

BRESSLER, AMERY & ROSS, P.C.  
A Professional Corporation  
325 Columbia Turnpike  
Florham Park, New Jersey 07932  
(973) 514-1200  
Attorneys for Third-Party Defendant,  
BASF Construction Chemicals, LLC

---

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,	:	DOCKET NO. L-9868-05 (PASR)
v.	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,	:	CIVIL ACTION
Defendants.	:	<b>SUPPLEMENTAL DISCLOSURE OF THIRD-PARTY DEFENDANT BASF CONSTRUCTION CHEMICALS, LLC</b>
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
Third-Party Plaintiffs,	:	
vs.	:	
3M COMPANY, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

---

Third-Party Defendant BASF Construction Chemicals, LLC (“BASF Construction Chemicals”) hereby provides its Supplemental 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 of those Third-Party Defendants who have received written confirmation that CMO XII paragraph 21(a) production of site files is complete from counsel for Third-Party Plaintiffs, together with any written agreement as to terms for timing, scope and manner of production reached under the Consent Order (collectively, the “Amended Production Requirements”).

### **Preliminary Statement**

Third-Party Plaintiffs have alleged in Third-Party Complaint B that BASF Construction Chemicals is liable for alleged discharges of hazardous substances from a former manufacturing facility that was located at 1 River Road, Nutley, New Jersey and Hancox Avenue, Belleville, New Jersey (the “Sonneborn Site”), and which was operated by L. Sonneborn Sons, Inc. and its successors (“Sonneborn”). Upon information and belief, operations at the Sonneborn Site ceased in or around 1972. Such alleged liability is based on the allegation that Degussa Building Systems, Inc. (“Degussa”) is a successor to the environmental liabilities allegedly associated with the Sonneborn Site. Degussa was acquired by BASF Aktiengesellschaft in July 2006 and merged into a subsidiary of BASF Corporation known as BASF Construction Chemicals. In an April 19, 2006 response to a General Notice Letter from the United States Environmental Protection Agency (“EPA”), counsel for Degussa stated that Degussa never had any corporate relationship with Sonneborn nor did it ever own or operate the Sonneborn Site.

BASF Construction Chemicals has undertaken a diligent investigation to locate any documents in its possession that are responsive to the document production requirements of CMO XII, paragraph 21 (as limited by the Reservations and Comments

section below), other than those documents provided to BASF Construction Chemicals by Third-Party Plaintiffs and the documents provided to EPA in 2005 in the form of a PRP Data Extraction Form for the Sonneborn Site. This investigation included discussions with former Degussa employees that are now employed by BASF Construction Chemicals. BASF Construction Chemicals' investigation has revealed limited documents that are responsive to the categories of documents set forth in CMO XII, paragraph 21. These documents are provided by BASF Construction Chemicals with full reservation of rights, without any admission of liability, and subject to the objections and reservations set forth herein.

### **Reservations and Comments**

1. BASF Construction Chemicals reserves the right to object to the production of any documents or other information on any ground, including relevance and undue burden, and to assert any applicable privilege, including 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. These disclosures are not intended to prejudice or waive any privileges or objections BASF Construction Chemicals may have with respect to any outstanding or subsequent requests for discovery.

2. BASF Construction Chemicals' investigation in this matter is continuing. Accordingly, it reserves the right to supplement, clarify, amend, and revise these disclosures at any time prior to trial to the extent additional information becomes available or is obtained through discovery or the relevancy of any information is hereafter discovered. Further, BASF Construction Chemicals reserves the right to amend these

disclosures to the extent the claims brought by or alleged against BASF Construction Chemicals in this litigation are amended.

3. BASF Construction Chemicals reserves its right to rely on any facts, documents or other evidence that may develop or come to its attention during the course of this matter. BASF Construction Chemicals' responses are set forth herein without prejudice to its right to assert additional objections or supplement its responses should BASF Construction Chemicals discover additional grounds for doing so during the course of this matter.

4. "Documents," excluding electronic e-mail and Electronically Stored Information, shall have the meaning set forth in the Court's August 11, 2009 Order for Preservation of Documents and Data.

5. "Alleged Discharges" shall have the meaning set forth in CMO VIII.

6. "Sites" per CMO VIII, shall be defined as those site(s) or properties with which a Third-Party Defendant is associated in a Third-Party Complaint.

7. Document Production requirements set forth in CMO XII, paragraph 21 (as amended by the Amended Production Requirements) are read in concert with CMO VIII, paragraph 3 and CMO V, paragraph 8, which are incorporated by reference into CMO XII. CMO VIII, *inter alia*, called for a listing of those documents to be produced by Third-Party Defendants with certain excepted categories, the "Excepted Information Categories." The Amended Production Requirements are also answered with reference to the Alleged Discharges, as defined in CMO VIII, and include documents under the

Excepted Information Categories except to the extent those documents are covered by logs attached hereto. 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 the Newark Bay Complex locations other than the Sites, disclosures herein are provided with reference to the Amended Production Requirements and CMO XII, paragraph 21(c) unless otherwise noted. With respect to Amended Production Requirements as to CMO XII, paragraph 21(b), reference is made to information previously furnished by the Joint Defense Group of private Third-Party Defendants (“JDG”) in connection with CMO V, paragraph 8.

