Exhibit A

EXECUTIVE SUMMARY OF THE TERMS OF THE REPSOL/YPF SETTLEMENT AGREEMENT AND THIRD-PARTY CONSENT JUDGMENT

Plaintiffs negotiated the Repsol/YPF Settlement Agreement and Third-Party Consent Judgment with the goal of recovering all of the State's substantial past cleanup and removal costs, spurring immediate restoration opportunities on the Passaic River and streamlining the remaining litigation against OCC since a global settlement was simply not possible under OCC's current stance.

If entered, the settlements will result in the dismissal of all remaining Third-Party Defendants and all of the State's claims against Maxus, Tierra, Repsol, YPF, YPFI, YPF Holdings, Inc., CLH Holdings, Inc., and Maxus International Energy Company. The only remaining claims will be Plaintiffs' unresolved claims against OCC and OCC's cross-claims against the Settling Defendants. The settlements will result in the State recovering all of its past cleanup and removal costs, including litigation costs, and additional money to fund natural resource damages ("NRD") restoration and redevelopment. Although the settlements were negotiated separately, they were designed to work together while taking into account the differing claims and circumstances involving the Settling Defendants and Settling Third-Party Defendants.

Both settlements are very complex and account for complicated issues arising out of the historic contamination of the Newark Bay Complex. The intricacies of both settlements are too numerous and complex to fully summarize, however, a general summary of the settlement terms, claims resolved, contribution protection and other considerations are set forth below. The summary of the settlements is intended as a general overview of the settlements' principal terms, but does not discuss all of their provisions or the details of each provision. The summaries are not intended to be used to interpret the settlement documents or to resolve future disputes

regarding the settlements. The specific language of the settlement should be controlling in all disputes, and the summary provided in this motion should not be used or considered in any dispute involving the interpretations of the terms of the settlements.

A. Participants to the Settlements

The participants to the Repsol/YPF Settlement Agreement include the State and Defendants, Repsol, YPF, YPFI, YPF Holdings, Inc., CLH Holdings, Maxus International Energy Corporation, Maxus, and Tierra. OCC is not a signatory to the Repsol/YPF Settlement Agreement, but is a beneficiary of some of the agreement's provisions. As a specifically identified beneficiary to certain provisions of the Repsol/YPF Settlement Agreement and a party to the litigation, it is not necessary for OCC to execute the agreement to receive the benefits and protections provided therein.

There are 257 settling Third-Party Defendants listed on Exhibits A and B to the consent judgment (collectively, the "Settling Third-Party Defendants"). (Ex. C, Consent Judgment ¶ 18.31.) The Settling Third-Party Defendants include all of the remaining solvent public and private Third-Party Defendants joined by Maxus and Tierra. Additionally, certain affiliated entities that had connections to third-party sites or the Newark Bay Complex were added as additional settling parties, with additional consideration. (See id.)

B. Settlement Payments

The State is to receive approximately $165,400,000 in cash consideration for the two settlements. Under the terms of the Repsol/YPF Settlement Agreement, Repsol and YPF (or Maxus) will each pay, or cause to be paid, $65 Million to Plaintiffs for a total payment of $130 Million. (Ex. B, Settlement Agreement ¶ 21.) The total payment of the settlement funds is on behalf all of the Settling Defendants and OCC, based on Maxus's indemnity obligations to OCC.

Under the terms of the Third-Party Consent Judgment, the Settling Third-Party Defendants are paying a collective $35,408,650. Private Settling Third-Party Defendants are paying $195,000 each with reduced amounts for affiliated companies and parties with an inability to pay. (Ex. C, Consent Judgment ¶ 20.) Public Settling Third-Party Defendants are each paying $95,000 directly or through a corresponding reduction in their state aid payments. (Id.) The settlement funds from both settlements will be placed in escrow accounts after the Court has approved the settlements and will be paid to the State once the order approving the settlements has become final and no longer subject to appeal or returned to the respective parties in the event the settlements are not approved or overturned on appeal. (Ex. B, Settlement Agreement ¶¶ 22-23; Ex. C, Consent Judgment ¶ 20.)

In determining how the settlement funds will be applied, the Respol/YPF Settlement Agreement, and the case management order attached thereto, provides that the settlement funds shall first be applied to retire Plaintiffs' past cleanup and removal costs and then as a credit to the Settling Defendants' NRD liability. (Ex. B, Settlement Agreement ¶¶ 24 and 63(c) and Case Management Order, ¶ 4). This is important because the Respol/YPF Settlement Agreement resolves both the Settling Defendants' and OCC's liability for Plaintiffs' past cleanup and removal costs. The Third-Party Consent Judgment does not specifically allocate the settlement funds received from the Settling Third-Party Defendants, except that 20% of the settlement funds (or $7,080,000) will be applied to NRD and to reduce the Settling Defendants' NRD liability. (Ex. C, Consent Judgment ¶¶ 21, 25).

C. Claims Resolved Against Settling Defendants and Settling Third-Party Defendants

Both settlements contain a very detailed description of which of Plaintiffs' claims are resolved and which claims Plaintiffs retain. With respect to the Newark Bay Complex as a

whole, Plaintiffs are resolving all of their claims against the Settling Defendants and Settling Third-Party Defendants for past cleanup and removal costs, natural resource damage assessment costs, economic damages, disgorgement damages, punitive damages and attorneys' fees and litigation costs incurred in this litigation. (Ex. B, Settlement Agreement ¶¶ 25-26; Ex. C, Consent Judgment ¶¶ 22-25.) Plaintiffs are also resolving their claims against the Settling Defendants for NRD and providing a credit for 20% of the settlement funds paid by the Settling Third-Party Defendants towards the Settling Third-Party Defendants' NRD liability. (Ex. B, Settlement Agreement ¶ 25; Ex. C, Consent Judgment ¶ 25.) The NRD matters addressed in the Settlement Agreement are limited to claims recoverable by any New Jersey state natural resource trustee against the Settling Defendants (but not OCC), and are not meant to include potential claims by any federal trustee. (See Repsol/YPF Settlement Agreement ¶ 63(e); Ex. C, Consent Judgment ¶¶ 22-25.) With respect to the FFS Area, Plaintiffs are also resolving their claims for future cleanup and removal costs against the Settling Defendants and future cleanup costs against the Third-Party Settling Defendants, but only up to two and one-half times the third-party settlement funds. (See Repsol/YPF Settlement Agreement ¶ 25-26; Ex. C, Consent Judgment ¶¶ 22-25.) In the portion of the Passaic River outside the FFS Area and in the remainder of the Newark Bay Complex, Plaintiffs have agreed not to sue the Settling Defendants for the first $70.8 Million the State spends or incurs in future cleanup and removal costs and not to sue the Settling Third-Party Defendants for the first $35.4 Million. (Id.) Plaintiffs may sue OCC for the first $35.4 Million they spend or incur, and for amounts spent or incurred above $70.8 Million, but they have covenanted not to sue OCC for amounts between $35.4 Million and $70.8 Million. (Repol/YPF Settlement ¶¶ 28, 29, 44, 45). Settling Defendants' and Settling Third-Party

Defendants' obligations under existing orders and judgments, including orders relating to the Lister Property, are not affected. (Id.)

D. Additional Claims Resolved Against the Repsol/YPF Defendants

Repsol, YPF, YPFI and all the other Settling Defendants, except Maxus and Tierra, have been brought into this case because of alleged corporate relationships with Maxus and Tierra. Plaintiffs could raise similar claims against these Settling Defendants at the Lister Property itself, or at other sites in New Jersey at which OCC, Maxus or Tierra are responsible for cleanup and removal costs or other types of claims. As part of the settlement, Plaintiffs have agreed to follow a protocol before suing Settling Defendants, other than Maxus and Tierra, at the Lister Property or other sites in New Jersey, where Plaintiffs' claims are based on allegations of an alter ego relationship with Maxus or Tierra or on allegations of fraudulent transfer. (Ex. B, Settlement Agreement ¶ 46.) Under this protocol, Plaintiffs must (a) first sue OCC and obtain a judgment that OCC is liable for these claims and (b) then demonstrate that OCC is insolvent and without sufficient resources to satisfy Plaintiffs' judgment and Plaintiffs have exhausted reasonable avenues of relief available to them, including pursuing claims in bankruptcy proceedings. (Id.)

E. Claims Resolved Against OCC

Although OCC is not a Settling Defendant, it is a beneficiary of certain provisions in the Repsol/YPF Settlement Agreement, including a covenant not to sue from Plaintiffs with respect to certain claims and a potential cap on its liability to Plaintiffs with respect to other claims. Specifically, Plaintiffs have agreed not to sue OCC for any past cleanup and removal costs within the Newark Bay Complex as those costs are being covered by the payments made by the Settling Defendants and under the Third-Party Consent Judgment. (Id. ¶28-29.) Plaintiffs have reserved the right to sue OCC for NRD, economic damages, disgorgement damages and punitive damages

within the entire Newark Bay Complex. (Id.) However, Plaintiffs have agreed to pursue these claims based only on "OCC Deliberate Conduct" and "OCC Distinct Conduct." (Id. ¶ 29) As more specifically defined in the Reposl/YPF Settlement Agreement, OCC Deliberate Conduct refers to the intentional conduct or omissions (though not intentional harm) of OCC and its predecessors, while OCC Distinct Conduct refers to conduct by OCC after September 4, 1986, or conduct unassociated with DSC-1/DSCC. (Id. ¶¶ 19.36 and 19.37.) Plaintiffs have also reserved the right to sue OCC for future cleanup and removal costs. (Id. ¶ 29.)

F. Additional Claims Reserved by Plaintiffs

Although Plaintiffs are resolving a significant portion of the claims brought in the litigation, or that could have been brought in the litigation, against the Settling Defendants and Settling Third-Party Defendants, Plaintiffs reserve certain claims to protect the State's interests if future environmental issues require additional litigation. In addition to certain claims for future cleanup and removal costs, Plaintiffs reserve claims related to the Lister Property itself, other upland sites around the Newark Bay Complex, claims in other ongoing litigation and superfund matters and claims outside the Newark Bay Complex, including claims at other contaminated water bodies, including the Hackensack River. (See Repsol/YPF Settlement Agreement ¶¶ 26, 29, and 48-49; Ex. C, Consent Judgment ¶¶ 25-27) The agreements expressly exclude certain claims, including those related to upland sites, the upper areas of the Hackensack River, and certain discharges to the Hackensack River and adjacent waterways. DEP has also retained its enforcement authority to address future discharges and ongoing threats to human health and the environment. (Id.)

G. Contribution and Contribution Protection

In exchange for the settlement funds and other consideration, the Settling Defendants and Settling Third-Party Defendants will be entitled to protection from contribution claims with respect to "matters addressed" in the settlements. OCC would also be entitled to contribution protection with respect to certain matters addressed relating to OCC. Under both the Spill Act and CERCLA, contribution is barred against parties that settle their liability to the State for matters addressed a settlement. 42 U.S.C.A. § 9613(f)(2), N.J.S.A. 58:10-23.11f. This contribution protection will apply to the extent applicable under State law (including the Spill Act), and also to the extent that Plaintiffs' claims for cleanup and removal costs, NRD assessment costs and NRD are recoverable under CERCLA. Both settlements contain specific sections that detail the contribution protection provided and identify claims for which contribution protection is not provided. (Ex. B, Settlement Agreement ¶ 63; Ex. C, Consent Judgment ¶ 39.)

1. Contribution Protection Provided Under the Repsol/YPF Settlement Agreement.

The Repsol/YPF Settlement Agreement provides the Settling Defendants with contribution protection from contribution claims for past and future cleanup and removal costs under State law and CERCLA, with certain exceptions. (Ex. B, Settlement Agreement ¶ 63.) OCC also receives more limited contribution protection to the extent subject to Maxus's indemnity obligations. (Id.) For example, OCC does not have contribution protection from claims by Repsol and YPF (or Maxus) to recoup the two $65 Million payments made to Plaintiffs under the Settlement. Repsol and YPF may pursue these claims against OCC either as counterclaims when Track IV is tried, or in a separate action. (Id. ¶¶ 60, 62, 63).

Neither the Settling Defendants nor OCC are receiving any contribution protection from claims brought pursuant to CERCLA except as to past cleanup and removal costs incurred by Plaintiffs, even if such claims relate to discharges of hazardous substances from the Lister Property. Similarly, the NRD matters addressed in the Settlement Agreement are limited to a credit against NRD claims recoverable by any New Jersey state natural resource trustee from the Settling Defendants, but not OCC. Additionally, the Settlement Agreement does not provide to the Settling Defendants or OCC any contribution protection or relief from liability with respect to any claims by any person not a party to the Settlement Agreement arising from contamination:

i. on upland sites, including existing Superfund Sites, or

ii. in any stretches of the Hackensack River that (a) may in the future become subject to new state or federal removal or remediation actions under either CERCLA or the Spill Act, other than as part of the Diamond Alkali Superfund Process or (b) may become new operable units of existing Superfund Sites other than the Diamond Alkali Superfund Site.

Also, if the Diamond Alkali Superfund Site is interpreted to include, or extended to include, stretches of the Hackensack River in which no removal or remedial activity is presently occurring, then with respect only to contamination caused by discharges of hazardous substances from the Lister Property, the Settling Defendants are receiving from Plaintiffs a covenant not to sue for costs incurred by the State of New Jersey up to $70.8 million, and OCC is receiving such a covenant not to sue for costs incurred by the State of New Jersey above $35.4 million and less than $70.8 million. However, neither the Settling Defendants nor OCC are receiving a release of liability or contribution protection for claims, including but not limited to claims for NRD, arising from contamination caused by discharges of hazardous substances from any source other than the Lister Property, as claims for costs associated with discharges from such other properties

fall within the definition of an "Other Action" as defined in Paragraph 19.39 of the Reposl/YPF Settlement Agreement, and no such matters are addressed in the Settlement Agreement.

2. Contribution Protection Provided Under the Consent Judgment.

The Third-Party Consent Judgment was designed to facilitate a dismissal of the state law claims against the Settling Third-Party Defendants. As a result, the Consent Judgment provides broad contribution protection for claims bought under State law, including claims by any person for past and future cleanup and removal costs and NRD. (See Consent Judgment ¶ 39(a).) Importantly, however, the Third-Party Consent Judgment does not limit the federal claims that can be brought between the Settling Third-Party Defendants and other parties, except for future costs incurred by Plaintiffs and resolved with covenants not to sue. (See Id. ¶ 39(b).) This is significant because most, if not all, of the costs incurred by Maxus, Tierra, the Settling Third-Party Defendants and any other responsible party regarding the investigation and remediation of the Passaic River and Newark Bay have been incurred as part of the Superfund process. Also, persons that incur costs under the superfund process are not precluded from seeking those costs under CERCLA against the Settling Third-Party Defendants. (Id.) Furthermore, the Settling Third-Party Defendants agreed to bring any future claims regarding costs incurred in investigating or cleaning up the Newark Bay Complex in federal court, under federal law. (Id. ¶ 36(b).)

H. Cap on Certain Future Recoveries from Repsol and YPF(I)

Because of OCC's refusal to participate in the settlement discussions that led to the proposed settlement with the Settling Defendants, the Repsol/YPF Settlement Agreement includes a "Cap" on the Settling Defendants' future exposure. The Cap applies to claims by the State in the event Repsol, YPF and/or YPFI are held liable (and pay the resulting judgment) to

OCC for claims asserted against OCC by Plaintiffs, including liability as the corporate alter egos of Maxus or Tierra or for allegedly having fraudulently transferred Maxus's or Tierra's assets. (Respol/YPF Settlement Agreement ¶ 43.) If these Settling Defendants defeat OCC's claims or fail to pay a judgment on such claims, the Cap will not apply. (Id.) But if any of them are held liable to OCC, and pays a judgment in favor of OCC, the Cap would limit Plaintiffs' recovery from OCC, which in turn would limit any liability of those Settling Defendants to OCC. (Id.) An overall Cap of $400 Million would apply to the total amount that Plaintiffs recover from OCC with respect to future cleanup and removal costs within the FFS Area (Category I Capped Claims), as well as to NRD, economic damages, disgorgement damages and punitive damages (Category II Capped Claims). (Id.) Within that overall Cap, there are three Sub-caps. Sub-cap A, when applicable, limits the amount that Plaintiffs may recover in future environmental investigation costs in the FFS Area to $20 Million. Sub-caps B and C, when applicable, operate as limits on the amounts that the Plaintiffs may recover from OCC with respect to Category II Capped Claims. Plaintiffs believe the Caps reasonably fit within the State's potential exposure for future cleanup and removal costs within the FFS Area, taking into account the unlikeliness of a publicly funded cleanup and the amount of any other recoveries of additional damages from OCC.

I. Proposed Dismissal Orders

Both settlements include proposed dismissal orders that are conditions precedent of the agreements. (See Repsol/YPF Settlement Agreement ¶ 69; Ex. C, Consent Judgment ¶ 57.) The orders contemplate the dismissal of claims that are resolved by the settlements or barred by contribution protection or as a matter of law. The Dismissal Order for the Repsol/YPF Settlement Agreement includes the dismissal of all claims brought by Plaintiffs against the

Settling Defendants and the dismissal of any remaining counterclaims. (Ex. B, Settlement Agreement at Ex. B.) This dismissal is with prejudice, except for claims reserved by Plaintiffs. (Id.) The Third-Party Consent Judgment also includes dismissal of claims brought by Maxus and Tierra against the Settling Third-Party Defendants. (Ex. C, Consent Judgment at Ex. C.) Because of the contribution protection provided by Plaintiffs under the Spill Act and the resolution of the claims made the bases of Maxus's and Tierra's third party claims, all claims in the Third-Party Complaints (A, B and C) and certain claims that could have been joined will be dismissed with prejudice. (Id.) As part of the Respol/YPF Settlement Agreement, Maxus and Tierra have agreed not to challenge the entry of the Dismissal Order and the dismissal, with prejudice, of the Third-Party Complaints and the claims brought therein. (Ex. B, Settlement Agreement ¶ 50.) Finally, both orders request that they become final and appealable under R. 4:42-2. This is significant given that the settlement funds will be held in escrow pending any appeal of the settlements.

J. Proposed Case Management Order

As a condition precedent to the entry of the Repsol/YPF Settlement Agreement and because Plaintiffs' recovery against OCC on the remaining claims is a prerequisite to OCC's remaining claims, Plaintiffs and Settling Defendants are asking the Court to enter the proposed Case Management Order ("CMO"), (Exhibit A to the Repsol/YPF Settlement Agreement). Under the proposed CMO, the current order of the Trial Tracks will be switched so that the next phase of this litigation to go to trial would be Trial Track VIII involving Plaintiffs' unresolved claims against OCC. (Id.) Discovery and trial with respect to Trial Track IV, concerning OCC's claims against the Settling Defendants, would be deferred until after the conclusion of Track

VIII. Plaintiffs would no longer be participants in Track IV because their claims against the Settling Defendants would be resolved under the settlement.

Switching these Trial Tracks is consistent with the statutory scheme designed to facilitate resolution of Plaintiffs' claims before contingent indemnity claims. The Settling Defendants will have paid $130 Million to resolve Plaintiffs' claims against them and certain claims against OCC. In contrast, OCC, which has already been found liable for discharges into the Passaic River associated with the Lister Property, would not enter into the settlement with the Plaintiffs and has paid *nothing* for decades of intentional pollution that has wreaked havoc on the Passaic River and its environs. In addition, Plaintiffs' case against OCC forms the basis of OCC's contingent claims for indemnification against the Settling Defendants. Plaintiffs should not have to delay finally trying their case against OCC until after the non-settling OCC resolves its case against Settling Defendants for damages that might, or might not, be awarded against OCC.

The Third-Party Consent Judgment also contains a proposed Case Management Order that Plaintiffs request the Court enter. (Ex. C, Consent Judgment ¶ 57.) The CMO addresses discovery that might be needed from the Settling Third-Party Defendants and the procedures for obtaining such discovery upon approval from the Court. (Id. at Ex. D.) A significant factor influencing the settlement process with the Third-Party Defendants is the discovery costs associated with the claims brought against them. With the dismissal of the claims brought against them in the litigation and Maxus's settlement with Plaintiffs, the need for additional discovery against the Settling Third-Party Defendants should be minimal. Furthermore, the CMO provides for discovery against the Settling Third-Party Defendants, if it is necessary, to address claims remaining in the litigation and approved by the Court. (See id.)

K. Timing Consideration

Plaintiffs requests the Court consider and approve the settlements simultaneously or have the Repsol/YPF Settlement Agreement entered immediately before entry of the Third-Party Consent Judgment. As fully discussed in DEP's response to comments, a condition of the Respol/YPF Settlement Agreement is that the Settling Defendants agreed not to contest the entry of the Third-Party Consent Judgment including the dismissal, with prejudice, of Maxus's and Tierra's claims asserted against the Settling Third-Party Defendants. (Ex. B, Settlement Agreement ¶ 50; see also Resp. to Cmts at p. 22.) This obligation, however, does not apply if the Court does not approve the Repsol/YPF Settlement Agreement. (Id.) The agreement not to challenge the Third-Party Consent Judgment and timing considerations provides a substantial benefit to the Settling Third-Party Defendants and will likely result in a significant cost savings and streamlined process for all parties. If the Court approves the Repsol/YPF Settlement Agreement, then the Court may reach a decision about the Third-Party Consent Judgment at the same time or immediately thereafter. However, if the Court does not approve the Repsol/YPF Settlement Agreement, then Plaintiffs request that the Court defer making a decision about the Third-Party Consent Judgment until after the Settling Defendants have an opportunity to submit public comments to DEP and briefs to the Court.

Exhibit B

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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. ESX-L9868-05 (PASR)

Civil Action

COURT APPROVED SETTLEMENT AGREEMENT

TABLE OF CONTENTS

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[1] 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

[1] 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 <u>not</u> 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:

Schedule 1 to

Settlement Agreement

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.

Exhibit A to

Settlement Agreement

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE 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.	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ESSEX COUNTY DOCKET NO. ESX-L9868-05 (PASR) **Civil Action** **CASE MANAGEMENT ORDER ____**
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[1] 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

[1] 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.

_____

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

Dated:

Exhibit B to

Settlement Agreement

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.

Exhibit C to

Settlement Agreement

[To Be Attached]

Exhibit C

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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. ESX-L9868-05 (PASR) <u>Civil Action</u> CONSENT JUDGMENT

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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 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 the Third-Party Defendants listed on the attached Exhibits A and B. The Parties[1] have amicably resolved their dispute before trial and request entry of this Consent Judgment as provided below:

I. BACKGROUND

1. Plaintiffs initiated the Passaic River Litigation on December 13, 2005 by filing a complaint against Occidental Chemical Corporation ("OCC"), Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Repsol YPF, S.A., YPF, S.A., YPF Holdings, Inc., and CLH Holdings, Inc. 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 ("Complaint").

2. Plaintiffs, in their Complaint, seek past and future costs and damages associated with the Discharge of 2,3,7,8 – TCDD ("dioxin") and other Hazardous Substances at and from the Lister Property. Plaintiffs allege that dioxin and other Hazardous Substances from the Lister Property have migrated throughout the Newark Bay Complex.

[1] Certain capitalized terms in this Consent Judgment are defined in Section IV and such definitions are controlling.

3. Defendants Maxus and Tierra ("Third-Party Plaintiffs") filed Third-Party Complaints against Settling Third-Party Defendants and others on February 4 and 5, 2009, alleging that Settling Third-Party Defendants are liable in contribution for the costs and damages incurred and to be incurred by Defendants Maxus and Tierra in remediating contamination and in contribution for any judgment obtained by Plaintiffs against Defendants Maxus and Tierra related to Discharges of Hazardous Substances into the Newark Bay Complex from the Third-Party Sites, under the Spill Act and other New Jersey statutes authorizing contribution, 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. Additional third-party claims were alleged against certain Settling Public Third-Party Defendants under the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 *et seq.*, Passaic Valley Sewerage Commission Statutes N.J.S.A. 58:14-7 and 58:14-8, and for nuisance and breach of the public trust.

4. The Settling Third-Party Defendants subsequently filed responsive pleadings in which they denied liability and asserted various defenses to the allegations contained in Defendants Maxus and Tierra's Third-Party Complaints.

5. By orders dated December 15, 2010 and April 24, 2012, the Court reserved (i) any and all claims Plaintiffs may have against current Third-Party Defendants and claims against any future third- or fourth-party defendants that could be brought during the pendency of, and after the conclusion of the Passaic River Litigation, and (ii) any and all natural resource damages claims, other than the cost of a natural resource damage 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 (the "Reserved Claims" as further defined by Paragraph 18.28).

6. By entering into this Consent Judgment, the Settling Third-Party Defendants do not admit any liability, including without limitation any liability arising from the claims, transactions or occurrences Defendants Maxus and Tierra allege or could have alleged in this action, pursuant to R. 4:8-1(a) or otherwise, or for any claims Plaintiffs have alleged or could allege concerning the Newark Bay Complex.

7. Defendants Maxus and Tierra allege that Hazardous Substances have been Discharged at and from the Third-Party Sites and that such Discharges have contributed to the damages alleged by Plaintiffs against Defendants Maxus and Tierra and to costs and damages that Defendants Maxus and Tierra allege they have otherwise incurred or will incur with regard to the Newark Bay Complex and the Passaic River Litigation. Pursuant to the Order on Track VII Trial Plan issued pursuant to Case Management Order No. XVII in this litigation ("Track VII Order"), each Third-Party Defendant was required to stipulate to or deny the occurrence of any Discharge of Hazardous Substances at or from Third-Party Sites with which they are associated in a Third-Party Complaint that entered the Newark Bay Complex, directly or indirectly. Notwithstanding any stipulations, all Settling Third-Party Defendants deny Maxus and Tierra's allegations that any alleged Discharges from such Third-Party Sites have contributed to the damages and costs that Maxus and Tierra allege they have incurred or will incur with regard to the Newark Bay Complex.

8. Plaintiffs allege that the State of New Jersey has incurred, and may continue to incur, costs and damages as a result of the Discharge of Hazardous Substances at and from the Lister Property and to the Newark Bay Complex.

9. Plaintiff Administrator has certified or may certify for payment claims made against the Spill Compensation Fund ("Spill Fund") concerning the Lister Property and / or the

Newark Bay Complex, and, further, has approved or may approve other appropriations for the Newark Bay Complex.

10. Plaintiffs allege that they have incurred, and will continue to incur, costs and damages, including without limitation Economic Damages and assessment costs for natural resources and natural resource services of New Jersey that have been or may be injured, as a result of the Discharge(s) of Hazardous Substances at and from the Lister Property and to the Newark Bay Complex.

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

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

13. The Parties intend that this Consent Judgment, the motions filed in support of the Consent Judgment and Dismissal Order will result in the dismissal of all claims by Third-Party Plaintiffs against Settling Third-Party Defendants. The Parties to this Consent Judgment agree and consent to the publishing of this Consent Judgment, Order Dismissing Certain Claims, attached hereto as Exhibit C ("Dismissal Order"), and Case Management Order, attached hereto as Exhibit D ("Case Management Order"), for notice and public comment as provided herein, and agree to support entry of the orders and this Consent Judgment on their common expectation and intention that the entry of this Consent Judgment and motions filed in support thereof will result in the dismissal of all claims by Third-Party Plaintiffs against Settling Third-Party Defendants in the Third-Party Complaints.

14. The Parties represent that the Parties to this Consent Judgment have negotiated this Consent Judgment at arm's-length and in good faith; that the implementation of this Consent Judgment will allow the Parties to avoid prolonged and complicated litigation; that the implementation of this Consent Judgment will save and preserve Plaintiffs' limited resources by avoiding the expenditure of inordinate amounts of those limited resources to allege and prosecute claims against the Settling Third-Party Defendants; and that this Consent Judgment warrants approval consistent with the purposes of the Spill Act.

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

15. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act, the WPCA, and the common law. This Court also has personal jurisdiction over the Parties to this Consent Judgment for the purposes of implementing this Consent Judgment and resolving the underlying Passaic River Litigation and the claims alleged by Defendants Maxus and Tierra against the Settling Third-Party Defendants.

16. For the sole purpose of entry and enforcement of this Consent Judgment, Dismissal Order and Case Management Order, the Parties waive all objections and defenses they may have to jurisdiction of this Court, or to venue in this County. The Parties shall not challenge the Court's continuing jurisdiction to enforce this Consent Judgment, the Dismissal Order, or Case Management Order.

III. PARTIES BOUND

17. This Consent Judgment applies to and is binding upon Plaintiffs, Settling Third-Party Defendants and, pursuant to Section XII herein, the Defendants, Third-Party Plaintiffs, and to the extent provided by law non-parties and non-settling parties.

IV. DEFINITIONS

18. Unless otherwise expressly provided herein, terms used in this Consent Judgment 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 Consent Judgment, the following definitions shall apply, solely for the purpose of this Consent Judgment, the Dismissal Order and the Case Management Order and for no other purpose:

18.1. "Claims" shall mean the following:

a. All claims of Plaintiffs against Defendants for Discharges to the Newark Bay Complex or otherwise sought by Plaintiffs from Defendants in the Passaic River Litigation;

b. All claims of Plaintiffs for which Third-Party Plaintiffs allege or could have alleged that they are entitled to contribution from Third-Party Defendants in the Third-Party Complaints for Discharges of Hazardous Substances to the Newark Bay Complex or otherwise sought by Third-Party Plaintiffs from Third-Party Defendants in the Passaic River Litigation, including without limitation all claims which could have been brought but for the limitation referenced in paragraph 15 of Third-Party Complaint B, paragraph 14 of Third-Party Complaint C, and paragraph 7 of Third-Party Complaint D (*i.e.*, Maxus and

Tierra's stated reference to an agreement with certain parties identified on Exhibit A to Third-Party Complaints B, C, and D "not to pursue claims against CPG members to recover costs incurred under the 1994 AOC, the CPG AOCs or Newark Bay AOC, to the extent such costs are attributable to the facilities identified in Exhibit B" to Third-Party Complaints B, C, and D unless and until certain conditions are met);

c. All claims for Past Cleanup and Removal Costs (excluding Natural Resources Damages, except as otherwise provided herein, but including Natural Resources Damages Assessment Costs) paid or incurred by Plaintiffs, Third-Party Plaintiffs, or any other person in connection with Discharges of Hazardous Substances to the Newark Bay Complex by Settling Third-Party Defendants or otherwise sought by Plaintiffs in the Passaic River Litigation;

d. All claims for Future Cleanup and Removal Costs (excluding Natural Resource Damages, except as otherwise provided herein, but including Natural Resource Damage Assessment Costs) paid or incurred by Plaintiffs in connection with response actions (including without limitation investigations and removal and remedial actions) and other activity in the Newark Bay Complex, but only to the extent such investigations, response actions and other activity are undertaken as part of the Diamond Alkali Superfund Process, including but not limited to the preparation and implementation of the Focused Feasibility Study;

e. All claims for Future Cleanup and Removal Costs under the Spill Act for Discharges of Hazardous Substances contained in sewage or stormwater, including without limitation combined sewage and stormwater, to the Newark

Bay Complex by Settling Public Third-Party Defendants;

f. All claims for Economic Damages and punitive damages caused in whole or in part by Defendants or sought by Plaintiffs in the Passaic River Litigation;

g. All claims for Natural Resource Damages associated with Settling Third-Party Defendants' Discharges of Hazardous Substances to the Newark Bay Complex; and

h. All claims for Past Cleanup and Removal Costs and Future Cleanup and Removal Costs caused by, associated with, arising from, or related to the ownership, management or control of submerged lands within the Newark Bay Complex by Settling Public Third-Party Defendants.

18.2. "Cleanup and Removal Costs" shall have the meaning ascribed to them 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 and damages recoverable under N.J.S.A. 58:10A-10 of the WPCA, and shall include all costs of "response" as defined under 42 U.S.C. § 9601. For purposes of this Consent Judgment, Cleanup and Removal Costs include, without limitation, the costs of evaluating and developing navigation in the Newark Bay Complex 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, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, ("CERCLA") or common law, but not otherwise.

18.3. "Complaint" shall mean the complaint filed by Plaintiffs on December 13, 2005, as subsequently amended, against Defendants.

18.4. "Consent Judgment" shall mean this Consent Judgment.

18.5. "Diamond Alkali Superfund Process" shall mean all investigations and/or response actions (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 operable units thereof or added thereto) pursuant to CERCLA by Plaintiffs and by federal agencies, separately or in conjunction with each other, or by other entities pursuant to administrative orders, that address or respond to any 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 remediation and no further action when such actions (or no action) have been selected as part of any remedy in the Diamond Alkali Superfund Process without deferral to the Plaintiffs for subsequent action. "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 (*e.g.*, the Berry's Creek Study Area).

18.6. "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"), the Plaintiffs, or any other agencies and departments of the State of New Jersey as part of the Diamond Alkali Superfund Process, and as those areas may be expanded, 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.

18.7. "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 Consent Judgment, "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 or sediments in the Newark Bay Complex.

18.8. "Economic Damages" shall mean any and all damages, loss of value of real or personal property, costs, lost income and tax revenue, and expenditures, including costs for impacts to navigation and commerce in the Newark Bay Complex, with applicable Interest.

18.9. "FFS Area" shall mean the area subject to the Focused Feasibility Study, including the Passaic River from river mile ("RM") 0.0 to RM 8.3.

18.10. "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, and any subsequent draft or final version thereof or modification thereof.

18.11. "Future Cleanup and Removal Costs" shall mean Cleanup and Removal Costs incurred on or after the effective date of this Consent Judgment.

18.12. "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 Consent Judgment 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 system's main outfalls and Combined Sewer Outfalls ("CSOs") and (ii) stormwater.

18.13. "Interest" shall mean interest at the rate established by R. 4:42 of the then-current edition of the New Jersey Court Rules.

18.14. "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, between U.S. EPA, OCC and Tierra.

18.15. "Lister Property" shall mean the former Diamond Shamrock Corporation facility located at and including the real property of 80 Lister Avenue (and 120 Lister Avenue after its acquisition by Diamond Shamrock Corporation on April 19, 1984), Newark, Essex County, New Jersey, this property being known and designated as Block 2438, Lot(s) 57, 58 and 59, on the Tax Map of the City of Newark.

18.16. "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.

18.17. "Matters Addressed," for purposes of the scope of contribution protection provided under this Consent Judgment to the Settling Third-Party Defendants, are all liabilities of the Settling Third-Party Defendants associated with Discharges of Hazardous Substances into the Newark Bay Complex from Third Party Sites, regardless of the location of the source of such Discharge whether inside or outside the Newark Bay Complex, including without limitation all liabilities and losses for the Claims, and all other Past Cleanup and Removal Costs and Future Cleanup and Removal Costs (including the payment of compensation for damages to, or the loss of, natural resources, or for restoration of natural resources) incurred by Plaintiffs, or any other person, associated with Discharges of Hazardous Substances to the Newark Bay Complex;

provided, however, "Matters Addressed" in this Consent Judgment does not include (i) the Cleanup and Removal Costs or other damages or claims for which Plaintiffs have reserved their rights under Section VIII of this Consent Judgment, in the event that Plaintiffs assert rights against the Settling Third-Party Defendants within the scope of such reservation, (ii) the Reserved Claims except to the extent affected by this Consent Judgment, (iii) Other Actions, or (iv) claims reserved by Settling Third-Party Defendants in Paragraph 36. "Matters Addressed" also include compliance with the 2003 Directive No. 2003-01, Natural Resources Injury Assessment and Interim Compensatory Restoration of Natural Resource Injuries, but only as to enforcement of the directive and otherwise included within Claims herein, and the payment of Settlement Funds pursuant to this Consent Judgment shall constitute remediation in compliance with Directive No. 2003-01.

18.18. "Natural Resource Damages," for purposes of this Consent Judgment 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 Consent Judgment 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, but do not include (1) compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages or (2) Natural Resource Damage Assessment Costs.

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

18.20. "Newark Bay Complex" shall mean (i) the lower 17 miles of the Passaic River, (ii) Newark Bay, (iii) the Arthur Kill, (iv) the Kill Van Kull, (v) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, the lower reaches of the Hackensack River and as may be further extended by U.S. EPA in the Diamond Alkali Superfund Process, and (vi) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, any adjacent waters and sediments of (i) through (v).

18.21. "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.

18.22. "Other Action" or "Other Actions" shall mean past, present or future judicial, civil and administrative claims between Plaintiffs and any Settling Third-Party Defendant(s) or among Settling Third-Party Defendants relating to the Discharge of a Hazardous Substance at, onto or from a Third-Party Site (upland area) to the extent that the losses, liabilities, costs, penalties or damages sought in such alleged claims are (i) caused, in whole or part, by a Discharge of Hazardous Substances not located in the Newark Bay Complex and that does 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. Other Action shall also mean any pending litigation or administrative proceeding or separate agreement (including a settlement agreement or consent judgment) between Plaintiffs and any Settling Third-Party Defendant and

between any Settling Third-Party Defendants (except the Passaic River Litigation), and any pending or future action (including for contribution) arising out of such pending litigation, administrative proceeding or agreement, regardless of the subject matter of the litigation, administrative proceeding or agreement. Other Action shall include without limitation the litigation styled New Jersey Dept. of Envtl. Prot., et al., v. Exxon Mobil Corp., Docket No. UNN-L-3026-04, consolidated with New Jersey Dept. of Envtl. Prot., et al., v. Exxon Mobil Corp., Docket No. UNN-L-1650-05 (formerly docketed as HUD-L-4415-04 prior to consolidation with UNN-L-3026-04).

18.23. "Passaic River Litigation" shall mean the action, originally initiated by Plaintiffs through the Complaint on December 13, 2005, against Occidental Chemical Corporation ("OCC"), Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Maxus International Energy Company ("MIEC"), Repsol YPF, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF International S.A. (formerly known as and as successor, at law or in equity, to YPF International Ltd.) ("YPFI"), YPF Holdings, Inc. ("YPFH") and CLH Holdings, Inc. ("CLHH") (collectively, "Defendants"), pursuant to the Spill Act, the WPCA, and common law, and the claims through which the Third-Party Plaintiffs allege or could have alleged that they are entitled to contribution from Third-Party Defendants in the Third-Party Complaints, including without limitation, all claims which could have been brought but for an existing agreement between 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.

18.24. "Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral.

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

18.26. "Past Cleanup and Removal Costs" shall mean Cleanup and Removal Costs incurred before the effective date of this Consent Judgment.

18.27. "Plaintiff(s)" shall mean DEP, Commissioner, Administrator, any predecessor or successor department, agency or official thereof.

18.28. "Reserved Claims" shall mean those claims reserved by orders dated December 15, 2010 and April 24, 2012, as described in Paragraph 5 herein.

18.29. "Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

18.30. "Settlement Funds" shall mean the total moneys paid or to be paid to Plaintiffs by Settling Third-Party Defendants, including any amounts dedicated from Municipal State Aid payments, under Section VI of this Consent Judgment.

