

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW  
JERSEY

Richard J. Hughes Justice Complex  
25 Market Street, PO Box 093  
Trenton, New Jersey 08625-0093  
Attorney for Plaintiffs

By: John F. Dickinson, Jr.  
Deputy Attorney General  
(609) 984-4863

JACKSON GILMOUR & DOBBS, PC  
3900 Essex Lane, Suite 700  
Houston, Texas 77027

By: William J. Jackson, Special Counsel  
(713) 355-5000

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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,

v.

OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA  
SOLUTIONS, INC., MAXUS ENERGY  
CORPORATION, MAXUS  
INTERNATIONAL ENERGY  
COMPANY, REPSOL YPF, S.A., YPF,  
S.A., YPF HOLDINGS, INC., YPF  
INTERNATIONAL S.A. (f/k/a YPF  
INTERNATIONAL LTD.) and CLH  
HOLDINGS,

Defendants

MAXUS ENERGY CORPORATION and  
TIERRA SOLUTIONS,  
INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, *et al.*,

Third-Party Defendants

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GORDON & GORDON  
505 Morris Avenue  
Springfield, New Jersey 07081

By: Michael Gordon, Special Counsel  
(973) 467-2400

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY  
DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

COURT APPROVED SETTLEMENT  
AGREEMENT

## TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND.....	1
II. JURISDICTION.....	6
III. PARTIES BOUND .....	7
IV. DEFINITIONS .....	7
V. PARTIES’ OBJECTIVES.....	22
VI. SETTLING DEFENDANTS’ COMMITMENTS.....	22
VII. PLAINTIFFS’ COVENANT NOT TO SUE THE SETTLING DEFENDANTS AND RESERVATION OF RIGHTS.....	24
VIII. PLAINTIFFS’ COVENANT NOT TO SUE OCC AND RESERVATION OF RIGHTS.....	30
IX. PLAINTIFFS’ ADDITIONAL COVENANTS AND RESERVATIONS .....	35
X. CAP ON SETTLING DEFENDANTS’ FUTURE LIABILITY .....	37
XI. PLAINTIFFS’ COVENANTS AND RESERVATIONS OF RIGHTS WITH RESPECT TO FUTURE CLEANUP AND REMOVAL COSTS .....	44
XII. SETTLING DEFENDANTS’ COVENANTS .....	48
XIII. SETTLING DEFENDANTS’ RESERVATIONS.....	52
XIV. FINDINGS & NON-ADMISSIONS OF LIABILITY .....	54
XV. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION.....	54
XVI. NOTICES .....	61
XVII. EFFECTIVE DATE .....	62
XVIII. RETENTION OF JURISDICTION .....	62
XIX. RETENTION OF RECORDS .....	63
XX. MODIFICATION.....	63
XXI. APPROVAL OF THIS SETTLEMENT AGREEMENT AND FURTHER ASSURANCES .....	64
XXII. SIGNATORIES.....	65

This matter was opened to the Court by John J. Hoffman, Acting Attorney General of New Jersey, John F. Dickinson, Jr., Deputy Attorney General, and Special Counsel William J. Jackson and Michael Gordon appearing, attorneys for plaintiffs, and this Settlement Agreement is among the New Jersey Department of Environmental Protection (“DEP”), the Commissioner of the New Jersey Department of Environmental Protection (“Commissioner”), and the Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “Plaintiffs”), and Defendants Tierra Solutions, Inc. (“Tierra”), Maxus Energy Corporation (“Maxus”), Maxus International Energy Company (“MIEC”), Repsol, S.A. (formerly known as Repsol YPF, S.A.) (“Repsol”), YPF, S.A. (“YPF”), YPF Holdings, Inc. (“YPFH”), YPF International S.A. (“YPFI”) and CLH Holdings, Inc. (“CLHH”). The Parties have amicably resolved their dispute before trial and request approval of this Settlement Agreement<sup>1</sup> as provided below:

## **I. BACKGROUND**

1. Plaintiffs initiated the Passaic River Litigation by filing a complaint on or about December 13, 2005 against Occidental Chemical Corporation (“OCC”), Tierra, Maxus, Repsol, YPF, YPFH and CLHH pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.24 (the “Spill Act”), the Water Pollution Control Act, N.J.S.A. 58:10A-1 through 35 (“WPCA”), and New Jersey common law, which complaint has been subsequently amended on several occasions to add, inter alia, claims against YPFI and MIEC (collectively, the “Complaint”).

2. Plaintiffs, in their Complaint, seek, among other things, past and future costs and damages, together with penalties, associated with Discharges of 2,3,7,8 – TCDD (“dioxin”) and

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<sup>1</sup> Capitalized terms are defined in Paragraph 19 below.

other Hazardous Substances at and from the Lister Property into the Newark Bay Complex as alleged in the Complaint. Plaintiffs allege, and Settling Defendants deny, that dioxin and other Hazardous Substances were Discharged from the Lister Property and have migrated throughout the Newark Bay Complex.

3. The Settling Defendants subsequently filed responsive pleadings in which they denied liability, and asserted various defenses to the allegations contained in the Complaint. Repsol, YPF, MIEC, YPFH, CLHH and YPFI all contest personal jurisdiction. Specifically, on January 8, 2007, Repsol and YPF filed Motions to Dismiss on the grounds that the Court lacked personal jurisdiction over them (the “Motions to Dismiss”). On September 5, 2008, the Court denied the Motions to Dismiss, reserving adjudication of the jurisdictional issue until the close of merits discovery because “the jurisdictional issues and the meritorious facts are so intertwined.” On October 24, 2008, Repsol and YPF filed an answer to the Second Amended Complaint, contesting liability and personal jurisdiction. On October 18, 2010, Repsol and YPF again sought leave to file a Motion to Dismiss the Third Amended Complaint on the grounds that the Court lacked personal jurisdiction. Prior to the Court responding to this request, the Plaintiffs filed the Fourth Amended Complaint on September 28, 2012.

4. OCC sought leave to file cross-claims on June 29, 2007. The Court instructed OCC to file proposed cross-claims, which OCC did on May 15, 2008. On October 6, 2008, OCC filed its final Cross-Claims. On February 9, 2009, YPF, YPFH, CLHH, and Repsol filed their answers to the Cross-Claims, contesting liability and personal jurisdiction. On February 9, 2009, Maxus and Tierra also filed their answer to the Cross-Claims, contesting liability. On September 26, 2012, OCC filed its Second Amended Cross-Claims, which added claims against YPFI.

5. On December 14, 2012, Repsol sought leave to file Motions to Dismiss the Fourth Amended Complaint and Second Amended Cross-Claims on various grounds, including lack of personal jurisdiction, failure to state claims upon which relief could be granted, and on the grounds that many of OCC's Cross-Claims are barred by the applicable statutes of limitation. On December 14, 2012, YPF, YPFH, YPFI and CLHH sought leave to file Motions to Dismiss on substantially similar grounds, however, they did not reassert personal jurisdictional arguments, instead choosing to preserve their jurisdictional arguments until the close of discovery. On December 19, 2012, Maxus, MIEC, and Tierra also sought leave to file Motions to Dismiss on various grounds, but also chose to preserve their lack of jurisdiction arguments until the close of discovery. On January 29, 2013, the Special Master granted the parties leave to file renewed motions to dismiss on various issues.

6. Defendants Maxus and Tierra ("Third-Party Plaintiffs") filed Third-Party Complaints on February 4 and 5, 2009, alleging that Third-Party Defendants are liable for the costs and damages incurred and to be incurred in investigating and remediating contamination and for any judgment obtained by Plaintiffs related to Discharges of Hazardous Substances into the Newark Bay Complex under the Spill Act and other New Jersey statutes, including (without limitation) the Joint Tortfeasor Contribution Act, N.J.S.A. 2A:53A-1 et seq., and/or N.J.S.A. 59:9-3. Maxus and Tierra asserted additional third-party claims against certain public Third-Party Defendants under the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., Passaic Valley Sewerage Commissioners Statutes, N.J.S.A. 58:14-7 and 58:14-8, and for nuisance and breach of the public trust.

7. By Orders dated December 15, 2010 and April 24, 2012, the Court permitted Plaintiffs to reserve (i) the claims Plaintiffs may have against current Third-Party Defendants and

claims Plaintiffs may have against any future third-party or fourth-party defendants that could be brought during the pendency of, and after the conclusion of the Passaic River Litigation, and (ii) natural resource damages claims, other than to recover the cost of a natural resource damages assessment, that Plaintiffs may have against current Defendants that could be brought during the pendency of, and after the conclusion of, the Passaic River Litigation.

8. By entering into this Settlement Agreement, the Settling Defendants do not admit any fact, fault or liability, including (without limitation) any liability arising from the claims, transactions or occurrences Plaintiffs have alleged or could have alleged in their Complaint or otherwise in the Passaic River Litigation.

9. Plaintiffs allege, and the Settling Defendants deny, that the State of New Jersey has incurred, and will continue to incur, costs and damages as a result of the Discharge of Hazardous Substances at and from the Lister Property and/or into the Newark Bay Complex.

10. Plaintiff Administrator alleges that he has certified or may certify for payment claims made against the Spill Compensation Fund (“Spill Fund”) concerning any Discharge of Hazardous Substances at or from the Lister Property and/or into the Newark Bay Complex, and, further, has approved or may approve other appropriations for the Newark Bay Complex.

11. Plaintiffs allege, and the Settling Defendants deny, that Plaintiffs have incurred, and will continue to incur, costs and damages, including (without limitation) Economic Damages and Natural Resource Damage Assessment Costs as a result of the Discharge of Hazardous Substances at and from the Lister Property and/or into the Newark Bay Complex.

12. Plaintiffs allege, and the Settling Defendants deny, that certain costs and damages they have allegedly incurred, and will allegedly incur, for the Lister Property and Newark Bay Complex are Cleanup and Removal Costs pursuant to N.J.S.A. 58:10-23.11b.

13. Plaintiffs allege, and the Settling Defendants deny, that certain costs and damages that Plaintiff DEP has incurred, and will incur, for Discharges at and from the Lister Property and into the Newark Bay Complex are also recoverable within the meaning of N.J.S.A. 58:10A-10c.(2)-(4) and the WPCA.

14. Unless expressly provided to the contrary herein, the Parties intend that this Settlement Agreement and the motions filed in its support will result in the dismissal of all Claims between the Parties and in the reorganization of proceedings relating to remaining claims asserted in the Passaic River Litigation. The Parties to this Settlement Agreement agree and consent to the publishing of this Settlement Agreement, Order Dismissing Certain Claims, attached hereto as Exhibit A (“Dismissal Order”), and Case Management Order, attached hereto as Exhibit B (“Case Management Order”), for notice and public comment as provided herein, and agree to support entry of those Orders and approval of this Settlement Agreement.

15. The Parties represent and agree, and the Court so finds, that the Parties have negotiated this Settlement Agreement at arm’s-length and in good faith. The Parties also agree that the implementation of this Settlement Agreement will allow the Parties to avoid prolonged and complicated litigation; that the implementation of this Settlement Agreement will save and preserve Plaintiffs’ limited resources by avoiding the expenditure of limited resources to allege and prosecute Claims against the Settling Defendants; and that this Settlement Agreement warrants approval consistent with the purposes of the Spill Act.

**THEREFORE**, with the consent of the Parties to this Settlement Agreement, it is hereby **ORDERED** that this Settlement Agreement is approved as follows:

## II. JURISDICTION

16. This Court has subject matter jurisdiction over this action pursuant to the Spill Act, the WPCA, and the common law. The Settling Defendants agree not to contest personal jurisdiction over them for the limited purposes of entering this Settlement Agreement and Dismissal Order and of enforcing the Settlement Agreement in future proceedings in this action. However, neither this Settlement Agreement (including the Exhibits hereto), any motions that may be filed in support of this Settlement Agreement, nor entry of any order shall create any personal jurisdiction in this Court over the Settling Defendants for any other purpose, including (but not limited to) prosecution by the Plaintiffs of any Claims they may have reserved pursuant to this Settlement Agreement or otherwise.

17. For the sole and limited purposes of entering this Settlement Agreement and Dismissal Order and of enforcement of this Settlement Agreement in future proceedings in this action, Settling Defendants agree not to contest the continuing jurisdiction of this Court, or venue in this County. The Settling Defendants shall have the right to challenge this Court's jurisdiction over them for any other purpose. This limited agreement not to contest this Court's jurisdiction to approve and enforce this Settlement Agreement and Dismissal Order shall not give rise to personal jurisdiction over the Settling Defendants for any purposes that do not arise directly from the approval or enforcement of the Settlement Agreement and Dismissal Order. Only the Parties, as defined in Paragraph 19.42, are intended to benefit from this limited waiver of objections and defenses to jurisdiction. The Settling Defendants reserve all objections and defenses to personal jurisdiction which they may have with respect to cross-claims brought against them by OCC and/or any other person or entity in the Passaic River Litigation or otherwise, and do not intend to and do not waive personal jurisdiction defenses with respect to other actions brought against

them in the courts or agencies of the State of New Jersey, any other State, or of the United States by any person, party or entity. Because the Settling Defendants are resolving the Claims brought or which could have been brought related to the Discharges of Hazardous Substances into the Newark Bay Complex against them by the Plaintiffs prior to appeal, any prior decision that this Court has personal jurisdiction over them shall have no res judicata or collateral estoppel effect in any other proceeding. For the avoidance of doubt, this Settlement Agreement shall not preclude the Settling Defendants from pursuing their motions to dismiss the claims brought against them by OCC or any other person or entity in this proceeding on any ground, including lack of personal jurisdiction.

### **III. PARTIES BOUND**

18. This Settlement Agreement applies to and is binding upon Plaintiffs and Settling Defendants and, pursuant to Sections VIII and XV herein, applies to OCC, the Third-Party Defendants, and, to the extent provided by law and equity, any non-parties and non-settling parties.

### **IV. DEFINITIONS**

19. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in the Spill Act, the WPCA, or in the regulations promulgated under these acts, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply, solely for the purpose of this Settlement Agreement, the Dismissal Order and the Case Management Order and for no other purpose:

19.1. "Affiliate" shall mean (a) a company or other legal entity that directly or indirectly controls a Settling Defendant or OCC (as applicable); (b) a company or other

legal entity which is directly or indirectly controlled by a Settling Defendant or OCC (as applicable); or (c) a company or other legal entity which is directly or indirectly controlled by a company or other legal entity which directly or indirectly controls a Settling Defendant or OCC (as applicable). For purposes of this definition of Affiliate, control means the ownership directly or indirectly of more than fifty (50) percent of the voting rights in a company or other legal entity.

19.2. “Cap” shall mean the hard cap of Four Hundred Million Dollars (\$400,000,000) on the Capped Claims under Paragraph 37.

19.3. “Capped Claims” shall mean all of the Claims Plaintiffs asserted or could assert against OCC as identified in Paragraph 36.

19.4. “Category I Capped Claims” shall have the meaning given to that term in Paragraph 36.

19.5. “Category II Capped Claims” shall have the meaning given to that term in Paragraph 36.

19.6. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §1906 et seq.

19.7. “Claim(s)” shall mean any claim (including directives) for damages, costs (including direct and indirect), injunctive or other relief, whether known or unknown, contingent or accrued.

19.8. “Cleanup and Removal Costs” shall have the meaning ascribed to it in the Spill Act, N.J.S.A. 58:10-23.11b, and, to the extent not within the meaning ascribed under the Spill Act, shall also include direct and indirect costs recoverable under the WPCA, and shall include all costs of “response” (also known herein as “Response

Costs”) as defined under 42 U.S.C. § 9601(25) (including, without limitation, by assignment). For purposes of this Settlement Agreement only, Cleanup and Removal Costs include, without limitation, the costs of evaluating and developing navigation in the Newark Bay Complex but only to the extent such costs are incurred as part of the Diamond Alkali Superfund Process and for which recovery is sought under the Spill Act, CERCLA or common law, but not otherwise. By including such navigation costs as “Cleanup and Removal Costs” Settling Defendants do not waive any defense or argument as to the recoverability of such costs or agree that such costs are recoverable under the Spill Act or CERCLA.

19.9. “CLHH” shall mean Defendant CLH Holdings, Inc.

19.10. “Complaint” shall mean the complaint dated November 22, 2005 and filed by Plaintiffs on or about December 13, 2005, as subsequently amended, against Defendants.

19.11. “Cross-Claims” shall mean the cross-claims filed in the Passaic River Litigation by OCC against Settling Defendants.

19.12. “Defendants” shall mean OCC and the Settling Defendants collectively.

19.13. “Diamond Alkali Superfund Process” shall mean all investigations and/or response actions pursuant to CERCLA (including (without limitation) removal actions and remedial actions) undertaken in respect to the Diamond Alkali Superfund Site (added to the National Priorities List on September 21, 1984, reference number NJD980528996, and including all operable units thereof or added thereto), undertaken by Plaintiffs and/or by federal agencies, separately or in conjunction with each other, or undertaken by other entities (including Defendants or Third-Party Defendants) and overseen or directed by

Plaintiffs and/or federal agencies pursuant to administrative orders, decrees, directives, statutory or regulatory obligations, or similar authority, that address or respond to any alleged Discharge of Hazardous Substances that are located or come to be located within the Diamond Alkali Superfund Site (regardless of the location of the source of such Discharge whether inside or outside the Newark Bay Complex), and all federal or CERCLA enforcement activities and litigation directly related thereto. For purposes of this definition, “remedial actions” include monitored natural attenuation and no further action when such actions (or no action) have been selected as part of any remedy in the Diamond Alkali Superfund Process. “Diamond Alkali Superfund Process” shall not include any Other Action or other CERCLA investigations and/or remedial actions at any Superfund site other than the Diamond Alkali Superfund Site.

19.14. “Diamond Alkali Superfund Site” shall mean the geographic area consisting of all operable units or areas identified for investigation and/or response actions, including (without limitation) removal and remedial actions by the United States Environmental Protection Agency (“U.S. EPA”) and any other federal agencies or departments with authority to implement CERCLA, the Plaintiffs, and/or any other agencies and departments of the State of New Jersey, separately or in conjunction with each other, or with other entities acting under the direction of any of the foregoing, pursuant to administrative orders, decrees, directives, statutory or regulatory obligations, or other similar authority, as part of the Diamond Alkali Superfund Process, and as those areas may be expanded from time to time, including (without limitation) the Lower Passaic River Study Area, the Lister Avenue Removal Area (Phase I and II), the Newark Bay Study Area and the Lister Property.

