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CWC Industries, Inc.

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

: **SUPPLEMENTAL THIRD-PARTY**
: **DISCLOSURE**

Defendant CWC Industries, Inc. (“Respondent”), by and through its undersigned counsel, hereby makes the following Supplement to Initial Disclosure:

Reservations and Comments

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, confidentiality, trade secret, State and Federal Homeland Security confidentiality and any other applicable 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’ Third Amended Complaints is quite long and encompasses at least six decades. The geographic scope of the Third Amended Complaint is 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.’ Third Amended Complaint, ¶ 2. The scope of inquiry required by Plaintiffs and Third-Party Plaintiffs is accordingly broad and potentially burdensome. Respondent

is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

4. “Documents”, excluding electronic e-mail, shall have the meaning set forth in this Court’s August 11, 2009 Order for Preservation of Documents and Data.

5. “Alleged Discharges” shall have the meaning set forth in the Court’s CMO VIII.

6. “Sites”, per CMO VIII, shall be defined as those site(s) or properties with which a Third-Party Defendant is associated in a Third-Party Complaint.

7. Document Production requirements set forth in CMO XII, paragraph 21 (as amended by the Consent Order (“Amended Production Requirements”) are read in concert with CMO VIII, paragraph 3 and CMO V, paragraph 8 (“Additional Discharger”) incorporated by reference in CMO XII, paragraph (1). CMO VIII, *inter alia*, called for a listing of those documents to be produced by Third-Party Defendants. The Amended Production Requirements are answered with reference to the Alleged Discharges as defined in CMO VIII. To the extent requirements set forth in Amended Production Requirements are repetitive, burdensome and /or unfairly place a duty of inquiry on Third-Party Defendants as to the Newark Bay Complex locations other than the Sites, disclosures herein are provided with reference to the Amended Production Requirements and CMO XII paragraph 21(c) unless otherwise noted. With respect to Amended Production Requirements as to CMO XII, paragraph 21(b), reference is made to information previously furnished by the JDG in connection with CMO V, paragraph 8 (“Additional Dischargers”).

8. Documents subject to claims of privilege have been detailed in a log contemporaneously provided with this Supplemental Disclosure.

Production as to Paragraph 21(c) Requests as Amended by the Amended Production Requirements

1. A copy of all Documents relating to the following information for the site(s), properties and/or operations with which the Third-Party Defendant is associated in the Third-Party Complaints:

i. the release or discharge of Hazardous Materials from or at that Third Party Defendant's properties or operations.

Response - Documents responsive to this request, to the extent available are on the enclosed disc, subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

ii. the operations, manufacturing and/or production processes, any Hazardous Materials stored or utilized on the property, and any sampling that took place on the property and any sampling or testing of the materials, by products or waste products used in connection therewith;

Response - Respondent limits its response to those documents in accordance with the Amended Production Requirements. Responsive Documents to this request, to the extent available are on the enclosed disc, subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements].

iii. sampling results from environmental, chemical, or biological testing conducted at that Third Party Defendant's properties; and

Response - Respondent limits its response to those documents as to the Alleged Discharges. Documents responsive to this request, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

iv. any communications involving that Third-Party Defendant and any branch, department, agency or instrumentality of municipal, State or federal government relating to any discharges or releases of Hazardous Materials or this litigation.

Response - Documents responsive to this request, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below and as to the Alleged Discharges or as provided under the Amended Production Requirements.

2. Any Documents relating to any industrial waste containing Hazardous Materials that was transported to, processed or treated at, or discharged from any of the sites and/or

properties with which a Third Party Defendant is associated in the Third Party Complaints.

Response - Documents responsive to this request as to the Alleged Discharge, to the extent available, are on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements].

c. Any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy said judgment.

Response - Documents responsive to this request could not be located. If such documents are located, they will be produced in a supplemental disclosure.

Production as to Paragraph 21(b) Requests as Amended by the Amended Production Requirements

Copies of all non-privileged Documents other than electronic email discovery, that relate to

(i.) the alleged discharge of any hazardous wastes, hazardous substances, pollutants or contaminants (“Hazardous Materials”) to the Newark Bay Complex;

Response - See, Paragraph 7, above. See, Response to Paragraph 21c 1, i., above.

(ii.) the potential pathways and methods by which the Hazardous Materials have been released to the Newark Bay Complex, as well as the quantity, nature and toxicity of such Hazardous Materials;

Response - See, Paragraph 7, above. See, Response to Paragraphs 21(c), 1, i. - iv., above.

(iii.) other actions relating to properties or operations that may have adversely impacted the environmental condition of the Newark Bay Complex

Response - See, Paragraph 7, above. See, Response to Paragraphs 21(c), 1, i. - iv., above.

(iv.) the costs and damages sought in connection with any alleged discharge of Hazardous Materials.

Response - See, Paragraph 7, above. Third-Party Defendant further notes that all cross-claims and counterclaims and Fourth-Party claims are stayed in the present action and, as such, Third-Party Defendant has made no such claim against parties in this action at this time.

August 11, 2009 CMO VIII Excepted Information Categories

Excepted Information includes the following:

“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”. See, Paragraph 4(a), as well as information produced under CMO XII, paragraph 21(a).

“Information previously produced to any branch, department, agency or instrumentality of the State of New Jersey including to the New Jersey Department of Environment 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”). We believe information received from such agencies is also included within the exception.

“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 system;” See, Paragraph 4(c).

“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;”
See, Paragraph 4(d).

“Information produced by a third-party defendant to any third-party plaintiff pursuant to the New Jersey Open Records Act or other freedom of information law or regulation.; See, Paragraph 4(e).

“Information previously produced to Defendants;” See, Paragraph 4(f).

“Information that falls within the attorney-client privilege and/or the attorney work product privilege.” See, Paragraph 4(g).

Dated: February 24, 2011

Respectfully submitted,

FARER FERSKO, P.A.
Attorney for Third-Party Defendant
CWC Industries, Inc.

By: Marjan F. Disler
Marjan F. Disler, Esq.