

**Archer & Greiner** P.C.  
ATTORNEYS AT LAW

Lindsay A. Wagner  
Also Member of Pennsylvania Bar  
lwagner@archerlaw.com  
856-857-2792 Direct

One Centennial Square  
Haddonfield, NJ 08033  
856-795-2121 Main  
856-795-0574 Fax  
[www.archerlaw.com](http://www.archerlaw.com)

December 31, 2012

**VIA HAND DELIVERY**

Clerk of the Court  
Superior Court of New Jersey  
Veterans Courthouse  
50 West Market St., Room 131  
Newark, NJ 07102

Re: New Jersey Department of Environmental Protection, *et al.* v.  
Occidental Chemical Corporation, *et al.*  
ESX-L-9868-05 (PASR)

Dear Sir/Madam:

This firm represents Defendant Occidental Chemical Corporation ("OCC") in the above referenced matter. Enclosed please find an original and two copies of OCC's Answer and Affirmative Defenses to Plaintiffs' Fourth Amended Complaint and the appropriate Certificate of Service. A filing fee of \$135.00 is also enclosed.

Please return one copy marked "filed" to the messenger. Thank you for your attention to this matter.

Very truly yours,

ARCHER & GREINER  
A Professional Corporation

By: 

Lindsay A. Wagner

LAW/mpw  
Enclosures

cc: Honorable Marina Corodemus, J.S.C. (Ret.) (via e-mail)  
All Counsel of Record (via CT Summation)

**ARCHER & GREINER**

A Professional Corporation  
One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968  
(856) 795-2121

BY: ROBERT T. LEHMAN, ESQUIRE  
PHIL CHA, ESQUIRE

**GABLE GOTWALS**

1100 ONEOK Plaza  
100 West Fifth Street  
Tulsa, OK 74103-4217  
(918) 595-4990

BY: OLIVER S. HOWARD, ESQUIRE  
SCOTT R. ROWLAND, ESQUIRE  
AMELIA A. FOGLEMAN, ESQUIRE

Attorneys for Defendant Occidental Chemical Corporation

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

Plaintiffs,

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, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY

DOCKET NO.: L-009868-05 (PASR)

Civil Action

**DEFENDANT OCCIDENTAL  
CHEMICAL CORPORATION'S**

**ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFFS' FOURTH  
AMENDED COMPLAINT**

Defendant Occidental Chemical Corporation (hereinafter "Occidental"), by way of Answer to Plaintiffs' Fourth Amended Complaint (hereinafter "Complaint"), admits, denies and alleges as follows:

#### **STATEMENT OF THE CASE**

---

1. Occidental denies the allegations in Paragraph 1 of the Complaint that are directed toward Occidental. The allegations in this paragraph directed toward parties other than Occidental do not require a response by Occidental.

2. The allegations in Paragraph 2 of the Complaint are directed toward parties other than Occidental and do not require a response by Occidental.

3. To the extent that the allegations in Paragraph 3 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

4. To the extent that the allegations in Paragraph 4 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

5. To the extent that the allegations in Paragraph 5 of the Complaint are directed toward Occidental, Occidental denies that it caused damages by intentional and egregious conduct or that it discharged TCDD into the Newark Bay. The remainder of Paragraph 5 of the Complaint contains no factual allegations to which a response is required. To the extent that any response is required, Occidental admits that Plaintiffs purport to bring a civil action on the grounds stated therein, but denies that Plaintiffs are entitled to relief against Occidental on said grounds.

6. To the extent that the allegations in Paragraph 6 of the Complaint are directed toward Occidental, Occidental denies that it damaged or destroyed natural resources by discharges. The remainder of Paragraph 6 of the Complaint contains no factual allegations to which a response is required. To the extent that any response is required, Occidental states that the terms of the Court's order dated April 24, 2012 speak for themselves. Occidental admits that Plaintiffs allege that they are not seeking to enforce or recover costs under the 1990 Consent Decree, the December 14, 2005 Directive, or the September 19, 2003 Directive, but denies that Plaintiffs have the right to reserve bringing such claims in the future.

