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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2005 OCT -4 PM 3:02
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

STATE OF OHIO,	:	CASE NO. 1:02CV0193
	:	
Plaintiff,	:	JUDGE NUGENT
	:	
v.	:	
	:	
CHEMICAL LAND HOLDINGS, et al.,	:	<u>CONSENT ORDER</u>
	:	
Defendants.	:	

Plaintiff State of Ohio, by and through its Attorney General, Jim Petro, at the written request of the Director of the Ohio Environmental Protection Agency ("Director"), together with Defendants Tierra Solutions, Inc. (f/k/a Chemical Land Holdings, Inc.), Maxus Energy Corporation, Occidental Chemical Corporation, Painesville Township Board of Trustees, the Village of Fairport Harbor, and The Painesville PRP Group (collectively "Defendants") hereby consent to the entry of this Consent Order.

WHEREAS, the Defendants substantially deny Plaintiff's allegations in the Pending Suit;

WHEREAS, the Parties desire to settle claims the State has brought against the Defendants in this action, including the claims for alleged violations of the Director's Final Findings and Orders for the Diamond Shamrock Painesville Works Site issued September 27, 1995 ("1995 DFFO") (Exhibit 1), in order to avoid the expense and inconvenience of further litigation;

NOW, THEREFORE, without adjudication or admission of any issue of fact or law, except as provided in paragraph 12, Section VI, of this Consent Order, and upon consent of

Plaintiff and Defendants (the "Parties"), it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

1. For purposes of this Consent Order, the terms used herein shall have the same meaning as stated in the Complaint and the 1995 DFFO, except as otherwise defined below.

A. "Claims" means any and all claims, counterclaims, cross claims, third party claims, actions, causes of action, rights, and demands for relief, damages (including punitive damages), losses, liabilities, liens, judgments, penalties, fines, costs, attorneys' fees, consultants' or expert fees, court costs, expenses, interest and any other expenses and compensation whether direct or indirect, known or unknown, foreseen or unforeseen.

B. "Dartron Site," for the purpose of this Consent Order, shall be the property referred to as Parcel 1C5 on the attached map, attached as Exhibit 2, and as described in deeds attached as Exhibit 3, respectively, which is located in Painesville Township, Lake County, Ohio, including all soil and all ground water beneath the soil.

C. "Diamond Shamrock Site" shall refer to the Diamond Shamrock Site as defined in the Complaint and the 1995 DFFO, except that the Diamond Shamrock Site shall no longer include the Dartron Site, as that term is defined above.

D. "Effective Date" is the date this Consent Order is entered by the Court.

E. "Operation and Maintenance" shall mean all activities that ensure and maintain the effectiveness of a Remedial Action as required by an order of the Director of Ohio EPA or this Court or any other court of competent jurisdiction.

F. "Paragraph" shall mean a portion of these Orders identified by an Arabic numeral or an upper or lowercase letter.

- G. "Party" or "Parties" shall mean Defendants and/or the State of Ohio.
- H. "Person" shall have the same meaning as defined in Section 101(21) of CERCLA.
- I. "Remedial Action" means any action, or part thereof, selected by the Ohio EPA that abates or reduces the threat posed by a placement or disposal or threatened disposal of Hazardous Substances, to prevent present or future harm to the public health or welfare or to the environment, and is consistent with applicable local, State and Federal laws and regulations, and the NCP (40 CFR Part 300).
- J. "Remedial Design" means the detailed engineering plans, specifications and construction drawings which are in compliance with NCP (40 CFR Part 300) and sufficient to implement the selected Remedial Action.
- K. "RD/RA" means the Remedial Design and Remedial Action, together.
- M. "Remedial, Preferred Plan and Decision Document Response Costs" shall mean all costs incurred by the State associated with the remedy for the Diamond Shamrock Site or the Dartron Site, as the case may be, including any remedy regarding any contamination that has migrated, is migrating, or will migrate from the relevant Site. Such costs shall include all costs associated with preparing and issuing a preferred plan and decision document, costs associated with the preparation and negotiation of an administrative or judicial RD/RA order, and the costs associated with overseeing, reviewing, approving, and/or verifying remedial work, including Operation and Maintenance, required by any subsequent Director's order or court order, doing the remedial work or otherwise implementing or enforcing any subsequent Director's order or a court order. These costs shall include, without limitation, payroll costs, fringe benefits, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement related costs,

oversight costs, laboratory costs and the costs of reviewing or developing plans, reports, and other items.

