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**Attorneys for Third-Party Defendant, Consolidated Rail Corporation**

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| NEW JERSEY DEPARTMENT OF            | : | SUPERIOR COURT OF NEW JERSEY |
| ENVIRONMENTAL PROTECTION and        | : | LAW DIVISION: ESSEX COUNTY   |
| THE ADMINISTRATOR OF THE NEW        | : |                              |
| JERSEY SPILL COMPENSATION FUND,     | : | DOCKET NO. L-9868-05         |
|                                     | : |                              |
| Plaintiffs                          | : |                              |
|                                     | : | CIVIL ACTION                 |
| v.                                  | : |                              |
|                                     | : | <b>THIRD-PARTY DEFENDANT</b> |
| OCCIDENTAL CHEMICAL                 | : | <b>CONSOLIDATED RAIL</b>     |
| CORPORATION, TIERRA SOLUTIONS,      | : | <b>CORPORATION'S</b>         |
| INC., MAXUS ENERGY CORPORATION,     | : | <b>INITIAL DISCLOSURE</b>    |
| 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, <i>et al.</i> ,         | : |                              |
|                                     | : |                              |
| Third-Party Defendants.             | : |                              |

Third-Party Defendant Consolidated Rail Corporation (“Conrail”), by and through its undersigned counsel, and in accordance with Case Management Order V provides the following specific information for its Initial Disclosure:

## **RESERVATIONS AND OBJECTIONS**

1. These disclosures are not intended to prejudice or waive any privileges or objections Conrail may have with respect to any outstanding or subsequent requests for discovery. Conrail 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 or protection, including the attorney-client privilege, the work product doctrine, and the common interest doctrine.

2. Conrail's investigation of the identity of persons with relevant knowledge and the existence of relevant documents is ongoing. Accordingly, these initial disclosures are made in good faith based on information that is available to Conrail at this time. Conrail reserves the right to supplement, clarify, and revise these disclosures at any time in the event that additional information becomes available to Conrail or is obtained by Conrail through discovery. Further, Conrail reserves the right to amend these disclosures to the extent the claims brought by or alleged against Conrail in this litigation are amended. Conrail likewise reserves the right to introduce at trial additional evidence as warranted by the development of the facts underlying this litigation.

3. The scope of inquiry required by Plaintiffs and Third-Party Defendants is overly broad and unduly burdensome. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint spans at least six decades. The geographic scope of the Second Amended Complaint is also overly 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.

4. Conrail objects to the form of the Initial Disclosures requested in “a.”, “d.”, and “e.”, as set forth below, to the extent that they assume that there were Alleged Discharges of Pollutants into the Newark Bay Complex (as those terms are defined above and in Third-Party Complaint “B”) from any of the Sites with which Conrail is alleged to be associated pursuant to Third-Party Complaint “B”: the Elizabeth Yard, located at or about 123 Dowd Avenue in Elizabeth, Union County (“Elizabeth Site”), New Jersey Transit Corporation’s Meadows Maintenance Complex, located in Kearny, Hudson County (“NJ Transit Site”), and/or the Ottilio Landfill Site, located in Newark, Essex County and being comprised of Lots 12 and 16 of Block 5001 on Blanchard Street (“Ottilio Landfill Site”).

### **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:**

**Elizabeth Site**

Conrail denies that there was an Alleged Discharge of Pollutants into the Newark Bay Complex from the Elizabeth Site and/or that Conrail has any liability, responsibility and/or obligation with respect to any Alleged Discharges of Pollutants from the Elizabeth Site. Conrail further responds that numerous individuals worked at the Elizabeth Site during Conrail’s ownership and operation thereof and, based on the breadth and ambiguity of Third-Party Plaintiffs’ claims, any of these individuals could have relevant knowledge of this matter. However, without waiver and subject to the Reservations and Objections set forth above, Conrail identifies the following individuals or entities in response to Initial Disclosure “a” who may have

discoverable information concerning environmental conditions, operational history, and site investigation and remediation activities related to the Elizabeth Site. Conrail may identify additional individuals in the course of discovery.