#### **THE PARTIES**

7. Occidental admits that Plaintiff DEP is a department within the Executive Branch of the State government and that its principal office is located at 401 East State Street, Trenton, Mercer County, New Jersey. The remaining allegations in Paragraph 7 of the Complaint constitute legal conclusions for which no response is required.

8. The allegations in Paragraph 8 of the Complaint constitute legal conclusions for which no response is required.

9. Occidental admits that Plaintiff Commissioner is the chief executive officer of the New Jersey Department of Environmental Protection and has his principal office at New Jersey Department of Environmental Protection, 401 East State Street, P.O. Box 028, Trenton, New Jersey. The remaining allegations in Paragraph 9 of the Complaint constitute legal conclusions for which no response is required.

10. Occidental admits that Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund and has his/her principal office at New Jersey Department of Environmental Protection, Environmental Claims Administration, 401 East State Street, P.O.

Box 028, Trenton, New Jersey. The remaining allegations in Paragraph 10 of the Complaint constitute legal conclusions for which no response is required.

11. Occidental admits the allegations in Paragraph 11 of the Complaint.
12. Occidental admits the allegations in Paragraph 12 of the Complaint.
13. Occidental admits the allegations in Paragraph 13 of the Complaint.
14. Occidental admits the allegations in Paragraph 14 of the Complaint.
15. Occidental admits the allegations in Paragraph 15 of the Complaint.
16. Occidental admits the allegations in Paragraph 16 of the Complaint.
17. Occidental admits the allegations in Paragraph 17 of the Complaint.
18. Occidental admits the allegations in Paragraph 18 of the Complaint.
19. Occidental admits the allegations in Paragraph 19 of the Complaint.

**OWNERSHIP & OPERATIONAL HISTORY OF LISTER SITE**

20. Occidental admits that a former Diamond Shamrock Corporation manufacturing site is located at 80 Lister Avenue, Newark, New Jersey. Occidental denies the remaining allegations in Paragraph 20 directed toward Occidental.

21. Occidental admits that properties with addresses of 80 Lister Avenue, Newark, Essex County, New Jersey and 120 Lister Avenue, Newark, Essex County, New Jersey are being referred to as the "Lister Site" in the Complaint. Occidental also admits that the Lister Site is located along the Passaic River. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint and therefore denies such allegations.

22. Occidental admits that Diamond Alkali Company ("Diamond Alkali") acquired Kolker Chemical Works, Inc. ("Kolker") in 1951, and that Diamond Alkali owned and conducted operations on property located at 80 Lister Avenue from 1951 until 1967. Occidental

also admits that in 1967, Diamond Alkali merged with Shamrock Oil & Gas Company and that the company's name was changed to Diamond Shamrock Corporation ("Old Diamond Shamrock"), which continued to conduct operations on property located at 80 Lister Avenue until August 1969. The terms of the February 7, 2012 Consent Order On Track III Kolker-Era Issues speak for themselves. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22 of the Complaint and therefore denies such allegations.

23. Occidental admits that in 1971, Old Diamond Shamrock sold the plant at 80 Lister Avenue to Chemicaland Corporation ("Chemicaland"), which manufactured benzyl alcohol. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 of the Complaint and therefore denies such allegations.

24. Upon information and belief, it appears that Chemicaland and Occidental Chemical Company, then a California corporation (later renamed and merged into Occidental) entered into an agreement, effective November 22, 1976, relating to operation and management of the Lister Plant and relating to a possible future acquisition of the Lister Plant by Occidental Chemical Company. However, Occidental Chemical Company decided not to acquire the Lister Plant and never became the owner of the Lister Site or the Lister Plant. Occidental admits that on or about April 22, 1982, Occidental Chemical Company changed its name to Occidental Chemical Agricultural Products, Inc. and that on or about December 23, 1987, that entity was merged into Occidental. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 of the Complaint and therefore denies such allegations.

25. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint and therefore denies such allegations.

26. Upon information and belief, Occidental admits that from November 22, 1976 through February 24, 1977, Chemicaland and Occidental Chemical Company were parties to an agreement relating to operation and management of the Lister Plant. Occidental denies the remaining allegations in Paragraph 26.

