

**LECLAIRRYAN**

*A Virginia Professional Corporation*  
One Riverfront Plaza  
1037 Raymond Boulevard, 16<sup>th</sup> Floor  
Newark, New Jersey 07102  
(973) 491-3600  
Attorneys for Third-Party Defendant  
PPG Industries, Inc.

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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.

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: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION: ESSEX COUNTY

: DOCKET NO. L-9868-05

: CIVIL ACTION

: **PPG INDUSTRIES, INC.'S**  
: **CMO V THIRD-PARTY INITIAL**  
: **DISCLOSURE**

Third-Party Defendant PPG Industries, Inc. ("PPG") provides the following specific information for its Initial Disclosures pursuant to Case Management Order V in the above-captioned matter:

## RESERVATIONS

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

2. PPG's investigation in this matter is continuing. Accordingly, PPG reserves the right to supplement, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, PPG reserves the right to amend these disclosures to the extent the claims brought by or alleged against PPG in this litigation are amended.

3. The time period covered by the allegations in Plaintiffs' Second Amended Complaint and Third-Party Plaintiffs' Third-Party Complaint "B" (collectively "Complaints") is quite long and encompasses at least six decades. The geographic scope of the Complaints 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, Third-Party Plaintiffs, and Third-Party Defendants is accordingly quite broad and potentially burdensome. PPG 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:

PPG objects to this request to the extent that it assumes or concludes that there was an "alleged discharge or release of pollutants, contaminants, and/or hazardous substances" to the Newark Bay Complex from the sites with which PPG are associated in the Third-Party Complaint "B." PPG further objects to this request on the grounds that the term "associated" is vague and ambiguous and susceptible to numerous interpretations. PPG further objects to this request on the grounds that it never owned or operated "The Bayonne Barrel and Drum Site" (as that terms is defined in Third-Party Complaint "B"), and therefore, does not have any personal knowledge of the information sought in this request. Subject to the foregoing objections and the Reservations stated above, the current and former PPG employees listed below are likely to have discoverable information pertaining to the environmental condition, operational history, and remediation activities at the PPG Site.

<b>Name</b>	<b>Title/Address</b>	<b>Subject/Site</b>
Joseph Comeskey	Paint Plant Superintendent Newark, NJ	PPG Site
Thomas Ebbert	Environmental Engineering Associate Allison Park, PA	PPG Site
Greg Norman	Process Technician Springdale, PA	PPG Site
Bill Silvestri	Manager Cleveland, OH	PPG Site
Tom Price	C&R Engineer Allison Park, PA	PPG Site

Contact with any current or former PPG employees must be made through PPG's outside counsel.

PPG further responds that hundreds of PPG employees have worked at the PPG Site throughout the decades that PPG operated the site. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, any of these individuals may have relevant knowledge of this matter. PPG, 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.

**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:**

PPG's investigation concerning the identity of individuals with "discoverable information" that PPG may use in support of its claims and/or defenses is ongoing, and therefore, PPG reserves the right to supplement this response as further information becomes available. Subject to the foregoing objections and Reservations stated above, PPG states that it has yet to identify persons who are responsive to this question, but may use some or all of the individuals listed in response to (a) above, and such other persons that may be identified through PPG's investigation or discovery.

PPG further responds that hundreds of PPG employees have worked at the PPG Site throughout the decades that PPG operated the site. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, any of these individuals may have relevant knowledge of this matter. PPG, 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, PPG 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:**

PPG objects to this request on the grounds that it never owned or operated The Bayonne Barrel and Drum Site, and therefore, does not have any personal knowledge of the information sought in this request. PPG further objects to this request on the grounds that it is overly broad and unduly burdensome due to the indefinite time period. PPG further objects to this request on the grounds that the term “associated” is vague and ambiguous. Subject to the foregoing objections and the Reservations stated above, PPG states that to the best of its knowledge, information concerning the ownership and operational history of the PPG Site has been submitted to, among other governmental agencies, the United States Environmental Protection Agency (“USEPA”), and therefore, all of the information necessary to respond to this Disclosure is available via Excepted public material. Thus, the information set forth below is derived from such Excepted Information. PPG reserves the right to supplement its Disclosure should additional information become available through discovery.

