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Attorneys for Third-Party Defendant  
Elan Chemical Company, 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

: **ELAN CHEMICAL COMPANY, INC.'S**  
: **INITIAL DISCLOSURE STATEMENT**

In accordance with the Court's Case Management Order VIII, entered August 11, 2009 ("CMO VIII"), and the New Jersey Rules of Court, Third-Party Defendant Elan Chemical Company, Inc. ("Elan"), hereby provides an Initial Disclosure Statement containing the specific information required by CMO VIII, Section 3(a)-(e). Elan reserves the right to supplement and/or amend same as more information becomes available during the course of continuing investigation and discovery, inasmuch as these disclosures are based on information available to Elan upon a reasonable investigation as of this date.

### **Reservations/Limitations**

1. Elan reserves the right to object to the use of these disclosures, in whole or in part, at any time (including at trial of this or any other action) and for any purpose on the grounds of relevancy, competency, materiality, admissibility, hearsay, privilege, work-product immunity, or for any other reason.

2. Elan reserves the right to object to the production of any documents or other information on any ground, including undue burden, relevance and to assert any applicable privilege, including the work product, the attorney-client privilege, the work product doctrine, the common interest doctrine, and any other applicable privilege or protection.

3. These disclosures are not intended to prejudice or waive any privileges or objections Elan may have with respect to any outstanding or subsequent requests for discovery.

4. Elan's investigation in this matter is on-going. Accordingly, Elan reserves the right to supplement, amend, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, Elan reserves the right to amend these disclosures to the extent the claims brought by or alleged against Elan in this litigation are amended.

5. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint is quite long and encompasses at least six decades. The geographic scope of the Second Amended Complaint is also quite 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 Defendants is accordingly overbroad and potentially burdensome. Elan is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

6. All capitalized terms not otherwise defined herein shall have the meaning

ascribed to them in CMO VIII.

7. All of the disclosures set forth below are made subject to the above objections and qualifications.

**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”);**

Elan objects to this request to the extent that it concludes that there was any discharge or release of pollutants, contaminants and/or hazardous substances from Elan’s site at 268 Doremus Ave., Newark, New Jersey (the “Site”). In an attempt to be responsive, Elan states that the below listed individuals may have discoverable information regarding environmental compliance, operations, investigation and remediation at the Site. Elan does not consent to or authorize any other party to communicate with Elan’s employees, former employees or individuals with privileged information and does not consent to or authorize any communications otherwise prohibited by all applicable rules of professional conduct. Individuals designated in this disclosure as Elan employees and/or former employees should be contacted through Elan’s undersigned counsel. Elan has identified the following individuals who may have discoverable information in relation to the ownership, operation, and conditions at the Site.<sup>1</sup>

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<sup>1</sup> References to “Elan-Conn,” “Old Elan-NJ,” and “FII” carry the meanings set forth in Initial Disclosure “(c)” herein.

<u>Name</u>	<u>Address</u>	<u>Telephone</u>	<u>Subject</u>
Jerome Scharf	P.O. Box 220 331 Great Neck, NY 11022	516-883-5358	Former President; Former shareholder; Operations prior to 2005; Former employee
David Weisman Deceased			
Jerry Guerrero	27 Miriam Drive Matawan, NJ 07747	732-566-6812	Former President; Former shareholder; Chemical processes and operations; Former employee
John Vassiliades Deceased			
Ira Kapp	19 Haytown Road Lebanon, NJ 0883	908-236-6476	Former President; Former shareholder; Chemical processes and operations; Former employee
David Katzman	Unknown	Unknown	Former shareholder
Karol Sulimirski	703 Cypress Point Street Alpharetta, GA 30022	678-461-0911	Former head of maintenance and environmental compliance; Former employee
Al Roque	1154 Meister Street South Plainfield, NJ 07080	Unknown	Environmental compliance, chemical processes and operations; Former employee
Yuri Langer	26 Pamona Road Suffern, NY 10901	Unknown	Environmental compliance and chemical processes; Former employee
Herman Kaplan	Unknown	Unknown	Former shareholder, Elan-Conn/Old

