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News Publishing Australia Limited

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. ESX-L-9868-05 (PASR)
	:	
v.	:	CIVIL ACTION
	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,	:	CMO V THIRD-PARTY INITIAL DISCLOSURE OF THIRD-PARTY DEFENDANT NEWS PUBLISHING AUSTRALIA LIMITED
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
Third-Party Plaintiffs,	:	
	:	
v.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

Comes now Third-Party Defendant News Publishing Australia Limited (“NPAL”) and for its Initial Disclosure in accordance with Case Management Order V provides the following specific information:

RESERVATIONS

1. NPAL 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 NPAL may have with respect to any requests for discovery.

2. NPAL’s investigation in this matter is continuing, and it reserves the right (but assumes no obligation other than as may be required by law) to supplement, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, NPAL reserves the right (but assumes no obligation other than as may be required by law) to amend these disclosures to the extent the claims brought by or alleged against NPAL in this litigation are amended.

3. The time period covered by the allegations in the Plaintiffs’ Second Amended Complaint is very long, encompassing at least six decades. Also, the geographic scope of the Second Amended Complaint is very 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 very broad and potentially burdensome. NPAL is engaged in a

continuing investigation and reserves the right (but assumes no obligation other than as may be required by law) 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

NPAL herein discloses the identify of individuals who may have discoverable information regarding matters related to operations during approximately 1946-1972 at the facility at 100 Lister Avenue in Newark, New Jersey ("Montrose Site"), formerly owned and operated by Montrose Chemical Co. ("Montrose") from approximately 1946 to 1961, and by Montrose's successors Baldwin-Montrose Chemical Co. (1961-1968) and Chris-Craft Industries, Inc. ("Chris-Craft") (1968-1972). The Third-Party Complaint alleges that these operations resulted in releases of certain hazardous substances to the environment, and, via certain pathways, to the Passaic River. NPAL denies that any such releases have materially or substantially contributed to contamination in the river or its sediments, or to injuries to natural resources.

NPAL is informed and believes that the Montrose Site was sold in 1972, or leased in 1972 and subsequently sold, to a third party, Sobin Chemical Co. In light of the passage of

time since any of NPAL's predecessors conducted operations at the Montrose Site, and in light of the fact that no current employee of NPAL or its affiliates has any personal knowledge of operations or activities at the Montrose Site, the information available to NPAL is limited to that which it can learn through investigation and discovery. NPAL's investigation is ongoing, and discovery in this litigation has not commenced.

NPAL is aware of the identity of two former officers of Montrose likely to have discoverable information. They are Samuel Rotrosen and Benjamin Rothberg. They can be contacted through the undersigned counsel. Each is more than eighty years old; neither is known to be suffering from any condition, aside from advanced age, making it likely that he will be unavailable to testify one year from now. In connection with EPA's investigation of conditions in the Passaic River, it has provided documents to NPAL's counsel that identify additional individuals who were employed at the Montrose Site at times between 1946 and 1972 (*e.g.* Sol Koved, Kelsey Brown and others). Defendants likewise are aware of the identities of these individuals (although if defendants wish us to identify all those of whom we presently are aware, we will). NPAL's ongoing investigation seeks to identify additional former employees at the Montrose Site.

There are additional potential percipient witnesses whose identities NPAL presently does not know. These include individuals associated with, or knowledgeable about, the Passaic Valley Sewerage Commission ("PVSC") sewer system in the vicinity of the Montrose Site, and any discharges from that system to the Passaic River. Such individuals may include S.A. Lubetkin, former Chief Engineer of PVSC. Other potential witnesses include individuals with knowledge of the alleged presence, or (as NPAL will contend) absence, of pipes connecting the Montrose Site to the Passaic River, and any discharges from such pipes. Other potential

witnesses also include individuals with knowledge about whether any employees at the Montrose Site, between 1946 and 1972, carried wastes to the river, or (as NPAL will contend) did not do so.