N. "RI/FS Response Costs" shall mean all costs incurred by Ohio EPA associated with completion of the Remedial Investigation/Feasibility Study ("RI/FS") for the Diamond Shamrock Site or the Dartron Site, as the case may be. Such costs include, without limitation, Ohio EPA's overseeing, reviewing, approving, and/or verifying the RI/FS and/or any other activities required by this Consent Order or the 1995 DFFO, doing the Work or otherwise implementing or enforcing this Consent Order or the 1995 DFFO. These costs include, without limitation, payroll costs, fringe benefits, contractor costs, travel costs, direct costs, indirect costs, legal and enforcement related costs, laboratory costs and the costs of reviewing or developing plans, reports, and other items.

O. "Section" shall mean a portion of this Consent Order identified by a Roman number except when "Section" is used as a part of a reference to a statutory or regulatory provision.

P. "Statement of Work" ("SOW") means Ohio EPA's generic Statement of Work for the implementation of an RI/FS. The SOW is not specific to the Diamond Shamrock Site or the Dartron Site, and shall be used as a guiding outline in developing site-specific Work Plans.

Q. "State" shall mean the State of Ohio, by and through its Attorney General, and on behalf of Ohio EPA.

R. "The Painesville PRP Group" shall include the following companies, individuals, and municipalities: Tierra Solutions, Inc. (f/k/a Chemical Land Holdings, Inc.), Oakton, Inc. (f/k/a Chelmsford Properties, Inc.), Fairport Harbor Village Board of Education, Steven W. and Calvina J. Gagat, John Grantham, Hach Excavation and Demolition, Inc., Paul W. and Marlene E. Hach, James Paul Management, Inc., Ralph M. Lederer (a/k/a R.M. Lederer Paving, Inc.),

Little Seedlings, Inc., Maxus Energy Corporation, Occidental Chemical Corp., Painesville Township Board of Trustees, RDL Properties, Schuster Service, Inc., Tartan Yachts, Inc. (a/k/a TLH Properties, Ltd.), and the Village of Fairport Harbor. The Painesville PRP Group does not include Defendant Crompton Manufacturing Company, Inc. (f/k/a Uniroyal Chemical Company, Inc.), Third-party Defendant Dartron Corporation, and Defendant Environmental Brine Services, Inc.

II. STATEMENT OF PURPOSE

2. The purpose of this Consent Order is to provide for: (1) the continued implementation of the 1995 DFFO, subject to certain modifications made or confirmed in this Consent Order; (2) the payment of a civil penalty for Defendants' alleged violations of the 1995 DFFO prior to entry of this Consent Order; (3) the requirement to pay stipulated penalties for any future violations of the 1995 DFFO and/or this Consent Order; (4) the release of the Defendants from certain Claims, in consideration of and subject to the State's reservation of rights on other Claims.

III. JURISDICTION

3. The Parties agree that this Court has jurisdiction over them and the subject matter of this Consent Order, and that venue is proper in this Court for the purpose and duration of this Consent Order. The Parties agree that this Consent Order will be governed by federal law and the laws of the State of Ohio. The Complaint states claims upon which relief can be granted.

IV. PARTIES BOUND

4. The provisions of this Consent Order shall apply to and be binding upon the Parties; their respective successors in interest, and assigns, and others to the extent provided by Civil Rule 65(D). The undersigned representative of each Party to this Consent Order certifies

that he or she is fully authorized by the Party or Parties whom she or he represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that Party or Parties to it.

