

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania

By: Jeffrey M. Pollock

Princeton Pike Corporate Center

997 Lenox Drive, Building 3

Lawrenceville, NJ 08648-2311

Tel: (609) 896-3600

Fax: (609) 896-1469

Attorney for Third-Party Defendant NPEC, Inc.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: ESSEX COUNTY
	:	
Plaintiffs	:	DOCKET NO. L-9868-05
v.	:	
	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,	:	CIVIL ACTION
	:	
Defendants.	:	FIRST AMENDED CMO V THIRD-PARTY INITIAL DISCLOSURE
	:	
	:	
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 NPEC, Inc.,¹ (“NPEC”) and for its First Amended Initial Disclosure in accordance with Case Management Order V provides the following specific information:

Reservations

1. NPEC 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 discovery requests.

2. NPEC’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, NPEC reserves the right to amend these disclosures to the extent the claims brought by or alleged against NPEC 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

¹ NPEC, Inc. provides the within First Amended Initial Disclosure in accordance with Case Management Order V on behalf of itself and on behalf of Third-Party Defendant Eastman Kodak Company.

burdensome. NPEC 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:

Neither NPEC nor Eastman Kodak Company ever owned or operated the Hilton Davis Site located at 120 Lister Avenue in Newark, New Jersey (the “Site”), and therefore NPEC has no personal knowledge of the information requested in Initial Disclosure “A.”² NPEC’s investigation regarding former employees of the Hilton Davis Company and Sterling Drug, Inc. is ongoing, and NPEC reserves the right to supplement this response as further information becomes available. Based upon NPEC’s internal investigation and review of files, it has identified the following individuals in response to Initial Disclosure “A”:

Name/Address/Phone	Subject
Joseph G. Gabriel c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7660	Former head of environmental compliance for NPEC, including remedial activities at the Site.
Ulrike B. Weinstock c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7660	Former head of environmental compliance for Hilton Davis Company, including the Site.
Mark R. Miller c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7660	Former head of environmental compliance for Hilton Davis Company, including the Site.

² As set forth in response to Initial Disclosure “C,” Eastman Kodak Company purchased the stock of Sterling Drug, Inc. in 1988, approximately two years after operations at the Site ceased in 1986. Neither NPEC nor Eastman Kodak Company have personal knowledge of any site operations after October 1986.

Name/Address/Phone	Subject
William T. Coleman c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7660	Former plant manager at the Site.
David A. Knego c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7660	Former plant manager, dyes division, Hilton Davis Chemical Company. Involved in Site closure activities.

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:

Neither NPEC nor Eastman Kodak Company ever owned or operated the Site, and therefore NPEC has no personal knowledge of the information requested in Initial Disclosure "B." NPEC's investigation regarding former employees of the Hilton Davis Company and Sterling Drug is ongoing, and NPEC reserves the right to supplement this response as further information becomes available. Based upon NPEC's internal investigation and review of files, it has identified the following individuals in response to Initial Disclosure "B":

Name	Address	Phone Number
Joseph G. Gabriel	c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648	(609) 896-7660
Ulrike B. Weinstock	c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648	(609) 896-7660
Mark R. Miller	c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648	(609) 896-7660
Margaret Helber	c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648	(609) 896-7660

Name	Address	Phone Number
Harold H. Hornbeck	c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648	(609) 896-7660
William T. Coleman	c/o Jeffrey M. Pollock, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648	(609) 896-7660

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		Dates at Site: Ownership/Operator/Lease
American Agricultural Chemical Company		Upon information and belief: From: Unknown To: March 1930
Swan-Finch Oil Corp.		Upon information and belief: From: March 1930 To: July 1950
Turco Products, Inc.		Upon information and belief: From: July 1950 To: June 1955
Thomasset Colors, Inc.		Upon information and belief: From: June 1955 To: March 1957
Hilton Davis owned and operated the Site at all times from 1957 to 1993.	Sterling Drug, Inc. ("Sterling Drug") ³	Upon information and belief: From: March 1957 To: September 1993 ⁴
	Hilton Davis Acquisition Company ("HDAC")	Upon information and belief: Sterling Drug sold the assets of Hilton-Davis, excluding the Site, to HDAC in October 1986. HDAC assumed operational control of the Site.
	Hilton Davis Chemical Co. ("HDCC")	Upon information and belief: HDAC changed its name to HDCC on January 2, 1987.
	PMC Specialties Group, Inc. ("PMC")	PMC acquired all of the stock of HDCC in 1989.
	Freedom Chemical Company ("Freedom")	Upon information and belief: Freedom purchased HDCC from PMC in 1993 and purchased the Site from Sterling Drug in September 1993.
B.F. Goodrich		Upon information and belief: B.F. Goodrich purchased the stock of HDCC from Freedom in 1998 and thereafter changed its name to B.F. Goodrich Hilton Davis, Inc. ⁵

