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 Attorney for Third-Party Defendant,
 Apexical, Inc.

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|----------------------------------|---|----------------------------------|
| NEW JERSEY DEPARTMENT OF | : | SUPERIOR COURT OF |
| ENVIRONMENTAL PROTECTION and | : | NEW JERSEY |
| THE ADMINISTRATOR OF THE NEW | : | |
| JERSEY SPILL COMPENSATION FUND, | : | LAW DIVISION: ESSEX |
| | : | COUNTY |
| Plaintiffs | : | |
| v. | : | DOCKET NO. L-9868-05 (PASR) |
| | : | |
| OCCIDENTAL CHEMICAL | : | |
| CORPORATION, TIERRA SOLUTIONS, | : | CIVIL ACTION |
| INC., MAXUS ENERGY CORPORATION, | : | |
| REPSOL YPF, S.A., YPF, S.A., YPF | : | CMO V THIRD-PARTY INITIAL |
| HOLDINGS, INC. and CLH HOLDINGS, | : | DISCLOSURE |
| INC., | : | |
| Defendants. | : | |
| | : | |
| MAXUS ENERGY CORPORATION and | : | |
| TIERRA SOLUTIONS, | : | |
| INC., | : | |
| Third-Party Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| 3M COMPANY, <i>et al.</i> , | : | |
| | : | |
| Third-Party Defendants. | : | |

Comes now Third-Party Defendant Apexical, Inc. (“Respondent”), and for its Initial Disclosure in accordance with Case Management Order V provides the following specific information:

Reservations

1. Respondent reserves the right to object to the production of any documents or other information on any ground, including relevance and undue burden, and to assert any applicable privilege, including the attorney-client privilege, the work product doctrine, the common interest doctrine, and any other applicable privilege or protection. These disclosures are not intended to prejudice or waive any privileges or objections Respondent may have with respect to any outstanding or subsequent requests for discovery.

2. Respondent's investigation in this matter is continuing. Accordingly, it reserves the right to supplement, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, Respondent reserves the right to amend these disclosures to the extent the claims brought by or alleged against Respondent in this litigation are amended.

3. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint is quite long and encompasses at least six decades. The geographic scope of the Second Amended Complaint is also quite broad, covering the 'Newark Bay Complex,' which spans the 'lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, and into adjacent waters and sediments.' Second Amended Complaint, ¶ 1. The scope of inquiry required by Plaintiffs and Third-Party Defendants is accordingly quite broad and potentially burdensome. Respondent is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

Initial Disclosures

a. The name, address and telephone number, as may be known of each individual likely to have discoverable information, along with the subjects of that information, that relates to any alleged discharge or release of pollutants, contaminants and/or hazardous substances (“Pollutants”) into the Newark Bay Complex (as these terms are defined in the Second Amended Complaint and the Third-Party Complaints) from the site(s) and/or properties with which the disclosing party is associated in the Third-Party Complaint (“Alleged Discharges”);

Response

| Name | Address | Phone Number |
|----------------|---|---------------------|
| STEVEN A. BAER | 1905 NEW CUT ROAD SPARTANBURG, S.C. 29303 | 864-578-0030 |
| LARRY MORDA | 1905 NEW CUT ROAD SPARTANBURG, S.C. 29303 | 864-578-0030 |

b. The name, address and telephone number, as may be known, of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses (unless the use would be solely for impeachment);

Response

| Name | Address | Phone Number |
|---------------|----------------|---------------------|
| SAME AS ABOVE | | |

c. The name, address and telephone number, as may be known, of any and all past or present owners, lessees or operators at the site(s) and/or properties with which it is associated in the Third-Party Complaint and the dates of such ownership, lease or operation, as may be known;

Response

| Name | Address | Phone Number |
|--|------------------|---------------------|
| APEX CHEMICAL COMPANY, INC. (owned from 1917-1980) | No longer exists | |
| EMIL BAER, INC. (owned from 1980-2002) | No longer exists | |
| APEX CHEMICAL CORP. (leased from 1980-1999) | No longer exists | |
| GO TRANSPORT, INC. (leased from 1999-2002) | | |

| | | |
|--|---|--|
| GO TRANSPORT, INC. (owned in 2002) | | |
| 200 SOUTH FIRST STREET, LLC (owned from 2002-2005) | 200 South First St., Elizabeth, NJ 07444 | |
| KING BIRD ACQUISITIONS, LLC (owned from 2005-present) | 200 South First St., Elizabeth, NJ 07444 | |

d. With respect to any individual identified pursuant to paragraph (a), (b) or (c) above, (or any other individual known to have material knowledge of an alleged discharge or release of a Pollutant at or from a site and/or property, or into the Newark Bay Complex), any known inability to testify due to age, infirmity, or incompetency within 12 months following the date of the Initial Disclosure;

Response

Emil Baer – Age 92. Mr. Baer does not have knowledge of an Alleged Discharge but was knowledgeable about the operations at the Respondent’s site.

e. A description by category and location (or copy at the discretion of the Third-Party Defendant) of all documents or electronically stored information that the disclosing party has in its possession, custody, or control with respect to Alleged Discharges including disclosure of the extent to which such documents or electronically stored information may fall within the Excepted Information.¹

¹ Applicable Exception Codes are as follows:

a. Information, (“Information”), including, but not limited to, environmental, chemical and/or biological testing of groundwater, surface water, soil or sediment (hereinafter "Sampling Information") contained in the nexus packages produced pursuant to paragraph 8 (e) of CMO V; and

b. Information previously produced to any branch, department, agency or instrumentality of the State of New Jersey including to the New Jersey Department of Environmental Protection (“NJDEP”) or Information produced to any other governmental agency or entity whose responsibility it is to oversee environmental compliance in the Newark Bay Complex Area, including, but not limited to, the United States Environmental Protection Agency and the United States Army Corps of Engineers (hereinafter “Governmental Recipients”);

c. Information produced to any Licensed Site Remediation Professional (hereinafter “LSRP”) who is duly licensed by the State of New Jersey at the time of receipt of such Information where such disclosure of Information is intended to be used in connection with any remedial investigation or remedial action having an assigned case number in the NJDEP’s NJEMS data system;

d. Sampling Information compiled with the expectation of being produced to a Governmental Recipient or an LSRP under Paragraphs 4(b) or 4(c) but which Sampling Information has not yet undergone quality assurance/quality control or similar analysis;

e. Information produced by a third-party defendant to any third-party plaintiff pursuant to the New Jersey Open Public Records Act or other freedom of information law or regulation;

Response

Respondent denies that it was involved in any Alleged Discharge. Various sampling reports, corporate transactional documents, remedial investigation reports, remedial action reports, and site investigation reports are available for inspection and copying at the law offices of Coughlin Duffy LLP, 350 Mt. Kemble Ave., Morristown, NJ 07962. The majority of these documents are subject to Exceptions a, b, and/or g.


* * * * *

Respondent's Initial Disclosures are made without prejudice to their right to change or supplement their responses, their right to assert privileges or objections with respect to any subsequent requests for discovery, and their right to introduce at trial additional evidence and documents as warranted by the development of the facts underlying this litigation.

Dated: December 4, 2009

Respectfully submitted,

COUGHLIN DUFFY LLP
Attorney for Third-Party Defendant,
Apexical, Inc.



ROBERT W. MUILENBURG
CONOR T. MULCAHY

f. Information previously produced to Defendants; and

g. Information that falls within the attorney-client privilege and/or the attorney work product privilege.