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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - ESSEX COUNTY
DOCKET NO.

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,

Defendants.

Civil Action

COMPLAINT AND
JURY DEMAND FOR TRIAL BY JURY

Plaintiffs, New Jersey Department of Environmental Protection (“DEP”) and Administrator of the New Jersey Spill Compensation Fund (“Administrator”) (collectively, “Plaintiffs”), by way of this Complaint against the above-named defendants, Occidental Chemical Corporation (“OCC”), Tierra Solutions, Inc. (“Tierra”), Maxus Energy Corporation (“Maxus”), Repsol YPF, S.A. (“Repsol”), YPF, S.A. (“YPF”), YPF Holdings, Inc. (“YPF Holdings”), and CLH Holdings (“CLH”) (collectively, “Defendants”), say:

STATEMENT OF THE CASE

1. For roughly twenty years, OCC and its predecessors-in-interest deliberately polluted the Passaic River with 2,3,7,8-Tetrachlorodibenzo-p-dioxin (“TCDD”) – a particularly potent form of dioxin – DDT and various other pesticides and chemicals. For an essentially equivalent period of time, OCC, Tierra, Maxus, Repsol, YPF, YPF Holdings, and CLH have orchestrated and implemented a strategy to delay and impede the clean-up and restoration of the Passaic River. As a direct result of OCC’s intentional releases and discharges into the Passaic River, and Defendants’ feat of delaying any real solution for another 20-plus years, TCDD has migrated throughout the lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill Van Kull, and into adjacent waters and sediments (collectively, the “Newark Bay Complex”). The sediments in the Newark Bay Complex are saturated with TCDD, yet not one teaspoon of TCDD-impacted sediment has been removed as part of a clean-up or restoration effort.

2. The consequences of Defendants’ actions are far-reaching and significant. The Newark Bay Complex has become one of the world's worst sites for TCDD contamination. TCDD concentrations recorded in blue crabs in the Newark Bay Complex may be the highest

ever discovered in aquatic animals. Because of this contamination, DEP has issued a complete ban on all fish and shellfish consumption from the Newark Bay Complex, though studies performed by Defendants themselves show that consumption continues. It is clear that the TCDD concentrations throughout the Newark Bay Complex present a real threat to human health and to the environment.

3. Similarly, Defendants have caused myriad and substantial economic injuries to the State, its citizens, and their natural resources. Defendants' TCDD has impacted commerce, industry, navigation, dredging, and disposal for decades. Likewise, the ecosystem and natural resources of the Newark Bay Complex have been significantly injured.

4. Accordingly, Plaintiffs now bring this action to recover past and future damages caused by Defendants' intentional and egregious conduct. This civil action is brought pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a to -23.11z (the "Spill Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -37.23 (the "WPCA"), and New Jersey common law. In this action, Plaintiffs seek reimbursement of any and all cleanup and removal costs the State of New Jersey has incurred, and all such costs that the State of New Jersey will incur, alone and working in conjunction with federal agencies, as a result of Defendants' discharge of TCDD into the Newark Bay Complex. With respect to the groundwater and other natural resources of New Jersey that are in and around the Lister Site (as defined below), but excluding the natural resources of the Newark Bay Complex and those upland natural resources that have been, or may be in the future, injured as a result of the presence of TCDD and other hazardous substances in the Newark Bay Complex, (collectively, such upland resources are referred to herein as the "Upland Resources"), Plaintiffs also seek: (1) a declaratory judgment that Defendants are jointly and severally liable for the injuries to the Upland Resources that have

been, or may be in the future, caused as a result of Defendants' discharge of TCDD; (2) a declaratory judgment that Defendants are required to fund Plaintiffs' performance of assessment and restoration of the Upland Resources (whether alone or in conjunction with federal agencies) that have been, or may be in the future, injured as a result of Defendants' discharge of TCDD; and (3) damages for injury to the Upland Resources. Plaintiffs also seek compensatory damages, punitive damages, declaratory relief, and equitable relief as set forth herein.

THE PARTIES

5. Plaintiff DEP is a principal department within the Executive Branch of the State government vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. See N.J.S.A. 13:1D-9; see also Executive Order 40. Plaintiff DEP's principal office is located at 401 East State Street, Trenton, Mercer County, New Jersey.

6. In addition, the State of New Jersey is the trustee of all natural resources within its jurisdiction for the benefit of its citizens and is vested with the authority to protect this public trust. See N.J.S.A. 58:10-23.11a.

7. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). See N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, Plaintiff Administrator is authorized to approve and pay cleanup and removal costs Plaintiff DEP incurs, see N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, see N.J.S.A. 58:10-23.11j.d. Plaintiff Administrator's principal office is located at New Jersey Department of Environmental Protection, Environmental Claims Administration, 401 East State Street, P.O. Box 028, Trenton, New Jersey 08625-0028.

8. Defendant Occidental Chemical Company (“OCC”) is a corporation organized under the laws of the State of New York, with a principal place of business located at 5005 LBJ Freeway, Dallas, Texas 75380.

9. Maxus Energy Corporation (f/k/a Diamond Shamrock Corporation, f/k/a New Diamond Corporation) (“Maxus”) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380.

10. Tierra Solutions, Inc. (f/k/a Diamond Shamrock Chemical Land Holdings, f/k/a Chemical Land Holdings, Inc.) (“Tierra”) is a corporation organized under the laws of the State of Delaware with a principal place of business located at 2 Tower Center Boulevard, Floor 10, East Brunswick, New Jersey 08816.

11. Repsol YPF, S.A. (“Repsol”) is, upon information and belief, a Spanish business entity with a principal place of business located at Paseo de la Castellana, 278-280, 28046 Madrid SPAIN.

12. YPF, S.A. (“YPF”) is, upon information and belief, an Argentinean business entity with a principal place of business located at Avenida Presidente Roque Saenz Pena, 777, C.P. 1364 Buenos Aires ARGENTINA.

13. YPF Holdings, Inc. (“YPF Holdings”) is, upon information and belief, a Delaware corporation with a principal place of business located at 1330 Lake Robbins Drive, The Woodlands, Texas 77380.

14. CLH Holdings (“CLH”) is, upon information and belief, a Delaware corporation with a principal place of business located at 1330 Lake Robbins Drive, Suite 400, The Woodlands, Texas 77380.