			Elan-NJ
Herbert Halpern	Unknown	Unknown	Former shareholder, Elan-Conn/Old Elan-NJ
Harold Kwart	Unknown	Unknown	Former shareholder, Elan-Conn/Old Elan-NJ
Jocelyn Kapp Manship	268 Doremus Avenue Newark, NJ	973-344-8014	CEO Company Operations

New Jersey  
Department of  
Environmental  
Protection:  
Ed Phillips  
Arnold Schiff  
Jodie Stein  
Christopher Gibbons  
Bruce F. Doyle

Environmental Waste Management Associates Chris Langewich Daniel Hartman	Lanidex Center 100 Misty Lane P. O. Box 5430 Parsippany, New Jersey 07054	973-560-1400	Past environmental consultants, environmental sampling
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ENSR			Phase I Environmental Assessment October, 1992
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**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**

Elan has identified the following individuals who may have discoverable information. Elan's investigation is ongoing and Elan reserves the right to supplement this response if and when additional responsive information becomes available.

<u>Name</u>	<u>Address</u>	<u>Phone</u>
Karol Sulimirski	703 Cypress Point Street Alpharetta, GA 30022	678-461-0911
Al Roque	1154 Meister Street South Plainfield, NJ 07080	Unknown
Yuri Langer	26 Pamona Road Suffern, NY 10901	Unknown

Elan hereby incorporates by reference, as if fully stated herein, each individual listed in Plaintiffs' Initial Disclosure Statements and Defendants' Initial Disclosure Statements. Elan also reserves the right to identify any individuals disclosed in response to interrogatories or disclosures by Plaintiffs, Defendants, or Third-Party Defendants.

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**

In addition to the Reservations stated above and expressly subject to them, Elan provides the following information regarding the past and present owners and operators of the Site:

In 1968, a corporation under the name Elan Chemical Company ("Elan-Conn"), incorporated under the laws of the State of Connecticut, acquired the Site from Essex Chemical Co. In 1971, the owners of Elan-Conn (Herbert Halper, Herman Kaplan and Harold Kwart), organized a New Jersey corporation and liquidated Elan-Conn into the new New Jersey corporation. ("Old Elan-NJ").

In September, 1977, Felton International, Inc. ("FII") organized the present Elan Chemical Company, Inc. ("Present Elan") for the purpose of acquiring Old Elan-NJ. Present Elan was originally incorporated by FII under the name Elan Acquisition Corporation. Elan Acquisition Corporation then changed its name to Elan Chemical Company, Inc. (referred to above as "Present Elan").

Thereafter, until July of 1985, Present Elan conducted its business operations as a New subsidiary of FII. In July 1985, FII terminated its operations and the predecessors of the current shareholders purchased the stock of Present Elan from Fel Corporation.

**Block 5014 – Lots 8 & 8A**

<u>Name</u>	<u>Site</u>	<u>Dates of Ownership</u>
Essex Chemical Co.	268 Doremus Avenue Newark, NJ	1961 to 1968
Elan Chemical Company "Elan-Conn"	268 Doremus Avenue Newark, NJ	1968 to 1971
Elan Chemical Company "Old Elan-NJ"	268 Doremus Avenue	1971-December 30, 1977
Elan Chemical Company, Inc. ("Present-Elan")	268 Doremus Avenue Newark, NJ	December 30, 1977 to December 30, 1977

<u>Name</u>	<u>Site</u>	<u>Dates of Ownership</u>
New Jersey Economic Development Authority	268 Doremus Avenue Newark, NJ	December 30, 1977 to December 30, 1977
Elan Acquisition Corporation (changed its name to Elan Chemical Company, Inc.)	268 Doremus Avenue Newark, NJ	December 30, 1977 to Present

**Block 5014, Lot 30**

Consolidated Rail Corporation		March 30, 1976 to April 24, 1983
Elan Chemical Company, Inc.		April 24, 1983 to present

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**

Elan has no knowledge whether any of the identified individuals would be unable to testify due to age, infirmity, or incompetency within the next 12 months.

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**

Elan objects to this request to the extent that it concludes there was any discharge or release of pollutants, contaminants, and/or hazardous substances either at the Site or off-site. Moreover, the fact that administrative or judicial proceedings have occurred to investigate and address potential environmental conditions does not lead to the conclusion that any potential contamination constitutes Alleged Discharges, as defined in CMO VIII. By disclosing the categories of documents identified below, Elan does not waive any applicable privileges attached to any individual document within these categories.