5. No change in ownership or corporate status of Defendants including, but not limited to, any transfer of assets or real or personal property shall in any way alter Defendants' obligations under this Consent Order.

6. Defendants shall provide a copy of this Consent Order to all "major contractors, subcontractors, laboratories and consultants," as defined in Paragraph 6(e) of the 1995 DFFO, retained to perform any portion of the work performed pursuant to this Consent Order. Defendants shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform work pursuant to this Consent Order comply with the applicable provisions of this Consent Order.

V. IMPLEMENTATION OF 1995 DFFO

7. Defendants shall complete implementation of the RI/FS for the Diamond Shamrock Site, and for the ground water at the Dartron Site, pursuant to the terms and conditions of the 1995 DFFO.

8. Upon the Effective Date of this Consent Order, Defendants are released from their prior obligation under the 1995 DFFO of submitting a baseline human health or ecological risk assessment, Alternatives Array Report and Feasibility Study portion of the RI/FS, as defined in the SOW, for soil at the Dartron Site, or for otherwise concluding the RI/FS with respect to soil at the Dartron Site, since the RI/FS for soil at the Dartron Site will now be completed by Defendant Crompton Manufacturing Company, Inc. ("Crompton"), pursuant to the terms of a separate consent order ("Crompton Consent Order") being entered in this action in conjunction

herewith. In addition, upon the Effective Date of this Consent Order, Defendants are released from any responsibility for paying RI/FS Response Costs incurred by Ohio EPA in connection with the Feasibility Study portion of the RI/FS for soil at the Dartron Site. The Dartron Site, Parcel 1C5, will no longer be a part of what has been designated Operable Unit 17 in the October 2003 FS Work Plan, submitted by Defendants as required by the 1995 DFFO and approved by Ohio EPA.

9. In completing the Feasibility Study portion of the RI/FS for the operable unit designated as ground water Operable Unit 1N ("GWOUIN") in the October 2003 FS Work Plan, which includes Parcel 1C5, the State recognizes that Crompton and the Defendants have separately agreed, among other things, that Crompton will have a private contractual right to review and comment in advance on the Painesville PRP Group's submissions to Ohio EPA in connection with the Feasibility Study for the GWOUIN. To allow time for the exercise of this contractual right, the State agrees that the 1995 DFFO be and hereby are modified to provide as follows:

- a. The Painesville PRP Group shall have forty-five (45) days, rather than thirty (30) days, to respond to OEPA's first round of comments on any initial submission by the Painesville PRP Group in connection with the Feasibility Study for GWOUIN; and
- b. The Painesville PRP Group shall have thirty (30) days, instead of fourteen (14) days, to respond to OEPA's second round of comments.

10. In completing the work required by the 1995 DFFO and this Consent Order, the terms of the 1995 DFFO shall prevail, except as expressly modified in this Consent Order.

VI. REMEDIAL DESIGN/REMEDIAL ACTION

11. The Parties to this Consent Order recognize that the Director of Ohio EPA may issue an order or orders for Remedial Design/Remedial Action ("RD/RA") for the purpose of performance of a remedy, including Operation and Maintenance and the payment of Remedial, Preferred Plan, and Decision Document Response Costs, for the Diamond Shamrock Site, and for any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, as well as for the Dartron Site, and for any contamination that has migrated, is migrating, or will migrate from the Dartron Site. In that regard, the Parties agree that, prior to the issuance of any RD/RA order with respect to any portion of the Diamond Shamrock Site, and/or with respect to any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, the State and the Defendants will meet and confer in good faith concerning the negotiation of a judicial RD/RA consent order(s) concerning the Diamond Shamrock Site and/or with respect to any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site. At Defendants' request, and upon submittal to the State of a written proposal by Defendants to perform RD/RA work pursuant to Findings and Orders issued by the Director of Ohio EPA, in lieu of a judicial consent order, the State agrees to consider, and confer in good faith upon, such a proposal. Nothing herein prevents Ohio EPA from rejecting such a proposal.