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

**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 Reservations and Comments section above. See Response to Paragraph 21(c)(1)(i), below.

(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 Reservations and Comments section above. See Response to Paragraphs 21(c)(1)(i) – (iv), below.

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

**Response** - See Reservations and Comments section above.

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

**Response** - See Reservations and Comments section above. BASF Construction Chemicals 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.

**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** – BASF Construction Chemicals objects to this request to the extent that it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Sonneborn Site, or related to any operations conducted thereon, for which BASF Construction Chemicals has any liability, responsibility, and/or obligation. BASF Construction Chemicals' investigation has not revealed any documents in its possession that are responsive to this request.

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** – BASF Construction Chemicals objects to this request to the extent that it assumes or concludes that any Hazardous Materials were stored or utilized at the Sonneborn Site for which BASF Construction Chemicals has any liability, responsibility, and/or obligation. BASF Construction Chemicals limits its response in accordance with the Reservations and Comments section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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

**Response** – BASF Construction Chemicals limits its response to those documents related to the Alleged Discharges in accordance with the Reservations and Comments section above. BASF Construction Chemicals’ investigation has not revealed any documents in its possession that are responsive to this request.

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** - BASF Construction Chemicals objects to this request to the extent that it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Sonneborn Site, or related to any operations conducted thereon, for which BASF Construction Chemicals has any liability, responsibility, and/or obligation. BASF Construction Chemicals’ investigation has not revealed any documents in its possession that are responsive to this request.

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** - BASF Construction Chemicals objects to this request to the extent that it assumes or concludes that any industrial waste containing Hazardous Materials was transported to, processed or treated at, or discharged from the Sonneborn Site for which BASF Construction Chemicals has any liability, responsibility, and/or obligation. Subject to the Reservations and Comments section above, BASF Construction Chemicals’ investigation has not revealed any documents in its possession that are responsive to this request.

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** - BASF Construction Chemicals’ investigation has not revealed any documents in its possession that are responsive to this request.

Dated: March 11, 2011

Respectfully submitted,

Bressler, Amery & Ross, P.C.  
Attorney for Third-Party Defendant,  
BASF Construction Chemicals, LLC

A handwritten signature in black ink, appearing to read "DPSchneider", written over a horizontal line.

David P. Schneider, Esq.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Third-Party Defendant BASF Construction Chemicals, LLC's Supplemental Disclosure, along with a disc containing documents produced by BASF Construction Chemicals, LLC pursuant to Case Management Order XII (Bates stamped BASFCC 00001 to BASFCC 00054), was served on counsel for Third-Party Plaintiffs Tierra Solutions, Inc. and Maxus Energy Corporation via Federal Express on March 11, 2011 at the following address:

Charles M. Crout, Esq.  
Andrews Kurth LLP  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005

The undersigned hereby certifies that a true and correct copy of the documents set forth above was served on the following counsel via regular mail on March 11, 2011 at the following addresses:

Eric B. Rothenberg, Esq.  
O'Melveny & Myers, LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036

Lee D. Henig-Elona, Esq.  
Wolff & Samson  
One Boland Drive  
West Orange, New Jersey 07052

John M. Scagnelli, Esq.  
Scarinci & Hollenbeck  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, New Jersey 07071-0790

Peter J. King, Esq.  
King & Petracca  
51 Gibraltar Drive, Suite 1D

Morris Plains, New Jersey 07950-1254

Michael Gordon, Esq.  
Gordon & Gordon, P.C.  
505 Morris Avenue  
Springfield, New Jersey 07081


Robert T. Lehman, Esq.  
Archer & Greiner  
One Centennial Square  
33 Euclid Avenue  
Haddonfield, New Jersey 08033

Gregg H. Hilzer, Esq.  
Greenbaum, Rowe, Smith & Davis  
75 Livingston Avenue, Suite 301  
Roseland, New Jersey 07068-3701

William L. Warren, Esq.  
Drinker Biddle & Reath LLP  
105 College Road East  
P.O. Box 627  
Princeton, New Jersey 08542-0627

Domenick Carmagnola, Esq.  
Carmagnola & Ritardi, LLC  
60 Washington Street  
Morristown, New Jersey 07960

The undersigned hereby certifies that a true and correct copy of Third-Party Defendant BASF Construction Chemicals, LLC's Supplemental Disclosure (without disc) was served on all other counsel of record on March 11, 2011 via electronic posting.

  
Keith P. McManus, Esq.

Dated: March 11, 2011