27. Occidental admits that in 1983 a new Diamond Shamrock Corporation was incorporated and purported to become both the direct parent company of Old Diamond Shamrock and the corporate successor-in-interest to "various corporations, the oldest of which was incorporated in 1910," including Diamond Alkali and Old Diamond Shamrock. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27 of the Complaint and therefore denies such allegations.

28. Upon information and belief, Occidental admits the allegations in Paragraph 28 of the Complaint.

29. Occidental admits that effective on September 4, 1986, Oxy-Diamond Alkali Corporation, an affiliate of Occidental, purchased the stock of Diamond Shamrock Chemicals Corporation ("DSCC"). Occidental further admits that Oxy-Diamond Alkali Corporation merged into Occidental on November 24, 1987, and, after a corporate name change, DSCC merged into Occidental on November 30, 1987. Occidental denies all other allegations in Paragraph 29 of the Complaint.

30. Occidental admits that a Court Order dated July 19, 2011 was entered regarding Occidental's Spill Act liability as a legal successor to DSCC, the terms of which speak for

themselves. By way of further response, Occidental states that pursuant to the September 4, 1986 Stock Purchase Agreement and the Court's June 19, 2011 Order, Maxus is required to indemnify Occidental for any costs, losses and liabilities that may be incurred by Occidental in the above-captioned action as a result of Occidental's acquisition of DSCC. Occidental denies all other allegations in Paragraph 30 of the Complaint.

31. Occidental admits that as a result of a corporate reorganization of Old Diamond Shamrock that occurred prior to the September 4, 1986 Stock Purchase Agreement, any liabilities for alleged discharges of hazardous substances from the Lister Site became liabilities of New Diamond Shamrock, not of DSCC, and that New Diamond Shamrock later changed its name to Maxus Energy Corporation. Occidental denies that by virtue of the acquisition of stock of DSCC as that entity existed at the time of the September 4, 1986 Stock Purchase Agreement, Occidental is liable for any such alleged discharges. The remaining allegations in Paragraph 31 of the Complaint are directed toward a party other than Occidental and do not require a response by Occidental.

32. Upon information and belief, Occidental admits the allegations in Paragraph 32 of the Complaint.

33. Occidental admits the allegations in Paragraph 33 of the Complaint, but further states that Paragraph 33 of the Complaint does not fully and completely allege all of the obligations Maxus and/or Diamond Shamrock Corporate Company assumed and undertook, in or prior to the September 4, 1986 Stock Purchase Agreement, with respect to the environmental liabilities associated with Old Diamond Shamrock's historical sites including the Lister Site..



34. Occidental admits that Occidental is entitled to indemnification from Maxus under the SPA for the liabilities associated with discharges at and from the Lister Site, including the claims brought by Plaintiffs, and that the Court so ruled.

35. In response to the first sentence of Paragraph 35, Occidental denies that it was aware of "significant liabilities associated with the Lister Site and Passaic River." Upon information and belief the allegations in the second sentence of Paragraph 35 of the Complaint are admitted. The allegation in the third sentence constitutes a legal conclusion for which no response is required.

36. Occidental admits the allegations in the first and third sentences of Paragraph 36 of the Complaint. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 36.

37. Upon information and belief, Occidental admits the allegations in the first, second, and fifth sentences in Paragraph 37 of the Complaint. Occidental admits that a Court Order finding Tierra to be a Spill Act liable party was entered on August 24, 2011. All other allegations in Paragraph 37 are directed toward a party other than Occidental and do not require a response by Occidental. By way of further response, Occidental states

#### **CORPORATE MISCONDUCT**

38. – 92. The allegations in Paragraphs 38 through 92 of the Complaint appear to be directed toward, and appear to concern only actions of, Defendants Maxus, Tierra, MIEC, Repsol, YPF, YPFH, YPFI, and CLHH (collectively referred to as the "Repsol Group") and not any actions of Occidental. Upon information and belief, Occidental admits that the allegations in Paragraphs 38 through 92 of the Complaint are true in all material respects insofar as they concern the actions and intentions of the Repsol Group, except that Occidental lacks knowledge

or information sufficient to form a belief as to the truth of any allegations concerning the intent of the Repsol Group to hinder, delay or defraud any party other than Occidental. Occidental denies any and all allegations in Paragraphs 38 through 92 to the extent they allege or may be interpreted to allege any wrongdoing by or any liability of Occidental. With respect to the references to court orders, Occidental states that the terms of the court's orders speak for themselves.