12. Defendants agree that, if the Director of Ohio EPA pursues any RD/RA order, judicial or administrative, against Defendants with respect to the Diamond Shamrock Site and/or with respect to any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, or seeks payment of any Remedial, Preferred Plan, and Decision Document Response Costs incurred by Ohio EPA in connection with any such order, then:

- a. No Defendant will raise a claim that Defendant Occidental is not a responsible party for purposes of any such RD/RA order or Remedial, Preferred Plan, and Decision Document Response Costs with respect to Parcels 1A1, 1A2, 1A3, 1A4, 1A5, 1A6, 1A7, 1A8, 1A9, 1A10, 1B1, 1B2, 1B3, 1C2, 1C3, 1C4, 2C1, 3B1, 4A1, 4A2, 4A3, 4B1, 4B2, 4B3, 4C1, 5B1, 6B1, 7A1, 7B1, 7B2, 7C1, 7C2, 7C3, 7C4.
- b. No Defendant will raise a claim that Defendant Tierra is not a responsible party for purposes of any such RD/RA order or Remedial, Preferred Plan, and Decision Document Response Costs with respect to Parcels 1B1, 1B2, 1B3, 1C3, 1C4, 2C1, 3A1, 3B1, 4B1, 4C1, 5B1, 6B1, 7A1 and 7B2.
- c. Defendants Maxus and Tierra agree (i) that Defendant Maxus has fully indemnified Defendant Occidental for all liability that Defendant Occidental may have as a responsible party with respect to the Diamond Shamrock Site; and (ii) that Defendants Maxus and Tierra are bound by Defendant Occidental's admission in Paragraph 12(a), above.
- d. The parcel numbers set forth in Paragraph 12(a) and (b), above, are identified on the parcel ownership map attached to this Consent Order (Exhibit 2).

13. In consideration of the admissions made by Defendants in Paragraph 12, above, and the Defendants' agreement to perform the other obligations imposed by this Consent Order and the 1995 DFFO (including, without limitation, the Defendants' agreement in Paragraph 11, above, to meet and confer in good faith concerning the negotiation of an RD/RA consent order(s) concerning the Diamond Shamrock Site and/or with respect to any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site), the State agrees that it

will not pursue Defendants for performance of any RD/RA that may be ordered or pursued by the Director of Ohio EPA with respect to the Dartron Site and, therefore, upon payment of the Civil Penalty and Enforcement Costs required by Sections IX and XI of this Consent Order, Defendants are released from any and all Claims to perform RD/RA at the Dartron Site or to reimburse the State for any Remedial, Preferred Plan, and Decision Document Response Costs incurred with respect to any RD/RA order issued with respect to the Dartron Site.

14. The release set forth in Paragraph 13 above does not extend to Defendants' liability – including, but not limited to, Defendants' liability to perform remedy and to reimburse the State for Remedial, Preferred Plan and Decision Document Response Costs – associated with any portion of the Diamond Shamrock Site, including, but not limited to, Defendants' liability for any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, and which originated on the Diamond Shamrock Site, to other property, including, but not limited to, the Dartron Site.

15. The admissions made in Paragraph 12, above, are strictly limited to the agreements made with the State herein regarding any RD/RA order the State might pursue against Defendants, and shall not be construed as an admission with respect to any other person or entity not a party to this Consent Order.

16. Defendants reserve their rights to contest and appeal any final agency action, or any judicial or administrative order, that requires a remedy for the Diamond Shamrock Site, and/or for any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, except that Defendants may not raise a claim or contest or appeal any such action or order on any grounds that conflict with the admissions made in Paragraph 12, above.