18.31. "Settling Third-Party Defendants" shall mean collectively the Settling Public Third-Party Defendants, the Settling Private Third-Party Defendants, and any other Party included in the Consent Judgment under Schedule 1, and "Settling Third-Party Defendant" shall mean any of the Settling Third-Party Defendants individually.

18.32. "Settling Private Third-Party Defendant" shall mean those entities listed in Exhibit A hereto, including their respective officers, directors, employees, and predecessors. Settling Private Third-Party Defendant shall also include those direct and indirect (current and former) parents, members (in the case of a limited liability corporation), partners (in the case of partnerships), joint venturers (in cases of joint ventures), successors, subsidiaries (both present and former), indemnitors, trustees in bankruptcy, or receivers appointed pursuant to a proceeding

in law or equity of those entities listed in Exhibit A, to the extent that the alleged liability of any such parent, member, partner, joint venturer, successor, subsidiary, indemnitor, trustee or receiver is based solely upon its status and in its capacity as a related entity of those entities listed in Exhibit A (as may be amended to include parties who enter this Consent Judgment after the effective date) ("vicarious liability"), 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 Private Third-Party Defendant. If the alleged or potential liability of an Affiliated Entity (as defined in Schedule 1) arises independently of its status and capacity as a related entity, that Affiliated Entity shall pay pursuant to Schedule 1, paragraph 2.

18.33. "Settling Public Third-Party Defendant" shall mean those entities listed in Exhibit B hereto, including their officers, directors, employees, and predecessors. Settling Public Third-Party Defendant shall also include all departments, agencies, commissions, committees, boards, councils, subdivisions and instrumentalities thereof, police and fire departments, emergency and first aid squads, public school districts and boards of education, departments of public works, subsidiaries, indemnitors, trustees in bankruptcy, or receivers appointed pursuant to a proceeding in law or equity of those entities listed in Exhibit B (as may be amended to include parties who enter this Consent Judgment after the effective date).

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

18.35. "Third-Party Sites" shall mean the sites and/or facilities identified in the Passaic River Litigation (including private and public sewer systems and those systems' main outfalls and combined sewer outfalls ("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 Settling 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. Lister Property is deemed a Third-Party Site only as to Settling Third-Party Defendant Veolia ES Technical Solutions, LLC, and the City of Newark (due to their prior association with such property, however, nothing herein shall be construed as an admission that such entities are responsible for a Discharge of Hazardous Substances at or from the property).

V. PARTIES' OBJECTIVES

19. The Parties' non-exclusive objectives in entering into this Consent Judgment, Dismissal Order and Case Management Order are (a) to protect public health and safety and the environment, consistent with the purposes that the Spill Act is intended to serve; (b) to recover a portion of funds expended and secure additional funds for the investigation and remediation of Hazardous Substances within the Newark Bay Complex related in whole or in part to Discharges from the Lister Property by Defendants; (c) save and avoid the expenditure of an inordinate amount of Plaintiffs' limited resources that would be incurred if forced to allege and prosecute claims against the Settling Third-Party Defendants, and (d) to resolve the Claims as to the Settling Third-Party Defendants, and to secure contribution protection as to Matters Addressed in this Consent Judgment, protection from discovery and further litigation, and dismissal of all

claims against Settling Third-Party Defendants pursuant to the terms of this Consent Judgment, Dismissal Order and Case Management Order and as provided by New Jersey law.

VI. SETTLING THIRD-PARTY DEFENDANTS' COMMITMENTS

20. Except as may be set forth on the individual signature pages and in conformance with "Schedule 1," within forty-five (45) days of entry of this Consent Judgment, each Settling Private Third-Party Defendant shall pay into an escrow account for the benefit of Plaintiffs to be established under the Escrow Agreement attached as Exhibit E to this Consent Judgment One Hundred and Ninety Five Thousand Dollars ($195,000), and within sixty (60) days of entry of this Consent Judgment or January 5, 2014 (whichever is later) each Settling Public Third-Party Defendant shall pay into the escrow account for the benefit of Plaintiffs Ninety-Five Thousand Dollars ($95,000). In alternative to payments to the escrow account, each municipal Settling Public Third-Party Defendant may authorize that $95,000 be deducted from their next two Municipal State Aid payments immediately following the entry of this Consent Judgment, in lieu of direct payments to the escrow account. The first reduction shall be $50,000 and the second reduction shall be $45,000. Such authorization shall be considered Settlement Funds as if the Settling Public Third-Party Defendant were making a direct payment to the escrow account. Except as provided below or as provided by the Escrow Agreement, after entry of the Consent Judgment and expiration of any deadline to appeal, 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, Cost Recovery and Natural Resource Damages 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. In the event (i)

this Consent Judgment and/or the Dismissal Order and Case Management Order are overturned, remanded or modified on appeal such that the Consent Judgment is void as provided by Paragraph 57, or (ii) a party opts out of this Consent Judgment pursuant to Paragraph 58, the funds placed into the escrow account by such Settling Third-Party Defendant or received by Plaintiffs shall be returned, with interest if any, as provided by the Escrow Agreement (for municipal Settling Public Third-Party Defendants paying through their Municipal State Aid payment, the deducted Settlement Funds shall be added to the next State Aid payment to such Settling Public Third-Party Defendant, subject to appropriation by the State Legislature).

21. Settling Third-Party Defendants' obligations to pay the amounts owed to the Plaintiffs under Paragraph 20 are several only, except that the obligations of an Affiliated Entity, as defined in Schedule 1, are joint and several among all Affiliated Entities with whom it is affiliated. In the event of insolvency, or other failure by any Settling Third-Party Defendant to satisfy any provision of this Consent Judgment, no other Settling Third-Party Defendant shall be responsible to satisfy such provision, except as provided above as to Affiliated Entities. Failure of a Settling Third-Party Defendant to pay the Settlement Funds as provided in Paragraph 20 shall void this Consent Judgment as to that Settling Third-Party Defendant unless such Settling Third-Party Defendant satisfies its payment obligation and cures such default within thirty (30) days of written notice from a Plaintiff. Any internal allocation by Plaintiffs of Settlement Funds toward Past Cleanup and Removal Costs, Future Cleanup and Removal costs, or other costs and damages shall not be binding on Settling Third-Party Defendants.

VII. PLAINTIFFS' COVENANTS

22. In consideration of the payments the Settling Third-Party Defendants are making pursuant to Paragraph 20 above, and except as otherwise provided in Section VIII (Plaintiffs'

Reservations) below, Plaintiffs covenant not to sue and agree not to take or procure judicial or administrative action (including without limitation the issuance of a directive) for any Claims against any Settling Third-Party Defendant under State and federal statutory and common law. Plaintiffs' covenants extend to and inure to the benefit of any persons or entities who acquire title to a Third-Party Site after the entry of this Consent Judgment for those Discharges of Hazardous Substances that occurred prior to the entry of this Consent Judgment.

23. Plaintiffs and Settling Third-Party Defendants agree to join and support each other in defending this Consent Judgment, 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 Consent Judgment brought against that Settling Third-Party Defendant after entry of this Consent Judgment, the Dismissal Order and the Case Management Order.

VIII. PLAINTIFFS' RESERVATIONS

24. Subject to Plaintiffs' Covenants in Section VII, Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Newark Bay Complex or to direct the Settling Third-Party Defendants to undertake any remediation authorized by law concerning the Newark Bay Complex or otherwise.

25. The covenants contained in Section VII do not pertain to any matters other than those expressly stated. Notwithstanding anything to the contrary herein, including Plaintiffs' Covenants in Section VII, Plaintiffs reserve, and this Consent Judgment is without prejudice to and shall have no effect and limitation on, all rights against the Settling Third-Party Defendants concerning the following, even to the extent such are considered Claims or within Matters Addressed:

a. Failure of a Settling Third-Party Defendant to satisfy its obligation to contribute to the Settlement Funds under Paragraph 20 of this Consent Judgment;

b. 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 the Settlement Funds in connection with the Diamond Alkali Superfund Process outside of the FFS Area, sought pursuant to CERCLA or other federal law, and only as to Cleanup and Removal Costs that exceed this amount;

c. Future Cleanup and Removal Costs (excluding investigation costs as part of the Diamond Alkali Superfund Process) 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 two and one-half (2.5) times the Settlement Funds in connection with the Diamond Alkali Superfund Process within the FFS Area, sought pursuant to CERCLA or other federal law, and only as to any Cleanup and Removal Costs exceeding this amount;

d. Claims or administrative action (including claims for Cleanup and Removal Costs or other damages or penalties) for the future Discharge or release of sewage or stormwater or Hazardous Substances within sewage or stormwater under the Water Pollution Control Act or other statute or regulation applicable to the regulation of sewage or stormwater, excluding the Spill Act;

e. 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 remedial action is not taken as part of the Diamond Alkali Superfund Process,

other than a Discharge of Hazardous Substances otherwise ordered or approved by Plaintiffs or addressed in Paragraph 18.1.e;

f. Liability for any future Discharge of any Hazardous Substance (but not including the migration of any Hazardous Substance from a Discharge that occurred prior to entry of this Consent Judgment but enters or moves within the Newark Bay Complex thereafter), other than a future Discharge of a Hazardous Substance ordered or approved by plaintiff DEP or addressed in Paragraph 18.1.e;

g. Liability for any air emissions, except as provided herein;

h. Criminal liability;

i. Liability for current administrative orders, consent decrees, judgments or ongoing remediation efforts that are the subject of separately enforceable legal obligations that are not otherwise specifically released under this Consent Judgment; and

j. Natural Resource Damages, but only after and to the extent that:

(1) a formal Natural Resource Damage Assessment has been completed under applicable law or regulations,

(2) a trustee determination of Settling Third-Party Defendants' liability for Natural Resource Damages has been made pursuant to a procedure that allows for participation by Settling Third-Party Defendants; and

(3) the collective liability established in an administrative or judicial proceeding of all Settling Third-Party Defendants for Natural Resource Damages exceeds twenty percent (20%) of the Settlement Funds. Settling Parties reserve all rights in any such proceeding.

Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey under this Section shall include all Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey regardless of whether such costs are recovered from or advanced or reimbursed by any person not a Settling Third-Party Defendant (except that such costs paid in settlement of liability of a Settling Third-Party Defendant that is an agency or department of the State of New Jersey shall not be included); provided, however, that there shall never be any double recovery by the State of New Jersey against any Settling Third-Party Defendant for the Matters Addressed herein. Settling Third-Party Defendants reserve all rights and defenses in any action by Plaintiffs under this Section.

26. Except to the extent Reserved Claims are affected by this Consent Judgment, the December 15, 2010 and April 24, 2012 orders reserving such claims shall remain in effect and shall not be disturbed by entry of this Consent Judgment.

27. Notwithstanding anything to the contrary herein, the Parties agree that this Consent Judgment 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, Plaintiffs reserve, and this Consent Judgment is without prejudice to, the right to institute proceedings against any or all of the Settling Third-Party Defendants in a new action or to issue a directive or other administrative order to any or all Settling Third-Party Defendants seeking to compel any Settling Third-Party Defendant to perform response actions or cleanup and removal actions related to any Other Action, or matters covered by Paragraph 26 (Reserved Claims) to the extent such Reserved Claims are not affected by this Consent Judgment.

IX. SETTLING THIRD-PARTY DEFENDANTS' COVENANTS

28. Subject to the conditions in Section XVIII, the Settling Third-Party Defendants covenant not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless Plaintiffs notify the Settling Third-Party Defendants, in writing, that they no longer support entry of the Consent Judgment.

29. The Settling Third-Party Defendants further covenant, subject to Paragraph 30 below, not to sue or assert any claim or cause of action for monetary relief against any Plaintiff for 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, including any direct or indirect claim for reimbursement from the Spill Fund. Settling Third-Party Defendants do not waive any claims and rights under federal law against any Settling Third-Party Defendant or against any other person and explicitly reserve any and all such claims against each other, as provided in Paragraph 36, including claims for response costs that may also constitute Cleanup and Removal Costs under the Spill Act. However, as to any state law claim under the Spill Act, each Settling Private Third-Party Defendant further covenants, subject to Paragraphs 27, 31, 35 and 36, not to sue or assert any such claim or cause of action against any Settling Public Third-Party Defendant, severally or joint, for monetary relief under the Spill Act for such Cleanup and Removal Costs incurred with respect to the Diamond Alkali Superfund Process. Each Settling Public Third-Party Defendant covenants, subject to Paragraphs 27, 31, 35 and 36, not to sue or assert any such claim or cause of action against any Settling Private Third-Party Defendant, severally or joint, for monetary relief under the Spill Act for such Cleanup and Removal Costs incurred with respect to the Diamond Alkali Superfund Process.

30. A Settling Third-Party Defendant's covenant not to sue or to assert any claim or cause of action against a Plaintiff pursuant to Paragraph 29 above does not apply in the event, and to the extent, that Plaintiffs sue or take administrative action jointly or severally against Settling Third-Party Defendants pursuant to Plaintiffs' reserved rights under Paragraph 25(b), 25(c), or 25(j) (but for purposes of 25(j) a Settling Third-Party Defendant's right to reassert any claim or cause of action against a Plaintiff shall only apply to state or federal claims for payment or compensation for Natural Resources Damages).

31. Settling Third-Party Defendants covenant not to sue for, and hereby waive, any claim for Settlement Funds against any other Settling Third-Party Defendant; provided, however, that Settling Third-Party Defendants reserve all rights and claims for Settlement Funds based on claims for contractual indemnity against any party, including Settling Third-Party Defendants as provided in Paragraph 36(d) herein.

32. (a) Settling Third-Party Defendants hereby agree to assign to Plaintiffs, upon request, their claims and causes of action for Economic Damages, in accordance with subsection (c), and the right to recovery thereon, without representation of value or existence, which each Settling Third-Party Defendant has as of the effective date of this Consent Judgment against the Defendants arising out of contamination at or from the Lister Property and into the Newark Bay Complex. Plaintiffs and each of the Settling Third-Party Defendants shall execute a separate assignment and cooperation agreement to effectuate such assignment, if so requested by Plaintiffs, in the case of each of the Public Settling Third-Party Defendants, in a form substantially similar to the form attached hereto as Exhibit F or, in the case of each of the Private Settling Third-Party Defendants, in a form governed by this Paragraph and materially consistent with Exhibit F to the extent consistent with the corporate requirements of any particular Private

Settling Third Party and not potentially implicated by or related to existing claims in an Other Action.

(b) In exchange for the assignment of claims herein, Plaintiffs agree that any judgment Plaintiffs obtain against Defendants for Economic Damages (including the Economic Damages assigned by Settling Third-Party Defendants) obtained under common law shall be limited to Defendants' apportioned liability. Such apportionment shall be made without the need for Defendants to file additional or amended claims against the Third-Party Defendants. Any credit or reduction of any recovery by Plaintiffs under the Spill Act or any other statute shall be as provided by New Jersey law. Furthermore, each Settling Third-Party Defendant releases and forever discharges all persons and entities other than Defendants from any of the Economic Damages assigned to Plaintiffs herein; provided, however that if any assigned claims revert to a Settling Third-Party Defendant, the conditions of this Paragraph shall no longer apply as to that Settling Third-Party Defendant. Plaintiffs agree that they shall not sell, transfer or assign any Economic Damages claims assigned by any Settling Third-Party Defendant.

(c) Economic Damages agreed to be assigned by Settling Third-Party Defendants do not include claims against the Defendants for their: (a) actually incurred past or future costs of investigation and remediation of Hazardous Substances, (b) contribution claims (if any) for Natural Resource Damages, (c) costs expended on community improvement projects, SEPs or similar activities undertaken in settlement or resolution of an environmental liability, (d) the loss in market value of their own real property or personal property (including, for purposes of the Private Settling Third-Party Defendants, the individual corporate entity value or corporate good will), (e) individual breach of contract claims, bad faith contract claims, and punitive damages

claims, or (f) other claims specifically reserved by Settling Third-Party Defendants herein, including those claims specifically reserved in Paragraph 36.

33. Nothing in this Consent Judgment 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.

X. SETTLING THIRD-PARTY DEFENDANTS' RESERVATIONS

34. Settling Third-Party Defendants reserve all rights, claims and defenses against any person not a Party to this Consent Judgment except as to those claims and causes of action assigned to Plaintiffs under Paragraph 32 and in any separate assignments of claims and causes of action executed by Settling Third-Party Defendants at the request of Plaintiffs.

35. The Parties intend and agree that this Consent Judgment, and any Dismissal Order entered pursuant to this Consent Judgment, is not a judicially-approved settlement of liability as to any claims in any Other Action, and the Settling Third-Party Defendants expressly reserve their rights, claims and defenses, including without limitation claims for contribution and other third-party cross-claims, in any Other Action. The Parties further intend and agree that this Consent Judgment, and any Dismissal Order entered pursuant to this Consent Judgment, will not bar the assertion of any contribution and / or other claims by any Settling Third-Party Defendants against any Settling Third-Party Defendants in any Other Action. The Parties agree that they will not raise this Consent Judgment and the Dismissal Order entered pursuant to this Consent Judgment as a bar or defense to claims by Settling Third-Party Defendants or Plaintiffs in any Other Action.

36. *Reservations by Settling Third-Party Defendants*

(a) *Claims Under Federal Law.*

i. *Reservation of Claims.* Subject to Paragraph 31 (Covenant Not To Sue for Settlement Funds) and subparagraphs (c), (e) and (f) below, Settling Third-Party Defendants reserve all rights, claims and defenses, including without limitation claims for contribution and cost recovery in any action under any statute of the United States, including but not limited to CERCLA, in any federal court of the United States against any entity including without limitation any Settling Third-Party Defendant, (a "United States Claim").

ii. *No Bar to Contribution*. Subject to Paragraph 31 (Covenant Not To Sue for Settlement Funds) and subparagraphs (c) and (e) herein, the Parties intend and agree that this Consent Judgment, and the Dismissal Order entered pursuant to this Consent Judgment, will not bar the assertion of any United States Claims for contribution or cost recovery and / or other claims by any Settling Third-Party Defendant against any Settling Third-Party Defendant(s).

(b) *Claims under State Law.* Subject to Paragraphs 27 (Other Actions), 29 and 31 (Covenants Not to Sue), 35 (Other Actions) and 39 (Contribution Protection), Settling Third-Party Defendants reserve all rights, claims and defenses, including without limitation contribution, under any New Jersey statute or common law they have or may have against any entity, including without limitation any Settling Third-Party Defendant, for: (i) Discharges of

Hazardous Substances at or from Third-Party Sites; (ii) costs, damages or judgments for any claims asserted by Plaintiffs pursuant to Section VIII (Plaintiffs' Reservations); 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. Notwithstanding the foregoing, other than in Other Actions, unless a claim arises solely under State law requiring a filing in a state court, all Settling Third-Party Defendants agree to assert their claims in federal court that arise in whole or in part as a result of Discharges of Hazardous Substances at or from the Lister Property.

(c) Notwithstanding any provision in subparagraphs (a) and (b) herein, if any claims asserted in federal court are barred under the Eleventh Amendment of the United States Constitution nothing herein shall preclude or prevent Settling Third-Party Defendants from bringing such claims under State statute or common law in state court.

(d) Settling Third-Party Defendants reserve any rights to assert claims for contractual indemnity for the Settlement Funds against any insurer and any other person or entity including without limitation any Settling Third-Party Defendant.

(e) For any claim reserved under subparagraph (a) by a Settling Third-Party Defendant against any other Settling Third-Party Defendant relating to Discharges to the Newark Bay Complex, Settling Third-Party Defendants agree not to bring such claims in any court proceeding until at least sixty (60)

days after notifying the Settling Third-Party Defendant and negotiating in good faith to develop during the 60-day period a case management order for the orderly prosecution, defense and disposition of such claims, except that this subparagraph shall not apply to any claim a Settling Third-Party Defendant must bring sooner than 60 days to avoid the claim being waived or barred. Settling Third-Party Defendants hereby agree that all applicable statutes of limitation are tolled during the negotiating period prescribed in this subparagraph.

(f) This Paragraph 36 does not apply to, and does not reserve or limit, any claim, right or defense that could be asserted by or against Plaintiffs.

XI. FINDINGS & NON-ADMISSIONS OF LIABILITY

37. Nothing contained in this Consent Judgment shall be considered an admission of any issue of fact or law by the Settling Third-Party Defendants as to any matter, or a finding by the Court or by Plaintiffs of any wrongdoing or liability on the Settling Third-Party Defendants' part for any matters, including matters Plaintiffs and Defendants have alleged in the Passaic River Litigation.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

38. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment, except as provided in Paragraphs 18.32, 18.33 and 22. Further, nothing in this Consent Judgment, 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, Plaintiffs, or any Settling Third-Party Defendant, or consent to jurisdiction in federal court.

39. (a) Upon entry, this Consent Judgment 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) for the Matters Addressed and for the purpose of providing protection to the Settling Third-Party Defendants from contribution actions and within the meaning of 42 U.S.C.A. § 9613(f)(2) as provided below under federal law. The Parties agree, and the Court by entering this Consent Judgment so intends, that the Settling Third-Party Defendants are entitled, upon satisfying their payment obligations under Paragraph 20 of this Consent Judgment to protection from contribution, except as provided in Paragraphs 27 and 35 (Other Actions), for:

(i) Past Cleanup and Removal Costs of Plaintiffs and any other person (including the Third-Party Plaintiffs) sought 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 Plaintiffs) sought 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 sought under CERCLA or other federal law;

(iv) Future Cleanup and Removal Costs of Plaintiffs sought under CERCLA or other federal law up to the amounts set forth in Section VIII;

(v) Natural Resource Damage Assessment Costs;

(vi) Natural Resources Damages sought under applicable state and federal law up to the amounts set forth in Section VIII; and

(vii) the Settlement Funds paid herein by each Settling Third-Party Defendant; provided, however, that contractual indemnity claims for Settlement Funds are not barred.

(b) The Parties agree, and the Court by entering this Consent Judgment so intends, that, except as provided by Section X (Settling Third-Party Defendants' Reservations), this Consent Judgment should not be construed to limit or provide protection from contribution for:

(i) Past Cleanup and Removal Costs incurred by Third-Party Plaintiffs, 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;

(ii) Future Cleanup and Removal Costs incurred by Third-Party Plaintiffs, 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;

(iii) Future Cleanup and Removal Costs of Plaintiffs sought under CERCLA or other federal law above the limits set forth in Section VIII;

(iv) Future Cleanup and Removal Costs of Plaintiffs or any other person for future Discharges of Hazardous Substances after the entry of this Consent

Judgment under State or federal law (other than for Hazardous Substances contained in sewage or stormwater under the Spill Act);

(v) Natural Resources Damages above the limits set forth in Section VIII; and

(vi) Relief sought in any Other Action.

(c) The Parties agree that this Consent Judgment 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 Third-Party Defendant or any person or entity not a party to this Consent Judgment nor of any claims, costs, damages or penalties in any Other Action. Settling Third-Party Defendants acknowledge that any Settling Third-Party Defendant and any person or entity not a party to this Consent Judgment (including Third-Party Plaintiffs) may assert claims under CERCLA or other federal law against any person or entity, including any Settling Third-Party Defendant, and such claims are not intended to be barred by CERCLA § 113(f)(2), except as provided in subparagraph (a) herein.

40. In order for the Settling Third-Party 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 Consent Judgment, Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on Plaintiff DEP's website on [ ], 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 Third-Party Defendants; and

d. a summary of the terms of this Consent Judgment.

41. Plaintiffs, in accordance with N.J.S.A. 58:10-23.11e2, arranged for written notice of the Consent Judgment 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 40.

42. Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Section XVIII unless, as a result of the notice of this Consent Judgment pursuant to Paragraphs 40 and 41, Plaintiffs receive information that discloses facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

43. In any subsequent administrative or judicial proceeding for injunctive relief, recovery of costs and/or damages, or other appropriate relief concerning the Newark Bay Complex, no Party shall assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment and the covenants not to sue set forth herein.

44. Except as provided by Paragraph 32(b), if a fact-finder apportions any portion of Plaintiffs' damages to a Settling Third-Party Defendant, Plaintiffs agree to reduce their recoveries from the Defendants to the extent and as required by New Jersey law. The Parties agree that nothing herein is intended to shift onto Plaintiffs or otherwise alter Plaintiffs' burden of proof in the Passaic River Litigation, in an Other Action, or in claims reserved from this Consent Judgment

XIII. NOTICES AND SUBMISSIONS

45. Except as otherwise provided in this Consent Judgment, 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
Cost Recovery and Natural Resource Damages 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

Settling Third-Party Defendants

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

46. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

47. The Settling Third-Party Defendants shall not construe any informal advice, guidance, suggestions, or comments by Plaintiffs, or by persons acting for them, as relieving the Settling Third-Party Defendants of their obligation to obtain written approvals or modifications as required by this Consent Judgment.

XIV. EFFECTIVE DATE

48. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment has been entered by the Court.

XV. RETENTION OF JURISDICTION

49. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties 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 Paragraph 51 of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including without limitation any appeal from an administrative determination of a dispute between the Parties.

XVI. RETENTION OF RECORDS

50. Until completion of the Diamond Alkali Superfund Process, each Settling Third-Party 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 any Settling Third-Party 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 XVI require preservation of records beyond ten (10) years from the effective date of the Consent Judgment unless Plaintiffs provide written notice to a Settling Third-Party Defendant 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 Third-Party 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 Consent Judgment, such AOC, Consent Decree or Court Order shall control as to that Settling Third-Party Defendant.

XVII. MODIFICATION

51. This Consent Judgment and any notices or other documents specified in this Consent Judgment may be modified only by agreement of the Parties. All such modifications shall be made in writing.

52. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications made pursuant to Paragraph 51 to this Consent Judgment.

XVIII. ENTRY OF THIS CONSENT JUDGMENT AND FURTHER ASSURANCES

53. The Settling Third-Party Defendants consent to the entry of this Consent Judgment without further notice only if entry of this Consent Judgment results in the dismissal of all of Third-Party Plaintiffs' claims in the Third-Party Complaints against Settling Third-Party Defendants as set forth herein.

54. Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for entry.

55. If less than 75% of the Private Third-Party Defendants or 50% of the Public Third-Party Defendants execute or perform under this Consent Judgment, this Consent Judgment is voidable at the sole discretion of Plaintiffs.

56. Subject to Paragraph 21, this Consent Judgment is void as to any Settling Third-Party Defendant that fails to pay its Settlement Funds in accordance with Paragraph 20.

57. Except as provided in Paragraph 58 below, the Parties agree that this Consent Judgment shall be void and of no effect if the Court fails to (i) dismiss all of Third-Party Plaintiffs' claims in the Third-Party Complaints against all Settling Third-Party Defendants, including, inter alia, for costs allegedly incurred or to be incurred for investigation, removal and remediation of Discharges of Hazardous Substances in the Newark Bay Complex; (ii) approve and enter the Dismissal Order in the form attached as Exhibit C or in materially the same form as attached, contribution protection is provided and claims are barred as set forth in this Consent Judgment and the Dismissal Order; and (iii) approve and enter the Case Management Order in the form attached as Exhibit D or in materially the same form as attached. This Consent Judgment shall be void and of no effect if any appellate court reverses, remands, vacates or modifies the Consent Judgment and/or Dismissal Order such that either will not result in the dismissal of all claims brought by Third-Party Plaintiffs against all Settling Third-Party Defendants. In such event, the terms of this Consent Judgment may not be used as evidence in any litigation, administrative proceeding or other proceeding.

58. If Third-Party Plaintiffs have any cause of action against a Settling Third-Party Defendant other than a cause of action under the Spill Act, through the Joint Tortfeasors Contribution Act, or that is otherwise commonly alleged against all Settling Third-Party Defendants (*i.e.*, a particularized cause of action), and such particularized cause of action is not dismissed as to any Settling Third-Party Defendant, this Consent Judgment shall not be void; provided that any Settling Third-Party Defendant that is subject to a particularized cause of action may choose to either remain a Setting Third-Party Defendant or to opt-out of the Consent Judgment and, in that instance, would not be obligated to satisfy the payment obligations of Paragraph 20. The opt-out of any Settling Third-Party Defendant shall not affect the Consent

Judgment, Dismissal Order or payment obligations under Paragraph 20 as to any other Settling Third-Party Defendant. Settling Third-Party Defendants opting out of this Consent Judgment as provided herein shall provide notice to Plaintiffs, the Court and all other Parties within sixty (60) days after the Court declines to approve the Dismissal Order or Case Management Order as to that Settling Third-Party Defendant. Plaintiffs shall have ninety days (90) days after the Court declines to approve the Dismissal Order or Case Management Order as to any Settling Third-Party Defendant to opt out of this Consent Judgment by providing notice to the Court and all other Parties. Any Party that fails to opt out of this Consent Judgment in the time periods set forth above shall be bound by the terms of this Consent Judgment.

59. This Consent Judgment shall not be effective as to any Settling Third-Party Defendant that has not paid in full its court costs, Special Master fees and liaison counsel / common counsel fees outstanding at the time of entry of this Consent Judgment.

60. Each of the parties to this Agreement shall use its best efforts to fulfill and cause to be fulfilled the terms and conditions of this Consent Judgment and to effectuate the dismissal of all claims in the Third-Party Complaints against Settling Third-Party Defendants as set forth herein.

XIX. SIGNATORIES/SERVICE

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

62. This Consent Judgment 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 Consent Judgment.

63. Each Settling Third-Party Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Third-Party Defendants agree to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

SO ORDERED 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:

[INSERT A SEPARATE SIGNATURE PAGE FOR EACH SETTLING DEFENDANT.]

Schedule 1 to
Consent Judgment

Schedule "1"

A. Given the particularized constraints and equities attendant to parties with multiple affiliated entities sued as Third-Party Defendants in the Passaic River Litigation and those parties that were sued by Third-Party Plaintiffs only due to limited drum recycling activities, Plaintiffs and the Settling Third-Party Defendants agree that the individual financial consideration of the Settling Third-Party Defendants may be varied slightly, but only as follows:

1. "**Drum-Site Only Parties**." Third-Party Defendants whose only alleged connection to the Passaic River Litigation in the Third-Party Complaints was via the shipment of drums to recycling facilities ("Drum-Site Only Parties") may pay ONE HUNDRED FORTY-FIVE THOUSAND DOLLARS ($145,000.00) in order to resolve their alleged liability in accordance with, and be a Settling Third-Party Defendant as defined in, the Consent Judgment. If a Drum-Site Only Party is later found to have Discharged Hazardous Substances to the Newark Bay Complex from sites other than drum-recycling site(s) or is found to be a substantial contributor to the risk that is driving the Past Cleanup and Removal Costs or Future Cleanup and Removal Costs, or is otherwise found to be unsuitable for the provisions hereunder, Plaintiffs may require such party to pay the full $195,000 (an additional $50,000) to participate in the Consent Judgment and may exclude such entity from participation in the Consent Judgment (and return that entity's original $145,000 payment) in the event that the party refuses to pay the full $195,000 (an additional $50,000).

2. **Affiliated Entities**. In recognition of the interrelated management, common issues, shared costs, and alleged overlapping liabilities of affiliated companies, if two or more Private Settling Third-Party Defendants are directly or indirectly wholly-owned by the same parent company or shareholder, or if one Private Settling Third-Party Defendant directly or

indirectly wholly-owns or is wholly owned by another Private Settling Third-Party Defendant (all such entities referred to herein as "Affiliated" or "Affiliated Entities"), the Affiliated Entities named as Third-Party Defendants in the Passaic River Litigation as of January 22, 2013 ("Named Affiliated Entities") shall participate in the Consent Judgment by paying a percentage of the amount required for other Private Settling Third-Party Defendants as follows:

A Settling Third-Party Defendant:	$195,000 (100%)
Second Named Affiliated Entity:	$128,700 (66%)
Third Named Affiliated Entity:	$97,500 (50%)
Fourth Named Affiliated Entity:	$64,350 (33%)

The Fifth Named Affiliated Entity, and each additional Named Affiliated Entity thereafter, may also pay $64,350 (33%) to participate in the Consent Judgment and become a Settling Third Party Defendant under the Consent Judgment.

Notwithstanding the foregoing, if a Named Affiliated Entity demonstrates that its sole basis of liability falls within the meaning of "vicarious liability" in Paragraph 18.32 or is vicariously liable solely through the operations of another Named Affiliated Entity, such Named Affiliated Entity may join in one payment as a Settling Third-Party Defendant under this Schedule with its Named Affiliated Entity. Plaintiffs will also consider any additional similar circumstances for treatment as being "vicariously liable" under the definition in Paragraph 18.32 of the Consent Judgment and such determinations will be reflected on those Settling Third-Party Defendant's execution page(s). If a Named Affiliated Entity is not approved by Plaintiffs for consideration under this provision or is involved at more than the one common site for which it is exposed to vicarious liability, that Named Affiliated Entity shall pay according to the Schedule set forth herein.

Additionally, if Private Settling Third-Party Defendants wish to resolve the liabilities of other, unidentified entities and/or entities that are not named in the Passaic River Litigation as of January 22, 2013 and that are Affiliated Entities ("Unnamed Affiliated Entity"), each additional, Unnamed Affiliated Entity must be explicitly identified by name on that Party's execution page and, under any circumstance, the Private Settling Third-Party Defendant must pay an additional $50,000 per newly identified Unnamed Affiliated Entity.

In order to include an Unnamed Affiliated Entity in the Consent Judgment or to demonstrate the vicarious liability of two Named Affiliated Entities as set forth above, the submission for inclusion into the administrative record prior to the opening of the Record for public comment must contain a verified statement (a) asserting and describing the corporate relationship and common ownership between or among the Settling Third-Party Defendants and/or Unnamed Affiliated Entities, and (b) describing all Affiliated Entities' association with Discharges of Hazardous Substances to the Newark Bay Complex, if any, from identified site(s). The addition of any Unnamed Affiliated Entity or treatment as a vicariously liable Settling Third-Party Defendant shall be at Plaintiffs' discretion after consideration of the information required above and any additional information requested by Plaintiffs.

Nothing herein shall change the definition in Paragraph 18.32 of Settling Private Third-Party Defendants. To the extent there is an ambiguity or question as to the appropriate application of any provision in this Schedule 1, the payment terms of Paragraph 18.32 and Paragraph 20 shall apply.

B. **Later Joining Parties**. In addition to the Third-Party Defendants who execute this Consent Judgment and are "Settling Third-Party Defendants" before its publication, it is anticipated that additional Third-Party Defendants and later identified persons may also wish to

voluntarily join this Consent Judgment after it receives the approvals necessary to be published for notice and comment. A person may later join in this Consent Judgment, and be treated as "Settling Third-Party Defendants" hereunder, if Plaintiffs in their discretion determine that such party is appropriately a Party to this Consent Judgment. In such instance, the following shall constitute the minimum consideration that a late-joining entity shall pay:

1. If a Third-Party Defendant named in the litigation as of January 22, 2013 (and any of its affiliated entities, named or unnamed) does not participate therein, and is not a "Settling Third-Party Defendant" at the time of publication of the Consent Judgment, but later wishes to join and participate in the Consent Judgment, such party may participate and become a Settling Third-Party Defendant by paying 150% of the settlement amount that similarly situated Private Settling Third-Party Defendants or Public Settling Third-Party Defendants (and their respective named or unnamed affiliates) agreed to pay prior to publication.

2. If a person was not named and served as a Third-Party Defendant as of January 22, 2013, and is not an Unnamed Affiliated Entity, but is thereafter named and served or otherwise wishes to voluntarily participate in this Consent Judgment, such person may seek to participate in the same amounts as other Private Settling Third-Party Defendants ($195,000) or Public Settling Third-Party Defendants ($95,000). An Unnamed Affiliated Entity that is later named and served may seek to participate in the same amount as other Unnamed Affiliated Entities ($50,000).

3. If an unnamed entity as of January 22, 2013 that is an Affiliated Entity with a Settling Third-Party Defendant wishes to participate in this Consent Judgment after its publication, such Affiliated Entity may seek to participate by paying an additional ($50,000).

4. The addition of any Settling Third-Party Defendant shall be at Plaintiffs' sole discretion after review of the verified submittal in Section C.

C. **Inclusion & Reopener.** If a Later Joining Party, as identified in Section B.1. B.2., or B.3., seeks to participate in the Consent Judgment, that party must make a verified submittal to Plaintiffs identifying the Later Joining Party, geographic location and source of any alleged past Discharges, and the Hazardous Substances allegedly discharged into the Newark Bay Complex. Upon review and approval by Plaintiffs, and payment by the Later Joining Party, the Later Joining Party shall constitute a "Settling Third-Party Defendant" for all purposes hereunder. If at any time the Later Joining Party is found to be a substantial contributor to Past Cleanup and Removal Costs or Future Cleanup and Removal Costs, or is otherwise found to be unsuitable for the provisions hereunder, Plaintiffs may deny such entity from participation.

D. **Inability to Pay.** Plaintiffs in their discretion may provide a payment schedule or other special payment terms for Settling Third-Party Defendants that are bankrupt, dissolved, insolvent or otherwise have limited ability to pay, as such terms may be defined in the discretion of Plaintiffs.

Exhibit A to

Consent Judgment

Private Settling Third-Party Defendants

Exhibit A to Consent Judgment

1. 3M Company
2. AGC Chemicals Americas, Inc.
3. Akzo Nobel Coatings Inc.
4. Alliance Chemicals, Inc.
5. Alumax Mill Products, Inc.
6. American Cyanamid Company (n/k/a Wyeth Holdings Corporation)
7. Arkema, Inc., f/k/a Pennwalt Corporation, on behalf of itself and as successor by merger to Wallace & Tiernan, Inc.
8. Ashland Inc.
9. Ashland International Holdings, Inc., a wholly owned subsidiary of Ashland Inc.
10. Associated Auto Body & Trucks, Inc.
11. Atlantic Richfield Company
12. Atlas Refinery, Inc.
13. Automatic Electro-Plating Corp.
14. BASF Catalysts LLC
15. BASF Corporation, on its own behalf, and as successor to the former Ciba Corporation and the former BASF Construction Chemicals, LLC
16. Bayer Corporation
17. Bayonne Industries, Inc.
18. Beazer East, Inc. f/k/a Koppers Company, Inc.
19. Belleville Industrial Center, Inc.
20. Benjamin Moore & Co.
21. Berol Corporation
22. B-Line Trucking, Inc.
23. Borden & Remington Corp.
24. BP Products North America Inc. (improperly named in the Complaint as BP Marine Services, Inc.)
25. Bristol-Myers Squibb Company
26. Campbell Foundry Company
27. CasChem, Inc.
28. CBS Corporation
29. Celanese Ltd.
30. Chemical Compounds Inc.
31. Chevron U.S.A. Inc.
32. Coltec Industries Inc.
33. ConAgra Panama, Inc. n/k/a ConAgra Grocery Products Company, LLC
34. Conopco, Inc.
35. Consolidated Rail Corporation
36. Cosan Chemical Corporation
37. Covanta Essex Company
38. Croda, Inc.
39. Cytec Industries Inc.
40. Darling International, Inc.
41. Davanne Realty Co.

