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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. L-9868-05 (PASR)
	:	
	:	CIVIL ACTION
	:	
Plaintiffs,	:	<b>FIRST SUPPLEMENT TO</b>
v.	:	<b>THIRD-PARTY INITIAL</b>
	:	<b>DISCLOSURE OF DEFENDANT,</b>
	:	<b>CBS CORPORATION</b>
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, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

Third-Party Defendant, CBS Corporation (“CBS”), hereby provides this First Supplement to Third-Party Initial Disclosure pursuant to Case Management Order (“CMO”) XII and prior

CMOs incorporated therein by reference and, in accordance with the terms of the January 31, 2011 Consent Order (“Consent Order”) applicable to certain Third-Party Defendants.

### **GENERAL OBJECTIONS AND STATEMENTS**

1. CBS generally objects to the production of documents and other information on the following grounds:

- (i) the documents are not relevant to the issues in this case and are not reasonably calculated to lead to the discovery of admissible evidence;
- (ii) production of the documents creates an undue burden on CBS;
- (iii) CBS is not in the possession of the documents and/or the documents are not reasonably accessible by CBS;
- (iv) the documents are a matter of public record which are equally accessible to Third-Party Plaintiffs;
- (v) the documents are specifically excepted from production pursuant to CMO VIII, paragraphs 4(a), 4(b), 4(c), 4(d), 4(e), 4(f) and 4(g) or other applicable Orders; and
- (vi) the documents are subject to an applicable privilege, including the Attorney-Client Privilege, the Work Product Doctrine, the Joint Defense Privilege, and/or the Common Interest Doctrine. These disclosures are not intended to prejudice or waive any privileges or objections CBS may have with respect to any outstanding or subsequent requests for discovery.

2. CBS’ production of Documents shall not mean that CBS concedes or agrees that any of the information or Documents provided in response to the production requirements under the applicable CMOs are relevant to this litigation. CBS reserves the right to object to the admissibility of any information or documents produced if any Party to this litigation seeks to use any such information or Documents as evidence.

3. “Documents”, excluding electronic e-mail and Electronically Stored Information, shall have the meaning set forth in this Court’s August 11, 2009 Order for Preservation of Documents and Data.

4. “Alleged Discharges” shall have the meaning set forth in the Court’s CMO VIII.

5. “Sites”, per CMO VIII, shall be defined as those sites or properties with which a Third-Party Defendant is associated in a Third-Party Complaint.

6. Document production requirements are set forth in CMO XII, paragraph 21, as amended and supplemented by the terms of the Consent Order and those terms of CMO VIII and CMO V incorporated by reference in CMO XII, paragraph (1) (the “Amended Production Requirements”). To the extent requirements set forth in the Amended Production Requirements are repetitive, burdensome and/or unfairly place a duty of inquiry on Third-Party Defendants as to Newark Bay Complex locations other than the Sites, disclosure should not be provided with reference to the Amended Production Requirements and CMO XII, paragraph 21(c) unless otherwise noted and CBS interprets paragraph 21(b) as not requiring CBS to conduct any unreasonable inquiry or analysis regarding such other sites, including, but not limited to, any inquiry or analysis to determine which site may be relevant.

7. Except as otherwise provided, Documents subject to claims of privilege or work product are detailed in a log that is being furnished concurrently with this First Supplement and in accordance with the August 11, 2009 “Agreed Order Regarding Documents Withheld From Production” and/or “Confidential Information Order” as appended to CMO VIII.

8. In accordance with the Court’s August 11, 2009 “Agreed Order Regarding Documents Withheld From Production” and CMO XII, paragraph 21(d) or to the extent it would cause an undue burden, CBS has neither produced nor logged privileged Documents or attorney work product materials created after the commencement of this action and with respect to this action, or those Documents which are communications regarding, or which, reflect the activities of the Cooperating Parties Group, the Small Parties Group and/or the Wolff & Samson Joint

Defense Group. For all such Documents, CBS asserts confidentiality and/or attorney-client privilege and/or protection under the Joint Defense, Common Interest and/or Work Product Doctrines.