³ Eastman Kodak Company acquired the stock of Sterling Drug in 1988. Sterling Drug changed its name to Sterling Winthrop, Inc. in 1991. Sterling Winthrop, Inc. changed its name to STWB, Inc. in 1996.

⁴ Upon information and belief, Sterling Drug transferred the assets of Thomasset to its subsidiary, the Hilton Davis Chemical Company, in 1983.

⁵ Upon information and belief, B.F. Goodrich Hilton Davis, Inc. changed its name to Noveon Hilton Davis, Inc. in 2001. Upon information and belief, Lubrizol Corporation subsequently purchased the stock of Noveon Hilton Davis from B.F. Goodrich. Upon information and belief, Lubrizol Corp. and Noveon Hilton Davis sold their assets to Emerald Performance Materials LLC in March 2006.

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:

None known.

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:

NPEC objects to this request to the extent that it concludes there were any Alleged Discharges, as that term is defined herein. Further, the mere fact that judicial or administrative proceedings have occurred to investigate and address potential environmental conditions at the Site does not lead to the conclusion that any potential on-site contaminants constitute Alleged Discharges. Without waiving these objections, the following list includes a description of all non-privileged documents and electronically stored information currently known to NPEC to be in its possession, custody or control that relate to environmental compliance, investigation and remediation at the Site. Discovery is ongoing in this litigation, however, and NPEC therefore reserves the right to supplement this response should additional responsive information become available. By disclosing the categories of documents identified below, NPEC does not waive any applicable privileges attached to any individual document within those categories. Further, some or all of the documents identified within the categories that are labeled with an asterisk (*) may consist of information that falls within the category of Excepted Information.⁶

⁶ Excepted Information shall include the following documents or electronically stored information:

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");

Documents by Category	Location
Consent Orders, ACOs and similar documents*	Copies maintained by Sandra Lee c/o NPEC, Inc. 3400 Ridge Road, Suite 5-341 Rochester, NY 14626
Environmental reports, sampling data, and related documents*	Copies maintained by Sandra Lee c/o NPEC, Inc. 3400 Ridge Road, Suite 5-341 Rochester, NY 14626
Correspondence with government agencies*	Copies maintained by Sandra Lee c/o NPEC, Inc. 3400 Ridge Road, Suite 5-341 Rochester, NY 14626
Correspondence with environmental consultants	Copies maintained by Sandra Lee c/o NPEC, Inc. 3400 Ridge Road, Suite 5-341 Rochester, NY 14626
Documents related to permits*	Copies maintained by Sandra Lee c/o NPEC, Inc. 3400 Ridge Road, Suite 5-341 Rochester, NY 14626
Correspondence with past owners and/or operators of the Site regarding remedial activity at the Site.	Copies maintained by Sandra Lee c/o NPEC, Inc. 3400 Ridge Road, Suite 5-341 Rochester, NY 14626

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;

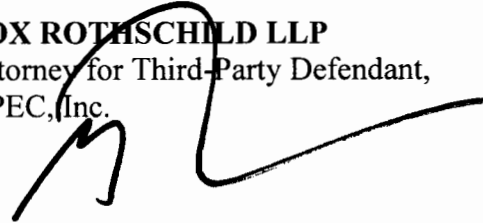
f. Information previously produced to Defendants and

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

NPEC's First Amended 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.

Respectfully submitted,

FOX ROTHSCHILD LLP
Attorney for Third-Party Defendant,
NPEC, Inc.



JEFFREY M. POLLOCK, ESQ.

Dated: February 5, 2010