

Joseph Patella, Esq.  
ANDREWS KURTH LLP  
450 Lexington Ave., 15<sup>th</sup> Floor  
New York, New York 10017  
Tel.: (212) 850-2800  
Fax: (212) 850-2929

Thomas E. Starnes, Esq.  
Charles M. Crout, Esq.  
ANDREWS KURTH LLP  
1350 I Street NW, Suite 1100  
Washington, D.C. 20005  
Tel.: (202) 662-2700  
Fax: (202) 662-2739

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

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NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION, THE	:	SUPERIOR COURT OF NEW JERSEY
COMMISSIONER OF THE NEW JERSEY	:	LAW DIVISION -ESSEX COUNTY
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION AND THE ADMINISTRATOR	:	DOCKET NO. ESX-L-9868-05
OF THE NEW JERSEY SPILL	:	
COMPENSATION FUND,	:	
Plaintiffs,	:	
vs.	:	ANSWER AND SEPARATE
OCCIDENTAL CHEMICAL CORPORATION,	:	DEFENSES OF DEFENDANTS
TIERRA SOLUTIONS, INC., MAXUS	:	MAXUS ENERGY CORPORATION
ENERGY CORPORATION, REPSOL YPF,	:	AND TIERRA SOLUTIONS, INC. TO
S.A., YPF, S.A., YPF HOLDINGS, INC., and	:	CROSS-CLAIMS OF OCCIDENTAL
CLH HOLDINGS,	:	CHEMICAL CORPORATION
Defendants.	:	

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Defendants Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”), by and through their counsel, submit the following Answer and Defenses to Defendant Occidental Chemical Corporation’s (“Occidental”) Cross-Claims.

## **CROSS-CLAIMS**

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

1. In response to paragraph 1 of Occidental's Cross-Claims, Maxus and Tierra admit that, on April 15, 2008, Plaintiffs filed a Second Amended Complaint against Occidental, Tierra, Maxus, Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF Holdings, Inc. ("YPFH"), and CLH Holdings, Inc. ("CLHH"). Maxus and Tierra state that Plaintiffs' Second Amended Complaint contains only such words as stated therein. Maxus and Tierra deny that Occidental is entitled to any relief against any of the Defendants in this action, and deny any remaining allegations in this paragraph.

### **FACTUAL BASIS FOR THE CROSS-CLAIMS OWNERSHIP AND OPERATION OF LISTER SITE**

2. In response to paragraph 2 of Occidental's Cross-Claims, Maxus and Tierra admit that Diamond Alkali Company ("Diamond Alkali") was incorporated in Delaware in 1928 and is the successor to Diamond Alkali Company incorporated in West Virginia in 1910. Maxus and Tierra admit that Diamond Alkali acquired the stock of Kolker in 1951, and that Diamond Alkali owned and operated a portion of the 80 Lister Avenue property from 1955 until 1967. Maxus and Tierra admit that Diamond Alkali leased another portion of the 80 Lister Avenue property in 1957, and operated on the leased portion until 1967, where it manufactured chemicals including pesticides and herbicides. Maxus and Tierra admit that the Plaintiffs allege that "dioxin" was formed as a by-product of the 2,4,5-T process. Maxus and Tierra deny any remaining allegations made in paragraph 2 of Occidental's Cross-Claims.

3. In response to paragraph 3 of Occidental's Cross-Claims, Maxus and Tierra admit that Diamond Alkali merged with Shamrock Oil and Gas Company in 1967, and that the merged company's name was changed to Diamond Shamrock Corporation, which Occidental calls "Old

Diamond Shamrock,” but which is sometimes more precisely referred to as “DSC-I.” Maxus and Tierra admit that DSC-I continued to operate the plant at 80 Lister Avenue until August 1969. Maxus and Tierra admit that, in 1971, DSC-I sold a portion of the 80 Lister Avenue property, as well as all personal property and improvements located at 80 Lister Avenue, to Chemicaland Corporation (“Chemicaland”), and further assigned to Chemicaland DSC-I’s lease with Walter R. Ray Holding Co. Inc. for the remaining portion of the 80 Lister Avenue property. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegation that “no subsequent purchaser of the plant at 80 Lister Avenue manufactured any dioxin-containing product on the site” and therefore deny same, except that Maxus and Tierra admit that no product which contains dioxin as a by-product was manufactured at the plant at 80 Lister Avenue after the site came under regulatory scrutiny in 1983.