19.15. “Discharge(s)” and “Discharged” shall have the meanings ascribed to “discharge” in N.J.S.A. 58:10-23.11b and 58:10A-3, except that, for purposes of this Settlement Agreement, “Discharge(s)” and “Discharged” shall also include the emission of Hazardous Substances into the atmosphere to the extent such emission contributes to contamination of water, sediments or other media in the Newark Bay Complex. For avoidance of doubt, “Discharge(s)” and “Discharged” shall include such Discharge(s), whether known or unknown, directly or indirectly, without limitation.

19.16. “DSC-1” or “DSCC” shall mean the corporation that was named Diamond Alkali Company (which is the stipulated successor to, and allegedly assumed the liabilities of, Diamond Alkali Organic Chemicals Division, Inc., Kolker Realty Company and Kolker Chemical Works, Inc.), was subsequently renamed Diamond Shamrock Corporation after a 1967 merger with Shamrock Oil & Gas Company, and was later renamed Diamond Chemicals Company and then Diamond Shamrock Chemicals Company prior to its acquisition by and merger into OCC.

19.17. “Economic Damages” shall mean any and all damages, loss of value of real or personal property, costs, expenditures, lost income of any kind, and lost tax revenue, including (without limitation) loss of revenue associated with lost industrial, manufacturing, commercial, residential or mixed use development, navigation and port facilities, increased costs of and expenditures for health or medical treatment, and other expenditures, including costs for impacts to navigation and commerce in or related to the Newark Bay Complex, recoverable under the Spill Act, the WPCA, any other statute or regulations relating to the protection of human health, the environment or natural resources, and/or common law (including, without limitation, by assignment), with

applicable interest. For avoidance of doubt, Economic Damages shall include (without limitation) any and all forms of damages or rights of compensation or restitution available at law or equity for compensatory relief other than those remediation costs included within Cleanup and Removal Costs and, but shall not include Natural Resource Damages, disgorgement, punitive or exemplary damages.

19.18. “Escrow Account” and “Escrow Trigger” shall have the meaning given to those terms, respectively, in Paragraph 22.

19.19. “FFS Area” shall mean the geographic area subject to and/or addressed by the Focused Feasibility Study, including the Passaic River from river mile (“RM”) 0.0 to RM 8.3 and any expansion thereof by any subsequent amendment, revision or final version of the Focused Feasibility Study issued by U.S. EPA or the functional equivalent issued by U.S. EPA to the extent it addresses the same general or approximate geographic areas (not to be unduly expanded thereby).

19.20. “Focused Feasibility Study” or “FFS” shall mean the Draft Source Control Early Action Focused Feasibility Study for the Lower Passaic River Restoration Project issued in June 2007 by Malcolm Pirnie, Inc. for the U.S. EPA, U.S. Army Corps of Engineers, and the New Jersey Department of Transportation.

19.21. “Future Cleanup and Removal Costs” shall mean Cleanup and Removal Costs incurred on or after the Effective Date of the Settlement.

19.22. “Hazardous Substances” shall have the meaning ascribed to them in N.J.S.A. 58:10-23.11b, and shall also be deemed, for purposes of this Settlement Agreement only and without prejudice to the interpretation of the meaning of Hazardous Substances under the Spill Act, to include “Pollutants,” as that term is defined in N.J.S.A.

58:10A-3, including Pollutants contained within (i) sewage, including sewer systems and those systems' main outfalls and Combined Sewer Outfalls ("CSOs") and (ii) stormwater.

19.23. "Interest" shall mean interest payable under the terms of the Escrow Agreement.

19.24. "Investigation Costs" shall have the meaning given to that term in Paragraph 38.

19.25. "Lister Avenue Removal Area (Phase I and II)" shall mean that area selected for a non-time critical removal under the Administrative Settlement Agreement and Order on Consent, Docket No. 02-2008-2020, among U.S. EPA, OCC and Tierra.

19.26. "Lister Property" shall mean the former DSC-1 facility and site located at and including the real property of 80 Lister Avenue, together with the real property at 120 Lister Avenue (acquired by DSCC on or about April 19, 1984), Newark, Essex County, New Jersey, these properties being known and designated as Block 2438, Lot(s) 57, 58 and 59, on the Tax Map of the City of Newark. For the avoidance of doubt, the Lister Property is outside of the FFS Area, except that the portion of the bank below mean high tide of the Passaic River that runs along the Lister Property is not to be included in the definition of the Lister Property, but is considered part of the FFS Area.

19.27. "Lower Passaic River Study Area" shall mean the lower 17 miles of the Passaic River and its tributaries, from the confluence with Newark Bay to the Dundee Dam, as identified in the May 8, 2007 Administrative Order on Consent concerning the Lower Passaic River Study Area, and as may be expanded by U.S. EPA from time to time. For the avoidance of doubt, the Lower Passaic River Study Area includes the FFS Area.

19.28. "Matters Addressed" shall have the meaning provided for that term in Paragraph 63.

19.29. "Maxus" shall mean Defendant Maxus Energy Corporation.

19.30. "MIEC" shall mean Defendant Maxus International Energy Company.

19.31. "Natural Resource Damages" (also known herein as loss of natural resources or restoration of natural resources), for purposes of this Settlement Agreement only, shall mean all Claims arising from Discharges at or to the Newark Bay Complex, known or unknown, that occurred prior to the Effective Date of this Settlement Agreement and that are recoverable by any New Jersey state natural resource trustee as damages for injuries to natural resources under the Spill Act; the WPCA; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through 2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 through 1387; CERCLA, or any other state or federal common law, statute, or regulation, for compensation for the restoration and/or replacement of, the lost value of, injury to, or destruction of natural resources and natural resource services, including (but not limited to) Claims for penalties, attorneys' fees, consultants' fees or experts' fees incurred in connection therewith, but do not include Natural Resource Damages Assessment Costs. For the avoidance of doubt, the costs of compliance with statutory or regulatory requirements concerning the on-going operations of active facilities are not considered to be Natural Resource Damages.

19.32. "Natural Resource Damages Assessment Costs" shall mean the costs of assessing injury to natural resources and natural resource services and the restoration thereof, including (without limitation) oversight costs, attorneys' fees, consultants' fees and experts' fees incurred as part of such assessment.

19.33. "Newark Bay Complex" shall mean (i) the Lister Property; (ii) the lower 17 miles of the Passaic River (including but not limited to the FFS Area), (iii) Newark Bay, (iv) the Arthur Kill, (v) the Kill Van Kull, (vi) to the extent investigated by or at the direction of U.S. EPA or the DEP for remediation as part of the Diamond Alkali Superfund Process, now or in the future, the lower reaches of the Hackensack River and as may be further extended by U.S. EPA or the DEP in the Diamond Alkali Superfund Process, and (vii) to the extent investigated by or at the direction of U.S. EPA for remediation as part of the Diamond Alkali Superfund Process, now or in the future, any adjacent waters, sediments and other media of (i) through (vi).

19.34. "Newark Bay Study Area" shall mean Newark Bay and portions of the Hackensack River, Arthur Kill, and the Kill Van Kull, as identified in the February 13, 2004 Administrative Order on Consent between the U.S. EPA and OCC, and as may be expanded by U.S. EPA.

19.35. "OCC" shall mean Occidental Chemical Corporation and its predecessors (including (without limitation) DSC-1/DSCC). For purposes of the covenant not to sue in Paragraphs 28 and 29, and for contribution protection in Paragraphs 62 and 63, OCC shall also include any and all persons entitled to the benefit of the covenant not to sue in Paragraph 28. OCC is not a Settling Defendant or an Affiliate of a Settling Defendant under this Settlement Agreement.

19.36. "OCC/DSCC Deliberate Conduct" shall mean OCC's (specifically including its predecessors DSC-1/DSCC's) intentional or fraudulent conduct in connection with the Lister Property at any time before September 4, 1986, including the operations on the Lister Property between 1940 and 1969. OCC/DSCC Deliberate

Conduct includes conduct that may result in damages awarded against OCC based upon the intentional or fraudulent conduct of DSC-1/DSCC, including the damages that relate to, result from, or arise out of DSC-1/DSCC's intentional pollution activities of the nature discussed in Diamond Shamrock Chems. Co. v. Aetna Cas. & Sur. Co., 134 N.J. 481 (1993) and appellate and trial court proceeding, i.e., Claims for Economic Damages, punitive damages, disgorgement damages, and Natural Resource Damages relating to the Hazardous Substances and contamination associated therewith. As used herein, "intentional" refers to the intent to perform an act or refrain from performing an act knowing that Hazardous Substances would be Discharged or released into the environment, regardless of whether OCC intended or knew the consequences or effects thereof. For avoidance of doubt, OCC/DSCC Deliberate Conduct shall not include any conduct, action or inaction of any Settling Defendant or their Affiliates, and "intentional" or "fraudulent" conduct as used herein does not include conduct that is merely negligent (including grossly negligent), or conduct that is non-intentional or non-fraudulent or conduct to the extent that it would only result in strict liability based upon non-intentional or non-fraudulent action or inaction, including the mere ownership of land or of a facility.

19.37. "OCC Distinct Conduct" shall mean (i) conduct of OCC, its Affiliates, joint venturers and associated entities, and of Chemicaland Corporation (not to be confused with Chemical Land Holdings, Inc.), but not DSC-1/DSCC or its Affiliates, at any time before September 4, 1986; and/or (ii) conduct of OCC, Occidental Electrochemical Corporation and/or DSC-1/DSCC at any time after September 4, 1986. Notwithstanding the forgoing, OCC Distinct Conduct shall not include the conduct,

action or inaction of any of the Settling Defendants or their Affiliates on the Effective Date of this Settlement Agreement.

19.38. "OCC Resolved Claims" shall have the meaning given to that term in Paragraph 28.

19.39. "Other Action" or "Other Actions" shall mean past, present or future judicial, civil and administrative Claims (including directives) relating to the Discharge of a Hazardous Substance at, onto or from a site other than the Lister Property whether such Claims are among Plaintiffs and any Settling Defendant(s) or OCC or are among Settling Defendants or any of them, and any other person to the extent that the losses, liabilities, costs, penalties or damages sought in such alleged Claims are either (i) caused by a Discharge of Hazardous Substances from a source not located in the Newark Bay Complex and which Hazardous Substances do not come to be located in the Newark Bay Complex, or (ii) not caused in whole or in part by a Discharge of Hazardous Substances from the Lister Property.

19.40. "Passaic River Litigation" shall mean the action, originally initiated by Plaintiffs through the Complaint, as later amended, and proceeding in the Superior Court of New Jersey, Law Division - Essex County, Docket No. ESX-L9868-05 (PASR), against Defendants pursuant to the Spill Act, the WPCA, and common law and otherwise, including all cross-claims and counter-claims related thereto, the claims which the Third-Party Plaintiffs have asserted against the Third-Party Defendants in the Third-Party Complaints, and such State law claims as Third-Party Plaintiffs could have asserted against all Third-Party Defendants (rather than only some) but for an existing agreement among Third-Party Plaintiffs and certain Third-Party Defendants referenced in paragraph

15 of Third-Party Complaint B, paragraph 14 of Third-Party Complaint C, and paragraph 7 of Third-Party Complaint D.

19.41. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

19.42. "Party" or "Parties" shall mean Plaintiff DEP, Plaintiff Commissioner, Plaintiff Administrator, and the Settling Defendants.

19.43. "Past Cleanup and Removal Costs" shall mean Cleanup and Removal Costs incurred before the Effective Date of the Settlement Agreement.

19.44. "Plaintiff(s)" shall mean DEP, Commissioner, Administrator, and any predecessor or successor department, agency or official thereof acting on their own behalf and on behalf of the State of New Jersey, its departments and agencies.

19.45. "Repsol" shall mean Defendant Repsol, S.A. (formerly known as Repsol YPF, S.A.).

19.46. "Reserved Claims" shall mean those claims of Plaintiffs reserved by orders dated December 15, 2010 and April 24, 2012, as described in Paragraph 48 herein.

19.47. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

19.48. "Settlement Agreement" shall mean this Settlement Agreement, including all exhibits hereto.

19.49. "Settlement Funds" shall mean the total moneys paid or to be paid to Plaintiffs by Settling Defendants under Section VI of this Settlement Agreement.

19.50. "Settling Defendants" shall mean collectively Tierra, Maxus, MIEC, Repsol, YPF, YPFI, YPFH and CLHH, and "Settling Defendant" shall mean any of the

Settling Defendants individually. For purposes of the covenant not to sue in Paragraphs 25 and 26, and for contribution protection in Paragraphs 62 and 63, Settling Defendants shall also include any and all persons entitled to the benefit of the covenant not to sue in Paragraph 25. OCC is not a Settling Defendant or an Affiliate of a Settling Defendant under this Settlement Agreement.

19.51. “Settling Defendant Resolved Claims” shall have the meaning given to that term in Paragraph 25.

19.52. “Settling Third-Party Defendant” shall mean those entities that entered into and abide by the obligations under the final, approved, and entered Third-Party Consent Judgment.

19.53. “SPA” shall mean the Stock Purchase Agreement, dated September 4, 1986, by which Maxus sold the stock of its wholly-owned subsidiary, DSCC, to Oxy-Diamond Alkali Corporation.

19.54. “Sub-caps” shall mean Sub-cap A, Sub-cap B and Sub-cap C.

19.55. “Sub-cap A” shall mean the hard cap of Twenty Million Dollars (\$20,000,000) that applies to Investigation Costs pursuant to Paragraph 38.

19.56. “Sub-cap B” shall mean the hard cap of Two Hundred and Fifty Million Dollars (\$250,000,000) that applies, pursuant to Paragraph 39, to limit the Plaintiffs’ potential recovery from OCC for Category II Capped Claims to the extent OCC collects such damages from Repsol but not YPF(I).

19.57. “Sub-cap C” shall mean the hard cap of Two Hundred and Fifty Million Dollars (\$250,000,000) that applies, pursuant to Paragraph 40, to limit the Plaintiffs’

potential recovery against OCC for Category II Capped Claims to the extent that OCC collects such damages from YPF(I) but not Repsol.

19.58. “Third-Party Consent Judgment” shall mean the consent judgment among Plaintiffs and certain Third-Party Defendants in the Passaic River Litigation presented to the Court or to be presented to the Court to resolve certain liabilities of and certain claims against the Settling Third-Party Defendants.

19.59. “Third-Party Defendants” shall mean those entities named as third-party defendants by Maxus and Tierra in the Third-Party Complaints filed in this action on February 4 and 5, 2009 and as may be later amended.

19.60. “Third-Party Sites” shall mean the sites, operations and/or facilities (whether public or private) identified in the Third-Party Complaints, including sewer systems and those systems’ main outfalls and CSOs, as well as those sites and/or facilities, whether known or unknown, owned, previously owned, operated, or previously operated by a Settling Third-Party Defendant or at which a Settling Third-Party Defendant may otherwise be a potentially responsible party (i.e., any person who has discharged a hazardous substance or is any way responsible for any hazardous substance pursuant to N.J.S.A. 58:10-23.11g), from where a Third-Party Defendant Discharged, caused to be Discharged or is alleged to have Discharged any Hazardous Substance into, or which Hazardous Substance reached, migrated or was transported by any means into, the Newark Bay Complex.

19.61. “Tierra” shall mean Defendant Tierra Solutions, Inc.

19.62. “Upland Order” shall mean the judicial and administrative orders for investigation and remediation of the Lister Property (i.e. the 1990 Consent Decree in the

matter of the United States of America, the State of New Jersey v. Occidental Chemical Corporation Chemical Land Holdings, Inc., Civil Action No. 89-5065, in the United States District Court for the District of New Jersey, the March 13, 1984 Administrative Consent Order among the New Jersey Department of Environmental Protection and Diamond Shamrock Chemicals Company and Marisol, Inc. (ACO I) and the December 21, 1984 Administrative Consent Order between the New Jersey Department of Environmental Protection and Diamond Shamrock Chemicals Company (ACO II).

19.63. "YPF" shall mean Defendant YPF, S.A.

19.64. "YPF(I)" shall mean, for the limited purpose of facilitating this Settlement Agreement, YPF and/or YPFI, collectively, or individually if only one of YPF or YPFI are found liable to OCC. For avoidance of doubt, and notwithstanding any other provision herein, (a) if YPF and YPFI are both found liable for claims under a particular Cap or Sub-cap, application of the Cap or Sub-caps herein shall apply to them as if they were one entity, and each Cap and Sub-cap shall apply to limit the total award against both YPF and YPFI combined, if any; and (b) nothing in this Settlement Agreement shall obligate YPF to guarantee or otherwise be responsible for any liability of YPFI, and nothing in this Settlement Agreement shall obligate YPFI to guarantee or otherwise be responsible for any liability of YPF.

19.65. "YPFH" shall mean Defendant YPF Holdings, Inc.

19.66. "YPFI" shall mean Defendant YPF International S.A. (formerly known as and as successor, at law or in equity, to YPF International Ltd.).

## **V. PARTIES' OBJECTIVES**

20. Given the uncertainties of litigation, the Parties' objectives in entering into this Settlement Agreement, Dismissal Order and Case Management Order include, inter alia, (a) advancing the Plaintiffs' protection of public health and safety and the environment, consistent with the purposes that the Spill Act is intended to serve; (b) resolving disputed liabilities as to Plaintiffs' alleged right to recover a portion of funds expended and secure additional funds for the investigation and remediation of Hazardous Substances or restoration of natural resources within the Newark Bay Complex related, in whole or in part, to Discharges from the Lister Property; (c) avoiding the expenditure of an inordinate amount of resources that would be incurred in the prosecution and defense of the Claims in the Passaic River Litigation resolved hereby; (d) resolving the Claims of the Plaintiffs in the Passaic River Litigation as to the Settling Defendants; (e) resolving any Claims of the Settling Defendants in the Passaic River Litigation as to the Plaintiffs; (f) securing contribution protection as to Matters Addressed in this Settlement Agreement; (g) limiting discovery and further litigation; (h) dismissing of all Claims between Plaintiffs and Settling Defendants pursuant to the terms of this Settlement Agreement, Dismissal Order and Case Management Order and as provided by New Jersey law; and (i) reorganizing the resolution of the matters remaining in the Passaic River Litigation in accordance with the Case Management Order.

