

**INTERIM COOPERATIVE ASSESSMENT FUNDING AGREEMENT FOR THE
DIAMOND ALKALI SUPERFUND SITE, NEW JERSEY**

I. PARTIES

This Interim Cooperative Assessment Funding Agreement (“Interim Funding Agreement”) is made and entered into by and between the United States Department of the Interior (“DOI”), acting by and through the Regional Director, the United States Fish and Wildlife Service (“FWS”) as Authorized Official; the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (“NOAA”) (together, the “Federal Trustees”); and Occidental Chemical Corporation, (“Occidental”) collectively referred to as the “Parties.”

II. BACKGROUND

In August 2004, the Federal Trustees issued a Preassessment Screen Determination for the Diamond Alkali Superfund Site (“Site”), and, on August 2, 2007, issued a Notice of Intent to Perform a Damage Assessment. On November 21, 2007, the Federal Trustees published in the Federal Register a Notice of Availability seeking public comment on a draft Natural Resource Damage Assessment Plan. The Federal Trustees have been and are continuing to collect and assess data and information related to releases of hazardous substances from the Site and their impact on natural resources and associated services. The Site includes the Lower Passaic River Study Area (“LPRSA”), which is the subject of this Interim Funding Agreement. The LPRSA consists of the lower seventeen miles of the Passaic River, from Dundee Dam to the mouth of the Passaic River at Newark Bay.

Occidental and Tierra represent that, pursuant to a 1986 stock transaction, the corporation now named Maxus Energy Corporation (“Maxus”) indemnified Occidental for, among other things, environmental liabilities arising from ownership and/or operation of 80 and 120 Lister Avenue by Diamond Shamrock Chemicals Company or its predecessors in interest. Occidental and Tierra represent further that, in 1996, Tierra (then known as Chemical Land Holdings, Inc) agreed by contract with Maxus to perform the indemnification responsibilities that Maxus owes Occidental. Occidental and Tierra further represent that, because of these agreements, Maxus and Tierra negotiated the Interim Agreement as well as the related Interim Cooperative Assessment Funding Agreement (“Interim Funding Agreement”) on Occidental’s behalf. Occidental and Tierra further represent that Occidental did not participate in these negotiations. Occidental and Tierra further represent that Maxus and Tierra also acknowledge their private contractual responsibilities to perform all obligations imposed on Occidental under the Interim Agreement or the Interim Funding Agreement.

III. AUTHORITY

Pursuant to Section 107(f) of CERCLA, 42 U.S.C. Sec. 9607(f), Executive Order 12580, and Section 300.600 of the NCP, 40 C.F.R. 300.600, the Federal Trustees for the Site act on behalf of the public as trustees for natural resources potentially affected by the Site. The Federal Trustees are authorized to conduct natural resource damage assessment and restoration activities and to sue for injuries to and the restoration of such natural resources. The Natural Resource Damage Assessment Regulations, at 43 C.F.R. 11.32(a)(2)(iii)(A), encourage the invitation of potentially responsible parties to participate in the assessment process.

IV. PURPOSE

The Federal Trustees for the Site are proceeding with a natural resource damage assessment (“NRDA”) of the Site, including the LPRSA. The purpose of this Interim Funding Agreement is to reimburse the Federal Trustees for a portion of their past costs and to provide funding for a portion of future costs incurred by the Federal Trustees in pursuing a cooperative NRDA of the LPRSA. The scope of the NRDA activities under this Interim Funding Agreement is detailed in the attached Interim Cooperative Assessment Agreement, which shall be signed by all Parties and incorporated by reference into this Interim Funding Agreement. These activities, which are the subject of this Interim Funding Agreement, shall include all natural resources in the LPRSA under the sole or joint trusteeship of the Federal Trustees. This Interim Funding Agreement is intended to facilitate resolution of any natural resource damages (“NRD”) claims arising from or relating to the LPRSA, to minimize the transaction costs associated with such claim(s), to ensure that appropriate credit is given to Occidental, and to work toward the goal of cooperatively developing and implementing a final restoration plan. Occidental agrees to work, to the extent practicable, with any other company or companies that may be participating in an overall cooperative assessment with the Trustees so that the overall assessment may be conducted in an efficient and cost-effective manner.