42. Deleet Merchandising Corporation
43. DiLorenzo Properties Company, L.P.
44. Duraport Realty One LLC
45. Duraport Realty Two LLC
46. Dynasty Enterprise Group, LLC
47. E. I. du Pont de Nemours and Company
48. Elan Chemical Company, Inc.
49. Essex Chemical Corporation
50. Exelis Inc. successor in interest to ITT Corporation, Avionics Division
51. Exxon Mobil Corporation
52. Fine Organics Corporation
53. Fiske Brothers Refining Company
54. Flexon Industries Corporation
55. Flint Group Incorporated
56. Fort James Corporation
57. Foundry Street Corporation
58. Franklin-Burlington Plastics, Inc.
59. G. J. Chemical Co.
60. Garfield Molding Co Inc. (incorrectly named Garfield Molding Company, Inc.)
61. General Cable Industries, Inc.
62. General Dynamics Corporation
63. General Electric Company
64. GenTek Holding LLC n/k/a General Chemical Corporation
65. Getty Properties Corp.
66. Givaudan Fragrances Corporation
67. GK Technologies, Incorporated
68. Goldman/Goldman/DiLorenzo Properties Partnerships
69. Goodrich Corporation
70. Goody Products, Inc.
71. Gordon Terminal Service Co. of N.J., Inc.
72. Harrison Supply Company
73. Hess Corporation
74. Hexcel Corporation
75. Hilton Davis Chemical Co., incorrectly named as Emerald Hilton Davis LLC
76. Hoffmann-LaRoche Inc.
77. Honeywell International Inc.
78. Honeywell Specialty Materials, LLC
79. Houghton International Inc.
80. Hudson Tool & Die Company, Inc.
81. ICI Americas Inc.
82. IMTT-Bayonne
83. Innospec Active Chemicals LLC
84. INX International Ink Co.
85. ISP Chemicals LLC (improperly named as ISP Chemicals Inc.)

86. Kalama Specialty Chemicals, Inc.
87. Kao USA Inc. f/k/a Kao Brands Company f/k/a The Andrew Jergens Company
88. Kewanee Industries, Inc.
89. Kinder Morgan Liquids Terminals LLC f/k/a GATX Terminals Corporation
90. Koehler-Bright Star LLC f/k/a Koehler-Bright Star, Inc.
91. Legacy Vulcan Corp. f/k/a Vulcan Materials Company
92. Linde, Inc. n/k/a Linde LLC
93. Lucent Technologies, Inc. (Alcatel-Lucent USA Inc.)
94. Mallinckrodt LLC, f/k/a Mallinckrodt Inc.
95. McKesson Corporation
96. Merck & Co.
97. Merck Sharp & Dohme Corp. f/k/a Merck & Co., Inc.
98. Metal Management Northeast, Inc.
99. MI Holdings, Inc., a wholly owned subsidiary of Avon Products, Inc.
100. Morton International, LLC f/k/a Morton International, Inc.
101. Nappwood Land Corporation
102. National Fuel Oil, Inc.
103. National-Standard, LLC
104. Nestle USA, Inc.
105. News America, Inc.
106. News Publishing Australia Limited (successor to Chris-Craft Industries)
107. Norpak Corporation
108. Novelis Corporation f/k/a Alcan Aluminum Corporation
109. Otis Elevator Company
110. Passaic Pioneers Properties Company
111. Pfister Chemical, Inc.
112. Pfister Urban Renewal, Inc.
113. Pfizer Inc.
114. Pharmacia LLC, f/k/a Pharmacia Corporation
115. Phelps Dodge Industries, Inc.
116. Philbro, Inc.
117. Pitt-Consol Chemical Company
118. Pivotal Utility Holdings, Inc.
119. Power Test Realty Company, L.P.
120. PPG Industries, Inc.
121. Praxair, Inc.
122. PRC-DeSoto International, Inc.
123. Precision Manufacturing Group, LLC
124. Prentiss LLC (f/k/a Prentiss Incorporated)
125. Prysmian Communications Cables and Systems USA, LLC
126. PSEG Fossil LLC
127. Public Service Electric and Gas Company
128. Purdue Pharma Technologies, Inc.
129. Quala Systems, Inc.

130. Quality Carriers, Inc.
131. Reckitt Benckiser LLC (formerly, Reckitt Benckiser Inc.)
132. Reichhold, Inc.
133. Revere Smelting & Refining Corporation
134. Rexam Beverage Can Company
135. Royce Associates, A Limited Partnership
136. Rutherford Chemicals LLC
137. S&A Realty Associates, Inc.
138. Safety-Kleen Corp.
139. Safety-Kleen Envirosystems Company successor to McKesson Envirosystems Co.
140. Schering Corporation n/k/a Merck Sharp & Dohme Corp.
141. Sequa Corporation
142. Seton Company
143. Shulton, Inc.
144. Siemens Industry, Inc., successor by merger to Siemens Water Technologies Corp.
145. Spectraserv, Inc.
146. Stanley Black & Decker, Inc. f/k/a The Stanley Works
147. STWB Inc.
148. Sun Chemical Corporation
149. Sun Pipe Line Company
150. Sunoco, Inc.
151. Sunoco, Inc. (R&M)
152. Tate & Lyle Ingredients Americas LLC, f/k/a Tate & Lyle Ingredients Americas, Inc. f/k/a A.E. Staley Manufacturing Company including its former division Staley Chemical Company
153. Teva Pharmaceuticals USA, Inc. f/k/a Biocraft Laboratories, Inc.
154. Texaco Downstream Properties, Inc.
155. Texaco Inc.
156. Textron Inc.
157. The Dial Corporation
158. The Dow Chemical Company
159. The Dundee Water Power and Land Company
160. The Hartz Mountain Corporation
161. The Newark Group, Inc.
162. The Okonite Company, Inc.
163. The Procter & Gamble Manufacturing Company
164. The Sherwin-Williams Company
165. The Valspar Corporation
166. Thirty-Three Queen Realty Inc.
167. Thomas & Betts Corp.
168. Three County Volkswagen Corporation
169. Tiffany and Company
170. TRMI-H LLC
171. Troy Chemical Corporation, Inc.

172. Universal Oil Products Company
173. Veolia ES Technical Solutions, LLC
174. Vertellus Specialties Inc. f/k/a Reilly Industries, Inc.
175. Vitusa Corp.
176. W.A.S. Terminals Corp., successor in interest to W.A.S. Terminals, Inc., and incorrectly sued as W.A.S. Terminals, Inc.
177. Whittaker Corporation
178. Wyeth n/k/a Wyeth LLC
179. Zeneca, Inc.

Exhibit B to

Consent Judgment

Public Settling Third-Party Defendants

Exhibit B to Consent Judgment

1. City of Bayonne
2. Bayonne Municipal Utilities Authority
3. Township of Belleville
4. Township of Berkeley Heights
5. Township of Bloomfield
6. Borough of Carteret
7. Township of Cedar Grove
8. Township of Clark
9. City of Clifton
10. The New Jersey Department of Agriculture
11. The New Jersey Department of Transportation
12. Borough of East Newark
13. City of East Orange
14. Borough of East Rutherford
15. City of Elizabeth
16. Borough of Elmwood Park
17. Borough of Fair Lawn
18. Borough of Fanwood
19. Borough of Franklin Lakes
20. City of Garfield
21. Borough of Garwood
22. Borough of Glen Ridge
23. Borough of Glen Rock
24. City of Hackensack
25. Borough of Haledon
26. Town of Harrison
27. Borough of Hasbrouck Heights
28. Borough of Hawthorne
29. Township of Hillside
30. Township of Irvington
31. City of Jersey City
32. Jersey City Municipal Utilities Authority
33. Joint Meeting of Essex and Union Counties
34. Town of Kearny
35. Borough of Kenilworth
36. City of Linden
37. Linden Roselle Sewerage Authority
38. Township of Little Falls
39. Borough of Lodi
40. Township of Lyndhurst
41. Township of Maplewood
42. Township of Millburn
43. Township of Montclair
44. Borough of Mountainside

45. New Jersey Transit Corporation
46. City of Newark
47. Housing Authority of the City of Newark
48. Borough of New Providence
49. Borough of North Arlington
50. Borough of North Caldwell
51. Borough of North Haledon
52. Town of Nutley
53. City of Passaic
54. Passaic Valley Sewerage Commissioners
55. City of Paterson
56. Port Authority of New York and New Jersey
57. Borough of Prospect Park
58. City of Rahway
59. Rahway Valley Sewerage Authority
60. Village of Ridgewood
61. Borough of Roselle
62. Borough of Roselle Park
63. Borough of Rutherford
64. Township of Saddle Brook
65. Township of Scotch Plains
66. Township of South Hackensack
67. Township of South Orange Village
68. Township of Springfield
69. City of Summit
70. Borough of Totowa
71. City of Union City
72. Borough of Wallington
73. Town of Westfield
74. Township of West Orange
75. Town of Woodbridge
76. Borough of Wood-Ridge
77. Borough of Woodland Park
78. Township of Wyckoff

Exhibit C to
Consent Judgment

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, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC., Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: ESSEX COUNTY : DOCKET NO. L-9868-05 (PASR) : Civil Action : **ORDER OF DISMISSAL**

This matter having been opened to the Court on the joint motion of _____, _____, and _____, counsel for the Third-Party Defendants listed on Annex A hereto (the "Settling Third-Party Defendants" as further defined in the Consent Judgment entered this date) and John J. Hoffman, Attorney General of New Jersey, John F. Dickinson, Jr., Deputy Attorney General, and Special Counsel William J. Jackson and Michael Gordon, counsel for Plaintiffs, after public notice and opportunity for comment by all parties and known non-parties with an interest in this Action, and the Court having considered the respective moving and opposition papers filed with respect thereto, heard the oral argument of counsel and interested parties and non-parties in a hearing conducted on _____, and having placed its findings of fact and conclusions of law on the record pursuant to R. 1:7-4(a) on _____, 2013, and good cause appearing,

IT IS on this ___ day of _____, 2013,

ORDERED, as follows:

1. That the joint motion of Settling Third-Party Defendants and Plaintiffs to approve the settlements embodied in that certain Consent Judgment and Case Management Order entered this same date ("Consent Judgment") be, and the same hereby is, granted in all respects, and the settlements embodied therein are hereby approved by this Court insofar as is necessary or appropriate so to do under N.J.S.A. 10:23-11f.a.(2)(b) and the common law of the State of New Jersey;

2. That each of the respective Third-Party Complaints, and all Claims (as defined in the Consent Judgment) brought or which could have been brought therein by Third-Party Plaintiffs against Settling Third-Party Defendants in the captioned suit including, without limitation, all claims which could have been brought therein by Third-Party Plaintiffs Maxus and Tierra but for the limitation referenced in paragraph 15 of Third-Party Complaint B, paragraph 14 of Third-Party Complaint C, and paragraph 7 of Third-Party Complaint D), be and they each are hereby dismissed with prejudice and without costs, except those set forth in Paragraph 39(b) and 39(c) of the Consent Judgment which, to the extent made in this suit or which could have been made, are dismissed without prejudice or costs;

3. That all Third-Party Defendant counter-claims or cross-claims for contribution or indemnity which have been or could have been brought by or against any Settling Third-Party Defendant for Matters Addressed in the

Consent Judgment be, and they each are hereby dismissed without prejudice and without costs;

4. That the entry of the Consent Judgment bars any future claim by any party for contribution or indemnity under New Jersey statutory or common law for the Matters Addressed and not otherwise reserved or exempted in the Consent Judgment;

5. That any stipulations of any Settling Third-Party Defendant pursuant to this Court's Order on Track VII Trial Plan under Case Management Order 17 are hereby vacated nunc pro tunc;

6. That the dismissals set forth herein are without prejudice to the rights of any party to raise claims under any statute of the United States in any court of the United States based upon the same or similar facts alleged as to each Settling Third-Party Defendant in the Third-Party Complaint (a "United States Claim"), or to the ability of any Settling Third-Party Defendant to claim contribution protection as set forth in the Consent Judgment, and to claim the whole or any part of its payment made under the Consent Judgment, as a credit or off-set with respect to any such United States Claim;

7. That in light of the foregoing bar to contribution claims, any judgment of liability that may be entered in the Passaic River Litigation against any non-settling party shall be reduced in a manner to be determined by the Court, as provided by law; and

8. All terms used herein shall have that meaning ascribed to them in the Consent Judgment entered this same date.

9. In the event of a conflict between any term or provision of this Order and the Consent Judgment, the relevant term or provision of the Consent Judgment shall govern.

_____

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

Exhibit D to
Consent Judgment

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, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC., Defendants.	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: ESSEX COUNTY : DOCKET NO. L-9868-05 (PASR) : Civil Action : **CASE MANAGEMENT ORDER ___**

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 Consent Judgment and the Order of Dismissal ("Dismissal Order") entered this date; and

WHEREAS, pursuant to the Consent Judgment and Dismissal Order, the Settling Third-Party Defendants have agreed to pay amounts specified therein to settle certain claims with regard to the Newark Bay Complex[1] in exchange for covenants not to sue, contribution protection, dismissals and other protections as provided in the Consent Judgment and the Dismissal Order; and

WHEREAS, pursuant to the Dismissal Order and the Consent Judgment, all claims

[1] Capitalized terms not specifically defined herein are defined in the Consent Judgment and those definitions are hereby incorporated by reference and adopted herein.

against the Settling Third-Party Defendants have been dismissed from the Passaic River Litigation and all claims in contribution against Settling Third-Party Defendants for Claims and Matters Addressed in the Consent Judgment are barred; 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 defendants, 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, (collectively, the "Defendants") and/or other persons and parties who have not entered into the Consent Judgment (hereinafter the "Passaic River Litigation"); and

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

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 Third-Party Defendants have engaged in substantive and comprehensive negotiations before entering into the Consent Judgment entered by this Court. The Consent Judgment, 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;

WHEREAS, the Parties entered into the Consent Judgment, in part, to avoid incurring further transactional and litigation costs in the Passaic River Litigation. By entering into the Consent Judgment and Dismissal Order, the Settling Third-Party Defendants intend to settle their respective alleged liability to Plaintiffs and Defendants in connection with the Passaic River Litigation (subject to the terms of the Consent Judgment), and they intend to terminate their further participation in, and to terminate discovery against them in, the Passaic River Litigation.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

As of the date of entry of the Consent Judgment, 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 jurisdiction over the Passaic River Litigation and all related proceedings in order to: (1) ensure the efficient litigation of the Passaic River Litigation and any related proceedings; (2) administer the Consent Judgment 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 Third-Party Defendants from oppression, undue burden or expense; and (5) address any discovery directed to the Settling Third-Party Defendants in the Passaic River Litigation, and any related proceedings.

B. Order

1. All claims by the Defendants against the Settling Third-Party Defendants are dismissed according to the terms of the Dismissal Order.

2. In determining the liability of the Defendants and other entities and parties which

have not settled their liability to Plaintiffs through the Consent Judgment and Dismissal Order ("Non-Settling Parties"), such alleged liability of the Non-Settling Parties shall be reduced in accordance with New Jersey law. The Court shall take judicial notice of the amounts paid (or paid through a reduction of Municipal State Aid for certain Settling Public Third-Party Defendants) by the Settling Third-Party Defendants under the Consent Judgment 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 Third-Party Defendants' alleged share of liability, there shall be no discovery by any party against the Settling Third-Party Defendants, except in accordance with Paragraphs 3 and 4 herein. The Court finds (and all previous Case Management Orders in the Passaic River Litigation shall be considered amended to provide) that any determinations of the Court as to liability and damages of the parties after the September 21, 2012 stay of third-party practice are not binding on any Settling Third-Party Defendant and shall not be considered as evidence or argument against any Settling Third-Party Defendant (i) in the Passaic River Litigation or (ii) in an action filed in any other court based upon the same or similar facts alleged as to each Settling Third-Party Defendant in the Third-Party Complaint.

3. Discovery against any Settling Third-Party Defendant is prohibited without prior approval of this Court, upon motion served on the affected Settling Third-Party Defendant including the proposed discovery, and demonstration by the party seeking discovery that such discovery is limited in scope and nature, and is necessary, and reasonable and unavoidable, including a demonstration that:

(a) the information sought has not already been, and cannot be obtained, from other sources;

(b) the information sought is not available from the responses, disclosures, discovery,

and other information already provided in the Passaic River Litigation including those previously provided pursuant to Case Management Order No. XII, paragraphs 20 and 21, or other publicly available information;

(c) the information sought cannot first be obtained from Non-Settling Third-Party Defendants;

and

(d) that the burden and expense of any proposed discovery does not outweigh its likely benefit.

4. In determining whether the burden or expense of any proposed discovery outweighs its likely benefit, the Court will consider:

(a) whether the burden and expense of such discovery imposes an undue hardship on the Settling Third-Party Defendants, considering the Settling Third-Party Defendants have paid substantial sums under the Consent Judgment to avoid incurring further transactional and litigation costs, and to limit and terminate their further participation in (and specifically, to limit discovery against them) in the Passaic River Litigation;

(b) whether such burden is mitigated by requiring the party seeking such discovery to pay all costs and reasonable attorneys fees incurred in responding thereto;

(c) whether the needs of the case for discovery against Settling Third-Party Defendants are limited, considering the claims in Plaintiffs' Fourth Amended Complaint are based on the alleged discharge of certain hazardous substances into the Newark Bay Complex by the Defendants from the Lister Property during the Defendants' ownership or control, and not on any alleged discharges from

properties, locations or sources associated with any Settling Third-Party Defendant;

(d) whether the need for such discovery is warranted by the amount in controversy, considering the Settling Third-Party Defendants have settled the full amount of their alleged liability, and have no further liability for any portion of the amount in controversy;

(d) whether consideration of the parties' resources warrants limiting such discovery; and

(e) whether consideration of the importance of the issues at stake in the action warrants limiting such discovery, considering the alleged liability of the Settling Third-Party Defendants has already been settled and does not require further proof, and the facts and evidence relating to the alleged liability of such parties may be unrelated to the liability of the Defendants and unnecessary to prove that liability (or the liability of Non-Settling Parties).

5. 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.

6. Settling Third-Party Defendants shall not be obligated to pay fees to the Special Master or any ESI Consultant imposed by the Court's January 28, 2011 Orders or other court fees that are incurred after entry of the Consent Judgment and Dismissal Order.

C. <u>Consistency with the Consent Judgment</u>

This Case Management Order shall be construed consistently with and to effectuate the purposes of the Consent Judgment and Dismissal Order, and any terms used herein shall be

construed according to their definitions as set forth in the Consent Judgment and Dismissal Order.

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

Upon entering the Consent Judgment, Dismissal Order and this Case Management Order, the stay governing third-party practice in the Passaic River Litigation concludes and the discovery and other obligations of Non-Settling Third-Party Defendants governed by the Court's Order on Track VII Trial Plan under Case Management Order XVII shall continue in effect, subject to deadline modifications at the discretion of the Special Master.

SO ORDERED.

_____

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

Dated:

Exhibit E to
Consent Judgment

State of New Jersey

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
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") ESCROW ACCOUNT AGREEMENT

_____
Name of Financial Institution

_____

_____
Address

_____
Telephone Number

_____
Escrow Account Number

Pursuant to the Consent Judgment between Plaintiffs, 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 the Settling Third-Party Defendants under the Consent Judgment, this Escrow Agreement and the escrow account is established to hold the Settlement Funds pursuant to the Consent Judgment. Terms used herein shall have the meaning ascribed to them in the Consent Judgment except as otherwise provided herein.

Accredited Financial Institution Name
_____
(hereinafter called "Escrow Agent")

(1) **Escrow Account/Purpose**

Settling Third-Party Defendants agree to deposit, with the Escrow Agent, the Settlement Funds as required by the Consent Judgment; and the Escrow Agent agrees to hold the Settlement Funds in escrow in an interest bearing account pursuant to the Consent Judgment and the terms and conditions of this Escrow Agreement. The sole purpose of the escrow account shall be to ensure that Settlement Funds are set aside and kept available during the pendency of any appeal of the Consent Judgment.

(2) **Amendment of the Escrow Agreement**

This Escrow Agreement may only be amended by a written agreement approved in writing by DEP and the Settling Third-Party Defendants, or as otherwise set forth herein.

(3) **Separation of Funds**

Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that the escrow account shall be a separate account apart from all other accounts.

(4) **Escrow Deposits**

Settling Third-Party Defendants agree to deposit the Settlement Funds as required by the Consent Judgment into the escrow account.

(5) **Investment of Escrow Account Funds**

The escrow account shall be invested and maintained so as to maximize yield and minimize risk (subject to the approval of DEP). 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 by DEP, in its discretion, based on prevailing financial market and economic conditions. Any such revisions or modifications by DEP to the Investment Guidelines shall be immediately incorporated into the terms of this Agreement upon receipt by the Settling Third-Party Defendants and 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.

(6) **Availability of Escrow Funds**

Subject to paragraph 5, the funds in the escrow account shall be kept readily available for withdrawal.

(7) **Interest and Other Income**

Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that all interest and other income earned as a result of investment of funds in the escrow account shall be deposited as earned into the escrow account, subject to DEP-approved fees and charges of the Escrow Agent. Such interest and other income shall be subject to the same restrictions applicable to the principal of the escrow account.

(8) **Direction of Investments**

Settling Third-Party Defendants shall have no right to direct the investment of the escrow account funds. Investments shall be directed by the Escrow Agent and DEP, as set forth in this Agreement.

(9) **Account as Non-Asset**

All funds deposited in the escrow account shall not be considered an asset of Settling Third-Party Defendants and shall not be available to any creditor of Settling Third-Party Defendants in the event of the bankruptcy, reorganization, insolvency or receivership, or for any other reason. Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that funds deposited in the escrow account are for the sole benefit of the purposes established in paragraph 1 of this Agreement and may be withdrawn only pursuant to the express provisions of this Agreement.

(10) **Monthly Statement-Financial Institution**

The Escrow Agent hereby agrees to submit monthly statements of the escrow account to the DEP. The statements shall report on all transactions charged and credited to the escrow account and shall include an itemization of all accrued interest and all opening and closing balances of principal and income.

(11) **Disbursement of Funds**

Plaintiffs, Settling Third-Party Defendants and the Escrow Agent agree that disbursements from the escrow account shall only be made upon written notice from DEP of the following:

a. The time period for appeal of the Consent Judgment has expired and no appeal was filed or the issuance of a final order approving or upholding the Consent Judgment by the highest appellate court reviewing the entry of this Consent Judgment. Upon such notice from DEP, the Escrow Agent shall disburse the funds in the escrow account, including interest, by check or checks made payable to the "Treasurer, State of New Jersey" to Plaintiffs. The payment or payments shall be mailed or otherwise delivered to the Section Chief, Cost Recovery and Natural Resource Damages 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 Consent Judgment has been overturned or remanded on appeal and the time period for appeal of such ruling has expired. One hundred and twenty (120) days after such notice, the Escrow Agent shall disburse the funds placed into the escrow account by a Settling Third-Party Defendant to the depositing Settling Third-Party Defendant, with interest earned thereon.

c. A Settling Third-Party Defendant opted-out of the Consent Judgment as provided therein. Within thirty (30) days of such notice, the Escrow Agent shall disburse the funds placed into the escrow account by the opting out Settling Third-Party Defendant to such Settling Third-Party Defendant, with interest earned thereon less ratable share of the Escrow Agent fees and expenses. Payment shall be made in the name of each Settling Third-Party Defendant as set forth on the signature pages to the Consent Judgment.

(12) **Compensation of Escrow Agent**

Notwithstanding the terms of paragraph 11 of this Escrow Agreement, the Escrow Agent shall be entitled to take reasonable compensation for its services in administering the escrow account to be established under this Agreement. Such compensation may be deducted by the Escrow Agent directly from the escrow account from time to time, but in no event more frequently than once a month, unless more frequent deductions are approved in writing by DEP. All such deductions shall be fully documented and shown as a debit to the escrow account by the Escrow Agent under the monthly statements to be submitted to DEP, pursuant to paragraph 10 of this Escrow Agreement. In all cases, the amount or rate of such compensation shall be reasonable, shall not exceed the amount or rate of compensation customarily charged by the Escrow Agent for like services, and shall be subject to the written approval of DEP. Under no event shall the Escrow Agent's compensation exceed the interest earned on the escrow account or reduce the principal in the escrow account. For purposes of this Agreement, and unless and until written approval to modify such compensation is given by DEP, the amount or rate of compensation to be charged by the Escrow Agent hereunder shall be as follows (detailed):

_____
_____

_____
_____

(13) **Termination**

This Escrow Agreement shall terminate upon payment of all funds in the escrow account under Paragraph 11 (a) or (b).

(14) **Notice and Instruction**

All notices and instructions related to this Escrow Agreement shall be in writing and, except monthly bank statements to DEP under paragraph 10, shall be made by certified or registered mail, return receipt requested.

In Witness Whereof, the parties to this Escrow Agreement have executed same on this _____day of _____ , 20___.

By_____
Signature

_____
Print or Type Name

ATTEST:

_____
Title

By

_____

Signature

_____
Print or Type Name

(Accredited Financial Institution Name)

By _____
Signature

_____
Print or Type Name

_____
Title

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

INVESTMENT GUIDELINES

PORTFOLIO OBJECTIVES

Maximize Return, Minimize Risk

GUIDELINES

The Escrow Agent shall use all reasonable efforts to invest in funds at the highest available rates of interest, consistent with the timing of the escrow fund withdrawal requirements, in the following:

A. *Obligations issued or guaranteed by an instrumentality or agency of the United States of America, whether now existing or hereafter organized;*

B. *Obligations issued or guaranteed by any State of the United States or the District of Columbia.*

C. *Repurchase agreements (including repurchase agreements of the Escrow Agent) fully secured by obligations of the kind specified in (A) or (B) above, as well as in money market funds and in common funds of the Escrow Agent invested in obligations specified in (A) and (B) above;*

and

D. *Interest bearing deposits in any bank or trust company (which may include the escrow agent) which has combined capital surplus and retained earnings of at least $50,000,000. Any interest payable on said funds shall become part of the escrow account balance*.

E. *Maximum maturity of individual securities limited to 10 years.*

F. *The average maturity should be between 3 and 5 years in accordance with the needs specified in the closure/post-closure financial plan.*

G. ***For all county, municipal, and local governments, please refer to N.J.S.A. 40A:5-15.1, which provides specific guidance for the allowable investment of public funds.***

To facilitate these investments the facility shall provide the Escrow Agent and the Chief, Bureau of Transfer Stations and Recycling Facilities, with a schedule of anticipated escrow account withdrawals consistent with the DEP approved closure/post-closure financial plan. The parties understand that said schedule shall be solely for the guidance of the Escrow Agent for investment purposes and shall not be considered as a firm escrow withdrawal schedule.

Exhibit F to
Consent Judgment

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, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC., 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 **ASSIGNMENT OF CLAIMS AND COOPERATION AGREEMENT**

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 the Settling Third-Party Defendant identified below are parties to a Consent Judgment in the above referenced Passaic River Litigation.[1]

In exchange for Plaintiffs' covenant not to sue in the Consent Judgment, Settling Third-Party Defendant has agreed to assign all of its claims for Economic Damages, if any, against

[1] Capitalized terms not specifically defined herein are defined in the Consent Judgment and those definitions are hereby incorporated by reference and adopted herein.

Occidental Chemical Corporation ("OCC"), Tierra Solutions, Inc. ("Tierra"), Maxus Energy Corporation ("Maxus"), Repsol YPF, S.A., YPF, S.A., YPF International S.A. (f/k/a YPF International Ltd.), Maxus International Energy Corporation YPF Holdings, Inc., and CLH Holdings, Inc. (the "Lister Defendants") for injuries or damages caused by Discharges at or from the Lister Site to the Newark Bay Complex or contamination of the Newark Bay Complex to Plaintiffs, and to provide information for Plaintiffs to pursue such claims. Accordingly, Plaintiffs and Settling Third-Party Defendant agree:

1. Settling Third-Party Defendant, as assignor, assigns and transfers to Plaintiffs, as assignee, for their use and benefit as provided herein, any and all sums of money now due or owing to Settling Third-Party Defendant, and all claims, demands, and cause or causes of action of whatever kind and nature that Settling Third-Party Defendant now has against the Lister Defendants, jointly or severally, arising out of, or for, Economic Damages, if any, sustained by Settling Third-Party Defendant in connection with Discharges of Hazardous Substances at or from the Lister Property to the Newark Bay Complex or contamination of the Newark Bay Complex associated therewith (the "Assigned Claims"); provided however that Settling Third-Party Defendants expressly reserve and do not assign any claims concerning their: (a) actually incurred past or future costs of investigation and remediation of Hazardous Substances, (b) contribution claims (if any) for Natural Resource Damages, (c) costs expended on community improvement projects, SEPs or similar activities undertaken in settlement or resolution of an environmental liability, (d) the loss in market value of their own real property or personal property (including the individual corporate entity value or corporate good will), (e) individual breach of contract claims, bad faith contract claims, and punitive damages claims, or (f) other claims specifically reserved by Settling Third-Party Defendants under the Consent Judgment.

2. Settling Third-Party Defendant does not guarantee payment or value of the Assigned Claims. However, Settling Third-Party Defendant agrees that in the event any payment under the Assigned Claims is made to it, Settling Third-Party Defendant will promptly remit the payment to Plaintiffs. Furthermore, Settling Third-Party Defendant represents and covenants that it has not assigned, transferred or released the Assigned Claims to any other person or entity after September 20, 2012, but not before such date.

3. Through this assignment, Settling Third-Party Defendant grants Plaintiffs the power to demand and receive satisfaction of the Assigned Claims, if any.

4. If Plaintiffs do not assert or settle the Assigned Claims of any particular Settling Third-Party Defendant within two (2) years of Entry of the Consent Judgment and any appeals thereof, those Assigned Claims shall revert to that Settling Third-Party Defendant and this Agreement shall have no further force or effect.

5. Settling Third-Party Defendant shall make reasonable efforts to provide information to Plaintiffs upon Plaintiffs' request and at Plaintiffs' sole expense in the investigation and pursuit of the Assigned Claims, if any, and make reasonable accommodations to respond to requests from Plaintiffs with respect to the pursuit of the Assigned Claims, if any. Settling Third-Party Defendants shall also reasonably assist Plaintiffs in gathering evidence, obtaining the attendance of witnesses, and responding to discovery requests. Provided the following is not legally privileged, Settling Third-Party Defendant shall provide Plaintiffs with:

(a) Reasonable access to all material information concerning the Assigned Claims Settling Third-Party Defendant is legally able to produce, whether or not deemed by Settling Third-Party Defendant to be relevant;

(b) Reasonable access to interview any current or former agent, servant or employee of Settling Third-Party Defendant concerning the Assigned Claims (with an opportunity for the Settling Third-Party Defendant to attend any interview); and

(c) Reasonable access to other material information or other responses to reasonable requests.

Plaintiffs shall be responsible for any reproduction costs.

6. Plaintiffs shall bear all costs and expenses incurred in pursuit of the Assigned Claims, and shall be entitled to retain any and all recoveries gained from such pursuit. However, under no circumstances shall Plaintiffs be responsible for Settling Third-Party Defendants' overhead, value of time, or other internal costs.

7. Nothing in this Agreement shall require the Plaintiffs to assert or settle any Assigned Claim, and the Plaintiffs shall not be liable to any Settling Third-Party Defendant for any reason as to any Assigned Claim that is not asserted or settled.

Exhibit D

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
P.O. BOX 402
MAIL CODE 401-07
Trenton, NJ 08625-0402
TEL: # (609) 292-2885
FAX # (609) 292-7695

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

September 30, 2013

Re: Comments Concerning Proposed Consent Judgment and Settlement Agreement
In the matter of *New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation et al.*, ESX-L-9868-05 (PASR)
(The "Passaic River Litigation")

To:

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The New Jersey Department of Environmental Protection (the "Department") is in receipt of your comments concerning the proposed settlement in the above-named matter with certain Third-Party Defendants, which was published for public comment in the New Jersey Register on May 6, 2013, and the proposed settlement with certain Defendants, which was published for public comment in the New Jersey Register on July 1, 2013. Copies of the comments are attached to the Department's Response to Comments.

Attached are the following documents:

1) Attachment A - Response of the New Jersey Department of Environmental Protection To Comments Received on Proposed Settlements in the Passaic River Litigation
2) Attachment B – The Order of the Hon. Sebastian P. Lombardi, J.S.C. setting forth the schedule for briefing and hearing on judicial approval of the proposed settlements

Sincerely,

Catherine A. Tormey, Esq.
Deputy Advisor to the Commissioner

cc: Hon. Sebastian P. Lombardi, J.S.C.
Hon. Marina Corodemus, J.S.C. (Ret.), Special Master

ATTACHMENT A

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
P.O. BOX 402
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Trenton, NJ 08625-0402
TEL: # (609) 292-2885
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

RESPONSE OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION TO COMMENTS RECEIVED ON PROPOSED SETTLEMENTS IN THE PASSAIC RIVER LITIGATION

On May 6, 2013, the Department of Environmental Protection ("DEP" or the "State") published a proposed Third-Party Consent Judgment in the New Jersey Register in the matter of New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation, et al.; Docket No. ESX-L-9868-05 (PASR), in the Superior Court of New Jersey, Law Division, Essex County, the Passaic River Litigation. The proposed Third-Party Consent Judgment, if approved and entered, will result in the dismissal of 261 Third-Party Defendants (the "Settling Third-Party Defendants"). The Settling Third-Party Defendants were not sued by DEP in the Litigation but have collectively agreed to pay DEP $35.4 Million to resolve or reduce certain liabilities and claims asserted against them, to assist in the restoration of the Passaic River and surrounds, and in order to be dismissed from the Litigation.[1]

On July 1, 2013, DEP also published a proposed Court Approved Settlement Agreement ("Repsol/YPF Settlement Agreement") in the New Jersey Register. The Repsol/YPF Settlement Agreement, if approved and entered, resolves various claims asserted by the State against Repsol, S.A. ("Repsol"), YPF, S.A. ("YPF"), YPF International, S.A. ("YPFI"), YPF Holdings, Inc., CLH Holdings, Inc., Maxus International Energy Company, Maxus Energy Corporation ("Maxus"), and Tierra Solutions, Inc. ("Tierra") (collectively, the "Settling Defendants"). In the Repsol/YPF Settlement Agreement, the Settling Defendants agree to pay DEP $130 Million in order to satisfy the State's substantial past costs and invest in restoration now, in exchange for the State's agreement to limit the Settling Defendants' potential future exposure to some of the State's damages and future costs at another $400 Million.

DEP received comments on these two settlements from three distinct groups.[2] First, DEP received comments on the Third-Party Consent Judgment and the Repsol/YPF Settlement Agreement from three non-profit organizations, all of whom support the settlements. (See Ex. 1.) Second, DEP received 13 sets of comments to the Repsol/YPF Settlement Agreement from Third-Party Defendants raising legal issues and/or questions regarding the intersection of the two settlements. (See Ex. 3-15.) Accordingly, DEP has analyzed and responds to the comments on these two settlements together. Finally, DEP received comments to the Repsol/YPF Settlement

[1] A list of the Settling Third-Party Defendants is included as an exhibit to the Third-Party Consent Judgment.
[2] The comments to both settlements are attached to this response to comments and are numbered Exhibits 1-15.

Agreement from Occidental Chemical Corporation ("OCC"),[3] which has already been adjudicated liable for the intentional discharges of Agent Orange, dioxins and other hazardous substances from the Lister Site.[4] (See Ex. 2.) OCC chose not to participate in the pending settlements; accordingly, the DEP must and will pursue OCC for the State's future remediation costs, past and future economic damages suffered by the State directly or through assignments, natural resource damages, and all punitive damages found appropriate by a jury, that are associated with OCC/DSCC's deliberate and notorious pollution of the Passaic River. Following the pending settlements if approved, the only claims and parties remaining in the Passaic River Litigation are related to OCC's liabilities.

These settlements – together recovering $165 Million and dismissing almost 270 litigants – represent a significant step toward achieving the State's goals for the Passaic River and finally finishing the Passaic River Litigation.

A. Contamination of the Passaic River

The Passaic River is one of the most polluted waterways in the country and one of the worst dioxin sites in the world. From the 1940s until 1969, OCC's predecessor, DSCC, manufactured DDT, Agent Orange, and other pesticides and herbicides at its agricultural chemical plant located at 80 Lister Avenue in Newark ("Lister Site"). During that time, OCC/DSCC intentionally and regularly dumped production waste and off-specification product, specifically including a congener of dioxin known as "TCDD," into the Passaic River. DEP, the United States Environmental Protection Agency ("EPA"), and other regulatory agencies around the world have determined that TCDD is one of the most toxic chemicals ever developed by humans, is extremely harmful to human health and the environment, and can cause adverse health effects (including cancer and reproductive damage) at very low concentrations. Dioxin concentrations in the Passaic River fish and crabs are among the highest reported in any known scientific literature and are considered unsafe for human consumption. Because of the TCDD and other hazardous substances that OCC/DSCC discharged into the Passaic River, DEP has been forced to impose and enforce fishing and crabbing bans for more than 25 years. Despite DEP's efforts, however, the fish and crabs are known to be harvested and consumed by a segment of the population of New Jersey.

TCDD and other hazardous substances discharged by OCC/DSCC from the Lister Site have migrated throughout the Passaic River (below the Dundee Dam) and Newark Bay Complex, creating one of the most contaminated waterways in the world. In addition to the imminent and substantial danger that TCDD and other hazardous substances discharged by OCC/DSCC poses

[3] In 1986, OCC purchased Diamond Shamrock Chemicals Corporation ("DSCC"), the chemical operations and successor of Diamond Shamrock Corporation ("DSC-1"), with knowledge of the Lister Plant practices and environmental condition and, in 1987, knowingly merged DSCC into itself. On February 7, 2012, OCC stipulated in the Consent Order on Track III Kolker-Era Issues that DSC-1 is the successor to Diamond Alkali Organic Chemicals Division, Inc., Kolker Chemical Works, Inc. and various related entities, that they all discharged hazardous substances into the Passaic River for decades, and that DSC-1 is "strictly, jointly and severally liable under the Spill Compensation and Control Act…" for all of the past and future costs at issue. Accordingly, as used herein "OCC/DSCC" refers to OCC, DSCC/DSC-1, and their predecessors in interest at the Lister Site.

[4] See July 19, 2011 Order Partially Granting Plaintiffs' Motion for Summary Judgment Against OCC, Maxus and Tierra.

to human and animal populations, the presence of TCDD in the sediment continues to impact commerce, industry, navigation, and dredging and has significantly damaged the ecosystem and natural resources of the Passaic River and the State of New Jersey.

