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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE NEW JERSEY ENVIRONMENTAL PROTECTION AGENCY 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,

Defendants,

MAXUS ENERGY CORPORATION AND TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

3M COMPANY, et. al.

X

: **SUPERIOR COURT OF NEW JERSEY**
: **LAW DIVISION: ESSEX COUNTY**

: **Docket No.: L-009868-05 (PASR)**

: **CIVIL ACTION**

: **SUPPLEMENTAL DISCLOSURE OF**
: **THIRD-PARTY DEFENDANT COSAN**
: **CHEMICAL CORPORATION**

X

Third-Party Defendant, Cosan Chemical Corporation (hereinafter “Respondent”), hereby submits its Supplement to its Initial Disclosures required pursuant to the Court’s Case Management Order XII (“CMO XII”), paragraph 21 and in accordance with terms of the January

31, 2011 Consent Order (“Consent Order”) applicable to certain of those Third-Party Joint Defense Group members who have received written confirmation that CMO XII paragraph 21(a) production of site files is complete from the Drinker Biddle & Reath LLP, Andrews Kurth LLP, and/or Hannafan & Hannafan, Ltd firms (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.”

Reservations and Comments

1. Respondent 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 privilege or protection. These disclosures are not intended to prejudice or waive any privileges or objections Respondent may have with respect to any outstanding or subsequent requests for discovery.
2. Respondent’s investigation in this matter is continuing. Accordingly, it reserves the right to supplement, clarify, and revise these disclosures any time prior to trial to the extent additional information becomes available or is obtained through discovery. Further, Respondent reserves the right to amend these disclosures to the extent the claims brought by or alleged against Respondent in this litigation are amended.
3. Respondent reserves its right to rely on any facts, documents or other evidence that may develop or come to Respondent’s attention during the course of this matter. Respondent’s responses are set forth herein without prejudice to its right to assert additional objections of

supplement is responses should Respondent 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 this Court's August 11, 2009 Order for Preservation of Documents and Data.
5. "Alleged Discharges" shall have the meaning set forth in the Court's 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 Consent Order ("Amended Production Requirements")) are read in concert with CMO VIII, paragraph 3 and CMO V, paragraph 8, which are incorporated by reference in CMO XII, paragraph 1. CMO VIII, *inter alia*, calls 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 certain documents under the Excepted Information Categories, except to the extent of those documents covered by logs to be furnished as soon as practicable in accordance with the Amended Production Requirements. To the extent requirements set forth in Amended Production Requirements are repetitive, burdensome and/or unfairly place a duty of inquiry on Respondent as to the locations other than Respondent's site, 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 or other protection will be detailed in a log to be furnished in accordance with the August 11, 2009 “Agreed Order Regarding Documents Withheld from Production” as appended to CMO VIII, and provided under the Amended Production Requirements. Inadvertent production of any such documents shall constitute neither a waiver of any privilege or protection nor a waiver of any right Respondent may have to demand the return or destruction of such document and/or to object to the use of any such document or the information contained therein in this litigation or any subsequent litigation or proceeding.
9. Respondent’s production of documents shall not mean that Respondent concedes or agrees that any of the information or documents provided in response to the Amended Production Requirements are relevant to this litigation. Respondent reserves the right to object to the admissibility of any information or documents produced if any party to this litigation seeks to use any such information or documents as evidence.

Production as to Paragraph 21(b) Requests

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: Respondent is unaware of any alleged discharges of Hazardous Materials to the Newark Bay Complex from Respondent’s site and has no documents responsive to this request. See objections, reservations, comments and limitations and Paragraph 7 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: Respondent is unaware of any releases of Hazardous Materials to the Newark Bay Complex from Respondent's site and has no documents responsive to this request. See objections, reservations, comments and limitations and Paragraph 7 above. See Response to Paragraph 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: Respondent is unaware of any operations conducted at Respondent's site that many have adversely impacted the environmental condition of the Newark Bay Complex and has no documents responsive to this request. See objections, reservations, comments and limitations and Paragraph 7 above.

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

Response: See: See objections, reservations, comments and limitations and Paragraph 7 above. Respondent further notes that all cross-claims and counterclaims 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) Requests

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: Respondent limits its response to those documents in accordance with the objections, reservations, comments and limitations and Paragraph 7 above. Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was an alleged discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the site at 400 Thirteenth Avenue, Carlstadt, NJ (the "Cosan Site") as defined in the Second Amended Complaint and Third Party Complaint B. Documents responsive to this request, subject to Respondent's objections and the exceptions provided under the Amended Production Requirements, are limited to certain of the documents 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: Respondent limits its response to those documents in accordance with objections, reservations, comments and limitations and Paragraph 7 above. Respondent objects to this request in that is overly broad and unduly burdensome. Respondent further objects to this request to the extent that it assumes, suggests, and/or concludes that there was an alleged discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the site at 400 Thirteenth Avenue, Carlstadt, NJ (the "Cosan Site") as defined in the Second Amended Complaint and Third Party Complaint B. Documents responsive to this request, subject to Respondent's objections and the exceptions provided under the Amended Production Requirements, are limited to certain of the documents on the enclosed disc.

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

Response: Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was an alleged discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the site at 400 Thirteenth Avenue, Carlstadt, NJ (the "Cosan Site") as defined in the Second Amended Complaint and Third Party Complaint B. Documents responsive to this request, subject to Respondent's objections and the exceptions provided under the Amended Production Requirements, are limited to certain of the documents 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: Respondent limits its response to those documents in accordance with objections, reservations, comments and limitations and Paragraph 7 above. Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was an alleged discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the site at 400 Thirteenth Avenue, Carlstadt, NJ (the "Cosan Site") as defined in the Second Amended Complaint and Third Party Complaint B. Respondent limits its response in accordance with paragraph 7 above and in accordance with the Amended Production Requirements. Documents responsive to this request, to be produced pursuant to the requirements of CMO XII, paragraph 21(c) as to the Alleged Discharges, and subject to Respondent's objections and the exceptions

provided under the Amended Production Requirements, are limited to certain of the documents 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: Respondent limits its response to those documents in accordance with objections, reservations, comments and limitations and Paragraph 7 above. Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was an alleged discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the site at 400 Thirteenth Avenue, Carlstadt, NJ (the "Cosan Site") as defined in the Second Amended Complaint and Third Party Complaint B. Documents responsive to this request, subject to Respondent's objections and the exceptions provided under the Amended Production Requirements, are limited to certain of the documents 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: Respondent limits its response to those documents in accordance with objections, reservations, comments and limitations and Paragraph 7 above. Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was an alleged discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the site at 400 Thirteenth Avenue, Carlstadt, NJ (the "Cosan Site") as defined in the Second Amended Complaint and Third Party Complaint B. Documents responsive to this request, subject to Respondent's objections and the exceptions provided under the Amended Production Requirements, are limited to certain of the documents on the enclosed disc.

August 11, 2009 Excepted Information Categories

Excepted Information includes the following:

- a. Information ("Information"), including, but not limited to environmental, chemical and/or biological testing of groundwater, surface water, soil or sediment (hereinafter "Sampling Information") contained in the nexus packages produced pursuant to paragraph 8(c) of CMO V; and
- 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 (hereinafter "Governmental Recipients");
- c. Information produced to any Licensed Site Remediation Professional (hereinafter "LSRP") who is duly licensed by the State of New Jersey at the time of receipt of such Information which 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 any 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;
 - g. Information that falls within attorney-client privilege and/or attorney work product privilege.

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Attorneys for Defendant Cosan Chemical
Corporation



By: _____
Coleen J. McCaffery, Esq.

Dated: March 8, 2011