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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

: CIVIL ACTION

: **INITIAL DISCLOSURE OF  
SUNOCO, INC., SUNOCO, INC.  
(R&M) AND SUN PIPE LINE  
COMPANY**

Third-Party Defendants, Sunoco, Inc. f/k/a Sun Oil Co., Sun Pipe Line Company (improperly identified in the Third Party Complaint as Sun Pipeline Co.) and Sunoco, Inc. (R&M) f/k/a Sun Refining and Marketing Company (improperly identified in the Third Party Complaint as Sun Refining & Marketing Co.), for their Initial Disclosure and in accordance with this Court's Case Management Order VIII, Section 3, entered August 11, 2009 ("CMO VIII") and the New Jersey Court Rules, respond to the requests for information in Section 3(a) - (e) of CMO VIII (as retyped below in bold). These disclosures are based upon information reasonably

available to Third Party Defendants as of this date and do not purport to identify every witness, document or electronically stored information (“ESI”) possibly relevant to this case and/or 436 Doremus Avenue in Newark, NJ (the “Site”). By filing one disclosure, Third Party Defendants reserve the right and in no way waive the right to contest separateness of the named parties at a later stage in this matter.

### RESERVATIONS

(1) Third Party Defendants reserve the right to object to the production of any documents or other information on any ground, including but not limited to, relevance and undue burden, and to assert any applicable privilege, including but not limited to, the attorney-client privilege, the work-product doctrine, the common interest doctrine, and/or any other applicable privilege or protection. These disclosures are not intended to prejudice or waive any privileges or objections Third Party Defendants may have with respect to any outstanding or subsequent requests for discovery.

(2) Third Party Defendants’ investigation in this matter is ongoing. Accordingly, they reserve the right to supplement, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, Third Party Defendants reserve the right to amend these disclosures to the extent the claims brought or alleged against Third Party Defendants in this litigation are amended.

(3) The time period covered by the allegations in the Plaintiffs’ Second Amended Complaint and the Third-Party Plaintiffs’ Complaint “D” is quite long and is believed to encompass at least six decades. The geographic scope of the Second Amended Complaint and the Third-Party Plaintiffs’ Complaint “D” 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.” Third-Party Complaint “D”, ¶2. The scope of the inquiry required by Third-Party Plaintiffs is accordingly broad and burdensome. Third Party Defendants are engaged in a continuing investigation and reserve the right to supplement and modify these disclosures.

(4) Contact with any employees or former employees of Third Party Defendants must be made through outside counsel for Third Party Defendants.

**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:**

Third Party Defendants object to the extent that the question assumes or implies that there was a “discharge or release of pollutants, contaminants and/or hazardous substances” to the Newark Bay Complex from the Site with which Third Party Defendants were associated as referenced in Third Party Complaint “D”. Upon information and belief, Third Party Defendants state that the following entities or individuals may have discoverable information related to the environmental conditions at the Site; however, any information or documentation that certain of the following persons possess may be protected by the attorney-client privilege, the work-product doctrine, and/or other applicable privilege:

- Mark Taylor, current Sunoco, Inc. (R&M) employee, former Newark Terminal Manager during the period approximately 1990-1999, may have knowledge of operations, invoices and NPDES permits held at the Site;
- Russell Hammond, current Sunoco, Inc. (R&M) employee, Environmental Specialist during the period approximately 1993 - present, may have knowledge of investigatory and/or remedial work performed at the Site;
- Francis “Frank” Jencsik, Jr., former Sunoco, Inc. (R&M) employee, Bergenfield, NJ, may have knowledge of certain Environmental Incident Reports prepared during the 1980s as well as the environmental condition of the Site;
- Romeet Ahuja, current Newark Terminal Operations Manager, Sunoco Partners, LLC, 436 Doremus Avenue, Newark, NJ 07105, (973)465-3200, may have knowledge of operations and environmental permits issued to the Site;
- John McFadden, current Manager Marketing Terminals, Sunoco Partners, LLC, 2700 West Passyunk Ave. Philadelphia, PA 19145, (215)339-1316, may have knowledge of operations and environmental conditions at the Site;
- Carl “Gus” Borkland, current HES Manager, Sunoco Partners, LLC, 1735 Market Street, Ste. LL, Philadelphia, PA 19103, (215)977-6136, may have knowledge of operations, environmental conditions and environmental permits issued to the Site;
- Jeff McGill, current Environmental Compliance Manager, Sunoco Partners, LLC, 1735 Market Street, Ste. LL, Philadelphia, PA 19103, (215)246-8267, may have knowledge of operations, environmental conditions and environmental permits issued to the Site;
- Bryan Emilius, Melanie Pyle, Paul Rosenwinkel and/or other representatives from Resource Control Corporation (“RCC”), 1274 N. Church Street, Moorestown, NJ 08057, (856)273-1009, may have knowledge of the investigatory and/or remedial work performed at the Site from approximately 1999 to present;