Twenty years ago, the New Jersey Superior Court, Appellate Division, reviewed the Lister Site plant operations and held that OCC/DSCC's actions in discharging TCDD and other hazardous substances into the Passaic River between the 1940s and 1960s "constituted intentional conduct with the corresponding intentional injury inextricably intertwined." Diamond Shamrock Chemicals Company v. Aetna Casualty & Surety Company, 258 N.J. Super. 167 (App. Div. 1992). The Court found that OCC/DSCC knew "the nature of the chemicals it was handling," and then that "they were being continuously discharged into the environment." Id. at 211. Former plant workers testified under oath that OCC/DSCC's waste policy amounted to "dumping everything" into the Passaic River and that employees were directed to wade surreptitiously into the Passaic River at low tide and "chop up" the mountains of chemicals in the River so they would not be seen by passing boats. Id. at 184. Based upon its examination of the record, the Court found that OCC/DSCC "intentionally and knowingly discharged hazardous pollutants with full awareness of their inevitable migration to and devastating impact upon the environment." Id. at 197. Today, extremely high concentrations of TCDD remain in the sediments of the Passaic River, are migrating throughout Newark Bay, and continue to be a threat to human health and the environment.

In 1983, dioxin contamination was discovered at the Lister Site and across the Ironbound section of Newark. Governor Thomas H. Kean issued Executive Order 40 authorizing DEP, on an emergency basis, to take immediate action to protect the public health and environment. DEP secured the site and was responsible for overseeing cleanup. The EPA added it to the federal National Priorities List in 1984 as one of the most contaminated sites in the country, and EPA later became the lead government agency responsible for overseeing the cleanup. The Diamond Alkali Superfund Site is more broadly defined to include the Lister Site itself and the areal extent of the dioxins (including TCDD), which spread from the Lister Site throughout the 17-miles of the lower Passaic River and Newark Bay, and into portions of the Hackensack River, the Arthur Kill, and the Kill Van Kull.

In 1986, after the Diamond Alkali Superfund Site was added to the NPL, OCC purchased DSCC and its ongoing chemicals business from Maxus. As part of the transaction, OCC/DSCC sold the Lister Site to Tierra, which was created to hold the property while it was being remediated, with both parties having knowledge of the extensive contamination of the property. Also, as part of the transaction, Maxus agreed to indemnify OCC for certain environmental liabilities associated with DSCC and the Lister Site in the 1986 Stock Purchase Agreement ("SPA") between the companies. The next year, OCC merged DSCC into itself and became the legal successor for the Lister Site discharges. DEP has obtained a judgment in the Passaic River Litigation that OCC is liable for all past and future cleanup and removal costs associated with the hazardous substances discharged from the Lister Site.

DEP is currently working with EPA to finalize a Focused Feasibility Study Report for the Lower Eight-Miles of the Lower Passaic River ("FFS") that will address contaminated sediments in the lower section of the Passaic River. The last public draft version of the FFS was issued in 2007, and the revised final draft of the FFS is anticipated to be released in December 2013 or early 2014. The FFS and the data and studies referenced in the administrative record indicate

that hazardous substances discharged by OCC/DSCC from the Lister Site, including TCDD, are the primary drivers of anticipated cleanup cost within the FFS Area. After the FFS is issued, it is anticipated that a proposed plan for the remediation of the lower eight miles of the Passaic River will be issued by EPA in cooperation with DEP. The 2007 draft of the FFS provided remedy alternatives projected, at that time, to cost between $863,000,000 and $2,272,000,000. The costs estimates in the FFS are based on net present value, and actual costs may vary when the selected remedial alterative is implemented. Additionally, the cost estimates in the FFS are for comparison purposes when evaluating the available remedial alternatives and are intended to provide an accuracy of +50 to -30 percent. (USEPA RI/FS Guidance (1988)). Actual costs of a selected remedy may vary.

Future costs anticipated to be incurred by DEP in the implementation of the selected FFS remedy are unknown. Under the Comprehensive Environmental Response, Compensation and Control Act, ("CERCLA") 42 U.S.C. §§ 9601 to 9675, the State could be asked to provide up to 10% of the costs of any remedy publicly funded under the federal Superfund, and be asked to secure a disposal location for the hazardous substances.

B. The Passaic River Litigation

Almost eight years ago, in December 2005, DEP brought the Passaic River Litigation to recover all of the costs and damages the State and public incurred as a result of the intentional discharges from the Lister Site, to obtain a declaratory judgment that OCC is responsible for all of the State's future cleanup and removal costs associated with the hazardous substances discharged from the Lister Site, and to recover the costs and fees incurred by DEP in prosecuting the Passaic River Litigation. When the Litigation was brought, the State reserved its claims for natural resource damages against OCC and all others.

As part of the Passaic River Litigation, the State also pursued claims against Maxus and Tierra related to the hazardous substances discharged from the Lister Site. Also, the State pursued claims against Repsol and YPF (and its subsidiaries YPFI, YPF Holdings, Inc., CLH Holdings, Inc., and Maxus International Energy, Inc.), Maxus and Tierra (collectively, the "Repsol/YPF Defendants"), alleging fraudulent transfers, alter ego, and breaches of fiduciary duties arising from Maxus's alleged liabilities for damages related to the Passaic River (the "Fraudulent Transfer Claims"). Repsol, YPF and their subsidiaries other than Maxus/Tierra were not alleged to be directly responsible as dischargers under the Spill Act, only vicariously liable for the environmental liabilities of Maxus. OCC later filed cross-claims similar to DEP's Fraudulent Transfer Claims. The Repsol/YPF Settlement Agreement does not seek to limit OCC's cross-claims, and the Repsol/YPF Defendants continue to deny the allegations set forth therein.

During the course of the Passaic River Litigation, the Court entered three judgments as to OCC, Maxus and Tierra that substantially inform both of the pending settlements. First, the Court ruled that OCC is the direct successor by merger to DSCC and is responsible for all cleanup and removal costs associated with the hazardous substances discharged from the Lister Site and into the Newark Bay Complex. (July 19, 2011 Order Partially Granting Plaintiffs' Motion for Summary Judgment Against OCC, Maxus and Tierra.) Accordingly, OCC has been adjudicated a "discharger" under the Spill Act, and found strictly, jointly and severally liable for

the State's past and future cleanup and removal costs associated with the hazardous substances discharged from the Lister Site. (Id.)

The Court also found that Maxus must indemnify OCC for certain environmental liabilities at issue pursuant to the express terms of the 1986 Stock Purchase Agreement whereby OCC acquired DSCC from Maxus. (August 24, 2011 Order Granting OCC's Motion for Partial Summary Judgment Against Maxus.) Important to any analysis of the pending settlements, the Court ruled that Maxus was not directly responsible to the State as the successor to – or "mere continuation" of – DSCC or Diamond Shamrock Corporation-1 (DSC-1).[5] (May 21, 2012 Order Granting In Part and Denying In Part Plaintiffs' Motion for Partial Summary Judgment Against Maxus.) The Court also found that, with knowledge of the contamination, Tierra purchased the Lister Site from OCC in order to facilitate OCC's purchase of the chemicals business from Maxus. (August 24, 2011 Order Granting Plaintiffs' Motion for Partial Summary Judgment Against Tierra.) The Court thus found Tierra "in any way responsible" under the Spill Act for the cleanup and removal costs associated therewith. (Id.) Finally, the Court also held that Maxus is liable as the alter ego of Tierra for those costs that Tierra may be required to bear as the owner of the Lister Site. (May 21, 2012 Order Granting In Part and Denying In Part Plaintiffs' Motion for Partial Summary Judgment Against Maxus.) Maxus and Tierra contested, and have stated their intention to appeal, the Court's ruling as to their direct responsibility under the Spill Act, especially in-so-far as the ruling holds Tierra strictly, jointly and severally responsible for all cleanup and removal costs associated with hazardous substances that were discharged off-site before Tierra purchased the Lister Site in the mid-1980's.

With regard to the Fraudulent Transfer Claims against the Repsol/YPF Defendants, DEP had been actively litigating those claims for many years. For almost three years, the State litigated – and ultimately prevailed upon – the initial motions to dismiss filed by several of the Repsol/YPF Defendants contesting the jurisdiction of the Courts of New Jersey, though the foreign defendants will be permitted to address these issues again by motion or at trial on the merits. The State devoted significant resources to experts and fees associated with the Fraudulent Transfer Claims – and was in the process of preparing its experts and taking dozens of depositions around the globe – when the Republic of Argentina repatriated YPF and took control of the majority of YPF's stock from its then parent company, Repsol YPF, S.A. DEP filed a motion seeking emergency relief severing the Fraudulent Transfer Claims from the remainder of the Passaic River Litigation upon learning that YPF had arguably become an instrumentality of a foreign sovereign, but the Court rejected DEP's motion in that regard. Instead, the Court ordered a stay of the claims against the Repsol/YPF Defendants while Repsol and YPF could obtain separate counsel in the Litigation, recognizing the uncertainties and strains arising from the repatriation of YPF by the Republic of Argentina. That stay remains in effect.

During this period of Court-ordered stay, and following years of intense litigation and the expenditure of millions of dollars on necessary experts, fees and costs associated with pursuing the claims against the Repsol/YPF Defendants, DEP resolved its differences with the

[5]The Court found that OCC paid over $400 Million for an ongoing chemicals business and that it succeeded to the Lister Site liabilities as a matter of law when it purchased and then merged DSCC into itself. Thus, the Court found that it was OCC, not Maxus, which succeeded to the liabilities at issue in the Passaic River Litigation.

Repsol/YPF Defendants under the terms of the Repsol/YPF Settlement Agreement. Under the terms of the Repsol/YPF Settlement Agreement, the State will recover all of its past costs associated with investigating the cause, extent and impacts associated with OCC/DSCC's discharges of hazardous substances from the Lister Site, and the State's substantial fees and costs associated with the pursuit of the Fraudulent Transfer Claims and the rest of the Passaic River Litigation. In reaching these settlements, DEP recognized and factored in the substantial remaining litigation costs and fees necessary to pursue the Fraudulent Transfer Claims, both the litigation and collection risks associated with those claims, the overarching need to resolve the years-long discovery and litigation with the Repsol/YPF Defendants, the substantial payment received from these parties, and the right to finally try its damage claims against OCC after nearly eight years of litigation.

C. Settlement Process and Terms

Third-Party Consent Judgment

Despite DEP's repeated efforts to prevent joinder of Third-Party Defendants and keep the litigation focused on OCC/DSCC's discharges of TCDD and related hazardous substances into the Passaic River, Maxus and Tierra were ultimately allowed to join and file Third-Party Complaints against approximately 300 Third-Party Defendants on February 4, 2009. Maxus and Tierra alleged that the Third-Party Defendants were liable in contribution to Maxus and Tierra for the costs and damages incurred, and to be incurred, by Maxus and Tierra in remediating contamination related to OCC/DSCC's discharges of hazardous substances into the Newark Bay Complex. Additional third-party claims were alleged against certain public entities under the New Jersey Environmental Rights Act, Passaic Valley Sewerage Commissioners Statutes, and for nuisance and breach of the public trust. DEP did not join in the claims against the Third-Party Defendants, and the Court reserved any and all claims DEP and the State of New Jersey may have against current Third-Party Defendants arising from or related to the Newark Bay Complex, as well as claims against any future third- or fourth-party defendants during the pendency of, and after the conclusion of, this litigation. The addition of the Third-Party Defendants greatly complicated the litigation, and the burdens on the Court, Special Master, State, and local governmental entities were substantial.

After years of bogging down the Passaic River Litigation and consuming enormous public resources, DEP and certain Third-Party Defendants began settlement discussions with the objective of settling the liabilities of the Third-Party Defendants and having them dismissed from the Passaic River Litigation. To the credit of the participating Third-Party Defendants, those discussions resulted in the development of the Third-Party Consent Judgment. Under the terms of the Third-Party Consent Judgment, the Settling Third-Party Defendants will collectively pay the State $35.4 Million and assign certain economic damage claims to the State. The Settling Third-Party Defendants are retiring, and will also receive a covenant not to sue and contribution protection under the Spill Act for, the State's past cleanup and removal costs and certain future cleanup and removal costs. The Settling Third-Party Defendants are also contributing toward the restoration of the Passaic River and will receive a Natural Resource Damages ("NRD") credit equal to 20% of the settlement funds (approximately $7 Million). If entered, the Third-Party Consent Judgment will result in the dismissal of all claims asserted in the Passaic River Litigation against the Settling Third-Party Defendants, subject to the State's reservation of

certain claims against the Settling Third-Party Defendants, including, but not limited to, claims for NRD and future cleanup and removal costs. Those reservations were subject to certain thresholds, particularly within the FFS Area, based upon the fact that the majority of the risk, and thus the remedy, within the FFS Area is driven by TCDD and the hazardous substances intentionally discharged by OCC/DSCC.

Repsol/YPF Settlement Agreement

After the Third-Party Consent Judgment was released for public comment, DEP began mediated settlement discussions with OCC, Repsol, YPF, Maxus and Tierra. After initial participation, OCC chose not to participate meaningfully in global settlement negotiations. DEP, Repsol, YPF, Maxus and Tierra were left to develop a settlement structure that would resolve many of the State's claims with the Settling Defendants, while recognizing the contractual relationship between Maxus and OCC, and thus was intended to also benefit OCC. In consideration of Maxus's indemnity obligations to OCC, DEP and the Settling Defendants developed a "high-low" settlement that resolves DEP's claims against the Settling Defendants and certain claims against OCC, but leaves open the possibility that the Settling Defendants may pay more. Under the terms of the Repsol/YPF Settlement Agreement, the Settling Defendants agreed to pay the State $130 Million to be applied first to past cleanup and removal costs and then as a credit against their own NRD, if any, but not that of OCC. The Agreement also caps the Settling Defendants' future liability for certain claims at $400 Million in the event OCC is successful in its claims against Repsol and/or YPF and YPFI and collects from those entities.

Importantly, DEP's resolution of its claims against the Repsol/YPF Defendants leaves the legally responsible and recalcitrant defendant, OCC, strictly, jointly and severally responsible for the future cleanup and removal costs associated with the Lister Site and for the damages caused by OCC and its predecessors. OCC has been adjudicated the "discharger" from the Lister Site, and the State intends to require that OCC pay the future costs and all of the damages associated with such discharges. Accordingly, the State has reserved its claims for future remediation costs against OCC (the subject of the State's existing judgment under the Spill Act), and the State has reserved all of its claims for economic damages, natural resource damages and punitive damages under the Spill Act, common law and/or all other avenues available to the State. While the liabilities of the other Repsol/YPF Defendants, besides Tierra, were derivative of Maxus's alleged indemnity liability, OCC's liability to the State is direct, as it is the legal successor to DSCC. Importantly, OCC has contractually allocated its liability with Maxus through the indemnity agreement negotiated as part of the 1986 Stock Purchase Agreement whereby OCC acquired DSCC from Maxus. Thus, the settlement with the Repsol/YPF Defendants expressly recognizes that Maxus has a continuing indemnity obligation to OCC and does not impact or impair that obligation or ruling in any way.

The Repsol/YPF Settlement Agreement resolves any direct liability of the Settling Parties to the State for their connection to the Lister Site, but it does not resolve their liability as to OCC. Importantly, Maxus's liability under the indemnity is not affected in any way and is not subject to the caps established in the Repsol/YPF Settlement Agreement. In exchange for the $130 Million cash consideration, DEP has agreed to cap the ultimate exposure of Repsol, YPF and/or YPFI at an additional $400 Million, which would be effectuated by the State's agreement to reduce its judgment against OCC to no more than $400 Million to the extent OCC succeeds in

obtaining and collecting on a judgment against these Settling Defendants for OCC's liabilities to the State.

Thus, the Repsol/YPF Settlement Agreement is not in a "traditional" form of agreement precisely because of the indemnity agreement and contractual allocation of responsibilities between OCC and Maxus/Tierra. When OCC chose not to participate in settlement negotiations with DEP and the Repsol/YPF Defendants, OCC essentially dictated the structure of DEP's settlement. As discussed below, because OCC and Maxus/Tierra agreed how to allocate their responsibilities for the same discharges and site, the State cannot and should not reallocate those responsibilities as between those parties. If the indemnity fails for whatever reason, that is a matter of contract between Maxus and OCC. If OCC's indemnity claim succeeds, Maxus is liable. Further, if OCC is also successful in its claims against Repsol, YPF and/or YPFI, some or all of the State's potential recovery against OCC will be subject to the caps agreed to with Repsol, YPF and YPFI, and any judgment against OCC must be reduced. Accordingly, though it rejected the opportunity to settle with DEP, OCC has received substantial benefits from the Repsol/YPF Settlement Agreement.

D. The Reserved Claims and Future Costs

The inter-related proposed settlements with the Third-Party Defendants and the Repsol-YPF Defendants were designed to complement each other in order to advance a major goal of the Passaic River Litigation: ensuring that the State and public would not have to pay any share of a publicly-funded remediation of the Diamond Alkali Superfund Site. The settlements recognize and address three separate components of the Diamond Alkali Superfund Site – the Lister property itself, the FFS Area (the approximately eight miles of the Lower Passaic immediately adjacent to the Lister Site and most impacted by OCC/DSCC's discharges), and geographical areas subject to EPA's Superfund process that are outside of the eight miles comprising the FFS Area, including the remainder of the lower Passaic River and Newark Bay. DEP's authority to enforce the continuing obligations of OCC, Maxus and Tierra with respect to the Lister Site itself under current administrative orders, consent decrees, or judgments is expressly recognized and reserved in the Settlement Agreement.

Regarding both the FFS Area and areas within the Diamond Alkali Superfund Site but outside of the FFS Area, both proposed settlements contemplate a layering of potential liability for the State's future cleanup and removal costs, if any. A proposed remedy for the lower eight miles of the Passaic River is expected to be publicly released by EPA in December 2013 or early 2014. Current estimates for this cleanup have ranged from $800 Million to $4 Billion. It is the EPA policy, supported by DEP, that the polluter pays for the cleanup. If the EPA is unable to reach a satisfactory agreement with the polluters to fund the cleanup, it may initiate a publicly funded cleanup under CERCLA. Under CERCLA, the local State share would be approximately 10% of the total costs of a publicly funded cleanup. 42 U.S.C. § 9604. It is anticipated that the EPA, as is its usual practice, will work with the potentially responsible parties to develop a remedy that would be funded by those parties. However, one of the goals for bringing the Passaic River Litigation was to ensure that, in the unlikely event there is a publicly funded remedy in the FFS Area, the State's share of any such cleanup would be paid by the polluter – OCC – and not the public.

It is also important to note that while DEP did not assert in the Passaic River Litigation any claims for NRD, except for the costs of a Natural Resource Damages Assessment ("NRDA"), DEP is but one of several trustees who have responsibility for protecting and preserving the public's interest in affected natural resources. While DEP specifically reserved these potential claims against the direct Defendants and Third-Party Defendants by court order dated April 24, 2012, both settlements address certain NRD obligations of the settling parties.

The Third-Party Consent Judgment sets forth a process for addressing the NRD liability of the Third Party Defendants to the State and provides for a modest credit against DEP's claims for NRD, and the Repsol/YPF Settlement Agreement reserves the State's right to pursue OCC for OCC's share of NRD. The two settlements do not retire NRD claims of any federal trustee, including the federal trustees' rights to seek funding for an NRDA.

E. The Comments Received by DEP

The majority of the comments received were submitted by entities that have been sued as Third-Party Defendants by Maxus and Tierra in the Passaic River Litigation. The Third-Party Defendants entered a separate Third-Party Consent Judgment to resolve certain portions of their liability with DEP and seek to be dismissed from the Passaic River Litigation, accordingly. The comments of the Third-Party Defendants focus primarily upon the intersection of the Third-Party Consent Judgment and the Repsol/YPF Settlement Agreement, requiring that the State consider both settlements together. The other comments were received from OCC, the remaining defendant and entity responsible for discharging Agent Orange, dioxins, DDT and various other pesticides and hazardous substances into the Passaic River for decades, and from public interest groups.

Reponses to the comments are grouped according to the subject matter of the comments and the entity providing the comment(s).[6] The responses addressed below have been grouped as follows: (a) comments received from non-parties; (b) comments received from OCC, and (c) comments received from Third-Party Defendants. For convenience of the reader, the comments are summarized and organized based upon identical or similar issues. In developing the settlements and evaluating the comments received thereto, DEP considered (i) its statutory authority and responsibility under the Spill Act and other statutes, (ii) its administrative expertise, (iii) the extensive administrative record, (iv) risk and expense of continued litigation against the settling parties, (v) the procedural and substantive status of the litigants both prior to and following the entry of the proposed settlements, (vi) the potential costs and risks of continued litigation with the remaining parties, (vii) the goals of the State in initiating the Passaic River Litigation, and (viii) the substantial recoveries and benefits obtained for the State.

[6]Except as otherwise set forth herein, the terms defined in the Third-Party Consent Judgment and Repsol/YPF Settlement Agreement shall have the same meaning when capitalized and used herein.

COMMENTS FROM NON-PARTIES
TO THE PASSAIC RIVER LITIGATION

Comments regarding use of settlement funds by DEP and the State for both the Third-Party Consent Judgment and Repsol/YPF Settlement Agreement

Comments were received for both the Third-Party Consent Judgment and the Repsol/YPF Settlement Agreement concerning how the State will use the settlement funds and whether portions will be used for natural resource restoration or cleanup of the Passaic River and Newark Bay. The comments are otherwise supportive of entry of both settlements. The comments were sent by the NY/NJ Baykeeper, the Hackensack Riverkeeper, and the Ironbound Community Corporation. (See Ex. 1.)

Response:

DEP appreciates the commenters' recognition of DEP's "perseverance and persistence" in pursuing the Passaic River Litigation for nearly eight years against those responsible for the pollution of the River, and the fact that the commenters support the proposed settlements. The commenters state that their organizations and members have suffered from decades of pollution of the Passaic River, and that many citizens have lost the full economic and recreational use of the River. DEP does not disagree. DEP recognizes the important role that their organizations and members play in the communities affected by the pollution of the Passaic River.

DEP brought this lawsuit in order to secure funding for a potential State share of any cleanup, to ensure that the citizens of New Jersey would not have to pay for any eventual cleanup of the River, to recover the State's substantial past investigation costs, to recover the costs of litigation, and to recover certain categories of damages from the parties sued by the State. Because remediation of the Diamond Alkali Superfund Site is being investigated under CERCLA with the EPA as the project lead, the two pending settlements and the judgments previously obtained by the State assure that most of these goals have been or will be achieved, while the Passaic River Litigation will continue against OCC, the party responsible for the TCDD contamination and other Lister Site discharges.

The issue of the disposition and use of any settlement funds is within the discretion of the Executive and Legislative Branches and is not an element for consideration in determining whether the pending settlements should be approved. However, it is important to note that since the discovery of dioxin at the Lister Site, the State has significantly funded the efforts undertaken by DEP and DOT to evaluate Passaic River contamination, study the impact of that contamination on human health and the environment, issue consumption advisories and act to protect the public, analyze impacts and disposal options for contaminated sediments dredged from the Newark Bay Complex to maintain commerce, and pursue the parties responsible for this contamination. As of July 1, 2013, the State's past costs and fees totaled $148,054,313.30. It is therefore appropriate in the first instance that settlement funds received from parties tied to contamination of the Passaic River be used to reimburse the State such costs.

Beyond reimbursement for all of these expenditures, the two pending settlements provide for another approximately $17 Million in recoveries from the settling parties. In order to effectuate the terms of the settlements and the NRD credits provided therein, the State is committed to applying these additional funds to reducing the natural resource damages done to the Passaic River and surrounds.

Moreover, DEP has reserved natural resource damages and will continue to seek all appropriate future costs, and damages from OCC. While the proposed Repsol/YPF Settlement Agreement does provide the Settling Defendants with an NRD credit against their own NRD liability and covenant not to sue from DEP, it does not settle OCC/DSCC's NRD liability nor does it resolve any potential federal trustee NRD claims against any Settling Defendants or Settling Third-Party Defendants.

In sum, it must be recognized that the Passaic River Litigation is not an isolated lawsuit, nor is it the only remedy that addresses the health and safety of the impacted communities, the cleanup of contaminants in the Newark Bay Complex, or the restoration of natural resources. There continues to be an ongoing federal process to develop a strategy for cleaning up the contamination in the Newark Bay Complex. The Phase I removal of some 40,000 cubic yards of highly-contaminated sediments just outside of the Lister Site, the ongoing removal of contaminated sediment by at river mile 10.9 in Lyndhurst, and the recent opening of Riverfront Park are just some examples of the progress being made under this multi-pronged approach. These settlements and the ongoing litigation against OCC will ensure that the polluters, and not the public, will pay for the remediation of Passaic River

COMMENTS FROM OCCIDENTAL CHEMICAL CORPORATION

Comment 1(a) regarding the State's costs and damages sought in the Passaic River Litigation

The commenter requests information regarding the amounts and types of damages sought by the State in the Passaic River Litigation and resolved by the Repsol/YPF Settlement Agreement. The comment does not cite to any document in the administrative record or lack thereof, but requests that DEP identify with specificity the costs incurred (or that will be incurred in the future) and the damages sustained in connection with discharges from the Lister Site. The commenter also requests that DEP provide information regarding the amount of costs and damages attributable to each category of costs and damages covered by the Repsol/YPF Settlement Agreement. (See Ex. 2.)

Response:

For decades, OCC/DSCC and its predecessors intentionally discharged vast quantities of Agent Orange, dioxins, DDT and other hazardous substances at the Lister Site and from the Lister Site into the Passaic River. Diamond Shamrock Chemicals Company v. Aetna Casualty & Surety Company, 258 N.J. Super. 167 (App. Div. 1992). OCC bought DSCC after the nature of the dioxin contamination had been discovered, after the Governor of New Jersey declared a public health crisis and a state of emergency, and after the Lister Site had been designated on the National Priorities List as one of the worst contaminated sites in the country. Accordingly, when OCC purchased DSCC (and its ongoing chemicals business) from Maxus for over $400 Million, OCC negotiated for a reduced price for DSCC, and it demanded an indemnity from Maxus. It received both.

The environmental liabilities at issue in the Passaic River Litigation are the subject of Maxus's indemnity, as already established by the Court. (August 24, 2011 Order Granting OCC's Motion for Partial Summary Judgment Against Maxus.) Hence, OCC and Maxus have "vertical privity" with regard to the Lister Site, that is, OCC, Tierra and Maxus share responsibility for the same discharges at the same site due to their contractual relationship with each other, and they have allocated their own responsibility for those liabilities via an indemnity agreement in the Stock Purchase Agreement whereby OCC purchased DSCC. DEP recognized and honored that agreement in the Repsol/YPF Settlement Agreement. But, DEP does not have to allocate legal responsibility between OCC and OCC's indemnitor in order to resolve its claims against Maxus and the other Settling Defendants. Further, the cases and comments cited by OCC concerning Tierra's and Maxus's liability may apply to an allocation among joint tortfeasors at different sites, as will likely be the case between OCC and third-parties responsible for other sites and discharges throughout the Newark Bay Complex. However, the Repsol/YPF Settlement Agreement requires no such allocation.

The administrative record and the discovery in the Passaic River Litigation clearly set forth the damages alleged by DEP, specifically identifying past cleanup and removal costs claimed by DEP. In addition to the record developed for the settlement, OCC has served and received extensive discovery conducted in the Passaic River Litigation concerning damages claimed by DEP, including several detailed damages disclosures and written damages discovery under Case Management Orders III, V, VII, XII, XVII. Reponses to such discovery were

included in the administrative record and are otherwise available to OCC as a party in the Passaic River Litigation.

The damages sought by DEP and resolved by the Settlement Agreement are clearly set forth in the Repsol/YPF Settlement Agreement and supported by the record. Under the terms of the Repsol/YPF Settlement Agreement, the State is due to receive $130 Million shortly after its approval and entry by the Court. (Repsol/YPF Settlement Agreement at ¶ 21.) The Repsol/YPF Settlement Agreement further provides that when determining any credit for the Settling Defendants, the $130 Million in settlement funds shall be applied first to retire the State's past cleanup and removal costs and second as a credit to NRD. (Repsol/YPF Settlement Agreement at ¶¶ 24 and 63(c).) In addition to the language of the Repsol/YPF Settlement Agreement, the case management order attached to the Repsol/YPF Settlement Agreement, which the parties will seek to have the Court enter, provides that the settlement funds would be applied to the State's past cleanup and removal costs and NRD. (Repsol/YPF Settlement Agreement Case Management Order, ¶ 4.)

As clearly set forth in the administrative record and DEP's damages disclosures, the State's past costs total $148,054,313.30 with litigation costs as of July 2013. Finally, there is no requirement under the Spill Act or common law that DEP must compare the total damages to each Settling Defendants' proportionate liability, especially when the Settling Defendants are paying as a group for claims distinct from those asserted against OCC. Also, any allocation of settlement funds and past cleanup and removal costs must account for the settlement funds to be paid to the State as part of the Third-Party Consent Judgment.

Comment 1(b) regarding Settling Defendants' allocated share of liability

The commenter requests that the DEP provide the basis for determining the share of liability allocable to the Settling Defendants. (See Ex. 2.)

Response:

Although the Repsol/YPF Settlement Agreement requires Repsol and YPF (or Maxus) to each pay $65 Million for a combined $130 Million, the settlement is contingent on payment of the entire settlement amount. (Repsol/YPF Settlement, ¶ 24.) DEP negotiated the settlement with all of the Settling Defendants and considers the payment of the settlement funds holistically; it is immaterial how much is paid by any particular Settling Defendant as long as Settling Defendants collectively satisfy the payment obligation. This is particularly true because the Settling Defendants are or were related entities with common ownership. The comment also fails to identify any precedent or authority for the requested fair share allocation amount related to settling co-defendants, as to their liability to the State.

Moreover, because OCC and its predecessors sold the Lister Site to Tierra so that OCC could acquire the chemicals operations of DSCC, OCC, Maxus and Tierra's liability was allocated among them by contract. While OCC often cites DEP to Tierra's Spill Act liability for off-site contamination as the subsequent purchaser of the Lister Site from OCC/DSCC, DEP must recognize the litigation risks of such argument on appeal and the fact that: (i) OCC/DSCC sold Tierra the Lister Site after most, and possibly all, discharges occurred; (ii) OCC obtained an

indemnity from Tierra's parent, Maxus, for such liabilities; and (iii) Tierra presents a substantial collection risk for any final judgment.

Even if DEP were required under the Spill Act to allocate the liability that Tierra acquired when it acquired the Lister Site from OCC with knowledge of the contamination (which under the Spill Act's joint and several liability scheme, it does not), in DEP's discretion, Tierra's independent responsibilities are adequately resolved under the particular facts of this case. First, Tierra's liability to the State was created by OCC's demand that it would not acquire the Lister Site when it knowingly acquired DSCC. Hence, DSCC (now OCC) transferred the Lister Site to Tierra right before – and in order to facilitate – OCC's acquisition of DSCC and its very profitable chemicals business. Maxus's indemnity to OCC in the SPA contemplated that title to the Lister Site was transferred from OCC's predecessor (DSCC) to Maxus's subsidiary (Tierra) and that Maxus would indemnify OCC from certain related environmental liabilities. Under these facts, OCC's suggestion that Spill Act liability has to be allocated between OCC and Tierra or Maxus is circular, unsupportable and self-serving.

Second, unlike OCC/DSCC's operations on the Lister Site, Tierra acquired the property to facilitate and during the ongoing stabilization and later remediation of preexisting discharges. Tierra did not own the property when most, if not all, of the discharges into the Passaic River occurred, and TCDD had already spread into other parts of the Newark Bay Complex by the time Tierra acquired the property. Thus, any comparison between Tierra's ownership and OCC/DSCC's ownership and operation of the Lister Site and as the actual and intentional discharger, is inappropriate.

Third, unlike typical "Spill Act" settlements, the Repsol/YPF Settlement Agreement is structured as a "high-low" agreement. Repsol, YPF and YPFI are resolving the Fraudulent Transfer Claims and the costs and fees associated therewith, as well as the environmental liabilities of their subsidiaries and related entities. When OCC refused to participate in negotiations with the State and the Settling Defendants, however, it became incumbent upon the settling parties to pay on behalf of OCC to retire certain of DEP's claims against OCC. Therefore, OCC is receiving 100-percent credit for the resolved claims, as the Settling Defendants and Third-Party Defendants have together paid and retired all of the State's $148 Million in claims for past costs and fees, including the State's claims against OCC for those same costs and fees.

Moreover, as to the claims that the State reserved against OCC, the Repsol/YPF Settlement Agreement recognizes the Maxus indemnity to OCC and leaves that indemnity obligation wholly in place. For any amount that the State may recover from OCC in the future, OCC is free to pursue the entirety of such recovery from Maxus. If the claim is indemnified, Maxus will be obligated to pay it. Hence, as to Maxus and its indemnity obligations, OCC's rights are untouched, and it is better off as a result of the Repsol/YPF Settlement. Moreover, recognizing that OCC will eventually pursue Repsol, YPF and YPFI for fraudulent transfers and related claims if the State is successful, the Repsol/YPF Settlement Agreement also provides that, if OCC is successful in recovering on such claims, the State will reduce its own judgment against OCC on its reserved claims to no more than $400 Million in additional recoveries. The Repsol/YPF Settlement Agreement simply operates as a traditional "high-low" agreement, whereby the settling parties agreed to pay the State $130 Million now in exchange for the State's

agreement to cap their ultimate exposure at no more than $530 Million. Thus, if OCC is successful in its claims against Repsol, YPF and/or YPFI, OCC will obtain the benefit of the caps the State placed on its own recovery, in addition to the complete benefit OCC has received for the $130 Million in settlement funds already paid to the State. Finally, OCC has always had the opportunity to acknowledge its responsibility for cleaning up its discharges to the Newark Bay Complex and may seek contribution in any future federal action from other dischargers for all of the amounts OCC expends to clean up the Newark Bay Complex.

Comment 1(c) regarding how settlement funds will be allocated among damages sought in the Passaic River Litigation

The commenter requests that DEP allocate the settlement funds between past and future cleanup and removal costs, economic damages, NRD and any other damages sought in the Passaic River Litigation.

Response:

Although the settlement funds are applied to retire claims for past cleanup and removal costs and then to NRD, the State is not restricted in the Settlement Agreement in its future use of those funds. Appropriation of money within the State is reserved to the Legislative Branch and is not an element for consideration in determining whether the pending settlement with the Settling Defendants should be approved.

OCC may seek a settlement credit afforded it by statute, including N.J.S.A. 58:10-23.11f.a.(2)(b), and common law. As set forth in the Repsol/YPF Settlement Agreement, the settlement funds are being applied to retire the State's past costs, for which OCC is receiving a covenant not to sue, and then to the NRD liability of the Settling Defendants. OCC will also receive the same credit all other dischargers receive for NRD to the extent the settlement funds are applied to NRD because there can be no double recovery by the State. However, the payment of the settlement funds by the Settling Defendants for NRD is not on behalf of OCC and does not reduce OCC's individual NRD liability, except to the extent it is otherwise entitled to a dollar-for-dollar reduction in the total NRD similar to the credit received by all other dischargers.

OCC correctly points out that, subject to certain enumerated reservations, the State will resolve its differences with the Settling Defendants and that the settlement funds are allocated to reimburse all of the State's past costs and, beyond that, as a credit against the Settling Defendants' NRD. The "matters addressed" by the Settlement Agreement are clearly defined in Paragraphs 19.28 and 63. Settling Defendants are paying a significant sum of money to resolve the claims against them, while DEP must continue to pursue OCC as the direct successor to DSCC and, as a matter of law, the actual discharger at the Lister Site. As such, OCC may seek a settlement credit as provided by New Jersey law, including a dollar-for-dollar credit under the Spill Act and a proportionate credit under common law. Under common law, the amount of the actual settlement funds is irrelevant, as the non-settling party may receive a credit equal to the settling parties' proportionate share as determined by the court. Thus, any allocation of the settlement funds to common law claims, as the comment suggests, would likely reduce the settlement credit OCC may receive under the Spill Act. Accordingly, the concerns OCC raises

about the fairness and reasonableness of the allocation of the settlement funds are unwarranted. Also, the settlement funds would not be applied to future cleanup and removal costs, as those costs are uncertain and have been reserved against the actual discharger at the Lister Site. If OCC, as the discharger, is unable to satisfy its adjudicated liability, DEP retained its enforcement authority to pursue certain claims against the Settling Defendants. Additionally, OCC continues to have an indemnity claim against Maxus for any future cleanup and removal costs it may be required to pay DEP.

Finally, the fact that DEP did not assert NRD claims in the Passaic River Litigation does not preclude DEP from settling some or all of its NRD claims. Parties regularly settle claims that are not brought in litigation, but that could have been sought in the same or future litigation. As set forth in detail above, DEP believes that the settlement funds reasonably compensate the State of New Jersey for the damage categories resolved by the Repsol/YPF Settlement Agreement, including NRD and NRDA costs, if any, due to the nature of the Settling Defendants' connection to the site and their relationship with OCC. Furthermore, Maxus continues to have potential liability for NRD under the indemnity agreement, and OCC's rights thereunder are not impaired. NRD recoverable by federal trustees are preserved, and the State should not be denied the benefits of the settlement, which are strongly favored by the Spill Act, because of a lack of a NRDA.

Comment 2 regarding navigation and DOT costs

The commenter raises concerns about the State's past cleanup and removal costs incurred by the New Jersey Department of Transportation and the basis for the State's claim for such costs. (See Ex. 2.)

Response:

Navigation costs, or costs incurred by the State of New Jersey through the DOT, were properly sought and included in the definition of "Cleanup and Removal Costs." The costs incurred by DOT and its Office of Maritime Resources directly relate to contaminated sediments in the Newark Bay Complex and the efforts to mitigate the damage caused by dioxin and other hazardous substances that OCC/DSCC discharged into the Newark Bay Complex. Specifically, New Jersey responded to the crisis caused by dioxin-contaminated sediments by commencing a series of complex studies and projects aimed at addressing contaminated sediments and restrictions on ocean disposal of dredge material. These efforts have included funding and administration of pilot and demonstration projects and studies designed to improve management of contaminated dredged materials in the Newark Bay Complex, working with EPA and the United States Army Corps of Engineers as part of the Focused Feasibility Study, developing beneficial uses for contaminated dredge material, developing sediment decontamination technologies, and addressing and eliminating contamination of sediments at the sources. These response efforts were necessary to mitigate the damage caused by contaminated sediments in the Newark Bay Complex, particularly, sediments contaminated with dioxin.

The Spill Act defines cleanup and removal costs to specifically include "all direct costs associated with a discharge, . . . , incurred by the State or its political subdivisions or their agents . . . in the: (1) removal or attempted removal of hazardous substances, or (2) taking of reasonable

measures to prevent or mitigate damage to the public health, safety or welfare, including but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property . . . . N.J.S.A. 58:10-23.11b (emphasis added). All of the "navigation costs" or DOT costs were incurred to prevent and/or mitigate the damages caused to the public and the waters and sediments of the Newark Bay Complex. Accordingly, the costs are properly categorized as "cleanup and removal costs" and recoverable under the Spill Act. The Spill Act further grants DEP the right to bring a civil action to enforce the Act and recover cleanup and removal costs from dischargers, such as OCC. N.J.S.A. 58:10-23.11u. Although the Settling Defendants dispute their liability for DOT or navigation costs, (see Repsol/YPF Settlement Agreement ¶ 19.8), they agreed to resolve the State's claims for such costs, including claims for such costs against OCC. It certainly is not appropriate for OCC to refuse to negotiate or participate in settlement discussions and then to question a settling party's assessment of a claim and their decision to resolve it.

