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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

**EXXON MOBIL CORPORATION'S
CMO V THIRD-PARTY INITIAL
DISCLOSURE**

Third-Party Defendant Exxon Mobil Corporation (“ExxonMobil”) provides the following specific information for its Initial Disclosures pursuant to Case Management Order V in the above captioned litigation:

RESERVATIONS

1. ExxonMobil 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 ExxonMobil may have with respect to any outstanding or subsequent requests for discovery.

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

ExxonMobil 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 ExxonMobil 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 the Environmental condition; operational history; and remediation activities at the Bayway and/or Bayonne properties:

- Brent B. Archibald: P.O. Box 728, 1900 East Linden Avenue, Linden, New Jersey 07036, (908) 474-6403; and
- Frank J. Messina: 1400 Park Avenue, Building 7, Linden, New Jersey 07036, (908) 474-6202

ExxonMobil further responds that Thousands of ExxonMobil employees have worked at the Bayway and Bayonne properties throughout the decades that the properties have been operated as refineries and/or plants. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, any of these individuals could have relevant knowledge of this matter. ExxonMobil, therefore, is unable to individually identify any such person with relevant knowledge of this matter without more specific information from Third-Party Plaintiffs on the nature and basis of their claims. As such, ExxonMobil 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:

- Brent B. Archibald: P.O. Box 728, 1900 East Linden Avenue, Linden, New Jersey 07036, (908) 474-6403; and
- Frank J. Messina: 1400 Park Avenue, Building 7, Linden, New Jersey 07036, (908) 474-6202

ExxonMobil further responds that Thousands of ExxonMobil employees have worked at the Bayway and Bayonne properties throughout the decades that the properties have been operated as refineries and/or plants. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, any of these individuals could have relevant knowledge of this matter. ExxonMobil, therefore, is unable to individually identify any such person with relevant knowledge of this matter without more specific information from Third-Party Plaintiffs on the

nature and basis of their claims. As such, ExxonMobil may identify additional individuals in the course of discovery and as its investigation continues.

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:

Since 1991, pursuant to Consent Decrees negotiated with the New Jersey Department of Environmental Protection (“NJDEP”), ExxonMobil has engaged in extensive investigative efforts at the Bayonne and Bayway properties. As part of this process, ExxonMobil and its consultants have generated voluminous Site History Reports, of which the NJDEP has copies and which are therefore Excepted Information pursuant to Case Management Order VIII. These materials describe in detail the operations at the Bayway and Bayonne properties, including, *inter alia*, dates of ownership and operational history. Therefore, all of the information necessary to respond to this Disclosure is available *via* Excepted public material.

ExxonMobil further responds that the Bayway and Bayonne properties have been operational for over 100 years and during that time there have been scores of owners, operators, lessees, licensees and other related entities that have conducted myriad operations thereon. Therefore, after reasonable investigation, the entities listed below are past or present owners, lessees or operators as currently known and ExxonMobil reserves the right to supplement its Disclosure should additional information become available through discovery.

Name	Address	Phone Number
ExxonMobil and its predecessor entities and affiliates	5959 Las Colinas Boulevard Irving, Texas 75039-2298	(972) 444-1000
ConocoPhillips Corporation and its predecessor entities and affiliates	600 North Dairy Ashford PO Box 2197 Houston, Texas 77252-2197	(281) 293-1000
AGA Chemicals Americas, Inc. and its predecessor entities and affiliates	2201 Water Ridge Parkway STE 400 Charlotte, North Carolina 28217	(704) 357-5084
ICI Americas, Inc. and its predecessor entities and affiliates	PO Box 8340 Wilmington, Delaware 19803-8340	(302) 887-5307
International-Matex Tank Tank Terminals ("IMTT") - Bayonne	321 St. Charles Ave New Orleans, Louisiana 70130	(504) 586-8300
ExxonMobil's predecessors in title and their tenants and licensees		
The United States and its agencies and departments		

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:

ExxonMobil 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.

ExxonMobil further responds that thousands of ExxonMobil employees have worked at the Bayway and Bayonne properties throughout the decades that the properties have been operated as refineries and/or plants. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, any of these individuals could have relevant knowledge of this matter. As such, ExxonMobil is unable to individually identify any such person with relevant knowledge of this matter without more specific information from Third-Party Plaintiffs on the nature and basis of their claims, and therefore cannot at this time identify individuals from within this category of potential witnesses that may 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:

ExxonMobil 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 ExxonMobil is associated in Third Party Complaint "B." Subject to this objection and the Reservations stated above, ExxonMobil responds that since 1991, pursuant to Consent Decrees negotiated with the New Jersey Department of Environmental Protection ("NJDEP"), ExxonMobil has engaged in extensive investigation and remediation efforts at the Bayonne and Bayway Properties. As part of this process, ExxonMobil and its consultants have generated

voluminous Site History Reports, remediation plans, environmental sampling results and other documents, of which the NJDEP has copies and which are therefore Excepted Information pursuant to Case Management Order VIII. These materials describe in detail the operations at the Bayway and Bayonne properties as related to waste disposal and environmental conditions. Therefore, all of the information necessary to respond to this Disclosure is available *via* this Excepted public material. The Exception Codes applicable to this material are: a, b, and g.¹

To the extent, however, there may remain responsive, discoverable material beyond the above mentioned Excepted Information, ExxonMobil discloses the following locations for similar categories of materials stored thereat:

- Bayway Refinery
1400 Park Ave

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

Linden, New Jersey 07036

- Bayonne Refinery
250 E. 22nd St
Bayonne, New Jersey 07002
- ExxonMobil Facility
1545 Rt. 22 East
Clinton, New Jersey 08801
- ExxonMobil Facility
3225 Gallows Rd
Fairfax, Virginia 22037
- ExxonMobil Facility (and offsite archives)
800 Bell St
Houston, Texas 77002
- Florham Park Storage Facility
180 Park Ave
Florham Park, New Jersey 07932

ExxonMobil further responds that it is in the process of identifying and locating relevant and responsive electronically stored information (ESI). All parties will be discussing a formal ESI Plan that will more specifically address the preservation and production format of responsive ESI. In as much as this process is ongoing, these disclosures will be supplemented as more evidence is located and ExxonMobil will work together with Third Party Plaintiffs and other parties in developing same.

ExxonMobil'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: December 18, 2009

Respectfully submitted,
ARCHER & GREINER
A Professional Corporation
Attorneys for Exxon Mobil Corporation



MARC A. ROLLO

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