17. None of the releases given by the State in this Consent Order shall be construed to prevent, restrict, limit or otherwise diminish or affect in any way any Claim by the State to enforce this Consent Order or to enforce any violations of the 1995 DFFO (as modified herein) that occur on or after the Effective Date. Nor shall any release given by the State in this Consent Order be construed to prevent, restrict, limit or otherwise diminish or affect in any way any Claim by the State (a) to issue or obtain an order to require Defendants to perform any RD/RA, including Operation and Maintenance, at the Diamond Shamrock Site and/or for any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site and which originated at the Diamond Shamrock Site, or (b) to recover any Remedial, Preferred Plan, and Decision Document Response Costs incurred after December 31, 2003, in connection with the Diamond Shamrock Site and/or with any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, or (c) to recover any RI/FS Response Costs incurred after December 31, 2003, in connection with the Diamond Shamrock Site, with any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, or with the ground water at the Dartron Site, it being agreed that all such Claims are being expressly reserved by the State.

VII. SATISFACTION OF CIVIL PENALTY CLAIMS FOR THE ALLEGED VIOLATIONS OF THE 1995 DFFO AND CLAIMS FOR RI/FS AND/OR REMEDIAL, PREFERRED PLAN, AND DECISION DOCUMENT RESPONSE COSTS INCURRED PRIOR TO JANUARY 1, 2004

18. Upon the payment of the Civil Penalty and Enforcement Costs required by Sections IX and XI of this Consent Order, the State hereby releases Defendants, including all members of The Painesville PRP Group in their individual capacities, from any and all Claims for RI/FS and/or Remedial, Preferred Plan, and Decision Document Response Costs incurred by the State prior to January 1, 2004 in connection with the Diamond Shamrock Site or the Dartron

Site, and from any and all Claims for alleged violations of the 1995 DFFO occurring prior to the Effective Date of this Consent Order.

VIII. TERMINATION OF CONSENT ORDER

19. This Consent Order shall terminate upon completion of the requirements of the 1995 DFFO, as modified herein; payment of the civil penalty required by Section IX ; payment of any stipulated penalties required by Section X; and payment of the enforcement costs required by Section XI.

20. Notwithstanding Paragraph 19, above, the provisions of Section VI (Remedial Design/Remedial Action), the provisions of Section VII (Satisfaction of Civil Penalty Claims for the Alleged Violations of the 1995 DFFO and Claims for RI/FS and/or Remedial, Preferred Plan, and Decision Response Costs Incurred Prior to January 1, 2004), and the provisions of Section XII (Reservation of Rights), shall survive termination of this Consent Decree and the 1995 DFFO and shall continue to remain in effect.

IX. CIVIL PENALTY

21. Pursuant to Ohio Revised Code ("R.C.") Sections 3734.13(C), 6111.09(A), and 3704.06, Defendants shall pay to the State Forty Six Thousand Five Hundred Dollars (\$46,500.00), which represents a civil penalty, which shall be paid as follows:

- a. Within thirty (30) days of the Effective Date of this Consent Order, Defendants shall deliver a certified check for Thirty-two Thousand, Five Hundred Fifty Dollars (\$32,550.00), which represents a civil penalty, made payable to the order of "Treasurer, State of Ohio," to the address stated in Paragraph 23 below.
- b. In lieu of paying the remaining Thirteen Thousand, Nine Hundred Fifty Dollars (\$13,950.00) in a civil penalty, within thirty (30) days of the Effective Date of this Consent Order, Defendants shall deliver a certified check for the Thirteen Thousand, Nine Hundred Fifty Dollars (\$13,950.00), made payable to "Lake Metro Parks." The purpose of this payment is to fund a supplemental environmentally beneficial project,

specifically within the Lake Metro Parks. If the Defendants do not, within thirty (30) days of the Effective Date this Consent Order, pay this amount to Lake Metro Parks, Defendants shall within thirty-seven (37) days of the Effective Date of this Consent Order pay this amount as the remainder of its civil penalty by delivering a certified check for Thirteen Thousand, Nine Hundred Fifty Dollars (\$13,950.00) payable to the order of "Treasurer, State of Ohio," to the address stated in Paragraph 23 below.

