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**VIA FEDERAL EXPRESS**

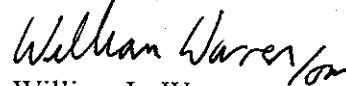
Clerk, Law Division  
Superior Court of New Jersey, Essex County  
50 West Market Street  
Room 131  
Newark, NJ 07102

**Re: NJDEP v. Occidental Chemical Corp., et al.  
Docket No. ESX-L-9868-05 (PASR)**

Dear Sir/Madam:

Enclosed for filing please find an original and two copies of the Answer and Separate Defenses of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. to Amended Cross-Claims of Occidental Chemical Corporation and Certification of Service in the above-referenced matter. Any filing fees may be charged to this firm's Superior Court account, no. 25325.

Very truly yours,

  
William L. Warren

JPM/bg  
Enclosure

cc: Honorable Sebastian Lombardi  
(via federal express, w/encl.)

Honorable Marina Corodemus (Ret.)  
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Lee Henig-Elona, Esq.  
Peter King, Esq.  
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**Attorneys for Defendants Maxus Energy Corporation  
and Tierra Solutions, Inc.**

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, THE  
COMMISSIONER OF THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND THE ADMINISTRATOR  
OF THE NEW JERSEY SPILL  
COMPENSATION FUND,

Plaintiffs,

vs.

OCCIDENTAL CHEMICAL CORPORATION,  
TIERRA SOLUTIONS, INC., MAXUS  
ENERGY CORPORATION, REPSOL YPF,  
S.A., YPF, S.A., YPF HOLDINGS, INC., and  
CLH HOLDINGS,

Defendants.

SUPERIOR COURT OF NEW JERSEY

:  
: LAW DIVISION -ESSEX COUNTY

:  
: DOCKET NO. ESX-L-9868-05

:  
: **ANSWER AND SEPARATE**  
: **DEFENSES OF DEFENDANTS**  
: **MAXUS ENERGY CORPORATION**  
: **AND TIERRA SOLUTIONS, INC. TO**  
: **AMENDED CROSS-CLAIMS OF**  
: **OCCIDENTAL CHEMICAL**  
: **CORPORATION**

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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”) Amended Cross-Claims.

1. In response to paragraph 1 of Occidental's Cross-Claims, Maxus and Tierra admit that, on August 27, 2010, Plaintiffs filed a Third Amended Complaint (the "Complaint") against Occidental, Tierra, Maxus, Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF Holdings, Inc. ("YPFH"), CLH Holdings, Inc. ("CLHH"), YPF International, S.A. ("YPFI") and Maxus International Energy Company ("MIEC"). Insofar as paragraph 1 of Occidental's Cross-Claims refers to and characterizes the Complaint and a Stock Purchase Agreement dated September 4, 1986 ("SPA"), Maxus and Tierra state that the Complaint and the SPA contain only such words as are 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.

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 "neither Chemicaland nor any subsequent owner or operator of the Lister Plant manufactured any dioxin-containing product at that plant" 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.

5. Maxus and Tierra admit that a reorganization of DSC-I was commenced in 1983, and that the reorganization was accomplished through a number of transactions, the essence of which was to create subsidiary corporations to conduct business previously conducted by divisions of DSC-I and to establish a holding company to hold the stock of the subsidiaries. Maxus and Tierra admit that they have produced documents relating to this reorganization to Occidental in this action and, while there may be additional such documents to be produced, the documents previously produced leave no genuine dispute that Occidental is the successor of

DSC-I, including for purposes of any Lister Site-related liabilities. Maxus and Tierra deny any remaining allegations in paragraph 5 of Occidental's Cross-Claims.

6. Maxus and Tierra deny that any facts of the type alleged in paragraph 6 of Occidental's Cross-Claims took place, if at all, in 2003. Assuming that allegation was mistaken, and Occidental meant to refer to the year 1983, 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, and that DSC-II was later renamed as Maxus.