4. Maxus and Tierra admit that the EPA issued a National Dioxin Strategy memorandum in 1983, which contains only such words as are stated therein. Maxus and Tierra admit that NJDEP issued an order dated June 13, 1983 to DSC-I, which related to 80 Lister Avenue, and which contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations in paragraph 4 of Occidental’s Cross-Claims.

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

5. Maxus and Tierra admit that on September 1, 1983, DSC-I changed its name to Diamond Chemicals Company, and that, on October 26, 1983, Diamond Chemicals Company changed its name to Diamond Shamrock Chemicals Company (“DSCC”). Maxus and Tierra further admit that New Diamond Corporation was incorporated in 1983, and that New Diamond Corporation changed its name to Diamond Shamrock Corporation (“DSC-II”) on September 1, 1983. Maxus and Tierra admit that DSC-II owned the stock of DSCC. Maxus and Tierra do not

know what other aspects (if any) of any 1983 “corporate reorganization” are the subject of this allegation and therefore lack sufficient knowledge or information to form a belief as to the truth of any remaining allegations in this paragraph and therefore deny same.

6. Maxus and Tierra admit that DSC-I/DSCC had previously owned, leased, operated or used facilities at numerous plant sites and properties, and produced various products. Maxus and Tierra admit that certain plants and properties which were previously owned, leased, operated or used in connection with the DSCC business were not owned, leased, operated or used as of September 4, 1986. Maxus and Tierra deny that DSC-I/DSCC no longer had any interest in the agricultural chemicals business prior to the 1986 sale of DSCC’s stock to Occidental. Maxus and Tierra deny that, as part of any 1983 “corporate reorganization of Old Diamond Shamrock (DSCC)” or otherwise, DSC-II (now Maxus) ever “acquired the Ag Chem business” or any other “assets and liabilities of DSCC,” whether “through a series of assignment and assumption agreements,” or otherwise. Maxus and Tierra deny any remaining allegations in paragraph 6 of Occidental’s Cross-Claims.

7. In response to paragraph 7 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of DSC-II’s 1984-1987 Annual Statements, which contain only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

8. Maxus and Tierra admit that DSCC acquired 120 Lister Avenue in 1984 and re-acquired 80 Lister Avenue in 1986. Maxus and Tierra admit that DSCC transferred ownership of both parcels to Diamond Shamrock Chemical Land Holdings, Inc. (“DSCLH”) in August of 1986. Maxus and Tierra deny that DSCC thereafter held only the active, operating assets of the chemicals business. Maxus and Tierra admit that DSCLH is now known as Tierra, and that

Tierra continues to own 80 and 120 Lister Avenue. Maxus and Tierra deny any remaining allegations in this paragraph.

9. In response to paragraph 9 of Occidental's Cross-Claims, Maxus and Tierra admit that, by the time DSCLH (now Tierra) acquired title to the Lister Site in August 1986, federal and state regulators had announced that hazardous substances were present at 80 and 120 Lister Avenue. Maxus and Tierra further admit that DSCC was actively working with regulators to investigate and address contamination at the Lister Site. In light of these and other similar facts, Maxus and Tierra deny any violation or failure to comply with *N.J.S.A. 58: 10-23g (d) (5)*, and any remaining allegations in this paragraph.

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

10. In response to paragraph 10 of Occidental's Cross-Claims, Maxus and Tierra admit that DSC-II announced its intention to sell DSCC in or about 1986. Maxus and Tierra admit that DSC-II sent written materials to prospective buyers that contained the indented words quoted in paragraph 10 of Occidental's Cross-Claims. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding whether "DSCC's Discontinued Operations would deter potential purchasers," and therefore deny same. Maxus and Tierra otherwise deny any remaining allegations made in paragraph 10 of Occidental's Cross-Claims.

11. In response to paragraph 11 of Occidental's Cross-Claims, Maxus and Tierra admit that, pursuant to a Stock Purchase Agreement dated September 4, 1986 ("1986 SPA"), DSC-II sold all of the stock of DSCC to Oxy-Diamond Alkali Corporation, an affiliate of Occidental, that DSCC was renamed Occidental Electrochemicals Corporation on September 29, 1986, and that Occidental Electrochemicals Corporation was merged into Occidental on or about

November 30, 1987. To the extent that this paragraph purports to quote portions of the 1986 SPA, or defined terms in the 1986 SPA, the 1986 SPA contains only such words as stated therein, and Maxus and Tierra deny any other allegations made in paragraph 11 of Occidental's Cross-Claims.

12. In response to paragraph 12 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of the 1986 SPA, which contains only such words as stated therein. Maxus and Tierra further answer that this paragraph calls for a legal conclusion, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law, and deny any remaining allegations in this paragraph.