Conrail requests that notice be given to undersigned counsel before any of the individuals identified below are contacted in this matter.

| <b>Name and Contact Information, If Known</b>  | <b>Subject</b>  |
|--|---|
| <p><b>Conrail Corporation</b><br/> Neil Ferrone<br/> Chief Environmental and Safety Officer<br/> 1000 Howard Boulevard, Suite 432<br/> Mt. Laurel, NJ 08054</p> <p>Craig Curry<br/> (Former Conrail Employee)<br/> REACT Environmental Services<br/> 6901 Kingsessing Avenue<br/> Philadelphia, PA 19142</p> | <p>Operations, environmental conditions and/or remediation activities at the Elizabeth Site.</p> <p>Operations, environmental conditions and/or remediation activities at the Elizabeth Site.</p> |
| <p><b>CSX Transportation, Inc.</b><br/> 301 West Bay Street<br/> Jacksonville, FL 32202</p>  | <p>Environmental conditions, operational history, site investigation and/or remediation activities at the Elizabeth Site.</p>   |
| <p><b>Norfolk Southern Railway Company</b><br/> Three Commercial Place<br/> Norfolk, VA 23510-9241</p>   | <p>Environmental conditions, operational history, site investigation and/or remediation activities at the Elizabeth Site.</p>   |
| <p><b>New Jersey Transit Corporation</b><br/> One Penn Plaza East<br/> Newark, NJ 07105-2246</p>   | <p>Operations at the Elizabeth Site.</p>  |
| <p><b>Central Railroad of New Jersey<sup>1</sup></b><br/> (current name and address unknown)</p>   | <p>Operations, environmental conditions and/or remediation activities at the Elizabeth Site prior to April 1, 1976</p>  |

<sup>1</sup> Upon information and belief, CNJ was reorganized through bankruptcy and reincorporated as a New Jersey corporation, Central Jersey Industries, Inc. (“CJI”). CJI was later merged into a Delaware Corporation, which subsequently became Triangle Industries, Inc. (“Triangle”). Certain of Triangle’s liabilities to the former CNJ were assumed by Wilmat Holdings, Inc. See *In re: Central Railroad of New Jersey*, CA. No. B-67-401, 1991 U.S. Dist. LEXIS 3381 (D.N.J. 3/18/91).

| <b>Name and Contact Information, If Known</b>  | <b>Subject</b>   |
|--|--|
| <b>O'Brien &amp; Gere</b><br>1090 King Georges Post Road<br>Suite 904<br>Edison, NJ 08837  | Consultant to Conrail and a prospective property tenant at the Elizabeth Site. Environmental conditions, site investigation and/or remediation activities at the Elizabeth Site. |
| <b>Geraghty &amp; Miller, Inc.</b><br>(currently Arcadis)<br>6 Terry Drive, Suite 300<br>Newtown, PA 18940   | Consultant to Conrail. Environmental conditions, site investigation and/or remediation activities at the Elizabeth Site.   |
| <b>O.H. Materials Corporation ("OHM")</b><br>Four Research Way<br>Princeton, NJ 08540  | Consultant to Conrail. Environmental conditions, site investigation and/or remediation activities at the Elizabeth Site.   |
| <b>Parratt-Wolff, Inc.</b><br>5879 Fisher Road, P.O. Box 56<br>East Syracuse, New York 13057   | Consultant to Conrail. Environmental conditions, site investigation and/or remediation activities at the Elizabeth Site.   |
| <b>DAS Environmental, Inc.</b><br>Philadelphia, PA   | Consultant to Conrail. Environmental conditions and/or remediation activities at the Elizabeth Site.   |
| <b>Environmental Management Assoc., Inc.</b><br>5303 State Route 33/34<br>Farmingdale, NJ 07727  | Consultant to Conrail. Environmental conditions, site investigation and/or remediation activities at the Elizabeth Site.   |
| <b>NUS Corporation</b>   | Consultant to U.S. Environmental Protection Agency. Environmental conditions, site investigation and/or remediation activities at the Elizabeth Site.                            |
| <b>J.B. Hunt Transportation Services, Inc.</b><br>(Corporate Postal Address)<br>P.O. Box 130<br>615 J. B. Hunt Corporate Drive<br>Lowell, AR 72745 | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <b>American Plywood Corporation</b>  | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <b>National Distribution Services</b>  | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <b>BGB Transport, Inc.</b><br>302 3 <sup>rd</sup> Street<br>Elizabeth, NJ 07201  | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <b>Kawasaki Kisen Kaisha, Ltd. ("K-Line")<br/>Trucking Company</b>   | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <b>Rail Bridge Terminals Corp.</b>   | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <b>Matlack Trucking Company</b>  | Environmental conditions, operational history,   |