This Interim Funding Agreement, and any other interim funding agreements similarly identified and labeled and related to the Diamond Alkali Superfund Site, are entered into by the Federal Trustees solely to facilitate the start of cooperative assessment activities. It is not meant to, nor does it represent any actual or potential allocation of possible role, responsibility, or liability between or among any Parties entering into any such agreements. The parties to this Interim Funding Agreement and any other interim cooperative assessment agreements among potentially responsible parties and the Federal Trustees enter into such agreements with the express understanding and agreement that such agreements are not for the purpose of identifying or establishing actual or potential share allocation, and that such agreements cannot and should not be so construed or utilized. To reiterate, the parties to this Interim Funding Agreement do not intend to establish or affirm anything whatsoever as to the possible roles, responsibilities, or obligations of any potentially responsible party as regards natural resource damages issues relating to the Diamond Alkali Superfund Site. Accordingly, nothing herein contained, used, or relied upon in developing this Interim Funding Agreement is to be taken or construed as having

any relevance, force, effect, or import whatsoever regarding possible issues of allocation or share as regards potential natural resource damages liability or responsibility.

The Parties therefore agree as follows:

V. TERMS AND CONDITIONS

A. Occidental shall reimburse the Federal Trustees for a \$300,000 portion of their past assessment costs incurred in connection with the LPRSA within ninety (90) calendar days after the Federal Trustees have provided Occidental with a summary of the costs being reimbursed and the full execution of this Interim Funding Agreement. The cost summary shall provide full documentation of those costs, following each agency's cost documentation practices. Payments shall be made in the amounts of \$150,000 to the DOI; and \$150,000 to NOAA. Occidental shall be provided with detailed funds transfer instructions by DOI and NOAA.

B. Upon mutual agreement between Occidental and the Federal Trustees, Occidental and/or the Trustees shall perform discrete studies and restoration project(s) related to potential NRD in the LPRSA. Such project(s) and studies shall be proposed by one or more of the technical work groups established in the attached Interim Cooperative Assessment Agreement, and shall be subject to the approval of Occidental and the Federal Trustees before they are performed.

C. Occidental shall fund the Federal Trustees' reasonable administrative, oversight, and assessment costs in an amount not to exceed \$500,000 incurred as part of the Interim Cooperative Assessment Agreement and relating to NRDA activities for the LPRSA under this Agreement, including but not limited to attendance at LPRSA-related meetings, ongoing GIS development, historical data review and consultant support, but excluding the costs of the development and implementation of NRDA study activities undertaken solely by the Federal Trustees or other entities, unless such costs are otherwise agreed to in writing by the Federal Trustees and Occidental. For the purposes of funding of the Federal Trustees' reasonable assessment and administrative costs, other activities will also be funded if those activities are for the larger Site, but cannot be separated from activities solely related to the LPRSA.

D. Occidental shall, within thirty (30) calendar days of full execution of this Interim Agreement, make an upfront payment of \$250,000 to the Federal Trustees towards the reasonable assessment and administrative costs referred to in C, above, which shall be credited against such costs. Payments shall be made in the amounts of \$125,000 to the DOI; and \$125,000 to NOAA. Occidental shall be provided with detailed funds transfer instructions by DOI and NOAA.

E. The Federal Trustees may submit to Occidental a replenishment request for the additional \$250,000 no earlier than six months after the initial payment made in Paragraph D, above. The request shall include documentation of the costs incurred that consumed the initial \$250,000 payment, following each agency's cost documentation practices, and a description of

the costs expected to be incurred that will consume the second \$250,000 payment. Payment of the second \$250,000 shall be made by Occidental within thirty (30) calendar days of receipt of the description of costs expected to be incurred. Occidental shall have the right to object, under Section IX – DISPUTE RESOLUTION, to any costs on the grounds they are unreasonable or not incurred under this Interim Agreement. However, Occidental shall pay the undisputed costs within the thirty (30) calendar days of receipt of the description of costs expected to be incurred.

F. The Federal Trustees shall submit to Occidental documentation of the costs incurred that consumed the second \$250,000 payment within a reasonable time after the exhaustion of those funds. This obligation to provide documentation of costs shall survive termination of this Interim Funding Agreement.

VI. RESERVATION OF RIGHTS

A. Nothing in this Interim Funding Agreement is intended to be nor should it be construed as an admission of liability on the part of the Occidental or as a limitation upon any of its rights or defenses.

