

**LECLAIRRYAN**

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Attorneys for Third-Party Defendant  
PRC-DeSoto International, 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
	:	
	:	DOCKET NO. L-9868-05
	:	
Plaintiffs	:	
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.,	:	<b>PRC-DESOTO INTERNATIONAL, INC.'S CMO V THIRD-PARTY INITIAL DISCLOSURE</b>
	:	
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

Third-Party Defendant PRC-DeSoto International, Inc. (“PRC-DeSoto”) provides the following specific information for its Initial Disclosures pursuant to Case Management Order V in the above-captioned matter:

## RESERVATIONS

1. PRC-DeSoto 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 PRC-DeSoto may have with respect to any outstanding or subsequent requests for discovery.

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

PRC-DeSoto 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 site with which PRC-DeSoto is associated in the Third-Party Complaint “B.” PRC-DeSoto further objects to this request on the grounds that the term “associated” is vague and ambiguous and susceptible to numerous interpretations. PRC-DeSoto 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 individual(s) listed below are likely to have information in connection with the Bayonne Barrel and Drum Site.

<b>Name</b>	<b>Title/Address</b>	<b>Subject/Site</b>
David P. Morris	Officer	Bayonne Barrel and Drum Site

Contact with any current or former PRC-DeSoto employees must be made through PRC-DeSoto’s outside counsel.

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:**

PRC-DeSoto's investigation concerning the identity of individuals with "discoverable information" that PRC-DeSoto may use in support of its claims and/or defenses is ongoing, and therefore, PRC-DeSoto reserves the right to supplement this response as further information becomes available. Subject to the foregoing objections and Reservations stated above, PRC-DeSoto 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 PRC-DeSoto's investigation or discovery.

**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:**

PRC-DeSoto 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. PRC-DeSoto further objects to this request on the grounds that it is overly broad and unduly burdensome due to the indefinite time period. PRC-DeSoto 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, PRC-DeSoto states that to the best of its knowledge, information concerning the ownership and operational history of The Bayonne Barrel and Drum 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. PRC-DeSoto reserves the right to supplement its Disclosure should additional information become available through discovery.

**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:**

PRC-DeSoto 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 site with which PRC-DeSoto is associated in Third-Party Complaint “B.” PRC-DeSoto further objects to this request on the grounds that the term “associated” is vague and ambiguous and susceptible to numerous interpretations. PRC-DeSoto further 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. Subject to and without waiving the foregoing objections and Reservations stated above, PRC-DeSoto has no knowledge of any physical and/or mental condition of the individual(s) listed in paragraph (a), (b) and (c) above that would make the individual(s) unable to testify within the next 12 months.

**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:**

PRC-DeSoto 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 site with which PRC-DeSoto is associated in Third-Party Complaint “B.” Subject to this objection and the Reservations stated above, PRC-DeSoto denies that it discharged any hazardous substances or

pollutants or has otherwise caused or committed a discharge of such hazardous substances or pollutants. PRC-DeSoto further responds that to the extent any relevant documents or information exist regarding the site with which PRC-DeSoto 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>

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

PRC-DeSoto International, Inc.  
5430 San Fernando Road  
Glendale, CA 91203

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<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;

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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PRC-DeSoto'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: August 9, 2010

Respectfully submitted,

**LECLAIRRYAN**  
Attorneys for Third-Party Defendant  
PRC-DeSoto International, Inc.

  
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JOSEPH F. LAGROTTERIA  
MICHAEL J. PLATA