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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
	:	
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>SUPPLEMENTAL THIRD-PARTY DISCLOSURE OF SEQUA CORPORATION</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 Sequa Corporation (“Respondent”) hereby provides its Supplement to Initial Disclosures pursuant to Case Management Order (“CMO”) XII and prior CMOs incorporated therein by reference.

### **General Objections and Reservations**

1. Respondent objects to the Document Production requirements set forth in CMO XII, paragraphs 21(b) and (c) (“Document Production requirements”) to the extent they purport to impose obligations on it that are not imposed by, or are otherwise inconsistent with, the New Jersey Court Rules.

2. Respondent objects to the Document Production requirements to the extent they seek or require the disclosure of information or documents that are protected from discovery by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, rule, immunity, protection, or duty of confidentiality that precludes or limits production or disclosure of information. Inadvertent disclosure or production of such information or documents shall not be deemed a waiver of the attorney-client privilege, the work product doctrine, and/or any other applicable privilege, rule, immunity, protection, or duty of confidentiality.

3. Respondent objects to the Document Production requirements to the extent they impose on it a duty to seek out documents not in its possession, custody, or control.

4. Respondent objects to the Document Production requirements to the extent they are overly broad and unduly burdensome.

5. Respondent objects to the Document Production requirements to the extent they are vague and ambiguous.

6. Respondent objects to the Document Production requirements to the extent they call for it to make legal conclusions.

7. Respondent objects to the Document Production requirements to the extent the

documents sought are not relevant to the specific claim or defense of any party, not relevant to the subject matter of the lawsuit, and not reasonably calculated to lead to the discovery of admissible evidence.

8. Respondent objects to the Document Production requirements to the extent they contain requests for documents that are duplicative of each other.

9. Respondent objects to the Document Production requirements to the extent they purport to require it to perform anything more than a reasonable and diligent search for documents from readily accessible sources where responsive documents reasonably can be expected to be found.

10. In producing documents responsive to the Document Production requirements, Respondent does not in any way waive, intend to waive, or prejudice, but rather intends to preserve and is preserving:

a. All objections as to the competency, relevancy, materiality, and admissibility of any documents produced in response to CMO XII, paragraph 21;

b. All objections as to vagueness, ambiguity, or other infirmity in the form of the Document Production requirements, and any objections based on the undue burden imposed thereby;

c. All additional objections should Respondent discover additional grounds for objecting during the course of this matter;

d. All rights to object on any ground to the use of any of the documents produced in response to CMO XII, paragraph 21 in any subsequent proceedings, including the trial of this or any other lawsuit;

e. All rights to object on any ground to any other discovery requests

involving or related to the subject matter of CMO XII, paragraph 21;

f. The right to revise, correct, supplement or clarify any of the responses to CMO XII, paragraph 21 any time prior to trial to the extent additional information becomes available or is obtained through discovery or to the extent the claims brought by or alleged against Respondent in this litigation are amended;

g. The right to rely on any facts, documents or other evidence that may develop or come to Respondent's attention during the course of this matter; and

h. Any and all privileges and/or rights under the New Jersey Court Rules, applicable statutes, or the common law, including, without limitation, the attorney-client privilege, the work product doctrine, the common interest doctrine, confidentiality, trade secret, State and Federal Homeland Security confidentiality and any other applicable protection.

#### **Comments**

1. "Documents" shall have the meaning set forth in this Court's August 11, 2009 Order for Preservation of Documents and Data, with the exception that "Documents" shall not include electronic e-mail and Electronically Stored Information.

2. "Alleged Discharges" shall have the meaning set forth in the Court's CMO VIII, namely "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."

3. "Sites," per CMO VIII, shall be defined as those "site(s) and/or properties with which the disclosing party is associated in the Third-Party Complaint."

4. "Excepted Information," per CMO VIII, includes the following:

(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,” see CMO VIII, paragraph 4(a), as well as information produced under CMO XII, paragraph 21(a).

(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’).” See CMO VIII, paragraph 4(b). We believe information received from such agencies is included within the exception.

(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 system.” See CMO VIII, paragraph 4(c).

(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.” See CMO VIII, paragraph 4(d).

(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.” See CMO VIII, paragraph 4(e).

(f) “Information previously produced to Defendants.” See Paragraph 4(f).

(g) “Information that falls within the attorney-client privilege and/or the attorney work product privilege.” See CMO VIII, paragraph 4(g).