#### **HAZARDOUS SUBSTANCES PRODUCED AT THE LISTER SITE**

93. Occidental admits that Old Diamond Shamrock manufactured agricultural chemicals at the Lister Plant. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 93 of the Complaint and therefore denies such allegations.

94. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94 of the Complaint and therefore denies such allegations.

95. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegation that DDT, 2,4-D, 2,4,5-T, and TCDD were used, produced, and discharged at the Lister Site and therefore denies such allegations. Occidental denies that the hazardous substances discharged from the Lister Site constitute significant drivers of the ecological and human health risk, the remedial actions, and the cleanup and removal costs in the Passaic River and the Newark Bay Complex. The remaining allegations in Paragraph 95 of the Complaint constitute legal conclusions for which no response is required.

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

96. The allegations in Paragraph 96 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

97. The allegations in Paragraph 97 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

98. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98 of the Complaint and therefore denies such allegations.

99. The allegations in Paragraph 99 of the Complaint constitute conclusions of law and are not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

100. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 100 of the Complaint and therefore denies such allegations.

101. To the extent that the allegations in Paragraph 101 of the Complaint are directed toward Occidental or purport to be based upon any acts or omissions of Occidental, Occidental denies those allegations.

102. Occidental denies that it is liable for any alleged historical discharges of hazardous substances from the Lister Site. Occidental also denies that it was a party to, was in privity with any party to, made any acknowledgements or judicial admissions in or during, participated in any way in, or sought any insurance coverage through, the cited case. The remaining allegations in Paragraph 102 of the Complaint constitute conclusions of law and are

not supported by the cited case law, which speaks for itself, and therefore, Occidental denies the allegations.

103. The allegations in Paragraph 103 of the Complaint are directed toward a party other than Occidental and do not require a response by Occidental.

104. Occidental denies that it conducted operations on the Lister Site or discharged TCDD and other hazardous substances from the Lister Site. The remaining allegations are either directed toward a party other than Occidental or constitute conclusions of law for which no response is required.

105. The allegations in Paragraph 105 of the Complaint constitute legal conclusions for which no response is required. To the extent that any response is required, Occidental denies the allegations insofar as they are directed toward Occidental.

#### **THE REGULATORY HISTORY**

106. Occidental admits that in 1982, the United States Environmental Protection Agency ("EPA") initiated a National Dioxin Strategy targeting facilities that had produced certain herbicides and pesticides for soil sampling and testing for dioxin.

107. Occidental admits that then-New Jersey Governor Thomas H. Kean issued Executive Order 40. Occidental also admits that the NJDEP issued an administrative order on June 13, 1983. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 107 of the Complaint and therefore denies such allegations.

108. Occidental admits that it was a party to the 1990 Consent Decree with EPA, DEP and Tierra, the terms of which speak for themselves.

109. The allegations in Paragraph 109 of the Complaint are directed toward a party other than Occidental and do not require a response by Occidental.

110. To the extent that the allegations in Paragraph 110 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

111. To the extent that the allegations in Paragraph 111 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

112. To the extent that the allegations in Paragraph 112 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

113. To the extent that the allegations in Paragraph 113 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

114. The allegations in Paragraph 114 of the Complaint are directed toward a party other than Occidental and do not require a response by Occidental.

115. Occidental admits that it was party to an AOC effective June 22, 2004, the terms of which speak for themselves. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 115 of the Complaint and therefore denies such allegations.

116. Occidental admits to the existence of an Administrative Order on Consent between the Environmental Protection Agency and Occidental with signature dates of February 13, 2004, which speaks for itself. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 116 of the Complaint and therefore denies such allegations.

117. Occidental admits that on September 19, 2003, Plaintiff DEP issued a Spill Act directive to Occidental purportedly pursuant to N.J.S.A. 58:10-23.11f.a., which speaks for itself. Occidental denies all other allegations in Paragraph 117 of the Complaint.

118. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118 of the Complaint and therefore denies such allegations.

119. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119 of the Complaint and therefore denies such allegations.

120. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegation that DEP is working to assess the injuries to the State of New Jersey's natural resources. Occidental admits that Plaintiffs purport to seek to recover their assessment costs in this action but denies that Plaintiffs are entitled to such costs from Occidental. Occidental also admits that Plaintiffs contend that they are not at this time seeking natural resource damages for the Newark Bay Complex but denies that Plaintiffs have the right to reserve bringing such claims in the future.

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

121. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 121 of the Complaint and therefore denies such allegations.

122. To the extent that the allegations in Paragraph 122 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

123. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 123 of the Complaint and therefore denies such allegations.

## **FIRST COUNT**

### **Spill Act**

124. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-123 of the Complaint as if fully set forth herein.

125. The allegations in Paragraph 125 of the Complaint constitute legal conclusions for which no response is required.

126. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126 of the Complaint and therefore denies such allegations.

127. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127 of the Complaint and therefore denies such allegations.

128. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128 of the Complaint and therefore denies such allegations.

129. The allegations in Paragraph 129 of the Complaint constitute legal conclusions for which no response is required.

130. In response to the first sentence of Paragraph 130 as to Occidental, Occidental admits only that a Court Order dated July 19, 2011 was entered regarding Occidental's Spill Act liability as a legal successor to DSCC, the terms of which speak for themselves. The remaining allegations in the first sentence of Paragraph 130 are denied as to Occidental. As to the remaining allegations in Paragraph 130, some of the allegations constitute legal conclusions for which no response is required. To the extent that the remaining factual allegations in Paragraph 130 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

131. Some of the allegations in Paragraph 131 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 131 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

132. The allegations in Paragraph 132 of the Complaint constitute legal conclusions for which no response is required.



## **SECOND COUNT**

### **Water Pollution Control Act**

133. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-132 of the Complaint as if fully set forth herein.

134. The allegations in Paragraph 134 of the Complaint constitute legal conclusions for which no response is required.

135. Some of the allegations in Paragraph 135 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 135 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

136. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 136 of the Complaint and therefore denies such allegations.

137. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 137 of the Complaint and therefore denies such allegations.

138. Occidental is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138 of the Complaint and therefore denies such allegations.

139. The allegations in Paragraph 139 of the Complaint constitute legal conclusions for which no response is required.

### **THIRD COUNT**

#### **Public Nuisance**

140. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-139 of the Complaint as if fully set forth herein.

141. The allegations in Paragraph 141 of the Complaint constitute legal conclusions for which no response is required.

142. To the extent that the factual allegations in Paragraph 142 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

143. Some of the allegations in Paragraph 143 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 143 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

144. To the extent that the factual allegations in Paragraph 144 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

145. Some of the allegations in Paragraph 145 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 145 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

146. Some of the allegations in Paragraph 146 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 146 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

147. Some of the allegations in Paragraph 147 of the Complaint constitute legal conclusions for which no response is required. To the extent that the allegations in Paragraph 147 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

148. To the extent that the allegations in Paragraph 148 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

#### **FOURTH COUNT**

##### **Trespass**

149. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-148 of the Complaint as if fully set forth herein.

150. Some of the allegations in Paragraph 150 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 150 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

151. Some of the allegations in Paragraph 151 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 151 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

152. To the extent that the allegations in Paragraph 152 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

#### **FIFTH COUNT**

##### **Strict Liability**

153. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-152 of the Complaint as if fully set forth herein.

154. The allegations in Paragraph 154 of the Complaint constitute legal conclusions for which no response is required.

155. Some of the allegations in Paragraph 155 of the Complaint constitute legal conclusions for which no response is required. To the extent that the factual allegations in Paragraph 155 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

156. To the extent that the allegations in Paragraph 156 of the Complaint are directed toward Occidental, Occidental denies those allegations. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies such allegations.

## **SIXTH COUNT**

### **Fraudulent Transfers**

157. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-156 of the Complaint as if fully set forth herein.