Additionally, as the comment notes, under the Spill Act, OCC may be entitled to a dollar-for-dollar credit for the cleanup and removal costs paid by the Settling Defendants. The amount of settlement funds allocated to "navigation costs" is set forth in the administrative record. The settlement funds paid by the Settling Defendants are retiring the State's claim for those costs, and OCC is receiving a covenant not to sue for all past cleanup and removal costs. This is a significant benefit to OCC and likely provides a larger benefit to OCC than if the claims were resolved under common law, with OCC receiving a pro rata credit. Given that the only established liability for the Settling Defendants is Tierra's Spill Act liability as the owner of the Lister Site after the mid-1980's (and Maxus as the alter ego of Tierra), it is very possible that OCC would receive no credit for the settlement funds if left to a common law pro rata credit, and DEP would be able to seek additional compensation under the Spill Act for the "navigation costs" or DOT costs at trial.

Comment 3 regarding the limits of contribution protection under the Repsol/YPF Settlement Agreement.

The commenters raise concerns about Paragraph 63 of the Repsol/YPF Settlement Agreement and whether the contribution protection provided by the Spill Act extends to claims beyond Cleanup and Removal Costs and NRDs. (See Ex. 2.)

Response:

Contribution protection is provided for Economic Damages, Disgorgement Damages and Punitive Damages to the extent provided by the Repsol/YPF Settlement Agreement and recoverable under the Spill Act or other New Jersey statutes providing contribution protection, if any. To the extent contribution is sought under common law and the Joint Tortfeasors Contribution Law, a settlement with the plaintiff bars any claim for contribution against the settling party. Verni v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 207 (App. Div. 2006).

Comment 4(a) regarding the covenant not to sue provided for OCC

The commenter raises concerns about the basis for the covenant not to sue provided to OCC and the interactions between Paragraphs 28 and 29 of the Repsol/YPF Settlement Agreement. (See Ex. 2.)

Response:

Paragraphs 28 and 29 of the Repsol/YPF Settlement Agreement provide certain covenants not to sue to OCC with certain reservations set forth in those paragraphs. One of those covenants includes past cleanup and removal costs, (see Repsol/YPF Settlement Agreement at ¶ 28(a)), while claims for future cleanup and removal costs are preserved. (See id. at ¶¶ 29(a-c).) A portion of the settlement funds to be paid as part of the Repsol/YPF Settlement Agreement would retire the State's past cleanup and removal costs, which would no longer be sought against OCC, as DEP may not obtain a double recovery. Under the July 19, 2011 Summary Judgment, OCC was found liable for all "past cleanup and removal costs," the very claims that would be retired by the Repsol/YPF Settlement Agreement, and "future cleanup and removal costs," which are reserved in Paragraph 29(a-c). Accordingly, there is no inconsistency with Paragraphs 28(a) and 29(k). Further, there is no basis under the Repsol/YPF Settlement Agreement or in the litigation to release or absolve OCC from liability under current administrative orders or consent decrees. To the extent OCC is obligated to DEP under current administrative orders or consent decrees, it must remain obligated to DEP, although DEP may not recover under those orders or decrees damages it recovers in the litigation. As set forth below, providing a covenant not to sue OCC is consistent with the Spill Act and with DEP's authority to resolve liability for discharges of hazardous substances to the environment.

Comment 4 (b) regarding contribution protection provided to OCC for certain claims

The commenter raises concerns about the basis for providing contribution protection under N.J.S.A. 58:10-23.11f.a(2)(b) to OCC and the basis for limiting the contribution protection for OCC.

Response:

Through its contribution protection provision, the Spill Act provides a mechanism to encourage early settlements with DEP. That serves to reduce the burdens on the State's limited resources by encouraging private parties to assume responsibility for cleanup and removal costs and contaminated sites. Spill Act settlements often provide a settling party protection for predecessors, successors, subsidiaries, affiliates, indemnitors or insurers, and other related entities. Many settlements could not be achieved without such coverage, especially when some, but not all, dischargers are willing to participate in a settlement with the State.

The Repsol/YPF Settlement Agreement, if approved by the Court, would be entered by Maxus to resolve claims against it and to resolve claims against its indemnitee, OCC. Pursuant to the SPA, Maxus agreed to indemnify OCC for certain claims related to the Lister Site. By entering into the Repsol/YPF Settlement Agreement, Maxus will resolve certain claims brought by DEP against OCC, including retiring claims for past cleanup and removal costs and certain other costs and fees. Moreover, as the surviving entity of the OCC/DSCC merger, OCC is

DSCC, the former subsidiary of Maxus. OCC is therefore an identified and specifically named third party beneficiary for certain provisions of the Repsol/YPF Settlement Agreement, including contribution protection to the extent OCC is entitled to indemnity under the SPA. (See Repsol/YPF Settlement Agreement ¶ 63.) Accordingly, the Repsol/YPF Settlement Agreement makes clear that contribution protection is provided to OCC to the extent OCC is entitled to indemnity under the SPA. (Id. ¶ 63(a).) Because Maxus is resolving certain claims on OCC's behalf and because OCC is a party to the litigation in which the settlement will be entered, it is not necessary for OCC to execute the Repsol/YPF Settlement Agreement in order to receive the benefits provided by the agreement.

Additionally, the contribution protection provided to OCC is only for matters addressed in the Repsol/YPF Settlement Agreement. OCC's potential liability to the Settling Defendants and the Settling Defendants' liability to OCC, if any, are not matters addressed by the settlement and therefore all such claims between OCC and the Settling Defendants would be reserved.

Comment 5 regarding Maxus's obligation to OCC under the Stock Purchase Agreement

The commenter raises concerns about Maxus's obligation under the Repsol/YPF Settlement Agreement to indemnify OCC and Maxus's efforts to obtain certain releases on behalf of OCC. (See Ex. 2.)

Response:

DEP is not a party to the SPA and provides no comment to the extent of any contractual or indemnity obligation of Maxus under the SPA. However, the Repsol/YPF Settlement Agreement specifically recognizes Maxus's indemnity obligations to OCC and makes clear that nothing in the agreement "shall require Maxus or Tierra to breach any defense or indemnity obligation they may have to OCC under the SPA." (Repsol/YPF Settlement Agreement ¶ 60.) Hence, the Repsol/YPF Settlement Agreement provides a cap on the potential ultimate exposure of Repsol, YPF and YPFI of up to $530 Million in exchange for their payment of $130 Million now, all of which enures to OCC's benefit. Under the terms of the Repsol/YPF Settlement Agreement, OCC may pursue Maxus for any and every claim that the State reserved against OCC. Thus, it is incorrect to state that Maxus negotiated for itself something that it did not obtain for OCC. To the extent covered under the indemnity, Maxus's and OCC's liability remains co-extensive. Also, to the extent Maxus is required to use its best efforts to seek releases and other agreements benefiting OCC, it should be noted that the Repsol/YPF Settlement Agreement provides OCC with certain covenants not to sue and contribution protection. (Id. at ¶¶ 28, 29 and 63.) Despite many opportunities and repeated requests to do so, OCC chose not to participate in settlement discussions that could have resulted in additional protection to OCC or a complete resolution of the Passaic River Litigation, but that would have required OCC to meaningfully contribute to such a settlement as the actual discharger at the Lister Site. Also, to the extent OCC wishes to waive the benefits provided it in the covenants not to sue and contribution protection, it should inform DEP, Maxus and the Court in writing of its waiver of those provisions of the Repsol/YPF Settlement Agreement.

Comment 6 regarding the Spill Fund

The commenter raises concerns about uses of funds from the New Jersey Spill Fund, claims paid by the Spill Fund concerning the Newark Bay Complex and what other appropriations were made from the Spill Fund. (See Ex. 2.)

Response:

DEP has not identified any unreimbursed third party claims approved and paid by the Spill Fund. The Legislature appropriated a total $12 Million for direct and indirect legal and consulting costs associated with the Passaic River Litigation from the New Jersey Spill Compensation Fund for fiscal year 2008-2009 ($6 Million) and 2009-2010 ($6 Million). Each subsequent appropriation has directed that any recovery from the Passaic River Litigation will reimburse the New Jersey Spill Compensation Fund in the amount not to exceed $12,000,000. The 2013-2014 New Jersey budget appropriation and previous budget appropriations can be found at http://www.state.nj.us/treasury/omb/publications/14budget/index.shtml.

COMMENTS FROM THIRD-PARTY DEFENDANTS IN THE PASSAIC RIVER LITIGATION

Comments regarding contribution protection provided to OCC pursuant to the Repsol/YPF Settlement Agreement

The comments address DEP's ability to provide contribution protection to OCC pursuant to N.J.S.A. 58:10-23.11f.a(2)(b). The comments were received from Garfield Molding Co., Inc. (see Ex. 3), and McKesson Corporation, McKesson Envirosystems Co., and Safety-Kleen Envirosystems Co. (see Ex. 9).

Response:

Through its contribution protection provision, the Spill Act provides a mechanism to encourage early settlements with DEP. This serves to reduce the burdens on the State's limited resources by encouraging private parties to assume responsibility for cleanup and removal costs and sites. Spill Act settlements often provide a settling party protection for predecessors, successors, subsidiaries, affiliates, indemnitors or insurers, and other related entities. Many settlements could not be achieved without such coverage, and the Settling Third-Party Defendants likewise insisted upon such protection, which was incorporated in the definitions of "Settling Private Third-Party Defendant" and "Settling Public Third-Party Defendant" in the Third-Party Consent Judgment.

The Repsol/YPF Settlement Agreement, if approved by the Court, would be entered by Maxus to resolve claims against it and to resolve claims against its indemnitee, OCC. Pursuant to the SPA, Maxus agreed to indemnify OCC for certain claims related to the Lister Site. The Court has already ruled that Maxus must indemnify OCC for certain cleanup and removal costs sought under the Spill Act in the Passaic River Litigation. (August 24, 2011 Order Granting OCC's Motion for Partial Summary Judgment Against Maxus.) By entering into the Repsol/YPF Settlement Agreement, Maxus will resolve certain claims brought by DEP against OCC, including retiring claims for past cleanup and removal costs and certain other costs and fees. OCC is therefore an identified and specifically named third party beneficiary for certain provisions of the Repsol/YPF Settlement Agreement, including contribution protection to the extent OCC is entitled to indemnity under the SPA. (See Repsol/YPF Settlement Agreement at ¶ 63.) Because Maxus is resolving certain claims on OCC's behalf, and because OCC is a party to the litigation in which the settlement will be entered, it is not necessary for OCC to execute the Repsol/YPF Settlement Agreement in order for its terms to be effective. Furthermore, the contribution protection provided to OCC is consistent with the contribution protection and covenants not to sue provided to certain affiliated persons and entities in the Third-Party Consent Judgment.

The case cited in the comment, Dragon v. New Jersey Department of Environmental. Protection, 405 N.J. Super. 478, 493-98 (App. Div. 2009), did not involve the Spill Act or a settlement for cleanup and removal costs and damages suffered by the public. Rather, it addressed a challenge from a neighboring property owner to a DEP settlement with a permit applicant, who was seeking permission to tear down and reconstruct a private residential oceanfront house in a coastal zone. The court found that DEP had approved the reconstruction

without issuing the permit required by the Coastal Area Facility Review Act (CAFRA), none of the express statutory exceptions to the permitting requirements under CAFRA applied, and DEP failed to follow its own rules. None of these findings implicate this proposed settlement under the Spill Act, where the very purposes of the legislation are being fulfilled through the proposed settlements, as opposed to being circumvented, as in the case cited.

Finally, the commenters misunderstand the purpose and application of N.J.S.A. 58:10-23.11f.a(2)(b). By requiring that DEP expressly intend to release a party from liability, that section of the Spill Act simply abrogated the outdated common law doctrine that settlement with one joint tortfeasor released all joint tortfeasors to the same extent. The provision operates as a restriction on parties that would attempt to take the benefit of another's settlement (an *unintended* third-party beneficiary, for example). The provision is not intended, nor can it be properly construed, to preclude contribution protection and covenants not to sue for associated or related entities like OCC, which are expressly identified by DEP and intended beneficiaries of a settlement.

Comments regarding Timing of the Entry of the Third-Party Consent Judgment and Repsol/YPF Settlement Agreement

The comments address the timing for entry of the proposed Third-Party Consent Judgment and the Repsol/YPF Settlement Agreement and request that the Third-Party Consent Judgment be presented before the Repsol/YPF Settlement Agreement despite the significant benefits to the Settling Third-Party Defendants by the latter agreement. The Repsol/YPF Settlement Agreement provides that it will be presented to the court contemporaneous with or immediately before the Third-Party Consent Judgment. The comments object to this timing even though it was designed to benefit the Settling Defendants and conserve State and judicial resources. The comments were received from Eric Rothenberg, Counsel for certain Private Third-Party Defendants (see Ex. 4), Gibbons P.C. Counsel for certain Private Third-Party Defendants (see Ex. 5), Legacy Vulcan Corp. (see Ex. 8), McKesson Corporation, McKesson Envirosystems Co., and Safety-Kleen Envirosystems Co. (see Ex. 9), Bayer Corporation and STWB Inc., (see Ex. 11) John Scagnelli for certain Public Third-Party Defendants (see Ex. 14), Borough of Hasbrouk Heights, Borough of Totowa, and Borough of Woodland Park (see Ex. 13), and Peter J. King, Liaison Counsel for various Public Third-Party Defendants (see Ex. 15).

Response:

The Court has set the schedule for the joint submittal of both settlements and the associated briefing and oral argument. Because both settlements seek to resolve claims in the Passaic River Litigation, DEP evaluated the comments received holistically, including comments suggesting rejection of the Third-Party Consent Judgment due to the procedure for submitting the Repsol/YPF Settlement Agreement to the Court. While the Third-Party Consent Judgment was negotiated prior to the Repsol/YPF Settlement Agreement, both settlements mutually address the State's cleanup and removal costs associated with the discharges of hazardous substances into the Newark Bay Complex, as well as damages suffered by the public as a result of those discharges. Neither settlement can be considered in isolation. Many of the comments made by Settling Third-Party Defendants go to the interaction between the two settlements and how their terms can be reconciled or rejected, further requiring this holistic approach.

Logistically, the settlements should be considered by the Court simultaneously, with the Court having the opportunity to consider how both settlements will affect the Passaic River Litigation and the claims of all parties. Additionally, as part of the Repsol/YPF Settlement Agreement, the Settling Defendants agreed not to object to or challenge the Third-Party Consent Judgment, including the dismissal, with prejudice, of Maxus's and Tierra's claims asserted against the Settling Third-Party Defendants. (Repsol/YPF Settlement Agreement at ¶ 50.) A provision allowing the Settling Defendants an opportunity to submit comments and challenge the Third-Party Consent Judgment in the event the Repsol/YPF Settlement Agreement was not approved by the Court, (see id.), is necessary to avoid undue prejudice to the Settling Defendants and is not an undue burden on the Settling Third-Party Defendants. The agreement not to challenge the Third-Party Consent Judgment and timing considerations provides a substantial benefit to the Settling Third-Party Defendants and will likely result in a significant cost savings and streamlined process for all parties. The Settling Third-Party Defendants should be supportive of efforts to reduce the litigation costs of all parties and preserve judicial resources, both goals of the Third-Party Consent Judgment and Repsol/YPF Settlement Agreement. Furthermore, the order of entry of the Repsol/YPF Settlement Agreement and Third-Party Consent Judgment would have no effect on the contribution protection provided by both agreements, if they are ultimately entered by the Court.

Comments regarding the Natural Resource Damage covenant not to sue and credits

The comments address Natural Resource Damages covenants not to sue provided to the Settling Defendants and the credit provided for NRD. The comments note that a full NRDA for the Newark Bay Complex has not been completed and the total NRD for the Newark Bay Complex has not been established. The comments also question why parties paying $95,000 - $195,000 did not receive the same covenant not to sue for NRD as parties paying $130 Million, and request that the terms of the Repsol/YPF Settlement Agreement be revised to match the terms negotiated for the Third-Party Consent Judgment. The comments were received from Eric Rothenberg, Counsel for certain Private Third-Party Defendants (see Ex. 4), Gibbons P.C. Counsel for certain Private Third-Party Defendant (see Ex. 5), Lee Henig-Elona, counsel for certain Private Third-Party Defendants (see Ex. 6), Kinder Morgan Liquids Terminals LLC (see Ex. 7), McKesson Corporation, McKesson Envirosystems Co., and Safety-Kleen Envirosystems Co. (see Ex. 9), Bayer Corporation and STWB Inc. (see Ex. 11) and John Scagnelli for certain Public Third-Party Defendants (see Ex. 14).

Response:

DEP is the designated trustee under federal and state law for natural resources owned, managed, held in trust or otherwise controlled by the State of New Jersey. DEP is authorized to bring and resolve claims for compensation for damage or destruction of natural resources under the Spill Act, other New Jersey statutes and common law, and CERCLA. In exchange for $130 Million, the Repsol/YPF Settlement Agreement seeks to resolve liability for the Settling Defendants for, among other liability, NRD and NRDA costs for the Newark Bay Complex. (Repsol/YPF Settlement Agreement at ¶ 25.) DEP's NRD claim against OCC, the successor to DSCC, the actual discharger, is reserved.

Repsol, YPF, and their foreign affiliates are not alleged to be directly liable for any discharge to the Newark Bay Complex. The Court previously entered interlocutory orders finding Tierra liable based solely on its status as the current owner of the Lister Site and Maxus liable as Tierra's alter ego, but NRD liability was not briefed or at issue (as the claims were not included in the suit) in that Order. The Court rejected Maxus's direct liability as a successor of DSCC, but instead found OCC the legal successor and, as such, strictly, jointly and severally liable under the Spill Act. Thus, given the facts of the case and attenuated relationship to the direct natural resource impacts of active discharges from the Lister Site, DEP believes that the settlement funds reasonably compensate the State of New Jersey for the damages resolved by the Repsol/YPF Settlement Agreement, including NRD and NRDA costs. The risk and expense of continuing the litigation against the Settling Defendants and the potential to recover the State's damages from OCC, the party directly responsible for the discharges from the Lister Site, must also be considered when evaluating the Repsol/YPF Settlement Agreement. Also, the comments are founded upon the fact that NRD liability under the Spill Act and CERCLA is joint and several, leading the commenters to express concern about their liability exposure if the Settling Defendants are not paying an appropriate amount for the resolution of NRD liability. DEP does not consider this a significant issue with respect to the pending settlements. Because the State's NRD claims against OCC are reserved and the federal trustee claims remain unaffected as well, any concern over contribution protection, credits, or third party exposure to disproportionate NRD liability is unfounded.

Comments to the Repsol/YPF Settlement Agreement also identify that a full NRDA has not been conducted for the Newark Bay Complex. There is no requirement under the Spill Act or other New Jersey authority that requires a NRDA assessment be completed before NRD claims can be resolved. Furthermore, many of the entities identifying the absence of a NRDA were given the opportunity to conduct a NRDA in response to DEP Directive Number 2003-01, Natural Resource Injury Assessment and Interim Compensatory Restoration of Natural Resources, and failed to conduct an assessment or provide funding for an assessment.

The Repsol/YPF Settlement Agreement addresses all natural resources owned, managed, held in trust or otherwise controlled by the State of New Jersey under state or federal law. The agreement, however, makes clear that it does not resolve NRD liability to any federal natural resource damage trustee. (Repsol/YPF Settlement Agreement at ¶ 63(e).) Furthermore, like the Third-Party Consent Judgment, the Repsol/YPF Settlement Agreement is not intended to cover costs incurred or reimbursed by EPA or the federal trustees, and the contribution protection provided by DEP is not intended to apply to EPA or the federal trustees. Furthermore, although the Repsol/YPF Settlement Agreement includes DEP's covenant not to sue the Settling Defendants (but not OCC) for NRD, and provides that a portion of the settlement funds will be applied as a credit against NRDs that are owed or may be owed by the Settling Defendants, none of the settlement funds are specifically earmarked for particular projects that can be considered NRD restoration or compensation. There is no authority cited for modifying the "Matters Addressed" based on the allocation of settlement funds, and doing so would be inconsistent with the Third-Party Consent Judgment. In the future, if any of these settlement funds are considered for use in connection with any particular restoration project or other purpose that could be characterized as compensation for injury to natural resources within the Newark Bay Complex, DEP intends to following its practice of consultation with its co-trustees prior to any final decision.

Finally, the comments identify no basis to modify the Repsol/YPF Settlement Agreement to match the negotiated language from Paragraph 26(j) to the Third-Party Consent Judgment. Resolution of any State claims for NRD associated with discharges from any third party site have been reserved, subject to the credit and conditions set forth in the proposed Third-Party Consent Judgment, while NRD associated with OCC/DSCC discharges from the Lister Site have been reserved against OCC.

Comment regarding Paragraph 53 of the Repsol/YPF Settlement Agreement

The comment concerns Paragraph 53 of the Repsol/YPF Settlement Agreement and a subsequent federal action between some of the Settling Defendants and the Settling Third-Party Defendants. In particular, the comment suggests that reservations by the Settling Defendants of certain claims somehow undermines the contribution protection provided by the Third-Party Consent Judgment. The comment was received from Gibbons, PC, Counsel for certain Private Third-Party Defendants. (See Ex. 5.)

Response:

Paragraph 53 of the Repsol/YPF Settlement has no impact upon the contribution protection provided by the Third-Party Consent Judgment, if entered, or the dismissal of claims that would result from the entry of the dismissal order attached thereto. In Paragraph 53, Settling Defendants agree to bring any future claims with respect to the Diamond Alkali Superfund Process in federal court, unless no federal jurisdiction exists. This agreement by Settling Defendants is consistent with the similar agreement of Settling Third-Party Defendants in Paragraph 36(b) of the Third-Party Consent Judgment. Additional language in Paragraph 53 makes clear that the agreement not to pursue claims under the Spill Act is not intended to preclude the Settling Defendants from seeking an offset in the event others pursue Spill Act contribution claims against them, notwithstanding the contribution protection provided to the Settling Defendants. The extent that Settling Defendants might have such a claim, if any, is not addressed. This agreement by Settling Defendants has no effect on the Third-Party Consent Judgment, or the dismissal of claims or contribution protection provided thereby. The Dismissal Order attached to and made part of the proposed Third-Party Defendant Consent Judgment provides that the Third-Party Complaints and all claims brought against the Third Party Defendants shall be dismissed with prejudice. DEP intends to cooperate with the Settling Third-Party Defendants to have the dismissal order entered by the Court.

Finally, the Spill Act only provides dischargers a right of contribution and does not provide dischargers "direct" actions as the comment suggests. See N.J.S.A. 58:10-23.11f.a(2).

Comment regarding Paragraphs 50, 53 and 63 of the Repsol/YPF Settlement Agreement

The comment concerns Paragraphs 50, 53 and 63 of the Repsol/YPF Settlement Agreement and the effect, if any, on the contribution protection provided to the Settling Third-Party Defendants in the Third-Party Consent Judgment. The comments were received from Gibbons, PC, Counsel for certain Private Third-Party Defendants. (See Ex. 5.)

Response:

The contribution protection provided by the Third-Party Consent Judgment is not impacted or undermined by the Repsol/YPF Settlement Agreement. In Paragraph 50 of the Repsol/YPF Settlement Agreement, the Settling Defendants agreed not to challenge the Third-Party Consent Judgment. (Repsol/YPF Settlement Agreement at ¶ 50.) Paragraph 50 further provides that the Settling Defendants' agreement not to challenge the Third-Party Consent Judgment should not be construed as a waiver of any argument in federal court regarding the extent of contribution protection for federal claims. (Id.) The extent of contribution protection for federal claims is not addressed or affected by the provision. The Settling Defendants' agreement not to challenge the Third-Party Consent Judgment is a considerable benefit to the Settling Third-Party Defendants, and the Settling Defendants should not be unduly prejudiced for providing such a benefit to the Settling Third-Party Defendants.

Issues raised regarding Paragraph 53 of the Repsol/YPF Settlement Agreement are addressed in response to the previous comment regarding Paragraph 53.

Paragraph 63(c) of the Repsol/YPF Settlement Agreement makes clear that Settling Defendants are not releasing any claims under federal law, except as against the State of New Jersey as provided by Paragraphs 51 and 52. (Id. at ¶ 63.) Paragraph 63(c) further provides that Settling Third-Party Defendants and any other person or entity may pursue federal claims against the Settling Defendants except to the extent the Settling Defendants have contribution protection. A nearly identical provision is set forth in Paragraph 39(c) of the Third-Party Consent Judgment.

Comments regarding the geographic scope of the covenants not to sue provided by the Repsol/YPF Settlement Agreement

The comments concern the geographic scope of the covenants not to sue provided to certain Settling Defendants and the differences in the definitions of "Newark Bay Complex" in the Repsol/YPF Settlement Agreement and Third-Party Consent Judgment. The comments were received from Gibbons, PC, Counsel for certain Private Third-Party Defendants (see Ex. 5), McKesson Corporation, McKesson Envirosystems Co. and Safety-Kleen Envirosystems Co. (see Ex. 9), and Bayer Corporation and STWB Inc. (see Ex. 11).

Response:

The comments correctly note that Repsol, YPF and their related foreign affiliates were sued under certain alter ego, fraudulent transfer and vicarious liability theories for damages associated with Maxus. As described in detail above, the Court previously entered an interlocutory order finding that OCC is the legal successor to DSCC. The order was included in the record developed by DEP. Based on the interlocutory order and because, if approved, the

Repsol/YPF Settlement Agreement would resolve certain claims for alter ego, fraudulent transfer and other vicarious liability theories, DEP has agreed to look first to OCC, as the adjudicated legal successor, for any damages associated with DSCC. (Repsol/YPF Settlement Agreement at ¶ 46.) If OCC is unable to satisfy a judgment, DEP has reserved its ability to pursue Repsol, YPF and certain related entities. (Id. at ¶ 26(e) and 46.) In short, the Repsol/YPF Settlement Agreement simply followed the Court's prior rulings in agreeing to look to OCC, as the direct legal successor by merger, for DSCC liabilities. If responsible, presumably OCC will then tender such claims or liabilities to Maxus under the terms of the indemnity provided in the SPA. Also, any claims not associated with DSCC or direct liability for discharges by Repsol, YPF or certain other entities are not addressed by Paragraph 25(i).

The comments also note that the definitions of the "Newark Bay Complex" differ in the Repsol/YPF Settlement Agreement and Third-Party Consent Judgment. The differences are intentional and may result in a broader or narrower geographical scope depending on the circumstances. The Settling Defendants' association with a single site along the Passaic River differs substantially from the Settling Third-Party Defendants' association with hundreds of sites throughout the Newark Bay Complex and surrounding area, and DEP considers the differences in the definitions necessary and appropriate.

Comments from Reichhold, Inc. seeking to reserve comments and questions to the Repsol/YPF Settlement Agreement.

Reichhold, Inc. provided comments that on its face state that "Reichhold does not have any comments, as such, pertaining to the Settlement Agreement that are not likely to have been or will be presented by others." Riechhold, Inc. also indicates that it has a number of questions, but none are specified. (See Ex. 10.)

Response:

No actual comment or question about the Repsol/YPF Settlement Agreement was included in comments submitted by Reichhold, Inc. DEP provides no response regarding the process for approval of the Repsol/YPF Settlement Agreement before the Court and Reichhold, Inc.'s possible waiver or non-waiver of any issue. Issues regarding the process for presenting the Repsol/YPF Settlement Agreement to the Court will be directed by the Court and Special Master.

Comments from Troy Corporation referencing other comments submitted by Third-Party Defendants.

The comments reference non-specific comments from other Third-Party Defendants. (See Ex. 12.)

Response:

No actual comment or question about the Repsol/YPF Settlement Agreement was included in comments submitted by Troy Corporation. Furthermore, the Repsol/YPF Settlement

Agreement has no effect on the protection provided by the Third-Party Consent Judgment, if the consent judgment is approved by DEP and entered by the Court.

Comments supporting a global settlement of the Passaic River Litigation and Paragraph 53 of the Repsol/YPF Settlement Agreement.

The comment provides support for the Third-Party Consent Judgment and Repsol/YPF Settlement Agreement and references Paragraph 53 of the Repsol/YPF Settlement Agreement and dismissal of all claims against the Settling Public Third-Party Defendants. The comments were received from the Borough of Hasbrouck Heights, the Borough of Totowa, and the Borough of Woodland Park. (See Ex. 13.)

Response:

The comments on benefits of settlement and policy considerations are noted and appreciated by DEP. The Repsol/YPF Settlement Agreement and the Third-Party Consent Judgment provide a significant opportunity for the State of New Jersey to resolve certain claims regarding one of the most contaminated sites in New Jersey. One of the key benefits of the Repsol/YPF Settlement Agreement to Settling Third-Party Defendants, including public entities, is the agreement by Maxus and Tierra to refrain from challenging the Third-Party Consent Judgment and the dismissal order included therein. If approved by DEP and entered by the Court, the Third-Party Consent Judgment and dismissal order will result in the dismissal, with prejudice, of all claims brought by Maxus/Tierra against the Settling Third-Party Defendants as addressed by the dismissal order. The dismissal would include all claims recoverable under state law covered by the dismissal order, whether direct or indirect or for contribution or otherwise. Paragraph 53 of the Repsol/YPF Settlement Agreement provides, in part, that future claims by the Settling Defendants regarding hazardous substances in the Newark Bay Complex will be brought in federal court to the extent federal jurisdiction exists. This agreement by Settling Defendants is consistent with the similar agreement of Settling Third-Party Defendants in Paragraph 36(b) of the Third-Party Consent Judgment.

Exhibit 1

Via email PassaicSettlement@dep.state.nj.us and Regular US Mail

July 30, 2013

Office of Record Access
NJDEP
Attn: Passaic Repsol/YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: Proposed Consent Judgment in the Matter of NJDEP, et al., v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR)

To Whom it May Concern:

Please accept these comments on the above referenced matter on behalf of NY/NJ Baykeeper ("Baykeeper"). Baykeeper works to protect, preserve and restore the Hudson-Raritan Estuary, which includes the lower Passaic River.

We applaud NJDEP's perseverance and persistence in pursuing claims against the companies responsible for the pollution of the lower Passaic River. For too long, those companies have turned their back on their legal and moral obligations to clean and restore the River.

We support the settlement with Repsol/YPF, however, we object to the use of any portion of the settlement by the State of New Jersey as General Revenue under the FY2014 Budget, rather than back into the cleaning up and restoring the Passaic River as was the original intention of the lawsuit.

The Governor's FY2014 Budget includes the following language:

> Notwithstanding the provisions of any law or regulation to the contrary, an amount not to exceed $12,000,000 of cost recoveries from litigation related to the Passaic River cleanup are appropriated to the New Jersey Spill Compensation Fund and any remaining recoveries, not to exceed $40,000,000 shall be deposited in the General Fund as State revenue, subject to the approval of the Director of the Division of Budget and Accounting. (Governor Christie's FY2014 Budget at D-129. See also S3000.)

As stated in the public notice, the Repsol/YPF have agreed to settle any alleged liability to the NJDEP for past cleanup and removal costs, future cleanup and removal costs, the costs of a Natural Resource Damages Assessment and economic and other damages by payment of $130,000,000.

Our organization and our members have suffered from decades of pollution of the River. The money recovered from those responsible for polluting the River should be directed and limited to the cleanup and restoration of the River. The State represents its citizens in this matter as the trustee of the natural resource and, in particular, those citizens who

have lost full economic and recreational use of this precious River for decades. Any recovery of funds from those responsible for polluting the River should be directed to cleaning up the River.

But the State's subsequent sweeping of a portion of the settlement into the general coffers as a one-off to balance the budget does not keep within the spirit of the agreement and violates the fundamental principle that clean up and restoration should be the first priority for the use of these funds. While the NJ Spill Compensation Fund will be reimbursed $12,000,000, this is primarily for past attorney costs borne by the state in litigation the case, not for cleanup or restoration purposes.

Further, the proposed consent judgment does not include money for natural resource damages, requiring a formal Natural Resource Damage Assessment (NRDA) to be completed before this claim can be resolved. Therefore, at least some portion of the monies collected from this settlement must be specifically allocated to complete the NRDA so that the State and Federal Trustees may move forward to pursue and collect further reimbursement for its loss of natural resources because of the pollution of the River. Without such an allocation, the NRDA claim will remain open and unresolved.

The entities that agreed to this proposed consent judgment did so with an understanding of how the money they would be paying would be spent. To now slide it over to fill a gap in the State's general budget, to be spent in some unknown way, is not honest to the spirit of the agreement and further victimizes the Passaic River.

Thank you for your attention to this matter. I may be reached at Debbie@nynjbaykeeper.org or 732-888-9870 x2 if you have questions.

Sincerely,

Deborah A. Mans
NY/NJ Baykeeper
Baykeeper & Executive Director

cc: Hon. Sebastian F. Lombardi, Jr., Judge of the Superior Court of New Jersey, Essex County
Regional Administrator Judith Enck, UEPA, Region 2
Open Letter

DEP Passaic3PStlmt

From: Debbie Mans <debbie@nynjbaykeeper.org>
Sent: Wednesday, July 03, 2013 3:32 PM
To: DEP Passaic3PStlmt
Cc: debbie@nynjbaykeeper.org
Subject: Commnets on Proposed Consent Judgment in the Matter of NJDEP v. Occidental Chemical Corp., Docket No. ESX-L9868-05(PASR)

Hackensack Riverkeeper • Ironbound Community Corporation • NY/NJ Baykeeper

Via email passaic3pstlmt@dep.state.nj.us

July 3, 2013
Office of Record Access
NJDEP
Attn: Passaic 3rd Party Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: Proposed Consent Judgment in the Matter of NJDEP, et al., v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR)

To Whom it May Concern:

Please accept these comments on the above referenced matter on behalf of NY/NJ Baykeeper, Hackensack Riverkeeper and Ironbound Community Corporation (the "Organizations"). Our organizations work to protect, preserve and restore the Hudson-Raritan Estuary, which includes the lower Passaic River.

We applaud NJDEP's perseverance and persistence in pursuing claims against the companies responsible for the pollution of the lower Passaic River. For too long, those companies have turned their back on their legal and moral obligations to clean and restore the River.

We support the settlement with third-party defendants brought into the case by Maxus Energy Corporation and Tierra Solutions, Inc., however, we object to the use of the majority of the settlement by the State of New Jersey as General Revenue under the FY2014 Budget, rather than back into the cleaning up and restoring the Passaic River as was the original intention of the lawsuit.

The Governor's FY2014 Budget includes the following language:

> Notwithstanding the provisions of any law or regulation to the contrary, an amount not to exceed $12,000,000 of cost recoveries from litigation related to the Passaic River cleanup are appropriated to the New Jersey Spill Compensation Fund and any remaining recoveries, not to exceed $40,000,000 shall be deposited in the General Fund as State revenue, subject to the approval of the Director of the Division of Budget and Accounting. (Governor Christie's FY2014 Budget at D-129. See also S3000.)

As stated in the public notice, the Settling Third-Party Defendants and affiliated entities have agreed to settle any alleged liability to the NJDEP for past cleanup and removal costs, future cleanup and removal costs, the costs of a Natural Resource Damages Assessment and economic and other damages by payment of approximately $35,300,000 to NJDEP.

Our organizations and our members have suffered from decades of pollution of the River. The money recovered from those responsible for polluting the River should be directed and limited to the cleanup and restoration of the River. The State represents its citizens in this matter and in particular, those citizens who have lost full economic and recreational use of this precious River for decades. Any recovery of funds from those responsible for polluting the River should be directed to cleaning up the River.

But the State's subsequent sweeping of a portion of the settlement into the general coffers as a one-off to balance the budget does not keep within the spirit of the agreement and violates the fundamental principle that clean up and restoration should be the first priority for the use of these funds. While the NJ Spill Compensation Fund will be reimbursed $12,000,000, this is primarily for past attorney costs borne by the state in litigation the case, not for cleanup or restoration purposes.

Further, the proposed consent judgment does not include money for natural resource damages, requiring a formal Natural Resource Damage Assessment (NRDA) to be completed before this claim can be resolved. Therefore, at least some portion of the monies collected from this settlement should be specifically allocated to complete the NRDA so that the State may move forward to pursue and collect further reimbursement for its loss of natural resources because of the pollution of the River. Without such an allocation, the NRDA claim will remain open and unresolved.

The entities that agreed to this proposed consent judgment did so with an understanding of how the money they would be paying would be spent. To now slide it over to fill a gap in the State's general budget, to be spent in some unknown way, is not honest to the spirit of the agreement and further victimizes the Passaic River.

Thank you for your attention to this matter. I may be reached at Debbie@nynjbaykeeper.org or 732-888-9870 x2 if you have questions.

Sincerely,

Deborah A. Mans
NY/NJ Baykeeper
Baykeeper & Executive Director

Capt. Bill Sheehan
Hackensack Riverkeeper
Riverkeeper & Executive Director

Ana Baptista
Ironbound Community Corporation

cc: Hon. Sebastian F. Lombardi, Jr., Judge of the Superior Court of New Jersey, Essex County

Deborah A. Mans, Baykeeper & Executive Director
NY/NJ Baykeeper
52 W. Front Street
Keyport, NJ 07735
732.888.9870 ext. 2
732.888.9873 fax
Website: www.nynjbaykeeper.org

Exhibit 2

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COUNSEL

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July 30, 2013

Via Email and United States Mail

Mr. Bob Martin, Administrator
New Jersey Department of Environmental Protection
Office of Record Access
Attn: Passaic Repsol/YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, New Jersey 08625-0420

Re: Repsol/YPF Settlement

Dear Mr. Martin,

Pursuant to *N.J.S.A.* 58:10-23.11e2 and the public notice published at 45 *N.J.R.* 1661(a), Occidental Chemical Corporation ("OCC") submits the following comments to the above-referenced settlement agreement (the "Settlement Agreement") relating to the case of *NJDEP v. Occidental Chemical Corp., et al.*, Case No. ESX-L-9869-05, in the Superior Court of New Jersey, Law Division: Essex County (the "Litigation").

OCC is in a unique position with respect to the Settlement Agreement. As you know, on August 24, 2011, the Honorable Sebastian P. Lombardi, J.S.C., entered a partial summary judgment in the Litigation requiring one of the Settling Defendants,[1] Maxus Energy Company ("Maxus"), to indemnify OCC for any costs, losses and liabilities that may be incurred by OCC in the Litigation as a result of OCC's acquisition of Diamond Shamrock Chemicals Company ("DSCC"). Maxus is also contractually obligated to use its best efforts to obtain OCC's release from these liabilities. Further, OCC has filed cross-claims against all of the other Settling Defendants, asserting their liability for these matters as well. Although the Settlement Agreement—to which OCC is not a party—purports to resolve some of Plaintiffs' claims against OCC, it also purports to specifically preserve others and to substantially limit OCC's ability to

[1] Capitalized terms used in these comments and not otherwise defined have the meanings given to them in the Settlement Agreement.

pursue its cross-claims against the Settling Defendants. For example, the parties to the Settlement Agreement presume to limit by agreement the preclusive effect of the Court's determination that it has personal jurisdiction over the foreign Settling Defendants, despite the fact that the ruling also established personal jurisdiction for purposes of OCC's still-existing cross-claims. Therefore, OCC has numerous, serious objections to the Settlement Agreement and it reserves the right to raise them with the Court as contemplated by the April 25, 2013 Order.[2] It is not required to make any such objections in this comment process and does not waive its right to do so with the Court or otherwise. OCC will limit its comments here only to those issues on which it seeks clarification and/or further information from Plaintiffs.