22. This civil penalty is for Defendants' alleged violations of the 1995 DFFO prior to the Effective Date of this Consent Order.

23. The civil penalty payment shall be made by delivering to Plaintiff State of Ohio a certified check in the above amount(s), payable to the order of "Treasurer, State of Ohio" c/o, Amy Laws, Paralegal, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. This penalty shall be deposited into the hazardous waste clean-up fund created by R.C. Section 3734.28. A copy of any checks remitted shall be sent to the Ohio EPA Site Coordinator.

X. STIPULATED PENALTIES

24. In the event that Defendants violate any of the requirements or prohibitions of this Consent Order, including any requirement of the 1995 DFFO as modified herein, Defendants shall pay a stipulated penalty according to the following payment schedules. For each day of each failure to meet a Major Milestone, as defined in the Field Sampling Work Plan, and any approved schedules mutually agreed to by the Parties and any approved revisions to those schedules, and including payment of the civil penalty and enforcement costs pursuant to Sections IX and XI of this Consent Order, up to thirty (30) days – Three Hundred Dollars (\$300.00) per day; from thirty-one (31) days to sixty (60) days – One Thousand Dollars (\$1,000.00) per day; over sixty (60) days – Two Thousand Dollars (\$2,000.00) per day. For each day of each failure to submit Monthly Progress Reports, up to thirty (30) days – One Hundred Dollars (\$100.00) per

day; from thirty-one (31) days to sixty (60) days – Five Hundred Dollars (\$500.00) per day; over sixty (60) days – One Thousand, Two Hundred Dollars (\$1,200.00) per day. For each day of each failure to submit the Final Report, up to thirty (30) days – Five Hundred Dollars (\$500.00) per day; from thirty-one (31) days to sixty (60) days – One Thousand, Five Hundred Dollars (\$1,500.00) per day; over sixty (60) days – Three Thousand Dollars (\$3,000.00) per day.

25. Stipulated penalties shall not begin to accrue for days 1 and 2, as indicated in the above schedules, if the milestone requirement or report submission deadline is met on or before day 3. If a milestone requirement or report submission deadline is not met on or before day 3, the Defendants shall be liable for stipulated penalties for days 1, 2, and 3 in addition to the days thereafter until the milestone requirement or report submission deadline is met.

26. Any payment required to be made under the provisions of Paragraphs 24 and 25 of this Consent Order shall be made by delivering to Plaintiff's counsel at the address in Paragraph 23 a certified check or checks for the appropriate amounts. Payments shall be made within forty-five (45) days from the date of the failure to meet the requirement, and every thirty (30) days thereafter as necessary to comply with the requirements of Paragraph 24, made payable to "Treasurer, State of Ohio." Such payment shall be deposited into the hazardous waste clean-up fund. A copy of any checks remitted shall be sent to the Ohio EPA Site Coordinator.

XI. ENFORCEMENT COSTS

27. Defendants shall pay the enforcement costs of the Ohio Attorney General expended prior to the Effective Date of this Consent Order, totaling Five Thousand Dollars (\$5,000.00), by delivering a certified check in such amount for payment into the State Treasury to the credit of the Attorney General's General Reimbursement account (also know as CAS Fund 106) made payable to the order of "Treasurer, State of Ohio" to Amy Laws, Paralegal, or her

successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400, within fourteen (14) days of the Effective Date of this Consent Order. Any check submitted in compliance with this Section shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order. Payment of this \$5,000.00 shall be in full satisfaction of any enforcement costs of the Ohio Attorney General related to Defendants' alleged violations of the 1995 DFFO prior to the Effective Date of this Consent Order.