B. Nothing in this Interim Funding Agreement is intended to be nor should it be construed to be a limitation on the Federal Trustees' (or the entities comprising them) authority to pursue any claims or causes of action against Occidental for damages or otherwise, provided, however, that any payments of Federal Trustee costs pursuant to Paragraph V.A. or C. and Occidental's performance of NRD-related studies or projects approved by the Federal Trustees shall be credited, in a mutually agreed upon manner, against any future claims for assessment costs and damages. Any restoration work or payments to the Federal Trustees for restoration work shall be credited, by mutually agreed upon metrics that measure restoration credits agreed by the Parties, against future claims for restoration.

VII. TERMINATION

Either Occidental or the Federal Trustees may withdraw from this Interim Funding Agreement at will at any time for any reason. The withdrawal must be made in writing and communicated to the other Party. Occidental will forward written notice of withdrawal to each Federal Trustee. The withdrawing Federal Trustees must forward written notice to Occidental. Withdrawal by Occidental shall terminate this Interim Funding Agreement, in which event Occidental shall remain obligated to reimburse Federal Trustee costs or expenses that are otherwise compensable under this Agreement and incurred prior to Occidental's termination of this Agreement. No further payments shall be made to the Federal Trustee withdrawing from this Interim Funding Agreement except for payments for costs or expenses compensable under this Agreement incurred prior to said Party's termination. There is no advance notice required to terminate the Interim Funding Agreement. The Interim Funding Agreement is terminated

immediately upon forwarding written notice of withdrawal by either Occidental or all Federal Trustees. Withdrawal from this Interim Funding Agreement by any Party will be effective upon the date of receipt by registered mail of a notice of withdrawal. This Interim Funding Agreement will terminate automatically one year from the date of execution of this Interim Funding Agreement or upon completion of all agreed work to be performed under this Interim Funding Agreement, whichever is later, unless extended by the mutual written agreement of the Parties.

VIII. NOTICES

A. Any general information or notices required to be given in writing under this Interim Funding Agreement shall be deemed to have been sufficiently given if delivered either personally or by certified mail (return receipt requested, postage prepaid), fax, or e-mail (if followed by confirming letter) to the each of the addresses set forth below, or to such other address for either party as may be designated by written notice.

For Occidental:

Dave Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, 10th Floor
East Brunswick, New Jersey 08816
Phone: (732) 246-5848
Fax: (732) 246-5858
Email: davermxs@aol.com

For the Federal Trustees:

Linda Burlington
NOAA/GCNR
Room 15104
1315 East West Highway
Silver Spring, MD 20910-3282
Phone: 301-713-1332
Fax: 301-713-1229
Email: Linda.B.Burlington@noaa.gov

With copies to:

Mark Barash
U.S. Department of the Interior
Office of the Regional Solicitor
One Gateway Center, Suite 612
Newton Corner, MA 02458

Interim Funding Agreement – Federal Trustees & Occidental
November 2008

Phone: 617-527-2103
Fax: 617-527-6848
Email: r5mbarash@gmail.com and MARK.BARASH@sol.doi.gov

Brian Donohue
U.S. Department of Justice
Environment and Natural Resources Division
1425 New York Ave. N. W., Room 13063
P.O. Box 7611
Washington DC 20044-7611
Phone: 202-514-5413
Fax: 202-616-2427
Email: brian.donohue@usdoj.gov

IX. DISPUTE RESOLUTION

A. The Parties shall endeavor in good faith to make decisions by consensus.

B. In the absence of consensus, the Parties shall attempt in good faith, for a period not to exceed ten (10) business days after receipt of written notice that briefly identifies the subject on which there is no consensus, to reach consensus through consultation among the Parties' representative, who are currently designated as:

1. For Occidental:

Dave Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, 10th Floor
East Brunswick, New Jersey 08816
Phone: (732) 246-5848
Fax: (732) 246-5858
Email: davermxs@aol.com

2. For the Federal Trustees:

Timothy Kubiak
U.S. Fish & Wildlife Service
New Jersey Field Office
927 North Main St.
Pleasantville, New Jersey 08232
Phone: 609-646-9310 x 26
Fax: 609-383-3939
E-mail: tim_kubiak@fws.gov

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Mark Barash
U.S. Department of the Interior
Office of the Regional Solicitor
One Gateway Center, Suite 612
Newton Corner, MA 02458
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United States Department of Commerce

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Silver Spring, MD 20910-3282
Phone 301-713-1332
FAX: 301-713-1229
Email Linda.B.Burlington@noaa.gov

National Oceanic & Atmospheric Administration

Eli Reinharz
National Oceanic and Atmospheric Administration
Office of Response and Restoration
Assessment and Restoration Division
SSMC#4, N/ORR3
1305 East-West Hgwy
Silver Spring, Maryland 20910
Phone: 301-713-4248, ext 193
Fax: 301-713-4378
Email eli.reinharz@noaa.gov

C. In the event consensus is not reached by the representatives pursuant to Subparagraph IX.B, the Parties shall attempt in good faith for a period not to exceed ten (10) business days to reach consensus through consultation among the following management representatives.

