

**Manko, Gold, Katcher & Fox, LLP**  
401 City Avenue, Suite 500  
Bala Cynwyd, PA 19004  
Attorneys for Third-Party Defendant,  
Waste Management, Inc.

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE 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. ESX-L-9868-05 (PASR)
	:	
Plaintiffs,	:	<u>CIVIL ACTION</u>
	:	
vs.	:	
	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC., and CLH HOLDINGS,	:	
	:	
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.	:	
	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

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**INITIAL DISCLOSURE OF WASTE MANAGEMENT, INC.**

Third-Party Defendant Waste Management, Inc. (“WMI” or “Respondent”), by and through its undersigned counsel, and in accordance with Case Management Order V, provides the following specific information for its Initial Disclosure:

## **Reservations**

1. 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. 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 or protection, including the attorney-client privilege, the work product doctrine, and the common interest doctrine.

2. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint spans at least six decades. The geographic scope of the Second Amended Complaint is also overly 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 Plaintiffs is accordingly overly broad and unduly burdensome. In addition, Respondent 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.

## **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 WMI is responsible for discharges of hazardous substances from two landfills in Kearny, New Jersey purportedly operated at one time by the Municipal Sanitary Landfill Authority (MSLA): the “Keegan Landfill,” located at the foot of Bergen Avenue, and the “MSLA 1-D Landfill,” located at 1500 Harrison Avenue. WMI denies liability for any discharges from the Keegan and MSLA 1-D landfills alleged in the Third-Party Complaint. The only alleged nexus between WMI and either landfill is the incorrect allegation that WMI acquired and is the successor to Peter Roselle & Sons, Inc. (“PRSI”), a purported former MSLA partner. WMI never acquired PRSI, is not a successor to PRSI, and has no successor liability for any MSLA operations at the Keegan or MSLA 1-D landfills. The stock of Peter Roselle & Sons Company was acquired by SCA Services, Inc. in 1974, but that acquisition expressly did not include ownership interests in Peter Roselle & Sons, Inc. On information and belief, PRSI remains an active corporation in the State of New Jersey unaffiliated with WMI.

WMI has no discoverable information relating to any alleged discharges from the Keegan or MSLA 1-D landfills beyond publicly available information related to the New Jersey Department of Environmental Protection’s (“NJDEP”) involvement at the sites.

The following individual has discoverable information relating to WMI's lack of successor liability for any activities by PRSI or the MSLA at the Keegan and MSLA 1-D:

Name/Address
Linda J. Smith, Corporate Secretary 1001 Fannin Street, Suite 4000 Houston, TX 77002

*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:** WMI does not, and has never, owned either the Keegan or MSLA 1-D landfills. WMI has no information regarding the identity or contact information for any past or present owners, lessees or operators of those landfills other than individuals and entities identified in the nexus packages for the sites already in the possession of Third-Party Plaintiffs.

*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, WMI has no discoverable documentation relating to any discharges of hazardous substances from the Keegan or MSLA 1-D landfills other than publicly available documentation related to the involvement of the NJDEP at those sites, which would fall within the category of Excepted Information.

Documentation of WMI's lack of successor liability for any activities by PRSI or the MSLA at the Keegan or MSLA 1-D landfills was provided to counsel for Third-Party Plaintiffs by letter dated November 25, 2009, and is also located in the offices of Manko, Gold, Katcher & Fox LLP, counsel for WMI, at 401 City Avenue, Suite 500, Bala Cynwyd, PA 19004.

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: January 5, 2009

Respectfully submitted,



Robert D. Fox (*Pro Hac Vice* Counsel)

Christopher D. Ball

Manko, Gold, Katcher & Fox, LLP

401 City Avenue, Suite 500

Bala Cynwyd, PA 19004

(484) 430-2358

[rfox@mgkflw.com](mailto:rfox@mgkflw.com) // [cball@mgkflaw.com](mailto:cball@mgkflaw.com)

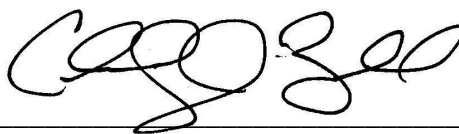
Attorneys for Third-Party Defendant,

Waste Management, Inc.

**CERTIFICATION OF SERVICE**

I, Christopher D. Ball, an attorney-of-law of the State of New Jersey, do hereby state upon my oath that I have served the Initial Disclosures of Waste Management, Inc. electronically via posting on Sfile upon all parties which have consented to service by posting, and upon the attached list of counsel of record by depositing the same with the United States Postal Service.

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



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Christopher D. Ball  
Attorney for Third-Party Defendant,  
Waste Management, Inc.

Dated: January 5, 2010

**THIRD-PARTY DEFENDANTS SERVICE LIST**

Thomas M. Egan, Esquire  
Assistant Municipal Attorney  
City of Clifton Law Department  
900 Clifton Avenue  
Clifton, NJ 07013  
*Attorney for Third-Party Defendant  
City of Clifton*

Eric S. Aronson, Esquire  
Greenberg Traurig, LLP  
200 Park Avenue  
Florham Park, NJ 07932  
*Attorney for Third-Party Defendant  
Clean Earth of North Jersey, Inc.*

Michael v. Calabro  
Law Offices of Michael V. Calabro  
466 Bloomfield Avenue, Suite 200  
Newark, NJ 07107  
*Attorney for Third-Party Defendant  
Roman Asphalt Corporation*

Gustavo Garcia  
Municipal Attorney  
Township of Irvington  
Irvington Municipal Building  
Civic Square  
Irvington, NJ 07111  
*Attorney for Third-Party Defendant  
Township of Irvington*

John P. McGovern  
Assistant City Attorney  
City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
*Attorney for Third-Party Defendant  
City of Orange*

John A. Daniels, Esquire  
Daniels & Daniels LLC  
6812 Park Avenue  
Guttenberg, NJ 07093  
*Attorney for Third-Party Defendant  
Passaic Pioneers Properties Company*

Carl R. Woodward, III, Esquire  
Brian H. Fenlon, Esquire  
Carella, Byrne, Bain, Gifillan, Cecchi,  
Stewart & Olstein  
5 Becker Farm Road  
Roseland, NJ 07068  
*Attorney for Third-Party Defendant  
Township of Cranford*