

Connell Foley LLP  
 85 Livingston Avenue  
 Roseland, New Jersey 07068  
 (973) 535-0500  
 ATTORNEYS FOR HARRISON SUPPLY COMPANY AND PHILBRO, INC.

NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW JERSEY
ENVIRONMENTAL PROTECTION and	:	LAW DIVISION: ESSEX COUNTY
THE ADMINISTRATOR OF THE NEW	:	
JERSEY SPILL COMPENSATION FUND,	:	DOCKET NO. L-9868-05 (PASR)
	:	
Plaintiffs,	:	
v.	:	CIVIL ACTION
	:	
OCCIDENTAL CHEMICAL	:	<b>CMO XII SUPPLEMENT TO</b>
CORPORATION, TIERRA SOLUTIONS,	:	<b>THIRD-PARTY INITIAL</b>
INC., MAXUS ENERGY CORPORATION,	:	<b>DISCLOSURE</b>
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, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

Comes now Third-Party Defendants Harrison Supply Company and Philbro, Inc.  
 (“Respondent”) and for its Supplement to Initial Disclosure in accordance with Case  
 Management Order XII provides the following specific information:

**Reservations**

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 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. 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 quite broad and potentially burdensome. Respondent is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

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

### **Supplemental Initial Disclosures**

- a. 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** - Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(b) subject to the exceptions set forth in CMO VIII and related below.

- 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** - Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(b) subject to the exceptions set forth in CMO VIII and related below and further subject to the objection as to "operations, manufacturing and/or production processes" and "sampling" or "testing" not related to an alleged release or discharge of a Hazardous Substance.

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

**Response** - Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(b) subject to the exceptions set forth in CMO VIII and related below.

- 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** - Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(b) subject to the exceptions set forth in CMO VIII and related below and further subject to the objection as to any communication not related to the sites which are the subject of the Third-Party Plaintiffs' allegations.

- b. 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** - Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(b) subject to the exceptions set forth in CMO VIII and related below.

c. 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** - [See attached] or [Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(b) subject to the exceptions set forth in CMO VIII and related below.] or [Respondent objects to this request (general or corporate policy objection to production of insurance documents)]

### **August 11, 2009 CMO VIII Excepted Information Categories**

Excepted Information includes the following

“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(e) of CMO V”.  
See, Paragraph 4(a).

“Information previously produced to any branch, department, agency or instrumentality of the State of New Jersey including to the New Jersey Department of Environment 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”).

“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 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 system;” See, Paragraph 4(c).

“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;” See, Paragraph 4(d).

“Information produced by a third-party defendant to any third-party plaintiff pursuant to the New jersey Open Records Act or other freedom of information law or regulation;” See, Paragraph 4(e).

“Information previously produced to Defendants” See, Paragraph 4(f).

“Information that falls within the attorney-client privilege and/or the attorney work product privilege.” See, Paragraph 4(g).

Dated: August 20, 2010

Respectfully submitted,

CONNELL FOLEY LLP  
Attorney for Third-Party Defendant(s) Harrison  
Supply Company and Philbro, Inc.



\_\_\_\_\_  
Timothy E. Corrison, Esq.

## **Instructions for Responding to CMO XII Paragraph 21(c) Supplemental Initial Disclosures**

### **1. Special Extension of Time for Parties Bringing CMO XII Paragraph 13 or 14 Motions.**

Any Third-Party Defendant that has circulated a stipulation under Paragraph 14 or made a motion based on Homeland Security protection in Paragraph 13 of CMO XII is required to respond to CMO XII Paragraph 21 Supplemental Disclosure requirements no later than sixty (60) days after circulation of the stipulation or electronic notice of the Special Master's recommended decision on said motion.

**2. Instructions for Producing Documents.** All supplemental initial disclosures shall be served by means of posting on a court-approved electronic bulletin board or by furnishing an electronic copy to counsel for each Original Parties and to Liaison Counsel. "Documents" for purposes of Supplemental Initial Disclosures include writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information and any other data of date compilations stored in any medium from which information can be obtained and translated, if necessary, by the Respondent into reasonably useable form but excluding electronic email. All documents responsive to any subsection of this section 21(c) shall be produced unless a Party claims the document or a redacted portion thereof is privileged, confidential or constitutes a trade secret. Any such privilege, confidentiality of trade secret assertions shall be detailed on a privilege log that shall be served contemporaneously with the Party's Supplemental Initial Disclosure.

[Claims as to work product privilege may be applied as to documents created since the filing of Plaintiffs' claims, related EPA proceedings or other litigation related to the Site(s).] Any Party raising confidentiality or trade secret as a basis for objection shall be prepared to submit any such document or information to the Special Master.

3. **ESI.** Electronic e-mail shall be discoverable pursuant to Protocol designed by the Special Master which has yet to be developed. Therefore electronic e-mail need not be produced in conjunction with this Supplemental Initial Disclosure until such Protocol has been designated.

4. **Production of Documents Required by CMO XII, Paragraph 21(b).** To the extent that Paragraph 21(c) calls for production of documents which would be produced under Paragraph 21(b), e.g. after Third-Party Plaintiffs' production, our position is that those documents need not be produced at this time.