1. The Amount of Costs and Damages Sought and Allocation Thereof.

Under the Spill Compensation and Control Act (the "Spill Act"), a party that has resolved its liability to the State for cleanup and removal costs and/or Natural Resource Damages ("NRDs") and has entered into a judicially approved settlement with the State shall not be liable for claims of contribution regarding matters addressed in the settlement. *N.J.S.A.* 58:10-23.11f.a.(2)(b). Non-settling parties are entitled to offset their common Spill Act liability only by the dollar amount of the settlement, rather than offsetting it by the pro rata share of the settling party's actual liability. *Id.* Thus, it is critically important that the settlement amount fairly represents the Settling Defendants' share of liability.

In the Settlement Agreement, Plaintiffs have covenanted not to sue the Settling Defendants for all claims related to the discharges of hazardous substances to the Newark Bay Complex. In exchange for payment of $130 million by certain of the Settling Defendants, Plaintiffs have agreed to forgo claims for the following costs and damages against all of the Settling Defendants:

- Past Cleanup and Removal Costs (including natural resource damage assessment costs);
- Future Cleanup and Removal Costs in the FFS Area (and up to $70.8 million in Future Cleanup and Removal Costs outside the FFS Area);
- NRDs;
- Economic Damages;
- Disgorgement Damages;
- Punitive Damages;
- Attorneys' fees and litigation costs; and
- Penalties under the Spill Act, Water Pollution Control Act (the "WPCA"), and other statutory and common law causes of action.

[2] In his April 25, 2013 Order on the Approval Process for the Proposed Settlement Agreement, Judge Lombardi ordered that after Plaintiffs have received all public comments, and if they have determined that none of the comments warrant rejection of the Settlement Agreement, Plaintiffs and Settling Defendants shall file motions with the Court for approval and implementation of the Settlement Agreement. At that time, the Court will set a briefing schedule that will permit any party to the action, including OCC, to file papers opposing those motions.

The fairness and reasonableness of paying $130 million to resolve these claims cannot be evaluated based on the information currently available. Specifically, Plaintiffs must provide additional information on three key issues.

(a) Plaintiffs must provide information regarding the costs and damages sought in the Litigation.

The administrative record contains conflicting information regarding the ***past*** Cleanup and Removal Costs allegedly incurred by Plaintiffs, and the estimates for ***future*** Cleanup and Removal Costs vary widely. Under Judge Lombardi's case management order, discovery has not yet occurred regarding any of the claimed costs and damages. Thus, the record contains no information whatsoever with respect to the amounts of any economic, disgorgement or punitive damages sought by Plaintiffs. Finally, Plaintiffs ***have not even asserted*** claims for NRDs in the Litigation.

Consequently, without more information regarding the total costs and damages alleged by Plaintiffs, it is impossible to determine whether $130 million represents a fair apportionment of liability to the Settling Defendants. Indeed, courts considering similar settlements between governmental agencies and responsible parties have rejected such settlements where, as here, the agency failed to articulate the amount of costs and damages it was seeking.[3] Accordingly, OCC requests that Plaintiffs identify with specificity the costs they allegedly have incurred (or will incur in the future) and the damages they allegedly have sustained in connection with discharges from the Lister Site. OCC further requests that Plaintiffs provide information regarding the amount of their purported costs and damages attributable to each category of costs and damages covered by the Settlement Agreement.

(b) Plaintiffs should identify their basis for determining the share of liability allocable to the Settling Defendants.

Under the Settlement Agreement, Plaintiffs would covenant not to sue ***all*** of the Settling Defendants, but only Repsol, YPF, and maybe Maxus are obligated to pay. Notably, Tierra—which Judge Lombardi already has found to be a Spill Act liable party—receives a covenant not to sue for virtually all claims sought by Plaintiffs, but it is not required to pay anything toward the Settlement Funds. The Settlement Agreement fails to indicate how Plaintiffs determined the Settling Defendants' respective share of the purported liability and how much (if any) each Settling Defendant should pay. OCC asks that Plaintiffs identify the basis for their determination that the settlement amount fairly represents the Settling Defendants' individual and collective share of costs and damages sought by Plaintiffs.

---

[3] *See, e.g., United States v. Montrose Chem. Corp.*, 50 F.3d 741, 746-47 (9th Cir. 1995) ("[T]he proper way to gauge the adequacy of settlement amounts to be paid by settling PRPs is ***to compare the proportion of total projected costs to be paid by the settlors with the proportion of liability attributable to them***, and then to factor into the equation any reasonable discounts for litigation risks, time savings, and the like that may be justified.") (emphasis in original); *Ariz. Dep't of Envt'l Quality v. Acme Laundry & Dry Cleaning Co.*, 2009 WL 5170176, at *2 (D. Ariz. Dec. 21, 2009) ("We cannot evaluate the fairness and reasonableness of the parties' proposed consent decree at this time because they have not provided a preliminary estimate of the natural resource damages at issue."); *Dep't of Planning & Natural Res. v. Century Alumina Co.*, 2008 WL 4693550, at *3-7 (D.V.I. Oct. 22, 2008) (court could not evaluate fairness of settlement "without an estimation of the total response costs").

(c) Plaintiffs should specify how the settlement amount will be allocated among the types of damages.

Similarly, it is not apparent how the $130 million settlement amount will actually be allocated among the various categories of costs and damages that the settling parties purport to resolve in the Settlement Agreement. Paragraph 24 appears to provide a vague description of the intended allocation:

> 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 [NRDs] owed or that may be owed in the future by Settling Defendants (but not OCC) . . . . 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.

This paragraph presents a host of issues.

First, the purported allocation of the Settlement Funds to Past Cleanup and Removal Costs and NRDs (if any) is—on its face—illusory. Although the Settlement Agreement attempts to define how the Settlement Funds should be allocated for purposes of the credit received by the Settling Defendants, it expressly recognizes that Plaintiffs may not use those funds in that manner. In other words, the allocation of the Settlement Funds is a legal fiction to determine the amount of credit provided to the Settling Defendants, and it expressly contemplates that the Settlement Funds may not actually go toward Past Cleanup and Removal Costs or NRDs or any effort to remediate the Newark Bay Complex. Because the settlement purports to compensate for alleged cleanup and removal costs and/or alleged impacts to natural resources, the public is entitled to know how Plaintiffs will actually apply the Settlement Funds in the Newark Bay Complex.

Second, the provision states that the Settlement Funds, in certain circumstances, are to be "applied as a credit against any Natural Resource Damages owed or that may be owed in the future by Settling Defendants (but not OCC) . . . ." This can be interpreted to mean that any credit applied toward a future NRD claim benefits only the Settling Defendants and not non-settling parties, such as OCC. This is flatly inconsistent with the Spill Act, which requires that non-settling parties receive credit in an amount equal to the settlement value. *See N.J.S.A.* 58:10-23.11f.a.(2)(b). Thus, this is surely not Plaintiffs' intent and should be clarified.

Third, in the Settlement Agreement, Plaintiffs agree not to sue the Settling Defendants for all the claims listed above, including "all Claims for Discharges to the Newark Bay Complex which Plaintiffs brought or could have brought against Settling Defendants in the Passaic River." The Agreement also purports to give the Settling Defendants contribution protection relating to all of these claims. Yet Paragraph 24 purports to allocate the Settlement Funds only to Past Cleanup and Removal Costs and possibly NRDs. Thus, according to this paragraph, the Settling Defendants are receiving a covenant not to sue for numerous claims for which they paid ***nothing***. This raises serious fairness and reasonableness concerns, since the Settlement Agreement

contemplates that such claims—for which Plaintiffs are receiving nothing from Settling Defendants—will be pursued against OCC.

Moreover, if this "allocation" were approved, then OCC and other non-settling defendants arguably would be deprived of any credit for Future Cleanup and Removal Costs, economic damages, disgorgement damages, and punitive damages, despite the fact that they would also be prohibited from seeking contribution from the Settling Defendants for those claims. This result is inconsistent with *N.J.S.A.* 58:10-23.11f.a(2)(b), which provides, in part, that a settling party "shall not be liable for claims for contribution regarding matters addressed in the settlement" provided that the settlement "shall reduce the potential liability of [a non-settling party] . . . by the amount of the . . . settlement."

Finally, as noted above, Plaintiffs have not asserted claims for NRDs in this action and may not ever assert such claims. Thus, the allocation of any part of the Settlement Funds as a credit to Settling Defendants for a yet-to-be asserted claim instead of toward claims actually asserted in the Litigation is patently unreasonable since such allocation effectively prevents OCC from obtaining a credit, for which it is statutorily entitled, against claims it currently faces.

The fairness and reasonableness of the Settlement Agreement cannot be ascertained without the information and clarification of the intent of the Settlement Agreement requested herein.

2. Navigation Costs

Paragraph 19.8 of the Settlement Agreement defines Cleanup and Removal Costs to include the costs of evaluating and developing navigation in the Newark Bay Complex ("Navigation Costs"). There is no legal authority that suggests such costs are recoverable as Cleanup and Removal Costs under the Spill Act.

Further, as discussed above, Paragraph 24 provides that the Settlement Funds shall first be applied to Plaintiffs' Claims for Past Cleanup and Removal Costs . . . ." Therefore, by including Navigation Costs in the definition of Past Cleanup and Removal Costs, the settling parties are inflating the value of Past Cleanup and Removal Costs, which will result in an allocation of a larger percentage of the Settlement Funds toward such costs than is permissible under the Spill Act.

Moreover, under the various common law claims asserted by Plaintiffs, a non-settling defendant typically would be entitled to a pro rata credit (*i.e.*, the non-settling defendants would receive a credit based on the percentage of fault ultimately allocated to the settling defendants rather than the amount actually paid by those defendants), assuming the non-settling defendant can prove the liability of the Settling Defendants. Therefore, the categorization of damages as either Spill Act damages (*i.e.*, Cleanup and Removal Costs or NRDs) or common law damages could have a significant impact on the settlement credit afforded to the non-settling defendants.

Therefore, OCC asks that Plaintiffs clarify the basis for categorizing Navigation Costs as Cleanup and Removal Costs, and identify the amount of their alleged costs attributable to such Navigation Costs.

3. Purported Limits on Contribution

Paragraph 63 of the Settlement Agreement purports to provide Settling Defendants with contribution protection against "all Claims for Discharges to the Newark Bay Complex which Plaintiffs brought or could have brought against Settling Defendants in the Passaic River," including Economic Damages, Disgorgement Damages and Punitive Damages. However, it is unclear whether the contribution protection provided by the Spill Act was intended to extend to claims beyond Cleanup and Removal Costs and NRDs. OCC requests that Plaintiffs identify any authority under which it is extending the purported contribution protections, especially with regard to the non-Spill Act claims.

4. The Legal Basis for "Benefits" Allegedly Granted to OCC in the Settlement Agreement

In the Settlement Agreement, Plaintiffs appear to covenant not to sue OCC on certain types of claims, and the Settlement Agreement purports to give OCC protection from contribution claims that may be brought by third parties. Although OCC has no objection to receiving such benefits, the Plaintiffs should provide additional information regarding the scope and basis of those provisions.

(a) Covenant not to sue

In Paragraph 28, Plaintiffs appear to covenant not to sue OCC for Plaintiffs' Past Cleanup and Removal Costs within the Newark Bay Complex, as well as claims for economic damages, disgorgement, punitive or exemplary damages and NRDs unrelated to "OCC/DSCC Deliberate Conduct" or "OCC Distinct Conduct" as those terms are defined in the Agreement. However, Paragraph 29.k. excludes from this covenant "OCC's liability or obligation, if any, under current . . . judgments. . . ." The purported exclusion of judgments in Paragraph 29.k. could be misinterpreted to negate the covenant not to sue in Paragraph 28, since the Court entered partial summary judgment on July 19, 2011, holding that OCC is a Spill Act liable party. Please clarify whether this was the intended effect of this provision and if it was not, then please ensure that the exclusion in Paragraph 29.k. will be modified to remedy this issue. Moreover, insofar as "administrative orders" or "consent decrees" also place obligations on OCC for the claims purportedly resolved in Paragraph 28, such orders and decrees must also be removed as exclusions.

In addition to the apparent internal inconsistencies in the Settlement Agreement itself, the Spill Act also provides a potential hurdle to the covenant not to sue OCC. The Spill Act provides that a settlement "shall not release any other person from liability for cleanup and removal cost who is not a party to the settlement." *N.J.S.A.* 58:10-23.11f.a(2)(b). As noted above, OCC is not a party to the Settlement Agreement. Therefore, please confirm that, under the Spill Act, Plaintiffs may enter into an enforceable covenant not to sue OCC and provide the authority Plaintiffs relied upon in entering into such a covenant.

(b) Contribution Protection

Paragraph 63.a. purports to provide OCC protection from contribution claims that may be brought against it by third parties. However, *N.J.S.A.* 58:10-23.11f.a(2)(b) grants contribution protection only where a party has "resolved his liability to the State for cleanup and removal costs . . ." ***and*** entered "into an administrative or judicially approved settlement with the State . . . ." Again, OCC is not a party to this settlement. Accordingly, please identify the basis for Plaintiffs' conclusion that the Settlement Agreement and proposed consent judgment will provide contribution protection to OCC that is valid and enforceable against third parties.

Assuming that OCC is eligible for contribution protection, please clarify Plaintiffs' basis for imposing limitations on that protection. Paragraph 63.a. grants OCC contribution protection only "from any and all contribution Claims by persons ***other than the Settling Defendants***. . . ." In fact, Paragraph 55 states, "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." In addition, Paragraph 60 states, "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." Such a carve-out is inconsistent with *N.J.S.A.* 58:10-23.11f.a(2)(b), which does not limit contribution protection in any way.

Accordingly, please clarify Plaintiffs' basis for extending contribution protection to OCC, as well as the basis for imposing limitations on that protection.

5. Maxus' Obligations to OCC

As noted above, Judge Lombardi has entered partial summary judgment in the Litigation requiring Maxus to indemnify OCC for ***any*** costs, losses and liabilities that may be incurred by OCC in the Litigation as a result of OCC's acquisition DSCC. His ruling was based not only on OCC's clear contractual right to indemnification under the 1986 Stock Purchase Agreement ("SPA"), but it also recognized the preclusive effect of a final judgment in Texas enforcing the same indemnification provision against Maxus. Despite these rulings, Maxus and the other Settling Defendants have failed to resolve all of Plaintiffs' claims against OCC in the Settlement Agreement.

In addition to its indemnification provisions enforced by Judge Lombardi and the Texas courts, the SPA also requires Maxus to use its best efforts to obtain a full release for OCC from Plaintiffs' claims against it to the extent those claims are based on OCC's acquisition of DSCC. Specifically, Section 12.11(a) provides:

> [Maxus] shall . . . use its . . . best efforts to obtain at the earliest practicable date . . . any amendments, novations, ***releases***, waivers, consents or approvals necessary to have each of the DSCC companies

released from its obligations and liabilities under the Historical Obligations.[4]

(Emphasis added.) OCC is not aware of any efforts (best or otherwise) by Maxus to obtain these releases for OCC, although Maxus and the other Settling Defendants demonstrated that they ***could*** obtain such releases by doing so for themselves.

The Settlement Agreement thus appears to be in direct violation of Judge Lombardi's Order, as well as Maxus' obligations under the SPA, because it purports to resolve all of the claims against Maxus and its affiliated parties but seeks to leave OCC exposed to potential liability to Plaintiffs. Public policy concerns should prevent parties, especially arms of the State, from knowingly entering into an agreement by which one of the contracting parties is breaching a prior agreement and/or violating a court order. *See Toll Bros., Inc. v. Board of Chosen Freeholders of County of Burlington*, 388 N.J. Super. 103, 124 (App. Div. 2006), *overruled on other grounds*, 194 N.J. 223, 254 (N.J. 2008) ("Courts may refuse to enforce agreements between private parties that violate public policy. When the agreement is between a private party and a public entity, the result is no different."). Please provide information regarding whether Plaintiffs have considered these issues and, if so, the basis for your decision to enter into the agreement despite its apparent conflict with Judge Lombardi's Order.

6. Claims Against the Fund

Paragraph 10 of the Settlement Agreement states that Plaintiff Administrator alleges that he has certified or may certify claims made against the Spill Compensation Fund ("Spill Fund") concerning 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.

Please identify the claims that have been filed against the Spill Fund concerning discharges at or from the Lister property and/or into the Newark Bay Complex and which of those claims have been paid by the Spill Fund. In addition, please identify what, if any, "other appropriations" have been approved for the Newark Bay Complex.

We appreciate your consideration of these comments and look forward to your response.

Yours very truly,

Oliver S. Howard
For the Firm

[4] Judge Lombardi already has found that this Litigation arises from an "Historical Obligation" of DSCC as defined in the SPA.

Exhibit 3

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July 31, 2013

VIA E-MAIL (PASSAICSETTLEMENT@DEP.STATE.NJ.US) AND U.S. MAIL

Office of Records Access
NJDEP
Attn: Passaic Repsol/YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comment on Proposed Settlement Agreement in the Matter of NJDEP et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013***

Dear Sir or Madam:

We submit this comment on behalf of Garfield Molding Co., Inc. on the proposed settlement agreement between Plaintiffs and Defendants YPF, Repsol, Maxus, and Tierra, and affiliated entities ("Proposed Settlement Agreement").

N.J.S.A. 58:10-23.11f.a(2)(b) provides: "The settlement [between the State and a person who has discharged a hazardous substance] shall not release any other person from liability for cleanup and removal costs who is not a party to the settlement . . ." Contribution protection can be granted only where a party "has resolved his liability to the State for cleanup and removal costs . . ." and entered "into an administrative or judicially approved settlement with the State . . ." The Proposed Settlement Agreement attempts to provide contribution protection to Occidental, who is not a party to the Proposed Settlement Agreement and who the State alleges has independent liability for discharges from the Lister Avenue Site. *See, e.g.,* Paragraph 62 ("[U]nder Paragraphs 28, 29 and 63, OCC shall be entitled to the protection under the Plaintiffs' covenant not to sue and to contribution protection.").

The Spill Act expressly prohibits providing contribution protection to a non-settling party, such as Occidental. Any attempt to provide this protection would be *ultra vires. See, e.g., Dragon v. New Jersey Dep't of Envtl. Protection,* 405 N.J. Super. 478, 493-98 (App. Div. 2009) (holding that NJDEP could not agree to a settlement in a permit appeal case when the settlement would contradict New Jersey statutes). Therefore, pursuant to the Spill Act, the Proposed Settlement Agreement cannot provide contribution protection to Occidental.

Sincerely,

Stephen W. Miller
Attorney for Garfield Molding Co., Inc.

SWM/apf

Exhibit 4

O'MELVENY & MYERS LLP

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July 31, 2013

VIA E-MAIL (PASSAICSETTLEMENT@DEP.STATE.NJ.US) AND U.S. MAIL

Office of Record Access
NJDEP
Attn: Passaic YPF/Repsol Settlement
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comments on Proposed Settlement Agreement with Settling Defendants (including attached Schedules and Exhibits) in the Matter of NJDEP, et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013 ("Proposed Settlement Agreement")***

Dear Sir or Madam:

I write as Liaison Counsel to certain private Third-Party Defendants, as identified on the attached Exhibit A ("Commenting Parties"), in *NJDEP, et al. v. Occidental Chemical Corporation*, et al., Docket No. ESX-L9868-05 (PASR) (the "Action"), to provide their comment in the referenced matter. Certain of the Commenting Parties may provide additional comment under separate cover. Please note that this comment is not offered in my capacity as coordinating counsel (or Liaison Counsel) to the Joint Defense Group of Third-Party Defendants.

These comments are occasioned by the State's July 1, 2013 posting of the Proposed Settlement Agreement with certain Settling Defendants in the Action ("Settlement Agreement"), as required under the Court's April 25, 2013 Process Order on the Approval Process for the Proposed Settlement Agreement("Process Order"). Significant discrepancies exist between the Proposed Settlement Agreement and the Proposed Third-Party Defendant Consent Judgment posted on May 6, 2013 as required under the Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Proposed Third-Party Consent

†In association with Tumbuan & Partners

Judgment"), such that the Commenting Parties are now compelled to offer the following comments and proposed modifications to the Proposed Settlement Agreement to assure equitable treatment for all settling parties in the Action.

1. Timing for Entry of Consent Judgment

The Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("January 24, 2013 Order") provides that, following 60 day notice and comment, the Third-Party Consent Judgment is to be brought before the Court for Entry absent comments "that warrant rejection of the Consent Judgment", January 24, 2013 Order at p 4. The Consent Judgment itself reiterates that, absent such comments, the Consent Judgment is to be promptly entered: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for Entry" (see, Proposed Third-Party Consent Judgment at paragraph 54). Plaintiffs are obligated to use their "best efforts" in the regard (see, Proposed Third-Party Consent Judgment at paragraph 60). The expectation of prompt Entry was further confirmed to the Court by State and Third-Party Defendants Liaison Counsel in their presentation of the settlement to the Court on March 26, 2013 and all parties understood that the subject settlement would be independent of any separate settlement undertakings between the State and the Original Party Defendants.

The Proposed Third-Party Defendant Consent Judgment was posted for comment in the New Jersey Register on May 6, 2013 and, no comments which warrant rejection of the Proposed Consent Judgment having been received during the 60-day comment period which concluded on July 6, 2013 Accordingly, the Third-Party Defendant Liaison Counsel, on July 10th jointly requested that the State promptly, and within not later than 30 days, submit the Proposed Third-Party Defendant Consent Judgment and attachments to the Court for Entry (copy of letter attached). The Third-Party Defendant Liaison Counsel expect that the State will now submit the Proposed Third-Party Defendant Consent Judgment, and accompanying Dismissal Order and Case Management Order to the Court for Entry, and, indeed, over 230 of their constituents have been advised that the required settlement payment of $35.4 million will be tendered and will terminate ongoing expense for this long-standing litigation.

Given these circumstances and this procedural history, the Third-Party Defendant Liaison Counsel were alarmed to find that paragraph 50 of the Proposed Settlement Agreement provides that, "in the event that the Agreement is not presented to the Court" or later overturned, disapproved or modified on appeal, the State will "reopen the public comment period concerning the Third-Party Consent Judgment" and/or "withdraw the Consent Judgment from the Court's consideration" for an unspecified period of time. This provision flies in the face of the Court's January 24, 2013 Order, the requirement in the Proposed Third-Party Defendant Consent Judgment and the representations by the State to the Court at the March 26, 2013 hearing that the Proposed Third-Party Defendant Consent Judgment would be promptly entered, independent of any separate settlement undertakings between the State and the Original Party Defendants. We

therefore ask that offending language in paragraph 50 of the Proposed Settlement Agreement be removed.

2. Natural Resource Damages

Plaintiffs have advised that the State's Natural Resource Damages ("NRDs") for the Newark Bay Complex, while not yet the subject of a formal assessment, could reach as much as $950 million, see, Alexander Lane, *Jersey Asks Polluters for $950 Million*, The Star Ledger (Newark), Oct. 29, 2003, at 13. Given the very dramatic size of this potential liability, Plaintiffs were not prepared to provide a complete release for State NRDs in the Proposed Third-Party Consent Judgment, but rather agreed to a partial settlement of the Third-Party Defendants eventual share of State NRD liability in consideration for the noted $35.4 million payment: The Third-Party Defendants received an NRD release equal to 20% of that settlement amount, with the understanding that the Third-Party Defendants could remain liable for NRD's in excess of that amount, (see Proposed Third-Party Defendant Consent Judgment, paragraph 25 (j)).

This approach is consistent with the general practice of deferring complete NRD settlements until an NRD assessment has been completed. *See, United States v. Montrose Chem. Corp. of California*, 50 F.3d 741, 747 (9th Cir. 1995); *Arizona ex rel. Arizona Dep't of Envtl. Quality v. ACME Laundry & Dry Cleaning Co., Inc.*, CV-09-01919-PHX-FJM, 2009 WL 5170176 (D. Ariz. Dec. 21, 2009); *compare United States v. Se. Pennsylvania Transp. Auth.*, 235 F.3d 817, 825 (3d Cir. 2000) (approving a NRD settlement in part because "if [NRDs] turn out to be 'significantly greater' than the $5.3 million estimate, the consent decree does not prevent EPA from pursuing the [settlors] for the excess").

Indeed, the State has acknowledged that an NRD assessment is likely a predicate to resolution of State NRDs in this case in its February 9, 2011 motion to the Court seeking reservation of the State's NRD claim ("Motion"):

> "Plaintiffs are not seeking NRD in the Second Amended Complaint because such claims are more effectively and efficiently brought in this case after completion of an assessment, so that the injured resources can be fully identified ,and the cost of restoring the resources (and the value of their loss where they cannot be immediately restored) can be accurately calculated..." Motion at pp. 4-5.

Inexplicably, the Plaintiffs have, in the Proposed Settlement Agreement, suggested that the Settling Defendants should be able to secure a complete release of State NRDs, even before any NRD assessment is prepared, in consideration for their $130 million settlement payment, (see Settlement Agreement, paragraph 25(g)). Yet most or all of the $130 million dollar settlement is committed to the reduction of Plaintiffs' past costs under the terms of the Proposed Settlement Agreement, (see Settlement Agreement, paragraph 24). In other words, and absent any further payment from non-settling defendants, Third-Party Defendants could now remain

almost exclusively exposed to a further liability of the estimated $950 million using the prior State NRD estimate.

We see no basis by which the Third-Parties Defendants should be so penalized and ask the State to revise the Proposed Settlement Agreement so that paragraph 25(g) is qualified by reservations, and a total NRD reservation identical to that set forth in the Proposed Third-Party Consent Judgment is added to paragraph 26 as follows:

> "j. Natural Resource Damages, but only after and to the extent that:
>
> a formal Natural Resource Damage Assessment has been completed under applicable law or regulations,
>
> a trustee determination of Settling Defendants' liability for Natural Resource Damages has been made pursuant to a procedure that allows for participation by Settling Defendants; and
>
> the collective liability established in an administrative or judicial proceeding of all Settling Defendants for Natural Resource Damages exceeds twenty percent (20%) of the aggregate of the Settlement Funds. Settling Parties reserve all rights in any such proceeding.
>
> Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey under this Section shall include all Cleanup and Removal Costs paid or incurred (not including unpaid future obligations) by the State of New Jersey regardless of whether such costs are recovered from or advanced or reimbursed by any person not a Settling Defendant (except that such costs paid in settlement of liability of a Defendant that is an agency or department of the State of New Jersey shall not be included); provided, however, that there shall never be any double recovery by the State of New Jersey against any Settling Defendant for the Matters Addressed herein. Settling Defendants reserve all rights and defenses in any action by Plaintiffs under this Section."

Nothing herein is intended as an admission of liability, waiver of rights to furnish individual party comments, nor a waiver of rights to provide further group comment.

We appreciate the opportunity to make these comments and welcome the opportunity to discuss the same with the State.

Sincerely,

Eric Rothenberg
for Exhibit A Private Third-Party Defendants

cc: Liaison Counsel for Parties of Record (via e-mail)
Honorable Sebastian P. Lombardi, J.S.C.
The Honorable Judge Marina Corodemus (Retired)

Att.

EXHIBIT A

July 31, 2013 Commenting Parties
AGC Chemicals Americas, Inc.
Alden-Leeds, Inc.
Associated Auto Body
Atlas Refinery, Inc.
Automatic Electro-Plating Corp.
Belleville Industrial Center
B-Line Trucking
Borden & Remington Corp.
CWC Industries, Inc.
Dundee Water Power and Land Company
Fort James Corporation
Foundry Street Corp.
Houghton International Inc.
Hudson Tool & Die Company, Inc.
Innospec Active Chemicals LLC
Inx International Ink Co.
MI Holdings, Inc.
National Fuel Oil, Inc.
N L Industries, Inc.
Prysmian Communications Cables and Systems USA LLC
Reckitt Benckiser, Inc.
Rexam Beverage Can Company
Royce Associates, a Limited Partnership
S&A Realty Associates, Inc.
Tate & Lyle Ingredients Americas LLC
The Dial Corporation
The Okonite Company, Inc.

ATTACHMENT TO JULY 31, 2013 LETTER TO OFFICE OF RECORD ACCESS, NJDEP

O

O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
JAKARTA†
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July 10, 2013

VIA E-MAIL AND FEDERAL EXPRESS

The Honorable Judge Marina Corodemus (Ret.)
Corodemus & Corodemus Law, LLC
120 Wood Avenue South
Suite 500
Iselin, New Jersey 08830

William J. Jackson, Esq.
Jackson Gilmour & Dobbs, PC
3900 Essex, Suite 600
Houston, Texas 77027

Michael Gordon, Esq.
Gordon & Gordon, PC
505 Morris Avenue
Springfield, NJ 07081

Re: *NJDEP v. Occidental Chemical Corp. et al.*, Docket No ESX-L-9868-05 – Request for Entry of Third-Party Settling Defendant Consent Judgment

Your Honor and Counsel:

Pursuant to this Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Order"), the Plaintiffs and Settling Third-Party Defendants appeared before the Court on March 26, 2013 and presented their Consent Judgment (with attached Schedule and Exhibits) in settlement of this matter, together with attestation as to execution by most of the Settling Third-Party Defendants (signatures being held in escrow for presentation to the Court at the time of Entry). Further to the Order (and the Court's March 26th bench order), the Consent Judgment was posted to CT, the NJDEP web site and published in the New Jersey Register on May 6th, 2013 for 60 day comment. No comments in opposition were received as of July 5, 2013, the expiration of the 60-day comment period.

†In association with Tumbuan & Partners

The Order requires Plaintiffs to bring the Consent Judgment before the Court for Entry if "Plaintiffs determine that they have received no comments that warrant rejection of the Consent Judgment". Accordingly, and no comment having been received, we ask that the Plaintiffs now formally present the Consent Judgment, Case Management Order (in the form set forth in Exhibit D) and Dismissal Order (in the form set forth in Exhibit C) before the Court for Entry on a "schedule to be provided by the Special Master and approved by the Court". We note, in this regard, that paragraph 54 of the Consent Judgment provides in its entirety: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Care Management Order, to the Court for entry" (emphasis added). We therefore ask that Plaintiffs move for Entry of the Consent Judgment and Dismissal Order (as a Rule 4:42-1(c) final order) without delay and not later than 30 days from the date of this letter.

We thank you in advance for your cooperation and assistance. We would be glad to meet with you and the Special Master to expedite finalization and Entry of the subject Consent Judgment at your earliest convenience.

[Remainder of page intentionally left blank]

The Undersigned are making this submission on behalf of Settling Third-Party Defendants:

THE JOINT DEFENSE GROUP SETTLING THIRD-PARTY DEFENDANTS

By: _____
David Erickson, Esq.
Coordinating Counsel for the Joint Defense Group of Settling Third-Party Defendants

By: _____
Eric B. Rothenberg, Esq.
Coordinating Counsel for the Joint Defense Group of Settling Third-Party Defendants

PRIVATE THIRD-PARTY SETTLING DEFENDANTS

By: _____
Lee Henig-Elona, Esq.
Liaison Counsel for Private Settling Third-Party Defendants

PRIVATE THIRD-PARTY SETTLING DEFENDANTS

By: _____
Eric B. Rothenberg, Esq.
Liaison Counsel for Private Settling Third-Party Defendants

PUBLIC THIRD-PARTY SETTLING DEFENDANTS

By: _____
Peter J. King, Esq.
Liaison Counsel for Public Settling Third-Party Defendants

PUBLIC THIRD-PARTY SETTLING DEFENDANTS

By: _____
John M. Scagnelli, Esq.
Liaison Counsel for Public Settling Third-Party Defendants

PASSAIC VALLEY SEWERAGE COMMISSIONERS

By: _____
Michael D. Witt, Esq.
Counsel for Settling Third Party Defendant Passaic Valley Sewerage Commissioners

cc: All Counsel of Record (via electronic posting)

Exhibit 5

GIBBONS

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4511 Fax: (973) 639-8320
whatfield@gibbonslaw.com

July 31, 2013

VIA E-MAIL (PassaicSettlement@dep.state.nj.us) AND REGULAR MAIL

Office of Record Access
NJDEP
Attn: Passaic Repsol/YPF Settlement Comments
PO Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: Repsol/YPF Settlement
NJDEP, et al. v. Occidental Chemical Corporation, et al.
Docket No. ESX-L9868-05 (PASR)

Dear Sir or Madam:

We write as counsel to certain private Third-Party Defendants[1] in the referenced litigation to submit comments on the proposed Repsol/YPF Settlement of certain claims in that litigation. The Department provided public notice of, and invited comments on, the proposed Repsol/YPF Settlement on July 1, 2013. *See* 45 N.J.R. 1661(a) (July 1, 2013).

There is an inherent conflict between the proposed Repsol/YPF Settlement and certain provisions of the pending Third-Party Consent Judgment, for which the public comment period has already closed. *See* 45 N.J.R. 1184(b), 1186 (May 6, 2013). The conflict significantly undermines the Third-Party Consent Judgment, which was negotiated and deemed complete well before the proposed Repsol/YPF Settlement.

I. The Proposed Repsol/YPF Settlement Undermines the Finality of the Third-Party Consent Judgment By Reserving Claims That the Third-Party Plaintiffs May Assert in a Subsequent Federal Action

The Third-Party Consent Judgment provides that

> this Consent Judgment shall be *void and of no effect* if the Court fails to (i) dismiss all of the Third-Party Plaintiffs' claims in the Third-Party Complaint against all Settling Third-Party Defendants, including [claims for] costs allegedly incurred or to be incurred for investigation, removal and remediation of Discharges of Hazardous Substances in the Newark Bay Complex; (ii) approve and enter the Dismissal Order in the form attached as Exhibit C or

[1] The parties submitting these comments are ITT Corporation, Benjamin Moore & Company, Givaudan Fragrances Corporation, Ashland Inc. (on its own behalf and on behalf of its wholly-owned subsidiary Ashland International Holdings, Inc.), Tiffany and Company, Hoffmann-La Roche Inc., Mallinckrodt LLC (formerly known as Mallinckrodt Inc.), The Dial Corporation, Gordon Terminal Service Co. of New Jersey, Inc., National-Standard LLC, Innospec Active Chemicals LLC, and MI Holdings, Inc.

> in materially the same form as attached, [wherein] contribution protection is provided and claims are barred as set forth in this Consent Judgment and the Dismissal Order; and (iii) approve and enter the Case Management Order in the form as attached as Exhibit D or in materially the same form as attached.

Third-Party Consent Judgment ¶ 57 (emphasis added). Exhibits C (form of Dismissal Order) and D (form of Case Management Order) are attached hereto.

Several provisions of the proposed Repsol/YPF Settlement threaten to render the Third-Party Consent Judgment ineffectual. In paragraph 53 of the proposed Repsol/YPF Settlement, the Third-Party Plaintiffs reserve all state law claims not subject to contribution protection and preserve them for a potential future federal action unless state law requires such matters to be pled exclusively in a state court. Proposed Repsol/YPF Settlement ¶ 53. In addition, under the proposed Repsol/YPF Settlement, the State does not provide contribution protection for claims related to removal, investigation and remediation costs by the Third-Party Plaintiffs; indeed, the State appears to agree they are reserved. *Id.*

Paragraph 53 of the proposed Repsol/YPF Settlement is in direct conflict with the Third-Party Consent Judgment. Under the Third-Party Consent Judgment, all claims pled, including the Third-Party Plaintiffs' direct claims for investigation, removal, and remediation costs, are to be dismissed with prejudice. Order of Dismissal, Exhibit C to Third-Party Consent Judgment, ¶ 2. Under paragraph 53 of the proposed Repsol/YPF Settlement, however, these claims are preserved if the Third-Party Plaintiffs take the position that their direct claims are not subject to contribution protection or that state law requires them to be filed in state court. The end result is that the Third-Party Plaintiffs could try to file (or append to federal claims) state law claims for removal, investigation and remediation costs in federal court, even though those claims were pled in the pending litigation and the Third-Party Consent Judgment and the Dismissal Order attached to it specifically require all state law claims to be dismissed with prejudice. If paragraph 53 in the proposed Repsol/YPF Settlement controls, then there can be no settlement under the Third-Party Consent Judgment because *all* of the Third-Party Plaintiffs claims against the Third-Party Defendants are not being dismissed with prejudice.

II. The Proposed Repsol/YPF Settlement Undermines the Contribution Protection Granted to the Settling Third-Party Defendants in the Third-Party Consent Judgment

The Third-Party Consent Judgment provides protection from contribution actions for, *inter alia*, past and future cleanup and removal costs of the Plaintiffs and any other person (including the Third-Party Plaintiffs) sought under State law; past cleanup and removal costs of the Plaintiffs sought under CERCLA or other federal law; future cleanup and removal costs of the Plaintiffs up to certain amounts sought under CERCLA or other federal law; natural resource damage assessment costs; and natural resource damages up to certain amounts sought under State and federal law. Third-Party Consent Judgment ¶ 39(a)(i)-(vi). This broad contribution

protection, a critical feature of the Third-Party Consent Judgment, is also undermined by the proposed Repsol/YPF Settlement.

First, in paragraph 50 of the proposed Repsol/YPF Settlement, the Third Party Plaintiffs "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 [Third-Party Plaintiffs] did not challenge the Third-Party Consent Judgment shall waive or impede such rights." Proposed Repsol/YPF Settlement ¶ 50 (emphasis added).

Second, in paragraph 53 of the proposed Repsol/YPF Settlement, the Third-Party Plaintiffs reserve the right to assert Spill Act claims in the nature of an offset if any of the Third-Party Defendants assert Spill Act claims against them, regardless of whether such Spill Act claims were asserted in the litigation or could have been asserted in the litigation. This provision undermines the contribution protection provided in the Third-Party Consent Judgment by purporting to preserve as offsets Spill Act claims that were to be dismissed with prejudice under the Third-Party Consent Judgment.

Finally, paragraph 63(c) of the proposed Repsol/YPF Settlement expressly states that the Settlement Agreement and Dismissal Order "shall not be a release of or a compromise of any Claims . . . under CERCLA or other federal law." Proposed Repsol/YPF Settlement ¶ 63(c). It goes on to state:

> 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 Settling Defendants, and such Claims are not intended to be barred by CERCLA § 113(f)(2), except as specifically provided in Subparagraph (a) herein . . .

Id. The effect of this provision is to deprive the Third-Party Defendants of the benefit of a pro tanto reduction in future CERCLA damage claims asserted by the State in the event it sues the Third-Party Defendants.