13. In response to paragraph 13 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental quotes truncated portions of the 1986 SPA, and state that the 1986 SPA contains only such words as stated therein. Maxus and Tierra further answer that asking what various terms of the 1986 SPA "requires" calls for a legal conclusion, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law, and further deny any remaining allegations in this paragraph.

14. In response to paragraph 14 of Occidental's Cross-Claims, Maxus and Tierra admit that the 1986 SPA includes a Schedule 2.07(g), which contains only such words as stated therein. Maxus and Tierra deny that all the sites listed on Schedule 2.07(g) are "DSCC" plant sites or former plant sites. Paragraph 14 of Occidental's Cross-Claims otherwise states a conclusion of law, and/or a characterization of the claims stated in Plaintiffs' Second Amended Complaint, to which no response is required. To the extent this paragraph calls for further

answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

15. In response to paragraph 15 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Section 9.03(a)(iv) of the 1986 SPA, which contains only such words as stated therein. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

16. In response to paragraph 16 of Occidental's Cross-Claims, Maxus and Tierra admit that the 1986 SPA includes Schedule 9.03(a)(iv), which contains only such words as stated therein. Maxus and Tierra admit that Schedule 9.03(a)(iv) lists former plant sites and commercial waste disposal sites. Paragraph 16 of Occidental's Cross-Claims otherwise states a conclusion of law, and/or a characterization of the claims stated in Plaintiffs' Second Amended Complaint, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

17. In response to paragraph 17 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Section 9.03(a)(viii) of the 1986 SPA, which contains only such words as stated therein. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

18. In response to paragraph 18 of Occidental's Cross-Claims, Maxus and Tierra admit that Section 2.23(b) defines "Historical Obligations" for purposes of the 1986 SPA, which

Occidental purports to quote, and that Section 2.23(a) defines “Reorganization” for purposes of the 1986 SPA. Maxus and Tierra answer that both sections contain only such words as contained therein. Paragraph 18 of Occidental’s Cross-Claims otherwise states a conclusion of law to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

19. In response to paragraph 19 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Schedule 2.23 of the 1986 SPA, which contains only such words as contained therein. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

20. In response to paragraph 20 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote Section 12.11 of the 1986 SPA, which contains only such words as stated therein. Occidental’s introductory characterization of that section states a conclusion of law, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

21. In response to paragraph 21 of Occidental’s Cross-Claims, Maxus and Tierra admit that DSC-II changed its name to Maxus Energy Corporation in 1987. Maxus and Tierra deny that “all of the obligations owed to Occidental” before 1987 remain obligations “today,” and deny any remaining allegations in this paragraph.



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

22. Maxus and Tierra admit the allegations in paragraph 22 of Occidental's Cross-Claims.

23. In response to paragraph 23 of Occidental's Cross-Claims, Maxus and Tierra admit that Repsol became the majority owner of YPF in 1999. To the extent that this paragraph calls for further answer, Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of any remaining allegations in this paragraph and therefore deny same.

24. In response to paragraph 24 of Occidental's Cross-Claims, Maxus and Tierra admit that Repsol's SEC Form 20-F filing contains only such words as stated therein. Maxus and Tierra deny, however, that Occidental has included a complete quote of the discussion of Repsol YPF's "management structure" in that filing, and deny any remaining allegations in this paragraph.

25. In response to paragraph 25 of Occidental's Cross-Claims, Maxus and Tierra deny the allegations in the first sentence of this paragraph. Maxus and Tierra repeat and incorporate by reference each response contained in paragraphs 33 through 53 of their Answer and Defenses to Plaintiffs' Second Amended Complaint as if fully recited herein.

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

26. In response to paragraph 26 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's 1998 SEC Form 20-F/A filing and state that the public filing contains only such words as stated therein. Maxus and Tierra deny that Tierra negotiated the referenced 1990 consent decree with the U.S. Environmental Protection Agency ("EPA"). Maxus admits that Maxus negotiated the 1990 consent decree with EPA and NJDEP on behalf of Occidental, which signed the Consent Decree. Maxus and Tierra

lack sufficient knowledge or information to form a belief as to the truth of any remaining allegations in this paragraph and therefore deny same.

27. In response to paragraph 27 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's 2006 SEC Form 20-F filing and state that the public filing speaks for itself: Maxus and Tierra deny any remaining allegations in this paragraph.