1. For Occidental:

Dave Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, 10th Floor
East Brunswick, New Jersey 08816
Phone: (732) 246-5848
Fax: (732) 246-5858
Email: davermxs@aol.com

2. For the Federal Trustees:

Dave Westerholm, Acting Director
Office of Response and Restoration
National Ocean Service
National Oceanic and Atmospheric Administration

Marvin Moriarity
Regional Director
U.S. Fish & Wildlife Service

D. In the event consensus is not reached by the representatives pursuant to Subparagraph IX.C, either Party may terminate the Interim Funding Agreement as provided in Section VII.

X. APPLICABLE LAW

This Interim Funding Agreement shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of New Jersey, without giving effect to the principles of conflicts of laws of such state.

XI. AUTHORITY

The person executing this Interim Funding Agreement on behalf of each party represents and warrants that he or she has full power and authority to do so on behalf of such party.

XII. EXECUTION

This Interim Funding Agreement and any modifications or addenda hereto may be executed in several counterparts by the parties and when so executed shall be considered fully executed to the same extent as if the parties had signed the original document. Facsimile execution is authorized.

XIII. PERIOD AND EFFECTIVE DATE

The effective date of this Interim Funding Agreement shall be the date of the last signature and the period of this Interim Funding Agreement shall be for one year from that date unless otherwise amended in writing.

XIV. GEOGRAPHIC SCOPE OF AGREEMENT

The geographic scope of this Interim Funding Agreement and of data collection activities undertaken thereunder will be limited to the LPRSA unless otherwise expressly agreed to by all parties.

IN WITNESS WHEREOF the Parties have executed this Interim Funding Agreement on the dates attested to below.

Interim Funding Agreement – Federal Trustees & Occidental
November 2008

The United States Department of the Interior, by its Authorized Official

By:

Name:

Title:



Marvin Moriarty

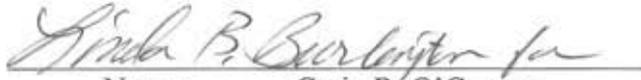
Acting Regional Director, U.S. Fish and Wildlife Service

Date:

12-11-08

Interim Funding Agreement – Federal Trustees & Occidental
November 2008

The United States Department of Commerce

By: 
Name: Craig R. O'Connor
Special Counsel for Natural Resources
Office of General Counsel
National Oceanic and Atmospheric Administration

Date: 11/25/08

Interim Funding Agreement – Federal Trustees & Occidental
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Occidental Chemical Corporation.

By: Dennis F. Blake

Name: Dennis F. Blake

Title: Senior Vice President—Business Analysis

Date: 11/20/08

Exhibit A. INTERIM COOPERATIVE ASSESSMENT AGREEMENT FOR THE
DIAMOND ALKALI SUPERFUND SITE, NEW JERSEY

**INTERIM COOPERATIVE ASSESSMENT AGREEMENT FOR THE DIAMOND
ALKALI SUPERFUND SITE, NEW JERSEY**

I. PARTIES

This Interim Cooperative Agreement (“Interim Agreement”) is made and entered into by and between the United States Department of the Interior (“DOI”), acting by and through the Regional Director, the United States Fish and Wildlife Service (“FWS”) as Authorized Official; the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (“NOAA”) (together, the “Federal Trustees”), and Occidental Chemical Corporation (“Occidental”), collectively referred to as the “Parties.”

II. BACKGROUND

In August 2004, the Federal Trustees issued a Preassessment Screen Determination for the Diamond Alkali Superfund Site (“Site”), and, on August 2, 2007, issued a Notice of Intent to Perform a Damage Assessment. On November 21, 2007, the Federal Trustees published in the Federal Register a Notice of Availability seeking public comment on a draft Natural Resource Damage Assessment Plan. The Federal Trustees have been and are continuing to collect and assess data and information related to releases of hazardous substances from the Site and their impact on natural resources and associated services. The Site includes the Lower Passaic River Study Area (“LPRSA”), which is the subject of this Interim Agreement. The LPRSA consists of the lower seventeen miles of the Passaic River, from Dundee Dam to the mouth of the Passaic River at Newark Bay.

