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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

CONSENT JUDGMENT

TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND	3
II. JURISDICTION	7
III. PARTIES BOUND	8
IV. DEFINITIONS.....	8
V. PARTIES’ OBJECTIVES	19
VI. SETTLING THIRD-PARTY DEFENDANTS’ COMMITMENTS	20
VII. PLAINTIFFS’ COVENANTS.....	21
VIII. PLAINTIFFS’ RESERVATIONS.....	22
IX. SETTLING THIRD-PARTY DEFENDANTS’ COVENANTS.....	26
X. SETTLING THIRD-PARTY DEFENDANTS’ RESERVATIONS	29
XI. FINDINGS & NON-ADMISSIONS OF LIABILITY	32
XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION	32
XIII. NOTICES & SUBMISSIONS	37
XIV. EFFECTIVE DATE.....	38
XV. RETENTION OF JURISDICTION	38
XVI. RETENTION OF RECORDS	38
XVII. MODIFICATION	39
XVIII. ENTRY OF THIS CONSENT JUDGMENT AND FURTHER ASSURANCES	39
XIX. SIGNATORIES/SERVICE.....	41

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 Parties¹ 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 Env'tl. Prot., et al., v. Exxon Mobil Corp., Docket No. UNN-L-3026-04, consolidated with New Jersey Dept. of Env'tl. 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 Settling 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.

Subject to DEP
and Court Approval

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

By:

John F. Dickinson, Jr.
Deputy Attorney General

Dated:

Subject to DEP
and Court Approval

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

*Subject to DEP
and Court Approval*

**Schedule 1 to
Consent Judgment**

*Subject to DEP
and Court Approval*

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 C to
Consent Judgment**

*Subject to DEP
and Court Approval*

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.

Subject to DEP
and Court Approval

**Exhibit D to
Consent Judgment**

*Subject to DEP
and Court Approval*

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 Complex¹ 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. Consistency with the Consent Judgment

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**

*Subject to DEP
and Court Approval*



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

Subject to DEP
and Court Approval

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**

*Subject to DEP
and Court Approval*

	:	SUPERIOR COURT OF NEW JERSEY
NEW JERSEY DEPARTMENT OF	:	LAW DIVISION: ESSEX COUNTY
ENVIRONMENTAL PROTECTION, THE	:	DOCKET NO. L-9868-05(PASR)
COMMISSIONER OF THE NEW JERSEY	:	
DEPARTMENT OF ENVIRONMENTAL	:	<u>Civil Action</u>
PROTECTION and THE ADMINISTRATOR OF	:	
THE NEW JERSEY SPILL COMPENSATION	:	
FUND,	:	
Plaintiffs,	:	ASSIGNMENT OF CLAIMS AND
v.	:	COOPERATION AGREEMENT
	:	
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, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

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.