**Types of Documents**

**Location**

Responses to EPA Information Requests;  
Environmental compliance;

268 Doremus Avenue  
Newark, NJ



Environmental reports and sampling data;  
Correspondence with environmental  
consultants;  
Correspondence with government agencies;  
Permits, SPCC/DPCC Plans and related  
documents;  
Material Safety Data Sheets;  
Misc. internal correspondence and documents;  
Maps, photos, surveys and drawings of Site

Attorney's Files

Saiber LLC, Counsel to Elan  
18 Columbia Turnpike; Suite 200  
Florham Park, NJ

Copies of any documents related to permits and correspondence with government agencies may also be available from the DEP, EPA or other government agencies, as applicable.

Some or all of these documents may consist of information that falls within the definition of Exempted Information as such term is defined in CMO VIII.

Respectfully submitted,  
**Saiber LLC**,  
Attorneys for Third Party Defendant  
Elan Chemical Company, Inc.

By: Randi Schillinger  
Randi Schillinger, Esq.

Dated: February 17, 2010

Randi Schillinger, Esq.  
**SAIBER LLC**  
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Florham Park, New Jersey 07932  
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Fax: (973) 622-3349  
Attorneys for Third-Party Defendant  
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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
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OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA SOLUTIONS,  
INC., MAXUS ENERGY CORPORATION,  
REPSOL YPF, S.A., YPF, S.A., YPF  
HOLDINGS, INC. and CLH HOLDINGS,  
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MAXUS ENERGY CORPORATION and TIERRA  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**CERTIFICATION OF SERVICE**

Katherine A. Escanlar, in lieu of oath or affidavit, certifies that:

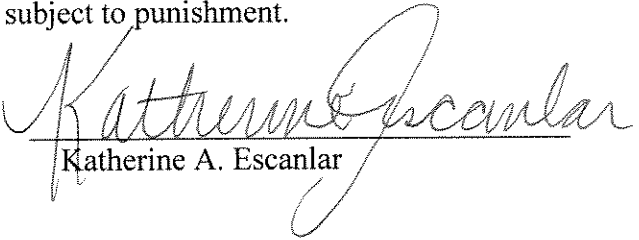
1. I am an attorney-at-law in the State of New Jersey and am an associate of the law firm of Saiber LLC, attorneys for Third-Party Defendant Elan Chemical Company, Inc. ("Elan") in the above captioned matter.

2. On February 17, 2010, I filed Elan's Initial Disclosures via the Sfile

website, which will be distributed to all counsel who have consented to such service.

5. On February 18, 2010, I also mailed a copy, via regular mail, to all counsel who have not consented to service by electronic posting.

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

  
Katherine A. Escanlar

Date: February 17, 2010

**Third-Party Defendants for Regular Service as of February 17, 2010**

<b>NAMED THIRD-PARTY DEFENDANT</b>	<b>THIRD-PARTY COMPLAINT</b>	<b>NOTICE OF APPEARANCE: COUNSEL OF RECORD</b>
Borough of Hasbrouck Heights	A	Richard J. Dewland, Esq. Coffey & Associates 465 South Street Morristown, NJ 07960 973.539.4500 <a href="mailto:rjd@coffeylaw.com">rjd@coffeylaw.com</a>
City of Orange	A	John P. McGovern, Esq. Assistant City Attorney City of Orange Township 29 North Day St. Orange, NJ 07050 973.266.4197 973.674.2021 – fax <a href="mailto:jmcgovern@ci.orange.nj.us">jmcgovern@ci.orange.nj.us</a>
Passaic Pioneers Properties Company	B	John A. Daniels, Esq. Daniels & Daniels LLC 6812 Park Ave. Guttenberg, NJ 07093 202.868.1868 201.868.2122 – fax <a href="mailto:Jad1903@gmail.com">Jad1903@gmail.com</a>
Township of Irvington	A	Gustavo Garcia, Esq. Municipal Attorney Township of Irvington Irvington Municipal Building Civic Square Irvington, NJ 07111 973.399.6637 973.399.6723 – fax <a href="mailto:audreyjackson30@hotmail.com">audreyjackson30@hotmail.com</a>