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Benjamin Moore & Co.

NEW JERSEY 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,
REPSOL YPF, S.A., YPF, S.A., YPF
HOLDINGS, INC. and CLH HOLDINGS,
INC.,

Defendants.

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS,
INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY, *et al.*,

Third-Party Defendants.

: SUPERIOR COURT OF NEW
: JERSEY
: LAW DIVISION: ESSEX
: COUNTY
:
: DOCKET NO. L-9868-05 (PASR)
:
:
: CIVIL ACTION
:
: **BENJAMIN MOORE & CO.'S**
: **INITIAL DISCLOSURE**
: **PURSUANT TO CMO V**

Third-Party Defendant Benjamin Moore & Co. ("BMC") provides the following specific information for its Initial Disclosures pursuant to Case Management Order V in the above captioned litigation:

Reservations

1. BMC reserves the right to object to the production of any documents or other information on any grounds, 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 BMC may have with respect to any outstanding or subsequent requests for discovery.

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

3. The allegations in the Plaintiffs' Second Amended Complaint and Third Party Plaintiffs' Third-Party Complaint "B" (collectively "Complaints") cover a broad time period, encompassing at least six decades. The geographic scope of the Complaints are also 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, Third Party Plaintiffs and Third-Party Defendants is accordingly broad and potentially burdensome. BMC 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:

BMC objects to the form of the question to the extent that it assumes or concludes there was an "alleged discharge or release of pollutants, contaminants and/or hazardous substances" to the Newark Bay Complex from the sites with which BMC is associated in Third Party Complaint "B." Subject to this objection and the Reservations stated above, the individuals listed below are likely to have discoverable information pertaining to environmental conditions and operational history at the BMC facility in Newark:

Marc L. Zoldessy
Assistant General Counsel
Benjamin Moore & Co.
101 Paragon Drive
Montvale, New Jersey 07645
(201) 949-6318

David B. Farer, Esq.
Farer Fersko
600 South Avenue
Westfield, New Jersey 07091
(908) 789-8550

William Kip Cleverley
Director, Environmental Health and Safety
Benjamin Moore & Co.
360 U.S. Highway 206
Flanders, New Jersey 07836
(973) 252-2513

Charles J. Ilsley, Jr.
former Benjamin Moore & Co. Regulatory Affairs Supervisor
704 Kline Place
Bridgewater, New Jersey 08807
(732) 469-0043

BMC further responds that many employees have worked at its Newark facility over the decades. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, other individuals could have relevant knowledge of this matter. BMC is unable to individually identify other persons with relevant knowledge of this matter without more specific information from Third-Party Plaintiffs on the nature and basis of their claims. As such, BMC may identify additional individuals in the course of discovery and as its investigation continues.

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:

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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:

The following list sets forth know current and former owner/operators of the BMC

Newark facility:

1. Lot 34:

<u>Name</u>	<u>Operator/ Owner</u>	<u>From</u>	<u>To</u>
M.A.C. Corporation in care of: John P. Callaghan, Mary D. Callaghan & Dorothy G. Callaghan	Owner/Operator	3/31/39	11/20/42
John P. Callaghan & Dorothy G. Callaghan	Owner	11/20/42	11/20/42
Callaghan Corporation	Owner/Operator	11/20/42	8/15/44
John P. Callaghan Inc.	Owner/Operator	8/15/44	1/24/49
Mary D. Callaghan	Owner	1/24/49	1/24/49
One-Thirty Lister Corporation	Owner/Operator	1/24/49	12/13/50
Hydrocarbon Chemicals, Inc.	Owner/Operator	12/13/50	2/25/58
Benjamin Moore & Co. 101 Paragon Drive Montvale, NJ 07645 (800) 344-0400	Owner/Operator	2/25/58	Present

2. Lots 40 & 62:

<u>Name</u>	<u>Operator/ Owner</u>	<u>From</u>	<u>To</u>
American Agricultural Chemical Company	Owner/Operator	7/19/24	2/11/25
Benjamin Moore & Co. 101 Paragon Drive Montvale, NJ 07645 (800) 344-0400	Owner/Operator	2/11/25	Present

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:

BMC responds that it is unaware of any individual identified in paragraphs (a), (b) and (c) that have a known inability to testify due to age, infirmity, or incompetence.

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.

Response:

BMC objects to the form of the question to the extent that it assumes or concludes there were "Alleged Discharges" to the Newark Bay Complex from the sites with which BMC is associated in Third Party Complaint "B." Subject to this objection and the Reservations stated above, BMC responds as follows:

BMC has possession, custody and control of documents relating to operational history and environmental conditions at the BMC facility in Newark, N.J., which documents are currently located at:

Benjamin Moore & Co.
101 Paragon Drive
Montvale, NJ 07645

Benjamin Moore & Co.
360 U.S. Highway 206
Flanders, NJ 07836

Benjamin Moore & Co.
134 Lister Avenue
Newark, NJ 07105

Farer Fersko, a Professional Association
600 South Avenue
Westfield, NJ 07091

Certain of the documents fall within the Excepted Information because such documents constitute: (a) information contained in the nexus packages produced pursuant to paragraph 8(e) of CMO V; (b) information previously produced to Governmental Recipients; (c) information produced to an LSRP; (d) sampling information that has not yet undergone quality assurance/quality control or similar analysis; (e) information produced by a third-party defendant to a third-party plaintiff pursuant to the New Jersey Open Public Records Act or other freedom of information law or regulation; (f) information previously produced to Defendants; or (g) information that falls within the attorney-client privilege and/or other attorney work product privilege.

Categories of documentation include but are not limited to:

- Permits from environmental authorities and related correspondence and applications.
- Hazardous waste generation reports.
- Waste management and minimization reports.

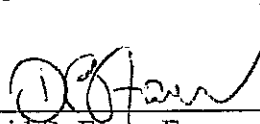
- Correspondence and enclosures to and from environmental authorities including U.S. EPA and N.J. DEP.
- Internal BMC reports and memoranda concerning operations and safety and waste management practices.
- Documentation concerning N.J. DEP Administrative Order.
- Internal memoranda concerning environmental matters.
- Documentation concerning Memorandum of Agreement with N.J. DEP.
- Environmental sampling information.

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

Dated: January 7, 2010

Respectfully submitted,

Farer Fersko, a Professional Association
Attorneys for Third-Party Defendant
Benjamin Moore & Co.



David B. Farer, Esq.