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Attorney for Third-Party Defendant Phelps Dodge Industries, Inc.

NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION and	:	LAW DIVISION
THE ADMINISTRATOR OF THE NEW	:	ESSEX COUNTY
JERSEY SPILL COMPENSATION FUND,	:	
	:	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.,	:	
Defendants.	:	INITIAL DISCLOSURE OF
	:	THIRD-PARTY DEFENDANT
MAXUS ENERGY CORPORATION and	:	PHELPS DODGE INDUSTRIES,
TIERRA SOLUTIONS,	:	INC.
INC.,	:	
Third-Party Plaintiffs,	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

Third-Party Defendant Phelps Dodge Industries, Inc. (“Respondent”), for its Initial Disclosure in accordance with Case Management Orders V and VIII, provides the following information:

Reservations

1. Respondent 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 requests for discovery.

2. Respondent'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, Respondent reserves the right to amend these disclosures to the extent the claims brought by or alleged against Respondent 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 time period covered by Third-Party Defendants' Third-Party Complaint "B" is also quite long and encompasses over 100 years. The scope of inquiry, accordingly, is quite broad and potentially burdensome. Respondent 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

Respondent objects to the extent that the Initial Disclosure requests information regarding whether specific individuals have “discoverable information” and the subject of that information because the response to that inquiry is unknowable to Respondent. Respondent also objects to the Initial Disclosure to the extent that it assumes the existence of a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the sites associated with Respondent in the Third Party Complaint. Any contact made with current or former employees of Respondent must be made through counsel for Respondent. Respondent reserves all rights to identify additional or different individuals and witnesses, and specifically reserves the right to designate fact, expert and corporate representative witnesses in the future. Subject to the foregoing objections and based on its review of the Third-Party Complaint B and the allegations asserted against Respondent, Respondent provides the following list of individuals who may have discoverable information, their last known address and the subject of the information they may have:

Name/Address/Phone	Subject
Ronald J. Buchanan, Jr. Ph.D. Manager, Remediation Projects Freeport-McMoRan Copper & Gold Inc. One North Central Ave., 15th Floor Phoenix, Az 85004 609.919.6619 (counsel for Phelps Dodge Industries, Inc.)	Environmental investigation and remediation of Phelps Dodge’s property in Elizabeth, New Jersey.
William Geissel, Plant Manager Phelps Dodge Industries, Inc. P.O. Box 648 Elizabeth, NJ 07207 609.919.6619 (counsel for Phelps Dodge Industries, Inc)	Operation of Phelps Dodge’s Bayway facility.
J.W. Holzenthaler (retired employee) 1936 Preview Place El Paso, TX 79936 609.919.6619 (counsel for Phelps Dodge Industries, Inc.)	Wastewater management at Phelps Dodge’s Bayway facility.
Robert Stetkar, PE	Environmental investigation and

Technical Consultant for the Borne Chemical Company Site PRP Group Golder Associates 744 Broad Street Newark, NJ 07102-3803 973.645.1922	remediation of the Borne Chemical Company Site.
Walter Vinograd, Environmental Engineer Phelps Dodge Industries, Inc. P.O. Box 648 Elizabeth, NJ 07207 609.919.6619 (counsel for Phelps Dodge Industries, Inc.)	Wastewater management at Phelps Dodge's Bayway facility.
Thomas Wilson (retired employee) 7 Cornell Way Aberdeen, NJ 07747 609.919.6619 (counsel for Phelps Dodge Industries, Inc.)	Wastewater system at Phelps Dodge's Bayway facility.