Occidental and Tierra represent that, pursuant to a 1986 stock transaction, the corporation now named Maxus Energy Corporation (“Maxus”) indemnified Occidental for, among other things, environmental liabilities arising from ownership and/or operation of 80 and 120 Lister Avenue by Diamond Shamrock Chemicals Company or its predecessors in interest. Occidental and Tierra represent further that, in 1996, Tierra (then known as Chemical Land Holdings, Inc) agreed by contract with Maxus to perform the indemnification responsibilities that Maxus owes Occidental. Occidental and Tierra further represent that, because of these agreements, Maxus and Tierra negotiated the Interim Agreement as well as the related Interim Cooperative Assessment Funding Agreement (“Interim Funding Agreement”) on Occidental’s behalf. Occidental and Tierra further represent that Occidental did not participate in these negotiations. Occidental and Tierra further represent that Maxus and Tierra also acknowledge their private contractual responsibilities to perform all obligations imposed on Occidental under the Interim Agreement or the Interim Funding Agreement.

III. AUTHORITY

Pursuant to Section 107(f) of CERCLA, 42 U.S.C. Sec. 9607(f), Executive Order 12580, and Section 300.600 of the NCP, 40 C.F.R. 300.600, the Federal Trustees for the Site act on behalf of the public as trustees for natural resources potentially affected by the Site. The Federal Trustees are authorized to conduct natural resource damage assessment and restoration activities and to sue for injuries to and the restoration of such natural resources. The Natural Resource Damage Assessment Regulations, at 43 C.F.R. 11.32(a)(2)(iii)(A), encourage the invitation of potentially responsible parties to participate in the assessment process.

IV. PURPOSE

The Federal Trustees for the Site are proceeding with a natural resource damage assessment (“NRDA”) of the Site, including the LPRSA. The purpose of this Interim Agreement is to provide a first step toward, and interim framework for, a cooperative NRDA of the LPRSA. The scope of the NRDA activities under this Interim Agreement shall include all natural resources in the LPRSA under the sole or joint trusteeship of the Federal Trustees. This Interim Agreement is intended to facilitate resolution of any natural resource damages (“NRD”) claims arising from or relating to the LPRSA, to minimize the transaction costs associated with such claim(s), to ensure that appropriate credit is given to Occidental, and to work toward the goal of cooperatively developing and implementing a final restoration plan. Occidental agrees to work, to the extent practicable, with any other company or companies that may be participating in an overall cooperative assessment with the Trustees so that the overall assessment may be conducted in an efficient and cost-effective manner.

The Parties agree that it is desirable to undertake a cooperative assessment of the LPRSA to:

- A. Determine the nature and extent of injuries to natural resources and/or the services provided by such resources (injury determination and quantification) in the LPRSA; and
- B. Conduct restoration planning and implementation (restoration) related to the LPRSA.

Based on experience gained working under this Interim Agreement, the Parties shall determine the manner and extent of future cooperation, and implement such cooperation through subsequent agreement(s).

The Parties therefore agree as follows:

V. TERMS AND CONDITIONS

A. The Federal Trustees and Occidental shall meet and establish one or more technical work groups (“TWG”) that will identify NRDA studies and data collection needs to be integrated with the RI/FS data collection, including the identification of data needed for NRDA purposes that are not otherwise planned to be collected for the RI/FS. As such studies and projects are agreed upon by the TWG, they will be added as Exhibits hereto and incorporated by reference to this Interim Agreement.

B. The TWG shall develop and submit to the Federal Trustees and Occidental, for their approval, specific restoration projects that could be undertaken in the near term, such as the purchase or option to purchase land for restoration, or enhancement of public access to the LPRSA. The TWG also may recommend data collection activities to be undertaken. All such activities will be defined and budgeted by the TWG before being presented to the Federal Trustees and Occidental for approval. Data collection efforts shall be coordinated with EPA-mandated activities to achieve economies of time and effort and all data collected shall be shared in a manner that allows all parties to readily access and use it. Where appropriate, QA/QC procedures consistent with EPA requirements shall be used. Data shall be collected in a mutually agreed upon manner, by or with the oversight of the Federal Trustees or their consultants.