III. The Administrative Record Does Not Support the Broad Geographic Scope of the Release Granted by the Proposed Repsol/YPF Settlement

In the proposed Repsol/YPF Settlement, the Plaintiffs covenant not to sue YPF, Repsol, and their related foreign affiliates under certain alter ego, fraudulent conveyance, or vicarious liability theories for damages and costs "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." *See* Proposed Repsol/YPF Settlement ¶ 25(i). Such a broad release for sites and impacts anywhere in New Jersey outside the Diamond Alkali Superfund Site is not supported by the administrative record.

A resolution of Spill Act liability to the State for cleanup and removal costs requires evidence that (1) the person discharged a hazardous substance; and (2) the State incurred cleanup and removal costs. *See* N.J.S.A. 58:10-23.11f.a(2)(b) ("A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs . . . ."). The administrative record in support of the proposed Repsol/YPF Settlement does not contain evidence of discharges or the resulting impacts at DSC-1/DSCC sites outside the Diamond Alkali Superfund Site. The administrative record also lacks any evidence that the Plaintiffs incurred cleanup and removal costs as a result of impacts related to DSC-1/DSCC sites outside the Diamond Alkali Superfund Site. It thus falls far short of the well established requirement that the administrative record must contain evidence that provides the basis for the agency's decision. *See, e.g.*, *In re Vey*, 124 N.J. 534, 544 (1991).

The proposed Repsol/YPF Settlement also provides the Settling Defendants a covenant not to sue and contribution protection for certain costs and claims "associated with Discharges of Hazardous Substances . . . to the Newark Bay Complex," but the definition of Newark Bay Complex may be construed as inconsistent with the same defined term and scope of release in the Third-Party Consent Judgment. *See* Proposed Repsol/YPF Settlement ¶¶ 25, 63. These provisions are similar to those found in the Third-Party Consent Judgment, except that wording of the respective definitions of "Newark Bay Complex" (and therefore the respective scopes of the releases) appear to differ between the two documents. *Compare* Proposed Repsol/YPF Settlement Agreement ¶ 19.33 *with* Third-Party Consent Judgment ¶ 18.20. The Third-Party Consent Judgment defined "Newark Bay Complex" as follows:

> 'Newark Bay Complex' shall mean (i) the lower 17 miles of the Passaic River, (ii) Newark Bay, (iii) the Arthur Kill, (iv) the Kill Van Kull, (v) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, the lower reaches of the Hackensack River and as may be further extended by U.S. EPA in the Diamond Alkali Superfund Process, and (vi) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, any adjacent waters and sediments of (i) through (v).

Third-Party Consent Judgment ¶ 18.20. Compared to the version of this definition in the Consent Judgment, the definition in the proposed Repsol/YPF Settlement adds a reference to the Lister Property; adds a parenthetical that the Passaic River includes but is not limited to the FFS Area; adds to investigations "by or at the direction of U.S. EPA or the DEP"; adds "now or in the future" to the Diamond Alkali Superfund Process; and adds "other media." Proposed Repsol/YPF Settlement ¶ 19.33. These changes may or may not result in substantive differences from the Third-Party Consent Judgment. However, to the extent the definitions are different at all, the differences should not result in any difference between the two settlements in terms of the geographic coverage of their respective releases. The two settlements resolve different aspects

of the same litigation, stemming from the same complaint. Accordingly, the geographic scope of the settlements also should be the same.

IV. The Release for Natural Resource Damages in the Proposed Repsol/YPF Settlement Is Neither Authorized Nor in the Public Interest

The proposed Repsol/YPF Settlement provides the Settling Defendants a complete release for State natural resource damages ("NRDs") in the Newark Bay Complex. *See* Proposed Repsol/YPF Settlement ¶ 25(g). Yet the Plaintiffs have not yet performed an assessment of the extent of State NRDs in the Newark Bay Complex. As a result, the extent of State NRDs in the Newark Bay Complex is completely unknown, although the Plaintiffs have previously stated that they could be as high as $950 million. *See* Alexander Lane, *Jersey Asks Polluters for $950 Million*, The Star-Ledger (Newark), Oct. 29, 2003, at 13. Giving the Settling Defendants a complete release for NRDs before assessing the scope and magnitude of such damages is not in the public interest.

The Plaintiffs should not provide a complete release for State NRDs without first identifying the State NRDs that have been assessed and providing such information in the record. *See United States v. Montrose Chem. Corp. of California*, 50 F.3d 741, 747 (9th Cir. 1995); *Arizona ex rel. Arizona Dep't of Envtl. Quality v. ACME Laundry & Dry Cleaning Co., Inc.*, CV-09-01919-PHX-FJM, 2009 WL 5170176 (D. Ariz. Dec. 21, 2009); *compare United States v. Se. Pennsylvania Transp. Auth.*, 235 F.3d 817, 825 (3d Cir. 2000) (approving NRD settlement in part because "if [NRDs] turn out to be 'significantly greater' than the $5.3 million estimate, the consent decree does not prevent EPA from pursuing the [settlors] for the excess"). It is not in the public interest for the Plaintiffs to provide a complete State NRD release to parties connected to the largest polluter in the Newark Bay Complex when the Plaintiffs have not assessed or quantified the total amount of state NRDs. It is also inequitable, in that the State NRD trustees may later seek to impose upon the settling Third-Party Defendants liability for NRDs for which YPF, Repsol, Maxus, or Tierra are responsible, leaving the settling Third-Party Defendants with little or no recourse in contribution against those entities. That is to say, under the approach reflected in the proposed Repsol/YPF Settlement, which requires the Settling Defendants to pay $130 million, the settling Third-Party Defendants could be exposed to further liability for the rest of the State NRDs, which could approach $950 million.

The proposed Repsol/YPF Settlement may be misconstrued as providing a release and possible contribution protection from potential claims by *federal* natural resource trustees as well. "Natural Resource Damages" are defined as damages "that are recoverable by any New Jersey state natural resource trustee." Proposed Repsol/YPF Settlement ¶ 19.31. However, the covenant not to sue and contribution protection provisions could be read as purporting to provide a release for both State and federal NRDs. *See id.* ¶¶ 25(g), 63(a)(v) ("Natural Resource Damages associated with the Newark Bay Complex under applicable state and federal law, with respect to Settling Defendants only."). Any attempt by Plaintiffs to provide contribution protection for federal NRD claims is *ultra vires*, inequitable, and not supported by the administrative record. There is no evidence in the administrative record to support such a broad

NRD release. Such a broad release also would not be permitted under the current agreement between the federal and State natural resource trustees, which provides that "[n]o Trustee is authorized to enter into any settlement on behalf of any other Trustee." *See* Memorandum of Agreement ("MOA") among the State of New Jersey, National Oceanic and Atmospheric Administration Regarding Natural Resource Damage Assessment and Restoration for the Diamond Alkali Superfund Site and Environs, at 7. Even if a party could contend that the proposed Repsol/YPF Settlement resolved federal natural resource damage claims on behalf of the federal trustees, the MOA makes clear that it simply could not settle these federal claims.

Finally, the Proposed Settlement Agreement provides for an allocation of Settlement Funds applied to Plaintiffs' Claims for Past Cleanup and Removal Costs and to Natural Resource Damages, but it does not specify what that allocation will be. *See* Proposed Repsol/YPF Settlement ¶¶ 24, 63(e). The Plaintiffs cannot limit settlement funds to any particular category of damages unless they remove from "Matters Addressed" in the settlement any category which does not receive an allocated amount of Settlement Funds.

V. The Third-Party Consent Judgment Should Be Entered Before the Proposed Repsol/YPF Settlement Or Both Should Be Entered Simultaneously

The Third-Party Consent Judgment was negotiated well before the proposed Repsol/YPF Settlement and should be promptly entered. The Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Order") provides that, following 60-day notice and comment, the Third-Party Consent Judgment is to be brought before the Court for entry after the Plaintiffs determine that they have received no comment "that warrants rejection of the Consent Judgment." Order at 4. The Consent Judgment itself reiterates that, absent substantive comment, the Consent Judgment is to be *promptly* entered: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for Entry." *See* Third-Party Consent Judgment ¶ 54. The expectation of prompt entry was further confirmed to the Court by State and Third-Party Defendants Liaison Counsel in their presentation of the settlement to the Court on March 26, 2013, and all parties understood that approval and entry of the Third-Party Consent Judgment would be independent of any separate settlement undertakings between the State and the Original Party Defendants. Accordingly, the Proposed Consent Judgment's entry should not be dependent on any other agreement including the proposed Repsol/YPF Settlement.

The proposed Third-Party Defendant Consent Judgment was posted for comment in the New Jersey Register on May 6, 2013 and, no substantive comment having been received during the 60-day comment period, which concluded on July 5th, the Third-Party Defendant Liaison Counsel on July 10 asked the State to promptly move for entry. We reiterate our support for entry of the Proposed Consent Judgment independent of and prior to entry of the proposed Repsol/YPF Settlement.

The proposed Repsol/YPF Settlement requires that it be entered first, or contemporaneously with the Third-Party Consent Judgment. Proposed Repsol/YPF Settlement

¶ 50. If the proposed Repsol/YPF Settlement is entered first, it may modify the Third-Party Consent Judgment and significantly alter a number of key terms of the settlement that the settling Third-Party Defendants reached after extensive negotiations. For example, as set forth above, the settling Third-Party Defendants may be denied the contribution protection for which they negotiated. It would also be inconsistent with the Court's clear direction regarding the entry of the Third-Party Consent Judgment and with the understanding of the parties to the Third-Party Consent Judgment. The timing provision in paragraph 50 of the proposed Repsol/YPF Settlement should therefore be deleted or, at a minimum, amended to provide that it will be entered contemporaneously with, and not before, the Third-Party Consent Judgment.

Conclusion

For all of the foregoing reasons, there are significant conflicts between the proposed Repsol/YPF Settlement and the earlier-negotiated and earlier-finalized Third-Party Consent Judgment. The proposed Repsol/YPF Settlement must be clarified, by way of an amendment, a side agreement, or a clarifying order, to provide that in the event of a conflict between the Repsol/YPF Settlement and the Third-Party Consent Judgment, the Third-Party Consent Judgment, and the Dismissal Order entered pursuant thereto, will govern these issues. Without such a clarification, the proposed Repsol/YPF Settlement threatens to render the Third-Party Consent judgment null and void.

Sincerely,

Susanne Peticolas	John H. Klock	William S. Hatfield	Camille V. Otero
Director	Director	Director	Director

Enclosures

Exhibit 6

LEE HENIG-ELONA
LHENIG-ELONA@GORDONREES.COM
DIRECT DIAL: (973) 549-2520

GORDON & REES LLP

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WWW.GORDONREES.COM

July 31, 2013

VIA E-MAIL (PassaicSettlement@dep.state.nj.us)
AND U.S. MAIL

Office of Record Access
NJDEP
Attn: Passaic YPF/Repsol Settlement
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comments on Proposed Defendant Settlement Agreement (with attached Schedules and Exhibits) in the Matter of NJDEP, et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013 ("Proposed Settlement Agreement")***

Dear Sir or Madam:

I write as Liaison Counsel to certain private Third-Party Defendants, as identified on the attached Exhibit A ("Commenting Parties"), in *NJDEP, et al. v. Occidental Chemical Corporation, et al.*, Docket No. ESX-L-9868-05 (PASR) (the "Action"), that wish to provide comment to the proposed Settlement Agreement among the State and certain Defendants.

These comments are occasioned by the State's July 1, 2013 posting of the proposed Settlement Agreement with certain Settling Defendants in the Action, as required under the Court's April 25, 2013 Process Order on the Approval Process for the proposed Settlement Agreement ("Process Order"). The Commenting Parties herein are concerned with the discrepancy between the proposed Settlement Agreement and the proposed Third-Party Defendant Consent Judgment posted on May 6, 2013 ("Proposed Third-Party Consent Judgment"). The Commenting Parties request modifications to the Proposed Settlement Agreement to assure equitable treatment for all settling parties in the Action and to protect non-settling parties, for the reasons set forth herein. The Commenting Parties are concerned with the inequitable treatment of the State's claim for Natural Resource Damages.

While not yet the subject of a formal assessment, Plaintiffs have advised that Natural Resource Damages ("NRDs") for the Newark Bay Complex could reach as much as $950 million. See, e.g., Alexander Lane, *Jersey Asks Polluters for $950 Million*, The Star Ledger (Newark), Oct. 29, 2003, at 13. Given the enormity of this potential liability, Plaintiffs were not prepared to provide a complete release for NRDs in the Proposed Third-Party Consent Judgment.

Instead, the State agreed to a partial settlement of the Third-Party Defendants' eventual share of NRD liability in consideration for the noted $35.4 million payment: Third-Party Defendants received an NRD release equal to 20% of their settlement amount with the understanding that the settling Third-Party Defendants would remain liable for NRDs in excess of that amount. (See, Consent Judgment, paragraph 25 (j)). Of course, non-settling Third-Party Defendants are not accorded any NRD protection.[1]

This approach is consistent with the prior practice of deferring complete NRD settlements until an NRD assessment has been completed. *See, United States v. Montrose Chem. Corp. of California*, 50 F.3d 741, 747 (9th Cir. 1995); *Arizona ex rel. Arizona Dep't of Envtl. Quality v. ACME Laundry & Dry Cleaning Co., Inc*., CV-09-01919-PHX-FJM, 2009 WL 5170176 (D. Ariz. Dec. 21, 2009); *compare United States v. Se. Pennsylvania Transp. Auth.*, 235 F.3d 817, 825 (3d Cir. 2000) (approving a NRD settlement in part because "if [NRDs] turn out to be 'significantly greater' than the $5.3 million estimate, the consent decree does not prevent EPA from pursuing the [settlors] for the excess").

Indeed, in this Action, the State has acknowledged that it was necessary to perform a robust NRD assessment as predicate to resolution of NRD claims. In its February 9, 2011 motion to the Court seeking reservation of the States NRD claim ("Motion"), the State asserted:

> "Plaintiffs are not seeking NRD in the Second Amended Complaint because such claims are more effectively and efficiently brought in this case after completion of an assessment, so that the injured resources can be fully identified, and the cost of restoring the resources (and the value of their loss where they cannot be immediately restored) can be accurately calculated." Motion at pp. 4-5.

Inexplicably, the Plaintiffs have, in the Proposed Settlement Agreement, suggested that the Settling Defendants should be able to secure a <u>complete</u> release of NRDs (even before any assessment is complete) in consideration for their $130 million settlement payment, (see, paragraph 25(g)). Without payment from non-settling defendant Occidental Chemical Corporation, settling and non-settling Third-Party Defendants would remain exposed to further liability of the estimated $950 million using the prior State estimate (and assuming all settlement funds are used to satisfy the State's past cost claims). We see no basis by which Third-Party Defendants should be so penalized and ask the State to revise the Proposed Settlement Agreement to mirror the Third-Party Consent Judgment so that paragraph 25(g) is qualified by reservations, and a total NRD reservation is added to paragraph 26 as follows:

> *"j. Natural Resource Damages, but only after and to the extent that:*
>
> *(1) a formal Natural Resource Damage Assessment has been completed under applicable law or regulations,*

[1] Although not accorded any protection, the Proposed Settlement Agreement should not unfairly prejudice the non-settling parties.

(2) a trustee determination of Settling Defendants' liability for Natural Resource Damages has been made pursuant to a procedure that allows for participation by Settling Defendants; and

(3) the collective liability established in an administrative or judicial proceeding of all Settling Defendants for Natural Resource Damages exceeds twenty percent (20%) of the aggregate of the Settlement Funds. Settling Parties reserve all rights in any such proceeding.

Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey under this Section shall include all Cleanup and Removal Costs paid or incurred (not including unpaid future obligations) by the State of New Jersey regardless of whether such costs are recovered from or advanced or reimbursed by any person not a Settling Defendant (except that such costs paid in settlement of liability of a Defendant that is an agency or department of the State of New Jersey shall not be included); provided, however, that there shall never be any double recovery by the State of New Jersey against any Settling Defendant for the Matters Addressed herein. Settling Defendants reserve all rights and defenses in any action by Plaintiffs under this Section."

Nothing herein shall be taken as a waiver of rights to provide further comment.

We appreciate the opportunity to make this comment and welcome the opportunity to discuss the same with parties and the Court.

Very truly yours,

Lee Henig-Elona

LEE HENIG-ELONA

cc: Liaison Counsel for Parties of Record (via e-mail)
Honorable Sebastian P. Lombardi, J.S.C.
The Honorable Judge Marina Corodemus (Retired)

Attachment A to Comment Letter – July 31, 2013

1. IMTT – Bayonne
2. Bayonne Industries
3. Campbell Foundry Company
4. Cosan Chemical Corporation
5. CasChem, Inc.
6. Passaic Pioneers Properties Company
7. Spectraserv, Inc.
8. CBS Corporation
9. Norpak Corporation
10. Precision Manufacturing Group, LLC
11. GenTek Holding LLC
12. Elan Chemical Company, Inc.
13. Philbro, Inc.
14. Harrison Supply Company
15. Coltec Industries
16. Deleet Merchandising Corporation
17. Prentiss Incorporated
18. CS Osborne & Co.
19. Goodrich Corporation for Hilton Davis Corporation, improperly named as Emerald Hilton Davis
20. Goodrich Corporation for Kalama Specialty Chemicals Inc.
21. Seton Company
22. Siemens Water Technologies Corp.
23. Veolia ES Technical Solutions, LLC
24. WAS Terminals Corporation
25. WAS Terminals, Inc.
26. EM Sergeant Pulp & Chemical Co.
27. Curtiss-Wright Corporation
28. Eden Wood Corporation
29. Kearny Smelting & Refining Corp.
30. Superior MPM LLC
31. Wiggins Plastics, Inc.
32. FER Plating, Inc.
33. Miller Environmental Group, Inc.
34. Clean Earth of North Jersey, Inc.
35. GJ Chemical Co., Inc.
33. Thomas & Betts Corp.
34. Vitusa Corp.
35. Como Textile Prints, Inc.
36. Hexion Specialty Chemicals, Inc. n/k/a Momentive Specialty Chemicals Inc.

Exhibit 7

Saul Ewing LLP

Andrea A. Lipuma
Phone: (609) 452-5032
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ALipuma@saul.com
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Our File: 356987.00002

July 31, 2013

VIA E-MAIL (PASSAICSETTLEMENT@DEP.STATE.NJ.US) AND US MAIL

Office of Record Access
NJDEP
Attn: Passaic Repsol/YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comments on Proposed Settlement Agreement in the Matter of NJDEP et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013***

Dear Sir or Madam:

On behalf of Kinder Morgan Liquids Terminals LLC, ("Kinder Morgan") and its related corporate entities, we submit the following comments to the proposed settlement agreement between Plaintiffs and Defendants Maxus Energy Corporation, Tierra Solutions, Inc., Repsol, S.A., YPF, S.A. and affiliated entities ("Proposed Settlement Agreement"). These comments address natural resource damages ("NRD") issues raised by the Proposed Settlement Agreement.

The Proposed Settlement Agreement provides the settling Defendants with a complete release and contribution protection for State NRD claims in the Newark Bay Complex. *See* Proposed Settlement Agreement, Paragraph 25(g) and Paragraph 63. The language of the Proposed Settlement Agreement may be misconstrued as also providing a release and contribution protection from potential claims by federal natural resource trustees. The Proposed Settlement Agreement provides that the matters addressed and released include NRDs "under applicable state and federal law" and that contribution protection is granted to the settling Defendants for such NRD claims. *See* Paragraph 63(a)(v).

If Plaintiffs are attempting to provide a release and contribution protection for federal NRD claims, that action is *ultra vires*, arbitrary and capricious, inequitable and not supported by the administrative record. There is no evidence in the administrative record to support such a broad NRD release. Moreover, such a broad release also would not be permitted under the agreement between the federal and state natural resource trustees, which provides that "[n]o

Trustee is authorized to enter into any settlement on behalf of any other Trustee." *See* Memorandum of Agreement among the State of New Jersey, National Oceanic and Atmospheric Administration Regarding Natural Resource Damage Assessment and Restoration for the Diamond Alkali Superfund Site and Environs, at p. 7. Even if a party could contend that the Proposed Settlement Agreement resolved federal natural resource damage claims on behalf of the federal trustees, the MOA makes clear that the Proposed Settlement Agreement could not settle these federal claims. Therefore, Kinder Morgan objects to the complete NRD release and contribution protection given to the Settling Defendants.

Kinder Morgan has other questions and potential objections to the Proposed Settlement Agreement which it hopes will be resolved as the Department responds to the comments made by the other parties to the litigation. Kinder Morgan reserves the right to raise its concerns and objections with the Court at the appropriate time in the approval process.

We look forward to receiving clarification from the Department. Thank you for your attention to this matter.

Very truly yours,

Andrea A. Lipuma

AAL/dl
Enclosure

Exhibit 8

NORTON ROSE FULBRIGHT

July 31, 2013

Via E-Mail
(passaicsettlement@dep.state.nj.us)
and U.S. Mail

Mr. Bob Martin, Administrator
New Jersey Department of
Environmental Protection
Office of Record Access
Attn: Passaic Repsol/YPF Settlement Comments
P. O. Box 420, Mail Code 401-06Q
Trenton, NJ 08626-0420

Fulbright & Jaworski LLP
1301 McKinney, Suite 5100
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Re: Comments of Legacy Vulcan Corp. to the Proposed Defendant Settlement Agreement (with attached Schedules and Exhibits) in the Matter of *NJDEP, et al. v. Occidental Chemical Corporation, et al.*, Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013

Dear Sir or Madam:

Legacy Vulcan Corp. ("Vulcan"), a private third-party Defendant in the *NJDEP, et al. v. Occidental Chemical Corporation, et al.*, Docket No. ESX-L9868-05 (PASR) (the "Action"), submits these comments on the Proposed Defendant Settlement Agreement published in the New Jersey Register on July 1, 2013 between certain "Settling Defendants" and the New Jersey Department of Environmental Protection ("DEP"), its Commissioner, and the Administrator of the New Jersey Spill Compensation Fund (collectively, the "State" or "Plaintiffs"). Vulcan's comments at this time are limited to the timing and approval processes for the Proposed Defendant Settlement Agreement and the previously filed "Third Party Consent Judgment."

Vulcan is one of many Third-Party Defendants with whom the State has entered into a settlement agreement for claims raised in the Action, the terms of which are embodied in a proposed Third-Party Consent Judgment signed by the parties. The Third Party Defendant settlement terms were submitted for public comment on May 6, 2013, and no substantive comments were received during the 60-day comment period which concluded on July 6, 2013.

The parties agreed in the Third Party Consent Judgment that: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for Entry." Proposed Third-Party Consent Judgment, ¶ 54. On July 10, 2013, Third-Party Defendant Liaison Counsel jointly presented the Consent Judgment and attachments to

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Fulbright & Jaworski LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa (incorporated as Deneys Reitz, Inc.), each of which is a separate legal entity, are members of Norton Rose Fulbright Verein, a Swiss Verein. Details of each entity, with certain regulatory information, are at nortonrosefulbright.com. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

the Court and State for entry. The Third-Party Defendants reasonably expect that the Third-Party Consent Judgment, Dismissal Order and Case Management Order will be promptly submitted to the Court for approval, per the terms of the settlement agreement. This expectation was confirmed to the Court by the State and Third-Party Defendants Liaison Counsel in their presentation of the agreement to the Court on March 26, 2013. All parties understood that the settlement would be independent of any separate settlement undertakings between the State and the Original Party Defendants.

Vulcan notes that the Proposed Defendants Settlement Agreement could potentially interfere with the timing and entry of the Third-Party Consent Judgment, which could effectively nullify covenants agreed to by the State. Specifically, Paragraph 50 of the Proposed Defendants Settlement Agreement provides that "in the event that the Agreement is not presented to the Court" or later overturned, disapproved or modified on appeal, the State will "reopen the public comment period concerning the Third-Party Consent Judgment" and/or "withdraw the [Third-Party] Consent Judgment from the Court's consideration" for an unspecified period of time. The potential consequence of Paragraph 50 of the Proposed Defendants Settlement Agreement could nullify the express terms of the agreement between the State and the Third-Party Defendants, including Vulcan, who are parties to the Third-Party Consent Judgment.

Vulcan understands that the State has represented that both settlements will be presented to the Court for approval and entry at the same hearing in September 2013. The State has also represented to the settling Third-Party Defendants and to the Court that the Third-Party settlement is independent of the Proposed Defendants Settlement Agreement, which was clearly reached at a later date. Therefore, to the extent that the Proposed Defendants Settlement Agreement is not approved, or is subsequently reversed or vacated, Vulcan objects to any provision in the Proposed Defendants Settlement Agreement, including Paragraph 50 in particular, that purports to delay or reverse approval of the Third-Party Consent Judgment, or alter the rights of Vulcan under the terms of its settlement agreement with the State.

Because it is not known at this time whether the terms of Paragraph 50 will in fact result in a breach of Vulcan's rights under its settlement with the State, Vulcan submits these comments for the record. Vulcan reserves its rights to withdraw the submitted comment and to further comment and/or formally object as necessary to protect its interests.

Very truly yours,

Eddie Lewis

Edward Lewis

/jnb

Exhibit 9

EDGCOMB LAW GROUP

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San Francisco, California 94104
415.692.8140 direct
415.399.1885 fax
mjenkins@edgcomb-law.com

July 31, 2013

VIA E-MAIL (PASSAICSETTLEMENT@DEP.STATE.NJ.US) AND U.S. MAIL

Office of Record Access
NJDEP
Attn: Passaic Repsol/YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comments on Proposed Settlement Agreement in the Matter of NJDEP et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013***

Dear Sir or Madam:

We submit this comment on behalf of Setlting Third Party Defendants McKesson Corporation, McKesson Envirosystems Co., and Safety-Kleen Envirosystems Co. (collectively "McKesson") on the proposed settlement agreement between Plaintiffs and Defendants YPF, Repsol, Maxus, and Tierra, and affiliated entities ("Proposed Settlement Agreement"). These comments address flaws in the agreement that will result in unfair and inequitable treatment of McKesson should the Proposed Settlement Agreement be approved by the Plaintiffs and entered as proposed.

1. Natural Resource Damages

The Proposed Settlement Agreement will provide Settling Defendants with a complete release for natural resource damages ("NRDs") in the Newark Bay Complex. *See* Proposed Settlement Agreement, Paragraph 25(g). The Plaintiffs have agreed to this complete release despite not having performed a NRD assessment on the extent of NRDs in the Newark Bay Complex. At this time, the extent of NRDs over which the state natural resource trustees have jurisdiction in the Newark Bay Complex are unknown. Providing a complete release to the Settling Defendants without identifying the potential scope of natural resource damages for which they may be liable is not in the best interests of the public or the State of New Jersey.

Plaintiffs should not provide a complete NRD settlement and release for NRDs without identifying the NRDs that have been assessed, and without providing such information in the record. *See United States v. Montrose Chem. Corp. of California*, 50 F.3d 741, 747 (9th Cir. 1995); *Arizona ex rel. Arizona Dep't of Envtl. Quality v. ACME Laundry & Dry Cleaning Co., Inc*., CV-09-01919-PHX-FJM, 2009 WL 5170176 (D. Ariz. Dec. 21, 2009); *compare United States v. Se. Pennsylvania Transp. Auth.*, 235 F.3d 817, 825 (3d Cir. 2000) (approving a NRD settlement in part because "if [NRDs] turn out to be 'significantly greater' than the $5.3 million estimate, the consent decree does not prevent EPA from pursuing the [settlors] for the excess"). It is not in the public interest for the Plaintiffs to provide a complete NRD release to parties connected to the largest polluter in the Newark Bay Complex when the Plaintiffs have not assessed or quantified the total amount of NRDs. It is further not in the public interest because it may inequitably disadvantage Settling Third-Party Defendants , should the state trustees seek to later impose liability for NRDs for which YPF, Repsol, Maxus, or Tierra are responsible, leaving little or no recourse in contribution against those entities. .

In addition, the Proposed Settlement Agreement may be misconstrued as providing a release and possible contribution protection from potential claims by federal natural resource trustees as well. "Natural Resource Damages" are defined by the Proposed Settlement Agreement as damages "that are recoverable by any New Jersey state natural resource trustee." Paragraph 19.31. However, the covenant not to sue and contribution protection provisions could be read as purporting to provide a release for both state and federal NRDs. *See* Paragraph 25(g); Paragraph 63(a)(v) ("Natural Resource Damages associated with the Newark Bay Complex under applicable state and federal law, with respect to Settling Defendants only."). Any attempt by Plaintiffs to provide contribution protection for federal NRD claims is *ultra vires*, inequitable, and not supported by the administrative record. There is no evidence in the administrative record to support such a broad NRD release. Such a broad release also would not be permitted under the current agreement between the federal and state natural resource trustees, which provides that "[n]o Trustee is authorized to enter into any settlement on behalf of any other Trustee." *See* Memorandum of Agreement among the State of New Jersey, National Oceanic and Atmospheric Administration Regarding Natural Resource Damage Assessment and Restoration for the Diamond Alkali Superfund Site and Environs, at p. 7. Even if a party could contend that the Proposed Settlement Agreement resolved federal natural resource damage claims on behalf of the federal trustees, the MOA makes clear that the Proposed Settlement Agreement could not settle these federal claims.

Finally, the Proposed Settlement Agreement provides for an allocation of Settlement Funds applied to Plaintiffs' Claims for Past Cleanup and Removal Costs and to Natural Resource Damages, but it does not specify what that allocation will be. *See* Paragraph 24, Paragraph 63(e). Plaintiffs cannot limit settlement funds to any particular category of damages unless they

remove from "Matters Addressed" in the settlement any category which does not receive an allocated amount of Settlement Funds.

Accordingly, McKesson objects to the complete NRD release to the Settling Defendants as arbitrary, capricious, and not in the public interest.

2. Geographic Scope of Release

The Proposed Settlement Agreement provides a covenant not to sue YPF, Repsol, and their related foreign affiliates under certain alter ego, fraudulent conveyance, or vicarious liability theories for damages and costs "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." *See* Paragraph 25(i). A broad release for sites and impacts anywhere in New Jersey outside the Diamond Alkali Superfund Site is not supported by the administrative record.

To resolve liability to the State for cleanup and removal costs, the Spill Act requires evidence that (1) the person discharged a hazardous substance; and (2) the State incurred cleanup and removal costs. *See* N.J.S.A. 58:10-23.11f.a(2)(b) ("A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs . . . ."). The administrative record in support of the Proposed Settlement Agreement does not contain evidence of discharges or the resulting impacts at DSC-1/DSCC sites outside the Diamond Alkali Superfund Site. The administrative record also does not contain evidence that Plaintiffs incurred cleanup and removal costs as a result of impacts related to DSC-1/DSCC sites outside the Diamond Alkali Superfund Site.

The administrative record must contain evidence that provides the basis for the agency's decision. *See, e.g.*, *In re Vey*, 124 N.J. 534, 544 (1991). The administrative record in support of the Proposed Settlement Agreement does not provide the basis for a covenant not to sue for cleanup and removal costs resulting from impacts at DSC-1/DSCC sites outside of and not reaching the Diamond Alkali Superfund Site.

In addition to the insufficiency of the record, Settling Third-Party Defendants cannot know the potential impact of this release because they do not know the locations involved. Plaintiffs have not provided a list of potentially released sites, yet seek to provide a release for those sites and any impacts outside the Diamond Alkali Superfund Site. It is impossible to evaluate the fairness and legal propriety of a settlement that covers unknown sites and impacts throughout all of New Jersey. The covenant not to sue for cleanup and removal costs for

discharges at DSC-1/DSCC sites outside of and not reaching the Diamond Alkali Superfund Site should be stricken.

The Proposed Settlement Agreement also provides Settling Defendants a covenant not to sue and contribution protection for certain costs and claims "associated with Discharges of Hazardous Substances . . . to the Newark Bay Complex," but the definition of Newark Bay Complex may be construed as inconsistent with the same-defined term and scope of release in the Settling Third-Party Defendants' Consent Judgment. *See* Proposed Settlement Agreement, Paragraphs 25, 63. These provisions are similar to the Proposed Third-Party Consent Judgment, except that wording of the respective definitions of "Newark Bay Complex" (and therefore the respective scopes of the releases) appear to differ between the two documents. *Compare* Proposed Settlement Agreement Paragraph 19.33 *with* Proposed Third-Party Consent Judgment Paragraph 18.20. The Proposed Third-Party Consent Judgment defined "Newark Bay Complex" as follows:

> 'Newark Bay Complex' shall mean (i) the lower 17 miles of the Passaic River, (ii) Newark Bay, (iii) the Arthur Kill, (iv) the Kill Van Kull, (v) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, the lower reaches of the Hackensack River and as may be further extended by U.S. EPA in the Diamond Alkali Superfund Process, and (vi) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, any adjacent waters and sediments of (i) through (v).

Proposed Third-Party Consent Judgment Paragraph 18.20. Compared to the version of this definition in the Consent Judgment, the Proposed Settlement Agreement definition adds a reference to the Lister Property; adds a parenthetical that the Passaic River includes but is not limited to the FFS Area; adds to investigations "by or at the direction of U.S. EPA or the DEP"; adds "now or in the future" to the Diamond Alkali Superfund Process; and adds "other media." Proposed Settlement Agreement Paragraph 19.33. These changes may or may not result in substantive differences from the Proposed Third-Party Consent Judgment. However, to the extent the definitions are different at all, the differences should not result in any different geographical coverage of the releases provided by the Plaintiffs in either settlement. Both settlements resolve the same litigation brought by the Plaintiffs' complaint. Accordingly, the geographic scope of the settlements also should be the same.

3. Contribution Protection for Occidental

N.J.S.A. 58:10-23.11f.a(2)(b) provides: "The settlement [between the State and a person who has discharged a hazardous substance] shall not release any other person from liability for

cleanup and removal costs who is not a party to the settlement . . . ." The Proposed Settlement Agreement attempts to provide contribution protection to Occidental, who is not a party to the Proposed Settlement Agreement and who the State alleges has independent liability for discharges from the Lister Avenue Site. *See, e.g.*, Paragraph 62 ("[U]nder Paragraphs 28, 29 and 63, OCC shall be entitled to the protection under the Plaintiffs' covenant not to sue and to contribution protection.").

The Spill Act expressly prohibits providing contribution protection to a non-settling party, such as Occidental. Any attempt to provide this protection would be *ultra vires*. *See, e.g.*, *Dragon v. New Jersey Dep't of Envtl. Protection*, 405 N.J. Super. 478, 493-98 (App. Div. 2009) (holding that NJDEP could not agree to a settlement in a permit appeal case when the settlement would contradict New Jersey statutes). Therefore, pursuant to the Spill Act, the Proposed Settlement Agreement cannot provide contribution protection to Occidental.

4. Timing for Entry of Consent Judgment

The Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Order") provides that, following 60-day notice and comment, the Proposed Third-Party Defendant Consent Judgment is to be brought before the Court for entry after the Plaintiffs determine that they have received no comment "that warrants rejection of the Consent Judgment." Order, at 4. The Consent Judgment itself reiterates that, absent substantive comment, the Consent Judgment is to be promptly entered: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for Entry." *See* Proposed Third-Party Consent Judgment, Paragraph 54. The expectation of prompt entry was further confirmed to the Court by State and Third-Party Defendants Liaison Counsel in their presentation of the settlement to the Court on March 26, 2013 and all parties understood that approval and entry of the Third-Party Consent Judgment would be independent of any separate settlement undertakings between the State and the Original Party Defendants.

The Proposed Consent Judgment between Plaintiffs and Settling Third-Party Defendants was independent of any agreement between Plaintiffs and any other party, including Defendants. Accordingly, the Proposed Consent Judgment's entry should not be dependent on any other agreement.

The Proposed Third-Party Defendant Consent Judgment was posted for comment in the New Jersey Register on May 6, 2013 and, no substantive comment having been received during the 60-day comment period which concluded on July 5th, the Third-Party Defendant Liaison Counsel, on July 10th asked the State to promptly move for entry. Settling Third-Party

Defendants support entry of the Proposed Consent Judgment independent of the Proposed Settlement Agreement.

We appreciate the opportunity to make this comment and welcome the opportunity to discuss the same with the parties and the Court.

Sincerely,

EDGCOMB LAW GROUP

By_____
MARYLIN JENKINS
Of Counsel

Defendants support entry of the Proposed Consent Judgment independent of the Proposed Settlement Agreement.

We appreciate the opportunity to make this comment and welcome the opportunity to discuss the same with the parties and the Court.

Sincerely,

EDGCOMB LAW GROUP

By_____
MARYLIN JENKINS
Of Counsel

MICHAEL P. MCTHOMAS PLLC

By_____
Michael P. McThomas
Local Counsel for Settling Third Party Defendants McKesson Corporation, McKesson Envirosystems Co., and Safety-Kleen Envirosystems Co.

Exhibit 10

FLASTER GREENBERG
ATTORNEYS AT LAW • A PROFESSIONAL CORPORATION

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MARTY M. JUDGE, ESQ.
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E-Mail: marty.judge@flastergreenberg.com

July 31, 2013

VIA E-MAIL (PassaicSettlement@dep.state.nj.us) AND REGULAR MAIL

Office of Record Access
NJDEP
Attn: Passaic Repsol/ YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: **Repsol/ YPF Settlement**
NJDEP et al. v. Occidental Chemical Corporation et al.
Docket No. ESX-L9868-05 (PASR)

Dear Sir or Madam:

This firm represents Third-Party Defendant Reichhold, Inc. ("Reichhold") in connection with the above-captioned litigation. Reichhold is one of numerous Third-Party Defendants who have, along with the Plaintiffs, entered into the Proposed Settlement Agreement and Proposed Third-Party Defendant Consent Judgment posted on May 6, 2013 as required under the Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Proposed Third-Party Consent Judgment").[1]

[1] Reichhold is a participant in the Proposed Third-Party Consent Judgment through its being named in the Third-Party Complaint as to the so-called "Reichhold Doremus Avenue Site" (see Third-Party Complaint B, ¶¶ 2503-2527), the so-called "Bayonne Barrel and Drum Site" (see id. at ¶¶ 3087-3118 and 3200-3202), and a small remaining portion of the so-called "Reichhold Elizabeth Site") (see id. at ¶¶ 2528-2543). Reichhold was originally also named in the Third-Party Complaint as to the so-called "Reichhold Albert Avenue Site" (see id. at ¶¶ 2490-2502), but during the course of the litigation all claims against Reichhold were dismissed, with prejudice, as to the entirety of the "Reichhold Albert Avenue Site" and the entirety of the "Reichhold Elizabeth Site," excluding only "contribution claims pertaining to alleged current damages or injury to Natural Resources located within and/or extending from the Morses Creek (a tidal stream, 20-40 feet wide in the vicinity of the Reichhold Elizabeth Site) and the nearby salt marsh that may have originated from historical contamination migration from source areas at the Reichhold Elizabeth Site." See Judge Lombardi's Order Correcting Order Granting Dismissal With Prejudice Of

Reichhold is presently awaiting application before the Court for approval of that settlement. If approved by the Court, Reichhold's settlement contemplates entry of a proposed Order of Dismissal (attached as Exhibit C to the Proposed Third-Party Consent Judgment) that would, *inter alia*, dismiss ***all*** remaining claims pleaded against Reichhold in the within litigation with prejudice. Reichhold would not have entered into this proposed settlement without assurance from the Plaintiffs that it will receive this consideration, together with all of the other promises and considerations set forth in the Proposed Third-Party Consent Judgment.