Regarding the allegations in paragraph 6 regarding SDS Biotech Corporation ("SDS"), Maxus and Tierra state that the documents Maxus has produced relating to the SDS transactions in 1983 contain a complete and accurate description of the rights and obligations of the parties to those transactions. Answering further, Maxus and Tierra admit that, pursuant to a Transfer and Assumption Agreement between SDS Biotech Corporation, DSC-I and Showa Denko K.K., dated as of July 1, 1983, DSC-I transferred to SDS assets of DSC-I's then-ongoing animal health and agricultural chemicals business, and SDS assumed certain liabilities, but only liabilities associated with the assets actually conveyed. Maxus and Tierra admit that no Lister Plant-related assets or liabilities were ever transferred to SDS.

Maxus and Tierra deny any remaining allegations in paragraph 6 of Occidental's Cross-Claims.

7. Maxus and Tierra admit that in 1984, as part of the reorganization of DSC-I, DSCC (previously DSC-I) transferred certain of DSCC's assets to newly created subsidiary

corporations, including Diamond Shamrock Corporate Company (“DS Corporate”) and additional subsidiaries to carry on businesses that has previously been operated as divisions of DSC-I. The specific assets conveyed by DSCC to each such subsidiary are identified in various Assignment and Assumption agreements entered into by DSCC and the newly created subsidiaries, which agreements Maxus has produced in this litigation. Maxus and Tierra admit that, pursuant to the Assignment and Assumption agreements, each subsidiary agreed to assume the liabilities specifically associated with the assets it had been conveyed by DSCC. Maxus and Tierra admit that DSC-II became the stockholder of DSCC and the newly created subsidiaries, that the stock of some of the subsidiaries was subsequently sold (including DSCC’s stock to Occidental), and that DS Corporate (after being renamed Maxus Corporate Company) was later merged into Maxus. Maxus and Tierra deny that any liabilities associated with operations at the Lister Site ever became liabilities of DS Corporate, under any of the aforementioned Assignment and Assumption agreements or otherwise.

Maxus and Tierra deny any remaining allegations in paragraph 7 of Occidental’s Cross-Claims.

8. Maxus and Tierra lack sufficient knowledge or information sufficient to form a belief as to the truth of the allegations made in the first sentence of paragraph 8 of Occidental’s Cross-Claims and therefore deny same. Maxus and Tierra deny the remaining allegations in paragraph 8 of Occidental’s Cross-Claims.

9. In response to paragraph 9 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Maxus’s 1983-1987 Annual Statements, which contain only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

10. Maxus and Tierra admit that DSCC acquired ownership of 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 admit that DSCLH is now known as Tierra, and that Tierra continues to own 80 and 120 Lister Avenue. Maxus and Tierra deny all remaining allegations in this paragraph.

11. In response to paragraph 11 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.

12. In response to paragraph 12 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 12 of Occidental's Cross-Claims. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegation that DSCC's "inactive sites, discontinued operations, and related historical obligations" would deter potential purchasers," and therefore deny same. Maxus and Tierra otherwise deny any remaining allegations made in paragraph 12 of Occidental's Cross-Claims.

13. In response to paragraph 13 of Occidental's Cross-Claims, Maxus and Tierra admit that, pursuant to the 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 SPA, or defined terms in the SPA, the SPA contains only such words as stated therein, and Maxus and Tierra deny any other allegations made in paragraph 13 of Occidental's Cross-Claims.

14. In response to paragraph 14 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of the 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.

15. In response to paragraph 15 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental quotes truncated portions of the SPA, and state that the SPA contains only such words as stated therein. Maxus and Tierra further answer that asking what various terms of the 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.

16. In response to paragraph 16 of Occidental's Cross-Claims, Maxus and Tierra admit that the SPA includes a Schedule 2.07(g), which contains only such words as stated therein. Paragraph 16 of Occidental's Cross-Claims otherwise states a conclusion of law, and/or a characterization of the claims stated in Plaintiffs' 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)(iv) of the 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 the SPA includes Schedule 9.03(a)(iv), which contains only such words as stated therein. Paragraph 18 of Occidental's Cross-Claims otherwise states a conclusion of law, and/or a characterization of the claims stated in Plaintiffs' 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.

