

## **ENVIRONMENTAL PROTECTION**

### **SITE REMEDIATION PROGRAM**

#### **Notice to Receive Interested Party Comments on Proposed Settlement Agreement in the Matter of NJDEP, et al. v. Occidental Chemical Corporation, et al., Docket No. ESX-L9868-05(PASR)**

**TAKE NOTICE** that the New Jersey Department of Environmental Protection (Department) hereby gives notice of a proposed Settlement Agreement concerning a settlement with certain defendants (Settling Defendants) in the matter of *NJDEP et al. v. Occidental Chemical Corporation et al.*, Dkt. No. ESX-L9868-05(PASR) (the Passaic River Litigation).

This lawsuit was instituted in December of 2005 against a limited number of direct defendants associated with the former Occidental Chemical Corporation site (formerly known as Diamond Alkali Company, Diamond Shamrock Corporation, Diamond Chemicals Company, and Diamond Shamrock Chemicals Company), an agricultural chemicals plant located at 80 Lister Avenue in Newark, New Jersey (Lister Property). It is alleged in the Complaint (and subsequent amended Complaints) that Occidental Chemical Corporation and certain of the Settling Defendants are responsible for cleanup and removal costs and damages resulting from discharges of dioxin, DDT and other hazardous substances into the Passaic River, from which they spread throughout the Newark Bay Complex, which includes (i) the lower 17 miles of the Passaic River, (ii) Newark Bay, (iii) the Arthur Kill, (iv) the Kill Van Kull, and (v) the lower reaches of the Hackensack River.

The Department, under the authority of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. (Spill Act) proposes to enter into a court approved Settlement Agreement with Tierra Solutions, Inc.; Maxus Energy Corporation (Maxus); Maxus International Energy

Company; Repsol, S.A. (f/k/a Repsol YPF, S.A.); YPF, S.A.; YPF Holdings, Inc.; YPF International S.A., and CLH Holdings, Inc. (the Settling Defendants).

Under the proposed Settlement Agreement, the Settling Defendants have agreed to settle certain alleged liability to the Department for past cleanup and removal costs, damages, attorneys fees, and litigation costs, and to cap their exposure to certain future cleanup and removal costs and damages, by the payment of \$130,000,000 and the Department's reservation of certain claims, as set forth below and fully and completely in the proposed Settlement Agreement.

Under the terms of the proposed settlement, the Department retains its rights to pursue certain claims against the remaining defendant Occidental Chemical Corporation (OCC) for future cleanup and removal costs and for damages resulting from the intentional discharges of dioxin and other hazardous substances from the Lister Property. The Department's recovery of these costs and damages from OCC could be subjected to liability caps provided to the Settling Defendants, in whole or in part, but only to the extent OCC is successful in pursuing and collecting the State's costs and damages from Repsol, S.A., YPF, S.A. and/or YPF International S.A. The caps do not apply to future cleanup and removal costs under the Diamond Alkali Superfund Site process at the Lister Property or outside of the Focused Feasibility Study area (the lower eight miles of the Passaic River).

It is the intent of the Department and the Settling Defendants that this Settlement Agreement constitutes a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f(b) of the Spill Act and 42 U.S.C. § 9613(f)2 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1984, as amended (CERCLA), 42 U.S.C. § 9601 et seq., for the purpose of providing protection from contribution actions or claims for matters addressed in this Settlement Agreement.

In February of 2009, Maxus Energy Corporation and Tierra Solutions, Inc. (Third-Party Plaintiffs), two of the Settling Defendants, filed third party claims against numerous third parties. The Department has previously negotiated a proposed Consent Judgment with 258 third parties to resolve certain liability for the Newark Bay Complex. Notice of that proposed settlement was published in the New Jersey Register on May 6, 2013. The public comment period on that proposed settlement ends on July 5, 2013. Under the terms of this proposed Settlement Agreement, if approved by the Court, all claims pending in the Passaic River Litigation against the settling third party defendants would be dismissed.

A copy of the proposed Settlement Agreement is available for inspection at the Department's main office at 401 East State Street, in Trenton, New Jersey, and via the internet at [www.nj.gov/dep/srp/legal](http://www.nj.gov/dep/srp/legal).

The Department is making the administrative record available to the public via the internet at [www.nj.gov/dep/srp/legal](http://www.nj.gov/dep/srp/legal). For members of the public who do not have access to the internet, a dedicated computer will be available for public use at the Department's main office at 401 East State Street, in Trenton, New Jersey, or the administrative record can be accessed at a publicly available computer at most public libraries. Requests to inspect a paper copy of the proposed Settlement Agreement and to review the administrative record in Trenton should be directed to the Office of Record Access, NJDEP, P.O. Box 420, Mail Code 401-06Q, Trenton, NJ 08625-0420 or via email at [records.custodian@dep.state.nj.us](mailto:records.custodian@dep.state.nj.us).


Written comments may be submitted electronically by July 31, 2013 to [PassaicSettlement@dep.state.nj.us](mailto:PassaicSettlement@dep.state.nj.us), referencing "Repsol/YPF Settlement" in the subject line of the email; or in hard copy to:

Office of Record Access  
NJDEP

Attn: Passaic Repsol/YPFSettlement Comments  
P.O. Box 420, Mail Code 401-06Q  
Trenton, NJ 08625-0420

The Department will consider all comments received and may decide to withdraw or withhold consent to the entry of the Settlement Agreement if comments received disclose facts or considerations which show that the Settlement Agreement is inappropriate, improper or inadequate.

6/7/13  
Date

  
Catherine A. Tormey  
Deputy Advisor to the Commissioner