C. All Parties agree to be guided by the principles set forth in the proposed Cooperative Assessment Approach and Framework, attached hereto and incorporated herein as Exhibit A.

D. All parties understand and agree that the Federal Trustees retain final responsibility for, and authority over, the development and implementation of this NRDA, including but not limited to the assessment plan, data collection, and other studies undertaken to implement the NRDA plan.

E. During the period of this Interim Agreement, the Federal Trustees or Occidental may propose additional restoration projects or joint studies related to NRDA for the Site. Any agreement by Occidental to fund such studies must be in writing and shall be incorporated as an Exhibit to this Interim Agreement.

VI. RESERVATION OF RIGHTS

A. Nothing in this Interim Agreement is intended to be nor should it be construed as an admission of liability on the part of Occidental or as a limitation upon any of its rights or defenses.

B. Nothing in this Interim Agreement is intended to be, nor should it be construed to be, a limitation on the Federal Trustees' (or the entities comprising them) authority to pursue any claims or causes of action against Occidental for damages or otherwise, provided, however, that any payments of Federal Trustee costs and the funding of any Federal Trustee activities by Occidental shall be credited, in a mutually agreed upon manner by the Parties, against any future claims for assessment costs and damages. Any restoration work or payments to the Federal Trustees for restoration work shall be credited, by mutually agreed upon metrics that measure restoration credits agreed by the Parties, against future claims for restoration.

VII. TERMINATION

A. Either Occidental or the Federal Trustees may withdraw from this Interim Agreement at will at any time for any reason. The withdrawal must be made in writing and communicated to the other parties. Occidental will forward written notice of withdrawal to each Federal Trustee. The withdrawing Federal Trustees must forward written notice to Occidental. Withdrawal by Occidental shall terminate this Interim Agreement. There is no advance notice required to withdraw from this Interim Agreement.

B. Withdrawal from this Interim Agreement by any Party will be effective upon the date of receipt by registered mail of notice of withdrawal.

C. This Interim Agreement will terminate automatically one year from its effective date or upon completion of all active field work efforts then underway at the time of termination of this Interim Agreement, whichever is later, unless extended by the mutual written agreement of the Parties; such an agreement shall be added to this Interim Agreement as an Exhibit.

VIII. EXTENSION/MODIFICATION

A. This Interim Agreement may, from time to time, be extended by mutual, written agreement of the Parties; each such extension of time, if agreed to by the Parties, shall be for a minimum of one year. The agreement to extend shall be appended to this Interim Agreement as an Exhibit.

B. This Interim Agreement and its exhibits may be modified only by mutual, written agreement of the Parties.

IX. NOTICES

A. Any general information or notices required to be given in writing under this Interim Agreement shall be deemed to have been sufficiently given if delivered either

Interim Cooperative Assessment Agreement – Federal Trustees & Occidental
November 2008

personally or by certified mail (return receipt requested, postage prepaid), fax, or e-mail (if followed by confirming letter) to the each of the addresses set forth below, or to such other address for either party as may be designated by written notice.

For Occidental:

Dave Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, 10th Floor
East Brunswick, New Jersey 08816
Phone: (732) 246-5848
Fax: (732) 246-5858
Email: davermxs@aol.com

For the Federal Trustees:

Linda Burlington
NOAA/GCNR
Room 15104
1315 East West Highway
Silver Spring, MD 20910-3282
Phone: 301-713-1332
Fax: 301-713-1229
Email: Linda.B.Burlington@noaa.gov

With copies to:

Mark Barash
U.S. Department of the Interior
Office of the Regional Solicitor
One Gateway Center, Suite 612
Newton Corner, MA 02458
Phone: 617-527-2103
Fax: 617-527-6848
Email: r5mbarash@gmail.com and MARK.BARASH@sol.doi.gov

Brian Donohue
U.S. Department of Justice
Environment and Natural Resources Division
1425 New York Ave. N. W., Room 13063

P.O. Box 7611
Washington DC 20044-7611
Phone: 202-514-5413
Fax: 202-616-2427
Email: brian.donohue@usdoj.gov

X. DISPUTE RESOLUTION

A. The Parties shall endeavor in good faith to make decisions by consensus.

B. In the absence of consensus, the Parties shall attempt in good faith, for a period not to exceed ten (10) business days after receipt of written notice that briefly identifies the subject on which there is no consensus, to reach consensus through consultation among the Parties' representative, who are currently designated as:

1. For Occidental:

Dave Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, 10th Floor
East Brunswick, New Jersey 08816
Phone: (732) 246-5848
Fax: (732) 246-5858
Email: davermxs@aol.com

2. For the Federal Trustees:

Timothy Kubiak
U.S. Fish & Wildlife Service
New Jersey Field Office
927 North Main St.
Pleasantville, New Jersey 08232
Phone: 609-646-9310 x 26
Fax: 609-383-3939
E-mail: tim_kubiak@fws.gov

Mark Barash
U.S. Department of the Interior
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1315 East West Highway
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FAX: 301-713-1229
Email Linda.B.Burlington@noaa.gov

National Oceanic & Atmospheric Administration

Eli Reinharz
National Oceanic and Atmospheric Administration
Office of Response and Restoration
Assessment and Restoration Division
SSMC#4, N/ORR3
1305 East-West Hgwy
Silver Spring, Maryland 20910
Phone: 301-713-4248, ext 193
Fax: 301-713-4378
Email eli.reinharz@noaa.gov

C. In the event consensus is not reached by the representatives pursuant to Subparagraph X.B, the Parties shall attempt in good faith for a period not to exceed ten (10) business days to reach consensus through consultation among the following management representatives.

1. For Occidental:

Dave Rabbe, President
Tierra Solutions, Inc.
2 Tower Center Boulevard, 10th Floor
East Brunswick, New Jersey 08816
Phone: (732) 246-5848
Fax: (732) 246-5858
Email: davermxs@aol.com

2. For the Federal Trustees:

Dave Westerholm, Director
Office of Response and Restoration
National Ocean Service
National Oceanic and Atmospheric Administration

Marvin Moriarity
Regional Director
U.S. Fish & Wildlife Service

D. In the event consensus is not reached by the representatives pursuant to Subparagraph X.C, either Party may terminate the Interim Agreement as provided in Section VII.

XI. PUBLIC INVOLVEMENT AND CONFIDENTIALITY

A. **Public Participation:** The Parties recognize and agree that public participation during the injury assessment and restoration planning process is both desirable and necessary. The Parties further recognize that the Trustees are required by law to give public notice and to solicit public review and comment during certain phases of the injury assessment and restoration planning process. The Trustees will undertake public outreach and will provide public notice and solicit public review and comment of the documents as the Trustees deem appropriate. Costs associated with public outreach constitute reasonable assessment costs.

B. **Confidentiality:** The Parties agree that oral communications between the Trustees and Occidental leading up to and pursuant to this Interim Agreement shall be treated by the Parties as confidential and were made in, and shall be deemed to be, in furtherance of

settlement negotiations pursuant to Federal Rule of Evidence 408. Notwithstanding, nothing herein shall limit the ability of the Trustees to share information, data, and communication with the state trustees or otherwise coordinate activities with the state trustees, subject to the Joint Prosecution and Confidentiality Agreement of 2003 among New Jersey, DOI/FWS, and NOAA. Furthermore, any written communication that is marked "Settlement Confidential" shall be treated by the parties as confidential and shall be deemed in furtherance of settlement negotiations pursuant to Federal Rule of Evidence 408. The Parties agree that any Final Study Plan, as well as any data collected pursuant to this Agreement, shall not be a "settlement confidential" communication.

C. Internal Communications: Notwithstanding Paragraph B above, the Parties recognize that any other Party may, from time to time, need to share confidential information with other members of their respective organization or other state governmental agencies, including external contractors, provided however that all such communications must be made in a manner reasonably calculated to prevent disclosure of such information beyond the organization and its contractors. Except as provided herein, in no event shall confidential information be disclosed to individuals who are not members (or contractors) of the Party's organization without the prior written consent of all other Parties.

D. Public Statements: Except as set forth in Paragraph A and this paragraph, the Parties agree that they will not make public representations about the legal or factual positions of another Party to this Agreement unless agreed to in writing by such Party, nor shall any Party publicly disclose or discuss any statements by another Party that are subject to Paragraph B above, unless agreed to in writing by all other Parties. Subject to the provisions of Paragraph B and the preceding sentence, the Parties agree that a Party may publicly describe the general terms of this Agreement. The Parties further agree that this Agreement itself, once executed, shall not be confidential.