| <b>Name and Contact Information, If Known</b>  | <b>Subject</b>  |
|--|---|
|  | site investigation and/or remediation activities at leased portion of the Elizabeth Site.   |
| <i>Superior Bulk Logistics</i>   | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.    |
| <i>Armin Poly-Film Company</i>   | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.    |
| <i>Carlisle Plastics</i>   | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.    |
| <i>Covalence Adhesives</i><br>87 Lincoln Blvd.<br>Middlesex, NJ 08846  | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.    |
| <i>Covidien</i><br>15 Hampshire Street<br>Mansfield, MA 02048  | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.    |
| <i>AECOM</i><br>300 Broadacres Drive<br>Suite 350<br>Bloomfield, NJ 07003  | Consultant to Covidien. Environmental conditions, site investigation and/or remediation activities at leased portion of the Elizabeth Site. |
| <i>Berry Plastics Corporation</i><br>100 Dowd Avenue<br>Elizabeth, NJ 07206  | Environmental conditions, operational history, site investigation and/or remediation activities at leased portion of the Elizabeth Site.    |
| <i>United States Environmental Protection Agency, Region 2</i><br>290 Broadway<br>New York, New York 10007-1866                      | Environmental conditions and/or remediation activities at the Elizabeth Site.   |
| <i>New Jersey Department of Environmental Protection</i><br>PO Box 402<br>401 East State Street, 7th floor<br>Trenton, NJ 08625-0402 | Environmental conditions and/or remediation activities at the Elizabeth Site.   |
| <i>Passaic Valley Sewerage Commission</i><br>600 Wilson Avenue<br>Newark, NJ 07105-4885  | Discharges from the Elizabeth Site into the Passaic Valley Sewer System   |

**NJ Transit Site (“Meadows Complex”)**

Conrail denies that there was an Alleged Discharge of Pollutants into the Newark Bay Complex from the NJ Transit Site and/or that Conrail has any liability, responsibility and/or

obligation with respect to any Alleged Discharges of Pollutants from the NJ Transit Site. Conrail further responds that numerous individuals worked at the NJ Transit Site during Conrail’s ownership and operation thereof and, based on the breadth and ambiguity of Third-Party Plaintiffs’ claims, any of these individuals could have relevant knowledge of this matter.

Without waiver and subject to the Reservations and Objections set forth above, Conrail identifies the following individuals or entities in response to Initial Disclosure “a” who may have discoverable information concerning environmental conditions, operational history, and/or site investigation and remediation activities at the NJ Transit Site. Conrail may identify additional individuals in the course of discovery and as its investigation continues.