19. In response to paragraph 19 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Section 9.03(a)(viii) of the 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.

20. In response to paragraph 20 of Occidental's Cross-Claims, Maxus and Tierra admit that that Occidental purports to quote Section 2.23(b) of the SPA, regarding "Historical Obligations," and that Section 2.23(a) defines "Reorganization" for purposes of the SPA. Maxus and Tierra answer that both sections contain only such words as contained therein. Paragraph 20

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.

21. In response to paragraph 21 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Schedule 2.23 of the 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.

22. In response to paragraph 22 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote Section 12.11 of the 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.

23. In response to paragraph 23 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, and deny any remaining allegations in this paragraph.

24. Paragraph 24 of Occidental's Cross-Claims states conclusions of law to which no response is required. To the extent this paragraph calls for further answer, Maxus and Tierra deny any remaining allegations in this paragraph.

25. Maxus and Tierra admit the allegation in paragraph 25 of Occidental's Cross-Claims.

26. In response to paragraph 26 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.

27. In response to paragraph 27 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's 1998 SEC Form 20-F filing and state that the public filing contains only such words as stated therein. 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 2006 SEC Form 20-F filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra 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 YPF's March 10, 2008 Amendment No. 1 to Form F-3 filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

30. In response to paragraph 30 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Repsol's December 31, 2006 SEC Form 20-F filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

31. In response to paragraph 31 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's March 10, 2008 Amendment No. 1 to Form F-3 filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

32. In response to paragraph 32 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's March 10, 2008 Amendment No. 1 to Form F-3 filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

33. In response to paragraph 33 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of YPF's March 10, 2008 Amendment No. 1 to Form F-3 filing and state that the public filing contains only such words as are stated therein. 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 Repsol's December 31, 2006 SEC Form 20-F filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra 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 December 31, 2000 SEC Form 20-F/A filing and state that the public filing contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations in this paragraph.

36. In response to paragraph 36 of Occidental's Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of the Complaint and state that the Complaint contains only such words as are stated therein. Maxus and Tierra deny any remaining allegations

in this paragraph, and incorporate its answers to paragraphs 36-62 of the Complaint as if fully set forth herein.

37. Maxus and Tierra deny the allegations in paragraph 37 of Occidental's Cross-Claims.

38. Maxus and Tierra deny the allegations in paragraph 38 of Occidental's Cross-Claims.

39. Maxus and Tierra deny the allegations in paragraph 39 of Occidental's Cross-Claims.

40. Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegation that "in 2005 Repsol created Repsol E&P USA, Inc. ("Repsol E&P"), as a U.S. corporation outside the chain of YPF's ownership of U.S. entities." Maxus and Tierra deny the remaining allegations in paragraph 40 of Occidental's Cross-Claims.

41. Maxus and Tierra admit discovery is ongoing. Maxus and Tierra deny the remaining allegations in paragraph 41 of Occidental's Cross-Claims.

42. In response to paragraph 42 of Occidental's Cross-Claims, Maxus and Tierra admit that Plaintiffs filed the Complaint against Occidental, Tierra, Maxus, Repsol, YPF, YPFH, CLHH, YPFI and MIEC. Maxus and Tierra state that Plaintiffs' Complaint contains only such words as are stated therein. Maxus and Tierra deny the remaining allegations in this paragraph, including, but not limited to, the suggestion that "Plaintiffs' allege that" all of "the purported pollution" for which they seek damages or a declaratory judgment "originated at the Lister Site."

43. In response to paragraph 43 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 DSC-I’s manufacturing 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.

44. In response to paragraph 44 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.

45. In response to paragraph 45 of Occidental’s Cross-Claims, Maxus and Tierra admit that Occidental purports to quote portions of Plaintiffs’ 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.