28. In response to paragraph 28 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's Amendment No. 1 to SEC Form F-3 filing, dated March 10, 2008, which contains only such words as stated therein. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

29. In response to paragraph 29 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Repsol's SEC Form 20-F filing, dated December 31, 2006, and state that the public filing contains only such words as stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

30. Maxus and Tierra deny the allegations in paragraph 30 Occidental's Cross-Claims.

31. Maxus and Tierra deny the allegations in paragraph 31 of Occidental's Cross-Claims.

32. In response to paragraph 32 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's Amendment No. 1 to SEC Form F-3 filing, dated March 10, 2008, and state that the public filing contains only such words as stated therein. Maxus and Tierra further state, however, that immediately before the quoted language,

the public filing states that “YPF Holdings’ management believes it has adequately reserved for all environmental and other contingencies that are probable and can be reasonably estimated based on information available as of such time[.]” Maxus and Tierra admit that, as of September 30, 2007, YPFH’s reserves for environmental, and other contingencies, totaled \$113.5 million. Maxus and Tierra deny any remaining allegations in this paragraph.

33. In response to paragraph 33 of Occidental’s Cross-Claims, Maxus and Tierra deny the first sentence of paragraph 33. Maxus and Tierra admit that YPF publicly filed a March 10, 2008, Amendment No. 1 to Form F-3, and that the public filing contains only such words as stated therein. Maxus and Tierra admit that the EPA released a draft Focused Feasibility Study (“FFS”) in 2007, which contains only such words as stated therein. Maxus and Tierra further answer that they understand that EPA has revised its proposed remedial approach based on numerous critical comments received in response to the draft FFS, that EPA intends to propose a new array of early remedial alternatives, and that EPA has yet to issue a revised and final FFS for public comment. Maxus and Tierra deny any remaining allegations in this paragraph.

34. In response to paragraph 34 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF’s Amendment No. 1 to SEC Form F-3 filing, dated March 10, 2008, state that the public filing contains only such words as stated therein, and deny any remaining allegations in this paragraph.

35. In response to paragraph 35 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Repsol’s SEC Form 20-F filing, dated December 31, 2006, state that the public filing contains only such words as stated therein, and deny any remaining allegations in this paragraph.

## THE CURRENT LITIGATION

36. In response to paragraph 36 of Occidental's Cross-Claims, Maxus and Tierra admit that Plaintiffs filed a Second Amended Complaint against Occidental, Tierra, Maxus, Repsol, YPF, YPFH, and CLHH. Maxus and Tierra state that Plaintiffs' Second Amended Complaint contains only such words as stated therein and otherwise deny any remaining allegations in this paragraph.

37. In response to paragraph 37 of Occidental's Cross-Claims, Maxus and Tierra lack sufficient knowledge or information to form a belief as to all of the reasons Plaintiffs named Occidental as a defendant, and therefore deny the first sentence of paragraph 37. Maxus and Tierra deny that Occidental "has never independently owned or operated the Lister Site." Maxus and Tierra admit that DSCC's operations at 80 Lister Avenue ceased in the late 1960s. Maxus and Tierra admit that DSCC transferred ownership of 80 and 120 Lister Avenue to DSCLH, now known as Tierra, in August 1986. Maxus and Tierra deny any remaining allegations in this paragraph.

38. In response to paragraph 38 of Occidental's Cross-Claims, Maxus and Tierra answer that this paragraph recites a series of legal conclusions, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

39. In response to paragraph 39 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Plaintiffs' Second Amended Complaint. Maxus and Tierra deny that Plaintiffs base any cause of action or claim for damages on any of the above-referenced allegations, and, indeed, state that Plaintiffs have repeatedly disclaimed any

such claim or cause of action. Maxus and Tierra further deny any remaining allegations in this paragraph.

40. In response to paragraph 40 of Occidental's Cross-Claims, Maxus and Tierra deny that any of the defendants has "controlled the environmental response at the Lister Site." Since 1983, the regulators, not any private party, have "controlled" the Lister Site, the environmental investigation, and all other activities at or in connection with the Lister Site. Maxus and Tierra admit that DSC-I/DSCC responded to the regulators concerns beginning in 1983. Maxus and Tierra admit that, after the 1986 SPA was executed, Maxus undertook to ensure that response actions required by the regulators were performed. Maxus and Tierra admit that Tierra undertook to implement all required response actions commencing in 1996. Maxus and Tierra deny that there has ever been any delay in investigating or remediating the Passaic River, much less any conspiracy to delay any cleanup. Maxus and Tierra deny any liability as a matter of fact and law, and Maxus and Tierra deny any remaining allegations in this paragraph.