Conrail requests that notice be given to undersigned counsel before any of the individuals identified below are contacted in this matter.

| <b>Name and Contact Information, If Known</b>   | <b>Subject</b>  |
|---|---|
| <p><b><i>Conrail Corporation</i></b><br/> Neil Ferrone<br/> Chief Environmental and Safety Officer<br/> 1000 Howard Boulevard, Suite 432<br/> Mt. Laurel, NJ 08054</p> <p>Craig Curry<br/> (Former Conrail Employee)<br/> REACT Environmental Services<br/> 6901 Kingsessing Avenue<br/> Philadelphia, PA 19142</p> | <p>Operations, environmental conditions and/or remediation activities at the NJ Transit Site.</p> <p>Operations, environmental conditions and/or remediation activities at the NJ Transit Site.</p> |
| <p><b><i>New Jersey Transit Corporation</i></b><br/> One Penn Plaza East<br/> Newark, NJ 07105-2246</p>   | <p>Environmental conditions, operational history, site investigation and/or remediation activities at the NJ Transit Site.</p>  |
| <p><b><i>American Premier Underwriters, Inc.</i></b><sup>2</sup><br/> 1 East Fourth Street<br/> Cincinnati, Ohio 45202-3717</p>   | <p>Environmental conditions, operational history, site investigation and/or remediation activities at the NJ Transit Site before April 1, 1976.</p>   |

<sup>2</sup> American Premier Underwriters, Inc. was formerly known as and/or is successor in interest to the Penn Central Transportation Company, the Pennsylvania Railroad Company, the New York Central Railroad, the Pennsylvania Central Railroad Company, the Penn Central Corporation and their related entities.

| <b>Name and Contact Information, If Known</b>  | <b>Subject</b>   |
|--|--|
| <b>Barer Engineering</b><br>515 Clifton Ave.<br>Lakewood, NJ 08701-3250  | Consultant to Conrail. Environmental conditions, site investigation and/or remediation activities at NJ Transit Site.    |
| <b>Langan Engineering and Environmental Services, Inc.</b><br>River Drive Center 1<br>Elmwood Park, NJ 07407                         | Consultant to NJ Transit. Environmental conditions, site investigation and/or remediation activities at NJ Transit Site. |
| <b>Recon Systems, Inc.</b><br>Raritan, NJ  | Consultant to NJ Transit. Environmental conditions, site investigation and/or remediation activities at NJ Transit Site. |
| <b>Converse Consultants</b><br>(address unknown)   | Consultant to NJ Transit. Environmental conditions, site investigation and/or remediation activities at NJ Transit Site. |
| <b>United States Environmental Protection Agency, Region 2</b><br>290 Broadway<br>New York, New York 10007-1866                      | Environmental conditions and/or remediation activities at the NJ Transit Site.   |
| <b>New Jersey Department of Environmental Protection</b><br>PO Box 402<br>401 East State Street, 7th floor<br>Trenton, NJ 08625-0402 | Environmental conditions and/or remediation activities at the NJ Transit Site.   |
| <b>Passaic Valley Sewerage Commission</b><br>600 Wilson Avenue<br>Newark, NJ 07105-4885  | Discharges from the NJ Transit Site into the Passaic Valley Sewer System   |

**Ottilio Landfill Site**

Conrail denies that there was an Alleged Discharge of Pollutants into the Newark Bay Complex from the Ottilio Landfill Site and/or that Conrail has any liability, responsibility and/or obligation with respect to any Alleged Discharges of Pollutants from the Ottilio Landfill Site. By way of further disclosure, Conrail never owned or operated the Ottilio Landfill and is not a generator or transporter to the site. Upon information and belief, the Ottilio Landfill Site property was owned by Central Railroad of New Jersey (“CNJ”). While Conrail acquired certain property in the vicinity of the Ottilio Landfill Site from CNJ in 1976 when Conrail was created, Conrail did not acquire the Ottilio Landfill Site. Further, Conrail is not the corporate successor



of CNJ, which is a separate and distinct corporate entity that continued to exist and own property and assets after it ceased railroad operations and after Conrail came into existence in 1976.

*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:**

As information is developed through discovery, Conrail may identify additional individuals or may more specifically identify individuals likely to have discoverable information that Conrail may use to support its claims or defenses with respect to the Elizabeth Site, the NJ Transit Site, and/or the Otilio Landfill Site and reserves the right to update this list. Without further investigation, any of the individuals identified with respect to the Elizabeth Site, the NJ Transit Site, and/or the Otilio Landfill Site in response to “a.”, above, may possess information that Conrail may use to support its claims or defenses.