## **VI. SETTLING DEFENDANTS' COMMITMENTS**

21. Within sixty (60) days of an order approving this Settlement Agreement, Repsol and YPF (and/or Maxus) shall each pay or cause to be paid into the Escrow Account (as provided by Paragraph 22) for the benefit of Plaintiffs Sixty-Five Million Dollars (\$65,000,000)

for a combined payment of One Hundred and Thirty Million Dollars (\$130,000,000) (the “Settlement Funds”).

22. The Escrow Account is to be established under the Escrow Agreement, which shall be attached as Exhibit C to this Settlement Agreement. Except as provided below, after approval of the Settlement Agreement by the Court in accordance with Paragraph 69, and the order approving the Settlement Agreement becoming final and non-appealable (the “Escrow Trigger”), the escrow agent shall disburse the Settlement Funds, plus Interest, if any, as provided in the Escrow Agreement, by check or checks made payable to the “Treasurer, State of New Jersey.” The payment or payments shall be mailed or otherwise delivered to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

23. In the event this Settlement Agreement and/or the Dismissal Order and/or Case Management Order are not approved, or the approval thereof is overturned, remanded or modified on appeal such that the Settlement Agreement is void as provided by Paragraph 69 or if the Settlement Agreement is void for non-payment under Paragraph 24, the funds placed into the Escrow Account by Settling Defendants shall be returned immediately and in full to Repsol and YPF, respectively, in the same amount as each of them paid in or caused to be paid in, plus Interest prorated, if any, as provided by the Escrow Agreement.

24. Settling Defendants’ obligations to pay the amounts owed to the Plaintiffs under Paragraph 21 are several only. Failure of any Settling Defendant to pay the Settlement Funds as provided in Paragraph 21 shall void this Settlement Agreement, in which case all Settlement Funds shall be returned immediately and in full to Repsol and YPF, respectively, plus Interest, if

any, as provided by the Escrow Agreement. The Settlement Funds shall first be applied to Plaintiffs' Claims for Past Cleanup and Removal Costs, to the extent recoverable under CERCLA, and then applied as a credit against any Natural Resource Damages owed or that may be owed in the future by Settling Defendants (but not OCC) that could have been sought by Plaintiffs against Settling Defendants in the Passaic River Litigation related to Discharges of Hazardous Substances from or at the Lister Property. Notwithstanding any allocation credit given to the Settling Defendants, this Paragraph does not control any internal allocation or use that Plaintiffs or the State of New Jersey may make with respect to the Settlement Funds received.

**VII. PLAINTIFFS' COVENANT NOT TO SUE THE SETTLING DEFENDANTS AND RESERVATION OF RIGHTS**

25. In exchange for the consideration provided by the Settling Defendants, including (without limitation) the payments the Settling Defendants are making pursuant to Paragraph 21 above, and except as otherwise provided in Paragraphs 26, 44, 45, 46, and 49 below, Plaintiffs, on their own behalf and on behalf of the State of New Jersey and its departments and agencies, covenant not to sue for, and not to take or procure judicial or administrative action (including, without limitation, the issuance of a directive) with respect to, any and all of the Settling Defendant Resolved Claims listed below against any Settling Defendant including (without limitation) under New Jersey and federal statutory and common law. For purposes of the covenant not to sue described in Paragraphs 25 and 26, and for contribution protection under Paragraphs 62 and 63, the "Settling Defendants" are intended to and shall be interpreted to include the respective past and present officers, directors, employees, and predecessors of Settling Defendants. In addition, for purposes of the covenant not to sue described in Paragraphs 25 and 26, and for contribution protection in Paragraphs 62 and 63, the "Settling Defendants" are

intended to and shall be interpreted to include each of their past and present direct and indirect parents, Affiliates, members (in the case of a limited liability corporation), partners (in the case of partnerships), joint venturers (in cases of joint ventures), successors, and subsidiaries (both present and former) (i) to the extent that the alleged liability of any such parent, Affiliate, member, partner, joint venturer, successor, or subsidiary is based upon its status and in its capacity as an entity related to Settling Defendants or to the extent based on transactions with any Settling Defendants, and not to the extent that the alleged or potential liability of such entity arises independently of its status and capacity as a related entity of any Settling Defendant or (ii) to the extent that the alleged liability of any such parent, Affiliate, member, partner, joint venturer, successor, or subsidiaries arises from or relates to facts establishing the basis of Plaintiffs' fraudulent transfer or conveyance or alter ego allegations in the Fourth Amended Complaint, as well as the officers, directors and employees of any of them, or any other persons or entities that are, or are adjudicated to be in the future, indemnitors of OCC under the SPA; provided, however, that "Settling Defendants" shall not include OCC or its predecessors DSCC/DSC-1 or any Third-Party Defendant. Subject to Paragraph 26, this covenant not to sue shall apply to any and all of the following Claims (hereinafter "Settling Defendant Resolved Claims"):

- a. All Claims for Discharges to the Newark Bay Complex which Plaintiffs brought or could have brought against Settling Defendants in the Passaic River Litigation;
- b. All Claims brought or which could have been brought against Settling Defendants for Past Cleanup and Removal Costs paid or incurred by Plaintiffs, Settling Defendants, OCC, Third-Party Defendants, or any other person or entity in

connection with Discharges of Hazardous Substances to the Newark Bay Complex;

- c. All Claims against Settling Defendants for Future Cleanup and Removal Costs paid or incurred by Plaintiffs, or assigned to Plaintiffs by other persons, now or in the future, in connection with response actions (including (without limitation) investigations and removal and remedial actions) or cleanup and removal actions in the Newark Bay Complex;
- d. All Claims against Settling Defendants for Economic Damages, suffered by Plaintiffs or assigned to Plaintiffs by other persons, now or in the future, associated with Discharges of Hazardous Substances to the Newark Bay Complex caused in whole or in part by Settling Defendants or any of them or by OCC;
- e. All Claims against Settling Defendants for disgorgement damages (whether Plaintiffs' Claims or assigned to Plaintiffs by other persons), now or in the future, associated with Discharges of Hazardous Substances to the Newark Bay Complex related, in whole or in part, to the conduct of Settling Defendants or any of them or of OCC;
- f. All Claims against Settling Defendants for punitive or exemplary damages (whether Plaintiffs' Claims or assigned to Plaintiffs by other persons), now or in the future, associated with Discharges of Hazardous Substances to the Newark Bay Complex resulting, in whole or in part, from actions or failures to act by Settling Defendants or any of them or by OCC;
- g. All Claims against Settling Defendants for Natural Resource Damages (including Natural Resource Damage Assessment Costs), now or in the future, associated

with Discharges of Hazardous Substances into the Newark Bay Complex for which Settling Defendants or any of them or OCC are or may be allegedly liable pursuant to any legal theory;

- h. All Claims against Settling Defendants for attorneys' fees and litigation costs incurred by Plaintiffs, now or in the future, in the Passaic River Litigation;
- i. All Claims against Settling Defendants, now or in the future, based upon allegations that Repsol, YPF, YPFI, YPFH, CLHH and/or MIEC are alter egos of Maxus and/or Tierra or that any of the Settling Defendants fraudulently conveyed or transferred assets or resources of or belonging to Maxus or Tierra or are otherwise vicariously liable for the debts or obligations of Maxus or Tierra, with respect to any geographic area in New Jersey outside the Diamond Alkali Superfund Site at which OCC is liable as successor to DSC-1/DSCC, in whole or in part;
- j. All Claims, now or in the future, against Settling Defendants for penalties pursuant to the Spill Act, WPCA, and/or any other statutory or common law associated with Discharges of Hazardous Substances into the Newark Bay Complex for which Settling Defendants or any of them or OCC may be alleged to be liable or in any way responsible with respect to the Newark Bay Complex; and
- k. All Claims for injunctive or equitable relief, now or in the future, against the Settling Defendants in connection with Discharges of Hazardous Substances to the Newark Bay Complex taking place prior to the Effective Date of this Settlement Agreement.

26. Notwithstanding anything to the contrary herein, including Plaintiffs' covenant not to sue Settling Defendants in Paragraph 25, Plaintiffs reserve, and this Settlement Agreement is without prejudice to and shall have no effect and limitation on, all rights against the Settling Defendants concerning the following:

- a. Failure of a Settling Defendant to satisfy its obligation to contribute to the Settlement Funds under Paragraph 21 of this Settlement Agreement;
- b. Future Cleanup and Removal Costs (including recoverable attorneys' fees) actually paid or incurred (not including unpaid future obligations) by the State of New Jersey, including any of its departments and agencies, in connection with the Lister Property pursuant to the Diamond Alkali Superfund Process against all Settling Defendants, but, with respect to Settling Defendants other than Maxus and Tierra, if and only if the Plaintiffs have satisfied the conditions specified in Paragraph 46 below;
- c. Future Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey, including any of its departments and agencies, in excess of \$70,800,000 in connection with the Newark Bay Complex outside of the FFS Area (but not with respect to the Lister Property itself), if and only if Plaintiffs have satisfied the conditions of Paragraph 46 below. For purposes of this Subparagraph 26(c) only, Cleanup and Removal Costs actually paid or incurred by the State of New Jersey shall still be considered paid or incurred even if such costs are recovered from or reimbursed by any person not a Settling Defendant; provided, however, that there shall never be any double recovery by the State of New Jersey;

- d. Cleanup and Removal Costs or damages not caused, in whole or in part, by Discharges of Hazardous Substances from the Lister Property, for which remedial action is not taken as part of the Diamond Alkali Superfund Process and as to which the Settling Defendant being sued is a Discharger, a person in any way responsible or a responsible party;
- e. Claims under 25(i) if, and only if, Plaintiffs have satisfied the applicable conditions of Paragraph 46 below;
- f. Liability for any Discharge of any Hazardous Substance (but not including the migration of any Hazardous Substance from a Discharge that occurred prior to approval of this Settlement Agreement but enters the Newark Bay Complex thereafter) occurring after the Effective Date of this Settlement Agreement;
- g. Liability for future air emissions;
- h. Criminal liability; and
- i. Obligations of Tierra or Maxus under current administrative orders, consent decrees, or judgments to which Tierra or Maxus is a party, including, but not limited to, the Upland Orders, as long as Plaintiffs shall also enforce these obligations against OCC to the extent OCC is obligated under these administrative orders, consent decrees or judgments; Plaintiffs may only pursue Claims with respect to those obligations against Settling Defendants other than Tierra or Maxus, if, and only if, Plaintiffs have satisfied the conditions in Paragraph 46 below, unless OCC is not responsible for the obligation(s) under the administrative order, consent decree or judgment.

27. Notwithstanding any of the above reservations by Plaintiffs, Settling Defendants reserve all defenses they may have to these Claims or actions, including but not limited to all defenses based on lack of personal jurisdiction.

**VIII. PLAINTIFFS' COVENANT NOT TO SUE OCC AND RESERVATION OF RIGHTS**

28. In exchange for the consideration provided by the Settling Defendants, including (without limitation) the payments the Settling Defendants are making pursuant to Paragraph 21 above, and except as otherwise provided in Paragraphs 29, 43, 44, 45, 46 and 49 below, Plaintiffs, on their own behalf and on behalf of the State of New Jersey and its departments and agencies, covenant not to sue for, and not to take or procure judicial or administrative action (including, without limitation, the issuance of a directive) with respect to, any of the OCC Resolved Claims listed below against OCC including (without limitation) under New Jersey and federal statutory and common law. For purposes of the covenant not to sue described in Paragraphs 28 and 29, and contribution protection in Paragraphs 62 and 63, OCC shall include its respective officers, directors, employees, and predecessors. For purposes of the covenant not to sue described in Paragraphs 28 and 29 and contribution protection in Paragraphs 62 and 63, OCC shall also include those direct and indirect parents, Affiliates, members (in the case of a limited liability corporation), partners (in the case of partnerships), joint venturers (in cases of joint ventures), successors, and subsidiaries (both present and former), (i) to the extent that the alleged liability of any such parent, Affiliate, member, partner, joint venturer, successor, or subsidiary is based upon its status and in its capacity as an entity related to OCC and not to the extent that the alleged or potential liability of such entity arises independently of its status and capacity as a related entity of OCC, or (ii) any other persons or entities that are, or are adjudicated to be in the future, indemnitees of OCC under the SPA, but only to the extent such

liability is based solely on the person's or entity's status as an indemnitee of OCC under the SPA. Subject to Paragraph 29, this covenant not to sue shall apply to any and all of the following Claims (hereinafter "OCC Resolved Claims"):

- a. All Claims against OCC for Past Cleanup and Removal Costs paid or incurred by Plaintiffs, Settling Defendants, OCC, Third-Party Defendants, or any other person in connection with Discharges of Hazardous Substances to the Newark Bay Complex brought or which otherwise could have been brought by Plaintiffs in the Passaic River Litigation;
- b. All Claims against OCC for Economic Damages (whether by Plaintiffs' Claims or those assigned to Plaintiffs by other persons), now or in the future, associated with Discharges of Hazardous Substances to the Newark Bay Complex caused, in whole or in part, by OCC, but not by OCC/DSCC Deliberate Conduct or OCC Distinct Conduct;
- c. All Claims against OCC for disgorgement damages (whether by Plaintiffs' Claims or those assigned to Plaintiffs by other persons), now or in the future, associated with Discharges of Hazardous Substances to the Newark Bay Complex related, in whole or in part, to the conduct of OCC, but not by OCC/DSCC Deliberate Conduct or OCC Distinct Conduct;
- d. All Claims against OCC for punitive or exemplary damages (whether by Plaintiffs' Claims or those assigned to Plaintiffs by other persons), now or in the future, associated with Discharges of Hazardous Substances to the Newark Bay Complex resulting, in whole or in part, from actions or failures to act by OCC, but not by OCC/DSCC Deliberate Conduct or OCC Distinct Conduct;

- e. All Claims against OCC for Natural Resource Damages (including Natural Resource Damage Assessment Costs), now or in the future, associated with Discharges of Hazardous Substances into the Newark Bay Complex for which OCC is or may be allegedly liable, but not by OCC/DSCC Deliberate Conduct or OCC Distinct Conduct; and
- f. All Claims against OCC for attorneys' fees and litigation costs incurred by Plaintiffs in the Passaic River Litigation prior to the Effective Date of this Settlement Agreement.

29. Notwithstanding anything to the contrary herein, including Plaintiffs' covenant not to sue OCC in Paragraph 28, Plaintiffs reserve, and this Settlement Agreement is without prejudice to and shall have no effect and limitation on, all rights and Claims against OCC concerning the following:

- a. Future Cleanup and Removal Costs (including recoverable attorneys' fees) actually paid or incurred (not including unpaid future obligations and excluding any internal government expenditures for employee salaries, benefits, and overhead not subject to reimbursement by U.S. EPA) by the State of New Jersey, including any of its departments and agencies, in connection with the FFS Area pursuant to the Diamond Alkali Superfund Process;
- b. Future Cleanup and Removal Costs (including recoverable attorneys' fees) actually paid or incurred (not including unpaid future obligations) by the State of New Jersey, including any of its departments and agencies, in connection with the Lister Property pursuant to the Diamond Alkali Superfund Process;

- c. Future Cleanup and Removal Costs (including recoverable attorneys' fees) actually paid or incurred (not including unpaid future obligations) by the State of New Jersey, including any of its departments and agencies, up to \$35,400,000 and in excess of \$70,800,000 in connection with areas of the Newark Bay Complex outside of the FFS Area (but not with respect to the Lister Property itself), if and only if the conditions in Paragraph 45 below are satisfied;
- d. Cleanup and Removal Costs or damages not caused, in whole or in part, by Discharges of Hazardous Substances from the Lister Property and for which response or remedial action is not taken as part of the Diamond Alkali Superfund Process;
- e. Liability for any Discharge of any Hazardous Substance (but not including the migration of any Hazardous Substance from a Discharge that occurred prior to the Effective Date of this Settlement Agreement but enters or moves within the Newark Bay Complex thereafter) occurring after the Effective Date of this Settlement Agreement;
- f. Liability for any future air emissions;
- g. Criminal liability;
- h. Claims for the following categories of damages to the extent that OCC's liability is predicated upon OCC/DSCC Deliberate Conduct or OCC Distinct Conduct:
  - i. Economic Damages,
  - ii. Disgorgement damages,
  - iii. Punitive and exemplary damages, or
  - iv. Natural Resource Damages;

- i. Claims for attorneys' fees and litigation costs incurred by Plaintiffs in the Passaic River Litigation on or after the Effective Date or on or after July 1, 2013 for Claims under Sub-paragraphs 29(h) and 29(j);
- j. Cleanup and Removal Costs actually paid or incurred between July 1, 2013 and the Effective Date of this Agreement (not including unpaid future obligations and excluding any internal government expenditures for employee salaries, benefits, and overhead not subject to reimbursement by U.S. EPA) by the State of New Jersey, including any of its departments and agencies, in connection with the FFS Area pursuant to the Diamond Alkali Superfund Process; and
- k. OCC's liability or obligations, if any, under current administrative orders, consent decrees, or judgments, including, but not limited to, the Upland Orders.

For purposes of Subparagraph 29(c), Cleanup and Removal Costs actually paid or incurred by the State of New Jersey shall still be considered paid or incurred even if such costs are recovered from or reimbursed by OCC or any person not a Settling Defendant; provided, however, that there shall never be any double recovery by the State of New Jersey. For the avoidance of doubt, the State of New Jersey will not seek to collect from OCC Future Cleanup and Removal Costs associated with areas of the Newark Bay Complex outside the FFS Area (but not with regard to the Lister Property) between \$35,400,001 and \$70,799,999, but may seek to collect Future Cleanup and Removal Costs above or below such amounts; provided, however, as set forth in Paragraph 50, the monetary restrictions in Subparagraph 29(c) shall be void and not applicable if the Third-Party Consent Judgment is not approved by the Court (or not upheld on appeal if an appeal is filed). The monetary restrictions in Subparagraph 29(c) shall also not apply to any Future Cleanup and Removal Costs for which OCC is not jointly liable with a Settling Third-

Party Defendant for such Future Cleanup and Removal Costs. Nothing herein requires Plaintiffs to pursue OCC and/or any person not a Settling Defendant in separate suits or proceedings or to segregate their liability, but Plaintiffs agree to collect any such Future Cleanup and Removal Costs consistent with the terms of this Paragraph.