158. Upon information and belief, the allegations in Paragraph 158 of the Complaint are admitted.

159. Upon information and belief, the factual allegations in Paragraph 159 of the Complaint are admitted, except that Occidental lacks knowledge or information sufficient to form a belief as to truth of the allegation that the members of the Repsol Group acted with the actual intent to hinder, delay or defraud any party other than Occidental.

160. Upon information and belief, the allegations in Paragraph 160 of the Complaint are admitted.

161. Upon information and belief, the factual allegations in Paragraph 161 of the Complaint are admitted except that Occidental lacks knowledge or information sufficient to form a belief as to truth of the allegation that the members of the Repsol Group acted with the actual intent to hinder, delay or defraud any party other than Occidental.

162. Upon information and belief, the allegations in Paragraph 162 of the Complaint are admitted.

163. Upon information and belief, the factual allegations in Paragraph 163 of the Complaint are admitted.

164. Upon information and belief, the factual allegations in Paragraph 164 of the Complaint that are admitted.

165. The allegations in Paragraph 165 of the Complaint constitute legal conclusions for which no response is required.

## **SEVENTH COUNT**

### **Civil Conspiracy/Aiding and Abetting**

166. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-165 of the Complaint as if fully set forth herein.

167. Upon information and belief, the allegations in Paragraph 167 of the Complaint are admitted.

168. Upon information and belief, the allegations in Paragraph 168 of the Complaint are admitted.

169. The allegations in Paragraph 169 of the Complaint constitute legal conclusions for which no response is required.

## **EIGHTH COUNT**

### **Breach of Fiduciary Duty/Aiding and Abetting**

170. Occidental repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1-169 of the Complaint as if fully set forth herein.

171. Upon information and belief, the allegations in Paragraph 171 of the Complaint are admitted, except that Occidental lacks knowledge or information sufficient to form a belief as to truth of the allegation that Repsol and YPF owed fiduciary duties to any party other than Maxus, and derivatively to Maxus' creditors including Occidental.

172. Upon information and belief, the allegations in Paragraph 172 of the Complaint are admitted, except that Occidental lacks knowledge or information sufficient to form a belief as to truth of the allegation that Repsol, YPF, and YPFT's actions were specifically directed at a party other than Occidental.

173. Some of the allegations in Paragraph 173 of the Complaint constitute legal conclusions for which no response is required. Occidental is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 173 of the Complaint and therefore denies such allegations.

174. Upon information and belief, the allegations in Paragraph 174 of the Complaint are admitted, except that Occidental lacks knowledge or information sufficient to form a belief as to truth of the allegation that the boards of directors of Maxus, Tierra and YPFI owed fiduciary duties to any party other than Maxus, and derivatively to Maxus' creditors including Occidental.

175. Upon information and belief, the allegations in Paragraph 175 of the Complaint are admitted, except that Occidental lacks knowledge or information sufficient to form a belief as to truth of the allegation that the board of directors' breaches of fiduciary duties, which were aided and abetted by Repsol, YPF and YPFI, hindered, further impaired and/or rendered Maxus, Tierra and/or YPFI incapable of satisfying its obligations and liabilities owed to any party other than Occidental.

176. Some of the allegations in Paragraph 176 of the Complaint constitute legal conclusions for which no response is required. Occidental is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 176 of the Complaint and therefore denies such allegations.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs fail to state a claim against Occidental upon which relief may be granted.
2. Occidental is not a discharger or a person in any way responsible for a discharge under the Spill Act.
3. Plaintiffs have no Spill Act claim against Occidental because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.
4. Plaintiffs' claims are barred, in whole or in part, by the statutory defenses to liability provided by the Spill Act and Water Pollution Control Act ("WPCA").
5. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation, Plaintiffs' incurring of costs not authorized by the Spill Act and Plaintiffs' failure to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.
6. Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief cannot be afforded the existing parties pursuant to *R. 4:28-1*.
7. Plaintiffs' claim are barred, in whole or in part, by applicable statutes of limitation or by the doctrine of laches.
8. Plaintiffs' claims are not ripe for adjudication.
9. Plaintiffs' claims are barred or diminished by the doctrines of release, waiver and/or accord and satisfaction.
10. Occidental denies that Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable at law, such injury was



caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Occidental exercised no control and for whose conduct Occidental was not responsible.

