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May 17, 2016

Juan M. Fajardo
Assistant Regional Counsel
New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
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Re: Lower Passaic River Remedial Design

Dear Juan:

This letter responds to Nicoletta Di Forte's letter of April 26, 2016.

First, on behalf of my clients Occidental Chemical Corporation ("OxyChem"), Maxus Energy Corporation ("Maxus"), and Tierra Solutions, Inc. ("Tierra"), I wanted to thank you for Region 2's meetings with us on May 12, 2016, which we had requested in our letter of May 3, 2016 to address several discrete topics: (1) the draft Statement of Work ("SOW"), (2) our efforts to convene a small group of responsible parties to fund the remedial design, and (3) the draft Remedial Design Administrative Settlement and Order on Consent ("RD AOC"). These discussions were constructive and helped inform our decision in moving forward. As we also discussed, however, we continue to have many serious concerns with the draft RD AOC, the draft SOW, and related issues.

Based on our understanding of Region 2's expectations for a response to its April 26 letter, please be advised that my clients are willing to enter good faith RD AOC negotiations with Region 2. The success of such negotiations will depend, in part, on whether my clients and Region 2 can reach a satisfactory and mutually acceptable resolution of my clients' principal concerns—some of which have already been shared with you during the technical and legal meetings held last week in your offices—during the course of future discussions.

By agreeing to enter such negotiations my clients do not admit any liability or waive any legal claims or defenses regarding any issue whatsoever—including alleged liability for

performance of the remedial design, the validity of the ROD, Region 2's authority to enforce the ROD, or any other issue—and reserve their rights to assert all such claims or defenses in any future proceedings. Moreover, my clients also reserve all rights to pursue claims against potentially responsible parties for hazardous substances found within the Diamond Alkali Superfund Site, including without limitation the eight contaminants of concern identified in the OU-2 ROD.

As you requested, we wanted to keep you up-to-date on our efforts to contact other responsible parties regarding the remedial design program. As we explained last week, we are working to assemble a small group to assist in funding the remedial design program, focusing on the major parties responsible for each of the eight contaminants of concern identified in the ROD. We wrote CPG's Coordinating Counsel, William Hyatt, on April 29, 2016, to determine whether CPG members were willing to speak with us. By letter dated May 4, 2016, Mr. Hyatt advised us that he does not represent CPG members in connection with the remedial design and was not authorized to discuss those issues. Accordingly, on May 9, 2016 we wrote a group of approximately 20 parties requesting that they attend a meeting in New York City on May 13, 2016, to discuss the remedial design. Representatives of five companies attended. We are continuing our efforts to work with these and other parties; we will keep you updated regarding these efforts.

To move the process forward, I will be sending you a follow-up letter shortly, identifying the issues where, based on our discussion last week, Region 2 had agreed to provide additional information to answer certain questions. After you have had a chance to review that letter, I am available to discuss next steps and the process going forward.

Very truly yours,

Benjamin S. Lippard /KMM

Benjamin S. Lippard

cc: Nicoletta DiForte, USEPA
Sarah Flannigan, USEPA
Brian Donohue, USDOJ
Laura Rowley, USDOJ

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