<b>Name Ownership/Operator/Lessee</b>	<b>Site</b>	<b>Dates at Site:</b>
Chemical Compounds, Inc. (Owner)	PPG Site	1986 to present
S.B.S. Chemicals, Inc. and Desachem Co., Inc. (Lessees and operators)	PPG Site	1980 to 1985
Industrial Development Associates (owner)	PPG Site	November 1979 to 1986

Industrial Development Corporation (owner)	PPG Site	October 1979 to November 1979
Riverside Avenue Properties, Inc. (owner)	PPG Site	August 1971 to October 1979
PPG Industries, Inc. and its predecessor entities and affiliates (owner and/or operator)	PPG Site	1902 to August 1971
Patton Paint Company (owner)	PPG Site	1902
Triton Boat Club of Newark (Owner)	PPG Site	1888 to 1902
Freeholders of Essex County (owner)	PPG Site	Pre-1888

**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:**

<b>Name</b>	<b>Nature of Inability</b>
Joseph Comeskey	Deceased

PPG further responds that hundreds of PPG employees have worked at the PPG Site throughout the decades that PPG operated the site. Based on the breadth and ambiguity of Third-Party Plaintiffs' claims, any of these individuals may have relevant knowledge of this matter. PPG, 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, PPG 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:**

PPG 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 PPG is associated in Third-Party Complaint "B." Subject to this objection and the Reservations stated above, PPG denies that it discharged any hazardous substances or pollutants or has otherwise caused or committed a discharge of such hazardous substances or pollutants. PPG further responds that to the extent any relevant documents or information exist regarding the sites with which PPG is associated in Third-Party Complaint "B," those documents have been provided to the USEPA or the New Jersey Department of Environmental Protection and are therefore Excepted Information. The Exception Codes applicable to this material are a, b, and g.<sup>1</sup>

<sup>1</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;

To the extent there may remain responsive, discoverable material beyond the above-mentioned Excepted Information, PPG states that such material is under the custody and control of in-house and outside counsel located at:

PPG Industries, Inc.  
One PPG Place  
Pittsburgh, PA 15272

LeClairRyan  
One Riverfront Plaza  
1037 Raymond Boulevard, 16<sup>th</sup> Floor  
Newark, NJ 07102

PPG'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: February 10, 2010

Respectfully submitted,

**LECLAIRRYAN**  
Attorneys for Third-Party Defendant  
PPG Industries, Inc.

  
\_\_\_\_\_  
JOSEPH F. LAGROTTERIA  
MICHAEL J. PLATA

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f. Information previously produced to Defendants; and

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



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SUPERIOR COURT OF NEW JERSEY  
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CIVIL ACTION

**CERTIFICATION OF SERVICE**

I, Michael J. Plata, hereby certify as follows:

1. I am a Partner with the law firm of LeClairRyan, *a Virginia Professional Corporation*, attorneys for Third-Party Defendant PPG Industries, Inc. ("PPG") in connection with the above-captioned matter.

2. On February 10, 2010, I caused PPG's CMO V Third-Party Initial Disclosures and this Certification of Service to be served electronically on all parties that have consented to service by posting on [www.sfile.com/njdepvocc](http://www.sfile.com/njdepvocc). The following counsel of record were served on that same date via regular mail:

Thomas M. Egan, Esq.  
Assistant Municipal Attorney  
City of Clifton Law Department  
900 Clifton Avenue  
Clifton, NJ 07103  
Attorneys for City of Clifton

Michael V. Calabro, Esq.  
Law Offices of Michael V. Calabro  
466 Bloomfield Ave., Suite 200  
Newark, NJ 07107  
Attorneys for Roman Asphalt  
Corporation

John P. McGovern, Esq.  
Assistant City Attorney  
Township of Orange  
29 North Day Street  
Orange, NJ 07050  
Attorneys for Township of Orange

Eric S. Aronson, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
Florham Park, NJ 07932  
Attorneys for Clean Earth of  
North Jersey, Inc.

John A. Daniels, Esq.  
Daniels & Daniels LLC  
6812 Park Avenue  
Guttenberg, NJ 07093  
Attorneys for Passaic Pioneers  
Properties Company

Gustavo Garcia, Esq.  
Municipal Attorney  
Township of Irvington  
Irvington Municipal Building  
Civic Square  
Irvington, NJ 07111  
Attorneys for Township of Irvington

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 10, 2010

  
MICHAEL J. PLATA