- Deborah Woltjen and/or other representatives from Environmental Resources Management (“ERM”), 350 Eagleview Boulevard, Suite 200, Exton, PA 19341-1155, (610)524-7335, may have knowledge of the investigatory and/or remedial work performed at the Site during the relevant time period that ERM was involved and/or the environmental condition at the Site;
- David Puchalski, Jonathan McCollom and/or other representatives from the former Handex of New Jersey (“Handex”), unknown current address/phone number, who may have knowledge of the investigatory and/or remedial work performed at the Site during the period approximately 1993-1999 and/or the environmental condition at the Site;
- Manuel Nolau, Karl Delaney, Arnold Schiff, Ted Hayes and/or other current or former representatives from the New Jersey Department of Environmental Protection (“NJDEP”), 401 East State Street, P.O. Box 028, Trenton, New Jersey (609)292-1250, may have knowledge of investigatory and/or remedial activities undertaken at the Site, any alleged violations in permits and/or any enforcement action taken;
- Representatives of the Newark Fire Department, 1010 18th Avenue, Newark, New Jersey, 07107, (973)733-7424, may have knowledge of environmental conditions at the Site;
- Representatives of the U.S. Coast Guard, may have knowledge of surface water investigations near the Site;
- Andrew S. Grier and/or other representatives from the Essex County Regional Health Department, may have knowledge of environmental investigations near the Site;
- Matthew Garamone and/or other representatives from the U.S. Environmental Protection Agency (“EPA”), Region II, 2890 Woodbridge Avenue (MS-104), Edison, NJ 08837; and
- Metropolitan Petroleum Company of Jersey City may have knowledge of surface water discharges.

Contact with any current employees or former employees of Third Party Defendants must be made through outside counsel for Third Party Defendants.

Third Party Defendants further respond that there are likely hundreds of employees, contractors and other persons who have worked at and/or visited the Site throughout the time period that the Site has operated, some or all of whom could have knowledge of the Site conditions. Third Party Defendants reserve the right to amend the list above with persons identified during the course of discovery and as their investigation continues. Further, Third Party Defendants have not yet named any trial experts in this matter, and will do so in accordance with the N.J. Court Rules and/or any pertinent Case Management Orders that may be entered in this matter. Accordingly, such individuals are not named above.

**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:**

Third Party Defendants have not identified the persons who are responsive to this question but may use some or all of the individuals listed in response to (a) above and/or such other persons as will be identified in the investigation and/or during discovery to support its claims or defenses.

**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:**

After reasonable investigation, Third Party Defendants have identified the following information with regard to past and/or present owners, operators, and lessees of the Site as currently known. Third Party Defendants reserve the right to amend or supplement these disclosures as discovery and their investigation continues.

**Owners:**

References to a survey dated March 15, 1951, last revised August 1, 1988, indicate that, during various relevant times, the Site has consisted of 23.16 acres with approximately 1 acre under water.

On or about January 14, 1916, Newark Bay Smelting and Refining Co. conveyed a tract of land identified as Parcel A (believed to be approximately 6 acres) to Sun Company, a New Jersey corporation. In addition, by deed dated June 19, 1922, the State of New Jersey conveyed to Sun Company a parcel of land flowed by tide water believed to affect Parcel A. Newark Bay Smelting and Refining Co. is believed to have operated a foundry on the Site until approximately 1916.

On or about November 19, 1936, Balbach Smelting and Refining Co., conveyed a tract of land identified as Parcel B (no acreage known) to Sun Oil Company, a New Jersey corporation. Balbach Smelting and Refining Co. is believed to have operated a second foundry on the Site until approximately 1945.