9. CBS' investigation of this matter is continuing. Accordingly, it reserves the right to supplement, clarify, and revise these disclosures at any time prior to trial to the extent additional information becomes available or is obtained through discovery.

10. These general objections and statements apply to and are incorporated in each of CBS' responses as if specifically set forth in a response below.

11. This production supplements the production made by letter dated March 21, 2011, to Charles M. Crout, and included a disk containing documents Bates stamped CBS-NJ000001-001855.

**PRODUCTION AS TO PARAGRAPH 21(b) OF CMO XII**

*Copies of all non-privileged Documents other than electronic e-mail discovery, that relate to:*

- (i) *the alleged discharge of any hazardous wastes, hazardous substances, pollutants or contaminants ("Hazardous Materials") to the Newark Bay Complex;*

**RESPONSE:**

CBS objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Westinghouse Electric Site at Orange Street, Newark, NJ ("Westinghouse Orange Street Site"). CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

- (ii) *the potential pathways and methods by which the Hazardous Materials have been released to the Newark Bay Complex, as well as the quantity, nature and toxicity of such Hazardous Materials.*

**RESPONSE:**

CBS objects to this request to the extent it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the Westinghouse Orange Street Site. CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

- (iii) *other actions relating to properties or operations that may have adversely impacted the environmental condition of the Newark Bay Complex.*

**RESPONSE:**

CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. CBS is not producing any Documents allegedly responsive to this request.

- (iv) *the costs and damages sought in connection with any alleged discharge of Hazardous Materials.*

**RESPONSE:**

CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. CBS further objects to this request on the basis that all cross-claims and counter-claims asserting statutory or common law contribution or indemnification and Fourth-Party claims are stayed in the present action and, as such, CBS has made no such claim against Parties in this action at this time. Based on the foregoing, CBS is not producing any Documents responsive to this request.

**PRODUCTION AS TO PARAGRAPH 21(c)**

1. *A copy of all Documents relating to the following information for the Site(s), properties and/or operation with which the Third-Party Defendant is associated in the Third-Party Complaints:*

- (i) *the release or discharge of Hazardous Materials from or at that Third-Party Defendant's properties or operations.*

**RESPONSE:**

CBS objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the Westinghouse Orange Street Site. CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

- (ii) *the operations, manufacturing and/or production processes, any Hazardous Materials stored or utilized on the property and any sampling that took place on the property and any sampling or testing of the materials, by-products or waste products used in connection therewith.*

**RESPONSE:**

CBS objects to this request to the extent that it assumes or concludes that any Hazardous Materials were stored or utilized at the Westinghouse Orange Street Site for which CBS has any liability, responsibility and/or obligation. CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

- (iii) *sampling results from environmental, chemical, or biological testing conducted at that Third-Party Defendant's properties.*

**RESPONSE:**

CBS objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the Westinghouse Orange Street Site. CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

- (iv) *any communications involving that Third-Party Defendant in any branch, department, agency or instrumentality of municipal, state or federal government relating to any discharges or releases of Hazardous Materials or this litigation.*

**RESPONSE:**

CBS objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the Westinghouse Orange Street Site. CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

- 2. *Any Documents relating to any industrial waste-containing Hazardous Materials that was transported to, processed or treated at, or discharged from any of the Sites and/or properties to which a Third-Party Defendant is associated in the Third-Party Complaints.*

**RESPONSE:**

CBS objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the Westinghouse Orange Street Site. CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed CD.

3. *Any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy said judgment.*

**RESPONSE:**

CBS limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. CBS has no Documents responsive to this request.

Dated: January 31, 2012

Respectfully submitted,

BABST, CALLAND, CLEMENTS and  
ZOMNIR, P.C.

/s/ Mark D. Shepard  
Mark D. Shepard, Esq.  
Lindsay P. Howard, Esq.