XII RESERVATION OF RIGHTS

28. Subject to the terms of Sections VI and VII, above, the State reserves the right against Defendants to bring Claims for violations of the 1995 DFFO, as modified herein, occurring after the Effective Date of this Consent Order and to seek further relief from this Court, including, without limitation, preliminary and/or permanent injunctive relief, Claims for damages for injury to natural resources, stipulated penalties for violations of the 1995 DFFO occurring after the Effective Date of this Consent Order, additional enforcement costs occurring after the Effective Date of this Consent Order, and cost recovery for work beyond this Consent Order. Subject to the terms of Sections VI and VII, above, this reservation explicitly includes the State's right to bring Claims to pursue an order implementing a remedy for any contamination at the Diamond Shamrock Site and for any contamination that has migrated, is migrating, or will migrate from the Diamond Shamrock Site, including without limitation an RD/RA order, and to seek recovery of costs for such work. Subject to the terms of Sections VI and VII, above, this Consent Order does not waive any defenses which Defendants may have to the subsequent filing of any such Claims or requests for further relief, except that Defendants shall not assert, plead or raise in any fashion, whether by answer, motion or otherwise, (a) any

defenses that in any way conflict, contradict, or oppose the agreements and admissions regarding liability set forth in Section VI, and (b) any defenses – including but not limited to any defense based on any statute of limitation, laches, or any other principle concerning the timeliness of commencing a civil action, waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses – which are based upon any contention that the Claims, demands, rights or causes of action raised by the State in the subsequent proceeding were or should have been brought in the instant case.

29. Nothing in this Consent Order shall constitute or be construed as a release by the State of any Claim, cause of action, or demand in law or equity against any Person who is not a Party to this Consent Order or a member of The Painesville PRP Group.

30. Nothing herein shall limit the authority of the State to undertake any action against any Person, including Defendants, to eliminate or control conditions that may present a threat to the public health, safety, welfare or environment, and to seek cost reimbursement for any such action.

31. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it, does not constitute an admission by Defendants of any factual or legal matters or opinions set forth herein, except as provided in Section VI.

32. Subject to the terms of this Order, and except as may be set forth in a separate agreement or agreements, Defendants reserve all rights, Claims, demands and causes of action they have or may have against any and all other Persons not a Party to this Consent Order. Defendants reserve all rights they have under the 1995 DFFO, including, but not limited to, the right to Dispute Resolution and Mediation as defined in the 1995 DFFO.

33. Except as may be set forth in a separate agreement or agreements, nothing in this Consent Order has any effect or constitutes any waiver of any Claims asserted or deemed to be asserted in *Maxus Energy Corporation, et al. v. Ace Lakefront Properties, Inc.*, Case No. 1:00CV 972 (N.D. Ohio).

34. Defendants reserve all rights that they may have against each other under all Federal, State and local laws, except as may be set forth in a separate agreement or agreements.

35. Except as may be set forth in a separate agreement or agreements, Defendants reserve all rights that they may have against the other named Defendants in the Complaint and all other Persons who are not Parties to this Consent Order.

XIII. EXHIBITS

36. All Exhibits to this Consent Order are incorporated by reference into and are an enforceable part of this Consent Order. The following Exhibits are attached to this Consent Order at the time of signing by the Parties: (1) 1995 DFFO, (2) Parcel Ownership Map; and (3) Deeds for the Dartron Site.

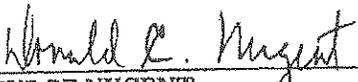
XIV. RETENTION OF JURISDICTION

37. This Consent Order shall be reviewed by Judge Donald C. Nugent for fairness and compliance with the State and Federal laws and regulations. The United States District Court for the Northern District of Ohio, Eastern Division, shall retain jurisdiction of this matter for the purpose of overseeing compliance with this Consent Order. Any and all legal actions to enforce the terms and conditions of this Consent Order shall be brought in the United States District Court for the Northern District of Ohio, Eastern Division.