41. In response to paragraph 41 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental, in a letter dated December 15, 2005, requested indemnification and defense by Maxus for the claims asserted in this lawsuit, and that Maxus, in a letter dated January 10, 2006, elected to assume Occidental's defense, subject to a reservation of rights, and expressly did not assume any obligation of indemnification. Maxus and Tierra deny any remaining allegations in this paragraph.

42. In response to paragraph 42 of Occidental's Cross-Claims, Maxus and Tierra admit that Plaintiffs filed a Second Amended Complaint on April 15, 2008. Maxus and Tierra admit that Occidental purports to quote portions of Plaintiffs' Second Amended Complaint, and state that Plaintiffs' Second Amended Complaint contains only such words as stated therein. To

the extent that this paragraph calls for further answer, Maxus and Tierra deny any remaining allegations in this paragraph.

43. In response to paragraph 43 of Occidental's Cross-Claims, Maxus and Tierra deny the allegations of any "scheme" or "course of conduct" alleged by Plaintiffs and Occidental. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding the purported "basis" of Plaintiffs' allegations. Maxus and Tierra admit that merits discovery has just commenced. Maxus and Tierra deny any remaining allegations in this paragraph.

44. Maxus and Tierra deny the allegations of any "scheme" and further deny any remaining allegations in paragraph 44 of Occidental's Cross-Claims.

45. Maxus and Tierra deny the allegations of any "scheme" and further deny any remaining allegations in paragraph 45 of Occidental's Cross-Claims.

46. Maxus and Tierra deny the allegations in paragraph 46 of Occidental's Cross-Claims.

47. In response to paragraph 47 of Occidental's Cross-Claims, Maxus and Tierra admit that Maxus is a separate and independent corporate entity. Maxus and Tierra do not know to which "disclosure statements" Occidental refers, and thus lack sufficient knowledge or information to form a belief as to the truth of the allegation in this paragraph regarding disclosure statements and therefore deny the same. Maxus and Tierra deny any remaining allegations in this paragraph.

48. Maxus and Tierra deny YPF or Repsol has any duty to "assume" any "responsibility" for any obligations Maxus may owe to Occidental, and admit that YPF and

Repsol have not done so. Maxus and Tierra deny all remaining allegations in paragraph 48 of Occidental's Cross-Claims.

49. In response to paragraph 49 of Occidental's Cross-Claims, Maxus and Tierra admit that Maxus agreed to defend Occidental in the current litigation, subject to a reservation of rights. Maxus and Tierra admit that Maxus did not agree to provide Occidental with "separate" defense counsel. Maxus and Tierra admit that Maxus sent correspondence to counsel Maxus had assigned for Occidental in February 2007, asking them temporarily to suspend communications with Occidental pending resolution of a perceived conflict. Maxus and Tierra deny that Maxus failed to take reasonable steps to defend Occidental diligently in the current suit or has otherwise breached any obligation in the 1986 SPA. Maxus and Tierra deny any remaining allegations in this paragraph.

50. In response to paragraph 50 of Occidental's Cross-Claims, Maxus and Tierra admit that Maxus did not agree to provide Occidental with "separate" defense counsel. Maxus and Tierra admit that Occidental has retained its own counsel in this case, in order to pursue cross-claims. Maxus and Tierra deny that any conflict between Occidental and Maxus and Tierra required separate counsel to defend Occidental's interests, and deny that counsel assigned by Maxus to defend Occidental ever failed to defend Occidental's interests adequately. Maxus and Tierra deny any remaining allegations in this paragraph.

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

#### **Breach of Contract**

51. In response to paragraph 51 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 50 above, as if fully recited herein.

52. In response to paragraph 52 of Occidental's Cross-Claims, Maxus and Tierra admit that Maxus (then known as DSC-II) executed the 1986 SPA. Which of the many terms of the 1986 SPA remain valid and binding presents questions of law, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and further deny any remaining allegations in this paragraph.

53. In response to paragraph 53 of Occidental's Cross-Claims, Maxus and Tierra answer that this paragraph recites a series of legal conclusions, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and deny any remaining allegations in this paragraph.

54. Maxus and Tierra deny the allegations made paragraph 54 of Occidental's Cross-Claims.

55. Maxus and Tierra deny the allegations in paragraph 55 of Occidental's Cross-Claims.

56. Maxus and Tierra deny the allegations in paragraph 56 of Occidental's Cross-Claims.

57. In response to paragraph 57 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental retained separate counsel to prosecute cross-claims in this litigation. Maxus and Tierra otherwise deny the allegations in this paragraph.