**IX. PLAINTIFFS' ADDITIONAL COVENANTS AND RESERVATIONS**

30. Subject to Plaintiffs' covenants in Sections VII through IX, Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Newark Bay Complex. The covenants contained in Sections VII through IX do not pertain to any matters other than those expressly stated.

31. Plaintiffs acknowledge and agree that U.S. EPA is, and Plaintiffs will not seek to become, the designated lead agency with respect to all response actions selected, to be selected and/or conducted as part of the Diamond Alkali Superfund Process. Plaintiffs agree to defer to U.S. EPA's final decisions on the selection of a remedy or remedies within the Diamond Alkali Superfund Site as determined by the formal Diamond Alkali Superfund Process, and Plaintiffs shall not use State authorities to select or require separate and/or additional response action(s) for the Diamond Alkali Superfund Site from those selected by U.S. EPA in implementing the Diamond Alkali Superfund Process. Nothing in this Paragraph shall limit Plaintiffs' authority or action related to response actions that do not address Hazardous Substances Discharged or released from the Lister Property or that address Hazardous Substances Discharged or released from a Third-Party Site other than the Lister Property. Furthermore, nothing in this Paragraph shall obligate Plaintiffs or the State of New Jersey to provide or to not provide, or agree to or not agree to permanent use of, State of New Jersey lands or take title to land, or not take title to land, for the implementation of any remedy or response action for the Diamond Alkali Superfund Site.

32. Plaintiffs agree not to oppose any application made by any Settling Defendant or OCC to U.S. EPA for a waste classification determination that sediments in the FFS Area do not contain listed hazardous wastes and/or are not “Hazardous Wastes from Non-Specific Sources” pursuant to 40 C.F.R. § 261.3. To the extent reasonable and within ordinary agency discretion, Plaintiffs will use good faith efforts to resolve their differences and to coordinate with the Settling Defendants and OCC on future regulatory issues associated with the Diamond Alkali Superfund Process.

33. Plaintiffs covenant not to support OCC, directly or indirectly, in connection with the prosecution of OCC’s Cross-Claims (or any Claims based on the same operable facts) against Settling Defendants, except as required by law. Plaintiffs reserve their right to seek testimony and documents from Maxus in connection with the Plaintiffs’ prosecution of the Claims reserved against OCC in Paragraph 29, and Maxus agrees, except as prohibited by law or the SPA, to cooperate in responding to those requests to the extent reasonably possible.

34. Entry or approval of, or performance under, this Settlement Agreement and/or the payment of the Settlement Funds under the terms hereunder do not constitute grounds for personal jurisdiction over any of the Settling Defendants in New Jersey or any of the United States, except solely to the limited extent necessary to enforce the terms of this Settlement Agreement and any future obligations of Settling Defendants under this Settlement Agreement, for which Settling Defendants expressly agree that service will not be required and that each will appear and not contest the jurisdiction of the courts of the State of New Jersey over them for those limited purposes.

35. Plaintiffs and Settling Defendants agree to join and support each other in defending this Settlement Agreement, the Dismissal Order and the Case Management Order in

any appeal thereof, and in seeking to dismiss any Claim that is barred or otherwise precluded by this Settlement Agreement brought against that Settling Defendant after approval of this Settlement Agreement and the entry of the Dismissal Order and the Case Management Order.

**X. CAP ON SETTLING DEFENDANTS' FUTURE LIABILITY**

36. For the purposes of this Settlement Agreement, "Capped Claims" shall mean the Claims reserved against OCC under Subparagraphs 29(a) and 29(j) ("Category I Capped Claims") and Subparagraph 29(h) and 29 (i) ("Category II Capped Claims").

37. If the requirements in paragraph 41 are met, Plaintiffs agree to reduce their recovery of any judgment or settlement against OCC for costs and damages recovered for Capped Claims in the Passaic River Litigation or any future action subject to the Cap, so that Plaintiffs will not recover more than the Cap (Four Hundred Million (\$400,000,000) Dollars) or the amounts of the Sub-caps, as applicable. For the avoidance of doubt, and irrespective of which Cap or Sub-cap, if any, may be triggered, the Settling Defendants' combined total exposure for Capped-Claims shall not exceed \$400 million (plus the upfront payments provided for in Paragraph 21).

38. Further, if the requirements in Paragraph 41 are met, Plaintiffs agree to reduce their recovery of any future judgment or settlement against OCC for Investigation Costs incurred in the FFS Area, so that Plaintiffs will not recover more than the amount of Sub-cap A (Twenty Million (\$20,000,000) Dollars) for such costs. For purposes of this Settlement Agreement, Investigation Costs shall mean all costs under Category I Capped Claims in (i) the investigation of the environmental condition of the FFS Area or the selection of a remedy for the FFS Area (but not the implementation of a remedy or evaluating and/or developing navigation in the FFS Area), and (ii) a removal action for the FFS Area not taken or directed by U.S. EPA. For

avoidance of doubt, Investigation Costs shall include the costs of site investigation and evaluation, sampling and analysis of environmental media, gathering of geological, hydrological and other scientific data, risk assessment, remedial investigation, and feasibility studies.

39. If the requirements in Paragraph 41 are met, Plaintiffs also agree to reduce their collection of any future judgment or settlement against OCC for Category II Capped Claims so that Plaintiffs will not recover more than the amount of Sub-cap B (Two Hundred Fifty Million (\$250,000,000) Dollars) against OCC with respect to Category II Capped Claims for which Repsol is held liable to OCC, and will not recover more than the amount of the Cap (Four Hundred Million (\$400,000,000) Dollars from Repsol and YPF(I) in total.

40. If the requirements in Paragraph 41 are met, Plaintiffs also agree to reduce their collection of any future judgment or settlement against OCC for Category II Capped Claims so that Plaintiffs will not recover more than the amount of Sub-cap C (Two Hundred Fifty Million (\$250,000,000) Dollars) against OCC with respect to Category II Capped Claims for which YPF(I) is held liable to OCC, and will not recover more than the amount of the Cap (Four Hundred Million (\$400,000,000) Dollars from Repsol and YPF(I) in total.

41. The Cap and Sub-caps referenced in Paragraphs 36, 37, 38, 39 and 40 apply if, and only if:

- i. OCC is successful in obtaining a final, non-appealable, judgment against Repsol and/or YPF(I) holding Repsol and/or YPF(I) liable to OCC (under theories asserted or that could be asserted in the Cross-Claims) for some or all of the costs or damages recovered by Plaintiffs under the Capped Claims; and

- ii. Repsol and/or YPF(I) satisfy and pay such OCC judgment(s) up to the amount of the applicable Caps or Sub-caps. In the event that some of Repsol, YPF or YPFI pay their individual share, but some do not, only the Settling Defendants that pay their share will have the benefit of the Cap and any applicable Sub-cap.

42. The Cap and Sub-caps do not apply to the Settlement Funds, and the Cap and Sub-caps do not apply to, and are not reduced or affected in any way by, any monies paid to Plaintiffs by any other person or entities, including the Settling Third-Party Defendants (“Other Recoveries”). Pre-Judgment and Post-Judgment interest on any Capped Claim shall be subject to the Cap or applicable Sub-cap.

43. The Cap and Sub-caps are intended to cap and limit Settling Defendants’ ultimate maximum exposure for the costs and damages recovered under the applicable Capped Claims, but only to the extent that Repsol and/or YPF(I) are held liable to and pay OCC for the particular Capped Claims and amounts upon which Plaintiffs recover. The Cap and Sub-caps shall apply to the aggregate of any amounts recovered by Plaintiffs through Capped Claims (exclusive of the Settlement Funds), but only to the extent that Repsol and/or YPF(I) are held liable to and pay OCC for the particular Capped Claims and amounts upon which Plaintiffs recover.

43.1 If the Plaintiffs recover from OCC an amount greater than the Cap or an applicable Sub-cap for the Capped Claims, the amounts above the Cap or applicable Sub-cap shall be held in escrow by Plaintiffs pending a determination and satisfaction of OCC’s Claims against Repsol and YPF(I). Plaintiffs agree that any interest that accrues on the funds held in escrow shall be payable to Plaintiffs and may be withdrawn by Plaintiffs at any time, and Settling Defendants disavow any rights thereto. If OCC is

ultimately successful in obtaining and collecting upon a final, non-appealable judgment against Repsol and/or YPF(I) holding Repsol and/or YPF(I) responsible to OCC for damages subject to the Cap or an applicable Sub-cap, the Plaintiffs will then reduce their recovery of any judgment or settlement in conformity herewith and return excess funds, if any, to OCC. If Repsol and YPF(I) are successful in defeating all of OCC's Claims for costs and damages subject to the Cap or applicable Sub-caps in final and non-appealable form or if OCC does not pursue Repsol and YPF(I) for Claims for costs and damages subject to the Cap or applicable Sub-caps within the applicable limitations period, the funds held in escrow shall be distributed to Plaintiffs. Repsol and YPF(I) shall diligently defend any action by OCC for costs and/or damages subject to the Cap or Sub-caps and shall not unreasonably delay or postpone any such action for the purpose of frustrating the Plaintiffs' recovery of money held in escrow under this Settlement Agreement.

43.2 If both Repsol and YPF(I) are successful in defeating OCC's Claims against them in a final and non-appealable form for a Capped Claim, the Cap or Sub-caps shall not be applicable or limit any recovery by Plaintiffs from OCC and any money held in escrow shall be released to Plaintiffs. Likewise, if Repsol, YPF and/or YPFI do not satisfy a final and non-appealable judgment in favor of OCC for a Capped Claim within four (4) years of issuance, the Cap or Sub-caps shall not be applicable for the amount of the unsatisfied judgment by the non-paying Settling Defendant or limit any recovery by Plaintiffs from OCC for such amount (and any money held in escrow shall be released to Plaintiffs). In the event OCC's judgment is several as to Repsol, YPF and/or YPFI, the Cap or applicable Sub-cap shall not apply to that portion of the judgment awarded against the particular Settling Defendant that failed to satisfy a final and non-appealable

judgment, provided that no Settling Defendant shall be required to pay more than the applicable Cap or Sub-cap.

43.3 If both Repsol and YPF(I) are successful in defeating some or all of OCC's Claims against them for Category I Capped Claims only, then the Cap or Sub-cap is inapplicable to that category of costs and damages and there is no cap on the amount of funds Plaintiffs may recover from OCC for a Category I Capped Claim. Likewise, if both Repsol and YPF(I) are successful in defeating some or all of OCC's Claims against them for Category II Capped Claims only, then the Cap or any Sub-cap is inapplicable to that category or sub-category of damages in which both Repsol and YPF(I) prevailed.

43.4 To the extent that either Repsol alone or YPF(I) alone are held liable to OCC, in a final and non-appealable order, for any amount of a Capped Claim, then the particular entity found liable (or entities, in the event that both YPF and YPFI are found liable) shall pay the relevant capped amount to OCC. To the extent that both Repsol and YPF(I) are held, in a final and non-appealable order, jointly and severally liable to OCC for any amount of the Capped Claims, they hereby agree to each pay to OCC 50% of that amount, subject to any applicable Caps. To the extent that Repsol and YPF(I) are both held liable to OCC, in a final and non-appealable order, for Capped Claims in a proportionate ratio other than on a joint and several basis, they shall each pay to OCC the portion of the amount under the Cap that is consistent with that ratio of liability. To the extent that Repsol or YPF(I) are held liable to OCC, in a final and non-appealable order, for a Capped Claim in an amount that is less than the Cap or applicable Sub-cap, this Settlement Agreement shall not require any entity to pay more to OCC than the amount for which it has been liable. Nothing herein shall be construed to result in any Settling

Defendant being responsible for more than the amount of the Capped Claims, if any, for which that particular entity is found liable to OCC. Notwithstanding Paragraph 19.64, except as to payments made pursuant to Paragraph 21 herein, Repsol and YPF(I) hereby reserve any and all contribution and other rights and claims each may have against the other with respect to any liabilities that Repsol and/or YPF(I) are determined, in a final and non-appealable order, to have in the Passaic River Litigation (including without limitation the Capped Claims) and otherwise between Repsol, YPF and YPFI related to this or any other matter.

43.5 Examples of the application of the Cap and Sub-caps are set forth on Schedule 1, which examples are incorporated herein by reference. These examples are intended to provide an interpretive guide in applying the Cap and Sub-caps to future events.

43.6 In any proceedings against OCC with respect to Category I Capped Claims, Plaintiffs may rely upon the existing judgment against OCC in the Passaic River Litigation, the facts underpinning such judgment (including facts associated with DSC-1/DSCC) and/or upon OCC Distinct Conduct or OCC/DSCC Deliberate Conduct. But in any portion of a proceeding with respect to Category II Capped Claims, Plaintiffs may not rely on the existing judgment for OCC's liability to establish OCC/DSCC Deliberate Conduct or OCC Distinct Conduct; provided, however, Plaintiffs may use the existing judgment for purposes of establishing OCC's liability as the corporate successor to DSC-1/DSCC in any Claim against OCC.

43.7 Plaintiffs covenant that they will clearly indicate the different standards for OCC/DSCC Deliberate Conduct applicable to Category II Capped Claims and

damages recoverable thereunder in all relevant submissions to the Court or requested submissions to a jury (including, but not limited to, summary judgment motions, proposed findings of facts and conclusions of law, proposed jury instructions and proposed verdict forms). Plaintiffs are not restricted in the evidence or types of evidence they may seek to introduce in any Category II Capped Claim.

43.8 This Settlement Agreement shall not limit the causes of action Plaintiffs may assert (including the causes of action currently in the Complaint) in any Capped Claim or require Plaintiffs or a finder of fact to segregate or allocate damages resulting from OCC/DSCC Deliberate Conduct or OCC Distinct Conduct from any other damages in the event of joint and several liability. Further, nothing in this Settlement Agreement shall limit Plaintiffs' ability to establish any element of a cause of action or damages subject to a Capped Claim or prevent Plaintiffs from meeting any obligation to satisfy a required higher standard of liability for damages under a Capped Claim, including Punitive Damages. For example, Plaintiffs allege and intend to put on evidence that OCC and its predecessors DSC-1/DSCC intentionally Discharged dioxins and other Hazardous Substances directly into the Passaic River for years (and that the plant on the Lister Property was in fact designed to do so) in prosecuting the Plaintiffs' causes of action against OCC. In order to recover Category I Capped Claims under the Spill Act, Plaintiffs may only need to prove that OCC is a Discharger. As provided herein, in order to recover on a Category II Capped Claim, Plaintiffs must obtain a finding that Discharges were the result of OCC/DSCC Deliberate Conduct (though Plaintiffs do not have to demonstrate that OCC knew or understood the consequences or effects of its acts or omissions, nothing herein prevents Plaintiffs from putting on evidence of such

knowledge or intent) or OCC Distinct Conduct. In addition, to recover Punitive Damages under a Category II Capped Claim, Plaintiffs must also meet any higher standard of liability or proof required for recovery of Punitive Damages under New Jersey law.

43.9 With respect to Claims reserved against OCC under Paragraph 29 above, nothing herein prevents Plaintiffs from pursuing declaratory relief against OCC for costs and damages for the Capped Claims or limit Plaintiffs ability to pursue OCC for Claims that are not Capped Claims.

**XI. PLAINTIFFS' COVENANTS AND RESERVATIONS OF RIGHTS WITH RESPECT TO FUTURE CLEANUP AND REMOVAL COSTS**

44. Nothing in this Settlement Agreement shall mitigate or limit (i) OCC's or Tierra's obligations to perform response actions or provide access as respectively applicable under the Upland Orders, (ii) Plaintiffs' or the State of New Jersey's right or ability, if any, to enforce the Upland Orders against OCC or Tierra, or (iii) Plaintiffs' or the State of New Jersey's right, if any, to seek to require OCC to perform future response actions or cleanup and removal actions at the Lister Property.

45. For any and all Claims reserved by Plaintiffs against OCC for Future Cleanup and Removal Costs at parts of the Diamond Alkali Superfund Site outside of the FFS Area, as reserved in Subparagraph 29(c) (but not at the Lister Property itself), Plaintiffs covenant that the following conditions must be met before or as part of asserting such Claims or taking administrative action against OCC:

- i. The additional response action or Cleanup and Removal Costs sought are undertaken or incurred, or to be undertaken, as part of the Diamond Alkali Superfund Process;

- ii. Plaintiffs are able to demonstrate, to the extent required by law, a causal nexus between Discharges which occurred prior to the Effective Date at or from the Lister Property and the response action or Cleanup and Removal Costs incurred or required to be incurred by the Plaintiffs;
- iii. In any action or proceeding other than the Passaic River Litigation, Plaintiffs will also reasonably pursue liability as to non-governmental entities that Plaintiffs reasonably determine are responsible for known Discharge(s) that are or may be substantial contributing factors to such Cleanup and Removal Costs, subject to Plaintiffs' reasonable and non-arbitrary discretion to enforce or pursue state or federal law, or policies, and any covenant not to sue provided by Plaintiffs; and
- iv. Plaintiffs do not join, and Plaintiffs hereby covenant not to join, any Settling Defendant or otherwise bring any Claims against any Settling Defendant in such action or Trial Track.

46. For any and all Claims reserved by Plaintiffs against Settling Defendants in Subparagraphs 26(c) and 26(e), and those claims reserved against Settling Defendants other than Maxus and Tierra under Subparagraphs 26(b) and 26(i), the following conditions must be met before Plaintiffs may assert such Claims or take administrative action against Settling Defendants:

- i. OCC is first adjudicated liable to Plaintiffs with respect to such Claims; and

- ii. Plaintiffs are able to demonstrate that OCC is insolvent or otherwise without sufficient resources to fully satisfy Plaintiffs' judgment against OCC for these Claims or costs, and Plaintiffs have exhausted all reasonable avenues of relief available to them against OCC, including but not limited to pursuing Claims in bankruptcy court. To the extent OCC is able to satisfy the judgment in part, Plaintiffs shall collect the portion of the judgment that OCC is able to satisfy from OCC before pursuing Claims against the Settling Defendants.
- iii. With respect to Claims under Subparagraph 26(c) only and to the extent applicable, Plaintiffs have satisfied the conditions of Subparagraph 45(iii); and
- iv. If, in any action brought by Plaintiffs against OCC and/or any other non-governmental entity, OCC and/or any other non-governmental entity files a third-party complaint against any Settling Defendant, Plaintiffs shall cooperate with that Settling Defendant in seeking to have OCC's and/or the non-governmental entity's case against that Settling Defendant tried in a separate proceeding or subsequent trial track, and Plaintiffs shall not participate or assist in OCC's and/or the non-governmental entity's prosecution of such Claims against that Settling Defendant.

