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 Attorneys for Third-Party Defendant  
 E.M. Sergeant Pulp & Chemical Co.

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,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, RESPOL S.A., YPF, S.A. YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION: ESSEX COUNTY

DOCKET NO. ESX-L-9868-05 (PARS)

CIVIL ACTION

**E.M. SERGEANT PULP &  
 CHEMICAL CO.'S  
 INITIAL DISCLOSURE**

Third-Party Defendant E.M. Sergeant Pulp and Chemical Co. (hereinafter "E.M. Sergeant"), by and through its attorneys, Zarwin Baum DeVito Kaplan Schaer Toddy, P.C., and in accordance with Case Management Order No. VIII, hereby provides its Initial Disclosure as follows:

**RESERVATIONS**

1. E.M. Sergeant reserves all objections to the production of any documents or other information on any ground, including relevance and undue burden, and all applicable privileges,

including the attorney-client privilege, the work product doctrine, the common interest doctrine, and any other applicable privilege or protection. These disclosures are made without waiver or admission of any kind, including prejudice to or waiver of any privileges or objections E.M. Sergeant may have with respect to any requests for discovery.

2. E.M. Sergeant makes this disclosure of witnesses, documents and/or information in good faith and based upon the information now available to it. E.M. Sergeant reserves the right to supplement, clarify, and revise these disclosures, if necessary, to the extent additional information becomes available or is obtained through discovery, or otherwise. Further, E.M. Sergeant reserves the right to amend these disclosures to the extent the claims brought by or alleged against E.M. Sergeant in this litigation are amended.

3. The time period covered by the allegations in Plaintiffs' Second Amended Complaint and Third-Party Plaintiffs' Third-Party Complaint "B" (collectively "Complaints") encompasses at least six decades. The geographic scope of the Complaints is 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. Accordingly, the scope of inquiry required of E.M. Sergeant is overly broad and burdensome.

4. E.M. Sergeant objects to the form of these Initial Disclosure requests to the extent that they assume or conclude that there were any discharges into the Newark Bay Complex by E.M. Sergeant or the site or property with which E.M. Sergeant is alleged to be associated in the Third-Party Complaint.

## 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").

*E.M. Sergeant objects to this request to the extent that it assumes or concludes that there was a discharge or release of pollutants, contaminants, or hazardous substances into the Newark Bay Complex from the "E.M. Sergeant Site" as defined in Paragraph 1164 of Third-Party Complaint "B". E.M. Sergeant further objects to the term "associated" in the foregoing instruction since that term is vague, ambiguous and susceptible of varying meanings. Subject to, and without waiver of the foregoing specific objections, E.M. Sergeant responds that the following persons may have some knowledge responsive to the foregoing request:*

*Mr. Albert F. Reisch, E.M. Sergeant*

*Mr. Frank Capone, Passaic Valley Sewerage Commission Inspector*

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).

*The persons identified in response a. may have discoverable information that E.M. Sergeant may use in its defenses. Mr. Scott Reisch of E.M. Sergeant and Jeffrey M. Riedl, Esquire also may possess such information. In addition, although it is E.M. Sergeant's understanding that this request does not call for the identification of experts or consultants, E.M. Sergeant reserves the right to retain and employ expert consultants and witnesses in its defense of this litigation.*

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.

*E.M. Sergeant objects this request on the grounds that the term "associated" is vague, ambiguous, and given to various interpretation. Subject to and without waiver of the foregoing, its response is as follows:*

*The property was owned by:*

- 1. E.M. Sergeant, from on or about October 22, 1942 to on or about April 19, 1984*
- 2. Diamond Shamrock Chemicals Company, beginning on or about April 19, 1984*

*Sergeant Chemical Co. was a tenant at the Site from in or around 1942 until it dissolved on or about September 4, 1981.*

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.

***E.M. Sergeant has no knowledge regarding the inability of any of individuals identified pursuant to paragraph (a), (b) or (c) above, to testify due to age, infirmity, or incompetency within 12 months following the date of this Initial Disclosure.***

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.

***E.M. Sergeant objects to this request to the extent that it assumes or concludes that there was an "Alleged Discharge" from the "E.M. Sergeant Site" as defined in Paragraph 1164 of Third-Party Complaint "B". Subject to, and without waiver of the foregoing specific objections, documents or electronically stored information in E.M. Sergeant's possession, custody or control responsive to the forgoing request were produced by Third-Party Plaintiffs Maxus Energy Corporation and/or Tierra Solutions, Inc. via a "Nexus Package," are available on the Sfile Electronic Case Management Platform in the above-captioned matter, and constitute "Excepted Information".***

**ZARWIN BAUM DeVITO  
KAPLAN SCHAER TODDY, P.C.**

BY:



MARK L. FREED  
Attorneys for Third-Party Defendant E.M.  
Sergeant Pulp & Chemical Co.

Date: February 18, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that E.M. Sergeant's Initial Disclosure was served upon all parties that have consented to electronic service by posting to <http://njdepvoce.sfile.com> on February 18, 2010. Other parties, as set forth on the attached counsel list, were served on February 18, 2010 via first class mail.

**ZARWIN BAUM DeVITO  
KAPLAN SCHAER TODDY, P.C.**

BY:



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MARK L. FREED  
Attorneys for Third-Party Defendant E.M.  
Sergeant Pulp & Chemical Co.

Date: February 18, 2010

**Third-Party Defendants for Regular Service as of February 5, 2010**

NAMED THIRD-PARTY DEFENDANT	THIRD-PARTY COMPLAINT	NOTICE OF APPEARANCE: COUNSEL OF RECORD
Borough of Hasbrouck Heights	A	Richard J. Dewland Coffey & Associates 465 South Steet Morristown, NJ 07960 973.539.4500 rjd@coffeylaw.com
City of Orange	A	John P. McGovern Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 - fax jmcgovern@ci.orange.nj.us
Passaic Pioneers Properties Company	B	John A. Daniels Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 - fax jad1903@gmail.com
Town of Harrison	A	Norma Garcia Castano Quigley LLC 1120 Bloomfield Ave. West Caldwell, NJ 07006 973.808.1234 973.808.8480 - fax ngarcia@cq-law.com
Township of Irvington	A	Gustavo Garcia Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 - fax
Township of Union	A	Frank P Arleo Arleo, Donohue & Biancamano, LLC 622 Eagle Rock Ave. West Orange, NJ 07052 973.736.8660 973.736.1712 - fax