58. Maxus and Tierra deny the allegations in paragraph 58 of Occidental's Cross-Claims.

59. Maxus and Tierra deny the allegations in paragraph 59 of Occidental's Cross-Claims.



60. Maxus and Tierra deny the allegations in paragraph 60 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

**SECOND COUNT - AGAINST REPSOL AND YPF**

**Tortious Interference With Contract**

61. In response to paragraph 61 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 60 above, as if fully recited herein.

62. In response to paragraph 62 of Occidental's Cross-Claims, Maxus and Tierra state that the allegations in this paragraph are a characterization of Occidental's claims, and do not require a response. To the extent that this paragraph calls for further answer, Maxus and Tierra deny the allegations in this paragraph.

63. In response to paragraph 63 of Occidental's Cross-Claims, Maxus and Tierra state that the 1986 SPA contains only such words as stated therein. Maxus and Tierra answer that this paragraph otherwise recites legal conclusions, to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law and deny any remaining allegations in this paragraph.

64. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and therefore deny same.

65. Maxus and Tierra deny the allegations in paragraph 65 of Occidental's Cross-Claims.

66. Maxus and Tierra deny the allegations in paragraph 66 of Occidental's Cross-Claims.

67. Maxus and Tierra deny the allegations in paragraph 67 of Occidental's Cross-Claims.

68. Maxus and Tierra deny the allegations in paragraph 68 of Occidental's Cross-Claims.

69. In response to paragraph 69 of Occidental's Cross-Claims, Maxus and Tierra admit that Repsol became the majority stockholder of YPF in 1999. Maxus and Tierra deny any remaining allegations in this paragraph.

70. Maxus and Tierra deny the allegations in paragraph 70 of Occidental's Cross-Claims.

71. Maxus and Tierra deny the allegations in paragraph 71 of Occidental's Cross-Claims.

72. Maxus and Tierra deny the allegations in paragraph 72 of Occidental's Cross-Claims.

73. Maxus and Tierra deny the allegations in paragraph 73 of Occidental's Cross-Claims.

74. Maxus and Tierra deny the allegations in paragraph 74 of Occidental's Cross-Claims.

75. Maxus and Tierra deny the allegations in paragraph 75 of Occidental's Cross-Claims.

**WHEREFORE**, Defendant Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

**THIRD COUNT - AGAINST MAXUS, REPSOL AND YPF**

**Fraudulent Transfers**

76. In response to paragraph 76 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 75 above, as if fully recited herein.

77. Maxus and Tierra deny the allegations in paragraph 77 of Occidental's Cross-Claims.

78. Maxus and Tierra deny the allegations in paragraph 78 of Occidental's Cross-Claims.

79. Maxus and Tierra deny the allegations in paragraph 79 of Occidental's Cross-Claims.

80. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegations regarding Repsol's and YPF's awareness, knowledge and intent, and therefore deny same. Maxus and Tierra otherwise deny the allegations in paragraph 80 of Occidental's Cross-Claims.

81. Maxus and Tierra deny the allegations in paragraph 81 of Occidental's Cross-Claims.

82. Maxus and Tierra deny the allegations in paragraph 82 of Occidental's Cross-Claims.

83. Maxus and Tierra deny the allegations in paragraph 83 of Occidental's Cross-Claims.

**WHEREFORE**, Defendant Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

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

##### **Unjust Enrichment**

84. In response to paragraph 84 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 83 above, as if fully recited herein.

85. In response to paragraph 85 of Occidental's Cross-Claims, Maxus and Tierra deny that YPF and Repsol engaged in a "scheme" to transfer Maxus's assets to other entities and otherwise deny the remaining allegations in this paragraph.

86. Maxus and Tierra deny the allegations in paragraph 86 of Occidental's Cross-Claims.

87. Maxus and Tierra deny the allegations in paragraph 87 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

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

**Contractual Indemnification**

88. In response to paragraph 88 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 87 above, as if fully recited herein.

89. Maxus and Tierra deny the allegations in paragraph 89 of Occidental's Cross-Claims.

90. Maxus and Tierra deny the allegations in paragraph 90 of Occidental's Cross-Claims.

91. Maxus and Tierra deny the allegations in paragraph 91 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

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

**Common Law Indemnification**

92. In response to paragraph 92 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 91 above, as if fully recited herein.

93. Maxus and Tierra deny the allegations in paragraph 93 of Occidental's Cross-Claims.

94. Maxus and Tierra deny the allegations in paragraph 94 of Occidental's Cross-Claims.

95. Maxus and Tierra deny the allegations in paragraph 95 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

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

**Contribution Under the Spill Act**

96. In response to paragraph 96 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 95 above, as if fully recited herein.

