

BRESSLER, AMERY & ROSS

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March 23, 2011

Via Federal Express

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


**Re: NJDEP, *et al.* v. Occidental Chemical Corporation, *et al.*
Supplemental Disclosure of Third-Party Defendant Ciba Corporation**

Dear Mr. Crout:

We are counsel to Ciba Corporation (“Ciba”) with respect to the referenced matter. In accordance with Case Management Order XII and the January 31, 2011 Consent Order executed by Third-Party Plaintiffs and Ciba, enclosed is Ciba’s Supplemental Disclosure, including a disc containing responsive, non-privileged documents Bates stamped CIBA 00001 to CIBA 02241.

If you have any questions, please do not hesitate to contact me.

Very truly yours,
BRESSLER, AMERY & ROSS, P.C.


Keith P. McManus

Encl.

c: Eric B. Rothenberg, Esq. (w/ enclosure)
Lee D. Henig-Elona, Esq. (w/ enclosure)
John M. Scagnelli, Esq. (w/ enclosure)
Peter J. King, Esq. (w/ enclosure)
Michael Gordon, Esq. (w/ enclosure)
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Domenick Carmagnola, Esq. (w/ enclosure)
All counsel of record (via electronic posting)

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Attorneys for Third-Party Defendant,
Ciba Corporation

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

: **SUPPLEMENTAL DISCLOSURE**
: **OF THIRD-PARTY DEFENDANT**
: **CIBA CORPORATION**

Third-Party Defendant Ciba Corporation (“Ciba”) 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 Ciba is liable for alleged discharges of hazardous substances from a former Geigy facility that was located at 39 Avenue C, Bayonne, New Jersey (the “Geigy Site”). Upon information and belief, Geigy ceased operations at the Geigy site in 1968. Third-Party Plaintiffs have also alleged in Third-Party Complaint B that Ciba is liable for alleged discharges from the Central Steel Drum facility that was located at 704 Doremus Avenue, Newark, New Jersey (the “Central Steel Drum Site”), based on allegations that Ciba’s Newport, Delaware and Toms Rivers, New Jersey facilities conducted transactions with Central Steel Drum. On January 22, 2010, Ciba filed its Initial Disclosure and now provides this Supplemental Disclosure.

Ciba 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 Ciba by Third-Party Plaintiffs and the documents provided to EPA in the form of PRP Data Extraction Forms for the Geigy Site and the Central Steel Drum Site. This investigation included discussions with current and former Ciba employees. Ciba’s investigation has revealed limited documents that are responsive to

the categories of documents set forth in CMO XII, paragraph 21 for the Geigy Site, as well as limited documents regarding Ciba sending drums to Central Steel Drum. Specifically, the documents reviewed by Ciba indicate that Ciba's Newport, Delaware facility sent drums to Central Steel Drum, but that its Toms River, New Jersey facility did not. As Ciba did not own or operate the Central Steel Drum Site, it is not required to respond to CMO XII, Paragraph 21(c)(1)(ii). However, Ciba has provided herein copies of documents relating to the Central Steel Drum Site that were obtained through a regulatory file review conducted on behalf of the Joint Defense Group of private Third-Party Defendants ("JDG"), which includes documents relating to the operations conducted at the Central Steel Drum Site. These documents are provided by Ciba with full reservation of rights, without any admission of liability, and subject to the objections and reservations set forth herein.

Reservations and Comments

1. Ciba 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 Ciba may have with respect to any outstanding or subsequent requests for discovery.

2. Ciba's 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, Ciba reserves the right to amend these disclosures to the extent the claims brought by or alleged against Ciba in this litigation are amended.

3. Ciba 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. Ciba's responses are set forth herein without prejudice to its right to assert additional objections or supplement its responses should Ciba 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 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)

The Geigy Site

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. Ciba 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.

The Central Steel Drum Site

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. Ciba 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)

The Geigy Site

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 – Ciba objects to this request to the extent that it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Geigy Site, or related to any operations conducted thereon, for which Ciba has any liability, responsibility, and/or obligation. Ciba's 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 – Ciba objects to this request to the extent that it assumes or concludes that any Hazardous Materials were stored or utilized at the Geigy Site for which Ciba has any liability, responsibility, and/or obligation. Ciba limits its response in accordance with the Reservations and Comments and Preliminary Statement sections 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 – Ciba limits its response to those documents related to the Alleged Discharges in accordance with the Reservations and Comments section above. Ciba's 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 - Ciba objects to this request to the extent that it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Geigy Site, or related to any operations conducted thereon, for which Ciba has any liability, responsibility, and/or obligation. Ciba's 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 - Ciba 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 Geigy Site for which Ciba has any liability, responsibility, and/or obligation. Ciba's 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 – Ciba's investigation has not revealed any documents in its possession that are responsive to this request.

The Central Steel Drum Site

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 – Ciba objects to this request to the extent that it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Central Steel Drum Site, or related to any operations conducted thereon, for which Ciba has any liability, responsibility, and/or obligation. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 – Ciba objects to this request to the extent that it assumes or concludes that any Hazardous Materials were stored or utilized at the Central Steel Drum Site for which Ciba has any liability, responsibility, and/or obligation. Ciba limits its response in accordance with the Reservations and Comments and Preliminary Statement sections 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 – Ciba limits its response to those documents related to the Alleged Discharges in accordance with the Reservations and Comments section above. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 - Ciba objects to this request to the extent that it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Central Steel Drum Site, or related to any operations conducted thereon, for which Ciba has any liability, responsibility, and/or obligation. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 - Ciba 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 Central Steel Drum Site for which Ciba has any liability, responsibility, and/or obligation. Subject to the Reservations and Comments and Preliminary Statement sections above, documents responsive to this request, to the extent available, are on the enclosed disc.


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 – Ciba’s investigation has not revealed any documents in its possession that are responsive to this request.

Dated: March 23, 2011

Respectfully submitted,

Bressler, Amery & Ross, P.C.
Attorney for Third-Party Defendant,
Ciba Corporation



Keith P. McManus, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Third-Party Defendant Ciba Corporation's Supplemental Disclosure, along with a disc containing documents produced by Ciba Corporation pursuant to Case Management Order XII (Bates stamped CIBA 00001 to CIBA 02241), was served on counsel for Third-Party Plaintiffs Tierra Solutions, Inc. and Maxus Energy Corporation via Federal Express on March 23, 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 23, 2011 at the following addresses:

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Carmagnola & Ritardi, LLC
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Morristown, New Jersey 07960

The undersigned hereby certifies that a true and correct copy of Third-Party Defendant Ciba Corporation's Supplemental Disclosure (without disc) was served on all other counsel of record on March 23, 2011 via electronic posting.



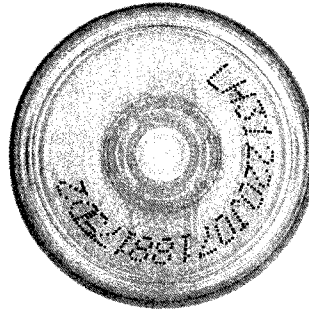
Keith P. McManus, Esq.

Dated: March 23, 2011

BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW



NJDEP, et al. v. Occidental Chemical Corporation, et al.
Docket No. ESX-9868-05 (PASR)

Documents produced by Ciba Corporation
pursuant to CMO XII

CIBA 00001 to CIBA 02241

Disc 1 of 1