



JACKSON GILMOUR & DOBBS, PC

WILLIAM C. PETIT
WPETIT@JGDPC.COM

T 713.355.5023
F 713.355.5001

May 10, 2012

Via Federal Express (7983 8439 5122)
The Honorable Sebastian P. Lombardi
Judge, Civil Division
109 Historic Court House
470 Martin Luther King, Jr. Boulevard
Newark, New Jersey 07102

Via Federal Express (7983 8440 7943)
The Honorable Marina Corodemus (Ret.)
Corodemus & Corodemus LLC
The Woodbridge Hilton Building
120 Wood Avenue South, Suite 500
Iselin, New Jersey 08830

Re: New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation, et al.; Docket No. ESX-L-986-05 (PASR), in the Superior Court of New Jersey, Law Division, Essex County.

Dear Judge Lombardi and Judge Corodemus:

I am writing on behalf of Plaintiffs, the New Jersey Department of Environmental Protection (the "DEP"), the Commissioner of the DEP, and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs").

Plaintiffs' Exhibit 178, attached hereto along with a supplemental attorney certification, was provisionally produced by Maxus Energy Corporation and Tierra Solutions, Inc. (collectively, "Maxus"), who claimed the document was protected by the attorney-client privilege and work product doctrine. Plaintiffs challenged Maxus's privilege claims through a Letter to Compel submitted to Special Master Corodemus. Special Master Corodemus recently ruled in Plaintiffs' favor and ordered that the document should be produced by Maxus without qualification. Unrestrained by Maxus's purported privilege claims, Plaintiffs now request that Plaintiffs' Exhibit 178 be added to the summary judgment record before the Court.

Plaintiffs have conferred with counsel for Maxus, who has indicated that Maxus consents to Plaintiffs' request to supplement the summary judgment record with Plaintiffs' Exhibit 178.

Very truly yours,

William C. Petit

WCP:cs
Enclosure

cc: Mr. Vincent Gentile (via email)
All counsel of record (via CT Summation)

MARC-PHILIP FERZAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street, PO Box 093
Trenton, New Jersey 08625-0093
Attorney for Plaintiffs

By: John F. Dickinson, Jr.
Deputy Attorney General
(609) 984-4863

JACKSON GILMOUR & DOBBS, PC
3900 Essex Lane, Suite 700
Houston, Texas 77027

By: William J. Jackson, Special Counsel
(713) 355-5000

GORDON & GORDON
505 Morris Avenue
Springfield, New Jersey 07081

By: Michael Gordon, Special Counsel
(973) 467-2400

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
THE COMMISSIONER OF THE
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

SECOND SUPPLEMENTAL
CERTIFICATION OF WILLIAM C. PETIT
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST MAXUS ENERGY
CORPORATION AND IN RESPONSE TO
MAXUS ENERGY CORPORATION'S
CROSS-MOTION FOR SUMMARY
JUDGMENT

I, William C. Petit, do hereby certify as follows:

A. I am an attorney of the law firm of Jackson Gilmour & Dobbs, PC, Special Counsel to Plaintiffs, the 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”), in the above-entitled action.

B. I have been admitted Pro Hac Vice to practice before the Court in the pending matter and I am familiar with the discovery and documents presented in this Certification.

C. This Certification is made in support of Plaintiffs’ Motion for Partial Summary Judgment against Defendant Maxus Energy Corporation (“Maxus”) and in response to Maxus’s Cross-Motion for Summary Judgment.

1. Exhibit 178 is a true and correct copy of a document titled “Environmental Restructuring Considerations,” which was provisionally produced by Maxus under purported claims of privilege as Privilege Log No. 154238. Following Plaintiffs’ challenge to Maxus’s privilege assertions, Special Master Corodemus ruled that Exhibit 178 should be produced without qualification.

D. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



William C. Petit

Dated: May 10, 2012

EXHIBIT 178

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
MATERIAL AND WORK PRODUCT**

DIAMOND SHAMROCK CHEMICALS COMPANY

ENVIRONMENTAL RESTRUCTURING CONSIDERATIONS

I. PROBLEMS

a. Overview. With the variety of problems which have arisen from the Chemicals Company, we risk the perception that Chemicals is not able to manage environmental issues.

i. Examples - Agent Orange, Lister Avenue, Painesville Site, Superfund Sites (10 - 15), Duolite TOSCA problem, SDS Biotech PCB Problem and Chrome Problem in NJ. New problems continue to develop - such as Carlstadt, potential PCB problem, with possible leakage to ground/groundwater.

ii. Some of these problems should have been prevented by management - Duolite TOSCA and SDS Biotech PCB Problems being best current examples.

iii. These problems have three major negative implications for the Chemicals Company:

A. Expensive.

B. Bad Press.

C. Makes management look either (1) not socially responsible or (2) incapable of controlling the environmental issues associated with the businesses.

b. From a Chemicals Company viewpoint, puts added pressure on Corporation to disassociate itself from the chemicals business and/or assume control over the day to day environmental operations of the Chemicals Company. Also lessens perception of the positive financial performance of the Chemicals Company, since today's business generates tomorrow's losses, in the form of environmental and products liability costs.

c. After Bhopal disaster, Board of Directors support for the Chemicals Company may erode, particularly with continuing unfavorable recent experience of environmental claims.

d. Further aggravating the problem is the denial of insurance coverage by Aetna and the difficulty experienced to date in securing replacement coverage, in large part because of the unwillingness of major insurers to underwrite "chemical" risks.

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
MATERIAL AND WORK PRODUCT**

II. MAJOR ENVIRONMENTAL WORK AREAS

- a. Permitting
- b. Superfund/Waste Disposal/Plant Closure/Product Stewardship (including NJ Chrome)
- c. Compliance/Monitoring/Audit/Education (New Developments)
- d. Lab Work
- e. Safety and Hygiene

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
MATERIAL AND WORK PRODUCT**

III. POSSIBLE ALTERNATIVES

No

a. Restructure Environmental - Existing structure was developed essentially for permitting alone. Indeed, some see the environmental department as not even having a compliance/audit function. In comparison, Union Carbide is undergoing substantial criticism and financial exposure for the Bhopal disaster in part because of a perception that Union Carbide's program of 2 - 2 1/2 year interval between environmental and safety audits of international operations is inadequate by industry standards - the Chemicals Company has, to my knowledge, no program of environmental and safety audits internationally and at best a limited, informal program domestically.

i. All 5 work areas identified in II. above should report to a central area, outside the business Divisions, for differing reasons. Compliance and safety and hygiene (c. and e. above) both are of critical importance to the overall Chemicals Company performance and perception. This factor, plus the cost effectiveness associated with centralization, indicate that the function should be structured as a central Department. Superfund activity (b.) also is best centralized, since the work frequently involves separate Divisions participating at the same sites and because the work tends to be repetitive from site to site - hopefully Superfund work will wind down over the next 5 years, as sites are cleaned-up. Permitting (exclusive of compliance) and Lab work (a. and d.) probably are best handled centrally, for economy of scale and consistency reasons, but are less sensitive.

ii. [Organizationally, one person should have overall responsibility for entire area, with managers/supervisors reporting to such person for each of the following: (A) Compliance, (B) Safety and Hygiene, (C) Superfund and (D) Permitting and Lab Work. Importance of separate managers/supervisors for each of these four areas is to assure that effort is maintained in all areas (for example, avoids having education/compliance put on the back burner because of the press of immediate activity in the Superfund area).] [Alternative - staff by Division, to give businesses one contact to handle overall environmental effort]

iii. Overall manager responsible for the environmental, safety and hygiene area and possibly the managers/supervisors responsible for compliance and safety and hygiene should be in Las Colinas, to assure contact with senior Divisional management. [Alternative - everyone in Las Colinas - problem - inadequate space available]

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
MATERIAL AND WORK PRODUCT**

iv. Existing staff of ___ will need to be increased by ___ as follows:

- A. Top Manager (1 person)
- B. Compliance (_ persons)
- C. Safety and Hygiene (_ persons)
- D. Superfund (_ persons)
- E. Permitting and Lab (_ persons plus existing Lab staff)

Some reduction in charges from Corporate HEAD would reduce added overall cost to some degree. Also, staffing could possibly be reallocated from engineering, particularly in the Superfund area.

b. Make Environmental a Divisional Management Goal - Division General Managers, Operations Managers and Plant Managers should have ICP goals which include environmental, safety and hygiene goals, to allow both possible increase and decrease in ICP compensation.

c. Give Some Say Over Capital Expenditures to Environmental, Safety and Hygiene - As things now stand, the Divisions have near total authority over whether, when and how much funds to expend in the environmental, health and safety areas. The staff area should have some mechanism to input into these decisions, either by requiring review of capital expenditure plans or by providing a positive right of the staff group to initiate environmental, safety and hygiene expenditures. Divisions should have approved remedial plans and strategies to deal with environmental concerns within fixed timetables, and be held accountable for implementation.

d. Management Policy Statement - Chemicals Company management should go on record by policy statement and by ongoing emphasis that environmental, safety and hygiene matters rank with profit achievement as Chemicals Company goals, and that failure to meet environmental, safety and hygiene goals is as unacceptable as failure to meet business goals.

4/29/85 - Env/MARCEL