For any and all Claims reserved by Plaintiffs against Settling Defendants in Subparagraph 26(e) in connection with areas outside the Newark Bay Complex for which OCC is not adjudicated

liable, Plaintiffs may pursue the claims reserved under Subparagraph 26(e) without meeting the conditions in Subparagraphs i-iv of this Paragraph 46.

47. Except as provided by Paragraph 67, in any such action under Section XI, Settling Defendants shall retain all defenses they may have, including, but not limited to, the defense of a lack of personal jurisdiction and the Court's prior decision on personal jurisdiction shall have no res judicata or collateral estoppel effect; provided, however, that any limitations period, if any, applicable to Plaintiffs' Claims against the Settling Defendants reserved under Subparagraphs 26(b), 26(c) or 26(e) shall be tolled from the time Plaintiffs' first bring a Claim against OCC until two (2) years after OCC defaults on (i) a payment obligation under a final non-appealable judgment in favor of Plaintiffs or (ii) a settlement agreement or consent decree with Plaintiffs. In the event OCC is in bankruptcy proceedings or other insolvency proceedings, this limitations period shall be further tolled until one (1) year after the conclusion of such proceedings.

48. The approval of this Settlement Agreement shall have no effect and shall not disturb the Plaintiffs' Claims reserved under the December 15, 2010 and April 24, 2012 orders reserving such Claims against persons other than the Settling Defendants. With respect to Claims of the Plaintiffs against the Settling Defendants, this Settlement Agreement shall supersede those orders.

49. Except as provided in Subparagraphs 25(i), 26(e), and 26(i), the Parties agree that this Settlement Agreement shall not release, be applied as a credit against, a defense to, contribution protection for, or a compromise of any Claims, costs, damages or penalties that are the subject of an Other Action. Further, except as provided by Sub-paragraphs 25(i), 26(e), and 26(i), Plaintiffs reserve, and this Settlement Agreement is without prejudice to, the right to institute proceedings against any or all of the Settling Defendants in any Other Action. Settling

Defendants reserve all defenses they may have to such Other Actions, including, but not limited to, defenses based on the lack of personal jurisdiction.

## **XII. SETTling DEFENDANTS' COVENANTS**

50. Subject to the conditions in Section XXI, the Settling Defendants agree to support and covenant not to oppose entry of an order approving this Settlement Agreement by this Court, or to challenge any provision of this Settlement Agreement, unless Plaintiffs notify the Settling Defendants, in writing, that they no longer support entry of this Settlement Agreement. This Settlement Agreement shall be presented to the Court for its approval prior to or simultaneously with the Third-Party Consent Judgment. Settling Defendants further represent that they will not oppose and covenant not to oppose, either before the Court or on appeal, the entry of the Third-Party Consent Judgment by this Court, and will not challenge any provision of the Third-Party Consent Judgment or the dismissal of the Settling Third-Party Defendants from the Passaic River Litigation. In the event that Plaintiffs withdraw from this Settlement Agreement or that this Settlement Agreement is not approved by the Court, or is overturned, disapproved or materially modified on appeal, Settling Defendants' covenant not to oppose the entry of the Third-Party Consent Judgment or any of its provisions is null and void. Further, Plaintiffs agree that, if this Settlement Agreement is not approved by the Court or is overturned, disapproved or modified on appeal (except for ministerial changes only), Plaintiffs shall (i) reopen the public comment period concerning the Third-Party Consent Judgment for Sixty (60) days to allow the Settling Defendants to submit public comments on the Third-Party Consent Judgment; and (ii) withdraw the Third-Party Consent Judgment from the Court's consideration until the Settling Defendants have had an opportunity to submit public comments on the Third-Party Consent Judgment to the Plaintiffs and to submit briefs and arguments to the Court concerning the proposed approval of

the Third-Party Consent Judgment. In the event the Third-Party Consent Judgment is not entered by the Court or is overturned on appeal, the monetary restrictions on Plaintiffs' reservation under Subparagraph 29(c) (Future Cleanup and Removal Costs in excess of \$35,400,000 and less than \$70,800,000) shall not apply. For the avoidance of doubt, it is the Parties' mutual intent that the Court consider this Settlement Agreement and the Third-Party Consent Judgment simultaneously, but that the Court must decide whether to approve or disapprove this Settlement Agreement prior to deciding whether to approve or disapprove the Third-Party Consent Judgment. Nevertheless, Settling Defendants reserve the right to challenge in federal court any allegation or claim that the Third-Party Defendant Consent Judgment provides the Settling Third-Party Defendants with contribution protection as to any federal claim, and neither this Settlement Agreement nor the fact that the Settling Defendants did not challenge the Third-Party Consent Judgment shall waive or impede such rights.

51. The Settling Defendants further covenant, subject to Paragraph 54 below, not to sue or assert any claim or cause of action (whether under federal or state law) for monetary relief against any Plaintiff or the State of New Jersey, including any department, authority or agency thereof, for the Settlement Funds or any other money recovered by Plaintiffs from OCC or the Settling Defendants for costs and damages subject to the Cap, including any direct or indirect claim for reimbursement from the Spill Fund, except that if the requirements of Paragraph 41 are met, Settling Defendants may seek to enforce Plaintiffs' obligations to return amounts in excess of the Cap or an applicable Sub-cap to OCC, pursuant to Section X. Maxus and Tierra covenant to dismiss all counterclaims asserted against Plaintiffs in the Passaic River Litigation.

52. The Settling Defendants further covenant, subject to Paragraph 54 below, not to sue or assert any Claim or cause of action for monetary relief against the New Jersey Department

of Agriculture, the New Jersey Department of Transportation and the New Jersey Transit Corporation for any Past Cleanup and Removal Costs incurred in the Newark Bay Complex or Future Cleanup and Removal Costs with respect to the Diamond Alkali Superfund Process to the extent of the contribution protection provided by the Third-Party Consent Judgment, and the Settling Defendants covenant not to challenge the application of such contribution protection under the Spill Act as to the New Jersey Department of Agriculture, the New Jersey Department of Transportation and the New Jersey Transit Corporation.

53. The Settling Defendants further covenant not to sue or assert any Claim or cause of action against any Settling Third-Party Defendant for monetary relief under the Spill Act for Cleanup and Removal Costs incurred with respect to the Diamond Alkali Superfund Process, but only to the extent that such Settling Third-Party Defendant has contribution protection with respect to such Claim or cause of action under the Third-Party Consent Judgment and the Third-Party Consent Judgment has been entered by this Court and becomes a final, non-appealable order. Except in Other Actions, unless a Claim arises solely under a State law requiring a filing in a state court, Settling Defendants agree to assert any Claims against the Settling Third-Party Defendants that arise in whole or in part as a result of Discharges of Hazardous Substances into the Newark Bay Complex in federal court. Notwithstanding any provision in this Paragraph, and except as provided by Paragraphs 51 and 52, if any Claims against a Settling Third-Party Defendant asserted in federal court are barred under the Eleventh Amendment of the United States Constitution nothing herein shall preclude or prevent Settling Defendants from bringing such Claims under State statute or common law in state court. Notwithstanding the foregoing and the contribution protection afforded Settling Defendants from Spill Act claims asserted by a Settling Third-Party Defendant or any other person pursuant to Paragraphs 62 and 63, nothing

herein is intended to preclude any Settling Defendant from seeking to assert a claim, if any, against any Settling Third-Party Defendant for monetary relief under the Spill Act in the nature of offset for such Cleanup and Removal Costs incurred with respect to the Diamond Alkali Superfund Process in an amount, if any, that any Settling Third-Party Defendant seeks to recover from a Settling Defendant under the Spill Act for costs related to the Diamond Alkali Superfund Site.

54. Any covenant not to sue or to assert any Claim or cause of action by a Settling Defendant against the State of New Jersey, or an agency, authority or department thereof, made with the Settling Defendants herein does not apply in the event, and to the extent, that Plaintiffs sue or take administrative action jointly or severally against Settling Defendants pursuant to Plaintiffs' reserved rights under Subparagraphs 26(c) or against Settling Defendants other than Maxus and Tierra under Subparagraphs 26(b). In the event, and only in the event that any of the Settling Defendants bring a claim against Plaintiffs or the State of New Jersey and/or its departments and agencies as provided in this Paragraph, those departments and agencies are not barred by this Settlement Agreement from asserting a cross-claim for contribution under federal or New Jersey law against the Settling Defendant bringing that claim.

55. Settling Defendants agree not to enter and shall not enter into any settlement (or agreed judgment, contract or award) with OCC that would limit or cap Plaintiffs' rights or Claims against OCC, including the Capped Claims, in such a way as to trigger the Cap or Sub-caps, except upon written approval from Plaintiffs, or assign any rights or Claims to OCC that could be asserted against Plaintiffs. Plaintiffs agree not to enter and shall not enter into any settlement (or agreed judgment, administrative agreement or award) with OCC that would limit Settling Defendants' Claims against OCC related to the Newark Bay Complex/Diamond Alkali

Superfund Site Process (other than statutory contribution protection attendant to OCC's direct payment of future remediation costs) or Settling Defendants' defenses to OCC's Claims related to the Newark Bay Complex/Diamond Alkali Superfund Site Process against them. Notwithstanding the foregoing, nothing herein restricts or prevents the Plaintiffs from settling their Capped Claims for an amount of damages or for a guaranty of their future costs, or for a combination thereof, in an aggregate amount not to exceed the Cap and/or applicable Sub-caps so long as the amount of such settlement is not contingent on OCC's success in prosecuting Claims against Repsol and/or YPF(I). Notwithstanding the foregoing, no settlement between Plaintiffs and OCC shall provide OCC with contribution protection against Claims brought by any of the Settling Defendants to recover amounts they paid or caused to be paid to Plaintiffs under this Settlement Agreement.

56. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k, or N.J.A.C. 7:1J.

### **XIII. SETTLING DEFENDANTS' RESERVATIONS**

57. Except as specifically addressed herein, Settling Defendants reserve all rights, Claims and defenses against any person not a Party to this Settlement Agreement.

58. This Settlement Agreement, and any Dismissal Order entered pursuant to this Settlement Agreement, is not a judicially-approved settlement of liability as to any Claims in any Other Action, and the rights, Claims and defenses, including (without limitation) Claims for contribution and other third-party cross-claims of the Settling Defendants, in any Other Action, are expressly reserved. This Settlement Agreement, and any Dismissal Order entered pursuant to

this Settlement Agreement, shall not bar the assertion of any contribution and/or other Claims by any Settling Defendants against any other person or entity in any Other Action.

59. Subject to Paragraphs 51 and 52 (Covenants Not to Sue), the Parties intend and agree that this Settlement Agreement, and the Dismissal Order entered pursuant to this Settlement Agreement, will not bar the assertion of any Claim or cause of action under a federal statute or federal common law (“United States Claims”) for contribution or cost recovery and/or other United States Claims by any Settling Defendant against any other person. Settling Defendants do not waive any Claims and rights under CERCLA or other federal law against OCC, any Settling Third-Party Defendant or against any other person or entity, and explicitly reserve any and all such United States Claims, including but not limited to Claims for cost recovery and contribution for Response Costs that may also constitute Cleanup and Removal Costs under the Spill Act and Natural Resource Damages under CERCLA. Subject to Paragraphs 49 (Other Actions), and 51, 52 and 53 (Covenants Not to Sue), Settling Defendants reserve all rights, Claims and defenses, including (without limitation) contribution, under any federal or New Jersey statute or common law they have or may have against any person or entity, including (without limitation) OCC or any Settling Third-Party Defendant, for: (i) Discharges of Hazardous Substances into the Newark Bay Complex; (ii) costs, damages or judgments for any Claims asserted by Plaintiffs pursuant to Section VI; and (iii) any costs or damages unrelated to the contamination at or from the Lister Property and into the Newark Bay Complex or that otherwise are not being sought in the Passaic River Litigation.

60. Settling Defendants reserve any rights to assert Claims for the Settlement Funds against OCC, including (but not limited to) rights and Claims under the Spill Act or CERCLA. Nothing in this Settlement Agreement shall require Maxus or Tierra to breach any defense or

indemnity obligations they may have to OCC under the SPA. To the extent a conflict arises between the terms of this Settlement Agreement and the defense and indemnity provisions of the SPA, Maxus and Tierra shall take all reasonable efforts to prevent the breach of either agreement.

#### **XIV. FINDINGS & NON-ADMISSIONS OF LIABILITY**

61. Nothing contained in this Settlement Agreement shall be considered an admission of any issue of fact or law or jurisdiction by the Settling Defendants as to any matter, or a finding by the Court or by Plaintiffs of any wrongdoing or liability on the Settling Defendants' part for any matters, including matters Plaintiffs and OCC have alleged in the Passaic River Litigation.

#### **XV. EFFECT OF SETTLEMENT AND CONTRIBUTION PROTECTION**

62. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement, except that under Paragraphs 28, 29 and 63, OCC shall be entitled to the protection under the Plaintiffs' covenant not to sue and to contribution protection. Further, nothing in this Settlement Agreement, including (without limitation) Plaintiffs' covenant not to sue under federal law, waives or limits, and shall not be deemed to waive or limit Eleventh Amendment immunity under the United States Constitution, if any, of the State of New Jersey or Plaintiffs, or consent to jurisdiction in federal court.

63. Upon approval by this Court, this Settlement Agreement will constitute a judicially approved settlement of liability to the State of New Jersey within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and, within the meaning of 42 U.S.C. § 9613(f)(2), and under common law for the Matters Addressed identified below, for the purpose of providing protection

to the Settling Defendants from contribution actions brought by OCC or by any other person or entity:

a. The Parties agree, and the Court by approving this Settlement Agreement so intends, that except as provided in Paragraph 49 (Other Actions), the Settling Defendants are entitled, upon satisfying their payment obligations under Paragraph 21 of this Settlement Agreement, to protection from any and all contribution Claims for all such Matters Addressed, and OCC is likewise entitled to protection from any and all contribution Claims by persons other than the Settling Defendants to the extent that OCC is entitled to indemnification for such Claims from any of the Settling Defendants under the SPA, relating to all of the Matters Addressed listed below:

- i. Past Cleanup and Removal Costs of Plaintiffs and any other person (including the Third-Party Defendants) under applicable State law associated with Discharges of Hazardous Substances (including Hazardous Substances contained in sewage and stormwater) to the Newark Bay Complex;
- ii. Future Cleanup and Removal Costs of Plaintiffs and any other person (including the Third-Party Defendants) under applicable State law associated with Discharges of Hazardous Substances (including Hazardous Substances contained in sewage and stormwater) to the Newark Bay Complex;

- iii. Past Cleanup and Removal Costs of Plaintiffs, the State of New Jersey, its agencies and departments, under CERCLA or other federal law;
- iv. Natural Resource Damages Assessment Costs related to the Newark Bay Complex;
- v. Natural Resource Damages associated with the Newark Bay Complex under applicable state and federal law, with respect to Settling Defendants only;
- vi. All Economic Damages incurred by Plaintiffs, the State of New Jersey, its agencies and departments, or assigned thereto, now or in the future, with respect to the Newark Bay Complex;
- vii. All disgorgement damages awarded to Plaintiffs against OCC, now or in the future, with respect to the Newark Bay Complex;
- viii. All punitive or exemplary damages awarded to Plaintiffs against OCC, now or in the future, with respect to the Newark Bay Complex; and
- ix. The Settlement Funds paid herein by each Settling Defendant, provided, however, that contractual indemnity Claims for Settlement Funds are not barred.

b. The Parties agree, and the Court by approving this Settlement Agreement so intends, that Matters Addressed shall not include and this Settlement Agreement should not be construed to limit or provide protection from contribution for:

- i. Against Settling Defendants only, Claims for Cleanup and Removal Costs or other damages or claims for which Plaintiffs have reserved their rights under Paragraphs 26, 44, 46, and 49 of this Settlement Agreement, in the event that, and only to the extent that, Plaintiffs assert rights against the Settling Defendants within the scope of those reservations;
- ii. With respect to OCC only, Claims for Cleanup and Removal Costs or other damages or claims for which Plaintiffs have reserved their rights under Paragraphs 29, 44, 45, 48, and 49 of this Settlement Agreement, in the event that, and only to the extent that, Plaintiffs assert rights against OCC within the scope of those reservations;
- iii. Past Cleanup and Removal Costs incurred by OCC, Settling Defendants, Third-Party Defendants or any other person (excluding the State of New Jersey and any agencies and departments thereof) sought under CERCLA or other federal law;
- iv. Future Cleanup and Removal Costs incurred by OCC, Settling Defendants, Third-Party Defendants or any other person (excluding the State of New Jersey and any agencies and departments thereof) sought under CERCLA or other federal law;
- v. Future Cleanup and Removal Costs of Plaintiffs or any other person for future Discharges of Hazardous Substances after the Effective Date of this Settlement Agreement under State or federal law;

- vi. Relief sought in any Other Action; and
  - vii. Claims reserved by Settling Defendants in Paragraphs 58 and 59.
- c. This Settlement Agreement and the Dismissal Order shall not be a release of or a compromise of any Claims, costs, damages or penalties under CERCLA or other federal law by any Settling Defendant; nor shall it be a release of or a compromise of any Claims, costs, damages or penalties under CERCLA or other federal law by any person or entity not a party to this Settlement Agreement, nor of any Claims, costs, damages or penalties in any Other Action. Any Settling Defendant and any person or entity not a Party to this Settlement Agreement (including Third-Party Defendants) may assert Claims under CERCLA or other federal law against any person or entity, including any Settling Defendant, and such Claims are not intended to be barred by CERCLA § 113(f)(2), except as specifically provided in Subparagraph (a) herein or with respect to the State of New Jersey as provided in Paragraphs 51 and 52.
- d. Nothing in this Settlement Agreement shall be interpreted as a waiver by Maxus and Tierra (or any other Settling Defendants) of their right to pursue Claims for contribution and/or indemnity against OCC in any subsequent litigation or as counterclaims to OCC's cross-claims in the Passaic River Litigation. Furthermore, nothing in this Settlement Agreement shall be interpreted as a waiver or abrogation of Plaintiffs' obligation to protect the public health, safety and environment or fulfill its legal mandates.

e. Plaintiffs agree to cooperate with the Settling Defendants in establishing whether Cleanup and Removal Costs sought in the Passaic River Litigation were consistent and/or not inconsistent with the National Contingency Plan (“NCP”). To the extent that any portion of the Settlement Funds are not entitled to credit as response and/or remediation costs paid under CERCLA, the Parties agree that such Settlement Funds shall be considered payment for Natural Resource Damages owed by Settling Defendants, but shall not otherwise limit or reduce any Claim or recovery by Plaintiffs or any federal trustee in any Natural Resources Damages action against OCC. Settling Defendants reserve their right to seek testimony and documents from Plaintiffs regarding the NCP consistency, and Plaintiffs agree to cooperate in responding to those requests to the extent reasonably possible, except as prohibited by law. Failure of the Settling Defendants to obtain a credit for purposes of contribution protection with respect to payment of the Settlement Funds shall not limit or otherwise affect any other provision of this Settlement Agreement.