On or about December 31, 1945, Continental Oil Company conveyed two tracts of land identified as Parcel C (believed to be approximately 5.9 acres) to Sun Oil Company, a New Jersey corporation. Continental Oil Company is believed to have operated a distribution facility on the Site until approximately 1936.

In 1951, a tract of land identified as Parcel D (no acreage known) was conveyed to Sun Oil Company. Prior to this time, deeds dated April 15, 1950 indicate that Chestnut Holding Co. and Tema Holding Co. transferred ownership over portions of this parcel to Harry A. Stiles. Final Judgment was recorded September 19, 1951 in Docket No. F-641-50 wherein Sun Oil Company was awarded the property from defendants Harry A. Stiles, et al.

Sun Company changed its corporate name to Sun Oil Company on or about December 15, 1922, and said Sun Oil Company merged into Sun Oil Company of Pennsylvania on or about September 30, 1971, with Sun Oil Company of Pennsylvania being the sole survivor. Sun Oil Company of Pennsylvania thereafter changed its corporate name to Sun Refining and Marketing Company on or about October 28, 1981, and said Sun Refining and Marketing Company changed its corporate name to Sun Company, Inc. (R&M) on or about December 31, 1991. Sun Company, Inc. (R&M) thereafter changed its corporate name to Sunoco, Inc. (R&M) on or about November 6, 1998.

Sunoco, Inc. (R&M), by deed dated April 26, 2002, effective February 8, 2002, transferred ownership of this property to Sunoco Partners Marketing & Terminals L.P., with an address at 1735 Market Street, Suite LL, Philadelphia, PA 19103 (but relocating shortly to 1818 Market Street, Philadelphia, PA 19103), tel. 215-977-3000.

#### **Lessees:**

References to a lease dated December 1, 1936, indicate that Sun Oil Company leased certain property at the Site to Middlesex Pipe Line Company with a right of way over adjoining property.

Upon information and belief, various parties are believed to have leased office space or other space at the Site, including but not limited to, New England Petroleum Corporation (as of December 15, 1977, leasing office space), Solar Oil Co., Inc. (as of April 8, 1983, leasing parking spaces for tractors and trailers), to Michael A. Bacigalupo (as of January 20, 1998, leasing a section of the terminal for a dispatcher's office and garage), Atlantic Star Trucking, Inc. (as of March 2, 1999, leasing a section of the terminal for a warehouse, distribution and offices), and Wing Electric of N.J., Inc. (as of August 8, 2000 leasing warehouse, parking and office space). Additionally, Sun Transport, Inc. is believed to have maintained office space at the Site for tug/barge operation during portions of the relevant time.

Moreover, various parties are believed to have held easement rights, pipeline rights and/or other rights over certain tracts at the Site, including but not limited to, U.S. Industrial Chemicals Inc.'s right to use railroad siding, a side track agreement from Continental Oil Company dated October 20, 1943, a pipeline easement dated June 4, 1991, to Newark Bay Cogeneration Partnership, L.P., a right of way permit dated September 7, 1977, to New Jersey Bell Telephone Company, and a pipeline easement dated July 31, 1981, to Sun Pipe Line Company.

Entities are believed to have entered into terminaling and/or other agreements at the Site, including but not limited to, a "Terminaling Agreement" between Sun Oil Company of Pennsylvania and New England Petroleum Corporation, a License Agreement dated July 11, 1963, to Sun Oil Company from Archer Daniels Midland Company for a pile cluster to be used by both parties for docking purposes, as well as various riparian grants from the State of New Jersey to third parties, including but not limited to, Ballard Oil Equipment Company, Inc., Balbach Smelting and Refining Company and Gottfried Krueger and William Scherer.

Also, beginning on or about August 18, 1986, Sun Transport, Inc. is believed to have leased to Sun Refining and Marketing Company the exclusive right to use a dock on the Passaic River for the loading and unloading of vessels.

**Operators:**

Upon information and belief, see response above under Owners/Lessees who may have been Operators of the Site during certain time periods. In addition, Sunmark Industries, Inc., was listed at certain relevant times as a permittee of the NPDES permit at the Site during at least a portion of the 1980s.