5. Document Production requirements are read in concert with CMO VIII, paragraphs 3 and 4, and CMO V, paragraph 8, which are incorporated by reference in CMO XII, paragraph 1. In particular, Document Production requests are answered with reference to the definitions of “Alleged Discharges” as defined in CMO VIII, paragraph 3, and “Excepted Information” from CMO VIII, paragraph 4. Additionally, Document Production requests are understood in conjunction with specific allegations against Respondent in the Third-Party Complaint. To the extent requirements set forth in CMO XII, paragraph 21 are repetitive, burdensome and/or unfairly place a duty of inquiry on Respondent as to the Newark Bay Complex locations other than the Sites, disclosures herein are provided with reference to CMO XII paragraph 21(c) unless otherwise noted. With respect to CMO XII, paragraph 21(b), reference is made to information previously furnished by the JDG in connection with CMO V, paragraph 8.

6. Documents subject to claims of privilege, work product, confidentiality, or trade secret will be detailed in a log to be furnished as soon as practicable following the production in accordance with the August 11, 2009 “Agreed Order Regarding Documents Withheld from Production” and/or “Confidential Information Order” as appended to CMO VIII.

7. Without waiving any objections, documents relating to transactions between Respondent and the Bayonne Barrel & Drum Site will be provided in electronic format on the enclosed disc. By way of further response, Respondent herein incorporates by reference

responsive, non-privileged documents regarding that site in the possession of the Bayonne Barrel & Drum Site PRP Group, which are being produced in electronic format on disc and/or made available for inspection and copying by K&L Gates LLP.

**Production as to Paragraph 21(c)**

1. A copy of all Documents relating to the following information for the site(s), properties and/or operations 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** - Respondent limits its response in accordance with Comment Paragraphs 1-7 above. Documents responsive to this request, to the extent available, are on the enclosed disc or are included in the document production submitted by K&L Gates LLP, Common Counsel for the Bayonne Barrel & Drum Site PRP Group.

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** - Respondent limits its response in accordance with Comment Paragraphs 1-7 above. Documents responsive to this request, to the extent available, are on the enclosed disc or are included in the document production submitted by K&L Gates LLP, Common Counsel for the Bayonne Barrel & Drum Site PRP Group.

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

**Response** - Respondent limits its response in accordance with Comment Paragraphs 1-7 above. Documents responsive to this request, to the extent available, are on the enclosed disc or are included in the document production submitted by K&L Gates LLP, Common Counsel for the Bayonne Barrel & Drum Site PRP Group.

iv. any communications involving that Third-Party Defendant and 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** - Respondent limits its response in accordance with Comment Paragraphs 1-7 above. Documents responsive to this request, to the extent available, are on the enclosed disc or are included in the document production submitted by K&L Gates LLP, Common Counsel for the Bayonne Barrel & Drum Site PRP Group.

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 with which a Third Party Defendant is associated in the Third Party Complaints.

**Response** - Respondent limits its response in accordance with Comment Paragraphs 1-7 above. Documents responsive to this request, to the extent available, are on the enclosed disc or are included in the document production submitted by K&L Gates LLP, Common Counsel for the Bayonne Barrel & Drum Site PRP Group.

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** – Respondent limits its response in accordance with Comment Paragraphs 1-7 above. Documents responsive to this request, to the extent available, are on the enclosed disc or are included in the document production submitted by K&L Gates LLP, Common Counsel for the Bayonne Barrel & Drum Site PRP Group. Respondent’s production of insurance policies shall not be construed as a representation that coverage is available under these policies.

**Production as to Paragraph 21(b)**

Copies of all non-privileged Documents other than electronic email 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** - See Comment Paragraphs 1-7 above. See Response to Paragraph 21(c) 1, i above.

(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** - See Comment Paragraphs 1-7 above. See Response to Paragraph 21(c) 1, i - iv above.

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

**Response** - See Comment Paragraphs 1-7 above.



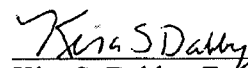
(iv.) the costs and damages costs and damages sought in connection with any alleged discharge of Hazardous Materials.

**Response** - See Comment Paragraphs 1-7 above. See Response to Paragraph 21(c) 3. Respondent further notes that all cross-claims and counterclaims asserting statutory or common law contribution or indemnification and Fourth-Party claims are stayed in the present action and, as such, it has made no such claim against parties in this action at this time.

Dated: March 28, 2011

Respectfully submitted,

Latham & Watkins LLP

  
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Kira S. Dabby, Esq.  
*Attorneys for Third-Party Defendant  
Sequa Corporation*