11. Plaintiffs' claims are barred by the entire controversy doctrine and/or the principles of res judicata and collateral estoppel.

12. Plaintiffs' claims are barred insofar as the acts and conduct, as alleged in the Complaint, conformed to and were pursuant to laws, statutes, rules, regulations and industry standards existing at all material times alleged in the Complaint.

13. Plaintiffs have failed to exhaust their administrative remedies.

14. Plaintiff, Administrator of the Spill Compensation Fund, has no viable claim against Occidental and, therefore, should be dismissed from the action, to the extent that no claims have been made against the Spill Compensation Fund with regard to this matter.

15. Some or all of Plaintiffs do not have standing to sue.

16. Any costs allegedly incurred or to be incurred by Plaintiffs, if any, are unreasonable, duplicative, and not cost effective and, therefore, are not recoverable.

17. Plaintiffs are limited to seeking contribution costs under the Spill Act because the State is a "discharger" or a person "in any way responsible" for a discharge of hazardous substances under the Spill Act.

18. Occidental is not jointly and severally liable to Plaintiffs because the State is a "discharger" or a person "in any way responsible" for a discharge of hazardous substances under the Spill Act and therefore Occidental's liability, if any, to Plaintiffs is several.

19. Occidental is not jointly and severally liable to Plaintiffs for discharges that may have occurred between November 22, 1976 and February 24, 1977 because Occidental is not a "discharger" or person "in any way responsible" for a discharge of hazardous substances under the Spill Act. Moreover, pursuant to N.J.S.A. § 58:10-23.11g12.a., Occidental is exempt from

liability for cleanup and removal costs.

20. Plaintiffs cannot assess civil penalties under the Spill Act insofar as the acts or omissions purportedly giving rise to the civil penalty predated the effective date of the Spill Act. Plaintiffs do not have a claim under the WPCA insofar as the purported acts or omissions giving rise to a violation predated the effective date of the WPCA.

21. Plaintiffs do not have a claim for monetary relief under a public nuisance claim because a public entity can only obtain an abatement of the public nuisance.

22. Plaintiffs do not have a claim for trespass.

23. Plaintiffs do not have a claim for strict liability because the former operations at the Lister Site were not abnormally dangerous.

24. Plaintiffs do not have a claim for unjust enrichment because there are adequate remedies at law available to Plaintiffs.

25. Any injury or damages suffered by Plaintiffs have been increased by Plaintiffs' failure to mitigate their damages, in that (1) the policies and activities of the State and its agencies during the period of time for which Plaintiffs seek damages have impacted natural resources greater than what would otherwise have occurred; and (2) the State and its agencies have failed to take reasonable measures available to them to reduce damages.

26. The damages sought by Plaintiffs are wholly speculative and conjectural.

27. If Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Plaintiffs' agents or employees. In the event that Plaintiffs are found to have sustained any injury and are entitled to damages, Plaintiffs' recovery against Occidental, if any, must be reduced by the proportionate damages caused by the acts and conduct of Plaintiffs and/or their agents or employees.

28. Plaintiffs' Complaint is barred to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law.

29. Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

30. Plaintiffs' claims are barred in whole or in part by the doctrine of federal preemption.

31. Plaintiffs suffered no losses or injuries that were proximately caused by Occidental.

32. Plaintiffs' delegation of the power to prosecute this case to private attorneys on a contingent fee basis is against public policy.

33. The discharges of hazardous substances, if any, from the Lister Site did not cause any tangible or cognizable injury to the Passaic River or the Newark Bay Complex, both of which have been polluted to the point of destruction by industry, public entities and the general population long before operations at the Lister Site commenced.

34. The injuries alleged in the Complaint may be reasonably apportioned among the parties, as each party's alleged acts and omissions are divisible and distinct. Therefore, Occidental is not jointly and severally liable to Plaintiffs for any claim alleged in the Complaint.

35. Plaintiffs' claims for punitive damages violate the provisions of the U.S. Constitution and the New Jersey Constitution, including, but not limited to, those provisions requiring due process of law and prohibiting excessive fines.

36. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because state law governing punitive damages provides inadequate procedural protections against arbitrary or erroneous awards of such damages.

37. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because Occidental lacked adequate notice either of the type of conduct that could warrant an award of punitive damages under state law, or of the amount of such damages that could be awarded. The lack of fair notice bars any award of punitive damages.

38. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because state law fails to require that any award of punitive damages bear a close relationship to appropriate civil fines or penalties established by the legislature, or by the administrative agencies under authority delegated by the legislature.

39. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because state law may permit the introduction of 'net worth' with respect to the quantum of punitive damages, which would violate Due Process by inviting the jury to award an arbitrary amount of punitive damages based on defendant's status as an industrial enterprise.

40. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and the Due Process Clause of the New Jersey Constitution because punitive damages, as awarded in New Jersey may impermissibly discriminate against corporate defendants, including Occidental, that are organized under the laws of other states and that maintain their principal places of business in other states.

41. Plaintiffs' claims for punitive damages are barred by the Excessive Fines Clause of the U. S. Constitution (Amendment VIII) insofar as the State requires that a portion of any award of punitive damages be paid to the State, which would constitute a "fine" subject to the Excessive Fines Clause. Under the circumstances of this case, any amount of punitive damages

would be excessive in violation of the Excessive Fines Clause.

42. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because the conduct that is alleged to warrant punitive damages is unrelated to the Plaintiffs' harm. Punitive damages may not be awarded to punish and deter conduct that bears no relation to a plaintiffs harm.

43. Plaintiffs' claims for punitive damages are barred by the Due Process Clause of the U.S. Constitution, amend. V and XIV, Section 1 and by the Due Process Clause of the New Jersey Constitution because Occidental did not conduct the actions that are alleged to warrant punitive damages. Punitive damages may not be awarded against a successor corporation to punish and deter the conduct of a predecessor corporation.

44. Principles of fundamental fairness preclude an award of punitive damages against a successor corporation to punish and deter the conduct of a predecessor corporation.

45. Occidental invokes each and every applicable federal and/or state common law, statutory and constitutional defense available to it as Occidental's investigation and defense of this matter continues.

46. Occidental incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are not defenses to Occidental's claims and do not impose liability on Occidental.

47. Occidental reserves the right to assert additional defenses that may be pertinent to Plaintiffs' claims when the precise nature of such claims are ascertained through discovery and based upon facts developed as this matter progresses.

WHEREFORE, Occidental demands judgment in its favor dismissing with prejudice Plaintiffs' claims asserted in the Complaint.

**STATEMENT OF DAMAGES**

Pursuant to R. 4:5-2, Occidental requests that Plaintiffs furnish Occidental with a written statement of the amount of damages claimed.

**DEMAND FOR DOCUMENTS**

Pursuant to R. 4:18-2, Occidental requests that Plaintiffs furnish Occidental with a copy of all documents or papers referred to in the Complaint.

Respectfully Submitted,

December 31, 2012

ROBERT T. LEHMAN



Robert T. Lehman, Esq.

Phil Cha, Esq.

ARCHER & GREINER

A Professional Corporation

One Centennial Square

P.O. Box 3000

Haddonfield, NJ 08033-0968

(856) 795-2121

Oliver S. Howard, Esq.

Scott R. Rowland, Esq.

Amelia A. Fogleman, Esq.

GABLE GOTWALS

1100 ONEOK Plaza

100 West Fifth Street

Tulsa, OK 74103-4217

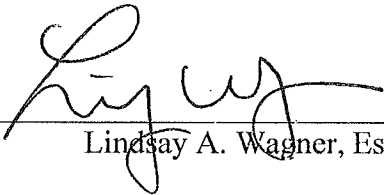
(918) 595-4490

*Attorneys for Defendant Occidental  
Chemical Corporation*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant Occidental Chemical Corporation's Answer and Affirmative Defenses to Plaintiffs' Fourth Amended Complaint was served upon all parties by posting on <https://cvg.ctsummation.com> consistent with Case Management Order XIII.

Date: December 31, 2012

  
\_\_\_\_\_  
Lindsay A. Wagner, Esq.