*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**

**Elizabeth Site**

| <b>Name</b>   | <b>Dates at Site: Ownership/Operation/Lease</b>  |
|---|--|
| <i>Central Railroad of New Jersey</i> <sup>3</sup>      | Owner and operator of Elizabeth Site from an unknown date until April 1, 1976                              |
| <i>Conrail</i>  | Owner/operator of the Elizabeth Site: 1976-1999; current owner/operator of a portion of the Elizabeth Site |
| <i>CSX Transportation, Inc.<br/>301 West Bay Street</i> | Current owner/operator of a portion of the Elizabeth Site  |

<sup>3</sup> Upon information and belief, CNJ was reorganized through bankruptcy and reincorporated as a New Jersey corporation, Central Jersey Industries, Inc. (“CJI”). CJI was later merged into a Delaware Corporation, which subsequently became Triangle Industries, Inc. (“Triangle”). Certain of Triangle’s liabilities to the former CNJ were assumed by Wilmat Holdings, Inc. *See In re: Central Railroad of New Jersey*, CA. No. B-67-401, 1991 U.S. Dist. LEXIS 3381 (D.N.J. 3/18/91).

| <b>Name</b>  | <b>Dates at Site: Ownership/Operation/Lease</b>            |
|--|--|
| <i>Jacksonville, FL 32202</i>  |  |
| <b>Norfolk Southern Railway Company</b><br><i>Three Commercial Place<br/>Norfolk, VA 23510-9241</i>  | Current owner/operator of a portion of the Elizabeth Site. |
| <b>New Jersey Transit Corporation</b><br><i>One Penn Plaza East<br/>Newark, NJ 07105-2246</i>  | Prior lessee/operator of a portion of the Elizabeth Site   |
| <b>J.B. Hunt Transportation Services, Inc.</b><br><i>(Corporate Postal Address)<br/>P.O. Box 130<br/>615 J. B. Hunt Corporate Drive<br/>Lowell, AR 72745</i> | Lessee of a portion of the Elizabeth Site                  |
| <b>American Plywood Corp.</b>  | Prior lessee of a portion of the Elizabeth Site            |
| <b>National Distribution Services</b>  | Prior lessee of a portion of the Elizabeth Site            |
| <b>BGB Transport, Inc.</b>   | Lessee of a portion of the Elizabeth Site                  |
| <b>Kawasaki Kisen Kaisha, Ltd. ("K-Line")<br/>Trucking Company</b>   | Prior lessee of a portion of the Elizabeth Site            |
| <b>Rail Bridge Terminals Corp.</b>   | Prior lessee of a portion of the Elizabeth Site            |
| <b>Matlack Trucking Company</b>  | Prior operator of a portion of the Elizabeth Site          |
| <b>Superior Bulk Logistics</b>   | Prior operator on a portion of the Elizabeth Site          |
| <b>Armin Poly-Film Company</b>   | Prior lessee of a portion of the Elizabeth Site            |
| <b>Carlisle Plastics</b>   | Prior lessee of a portion of the Elizabeth Site            |
| <b>Covalence Adhesives</b><br><i>87 Lincoln Blvd.<br/>Middlesex, NJ 08846</i>  | Prior lessee of a portion of the Elizabeth Site            |
| <b>Covidien</b><br><i>15 Hampshire Street<br/>Mansfield, MA 02048</i>  | Prior lessee of a portion of the Elizabeth Site            |
| <b>Berry Plastics Corporation</b><br><i>100 Dowd Avenue<br/>Elizabeth, NJ 07206</i>  | Current lessee of a portion of the Elizabeth Site          |

### **NJ Transit Site**

Conrail owned and operated the NJ Transit Site from April 1, 1976 until 1984. On information and belief, American Premier Underwriters, Inc. (formerly known as Penn Central Transportation Company) owned and operated the NJ Transit Site prior to April 1, 1976. Other owners or operators are unknown with the exception of the NJ Transit Corporation.