64. In order for the Settling Defendants to obtain protection under N.J.S.A. 58:10-23.11f.a.(2)(b) from contribution Claims concerning the Matters Addressed in this Settlement Agreement, Plaintiffs published notice of this Settlement Agreement in the New Jersey Register and on Plaintiff DEP’s website on July 1, 2013, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

a. the caption of this case;

- b. the name and location of the Newark Bay Complex;
- c. the names of the Settling Defendants; and
- d. a summary of the terms of this Settlement Agreement.

65. Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Settlement Agreement to all other potentially responsible parties of whom Plaintiffs had notice as of the date Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 64.

66. Plaintiffs will submit this Settlement Agreement to the Court for approval pursuant to Section XXI unless, as a result of the notice of this Settlement Agreement pursuant to Paragraphs 64 and 65, Plaintiffs receive new information that discloses facts or considerations that indicate to them, in their sole discretion, that the Settlement Agreement is inappropriate, improper or inadequate, but Plaintiffs agree not to withdraw from this Settlement Agreement for the purpose of entering into a settlement with OCC unless the Settling Defendants are also parties to the same settlement with OCC.

67. In any subsequent administrative or judicial proceeding for claims reserved by Plaintiffs (under Paragraphs 26, 29, 44, 45, 46, and 49) or Settling Defendants, no Party shall assert or maintain any contention against any other Party that the Claims reserved in this Settlement Agreement were or should have been brought in this case, including under the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or the entire controversy doctrine.

68. All Sections, Paragraphs and provisions of this Settlement Agreement are integral to the Settlement Agreement, and any Court Order that does not approve this Settlement Agreement in its entirety or attempts to modify this Settlement Agreement, except as to

ministerial changes, shall cause this Settlement Agreement to be void and of no effect, unless otherwise agreed in writing by the Parties.

69. This Settlement Agreement shall be void and of no force or effect until the Court shall approve it by means of a Dismissal Order entered in the form attached to this Settlement Agreement as Exhibit A and enter a Case Management Order in the form attached to this Settlement Agreement as Exhibit B, unless the Parties agree to all changes made in both Exhibits.

#### **XVI. NOTICES**

70. Except as otherwise provided in this Settlement Agreement, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP, Commissioner & Administrator:

Section Chief  
Environmental Enforcement Section  
Department of Law & Public Safety  
Division of Law  
Richard J. Hughes Justice Complex  
P.O. Box 093  
Trenton, New Jersey 08625-0093  
(609) 984-4863

As to Settling Defendants:

Contact for each Settling Defendant is listed with that Party on its respective signature page.

## **XVII. EFFECTIVE DATE**

71. The “Effective Date” of this Settlement Agreement shall be the date upon which this Settlement Agreement has been approved by order of the Court and the conditions set forth in Section XXI have been met.

## **XVIII. RETENTION OF JURISDICTION**

72. This Court retains jurisdiction over the subject matter of this Settlement Agreement and the Parties for the duration of the performance of the terms and provisions of this Settlement Agreement and Dismissal Order for the purpose of enabling the Plaintiffs and any of Settling Defendants to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification pursuant to Paragraphs 17 and 74 of this Settlement Agreement, or to effectuate or enforce compliance with its terms, or to resolve disputes. Each of the Settling Defendants agrees not to contest the Court’s personal jurisdiction over it solely for the limited purposes of this Paragraph 72 and Paragraph 17. The Settling Defendants limited agreement not to contest personal jurisdiction shall not extend to any other purpose except the approval and the entry of the Settlement Agreement and Dismissal Order. Only Parties as defined in Paragraph 19.42 are intended to benefit from this limited agreement not to contest personal jurisdiction. The Settling Defendants reserve all objections and defenses to personal jurisdiction with respect to Cross-Claims brought against them by OCC and Third Parties in the Passaic River Litigation, and do not waive personal jurisdiction defenses with respect to other actions brought against them in the courts of New Jersey by any person. Because the Settling Defendants are resolving the Claims brought or which could have been brought against them by the Plaintiffs prior to appeal, any prior decision that this Court has personal jurisdiction over them shall have no res judicata or collateral estoppel effect in any

other proceeding. For the avoidance of doubt, this Settlement Agreement shall not preclude the Settling Defendants from pursuing their motions to dismiss the claims brought against them by OCC in this proceeding on any ground, including lack of personal jurisdiction.

#### **XIX. RETENTION OF RECORDS**

73. Until completion of the Diamond Alkali Superfund Process, each Plaintiff and Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to cleanup and removal or response actions taken at the Diamond Alkali Superfund Site or to the liability of OCC or any Settling Defendant for Cleanup or Removal Costs, Natural Resource Damages, response actions or response costs at or in connection with the Diamond Alkali Superfund Site, regardless of any retention policy to the contrary. In no event shall this Section XIX require preservation of records beyond ten (10) years from the Effective Date of the Settlement Agreement unless Plaintiffs provide written notice to a Settling Defendant (or vice versa) upon good cause requiring preservation of records for an additional fixed term not to exceed five (5) years, or as further extended upon good cause and in writing for additional five (5) year periods. To the extent a Settling Defendant is a party to a current or future Administrative Order on Consent (“AOC”), Consent Decree, or Court Order which requires such party to maintain documents and information beyond the requirements of this Settlement Agreement, such AOC, Consent Decree or Court Order shall control as to that Settling Defendant.

#### **XX. MODIFICATION**

74. This Settlement Agreement and any notices or other documents specified in this Settlement Agreement may be modified only by agreement of the Parties. All such

modifications shall be made in writing and shall not require Court approval. Nothing in this Settlement Agreement shall be deemed to alter the Court's power to enforce, supervise or approve modifications made pursuant to this Paragraph.

**XXI. APPROVAL OF THIS SETTLEMENT AGREEMENT AND FURTHER ASSURANCES**

75. Upon conclusion of the public comment process, Plaintiffs shall promptly submit to the Court this Settlement Agreement for approval, and the Dismissal Order and Case Management Order for entry.

76. This Settlement Agreement is void if any Settling Defendant fails to pay its share of Settlement Funds in accordance with Paragraph 21.

77. The Parties agree that this Settlement Agreement shall be void and of no effect if the Court fails to (i) dismiss all of Plaintiffs' Claims against all Settling Defendants and Maxus's counterclaims against Plaintiffs consistent with this Settlement Agreement; (ii) approve and enter the Dismissal Order in the form attached as Exhibit A or in materially the same form as attached; (iii) approve and enter the Case Management Order in the form attached as Exhibit B or in materially the same form as attached; and (iv) approve and enter as a Court Order the terms of this Settlement Agreement. This Settlement Agreement shall be void and of no effect if any appellate court reverses, remands, vacates or modifies the Settlement Agreement, or Dismissal Order, or Case Management Order so that (i) all Claims brought by Plaintiffs against all Settling Defendants are not dismissed, or (ii) the terms of the Settlement Agreement or the Case Management Order are materially changed. In such event, the terms of this Settlement Agreement may not be used as evidence in any litigation, administrative proceeding or other proceeding.

78. This Settlement Agreement shall not be effective as to any Settling Defendant that has not paid in full its court costs, including Special Master fees, outstanding and due at the time of approval of this Settlement Agreement until such fees and costs are paid.

79. Each of the parties to this Settlement Agreement shall use its best efforts to fulfill and cause to be fulfilled the terms and conditions of this Settlement Agreement and to effectuate the dismissal of all Claims by Plaintiffs against Settling Defendants as set forth herein.

## **XXII. SIGNATORIES**

80. Each undersigned representative of a Party to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement, and to execute and legally bind such party to this Settlement Agreement.

81. This Settlement Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Settlement Agreement.

82. Each Settling Defendant shall identify on the attached signature pages the name, address and telephone number of an agent in the United States who is counsel of record with respect to all matters arising under or relating to this Settlement Agreement.

**SO APPROVED** this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
, J.S.C.

JOHN J. HOFFMAN, ACTING ATTORNEY  
GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

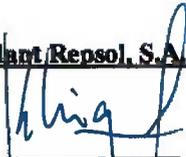
By:

\_\_\_\_\_  
John F. Dickinson, Jr.  
Deputy Attorney General

Dated:

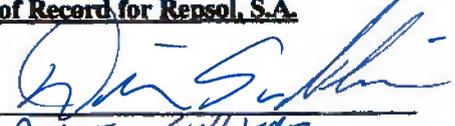
Subject to DEP  
and Court Approval

Settling Defendant Repsol, S.A.

BY:  Mikael KLINGENBERG  
DEPUTY SECRETARY GENERAL

DATE: 31 MAY, 2013

Counsel of Record for Repsol, S.A.

NAME:  D. Anne SULLIVAN

ADDRESS: W.C.L. Gotschal dmanges  
301 Carnegie Center  
Princeton, N.J. 08540-6589

PHONE NO.: 609-986-1120

Subject to DEPT. OF JUSTICE  
and Court Approval

**Settling Defendant YPF, S.A.**

AS ATTORNEY-IN-FACT  
BY: Talbert I. Nava  
TALBERT I. NAVA  
DATE: JUNE 6th, 2013

**Counsel of Record for YPF, S.A.**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF Holdings, Inc.**

\_\_\_\_\_  
BY: \_\_\_\_\_  
\_\_\_\_\_  
DATE: \_\_\_\_\_

**Counsel of Record for YPF Holdings, Inc.**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF International S.A.**

\_\_\_\_\_  
BY: \_\_\_\_\_  
\_\_\_\_\_  
DATE: \_\_\_\_\_

**Counsel of Record for YPF International S.A.**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF, S.A.**

\_\_\_\_\_  
BY: \_\_\_\_\_  
\_\_\_\_\_  
DATE: \_\_\_\_\_

**Counsel of Record for YPF, S.A.**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF Holdings, Inc.**

\_\_\_\_\_  
BY: Guillermo Jalfin  
President & CEO, Maxus Energy  
DATE: June 4, 2013

**Counsel of Record for YPF Holdings, Inc.**

NAME: Thomas J. Hall, Esq.  
ADDRESS: Chadbourne & Parke LLP  
30 Rockefeller Plaza  
New York, NY 10112  
PHONE NO.: (212) 408-5487

**Settling Defendant YPF International S.A.**

\_\_\_\_\_  
BY: \_\_\_\_\_  
\_\_\_\_\_  
DATE: \_\_\_\_\_

**Counsel of Record for YPF International S.A.**

NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF, S.A.**

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

**Counsel of Record for YPF, S.A.**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF Holdings, Inc.**

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

**Counsel of Record for YPF Holdings, Inc.**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHONE NO.: \_\_\_\_\_

**Settling Defendant YPF International S.A.**

\_\_\_\_\_

BY: José César Landívar  
Castro

DATE: 06/06/2013

**Counsel of Record for YPF International S.A.**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHONE NO.: \_\_\_\_\_

**Settling Defendant CLH Holdings**

BY: Guillermo Jalfn  
President & CEO, Maxus Energy

DATE: June 4, 2013

**Counsel of Record for CLH Holdings**

NAME: Thomas J. Hall, Esq.

ADDRESS: Chadbourne & Parke, LLP

30 Rockefeller Plaza

New York, NY 10112

PHONE NO.: (212) 408-5487

**Settling Defendant Maxus Energy Corporation**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**Counsel of Record for Maxus Energy Corporation**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

**Settling Defendant Maxus International Energy Company**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**Counsel of Record for Maxus International Energy Company**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

**Settling Defendant CLH Holdings**

\_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

**Counsel of Record for CLH Holdings**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PHONE NO.: \_\_\_\_\_

**Settling Defendant Maxus Energy Corporation**

BY:  \_\_\_\_\_  
Guillermo Jalfin

President & CEO, Maxus Energy Corporation

DATE: June 4, 2013

**Counsel of Record for Maxus Energy Corporation**

NAME: William L. Warren, Esq.

ADDRESS: Drinker Biddle & Reath, LLP

105 College Road East

Princeton, NJ 08542

PHONE NO.: (609) 716-6500

**Settling Defendant Maxus International Energy Company**

BY:  \_\_\_\_\_  
Guillermo Jalfin

President & CEO, Maxus Energy Corporation

DATE: June 4, 2013

**Counsel of Record for Maxus International Energy Company**

NAME: William L. Warren, Esq.

ADDRESS: Drinker Biddle & Reath, LLP

105 College Road East

Princeton, NJ 08542

PHONE NO.: (609) 716-6500

**Settling Defendant Tierra Solutions, Inc.**



BY: David Rabbe  
President & CEO, Tierra Solutions, Inc.

DATE: June 4, 2013

**Counsel of Record for Tierra Solutions, Inc.**

NAME: William L. Warren, Esq.

ADDRESS: Drinker Biddle & Reath, LLP  
105 College Road East  
Princeton, NJ 08542

PHONE NO.: (609) 716-6500

Subject to DEP  
and Court Approval

**Schedule 1 to  
Settlement Agreement**

*Subject to DEP  
and Court Approval*

## Schedule 1 to Settlement Agreement

The following examples are intended to illustrate how Caps and Sub-caps would apply in different situations under the Settlement Agreement, subject to the procedures and time frames established under the Settlement Agreement:

Example 1. Plaintiffs obtain a judgment of \$600 Million against OCC, and Repsol and YPF(I) are subsequently held jointly and severally liable to OCC for the entire amount of the judgment and interest. The Cap would apply as follows: Repsol and YPF(I) would each pay OCC \$200 Million, and Plaintiffs would return the excess \$200 Million to OCC.

Example 2. Plaintiffs obtain a judgment of \$600 Million against OCC, and all such damages relate to Cleanup and Removal Costs (Category I Capped Claims), but at least \$400 Million of that amount is not related to Investigation Costs Covered by Sub-cap A. YPF(I) is held liable to OCC for the entire amount, but Repsol is held not liable for any amount. The Cap would apply as follows: Plaintiffs would reduce the amount collected from OCC to \$400 Million and YPF(I) would pay OCC that amount; Plaintiffs would return the excess \$200 Million to OCC.

Example 3. Plaintiffs obtain a judgment of \$350 Million against OCC, and all such damages relate to Cleanup and Removal Costs (Category I Capped Claims) with \$50 Million of that amount relating to Investigation Costs covered by Sub-cap A. Repsol is held liable to OCC for the entire amount and YPF(I) is held not liable. The Cap and Sub-Cap A would apply as follows: Plaintiffs would reduce the amount collected from OCC to \$320 Million (\$20 Million for Investigative Costs under Sub-Cap A plus \$300 Million for Category I Capped Claims that do not include Investigatory Costs) and Repsol would pay OCC that amount; Plaintiffs will return the excess \$30 Million to OCC.

Example 4. Plaintiffs obtain a judgment of \$600 Million against OCC, and all such damages relate to Category II Capped Claims. Repsol and YPF(I) are held jointly and severally liable to OCC for the entire amount of the damages. The Cap would apply as follows: Plaintiffs would reduce the amount collected from OCC to \$400 Million. Repsol and YPF(I) would each pay OCC \$200 Million, and the State would return the excess \$200 Million to OCC.

Example 5. Plaintiffs obtain a judgment of \$600 Million against OCC, and all such damages relate to Category II Capped Claims. Repsol is held liable to OCC for the entire amount of the damages, and YPF(I) is held not liable. The Cap and Sub-cap B would apply as follows: Repsol will pay OCC \$250 Million and Plaintiffs will return the remaining \$350 Million to OCC.

Example 6. Plaintiffs obtain a judgment of \$600 Million against OCC, of that amount, \$500 Million relate to Category II Capped Claims, and \$100 Million relates to Category I Capped Claims (but not to Investigation Costs covered by Sub-cap A). YPF(I) is held liable to OCC for the entire amount and Repsol is held not liable. The Cap and Sub-cap C would apply as follows: Plaintiffs would retain \$350 Million (the \$250 Million amount of Category II Capped Claims covered by Sub-cap C plus the \$100 Million amount of Category I Capped Claims), YPF(I) would pay that amount to OCC, and Plaintiffs would return the remaining \$250 Million.

Example 7. Plaintiffs obtain a judgment of \$600 Million against OCC, and the entire amount of the judgment relates to Category II Capped Claims. YPF(I) is found liable to OCC for the entire amount of the Plaintiffs' judgment, but Repsol is found liable to OCC for only \$50 Million. The Cap and Sub-caps B and C would apply as follows: Plaintiffs would retain \$300 Million and return the remaining \$300 Million to OCC; YPF(I) would pay \$250 Million to OCC and Repsol would pay \$50 Million to OCC.