97. In response to paragraph 97 of Occidental's Cross-Claims, Maxus and Tierra admit that there is a Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq., and state that the Spill Act contains only such words as are stated therein. Insofar as paragraph 97 of Occidental's Cross-Claims purports to characterize the Spill Act, the paragraph states a legal conclusion to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law, and further deny any remaining allegations in this paragraph.

98. In response to paragraph 98 of Occidental's Cross-Claims, Maxus and Tierra admit that there is a Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq., and state that the Spill Act contains only such words as are stated therein. Insofar as paragraph 98 purports to characterize the Spill Act, the paragraph states a legal conclusion to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any liability as a matter of fact or law, and further deny any remaining allegations in this paragraph.

99. Maxus and Tierra deny the allegations in paragraph 99 of Occidental's Cross-Claims.

100. Maxus and Tierra deny the allegations in paragraph 100 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

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

#### **Statutory Contribution**

101. In response to paragraph 101 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 100 above, as if fully recited herein.

102. Maxus and Tierra deny the allegations in paragraph 102 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

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

#### **Declaratory Judgment**

103. In response to paragraph 103 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 1 through 102 above, as if fully recited herein.

104. Maxus and Tierra deny the allegations in paragraph 104 of Occidental's Cross-Claims.

105. Maxus and Tierra deny the allegations in paragraph 105 of Occidental's Cross-Claims.

106. Maxus and Tierra deny the allegations in paragraph 106 of Occidental's Cross-Claims.

107. Maxus and Tierra deny the allegations in paragraph 107 of Occidental's Cross-Claims.

**WHEREFORE**, Defendants Maxus and Tierra deny each and every Prayer for Relief of Occidental and request judgment be entered for Maxus and Tierra, along with an award to Maxus and Tierra of their attorneys' fees, costs, and expenses and all other relief deemed just.

#### **SEPARATE DEFENSES**

Without assuming the burden of proof where such burden is otherwise on Occidental as a matter of applicable substantive or procedural law, Maxus and Tierra assert the following defenses. Maxus and Tierra assert both direct defenses that they have has to Occidental, as well as defenses which Occidental has or could have as to the Plaintiffs. Maxus and Tierra reserve the right to assert additional defenses as information becomes available to them.

1. Some or all of Occidental's claims are not ripe for adjudication.
2. Occidental's claims are barred, in whole or in part, as Occidental fails to state a cause of action against Maxus and Tierra upon which relief can be granted.
3. Occidental's claims are barred, in whole or in part, as Occidental legally cannot establish the requisite elements of its claims.
4. Occidental's claims against Maxus and Tierra are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and the equitable doctrines of laches and estoppel.



5. Occidental's claims are barred, in whole or in part, by the doctrines of waiver, consent, estoppel, release, and assumption of risk.

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

7. Occidental's claims against Maxus and Tierra are subject to setoff and recoupment, and therefore, must be reduced accordingly.

8. Occidental is not entitled to recover attorneys' fees or costs, or fees of litigation.

9. Occidental is not entitled to recover for any alleged unjust enrichment as there exists an adequate remedy at law to redress Occidental's claims.

10. The damages Occidental seeks, if awarded, would result in unjust enrichment to Occidental.

11. Occidental's claims are barred by the statutory defenses to liability provided by the Spill Compensation and Control Act ("Spill Act").

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

13. Maxus and Tierra did not own or operate a "Major Facility" as defined by the Spill Act, N.J.S.A. 58:10-23.11b.

14. In the event that Occidental is entitled to contribution from Maxus or Tierra under the Spill Act, such relief is limited to "clean up and removal costs" as defined in N.J.S.A. 58:10-23.11b.

15. Occidental's costs and damages, if any, are divisible and, as a result, Occidental has no claim for joint and several liability.

16. Any claims asserted by Occidental based on an allegation of joint and several

liability are barred or limited because: (1) the acts and omissions, if any, of other Cross-Claim Defendants were separate and distinct from those, if any, of Maxus and Tierra; (2) under the facts of this case, neither the common law nor any statute renders Maxus or Tierra jointly and severally liable for the acts or omissions of the other Cross-Claim Defendants; and (3) the injury, harm, and costs that are the subject of Occidental's claims are subject to apportionment.

17. Occidental is not entitled to any recovery against Tierra on any claims based on the 1986 SPA, as Tierra is not a party to the 1986 SPA.

18. In accordance with the applicable law and facts of this case, Occidental is not entitled to any recovery based upon the provisions of the 1986 SPA (including, but not limited to Article IX) as those provisions are invalid or inapplicable.