E. Information Requests: Any Party that receives a request for documents pursuant to federal or state freedom of information law, or that is served in any administrative or judicial proceeding with a subpoena or discovery request for any document or statement that the Parties have agreed should be treated as confidential, shall provide timely notice to the other Parties so as to allow them, if they choose, to assert a privilege or statutory exception seeking to prevent the release of such document or statement.

XII. APPLICABLE LAW

This Interim Agreement shall be governed in all respects, including validity, interpretation, and effect, by the laws of the State of New Jersey, without giving effect to the principles of conflicts of laws of such state.

XIII. AUTHORITY

The person executing this Interim Agreement on behalf of each party represents and warrants that he or she has full power and authority to do so on behalf of such party.

XIV. EXECUTION

This Interim Agreement and any modifications or addenda hereto may be executed in several counterparts by the parties and when so executed shall be considered fully executed to the same extent as if the parties had signed the original document. Facsimile execution is authorized.

XV. PERIOD AND EFFECTIVE DATE

The effective date of this Interim Agreement shall be the date of the last signature and the period of this Interim Agreement shall be for one year from that date unless otherwise amended in writing.

XVI. GEOGRAPHIC SCOPE OF AGREEMENT

The geographic scope of this Interim Agreement and of data collection activities undertaken thereunder will be limited to the LPRSA unless otherwise expressly agreed to by all parties.

IN WITNESS WHEREOF the Parties have executed this Interim Agreement on the dates attested to below.

Interim Cooperative Assessment Agreement – Federal Trustees & Occidental
November 2008

The United States Department of the Interior, by its Authorized Official

By:

Name:

Title:

Acting


Marvin Moriarty

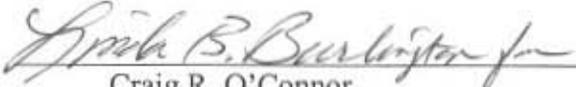
Regional Director, U.S. Fish and Wildlife Service

Date:

12-11-08

Interim Cooperative Assessment Agreement – Federal Trustees & Occidental
November 2008

The United States Department of Commerce

By: 
Name: Craig R. O'Connor
Title: Special Counsel for Natural Resources
Office of the General Counsel
National Oceanic and Atmospheric Administration

Date: Nov. 25, 2008

Interim Cooperative Assessment Agreement – Federal Trustees & Occidental
November 2008

Occidental Chemical Corporation.

By: *Dennis F. Blake*

Name: Dennis F. Blake

Title: Senior Vice President—Business Analysis

Date: *11/20/08*

Exhibit A

**PROPOSED COOPERATIVE ASSESSMENT APPROACH AND FRAMEWORK
LOWER PASSAIC RIVER STUDY AREA**

I. Points of General Understanding

- (A) The Federal Trustees shall meaningfully involve Occidental in the NRDA process
- (B) The Federal Trustees and Occidental shall interact in good faith
- (C) The Federal Trustees and Occidental share a desire to establish a cooperative process addressing restoration
- (D) The Federal Trustees and Occidental understand that development of a successful cooperative process requires significant time and effort, and is best achieved by iterative confidence- and trust-building steps
- (E) The Federal Trustees and Occidental enter this cooperative process with a shared restoration focus with the goals of resolving NRD claims and achieving appropriate natural resource restoration
- (F) The Federal Trustees and Occidental will strive to achieve consensus decision-making

II. Specific Obligations, Understandings, and Mechanisms

- (A) The Federal Trustees, while working with Occidental, shall manage and control the assessment process under this Interim Agreement:
 - a) The Federal Trustees will meet regularly with Occidental to discuss the goals and direction of the assessment process;
 - b) The Federal Trustees will consider Occidental's suggestions;
 - c) The Federal Trustees will decide what restoration projects and studies will be performed and by whom;
 - d) Occidental will fully fund Federal Trustee studies that Occidental agrees to fund;
 - e) All Parties will share all relevant data with each other unless the Parties agree otherwise; and
 - f) Prior to commencing any independent NRD-related projects or studies, the Parties shall notify each other of their intention, provide copies of all workplans, and share all data, unless the Parties agree otherwise.
- (B) Occidental shall reimburse Federal Trustees for all reasonable ongoing assessment costs, direct and indirect, pursuant to separate funding agreements.
- (C) All parties reserve rights and defenses.
- (D) Occidental shall endeavor to identify and implement restoration projects including, where appropriate, early restoration projects.