46. In response to paragraph 46 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, after the 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.

47. In response to paragraph 47 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.

48. Maxus and Tierra deny the allegations of any "scheme" and further deny all remaining allegations in paragraph 48 of Occidental's Cross-Claims.

49. Maxus and Tierra deny the allegations deny the allegations of any "scheme" and further deny all remaining allegations in paragraph 49 of Occidental's Cross-Claims.

50. Maxus and Tierra deny the allegations in paragraph 50 of Occidental's Cross-Claims.

51. In response to paragraph 51 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.

52. Maxus and Tierra deny YPF or Repsol has any duty to "assume" any "responsibility" for any obligations Maxus may owe to Occidental, and deny all remaining allegations in paragraph 52 of Occidental's Cross-Claims.

53. In response to paragraph 53 of Occidental's Cross-Claims, Maxus and Tierra admit 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 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 SPA. Maxus and Tierra deny any remaining allegations in this paragraph.

54. In response to paragraph 54 of Occidental's Cross-Claims, Maxus and Tierra admit that "Occidental asked Maxus to provide Occidental with separate counsel in this action" and that "Maxus refused this request." Maxus and Tierra admit that Occidental has retained separate counsel in this case. Maxus and Tierra deny all remaining allegations in this paragraph.

### **FIRST COUNT – AGAINST MAXUS**

#### **Declaratory Judgment – Duty to Indemnify**

55. In response to paragraph 55 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

56. In response to paragraph 56 of Occidental's Cross-Claims, Maxus and Tierra admit that Maxus (then known as DSC-II) executed the SPA. Which of the many terms of the 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.

57. In response to paragraph 57 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.

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

59. In response to paragraph 59 of Occidental's Cross-Claims Maxus and Tierra admit that Maxus has denied that it is obligated to indemnify Occidental herein. Maxus and Tierra deny the remaining allegations in paragraph 59 of Occidental's Cross-Claims.

60. In response to paragraph 60 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.

61. In response to paragraph 61 of Occidental's Cross-Claims, Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegation in this paragraph and therefore deny the same.

62. In response to paragraph 62 of Occidental's Cross-Claims, Maxus and Tierra answer that this paragraph recites a legal conclusion, to which no response is required.

**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 ALL CROSS-CLAIM DEFENDANTS**

**Declaratory Judgment – Alter Ego Liability**

63. In response to paragraph 63 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

64. In response to paragraph 64 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in paragraphs 36-62 of its Answer to Plaintiffs' Complaint, as if fully recited herein. Maxus and Tierra deny that any of the Cross-Claim Defendants are alter egos of any other or together constitute a Cohesive Economic Unit, and deny any remaining allegations in the paragraph.

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

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

67. In response to paragraph 67 of Occidental's Cross-Claims, Maxus and Tierra lack sufficient knowledge or information to form a belief as to the truth of the allegation in this paragraph and therefore deny the same.

68. In response to paragraph 68 of Occidental's Cross-Claims, Maxus and Tierra answer that this paragraph recites a legal conclusion, to which no response is required.

**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.

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

**Breach of Contract**

69. In response to paragraph 69 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

70. In response to paragraph 70 of Occidental's Cross-Claims, Maxus and Tierra admit that Maxus (then known as DSC-II) executed the SPA. Which of the many terms of the 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.

71. In response to paragraph 71 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.

72. Maxus and Tierra deny the allegations made 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. In response to paragraph 75 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.

76. Maxus and Tierra deny the allegations in paragraph 76 of Occidental's Cross-Claims.

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.

**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.

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

##### **Tortious Interference With Contract**

79. In response to paragraph 79 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

80. In response to paragraph 80 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.

81. In response to paragraph 81 of Occidental's Cross-Claims, Maxus and Tierra state that the 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.

82. 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.

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

84. Maxus and Tierra deny the allegations in paragraph 84 of Occidental's Cross-Claims.

85. Maxus and Tierra deny the allegations in paragraph 85 of Occidental's Cross-Claims.

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

87. In response to paragraph 87 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.

88. Maxus and Tierra deny the allegations in paragraph 88 of Occidental's Cross-Claims.

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.