Example 8. Plaintiffs obtain a judgment of \$800 Million against OCC. Of that amount, \$300 Million is for Economic Damages, \$300 Million is for Natural Resource Damages, and \$200 Million is for punitive or exemplary damages, all being Category II Capped Claims. Repsol and YPF(I) are held jointly and severally liable to OCC for the full amount of the Economic Damages and Natural Resource Damages, but held not liable for the punitive and exemplary damages. The Cap and Sub-caps B and C would apply as follows: Plaintiff would reduce the total amount they collected from OCC for Economic Damages and Natural Resource damages to \$400 Million, the amount of the Cap, but Plaintiffs would not be required to reduce the \$200 Million award for punitive and exemplary damages because both Repsol and YPF(I) have been held not liable for those damages and, therefore, those damages are not subject to either the Cap or Sub-caps B and C. In total, the State would collect \$600 Million from OCC, and Repsol and YPF(I) would each pay \$200 Million to OCC for the capped amount of \$400 Million, and OCC would pay \$200 Million in unreimbursed punitive and exemplary damages.

Example 9. Plaintiffs obtain a judgment of \$300 Million against OCC, with all amounts relating to Category II Capped Claims. Both Repsol and YPF(I) are found liable to OCC, but on a proportionate basis: Repsol is found liable for 25% of the obligation and YPF(I) is found liable for 75% of the obligation. The total amount is under the Cap, so Plaintiffs would not have to reduce the amount collected from OCC. Because YPF(I) has been held liable for 75% of the obligation to OCC, it would pay 75% of the total \$300 Million amount or \$225 Million (which is under Sub-cap C), and Repsol would pay the remaining 25% or \$75 Million.

Example 10. Plaintiffs obtain a judgment of \$600 Million against OCC. Neither Repsol nor YPF(I) are found liable to OCC for any amount of the judgment. The Cap and the Sub-caps

do not apply. Plaintiffs may collect the full amount of the judgment from OCC, and neither Repsol nor YPF(I) will pay any amount to OCC.

Example 11. Plaintiffs obtain a judgment of \$600 Million against OCC, and Repsol, YPF(I) and OCC enter an agreed judgment or settlement holding Repsol and YPF(I) jointly and severally liable to OCC for \$400 Million of the entire amount of the judgment. The Cap and the Sub-caps do not apply. Plaintiffs may collect the full amount of the judgment from OCC.

Example 12. Plaintiffs obtain a judgment of \$600 Million against OCC, and Repsol and YPF(I) do not contest their liability to OCC for the full amount of Plaintiffs' judgment. The Cap and the Sub-caps do not apply. Plaintiffs may collect the full amount of the judgment from OCC.

Subject to DEP  
and Court Approval

**Exhibit A to  
Settlement Agreement**

*Subject to DEP  
and Court Approval*

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, : SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO. ESX-L9868-05 (PASR)

**Civil Action**

**CASE MANAGEMENT ORDER \_\_\_\_\_**

Plaintiffs, :

v. :

OCCIDENTAL CHEMICAL CORPORATION; TIERRA SOLUTIONS, INC.; MAXUS ENERGY CORPORATION; MAXUS INTERNATIONAL ENERGY COMPANY; REPSOL YPF, S.A.; YPF, S.A.; YPF HOLDINGS, INC.; YPF INTERNATIONAL S.A. (f/k/a YPF INTERNATIONAL LTD.) and CLH HOLDINGS, :

Defendants. :

MAXUS ENERGY CORPORATION AND TIERRA SOLUTIONS, INC., :

Third-Party Plaintiffs, :

v. :

3M COMPANY, et al., :

Third-Party Defendants. :

**WHEREAS**, a settlement has been reached in the matter entitled New Jersey Department of Environmental Protection, et al. vs. Occidental Chemical Corporation, et al., Docket No. ESX-L-9868-05 (hereinafter the “Passaic River Litigation”) and is embodied in a Settlement Agreement and the Order of Dismissal (“Dismissal Order”) approved on this date; and

**WHEREAS**, pursuant to the Settlement Agreement and Dismissal Order, the Settling Defendants, Tierra Solutions, Inc. (“Tierra), Maxus Energy Corporation (“Maxus”), Maxus International Energy Company (“MIEC”), Repsol, S.A. f/k/a Repsol YPF, S.A. (“Repsol”), YPF,

S.A. (“YPF”), YPF Holdings, Inc. (“YPFH”), YPF International S.A. (“YPFI”) and CLH Holdings, Inc. (“CLHH”) (collectively, “Settling Defendants”), have provided the consideration specified therein to settle certain claims with regard to the Newark Bay Complex<sup>1</sup> in exchange for covenants not to sue, contribution protection, dismissals and other protections as provided in the Settlement Agreement and the Dismissal Order; and

**WHEREAS**, pursuant to the Dismissal Order and the Settlement Agreement, all claims against the Settling Defendants by Plaintiffs have been dismissed from the Passaic River Litigation; and

**WHEREAS**, Plaintiffs will continue to pursue claims under the New Jersey Spill Compensation and Control Act (“Spill Act”) and other statutory authorities and common law against defendant, Occidental Chemical Corporation (“OCC”); and

**WHEREAS**, this Court shall retain subject matter jurisdiction over the Settlement Agreement, Dismissal Order, and the Passaic River Litigation in order to: (a) ensure the efficient continuing management of the Passaic River Litigation; (b) address any discovery directed to Parties during the course of the Passaic River Litigation; and (c) administer the Settlement Agreement consistent with the expectations of the Parties and to protect them from oppression, undue burden or expense; and

**WHEREAS**, the Settling Defendants agreed not to contest this Court’s assertion of personal jurisdiction over them solely for the limited purpose of enforcing the terms of the Settlement Agreement and the Dismissal Order; and

---

<sup>1</sup> Capitalized terms not specifically defined herein are defined in the Settlement Agreement and those definitions are hereby incorporated by reference and adopted herein.

**WHEREAS**, courts afford substantial deference to settlements entered into by government agencies with specific expertise in the matters addressed in the settlement. Plaintiffs and the Settling Defendants have engaged in substantive and comprehensive negotiations before entering into the Settlement Agreement approved by this Court. The Settlement Agreement has been the subject of public notice and comment in accordance with N.J.S.A. 58:10-23.11e2 and the Settlement Agreement, Dismissal Order, and this Case Management Order were the subject of notice to parties and interested and identifiable non-parties followed by a hearing conducted on \_\_\_\_\_ in consideration of comments, if any, and briefing by the parties and/or non-parties; and

**WHEREAS**, the Parties entered into the Settlement Agreement, in part, to avoid unnecessary further transactional and litigation costs in the Passaic River Litigation. By entering into the Settlement Agreement and Dismissal Order, the Settling Defendants intend to settle their respective alleged liability to Plaintiffs in connection with the Passaic River Litigation (subject to the terms of the Settlement Agreement), and they intend to postpone further litigation against them until Plaintiffs' remaining claims against OCC are tried and damages, if any, are awarded against OCC in the Passaic River Litigation.

**NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

As of the date of approval of the Settlement Agreement and entry of the Dismissal Order and this Case Management Order, the following case management provisions are effective:

**A. Jurisdiction**

Pursuant to N.J.S.A. 58:10-23.11a to -23.11z, N.J.S.A. 58:10A-1 to -37.23, and the common law, this Court retains subject matter jurisdiction over the Passaic River Litigation in order to: (1) ensure the efficient litigation of the Passaic River Litigation and any related

proceedings; (2) administer the Settlement Agreement and Dismissal Order consistent with the expectations of the Parties; (3) promote and further the Spill Act's interest in encouraging settlements; (4) protect the Settling Defendants from oppression, undue burden or expense; (5) address any discovery directed to the Settling Defendants in the Passaic River Litigation; and (6) adjudicate any remaining claims asserted between OCC and the Settling Defendants. The Settling Defendants agree not to contest this Court's assertion of personal jurisdiction over them solely for the limited purpose of enforcing the terms of the Settlement Agreement and Dismissal Order.

**B. Order**

1. All Plaintiffs' claims against the Settling Defendants and Maxus's and Tierra's counterclaims against Plaintiffs are dismissed according to the terms of the Dismissal Order.

2. Plaintiffs' remaining claims against OCC, currently Trial Plan Track VIII as set forth in Case Management Order XVII Trial Plan and Order, will be tried before Trial Plan Track IV. Plaintiffs have leave to file an amended complaint as to their claims against OCC within sixty (60) days of this Order. Thereafter, OCC shall have sixty (60) days to answer or otherwise move on issues not previously addressed by the Court. Plaintiffs and OCC shall submit proposed trial plan(s) to the Court on or before \_\_\_\_\_. Track VIII trial is scheduled to commence on \_\_\_\_\_. Settling Defendants, as parties, and Settling Defendants' liability to Plaintiffs or OCC shall not be part of Track VIII.

3. Track IV and all Cross-Claims between OCC and the Settling Defendants will be tried after the completion of both Track VIII which shall contain all claims of Plaintiffs remaining in the Passaic River Litigation. Notwithstanding Case Management Order XVII Trial Plan or Consent Order Tracks II and IV Trial Plan Supplement, Track IV discovery (and any discovery concerning the Cross-Claims between OCC and Settling Defendants) is hereby stayed (save only

as provided herein and for potential document preservation orders) pending the final and unappealable approval of the Settlement Agreement and the trial of the Plaintiffs' damages claims under Track VIII, whichever is later, but, in any event, no earlier than April 2014. Furthermore, trial for OCC's Cross-Claims against the Settling Defendants (Tracks II and IV) shall not be set until after the final and unappealable approval of the Settlement Agreement and the trial of the Plaintiffs' damages claims against OCC, whichever is later, but, in any event, no earlier than December 2015. In the event approval of the Settlement Agreement is overturned on appeal, the Court shall modify the trial dates and discovery limitation set forth herein.

4. In determining the liability of OCC and other entities and parties which have not settled their liability to Plaintiffs through the Settlement Agreement or Third-Party Defendant Consent Judgment ("Non-Settling Parties"), such alleged liability of the Non-Settling Parties shall be reduced in accordance with New Jersey law and the application of the Settlement funds to the State's Past Cleanup and Removal Costs and for natural resource damages ("NRD"). The Court shall take judicial notice of the amounts paid by the Settling Defendants under the Settlement Agreement in determining the liability of the Non-Settling Parties. To the extent that any further proof will be required or permitted to establish the Settling Defendants' alleged share of liability, there shall be no discovery by any party against the Settling Defendants, except in accordance with Paragraph 5 herein.

5. Until such time as the stay of Track IV is lifted, no party may conduct any discovery against any Settling Defendant, without leave of Court, except that Plaintiffs may take discovery of Maxus consistent with Paragraph 33 of the Settlement Agreement.

6. Nothing contained herein shall alter or amend any provision governing the confidentiality protections contained in all prior Orders of this Court in the Passaic River Litigation, including any Case Management Orders, except that:

- (a) Information designated as confidential may be used *not only* in this case but also in any proceeding that is severed from this case or any proceeding arising out of a cause of action that is reserved by any Party in accordance with the Settlement Agreement and is subsequently commenced under a different docket number;
- (b) Information designated as confidential may be used in any subsequent proceeding commenced by any governmental entity or any party to this case relating to the remediation, cost of remediation or NRD in the Newark Bay Complex; and
- (c) The Court will retain subject matter jurisdiction to determine whether information that has been produced and designated as confidential is entitled to be treated as confidential information, and an application to the Court to make such a determination may be submitted at any time.

7. The reservation Orders entered by this Court on December 15, 2010 and April 24, 2012, hereby remain in full force and effect, except as to claims settled or otherwise resolved in the Consent Judgment between Plaintiffs and Settling Third-Party Defendants, and the Settlement Agreement between Plaintiffs and Settling Defendants.

8. In accordance with Rule 4:30A, except as to claims settled, dismissed with prejudice or resolved pursuant to the Settlement Agreement or the Third-Party Defendant Consent Judgment, all other claims of Plaintiffs, Settling Defendants, and Settling Third-Party Defendants (including, but not limited to, those claims expressly reserved in the Settlement Agreement or the

Third-Party Defendant Consent Judgment) are hereby reserved during the pendency of, and after the conclusion of, this litigation.

**C. Consistency with the Settlement Agreement**

This Case Management Order shall be construed consistently with and to effectuate the purposes of the Settlement Agreement and Dismissal Order, and any terms used herein shall be construed according to their definitions as set forth in the Settlement Agreement and Dismissal Order.

**D. Case Management for Non-Settling Third-Party Defendants**

Upon approving the Settlement Agreement, any remaining claims against Non-Settling Third-Party Defendants are severed into a separate action or trial. Third-Party Plaintiffs shall have sixty (60) days to amend their pleadings against the Non-Settling Third-Party Defendants, including adding any additional claims or allegation, or may dismiss any or all alleged claims against any Non-Settling Third-Party Defendants without prejudice.

**SO ORDERED.**

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Hon. Sebastian P. Lombardi, J.S.C.

Dated:

**Exhibit B to  
Settlement Agreement**

*Subject to DEP  
and Court Approval*

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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

v.

OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, MAXUS INTERNATIONAL ENERGY COMPANY, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., YPF INTERNATIONAL S.A. (f/k/a YPF INTERNATIONAL LTD.) and CLH HOLDINGS,

Defendants

MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, *et al.*,

Third-Party Defendants.

---

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION: ESSEX COUNTY  
: DOCKET NO. L-9868-05 (PASR)

:  
: Civil Action

:  
: **ORDER OF DISMISSAL**

**THIS MATTER**, having come before the Court on an application by Plaintiffs, the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs"), and Defendants, Repsol, S.A. (f/k/a Repsol YPF, S.A.), YPF, S.A., YPF Holdings, Inc., YPF International S.A. (f/k/a YPF International Ltd.), CLH Holdings, Inc., Maxus International Energy Corporation, Maxus Energy Corporation, and

Tierra Solutions, Inc. (collectively the “Settling Defendants”) for the approval of a Settlement Agreement among Plaintiffs and the Settling Defendants (“Settlement Agreement”) and for the entry of an order of dismissal of all of the Plaintiffs’ claims against the Settling Defendants and all of Maxus’s and Tierra’s Claims against Plaintiffs in the above referenced matter due to a settlement reached by the Plaintiffs and Settling Defendants. All capitalized terms below shall have the definitions ascribed to them in the Settlement Agreement approved by the Court today.

**IT IS** on this \_\_\_\_ day of \_\_\_\_\_, 2013

**ORDERED THAT:**

1. The Settlement Agreement is approved. This Dismissal Order shall be construed consistently with the Settlement Agreement and so as to effectuate the purposes of that Agreement and, unless otherwise defined herein, capitalized terms as used herein shall have the meanings ascribed to them in the Settlement Agreement.

2. All claims in Plaintiffs’ Fourth Amended Complaint against the Settling Defendants are hereby dismissed with prejudice, except that those claims which Plaintiffs have reserved against Settling Defendants pursuant to Paragraphs 26, 44, 46 and 49 of the Settlement Agreement are dismissed without prejudice.

3. All counterclaims brought by Maxus and Tierra against the Plaintiffs in response to Plaintiffs’ Second Amended Complaint are hereby dismissed with prejudice.

4. Because this Order completely resolves all of the claims between the Plaintiffs and the Settling Defendants, and because there is no just reason for delay, the Court hereby certifies this Order as a final order disposing of all of Plaintiffs’ claims against the Settling Defendants, pursuant to Rule 4:42-2. As such and to that extent, this Order is appealable by any aggrieved party.

5. Plaintiffs and Settling Defendants shall not assert against each other claims for costs or attorney's fees incurred in this litigation.

6. Consistent with N.J.S.A. §58:10-23.11f, the Settling Defendants shall not be liable for claims for contribution regarding Matters Addressed in the Settlement Agreement.

7. A true copy of this Order be and hereby shall be served upon all counsel of record within \_\_\_\_\_ days of receipt hereof.

---

HON. SEBASTIAN P. LOMBARDI, J.S.C.

Subject to DEP  
and Court Approval

**Exhibit C to**  
**Settlement Agreement**

*Subject to DEP  
and Court Approval*

**DRAFT**

Escrow Agreement  
By and Among

\_\_\_\_\_ as "Escrow Agent"

and

Repsol, S.A,

and

YPF, S.A.

and

The New Jersey Department of Environmental Protection

Account No. \_\_\_\_\_

Dated: July \_\_\_\_, 2013

**[DRAFT -- Containing Principal Terms, But Subject to Change]**

THIS ESCROW AGREEMENT (the “**Escrow Agreement**”) is made this [REDACTED] day of [REDACTED], 2013, between and among Repsol, S.A. (“**Repsol**”), YPF, S.A. (“**YPF**”), the New Jersey Department of Environmental Protection (“**DEP**”) and, \_\_\_\_\_, as Escrow Agent hereunder and under the hereinafter defined Settlement Agreement(the “**Escrow Agent**”).

The above-named parties appoint said Escrow Agent with the duties and responsibilities and upon the terms and conditions provided in Schedule A annexed hereto and made apart hereof.

**ARTICLE FIRST:** The above-named parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of the Escrow Agent:

- a) The Escrow Agent shall neither be responsible for or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the parties hereto, except as may be specifically provided in Schedule A annexed hereto. This Escrow Agreement sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.
- b) The Escrow Agent may act in reliance upon any written instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by any party, consistent with the terms of this Escrow Agreement and Schedule A, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. The Escrow Agent may act in reliance upon any signature believed by it to be genuine, and may assume that such person has been properly authorized to do so.
- c) The Escrow Agent shall not be liable for any loss resulting from any investment made pursuant to the terms and provisions of this Agreement, except for losses resulting from the Escrow Agent’s gross negligence or willful misconduct. The liability of the Escrow Agent for the payment of the principal and interest shall be limited to the amounts deposited pursuant to this Agreement and the earnings thereon when invested in accordance with this Agreement. The Escrow Agent shall assert no lien whatsoever upon any of the moneys or **Federal Securities** on deposit in the escrowed funds for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement. As used in this Escrow Agreement, the term “Federal Securities” shall mean obligations issued or guaranteed by an instrumentality or agency of the United States, whether now existing or hereinafter organized. Repsol and YPF shall each pay to the Escrow Agent, in accordance with the Escrow Agent’s fee proposal, one-half of the compensation for all services performed by it hereunder and all of its reasonable expenses, charges, and other disbursements and those of its attorneys, agents and employees, incurred in and about the administration and execution of the trusts hereby created, and the performance of its powers and duties hereunder.

The Escrow Agent may consult with duly qualified outside legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel. Repsol and YPF, each agree to reimburse the Escrow Agent on demand for one half of such reasonable legal fees, disbursements and expenses from outside counsel.