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

Respondent reserves all rights to identify additional or different individuals and witnesses, and specifically reserves the right to designate fact, expert and corporate representative witnesses in the future. Subject to this reservation and the foregoing objections and reservations, Respondent responds as follows:

Name	Address	Phone Number
Ronald J. Buchanan, Jr. Ph.D.	Freeport-McMoRan Copper & Gold Inc. One North Central Ave., 15th Floor Phoenix, Az 85004	609.919.6619
William Geissel	Phelps Dodge Industries, Inc. PO Box 648 Elizabeth, NJ 07207	609.919.6619
Walter Vinograd	Phelps Dodge Industries, Inc. PO Box 648 Elizabeth, NJ 07207	609.919.6619

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
Phelps Dodge Industries, Inc. One North Central Ave. Phoenix, Az 85004	48-94 Bayway Avenue Elizabeth, NJ 07202	Current owner/operator since the 1930s.
Phelps Dodge Industries, Inc. One North Central Ave. Phoenix, Az 85004	720 Front Street Elizabeth, NJ 07202	Owner/operator from the 1930s until it sold the site in or about June 1984
666 South Front Associates 888 Newark Avenue Jersey City, NJ 07306	720 Front Street Elizabeth, NJ 07202	Acquired 720 Front Street property in or about June 1984.
Borne Chemical Company	600-616 and 532-650 South Front Street Elizabeth, NJ 07202	unknown
City of Elizabeth	600-616 and 532-650 South Front Street Elizabeth, NJ 07202	unknown

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

Unknown at this time.

Name/Address/Phone	Nature of Inability

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

Documents by Category	Location	Applicable Exception¹
Communications with the Joint Meeting of Essex and Union Counties, New Jersey Department of Environmental Protection and/or US Coast Guard regarding Phelps Dodge's facility in Elizabeth, N.J.	Freeport-McMoRan Copper & Gold Inc. One North Central Ave., Phoenix, Az 85004 Iron Mountain Phoenix, Az 85004 48-94 Bayway Avenue Elizabeth, NJ 07202	a & b applicable to some documents within the category
Internal communications regarding environmental activities at Phelps Dodge's facility in Elizabeth, N.J.	Freeport-McMoRan Copper & Gold Inc. One North Central Ave., Phoenix, Az 85004 Iron Mountain Phoenix, Az 85004	a, b & g applicable to some documents within the category

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;

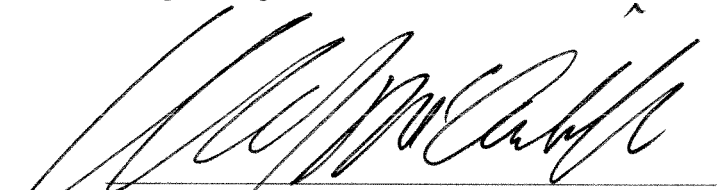
e. Information produced by a third-party defendant to any third-party plaintiff pursuant to the New Jersey Open Public Records Act or other freedom of information law or regulation; f. Information previously produced to Defendants and g. Information that falls within the attorney-client privilege and/or the attorney work product privilege.

	48-94 Bayway Avenue Elizabeth, NJ 07202	
Environmental investigation and cleanup activities at the Borne Chemical Company site.	Freeport-McMoRan Copper & Gold Inc. One North Central Ave., Phoenix, Az 85004 Iron Mountain Phoenix, Az 85004 48-94 Bayway Avenue Elizabeth, NJ 07202	a, b and f applicable to some documents within the category

Respondent's Initial Disclosures are made without prejudice to their right to change or supplement their responses, their right to assert privileges or objections with respect to any subsequent requests for discovery, and their right to introduce at trial additional evidence and documents as warranted by the development of the facts underlying this litigation.

Dated: May 12 2010

MORGAN, LEWIS & BOCKIUS LLP
Attorney for Third-Party Defendant
Phelps Dodge Industries, Inc.



Christopher J. McAuliffe

CERTIFICATE OF SERVICE

I hereby certify that Third-Party Defendant Phelps Dodge Industries, Inc.'s Initial Disclosure was served electronically on all parties that have consented to service by posting on <http://njdepvocc.sfile.com>, and that I caused same to be served upon the attached list of counsel by first-class mail.

Borough of Hasbrouck Heights

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Dated: May 12, 2010



Christopher J. McAuliffe