92. Maxus and Tierra deny the allegations in paragraph 92 of Occidental's Cross-Claims.

93. Maxus and Tierra deny the allegations in paragraph 93 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.

**FIFTH COUNT - AGAINST REPSOL AND YPF**

**Fraudulent Transfers**

94. In response to paragraph 94 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

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

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

97. Maxus and Tierra deny the allegations in paragraph 97 of Occidental's Cross-Claims.

98. 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 98 of Occidental's Cross-Claims.

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.

101. Maxus and Tierra deny that there were any fraudulent transfers, deny that there was any concealment, misstatements or misleading statements of any facts, and deny any remaining allegations in paragraph 101 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.

**SIXTH COUNT - AGAINST REPSOL AND YPF**

**Unjust Enrichment**

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

103. In response to paragraph 103 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.

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.

**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.

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

**Contractual Indemnification**

106. In response to paragraph 106 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

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.

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

**Contribution Under the Spill Act**

108. In response to paragraph 108 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

109. In response to paragraph 109 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 109 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.

110. In response to paragraph 110 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 110 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.

111. Maxus and Tierra deny the allegations in paragraph 111 of Occidental's Cross-Claims.

112. Maxus and Tierra deny the allegations in paragraph 112 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**

113. In response to paragraph 113 of Occidental's Cross-Claims, Maxus and Tierra repeat and incorporate by reference every response contained in each and every preceding paragraph, as if fully recited herein.

114. Maxus and Tierra deny the allegations in paragraph 114 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 as 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 SPA, as Tierra is not a party to the 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 SPA (including, but not limited to Article IX) as those provisions are invalid or inapplicable, including but not limited to being time-barred.

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' Complaint.

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

**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.

**DRINKER BIDDLE & REATH LLP**  
A Delaware Limited Liability Partnership  
**Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.**

By: William L. Warren /om  
William L. Warren, Esq.

Dated: November 22, 2010

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the Court is advised that William E. Warren is hereby designated as trial counsel for Maxus and Tierra in this action.

**DRINKER BIDDLE & REATH LLP**  
A Delaware Limited Liability Partnership  
**Attorneys for Defendants Maxus Energy Corporation and Tierra Solutions, Inc.**

By: William L. Warren /sm  
William L. Warren, Esq.

Dated: November 22, 2010

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Attorneys for Defendants/Third Party Plaintiffs,  
Tierra Solutions, Inc. and Maxus Energy Corporation

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION, THE  
COMMISSIONER OF THE NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND THE ADMINISTRATOR  
OF THE NEW JERSEY SPILL  
COMPENSATION FUND,

Plaintiffs,

vs.

OCCIDENTAL CHEMICAL CORPORATION,  
TIERRA SOLUTIONS, INC., MAXUS  
ENERGY CORPORATION, REPSOL YPF,  
S.A., YPF, S.A., YPF HOLDINGS, INC., AND  
CLH HOLDINGS,

Defendants.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION -ESSEX COUNTY

: DOCKET NO. ESX-L-9868-05 (PASR)

**CERTIFICATION OF SERVICE**

JOHN P. MITCHELL, ESQ., in lieu of oath or affidavit, certifies and says:


1. I am an attorney at law of the State of New Jersey in the law firm of Drinker Biddle & Reath LLP, counsel for Defendants/Third Party Plaintiffs Maxus Energy Corp. (“Maxus”) and Tierra Solutions, Inc. (“Tierra”) in the above-referenced matter.

2. I certify that a true and correct copy of the following documents were served on this date in accordance with the Court’s Case Management Order by posting on the electronic case management platform:

- Answer and Separate Defenses of Defendants Maxus Energy Corporation and Tierra Solutions, Inc. to Amended Cross-Claims of Occidental Chemical Corporation; and
- Certification of Service.

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

November 22, 2010

  
John P. Mitchell