### **Otilio Landfill Site**

Unknown with the exception of Central Railroad of New Jersey (see above response related to the Elizabeth Site with respect to corporate successors to Central Railroad of New Jersey). Upon information and belief, the Otilio Landfill Site was purchased and operated by Deleet Merchandising Corporation on or about 1970. Conrail never owned or operated the Otilio Landfill Site.

*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**

Conrail is without knowledge of any inability to testify due to age, infirmity, or incompetency with regard to any individuals identified above who are not currently employed by Conrail. With respect to any remaining individuals identified in these Initial Disclosures, Conrail is not currently aware of any information regarding any known inability to testify.

*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**

### **Elizabeth Site**

Conrail denies that there was an Alleged Discharge of Pollutants into the Newark Bay Complex from the Elizabeth Site and/or that Conrail has any liability, responsibility and/or obligation with respect to any Alleged Discharges of Pollutants from the Elizabeth Site. Without waiver and subject to this objection and to the Reservations and Objections set forth above,

Conrail has identified the following categories of documents concerning environmental conditions, operational history, and site investigation and remediation activities during Conrail’s period of ownership and/or operations at the Elizabeth Site:

| <b>Documents by Category</b>  | <b>Applicable Exception(s)<sup>4</sup></b>   |
|---|--|
| Documents regarding corporate history of Conrail.   | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Documents containing information relating to past operations at the Elizabeth Site.   | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Documents containing information relating to real estate and/or lease transactions involving the Elizabeth Site.                                    | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Environmental reports, sampling data, and related documents pertaining to environmental conditions at and/or the remediation of the Elizabeth Site. | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Environmental permits and related documents pertaining to the Elizabeth Site.   | Some or all documents may consist of information that falls within Exception                             |

<sup>4</sup> 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;
- f. Information previously produced to Defendants; and
- g. Information that falls within the attorney-client privilege and/or the attorney work product privilege.

| <b>Documents by Category</b>   | <b>Applicable Exception(s)<sup>4</sup></b>   |
|--|--|
|  | Codes (a), (b), and/or (g).  |
| Documents containing information relating to communications with governmental agencies pertaining to environmental conditions at and/or the remediation of the Elizabeth Site. | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Other documents containing information pertaining to environmental conditions at and/or the remediation of the Elizabeth Site.   | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |

The above-referenced documents and electronically stored information may be located at or through the offices of: Manko Gold, Katcher & Fox, LLP, 401 City Avenue, Suite 500, Bala Cynwyd, PA 19004; Conrail, 1717 Arch Street, Philadelphia, PA 19103; CSX Transportation, Inc., 301 West Bay Street, Jacksonville, FL; and Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510-9241. Certain documents referenced above may also be located at Conrail document storage locations on Gaither Drive in Mount Laurel, New Jersey, and on Industry Lane in Norristown, Pennsylvania.

**NJ Transit Site**

Conrail denies that there was an Alleged Discharge of Pollutants into the Newark Bay Complex from the NJ Transit Site and/or that Conrail has any liability, responsibility and/or obligation with respect to any Alleged Discharges of Pollutants from the NJ Transit Site. Without waiver and subject to this objection and to the Reservations and Objections set forth above, Conrail has identified the following documents concerning environmental conditions, operational history, and site investigation and remediation activities during Conrail’s period of ownership and/or operations at the NJ Transit Site:

| <b>Documents by Category</b>                      | <b>Applicable Exception(s)</b>   |
|---|--|
| Documents regarding corporate history of Conrail. | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Documents containing information relating to      | Some or all documents may consist of   |