- d) The Escrow Agent shall be under no duty to give the property held in escrow by it hereunder any greater degree of care than it gives its own similar property.
- e) The Escrow Agent shall invest the property held in escrow in such a manner as directed in Schedule A annexed hereto, which may include deposits in \_\_\_\_\_ available by \_\_\_\_\_ or its affiliates even though \_\_\_\_\_ or its affiliates may receive a benefit or profit therefrom. The Escrow Agent and any of its affiliates are authorized to act as counterparty, principal, agent, broker or dealer while purchasing or selling investments as specified herein. The Escrow Agent and its affiliates are authorized to receive, directly or indirectly, fees or other profits or benefits for each service, task or function performed, in addition to any fees as specified in Schedule B hereof, without any requirement for special accounting related thereto.

**The parties to this Escrow Agreement acknowledge that non-deposit investment products are not obligations of, or guaranteed, by \_\_\_\_\_ nor any of its affiliates; are not FDIC insured; and are subject to investment risks, including the possible loss of principal amount invested. Only deposits in the United States are subject to FDIC insurance.**

- f) The Escrow Agent shall have no obligation to invest or reinvest the property held in escrow, on the day of deposit, if all or a portion of such property is deposited with the Escrow Agent after 11:00 AM Eastern Time on the day of deposit. Written instructions to invest or reinvest that are received after 11:00 AM Eastern Time will be treated as if received on the following business day in New York. The Escrow Agent shall have the power to sell or liquidate the foregoing investments whenever the Escrow Agent shall be required to distribute amounts from the escrow property pursuant to the terms of this Escrow Agreement. Written requests or instructions received after 11:00 AM Eastern Time by the Escrow Agent to liquidate all or any portion of the escrowed property will be treated as if received on the following business day in New York. The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions of this Escrow Agreement.
- g) In the event of any disagreement between/among any of the parties to this Escrow Agreement, or between/among them or either or any of them and any other person, resulting in adverse claims or demands being made in connection with the subject matter of the Escrow, or in the event that the Escrow Agent, in good faith, be in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply

with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjudicated and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after 30 calendar days' notice to the other parties of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.

- h) The Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominees of any securities depository, and such nominee(s) may sign the name of any of the parties hereto to whom or to which such securities belong and guarantee such signature in order to transfer securities or certify ownership thereof to tax or other governmental authorities.
- i) Notice to the parties shall be given as provided in Schedule A annexed hereto.

**ARTICLE SECOND:** The Escrow Agent shall make payments of income earned on the escrowed property as provided in Schedule A annexed hereto. Each such payee shall provide to the Escrow Agent an appropriate W-9 form for tax identification number certification or a W-8 form for non-resident alien certification. The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the escrowed property.

**ARTICLE THIRD:** The Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 30 calendar days' written notice to the parties to the Escrow Agreement herein, provided a successor Escrow Agent must be appointed and have accepted its appointment prior to any such resignation. Any such resignation shall terminate all obligations and duties of the Escrow Agent hereunder. On the effective date of such resignation, the Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents to any successor escrow agent agreeable to the parties, subject to this Escrow Agreement herein. If a successor escrow agent has not been appointed prior to the expiration of 30 calendar days following the date of the notice of such resignation, the then acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

The Escrow Agent may resign and be discharged of its duties and obligations created by this Agreement, and may be removed and discharged as Escrow Agent under this Agreement, upon the terms and conditions as are set forth below, which terms and conditions are incorporated herein by reference. If the Escrow Agent shall resign or be removed as Escrow Agent under this Agreement as aforesaid, then, upon appointment of a successor escrow agent for such purpose, the said

successor escrow agent shall become the Escrow Agent hereunder and all the title, rights, duties and obligations of the former Escrow Agent under this Agreement [and with respect to the Federal Securities and other] moneys deposited or to be deposited in the Escrow Fund in accordance with this Agreement shall become those of the successor escrow agent, and upon acceptance by such successor escrow agent of the trusts created hereunder, all further title, rights, duties and obligations of the former Escrow Agent under this Agreement shall cease and be discharged. **No resignation or discharge of the Escrow Agent shall take effect until a successor shall have been appointed and shall have accepted its appointment as Escrow Agent hereunder, and until the Escrow Fund shall have been transferred to such successor. Any successor escrow agent must be a bank or trust company organized under the laws of any state of the United States or a national banking association having capital stock, surplus and undivided earnings aggregating \$100,000,000, or another amount agreed to by the parties.** Any company into which the Escrow Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which all or substantially all of the corporate trust business shall be sold or transferred, shall be the successor to the Escrow Agent without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank or trust company organized under the laws of any state of the United States or a national banking association and shall be authorized by law to perform all the duties imposed upon it by this Agreement.

**ARTICLE FOURTH:** The Escrow Agent shall receive the fees provided in Schedule B annexed hereto. In the event that such fees are not paid to the Escrow Agent within 30 calendar days of presentment to the party responsible for such fees as set forth in said Schedule B, then the Escrow Agent shall follow the procedures set forth in Article First (c). Once fees have been paid, no recapture or rebate will be made by the Escrow Agent.

**ARTICLE FIFTH:** Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto.

If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement

**ARTICLE SIXTH:** In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement), in writing, whether by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by written confirmation or call back to the person or persons designated in Schedule A annexed hereto, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all issues have been resolved. The persons and telephone numbers for written response and call backs may be changed only in

writing actually received and acknowledged by the Escrow Agent. The parties agree to notify the Escrow Agent of any errors, delays or other problems within 30 calendar days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Escrow Agent's error, the Escrow Agent's sole obligation is to pay or refund such amounts as may be required by applicable law. In no event shall the Escrow Agent be responsible for any incidental or consequential damages or expenses in connection with the instruction. Any claim for interest payable will be at the Escrow Agent's published savings account rate in effect in New York, New York.

**ARTICLE SEVENTH:** The parties agree that this Escrow Agreement shall be governed by the law of the State of New York, except that concerning matters of the State of New Jersey's sovereignty, including sovereign immunity and liability, New Jersey law shall be applied. With respect to any dispute in which the Escrow Agent is an actual party or is a necessary and indispensable party, or in which the obligations of or performance of duties by the Escrow Agent are in issue, the parties hereto irrevocably and unconditionally submit to the jurisdiction of a federal or state court located in the Borough of Manhattan and State of New York, in connection with any proceedings commenced regarding this Escrow Agreement, including but not limited to, any interpleader proceeding or proceeding for the appointment of a successor escrow agent the Escrow Agent may commence pursuant to this Escrow Agreement, and all parties irrevocably submit to the jurisdiction of such courts for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue of inconvenient forum. However, with respect to any dispute in which the Escrow Agent is not an actual party, is not a necessary and indispensable party, or in which the obligations of or performance of duties by the Escrow Agent are not in issue, Repsol, YPF and DEP shall follow the Retention of Jurisdiction provision in Paragraph 72 of the Settlement Agreement which is referenced in Schedule A hereto.

**ARTICLE EIGHTH:** This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement. Facsimile signatures on counterparts of this Escrow Agreement shall be deemed original signatures with all rights accruing thereto.

**ARTICLE NINTH:** This Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

**ARTICLE TENTH:** No printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "\_\_\_\_\_" by name or the rights, powers, or duties of the Escrow Agent under this Escrow Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent.

In witness whereof the parties have executed this Escrow Agreement as of the date first above written.

\_\_\_\_\_  
as Escrow Agent

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Repsol, S.A.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**YPF, S.A.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**New Jersey Department of Environmental Protection**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE A

This “**Schedule A**” is the Schedule A referred to in that certain Escrow Agreement dated [insert date] (the Escrow Agreement, including this schedule and any other schedules and/or exhibits attached hereto, all of the terms and conditions of which are incorporated herein by reference, in each case as amended and/or supplemented from time to time in accordance with the terms hereof, the “**Escrow Agreement**”) by and among Repsol, S.A. (“**Repsol**”); YPF, S.A. (“**YPF**”); the New Jersey Department of Environmental Protection (“**DEP**”) and \_\_\_\_\_ (the “**Escrow Agent**”). For purposes of this Escrow Agreement, references to (i) Repsol herein shall mean Repsol or an authorized signer of Repsol; (ii) YPF herein shall mean YPF or an authorized signer of YPF; and (iii) DEP herein shall mean the DEP or an authorized signer for the DEP.

WHEREAS, Repsol, YPF and the DEP have entered into a certain Settlement Agreement, dated [\_\_\_\_\_] ,concerning the resolution of the DEP’s claims against Repsol, YPF and certain other settling defendants in New Jersey Dept. of Environmental Protection, et al. v. Occidental Chemical Corp. et al., Docket No. ESX-L9868-05 (PASR) (Superior Court of New Jersey, Law Division, Essex County) (the “**Settlement Agreement**”).

WHEREAS, the Settlement Agreement provides that Repsol and YPF shall each pay into an escrow account for the benefit of the DEP \$65,000,000, for a total payment of \$130,000,000 (the “**Escrow Funds**”); and

WHEREAS, the Settlement Agreement provides that the Escrow Funds shall be disbursed to the DEP upon a court order approving the Settlement Agreement becoming final and non-appealable, or returned to Repsol and YPF, in the same amount paid by each, in the event that the Settlement Agreement and/or the Dismissal Order and/or Case Management Order are not approved, or the Settlement Agreement otherwise is void pursuant to the terms thereof.

NOW, THEREFORE, Repsol, YPF, the DEP and the Escrow Agent, in furtherance of the Settlement Agreement and intending to be legally bound, hereby agree as follows:

### **I. Description of Transaction**

A. The parties hereto hereby appoint \_\_\_\_\_ as the escrow agent for the Escrowed Funds (as hereinafter defined) and direct \_\_\_\_\_, as the Escrow Agent, to open and maintain a separate escrow account (the “**Escrow Account**”), upon the terms and conditions set forth in this Escrow Agreement. \_\_\_\_\_ hereby accepts such appointment as the escrow agent for the Escrowed Funds and agrees to open and maintain the Escrow Account and to act as the Escrow Agent for the Escrowed Funds, in each case upon the terms and conditions set forth in this Escrow Agreement.

B. Within sixty (60) days of the entry of an order by the Superior Court of New Jersey, Law Division-Essex County (the “**Superior Court**”) approving the Settlement Agreement, (i) Repsol shall deposit \$65,000,000 (the “**Repsol Deposit**”) via wire transfer of immediately available funds to the Escrow Account, and (ii) YPF shall deposit \$65,000,000 (the “**YPF Deposit**”) via wire transfer of immediately available funds to the Escrow Account. The amount of all deposits in the Escrow Account, and the interest, net realized gains and other earnings accrued on such deposits, minus any distributions therefrom hereunder are collectively referred to as the “**Escrowed Funds**”. The Escrow Agent shall maintain the Escrowed Funds and any interest thereon outside the geographic limits of the State of New

Jersey unless and until a Disbursement is required to be made to DEP pursuant to Section III(A) below, The Escrow Agent shall have no duty to solicit the delivery of any property into the Escrow Account.

C. The Escrow Agent is not a party to any other provisions, covenants or agreements as may exist between Repsol, YPF and the DEP, and shall not distribute or release the Escrowed Funds except in accordance with the express terms and conditions of this Escrow Agreement.

## II. Investment Instructions

The escrow account shall be invested and maintained so as to maximize yield and minimize risk (subject to the written approval of DEP, Repsol and YPF). The escrow account shall also be invested and maintained in a manner fully consistent with the attached Investment Guidelines. The Investment Guidelines may from time to time be revised or modified jointly by DEP, Repsol and YPF, based on prevailing financial market and economic conditions. Any such revisions or modifications to the Investment Guidelines shall be immediately incorporated into the terms of this Agreement upon receipt by the Escrow Agent, and thereafter the investment and maintenance of the escrow account shall be fully consistent with such revised or modified Investment Guidelines. Liquidity shall be maintained as directed by DEP. The funds in the escrow account shall be kept readily available for withdrawal.

## III. Disbursement Instructions

The Escrow Agent shall retain the Escrowed Funds in the Escrow Account until one of the following events has occurred:

A. The Escrow Agent has been provided with (1) a written request executed by [a representative of the DEP] to distribute the Escrowed Funds to the DEP (2) a copy of a Final Court Order (as defined below) approving the Settlement Agreement, and (3) a notarized affidavit from [a representative of the DEP] stating that such Final Court Order is not subject to further appeal, in which case the Escrow Agent shall disburse the Escrowed Funds, plus any interest, to the DEP by check or checks made payable to the "Treasurer, State of New Jersey," and such check(s) shall be mailed or otherwise delivered to the Section Chief, Environmental Enforcement Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093;

B. The Escrow Agent has been provided with (1) a written request executed by [a representative of Repsol] to return the Repsol Deposit to Repsol (2) a Final Court Order (as defined below) disapproving, overturning, remanding or modifying the Settlement Agreement and/or the Dismissal Order and/or Case Management Order, and (3) a notarized affidavit from [a representative of Repsol] stating that such a Final Court Order has been issued, in which case the Escrow Agent shall return to Repsol the Repsol Deposit and with any interest;

C. The Escrow Agent has been provided with (1) a written request executed by [a representative of YPF] to return the YPF Deposit to YPF, (2) a Final Court Order (as defined below) disapproving, overturning, remanding or modifying the Settlement Agreement and/or the Dismissal Order and/or Case Management Order, and (3) a notarized affidavit from [a representative of YPF] stating that such a Final Court Order has been issued, in which case the Escrow Agent shall return to YPF the YPF Deposit and with any interest;

D. The Escrow Agent has been provided with an affidavit [from both a representative of the DEP and a representative of Repsol] stating that the Settlement Agreement is void pursuant to the terms

thereof due to a failure of YPF to deposit funds as provided for in Section I.B of this Schedule A and as required under Paragraph 21 of the Settlement Agreement, in which case the Escrow Agent shall return to Repsol the Repsol Deposit and return to YPF any portions of the YPF Deposit, in each case with any interest; or

E. The Escrow Agent has been provided with an affidavit [from both a representative of the DEP and a representative of YPF] stating that the Settlement Agreement is void pursuant to the terms thereof due to a failure of Repsol to deposit funds as provided for in Section I.B of this Schedule A and as required under Paragraph 21 of the Settlement Agreement, in which case the Escrow Agent shall return to YPF the YPF Deposit and return to Repsol any portions of the Repsol Deposit, in each case with any interest.

For purposes of this Schedule A, a “**Final Court Order**” means (1) a certified copy of an order of the Superior Court of New Jersey Law Division – Essex County from which an appeal to the New Jersey Superior Court – Appellate Division has not been filed pursuant to N.J. Ct. R. 2:4-1 within 45 days after the date such order is entered or any other period allowed by applicable law for such an appeal; or (2) a certified copy of an order or opinion of the New Jersey Superior Court – Appellate Division of which an appeal to the Supreme Court of New Jersey has not been filed within 45 days after the date such order is entered, or any other period allowed by applicable law for such an appeal; or (3) a certified copy of an order or opinion of the Supreme Court of New Jersey of which a petition for certiorari to the United States Supreme Court has not been filed within 90 days of such order, or any other period allowed by applicable law for such a petition; or (4) a certified copy of an or opinion order of the United States Supreme Court.

#### **IV. Tax Information**

The designated taxpayer shall be responsible for and the taxpayer on all taxes due on the interest or income earned on the Escrowed Funds for the calendar year in which such interest or income is earned. A W-9 for each of Repsol, YPF and DEP shall be provided to the Escrow Agent upon execution of this Escrow Agreement.

#### **V. Termination of the Escrow Account**

This Escrow Agreement, the duties of the Escrow Agent and the Escrow Account shall automatically terminate upon the payment in full by the Escrow Agent of the Escrowed Funds as directed herein.

#### **VI. Notices**

Any notice or other communication required or permitted to be delivered to any party under this Escrow Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile) to the address or facsimile telephone number set forth beneath the name of such party below (or to such other address or facsimile telephone number as such party shall have specified in a written notice given to the other parties):

If to Repsol:

Name:  
Address:

Attn:  
Telephone:  
Facsimile:

With a copy to:

Name: [counsel for Repsol]  
Address:

Attn:  
Telephone:  
Facsimile:

If to YPF:

Name:  
Address:

Attn:  
Telephone:  
Facsimile:

With a copy to:

Name: [counsel for YPF]  
Address:

Attn:  
Telephone:  
Facsimile:

If to the DEP:

Name:  
Address:

Attn:  
Telephone:  
Facsimile:

With a copy to:

Name: [counsel for DEP ]  
Address:

Attn:  
Telephone:  
Facsimile:

If to the Escrow Agent:

Name:

Address:

Attn:

Telephone:

Facsimile:

**VII. Account Statements and Advices**

Unless instructed otherwise in writing by the party in question, the Escrow Agent shall prepare monthly account statements for the Escrow Account and deliver such statements to all parties listed in the "Notices" section herein. All such parties shall also receive advices for all transactions in the Escrow Account as any such transactions occur.

**VIII. Authorized Persons of Repsol, YPF, and the DEP**

[The Escrow Agent shall be authorized to take instructions jointly from each of [names] on behalf of Repsol, [names] on behalf of YPF, and [names] on behalf of the DEP with respect to the Escrowed Funds. The above persons shall also be the designated callback authorized individuals of Repsol, YPF and the DEP, respectively, to be notified by the Escrow Agent, upon the release of all or a portion of the Escrowed Funds from the Escrow Account.

**IX. Certificate of Incumbency**

A Certificate of Incumbency for each of Repsol and YPF shall be provided to the Escrow Agent upon execution of this Escrow Agreement.

**X. Fee Information**

Repsol and YPF shall each be responsible for, and agree to promptly pay the Escrow Agent, upon request from the Escrow Agent, one half of the Escrow Agent's compensation as set forth on Schedule B for its services as escrow agent hereunder, and to reimburse the Escrow Agent for one half of all costs and expenses in connection with the performance of its duties and obligations hereunder, including reasonable attorneys' fees incurred by the Escrow Agent.

## **THE PARTIES' INVESTMENT GUIDELINES**

The Escrow Agent shall implement all written instructions from the parties with respect to the investment of Escrowed Funds.

The parties decide upon investments of the Escrowed funds at the highest available rates of interest, consistent with the timing of the escrow fund withdrawal requirements, in deposit accounts with a positive rate of return.

*Subject to DEP  
and Court Approval*