NPAL reserves the right, but assumes no obligation other than as imposed by law, to later disclose the identity of individuals with responsive knowledge.

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

See Response to “a.” above. Further responding, NPAL states that its investigation is ongoing. It reserves the right to retain and employ expert consultants and witnesses, and does not construe this Initial Disclosure as requiring experts to be identified at this time. NPAL’s ongoing investigation and future discovery will include investigation of parties whose release of hazardous substances, unlike those from the Montrose Site, have materially or substantially contributed to contamination in the river or its sediments, or to injuries to natural resources.

NPAL reserves the right, but assumes no obligation other than as imposed by law, to later disclose the identity of individuals with responsive knowledge.

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/Address/Phone	Site Address	Dates at Site: Ownership/Operator/Lease
Montrose Chemical Co.	100 Lister Ave., Newark (all or portions)	1946 (approx.)-1961 ¹
Celia Bersohn	100 Lister Ave., Newark (portion)	?-1952 (sold portion at that time to Montrose)
Baldwin-Montrose Chemical Co.	100 Lister Ave., Newark (all)	1961-1968
Chris-Craft Industries, Inc.	100 Lister Ave., Newark (all)	1968-1972
Sobin Chemicals Co. (on information and belief, subsequently IMC Chemical Group, Inc.)	100 Lister Ave., Newark (all)	1972-1977 (on information and belief, leased from Chris-Craft 1972-1974, and owned 1974-1977)
Lister Properties, a partnership	100 Lister Ave., Newark	1977-?

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 incompetence within 12 months following the date of the Initial Disclosure;

Response

As stated above regarding Messrs. Rotrosen and Rothberg, each is more than eighty years old; neither is known to be suffering from any condition, aside from advanced age, making it likely that he will be unavailable to testify one year from now.

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

¹ The Third-Party Complaint's allegations against NPAL relate to times beginning in 1946 and thereafter. As a result, NPAL's response to this and the other parts of these initial disclosures does not include information about earlier time periods.

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.


Because, as described above, Chris-Craft divested the Montrose Site in 1972, and because NPAL did not acquire Chris-Craft until almost thirty years later, in 2000, NPAL does not to its knowledge possess documents relating to the operations or activities conducted at the Montrose site between 1946 and 1972. NPAL's undersigned counsel, together with expert consultants, has collected certain documents relating to the matters described in parts "a" through "c" above.

CONCLUSION

NPAL's Initial Disclosure is 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 23, 2009

Respectfully submitted



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Counsel for Third-Party Defendant
News Publishing Australia Limited

Certificate of Service

I hereby certify that the foregoing CMO V Third-Party Initial Disclosure Of Third-Party Defendant News Publishing Australia Limited was served electronically on all parties which have consented to service by posting on www.sfile.com/njdepvocc on December 24, 2009. I further certify that counsel of record identified on the Service List attached hereto were served on December 24, 2009 via first class, ~~regular~~ mail.

Dated: December 24, 2009



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News Publishing Australia Limited

Third-Party Defendants for Regular Service as of December 16, 2009

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
City of Clifton	A	Thomas M. Egan, Esq. Assistant Municipal Attorney City of Clifton Law Department 900 Clifton Avenue Clifton, NJ 07013 973.470.5817 973.470.5254 - fax tegan@cliftonnj.org
City of Orange	A	John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 - fax jmcgovern@ci.orange.nj.us
Clean Earth of North Jersey, Inc.	B	Eric S. Aronson Greenberg Traurig, LLP 200 Park Avenue Florham Park, NJ 07932 973.360.7900 973.301.8410 - fax aronsone@gtlaw.com
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com
Roman Asphalt Corporation	B	Michael V. Calabro Law Offices of Michael V. Calabro 466 Bloomfield Ave., Suite 200 Newark, NJ 07107 973.482.1085 973.482.7930 - fax michaelvcalabro@verizon.net
Township of Irvington	A	Gustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 - fax