| <b>Documents by Category</b>  | <b>Applicable Exception(s)</b>   |
|---|--|
| past operations at the NJ Transit Site.   | information that falls within Exception Codes (a), (b), and/or (g).                                      |
| Documents containing information relating to real estate transactions involving the NJ Transit Site.  | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Environmental reports, sampling data, and related documents pertaining to environmental conditions at and/or the remediation of the NJ Transit Site.                            | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Environmental permits and related documents pertaining to the NJ Transit Site.  | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Documents containing information relating to communications with governmental agencies pertaining to environmental conditions at and/or the remediation of the NJ Transit Site. | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |
| Other documents containing information pertaining to environmental conditions at and/or the remediation of the NJ Transit Site.   | Some or all documents may consist of information that falls within Exception Codes (a), (b), and/or (g). |

The above referenced documents and/or electronically stored information may be located at the offices of Conrail, 1717 Arch Street, Philadelphia, PA 19103. The referenced documents may also be located at Conrail document storage locations on Gaither Drive in Mount Laurel, New Jersey, and on Industry Lane in Norristown, Pennsylvania.

### **Ottilio Landfill Site**

Conrail denies that there was an Alleged Discharge of Pollutants into the Newark Bay Complex from the Ottilio Landfill Site and/or that Conrail has any liability, responsibility or obligation with respect to any Alleged Discharges of Pollutants from the Ottilio Landfill Site. Further, as noted in response to “a.”, Conrail never owned or operated the Ottilio Landfill Site and is not a generator or transporter to the Ottilio Landfill Site. Subject to this clarification and to the Reservations and Objections set forth above, the only category of documents and/or electronically stored information that we currently believe may be responsive to this Initial Disclosure request is comprised of miscellaneous documents related to property adjacent to the

Otilio Landfill Site owned by Conrail, including the ownership records for that property. Conrail provided the New Jersey Department of Environmental Protection (“NJDEP”) with a staging area and access through its property near the Otilio Landfill Site when NJDEP conducted remedial activities at the Otilio Landfill Site. Some or all of the documents in this category may consist of information that falls within Exception Codes (a), (b), and/or (g). Documentation related to this category of information is maintained at the offices of Manko Gold, Katcher & Fox, LLP, 401 City Avenue, Suite 500, Bala Cynwyd, PA 19004.

Dated: August 5, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. D. Ball', written over a horizontal line.

Christopher D. Ball  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 500  
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(484) 430-5700  
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Attorney for Third-Party Defendant,  
Consolidated Rail Corporation

**CERTIFICATION OF SERVICE**

I, Christopher D. Ball, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that the Initial Disclosures of Consolidated Rail Corporation were served on this date:

- a. electronically on all parties which have consented to service by posting on <https://www.sfile.com/njdepvocc>;
- b. by electronic mail on all designated liaison counsel in this matter;
- c. by electronic mail and overnight mail on the following counsel of record for Third-Party Plaintiffs:

William Warren, Esq.  
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105 College Road East, Suite 300  
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William.Warren@dbr.com

Charles M. Crout, Esq.  
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1350 I Street NW  
Washington, DC 20005  
ccrout@andrewskurth.com

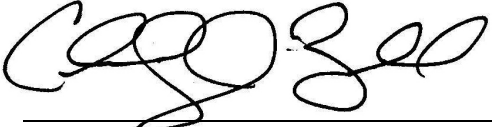
- d. By first class, regular mail on the following counsel of record:

Richard J. Dewland  
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465 South Street  
Morristown, NJ 07960  
***Attorney for Third-Party Defendant  
Borough of Hasbrouck Heights***



John P. McGovern  
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City of Orange Township  
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Orange, NJ 07050  
*Attorney for Third-Party Defendant  
City of Orange*

Steven A. Weiner  
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**Attorney for Third-Party Defendant  
Township of Winfield Park**

A handwritten signature in black ink, appearing to read "C. D. Ball", written over a horizontal line.

Christopher D. Ball  
Attorney for Third Party-Defendant,  
Consolidated Rail Corporation

Dated: August 5, 2010