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. YPF further denies that it engaged in, or attempted to shift blame from, "activities" at the Lister Site. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities. YPF lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies same.

72. In response to paragraph 72 of plaintiffs' Second Amended Complaint, YPF 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." YPF denies that it "conducted sampling" or "reported data to the Government." YPF denies that it submitted maps to regulators as part of "the investigation." YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph against those entities. YPF 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, YPF denies that it or, to its knowledge, any other defendant, attempted to bias the results of "the investigation." YPF denies ever receiving instructions from EPA. YPF refers to the Answers of Maxus, Tierra, Repsol, YPFH, and CLHH concerning allegations in this paragraph made against those entities. YPF 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. YPF denies the allegations in paragraph 74 of plaintiffs' Second Amended Complaint.

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

76. In response to paragraph 76 of plaintiffs' Second Amended Complaint, YPF 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, YPF 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, YPF refers to the Answers of Maxus and Tierra concerning allegations in this paragraph against those entities. YPF 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, YPF 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, YPF 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, YPF 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, YPF 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. YPF denies the remaining allegations in this paragraph.

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

82. In response to paragraph 82 of plaintiffs' Second Amended Complaint, YPF 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, YPF 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. YPF 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, YPF 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, YPF 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, YPF denies same.

87. In response to paragraph 87 of plaintiffs' Second Amended Complaint, YPF 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, YPF 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, YPF 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, YPF 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, YPF denies that it is a discharger of TCDD and, thus, denies the allegations as to itself. With respect to allegations against any other defendants, YPF refers to those defendants' Answers to such

allegations. YPF 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, YPF denies that it is a discharger of TCDD and, thus, denies the allegations as to itself. With respect to allegations against any other defendants, YPF refers to those defendants' Answers to such allegations. YPF 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, YPF 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 contained in this paragraph.

**WHEREFORE**, YPF 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, YPF 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, YPF denies same.

96. In response to paragraph 96 of plaintiffs' Second Amended Complaint, YPF denies that it is a discharger of TCDD and, thus, denies the allegations as to itself. With respect

to allegations against any other defendants, YPF refers to those defendants' Answers to such allegations.

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

98. In response to paragraph 98 of plaintiffs' Second Amended Complaint, YPF 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, YPF 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, YPF denies that the State is entitled to the relief requested, and denies the remaining allegations contained therein.

**WHEREFORE**, YPF 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, YPF 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 this paragraph 102 of plaintiffs' Second Amended Complaint call for a legal conclusion, and, therefore, YPF denies same.

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

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

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

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

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

109. YPF denies the allegations in paragraph 109 of plaintiffs' Second Amended Complaint, and denies that the State is entitled to the relief requested.



**WHEREFORE**, YPF 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, YPF hereby repeats and incorporates by reference each response contained in paragraphs 1 through 109 above, as if fully recited herein.

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

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

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

**WHEREFORE**, YPF 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, YPF hereby repeats and incorporates by reference each response contained in paragraphs 1 through 113 above, as if fully recited herein.

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

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

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

**WHEREFORE**, YPF 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, YPF hereby repeats and incorporates by reference each response contained in paragraphs 1 through 117 above, as if fully recited herein.

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

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

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

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

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

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

**WHEREFORE**, YPF 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, YPF hereby repeats and incorporates by reference each response contained in paragraphs 1 through 124 above, as if fully recited herein.

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

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

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

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

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

**WHEREFORE**, YPF 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, YPF asserts the following defenses. YPF reserves the right to assert additional defenses as information becomes available to it.

1. The Court lacks personal jurisdiction over YPF.
2. The Complaint is barred in whole or in part as it fails to state a cause of action against YPF upon which relief can be granted.
3. The State's claims against YPF 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 YPF'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 YPF 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 YPF acquired Maxus, and therefore, YPF cannot be subject to penalties for the alleged failure to timely notify the State of such discharges.

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. YPF 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 YPF had no control caused the State's injuries and damages.

25. Although YPF denies that it is liable for the contamination described in the State's Complaint, in the event it is found liable, YPF 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 YPF; (2) under the facts of this case, neither the common law nor any statute renders YPF 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. YPF 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 YPF 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 YPF 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 YPF, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

46. YPF 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 YPF.

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

### III. PRAYER

YPF reserves the right to amend this answer.

**WHEREFORE**, YPF respectfully prays that:

- (i) judgment against the State on its claims against YPF be entered;
- (ii) the State's claims against YPF be dismissed with prejudice at the State's cost;
- (iii) the State recover nothing by this suit;
- (iv) YPF be awarded its costs of court, expenses, and attorneys' fees; and
- (v) YPF 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,  
YPF, S.A.

By \_\_\_\_\_

  
MARC J. GROSS

Dated: October 24, 2008

**DEMAND FOR STATEMENT OF DAMAGES**

PLEASE TAKE NOTICE that 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 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 YPF at this time, but may become the subject of a federal action pursuant to certain federal environmental statutes. YPF 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 YPF, 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,  
YPF, S.A.

By

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

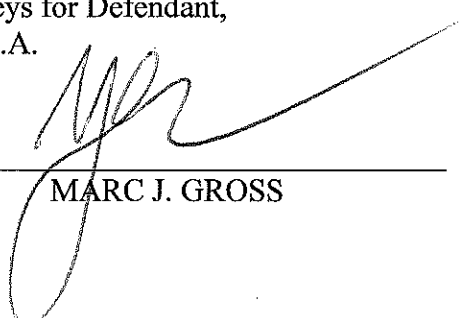
Dated: October 24, 2008

**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 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,  
YPF, S.A.

By

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

Dated: October 24, 2008