**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:**

Third Party Defendants are currently unaware of any individuals identified in (a), (b) or (c) who have a known inability to testify due to age, infirmity, or incompetency within 12 months following the date of these Initial Disclosures. Third Party Defendants further respond that there are likely hundreds of employees, contractors and/or other persons who have worked at and/or visited the throughout the time period that the Site has operated, some or all of whom could have knowledge of the Site and/or environmental conditions.

**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:**

Third Party Defendants object to the extent that these Initial Disclosures conclude that there were any Alleged Discharges, as that term has been defined. Further, the mere fact that judicial and/or administrative proceedings have occurred to investigate and address potential environmental conditions at the Site does not lead to the conclusion that any potential on-site contaminants constitute Alleged Discharges. During the relevant time period, Third Party Defendants have the following documents and/or electronically stored information (ESI) with respect to environmental conditions, compliance, investigation and remediation at the Site. Documents responsive to this request for disclosure are currently located at Sunoco, Inc. (R&M)'s business address located at 1735 Market Street in Philadelphia, PA 19103. Those

categories that are labeled with an asterisk (\*) may consist of documents that fall within the Excerpted Information.<sup>1</sup>

- Administrative Order(s)\*
- Correspondence with NJDEP\*
- Correspondence with environmental consultants and other agents\*
- Correspondence with other third parties\*
- Correspondence with the USEPA\*
- Declaration of Environmental Restrictions\*
- Documents related to oil/water separator discharge, including but not limited to, Discharge Monitoring Reports (DMRs)\*
- Engineer's Report of Oil/Water Separator
- Environmental Incident Reports\*
- Environmental Assessments\*
- EPA Potential Hazardous Waste Site Preliminary Assessments\*
- Hazardous Waste Manifests\*
- Internal correspondence, memoranda and Flash Reports\*
- Invoices
- Lab Analyses\*
- Materials submitted to the Interstate Sanitation Commission\*
- Maps and property surveys
- Memorandum of Agreement\*

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<sup>1</sup> Excerpted Information shall include the following documents or electronically stored information:

(a) Information, ("Information"), including, but not limited to, environmental, chemical, and/or biological testing of groundwater, surface water, soil or sediment (hereafter "Sampling Information") contained in the nexus packages produced pursuant to paragraph 8(e) of CMO V;

(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 (hereafter "Governmental Recipients");

(c) Information produced to any Licensed Site Remediation Professional (hereafter "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 data system;

(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;

(e) Information produced by a third-party defendant to a third-party plaintiff pursuant to the New Jersey Open Public Records Act or other freedom of information law or regulation;

(f) Information previously produced to Defendants; or

(g) Information that falls within the attorney-client privilege and/or work product privilege



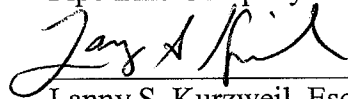
- NJDEP (Division of Waste) Inspection Reports, Incident Reports, logs, memoranda, Case Transfer Reports, and Investigation Reports\*
- New Jersey Pollution Discharge Elimination System Permits and supporting papers\*
- Reports and other information submitted to NJDEP, including but not limited to, Field Sampling data, AST Closure Reports, Remedial Action Progress Reports, RIW/RAW and Addendums \*
- Documents related to the Spill Prevention Control and Countermeasure Plan (SPCC)\*

Third Party Defendants further respond that there are ongoing efforts to identify and locate ESI. The parties have contemplated discussing a formal ESI procedure that will more specifically address the preservation and production format of responsive ESI. Consequently, these disclosures will be supplemented as required by the N.J. Court Rules and/or Case Management Orders entered in this matter.

Dated: December 23, 2009

Respectfully submitted,

McCarter & English, LLP  
Attorneys for Third-Party Defendant(s),  
Sunoco Inc., Sunoco, Inc. (R&M) and Sun  
Pipe Line Company




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Lanny S. Kurzweil, Esq.

**CERTIFICATE OF SERVICE**

I, Timothy Borkowski, hereby certify that a true and correct copy of the within Initial Disclosure was, pursuant to Section 5 of Case Management Order CMO VIII, served upon all parties which have consented to electronic service by posting to <http://njdepvocc.sfile.com> as well as served upon all parties (as listed below) that have not consented to electronic service via First Class, regular mail on this 23rd day of December 2009.

  
\_\_\_\_\_  
Timothy Borkowski

Date: December 23, 2009

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