On July 1, 2013, Plaintiffs posted the Proposed Settlement Agreement with certain Settling Defendants in the Action ("Settlement Agreement"), as required under the Court's April 25, 2013 Order On The Approval Process For The Proposed Settlement Agreement ("April 25 Process Order"). Under the State's notice of posting of the Settlement Agreement, written comments, if any, are to be submitted by today, July 31, 2013.

At present, Reichhold does not have any comments, as such, pertaining to the Settlement Agreement that are not likely to have been or will be presented by others. However, it is clear that, under the April 25 Process Order, a party is not prejudiced if it chooses not to raise any comments during the present, administrative only comment period. Specifically, the April 25 Process Order provides that after Plaintiffs have received all public comments, and if they have determined that none of the comments warrant rejection of the Settlement Agreement, Plaintiffs and Settling Defendants shall then file motions with the Court for approval and implementation of the Settlement Agreement. At that time, the Court will set a briefing schedule that will permit any party to the action to file papers opposing those motions. Consequently, Reichhold hereby reserves any and all objections, if any, that it may have with respect to the Settlement Agreement for presentation to the Court during such time following the present comment period that Plaintiffs have, in fact, decided to proceed with motions directed to the Court to approve that settlement.

However, Reichhold does have a number of questions regarding the meaning and intent of the Plaintiffs and the Settling Defendants in proposing to enter into the Settlement Agreement which, as Reichhold understands a number of parties have already noted, and still other parties may additionally be pointing out, is in various respects unclear, ambiguous, susceptible of multiple interpretations, and possibly inconsistent with certain provisions of the Proposed Third-Party Consent Judgment to which Reichhold, itself, is a signatory. Without the need to exhaustively list all such questions as they have been or are anticipated to be raised by others, Reichhold notes that it would be impossible for it to take a position one way or another as to the

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Certain Contribution Claims As To Third Party Defendant Reichhold, Inc. Based On Prior Settlements With Plaintiffs, filed May 2, 2011.

acceptability of the proposed Settlement Agreement with the Direct Defendants anyway, unless and until all of these questions regarding the meaning and intent of that document have been responded to by the Plaintiffs. Reichhold understands that is precisely what the present comment period is supposed to accomplish, as the April 25 Process Order expressly states that, "after the close of the thirty-day public comment period on July 31, 2013, Plaintiffs shall review all comments and prepare a response document."

Without waiver of any of its rights, Reichhold awaits its receipt and review of that "response document" to determine whatever final position it may take with respect to the proposed Settlement Agreement between the Plaintiffs and certain of the Direct Defendants.

Very truly yours,

FLASTER/GREENBERG P.C.

Marty M. Judge

Cc: Liaison Counsel for Parties of Record (via e-mail)
Honorable Sebastian P. Lombardi, J.S.C.
Special Master, Honorable Marina Corodemus (Retired)

Exhibit 11

COUGHLIN DUFFY LLP

ATTORNEYS AT LAW

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TIMOTHY I. DUFFY, ESQ.
DIRECT DIAL: (973) 631-6002
EMAIL: TDUFFY@COUGHLINDUFFY.COM

July 31, 2013

VIA E-MAIL (PASSAICSETTLEMENT@DEP.STATE.NJ.US) AND U.S. MAIL

Office of Record Access
NJDEP
Attn: Passaic Repsol/YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comments on Proposed Settlement Agreement in the Matter of NJDEP et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013***

Dear Sir or Madam:

On behalf of our clients, Bayer Corporation ("Bayer") and STWB Inc. ("STWB"), we submit these comments on the proposed settlement agreement between Plaintiffs and Settling Defendants YPF, Repsol, Maxus, and Tierra, and affiliated entities ("Proposed Settlement Agreement"). These comments address flaws in the Proposed Settlement Agreement that will result in unfair and inequitable treatment of Bayer and STWB should it be approved by the Plaintiffs and entered as proposed. Our comments are as follows:

Comment 1. Natural Resource Damages

The Proposed Settlement Agreement will provide Proposed Settling Defendants with a complete release for state natural resource damages ("NRDs") in the Newark Bay Complex. *See* Proposed Settlement Agreement, Paragraph 25(g). The Plaintiffs have agreed to this complete release despite not having performed a state NRD assessment on the extent of state NRDs in the Newark Bay Complex. At this time, the extent of state NRDs over which the state natural resource trustees have jurisdiction in the Newark Bay Complex is unknown. Providing a complete release to the Settling Defendants without identifying the potential scope of natural resource damages for which they may be liable is not in the best interests of the public or the State of New Jersey.

Plaintiffs should not provide a complete state NRD settlement and release for state NRDs without identifying the state NRDs that have been assessed, and without providing such information in the record. *See United States v. Montrose Chem. Corp. of California*, 50 F.3d 741, 747 (9th Cir. 1995); *Arizona ex rel. Arizona Dep't of Envtl. Quality v. ACME Laundry & Dry Cleaning Co., Inc.*, CV-09-01919-PHX-FJM, 2009 WL 5170176 (D. Ariz. Dec. 21, 2009); *compare United States v. Se. Pennsylvania Transp. Auth.*, 235 F.3d 817, 825 (3d Cir. 2000) (approving a NRD settlement in part because "if [NRDs] turn out to be 'significantly greater' than the $5.3 million estimate, the consent decree does not prevent EPA from pursuing the [settlors] for the excess"). It is not in the public interest for the Plaintiffs to provide a complete state NRD release to parties connected to the largest polluter in the Newark Bay Complex when the Plaintiffs have not assessed or quantified the total amount of state NRDs. It is further not in the public interest because it may inequitably disadvantage Settling Third-Party Defendants should the state trustees seek to later impose liability for state NRDs for which YPF, Repsol, Maxus, or Tierra are responsible, leaving little or no recourse in contribution against those entities.

In addition, the Proposed Settlement Agreement may be misconstrued as providing a release and possible contribution protection from potential claims by federal natural resource trustees as well. "Natural Resource Damages" are defined by the Proposed Settlement Agreement as damages "that are recoverable by any New Jersey state natural resource trustee." Paragraph 19.31. However, the covenant not to sue and contribution protection provisions could be read as purporting to provide a release for both state and federal NRDs. *See* Paragraph 25(g); Paragraph 63(a)(v) ("Natural Resource Damages associated with the Newark Bay Complex under applicable state and federal law, with respect to Settling Defendants only."). Any attempt by Plaintiffs to provide contribution protection for federal NRD claims is *ultra vires*, inequitable, and not supported by the administrative record. There is no evidence in the administrative record to support such a broad NRD release. Such a broad release also would not be permitted under the current agreement between the federal and state natural resource trustees, which provides that "[n]o Trustee is authorized to enter into any settlement on behalf of any other Trustee." *See* Memorandum of Agreement among the State of New Jersey, National Oceanic and Atmospheric Administration Regarding Natural Resource Damage Assessment and Restoration for the Diamond Alkali Superfund Site and Environs, at p. 7. Even if a party could contend that the Proposed Settlement Agreement resolved federal NRDs on behalf of the federal trustees, the MOA makes clear that the Proposed Settlement Agreement could not settle these federal claims.

Finally, the Proposed Settlement Agreement provides for an allocation of Settlement Funds applied to Plaintiffs' Claims for Past Cleanup and Removal Costs and to Natural Resource Damages, but it does not specify what that allocation will be. *See* Paragraph 24, Paragraph 63(e). Plaintiffs cannot limit settlement funds to any particular category of damages unless they remove from "Matters Addressed" in the settlement any category which does not receive an allocated amount of Settlement Funds.

Accordingly, Bayer and STWB object to the complete state NRD release to the Settling Defendants as arbitrary, capricious, and not in the public interest.

Comment 2. Geographic Scope of Release

The Proposed Settlement Agreement provides a covenant not to sue YPF, Repsol, and their related foreign affiliates under certain alter ego, fraudulent conveyance, or vicarious liability theories for damages and costs "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." *See* Paragraph 25(i). A broad release for sites and impacts anywhere in New Jersey outside the Diamond Alkali Superfund Site is not supported by the administrative record.

To resolve liability to the State for cleanup and removal costs, the Spill Act requires evidence that (1) the person discharged a hazardous substance; and (2) the State incurred cleanup and removal costs. *See* N.J.S.A. 58:10-23.11f.a(2)(b) ("A person who has discharged a hazardous substance or is in any way responsible for the discharge of a hazardous substance who has resolved his liability to the State for cleanup and removal costs . . . ."). The administrative record in support of the Proposed Settlement Agreement does not contain evidence of discharges or the resulting impacts at DSC-1/DSCC sites outside the Diamond Alkali Superfund Site. The administrative record also does not contain evidence that Plaintiffs incurred cleanup and removal costs as a result of impacts related to DSC-1/DSCC sites outside the Diamond Alkali Superfund Site.

The administrative record must contain evidence that provides the basis for the agency's decision. *See, e.g., In re Vey*, 124 N.J. 534, 544 (1991). The administrative record in support of the Proposed Settlement Agreement does not provide the basis for a covenant not to sue for cleanup and removal costs resulting from impacts at DSC-1/DSCC sites outside of and not reaching the Diamond Alkali Superfund Site.

In addition to the insufficiency of the record, Settling Third-Party Defendants cannot know the potential impact of this release because they do not know the locations involved. Plaintiffs have not provided a list of potentially released sites, yet seek to provide a release for those sites and any impacts outside the Diamond Alkali Superfund Site. It is impossible to evaluate the fairness and legal propriety of a settlement that covers unknown sites and impacts throughout all of New Jersey. The covenant not to sue for cleanup and removal costs for discharges at DSC-1/DSCC sites outside of and not reaching the Diamond Alkali Superfund Site should be stricken.

The Proposed Settlement Agreement also provides Settling Defendants a covenant not to sue and contribution protection for certain costs and claims "associated with Discharges of Hazardous Substances . . . to the Newark Bay Complex," but the definition of Newark Bay Complex may be construed as inconsistent with the same-defined term

and scope of release in the Settling Third-Party Defendants' Consent Judgment. *See* Proposed Settlement Agreement, Paragraphs 25, 63. These provisions are similar to the Proposed Third-Party Consent Judgment, except that wording of the respective definitions of "Newark Bay Complex" (and therefore the respective scopes of the releases) appears to differ between the two documents. *Compare* Proposed Settlement Agreement Paragraph 19.33 *with* Proposed Third-Party Consent Judgment Paragraph 18.20. The Proposed Third-Party Consent Judgment defined "Newark Bay Complex" as follows:

> 'Newark Bay Complex' shall mean (i) the lower 17 miles of the Passaic River, (ii) Newark Bay, (iii) the Arthur Kill, (iv) the Kill Van Kull, (v) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, the lower reaches of the Hackensack River and as may be further extended by U.S. EPA in the Diamond Alkali Superfund Process, and (vi) to the extent investigated for remediation as part of the Diamond Alkali Superfund Process, any adjacent waters and sediments of (i) through (v).

Proposed Third-Party Consent Judgment Paragraph 18.20. Compared to the version of this definition in the Consent Judgment, the Proposed Settlement Agreement definition adds a reference to the Lister Property; adds a parenthetical that the Passaic River includes but is not limited to the FFS Area; adds to investigations "by or at the direction of U.S. EPA or the DEP"; adds "now or in the future" to the Diamond Alkali Superfund Process; and adds "other media." Proposed Settlement Agreement Paragraph 19.33. These changes may or may not result in substantive differences from the Proposed Third-Party Consent Judgment. However, to the extent the definitions are different at all, the differences should not result in any different geographical coverage of the releases provided by the Plaintiffs in either settlement. Both settlements resolve the same litigation brought by the Plaintiffs' complaints. Accordingly, the geographic scope of the settlements also should be the same.

Comment 3. Timing for Entry of Consent Judgment

The Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Order") provides that, following 60-day notice and comment, the Proposed Third-Party Defendant Consent Judgment is to be brought before the Court for entry after the Plaintiffs determine that they have received no comment "that warrants rejection of the Consent Judgment." Order, at 4. The Consent Judgment itself reiterates that, absent substantive comment, the Consent Judgment is to be promptly entered: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for Entry." *See* Proposed Third-Party Consent Judgment, Paragraph 54. The expectation of prompt entry was further confirmed to the Court by State and Third-Party Defendants Liaison Counsel in their presentation of the settlement to the

Court on March 26, 2013 and all parties understood that approval and entry of the Third-Party Consent Judgment would be independent of any separate settlement undertakings between the State and the Original Party Defendants.

The Proposed Consent Judgment between Plaintiffs and Settling Third-Party Defendants was independent of any agreement between Plaintiffs and any other party, including Defendants. Accordingly, the Proposed Consent Judgment's entry should not be dependent on any other agreement.

The Proposed Third-Party Defendant Consent Judgment was posted for comment in the New Jersey Register on May 6, 2013 and, no substantive comment having been received during the 60-day comment period which concluded on July 5th, the Third-Party Defendant Liaison Counsel on July 10th asked the State to promptly move for entry. Settling Third-Party Defendants support entry of the Proposed Consent Judgment independent of the Proposed Settlement Agreement.

Comment 4.

We are in receipt of the letter by the Gibbons firm dated July 31, 2013, setting forth comments on behalf of its various clients. We join in those comments set forth in Section I and II thereof and adopt them as if fully set forth herein.

Finally, we have other concerns that have been raised in comments and objections submitted by various parties. It is our hope and expectation that those issues will be addressed by the New Jersey Department of Environmental Protection and the parties involved. Moreover, Bayer and STWB reserve their rights to raise their concerns with the Court and object at the appropriate time during the approval process.

We appreciate the opportunity to make these comments and welcome the opportunity to discuss the same with the parties and the Court.

Very truly yours,

COUGHLIN DUFFY LLP

Timothy I. Duffy
Attorneys for Third-Party Defendants
Bayer Corporation and STWB Inc.

Exhibit 12

Mark P. Fitzsimmons
202 429 8068
mfitzsim@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

Steptoe
STEPTOE & JOHNSON LLP

July 31, 2013

VIA E-MAIL (PassaicSettlement@dep.state.nj.us) AND
REGULAR MAIL

Office of Record Access
NJDEP
Attn: Passaic Repsol/ YPF Settlement Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Dear Sir or Madam:

This firm represents Troy Corporation in the above captioned matter. Troy was one of many Third Party Defendants which entered into a settlement with Plaintiffs NJDEP, et al. to resolve any and all potential liability as asserted in the litigation. Troy has expected that the settlement that it entered into go forward on the terms that were agreed to by all parties to the settlement, in accordance with the orders of the Court, and not something less than that. Troy continues to hold that position. Nonetheless many comments have been submitted by other settling Third Party Defendants that raise serious questions with regard to the potential effect of the Repsol/YPF settlement on the Third Party Settlement. Troy shares the concerns as delineated in all the Third Party Comments, and hereby joins in them. It requests that DEP seriously consider and respond to these comments, and that it take no action that denigrates the terms of the Agreement with Third Parties, that it has already agreed to.

Sincerely.

Mark P. Fitzsimmons

MPF/pk
cc: Honorable Sebastian P. Lombardi, J.S.C.
The Honorable Judge Marina Corodemus (Retired)

Exhibit 13

COFFEY & ASSOCIATES

COUNSELLORS AT LAW

A PROFESSIONAL CORPORATION

310 SOUTH STREET
MORRISTOWN, NEW JERSEY 07960
973--539-4500

FAX 973-539-4501
EMAIL GJC@COFFEYLAW.COM

GREGORY J. COFFEY
DIRECT DIAL 973-539-4582

July 31, 2013

VIA E-MAIL AND REGULAR MAIL
Office of Record Access
NJDEP
P.O. Box 420
Mail Code 401-06Q
Trenton, New Jersey 08626-0420

Re: Repsol/YPF Settlement
Comments to Proposed Settlement Agreement

Dear Madam or Sir:

This firm represents the Borough of Hasbrouck Heights, the Borough of Totowa, and the Borough of Woodland Park (hereinafter referred to as "Certain Settling Municipalities") in connection with the above referenced matter. We are writing at this time to provide comments to the proposed Court Approved Settlement Agreement memorializing the settlement in the above action that was published in the New Jersey Register on July 1, 2013. We applaud the good faith efforts of the State of New Jersey, the New Jersey Department of Environmental Protection (collectively referred to herein as the "State Plaintiffs") and the settling defendants to expeditiously resolve this vexatious and costly litigation. Through the comments set forth below and for the reasons that follow, we seek to confirm and obtain clarification from the State Plaintiffs on the operation of certain provisions within the proposed Court Approved Settlement Agreement and its impact on the proposed Third-Party Defendant Consent Judgment.

We fully support the State Plaintiffs' good faith efforts to negotiate and implement a global settlement of the claims asserted in the Passaic River Litigation with the Tierra/Maxus and Repsol/YPF defendants. Although we take no position as to the adequacy of the amount of the settlement, we note that public policy interests strongly favor settlement of complex environmental disputes over the prospect of continuing and costly litigation. Settlements in complex environmental disputes, such as the case at bar, conserve the resources of the courts, the litigants, and the taxpayers and should be upheld whenever equitable and policy considerations so permit. *United States v. Cannons Eng'g Corp.*, 899 *F.2d* 79, 84 (1st Cir. 1993); *Equal Employment Opportunity Comm'n v. Hiram Walker & Sons, Inc.*, 768 *F.2d* 884, 889 (7th Cir. 1985). The policy of encouraging

settlements has particular force, where, as here, a government actor committed to the protection of the public interest has engaged in the construction of the proposed settlement and where the government actor is specially equipped, trained, and oriented in the field. *Cannons Eng'g Corp.*, *supra*, 899 *F.2d* at 84. We recognize that the settlement embodied in the proposed Court Approved Settlement Agreement represents some level of compromise between the settling parties, but the proposed settlement also serves to eliminate the inherent risks involved in continued and protracted litigation and to reduce the delays in implementing a remedy. Support for the State's settlement approach is further buttressed by the public policy articulated by the State Legislature and the well-established guidance documents promulgated by both the DEP and the federal Environmental Protection Agency for the settlement of complex, multi-party CERCLA and Spill Act litigations. In short, the benefits that a global settlement presents outweigh the vexatious and undue burdens that the parties would continue to incur in prosecuting and defending these claims through trial in this matter. For all of these reasons, we fully support the efforts undertaken by the State and the settling defendants to resolve the claims in this case.

In addition, we further endorse the use of the proposed Court Approved Settlement Agreement as a practical mechanism that serves to confirm the extinguishment of not only the Spill Act and direct claims for contribution asserted against the Settling Municipalities in this action, but also Tierra/Maxus' alleged claims arising under the PVSC Statute, the Environmental Rights Act, and common law nuisance. In particular, Paragraph 53 of the proposed Court Approved Settlement Agreement contains the following provision:

> 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.

Pursuant to the intent and purpose of the proposed Third-Party Defendant Consent Judgment, we interpret the above provision in Paragraph 53 of the presently proposed Court Approved Settlement Agreement to mean that any and all claims, Spill Act and non-Spill Act, both direct and indirect, and those for contribution and otherwise that have been or could have been asserted against the Settling Municipalities in this State Action by the Settling Defendants are dismissed and extinguished on the basis that such claims represent alleged costs properly asserted pursuant to CERCLA in federal court. By virtue of the fact that CERCLA confers exclusive federal subject matter jurisdiction upon the federal courts, we interpret the above provision contained in Paragraph 53 as a full dismissal and extinguishment of all claims brought in the State Action against the Settling Municipalities. We fully endorse this approach and through this comment, respectfully request the State Plaintiffs to confirm our interpretation of Paragraph 53.

Finally, we write to highlight the apparent inconsistency between Paragraph 50 of the proposed Court Approved Settlement Agreement and the timing provisions for the Third-Party Consent Judgment set forth in the January 24, 2013 Consent Order entered by the Court. The Court endorsed and the following timeline of events for approval and entry of the Third-Party Defendant Consent Judgment.

A. All third-party defendants shall advise of their intent to proceed and enter the Consent Judgment by March 23, 2013;

B. If the participating approval threshold is reached by March 23, 2013, the State shall notify the Court that the threshold has been reached and the administrative process shall begin. Importantly, to the extent any third-party defendant chooses not to participate in the Consent Judgment by March 23, 2013, the identities of such opt-out parties will be provided to the Court and the Special Master, the stay will be lifted as to those parties, and discovery will re-commence immediately;

C. By April 12, 20913, the State shall strive to publish the proposed Consent Judgment in the New Jersey Register by May 6, 2013 with a 60-day public comment period and make available the administrative record to the public;

D. Within fourteen days of publication of the proposed Consent Judgment, the State, the settling third-party defendants, and the Tierra-Maxus Defendants shall meet with the Special Master to discuss the judicial process for approval of the Consent Judgment including the establishment of a briefing schedule;

E. After expiration of the public comment period on or around July 5, 2013, the State shall consider all comments received and prepare responses thereto to arrive at a final agency decision; and

F. If the State Plaintiffs determine that they have received no comments that warrant rejection of the Consent Judgment, Plaintiffs and Settling Third-Party Defendants shall file motions to enter the Consent Judgment.

The timeline and lodging process set forth in the Court's January 24, 2013 Consent Order are wholly independent of any settlement initiatives by and between the State Plaintiffs and the Defendants. Even so, Paragraph 50 of the proposed Court Approved Settlement Agreement compelling the State Plaintiffs to reopen the public comment period and withdraw the Third-Party Consent Judgment from Court consideration seemingly imposes a new timeline and process for comment and approval of that Consent Judgment based upon the success or non-success of the settlement by and between the State Plaintiffs and Settling Defendants. The linkage between the success of a settlement agreement between the State Plaintiffs and the direct Settling Defendants and the timing for comment and approval of the Third-Party Consent Judgment is apparently inconsistent with the Court's January 24, 2013 Consent Order. To the extent such inconsistencies exist, we

respectfully request clarification from the State Plaintiffs in connection with Paragraph 50 of the proposed Court Approved Settlement Agreement.

We circulate these comments in good faith and without prejudice to the Certain Settling Municipalities' rights in this matter. We appreciate the opportunity to share our comments to the proposed Court Approved Settlement Agreement and are available to discuss these issues with you.

Thank you again for your kind consideration of this matter.

Very truly yours,

COFFEY & ASSOCIATES

Gregory J. Coffey

GJC:
cc: All Counsel (via CT Posting)

Exhibit 14

JOHN M. SCAGNELLI | Partner | Chair, Environmental and Land Use Law Group
jscagnelli@scarincihollenbeck.com

July 31, 2013

VIA E-MAIL (PASSAICSETTLEMENT@DEP.STATE.NJ.US) AND U.S. MAIL

Office of Record Access
NJDEP
Attn: Passaic YPF/Repsol Settlement
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: ***Comments on Proposed Settlement Agreement with Settling Defendants (including attached Schedules and Exhibits) in the Matter of NJDEP, et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05 (PASR), as Noticed in the New Jersey Register on July 1, 2013 ("Proposed Settlement Agreement")***

Dear Sir or Madam:

I write as Liaison Counsel to certain members of the Third-Party Defendant Public Entity Group, as identified on the attached Exhibit A ("Commenting Parties"), in *NJDEP, et al. v. Occidental Chemical Corporation*, et al., Docket No. ESX-L9868-05 (PASR) (the "Action"), to provide comment in the referenced matter.

These comments are occasioned by the State's July 1, 2013 posting of the Proposed Settlement Agreement with certain Settling Defendants in the Action ("Settlement Agreement"), as required under the Court's April 25, 2013 Process Order on the Approval Process for the Proposed Settlement Agreement("Process Order"). Significant discrepancies exist between the Proposed Settlement Agreement and the Proposed Third-Party Defendant Consent Judgment posted on May 6, 2013 as required under the Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("Proposed Third-Party Consent Judgment"), such that the Commenting Parties are now compelled to offer the following comments and proposed modifications to the Proposed Settlement Agreement to assure equitable treatment for all settling parties in the Action.

1. Timing for Entry of Consent Judgment

The Court's January 24, 2013 Consent Order on the Approval Process for the Proposed Consent Judgment ("January 24, 2013 Order") provides that, following 60 day notice and comment, the Third-Party Consent Judgment is to be brought before the Court for Entry absent comments "that warrant rejection of the Consent Judgment", January 24, 2013 Order at p 4. The

Consent Judgment itself reiterates that, absent such comments, the Consent Judgment is to be promptly entered: "Upon conclusion of the public comment process, Plaintiffs shall promptly submit this Consent Judgment, including the Dismissal Order and Case Management Order, to the Court for Entry" (see, Proposed Third-Party Consent Judgment at paragraph 54). The expectation of prompt entry was further confirmed to the Court by State and Third-Party Defendants Liaison Counsel in their presentation of the settlement to the Court on March 26, 2013 and all parties understood that the subject settlement would be independent of any separate settlement undertakings between the State and the Original Party Defendants.

The Proposed Third-Party Defendant Consent Judgment was posted for comment in the New Jersey Register on May 6, 2013 and, no comments which warrant rejection of the Proposed Consent Judgment having been received during the 60-day comment period which concluded on July 6, 2013, the Third-Party Defendant Liaison Counsel, on July 10th jointly requested that the State promptly, and within not later than 30 days, submit the Proposed Third-Party Defendant Consent Judgment and attachments to the Court for entry (copy of letter attached). The Third-Party Defendant Liaison Counsel expect that the State will now submit the Proposed Third-Party Defendant Consent Judgment, and accompanying Dismissal Order and Case Management Order to the Court for entry, and, indeed, over 230 of their constituents have been advised that the required settlement payment of $35.4 million will be tendered and will terminate ongoing expense for this long-standing litigation.

Given these circumstances and this procedural history, the Third-Party Defendant Liaison Counsel were alarmed to find that paragraph 50 of the Proposed Settlement Agreement provides that, "in the event that the Agreement is not presented to the Court" or later overturned, disapproved or modified on appeal, the State will "reopen the public comment period concerning the Third-Party Consent Judgment" and/or "withdraw the Consent Judgment from the Court's consideration" for an unspecified period of time. This provision flies in the face of the Court's January 24, 2013 Order, the requirement in the Proposed Third-Party Defendant Consent Judgment and the representations by the State to the Court at the March 26, 2013 hearing that the Proposed Third-Party Defendant Consent Judgment would be promptly entered, independent of any separate settlement undertakings between the State and the Original Party Defendants. We therefore ask that offending language in paragraph 50 of the Proposed Settlement Agreement be removed.

2. Natural Resource Damages

Plaintiffs have advised that the State's Natural Resource Damages ("NRDs") for the Newark Bay Complex, while not yet the subject of a formal assessment, could reach as much as $950 million, see, Alexander Lane, *Jersey Asks Polluters for $950 Million*, The Star Ledger (Newark), Oct. 29, 2003, at 13. Given the very dramatic size of this potential liability, Plaintiffs were not prepared to provide a complete release for State NRDs in the Proposed Third-Party Consent Judgment, but rather agreed to a partial settlement of the Third-Party Defendants eventual share of State NRD liability in consideration for the noted $35.4 million payment: The Third-Party Defendants received an NRD release equal to 20% of that settlement amount, with the understanding that the Third-Party Defendants could remain liable for NRD's in excess of that amount, (see Proposed Third-Party Defendant Consent Judgment, paragraph 25 (j)).

This approach is consistent with the general practice of deferring complete NRD settlements until an NRD assessment has been completed. *See, United States v. Montrose Chem. Corp. of California*, 50 F.3d 741, 747 (9th Cir. 1995); *Arizona ex rel. Arizona Dep't of Envtl. Quality v. ACME Laundry & Dry Cleaning Co., Inc.*, CV-09-01919-PHX-FJM, 2009 WL 5170176 (D. Ariz. Dec. 21, 2009); *compare United States v. Se. Pennsylvania Transp. Auth.*, 235 F.3d 817, 825 (3d Cir. 2000) (approving a NRD settlement in part because "if [NRDs] turn out to be 'significantly greater' than the $5.3 million estimate, the consent decree does not prevent EPA from pursuing the [settlors] for the excess").

Indeed, the State has acknowledged that an NRD assessment is likely a predicate to resolution of State NRDs in this case in its February 9, 2011 motion to the Court seeking reservation of the State's NRD claim ("Motion"):

> "Plaintiffs are not seeking NRD in the Second Amended Complaint because such claims are more effectively and efficiently brought in this case after completion of an assessment, so that the injured resources can be fully identified, and the cost of restoring the resources (and the value of their loss where they cannot be immediately restored) can be accurately calculated..." Motion at pp. 4-5.

Inexplicably, the Plaintiffs have, in the Proposed Settlement Agreement, suggested that the Settling Defendants should be able to secure a complete release of State NRDs, even before any NRD assessment is prepared, in consideration for their $130 million settlement payment, (see Settlement Agreement, paragraph 25(g)). Yet most or all of the $130 million dollar settlement is committed to the reduction of Plaintiffs' past costs under the terms of the Proposed Settlement Agreement, (see Settlement Agreement, paragraph 24). In other words, and absent any further payment from non-settling defendants, Third-Party Defendants could now remain almost exclusively exposed to a further liability of the estimated $950 million using the prior State NRD estimate.

We see no basis by which the Third-Parties Defendants should be so penalized and ask the State to revise the Proposed Settlement Agreement so that paragraph 25(g) is qualified by reservations, and a total NRD reservation identical to that set forth in the Proposed Third-Party Consent Judgment is added to paragraph 26 as follows:

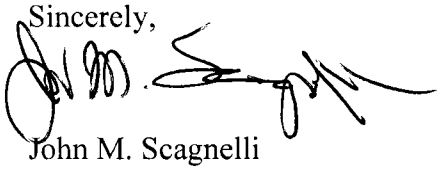
> "j. Natural Resource Damages, but only after and to the extent that:
>
> a formal Natural Resource Damage Assessment has been completed under applicable law or regulations,
>
> a trustee determination of Settling Defendants' liability for Natural Resource Damages has been made pursuant to a procedure that allows for participation by Settling Defendants; and
>
> the collective liability established in an administrative or judicial proceeding of all Settling Defendants for Natural Resource

> Damages exceeds twenty percent (20%) of the aggregate of the Settlement Funds. Settling Parties reserve all rights in any such proceeding.
>
> Cleanup and Removal Costs actually paid or incurred (not including unpaid future obligations) by the State of New Jersey under this Section shall include all Cleanup and Removal Costs paid or incurred (not including unpaid future obligations) by the State of New Jersey regardless of whether such costs are recovered from or advanced or reimbursed by any person not a Settling Defendant (except that such costs paid in settlement of liability of a Defendant that is an agency or department of the State of New Jersey shall not be included); provided, however, that there shall never be any double recovery by the State of New Jersey against any Settling Defendant for the Matters Addressed herein. Settling Defendants reserve all rights and defenses in any action by Plaintiffs under this Section."

Nothing herein is intended as an admission of liability, waiver of rights to furnish individual party comments, nor a waiver of rights to provide further group comment.

We appreciate the opportunity to make these comments and welcome the opportunity to discuss the same with the State.

Sincerely,



John M. Scagnelli
Liaison Counsel for Exhibit A Third-Party
Defendant Public Entity Group Members

Cc: Liaison Counsel for Parties of Record (By Case Vantage)
Honorable Sebastian P. Lombardi, J.S.C. (By Regular Mail and Case Vantage)
The Honorable Judge Marina Corodemus (Retired) (By Case Vantage)

EXHIBIT A

July 31, 2013 Commenting Parties

Borough of East Newark
Borough of Fanwood
Borough of North Haledon
Borough of Roselle
City of Bayonne
City of East Orange
City of Elizabeth
City of Hackensack
City of Jersey City
City of Linden
City of Newark
City of Paterson
City of Union City
Housing Authority of the City of Newark
Jersey City Municipal Utilities Authority
Joint Meeting of Essex & Union Counties
Linden Roselle Sewerage Authority
Passaic Valley Sewerage Authority
Port Authority of NY and NJ
Rahway Valley Sewerage Authority
Township of Hillside
Township of Irvington

Exhibit 15

KING AND PETRACCA

ATTORNEYS AT LAW

51 GIBRALTAR DRIVE – SUITE 2F

MORRIS PLAINS, NEW JERSEY 07950-1254

PETER J. KING
MATTHEW R. PETRACCA*

OF COUNSEL
JOSEPH GATENARO, JR.
MEDEA B. GHILLEMI*
NATASHA Z. MILLMAN*
* ALSO MEMBER OF N.Y. BAR

973-998-6860

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WWW.KINGPETRACCA.COM

A PARTNERSHIP OF LIMITED LIABILITY COMPANIES

WRITER'S E-MAIL:

pjk@kingpetracca.com

July 31, 2013

Office of Record Access
New Jersey DEP
Attn: Passaic YPF/Repsol Settlement
P. O. Box 420 – Mail Code 401-06Q
Trenton, NJ 08625-0420

Re: *NJDEP, et al v. Occidental Chemical Corporation, et al*
Docket No. ESX-L-9868-05 (PASR)
Comments on Proposed Settlement Agreement with Settling Defendants (including attached Schedules and Exhbits)

Dear Sir or Madam:

Please be advised that I serve as Liaison Counsel to various Third Party Defendant Municipal Entities as per attached Addendum A (the "Third Party Defendants"). These parties were named in *NJDEP, et al v. Occidental Chemical Corporation, et al.*, Docket No. ESX-L-9868-05 (PASR) (the "Action").

Please be further advised that said Third Party Defendants join in with comments made in John M. Scagnelli, Liaison Counsel for Various Third-Party Defendant Public Entity Group Members, as put forth in his July 31, 2013 letter to you and will not repeat those comments at length herein. We adopt those comments as they relate to the timing for entry of the Consent Judgment and Natural Resource Damages.

In addition, based upon the fact that the Third Party Defendants are still incurring certain costs, there is an urgency that the matter be resolved as expeditiously as possible. The longer this settlement is delayed, the municipalities and the taxpayers of the State of New Jersey will incur continued costs for litigation which, based upon the dire economic climate in this State, is unduly burdensome for many municipal entities.

Nothing contained herein shall be construed as a waiver of any rights to provide further comments or express further arguments for or against the above-captioned Settlement.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

PETER J. KING
Liaison Counsel for Various Third Party Defendant Municipal Entities on attached Addendum A

PJK:wlc
Enclosure
C: Liaison Counsel for Parties of Record (*By Case Vantage)*
Honorable Sebastian P. Lombardi, J.S.C. (*By Case Vantage/Regular Mail)*
Honorable Judge Marina Corodemus (Retired) *(By Case Vantage)*
Municipal Joint Defense Group (*By Email)*
J:\CLIENT FOLDERS\Lower Passaic\MUNICIPAL JOINT DEFENSE GROUP\Office of Record Access Let1_7.31.13 re Settlement.doc

ADDENDUM A
NOTICE OF DESIGNATION OF LIAISON COUNSEL ON BEHALF OF THE FOLLOWING 56 MUNICIPALITIES:

Bayonne Municipal Utility Authority
Belleville Township
Berkeley Heights Township
Bloomfield Township

Carteret Borough
Cedar Grove Township
Clark Township
Clifton (City)
Cranford Township

East Rutherford Borough
Elmwood Park Borough

Fair Lawn Borough
Franklin Lakes Borough

Garfield (City)
Garwood Borough
Glen Ridge Borough
Glen Rock Borough

Haledon Borough
Harrison (Town)
Hasbrouck Heights Borough
Hawthorne Borough
Hillside Township

Kearny (Town)
Kenilworth Borough

Little Falls Township
Lodi Borough
Lyndhurst Township

Maplewood Township
Millburn Township
Montclair Township
Mountainside Borough

New Providence Borough
Newark (City) Housing Authority
North Arlington Borough
North Caldwell Borough
Nutley (Town)

Passaic (City)
Prospect Park Borough

Rahway (City)
Ridgewood Village
Roselle Park Borough
Rutherford Borough

Saddle Brook Township
Scotch Plains Township
South Hackensack Township
South Orange Village Township
Springfield Township
Summit (City)

Totowa Borough

Union Borough

Wallington Borough
Westfield (Town)
West Orange Township
Woodbridge (Town)
Wood-Ridge Borough
Wyckoff Township

ATTACHMENT B

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, REPSOL YPF, S.A., YPF, S.A.; YPF HOLDINGS, INC. and CLH HOLDINGS, INC., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ESSEX COUNTY DOCKET NO.: ESX-L-9868-05 (PASR) CIVIL ACTION CASE MANAGEMENT ORDER XVIII Schedule for hearing and motion(s) regarding two pending settlement agreements.

FILED
SEP 18 2013
Sebastian P. Lombardi, J.S.C.

THIS MATTER, having come before the Court on case management conference called by the Court, having been informed by the Appointed Special Master, Hon. Marina Corodemus (Ret.) that a proposed settlement agreements exists between 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 ("Plaintiffs") and certain third-party private and public defendants ("Third-Party Defendant Proposed Settlement") of which the parties now seek Court approval.

LIKEWISE, the Court having been informed that a proposed settlement exists between Plaintiffs and Maxus Energy Corporation, Tierra Solutions, Inc., Respol, YPF, S.A., YPF, HOLDINGS, Inc., and CLH Holdings Inc., (Original-Party Proposed settlement.) of which the parties now seek Court approval. This Court hereby issues the following schedule:

1. **SEPTEMBER 30, 2013:**
No later than September 30, 2013, the New Jersey Department of Environmental Protection shall release and publish "responses" to comments of both the Third-Party Defendant Proposed Settlement AND the Original-Party Proposed Settlement.

2. **OCTOBER 28, 2013:**
No later than October 28, 2013, the New Jersey Department of Environmental Protection may move and file before this Court, by way of direct application, a motion and brief seeking approval of both the Third-Party Defendant Proposed Settlement AND the Original-Party Proposed Settlement.

3. **NOVEMBER 5, 2013**
No later than November 5, 2013, any and all parties in support of either Settlement must file respectively their briefs and certifications.

4. **November 20, 2013**
No later than November 20, 2013, Original Defendant Occidental Chemical Corporation ("OCC") may choose to cross-move or oppose but must do so by November 20, 2013.

5. **DECEMBER 2, 2013 and December 6, 2013**
No later than December 2, 2013, Plaintiff and any other party who filed in support of Settlement and having received opposition or cross motion may file a response to said opposition or cross motion. No later than December 6, 2013, OCC may file a reply to the cross motion.

6. **DECEMBER 12-13, 2013**
The Court shall hear oral argument in accordance with the briefing schedule set forth herein. No party will be recognized for oral argument without having followed and filed the prescribed documents contained within this order.

ALL papers filed with accordance with this Court shall also be timely filed on CT SUMMATION.

SO ORDERED:

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

DATE: 9/18/13