

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania

Princeton Pike Corporate Center

By: Joel M. Ferdinand, Esq.

997 Lenox Drive, Building 3

Lawrenceville, New Jersey 08648-2311

(609) 896-3600

Attorneys for Third-Party Defendant S&A Realty Associates, Inc.

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.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

CMO V THIRD-PARTY INITIAL DISCLOSURE

Pursuant to Case Management Order V, entered April 16, 2009, Third-Party Defendant, S&A Realty Associates, Inc. (S&A), hereby makes the following initial disclosures:

Reservations

1. These disclosures are not intended to prejudice or waive any privileges or objections S&A may have with respect to any outstanding or subsequent discovery requests. S&A reserves the right to object to the production of any documents or other information on any ground, including, but not limited to, relevance and undue burden. S&A further reserves the right to assert any applicable privilege, including, but not limited to, the attorney-client privilege, the work product doctrine, the common interest doctrine, and any other applicable privilege or protection.

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

3. The time period covered by the allegations in Plaintiffs' Second Amended Complaint encompasses at least six decades, and is overly broad. The geographic scope of the Second Amended Complaint is also overly broad, covering the "Newark Bay Complex," which spans the "[l]ower 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 is accordingly overly broad and unduly burdensome. S&A is therefore engaged in 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: The Third-Party Complaint alleges that S&A is responsible for discharges of hazardous substances from the American Modern Metals Site. S&A never operated the American Modern Metals Site, and simply owned a building on the Site after the alleged discharge of hazardous substances is alleged to have occurred. Therefore, S&A has no personal knowledge of the information requested in this Initial Disclosure. Subject to this qualification, S&A identifies the following individuals who may have discoverable knowledge or information indicating that S&A is neither responsible nor liable for any discharge of hazardous substances from the American Modern Metals Site:

Name/Address/Phone	Subject
Ottavia McLaughlin c/o Joel M. Ferdinand, Esq. Fox Rothschild LLP 997 Lenox Drive, Building 3 Lawrenceville, NJ 08648 (609) 896-7659	Chief Financial Officer of S&A Realty Associates, Inc.
Ivan Rosalsky Kearny Industrial Associates, L.P. 25 Passaic Avenue Kearny, NJ 07032 Phone number unknown	President of Kearny Industrial Associates, L.P., former owner of Block 1, Lots 9 and 11 as shown on the tax map of Kearny, New Jersey as of 2001 (“the Property”). Kearny Industrial Associates, L.P. is obligated to indemnify S&A for the environmental concerns on the Property, which were caused, if any, before S&A’s purchase of the

	Property.
Alex DiLorenzo, III DiLorenzo Properties Company 238 East 53rd Street New York, NY 10022 Phone number unknown	Former owner of the Property.
Andrew Rodriguez American Modern Metals Corp. 44 Passaic Street Kearny, NJ 07032 Phone number unknown	Vice President of American Modern Metals Corp., former tenant of the Property.

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 "A", above

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: S&A became an owner of Block 1, Lots 9 and 11 as shown on the tax map of Kearny, New Jersey as of 2001 in 2001. Further, with the exception of the following, unknown:

Name/Address/Phone	Subject
Ivan Rosalsky Kearny Industrial Associates, L.P. 25 Passaic Avenue Kearny, NJ 07032 Phone number unknown	President of Kearny Industrial Associates, L.P., former owner of Block 1, Lots 9 and 11 as shown on the tax map of Kearny, New Jersey as of 2001 ("the Property"). Kearny Industrial Associates, L.P. is obligated to indemnify S&A for the environmental concerns on the Property, which were caused, if any, before S&A's purchase of the Property.
Alex DiLorenzo, III DiLorenzo Properties Company 238 East 53rd Street New York, NY 10022 Phone number unknown	Former owner of the Property.

Andrew Rodriguez American Modern Metals Corp. 44 Passaic Street Kearny, NJ 07032 Phone number unknown	Vice President of American Modern Metals Corp., former tenant of the Property.
---	--

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: As noted above, S&A never operated the American Modern Metals Site, and simply owned a building on the Site after the alleged discharge of hazardous substances is alleged to have occurred. With the exception of a Real Estate Purchase Agreement between S&A and Kearny Industrial Associates, L.P. dated February 7, 2001, identifying environmental investigations of the Property undertaken by Kearny Industrial Associates, L.P., S&A has no documentation or electronically stored information responsive to this Initial Disclosure.¹ The documentation in S&A's possession is

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;

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,

maintained at S&A's office, located at 400 Metuchen Road, South Plainfield, New Jersey 07080.

S&A'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.

Respectfully submitted,

FOX ROTHSCHILD LLP
*Attorneys for Third-Party Defendant, S&A
Realty Associates, Inc.*



JOEL M. FERDINAND

Dated: January 25, 2010

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; and

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.