XIII. COURT COSTS

38. Defendants shall pay court costs as ordered by the Order of Dismissal and Approval of Settlement Agreement entered in this action.

SO ORDERED THIS 4th DAY OF October, 2005.

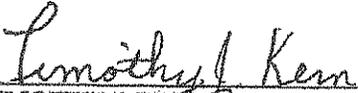


JUDGE NUGENT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

The parties whose signatures appear below and on the attached signature pages hereby consent to the terms of this Consent Order.

APPROVED BY:

JIM PETRO
ATTORNEY GENERAL OF OHIO



TIMOTHY J. KERN (0034629)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2766
Facsimile: (614) 644-1926
tkern@ag.state.oh.us

Attorneys for Plaintiff
State of Ohio

The undersigned Defendant hereby consents to the foregoing Consent Order in State of Ohio v. Tierra Solutions, Inc., et al.

Name of Party: Maxus Energy Corporation

Address: 1330 Lake Robbins Drive, Ste. 400
The Woodlands, TX 77380

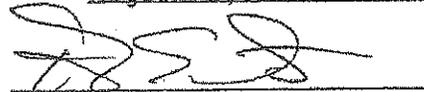
By:


Signature of Representative

Alvaro Racero
Name of Representative (Print or Type)

Title: Vice President

Date: August 5, 2005


Signature of Counsel for Defendant

The undersigned Defendant hereby consents to the foregoing Consent Order in State of Ohio v. Tierra Solutions, Inc. et al.

Name of Party: TIERRA SOLUTIONS, INC.

Address: 2 TOWER CENTER BLDG.
EAST BRUNSWICK, NJ
08816

By: 
Signature of Representative

DAVID ZAGGE
Name of Representative (Print or Type)

Title: President

Date: 8/5/05


Signature of Counsel for Defendant

The undersigned Defendant hereby consents to the foregoing Consent Order in State of Ohio v. Tierra Solutions, Inc., et al.

Name of Party: Occidental Chemical Corporation

Address: 5005 LBJ Freeway
Dallas, TX 75244

By: J. Alan Mack
Signature of Representative

J. Alan Mack
Name of Representative (Print or Type)

Title: Associate General Counsel

Date: August 24, 2005

[Signature]
Signature of Counsel for Defendant

The undersigned Defendant hereby consents to the foregoing Consent Order in State of Ohio v. Tierra Solutions, Inc., et al.

Name of Party: Painesville PRP Group

Address: Painesville PRP Group
PO Box 188
1897 Fairport Nursery Road.
Painesville, Ohio 44077

By: 
Signature of Representative

William C. Horton
Name of Representative (Print or Type)

Title: Chairman

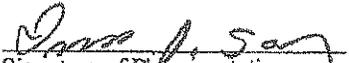
Date: August 8, 2005


Signature of Counsel for Defendant

The undersigned Defendant hereby consents to the foregoing Consent Order in State of Ohio v. Tierra Solutions, Inc., et al.

Name of Party: Village of Fairport Harbor

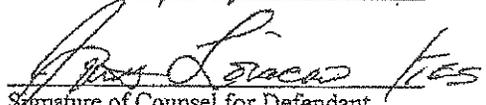
Address: 220 Third Street
Fairport Harbor, Ohio 44077

By: 
Signature of Representative

Frank J. Sarosy
Name of Representative (Print or Type)

Title: Mayor

Date: 8/16/05


Signature of Counsel for Defendant

The undersigned Defendant hereby consents to the foregoing Consent Order in State of Ohio v. Tierra Solutions, Inc., et al.

Name of Party: Painesville Township Board of Trustees

Address: Painesville Township Hall
55 Nye Road
Painesville Twp., Ohio 44077

By 
Signature of Representative

James S. Falvey
Name of Representative (Print or Type)

Title: Board Chair

Date: August 23, 2005


Signature of Counsel for Defendant