19. Occidental's claims for indemnification and otherwise are barred or diminished because Occidental was guilty of negligence, or otherwise culpable conduct, and contributory negligence.

20. Occidental's claims for indemnification and otherwise are barred or diminished because Occidental was guilty of failure to act in good faith or failure to provide appropriate cooperation.

21. The costs, damages and penalties Occidental seeks to recover or impose are unreasonable, excessive, arbitrary, and capricious.

22. Occidental's claims for indemnification and otherwise are barred to the extent they seek recovery for any punitive damages as such claims are barred by public policy and applicable laws.

23. To the extent that Occidental's claims against Maxus and Tierra are subject to contribution, or any reduction or offset from other parties, any damages recovered against Maxus

and Tierra shall be reduced accordingly.

24. Maxus and Tierra reserve 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 Maxus or Tierra.

25. Maxus and Tierra assert against Occidental all defenses Occidental has or could have against the Plaintiffs, including but not limited to the separate defenses pleaded by Occidental in its Answer to the Plaintiffs' Second Amended Complaint.

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

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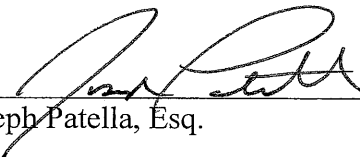
**PRAYER**

Maxus and Tierra reserve the right to amend this answer.

**WHEREFORE**, Maxus and Tierra respectfully pray:

- (i) judgment against Occidental on their Cross-Claims against Maxus and Tierra be entered;
  - (ii) Occidental's Cross-Claims against Maxus and Tierra be dismissed with prejudice at Occidental's costs;
  - (iii) Occidental recover nothing by this suit;
  - (iv) Maxus and Tierra be awarded their costs of court, expenses and attorneys' fees;
- and
- (v) Maxus and Tierra be granted such other relief, both special and general, at law or in equity, to which it may show itself to be justly entitled.

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

By:   
\_\_\_\_\_  
Joseph Patella, Esq.

Dated: February 9, 2009

## CERTIFICATE OF SERVICE

JOSEPH PATELLA, in lieu of oath or affidavit, certifies and says:

1. I am an attorney-at-law and Counsel at the law firm of Andrews Kurth LLP, - counsel for Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”) in connection with the above-captioned matter.

2. I hereby certify that, on this date, copies of Answer and Separate Defenses of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. to Cross-Claims of Occidental Chemical Corporation, and this Certification of Service, were served upon the court via hand delivery.

3. I hereby certify that, on this date, copies of Answer and Separate Defenses of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. to Cross-Claims of Occidental Chemical Corporation was served upon Honorable Donald S. Goldman, J.S.C. 410 Historic Courthouse, 470 Dr. Martin Luther King Jr., Blvd., Chambers 410, Newark, NJ 07102 and upon the following counsel of record via e-mail and Federal Express:

John F. Dickinson, Jr., Esq.  
Deputy Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093

Michael Gordon, Esq.  
GORDON & GORDON  
505 Morris Ave.  
Springfield, NJ 07081

William J. Jackson, Esq.  
JACKSON FISCHER GILMOUR & DOBBS, PC  
3900 Essex Lane, Ste. 700  
Houston, TX 77027

Robert T. Lehman, Esq.  
ARCHER & GREINER  
One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968

Oliver S. Howard, Esq.  
GABLEGOTWALS  
1100 ONEOK Plaza  
100 West 5th Street  
Tulsa, OK 74103-4217

Marc J. Gross, Esq.  
GREENBAUM, ROWE, SMITH & DAVIS LLP  
75 Livingston Avenue  
Roseland, NJ 07068

Mark S. Lillie, Esq.  
Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601-6636

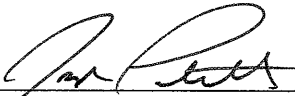
Ileana Blanco, Esq.  
DLA PIPER US LLP  
Chase Tower  
600 Travis Street, Suite 1700  
Houston, TX 77002-3009

William Warren, Esq.  
Drinker Biddle & Reath LLP  
A Pennsylvania Limited Liability Partnership  
105 College Road East, Suite 300  
Princeton, New Jersey 08542-0627

Blake T. Hannafan  
Hannafan & Hannafan, Ltd.  
One East Wacker Dr.  
Suite 2800  
Chicago, IL 60601

Domenick Carmagnola  
Carmagnola & Ritardi, LLC  
60 Washington St.  
Morristown, New Jersey 07960

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Joseph Patella

DATED: February 9, 2009