

March 25, 2011

**VIA CT SUMMATION**

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

**Re: *NJDEP, et al. v. Occidental Chemical Corp., et al.***  
**Docket No: ESX-L-009868-05**

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Dear Mr. Crout,

This firm represents Third-Party Defendant ITT Corporation (“ITT”). Attached is the Supplemental Disclosure on behalf of ITT.

In accordance with the August 11, 2009 Agreed Order Regarding Documents Withheld from Production, ¶ 2, no work product after December 13, 2005 will be produced or logged.

Additionally, ITT will not be producing any documents responsive to CMO XII, ¶ 21(b) except to the extent they relate to site-specific documents. Tierra/Maxus has taken the position that ¶ 21(b) requires production of documents that relate to the sites of other dischargers. See Tierra/Maxus Letter Brief dated September 14, 2010, signed by William L. Warren at p. 10. ITT does not possess such documents, moreover, ITT relies on the JDG prior offer as to “Additional Dischargers” under CMO V, ¶ 8. Accordingly, no documents will be produced under ¶ 21(b). The ITT production will be limited to documents under ¶ 21(c) which, as noted in the Tierra/Maxus letter brief, “are confined to **site-specific** documents . . . that relate specifically to ‘the release or discharge of Hazardous Materials **at or from that Third Party Defendant’s properties or operations.**” (emphasis in the original).

We have about 100,000 pages of documents located in our offices available for inspection and copying at a mutually convenient time. If you have any questions please do not hesitate to contact me.

Very truly yours,



Susanne Peticolas  
Director

SP/

GIBBONS P.C.

Charles M. Crout  
February 14, 2011  
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Enclosures

cc: All Counsel Consenting to Service by Electronic Posting (via CT Summation)

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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.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO. L-9868-05 (PASR)

CIVIL ACTION

**DOCUMENT PRODUCTION AND  
SUPPLEMENTAL THIRD-PARTY  
DISCLOSURE**

Third-Party Defendant ITT Corporation, (“Respondent”) hereby provides its  
Document Production and Supplement to Initial Disclosure pursuant to Case  
Management Order (“CMO”) XII and prior CMO’s incorporated therein by reference.

## **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 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 or supplement its 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, to the extent it refers to releases or discharges at the ITT Site.

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 are read in concert with CMO VIII, paragraph 3 and CMO V, paragraph 8 incorporated by reference in CMO XII, paragraph 1. 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." To the extent requirements set forth in CMO XII, paragraph 21 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 CMO XII paragraph 21(c) unless otherwise noted. With respect 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 as soon as practicable 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.

9. Respondent denies that any Hazardous Materials that may have been released or discharged at the ITT Site were transported or impacted the Newark Bay Complex. Accordingly, ITT does not have documents responsive to CMO XII paragraph 21(b).

**Production as to Paragraph 21(b)**

Copies of all non-privileged Documents other than electronic email discovery and ESI, 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 noted above. See Response to Paragraph 21(c)(1)(i), below. Respondent is only producing Documents responsive to this subparagraph to the extent they are responsive to Paragraph 21(c). Further, Respondent relies on the JDG prior offer as to “Additional Dischargers” under CMO V, Paragraph 8.

(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 noted above. See Response to Paragraphs 21(c)(1)(i) - (iv), below. Respondent is only producing Documents responsive to this subparagraph to the extent they are responsive to Paragraph 21(c). Further, Respondent relies on the JDG prior offer as to “Additional Dischargers” under CMO V, Paragraph 8.

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

**Response** - See reservations noted above. Respondent is only producing Documents responsive to this subparagraph to the extent they are responsive to Paragraph 21(c). Further, Respondent relies on the JDG prior offer as to “Additional Dischargers” under CMO V, Paragraph 8.

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

**Response** - See reservations noted above. Respondent 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. Respondent is only producing Documents responsive to this subparagraph to the extent they are responsive to Paragraph 21(c). Further, Respondent relies on the JDG prior offer as to “Additional Dischargers” under CMO V, Paragraph 8.

**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** - Subject to the reservations noted above, Documents responsive to this request, to the extent available, will be made available for inspection and copying at the offices of Gibbons P.C. at a time mutually convenient to the Parties subject to the exceptions set forth in CMO VIII enumerated 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** - Subject to the reservations noted above, responsive Documents to this request, to the extent available will be made available for inspection and copying at the offices of Gibbons P.C. at a time mutually convenient to the Parties subject to the exceptions set forth in CMO VIII enumerated below.

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

**Response** - Subject to the reservations noted above, Documents responsive to this request, to the extent available, will be made available for inspection and copying at the offices of Gibbons P.C. at a time mutually convenient to the Parties subject to the exceptions set forth in CMO VIII enumerated 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** - Subject to the reservations noted above, Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(c) as to the Alleged Discharges, will be made available for inspection and copying at the offices of Gibbons P.C. at a time mutually convenient to the Parties subject to the exceptions set forth in CMO VIII enumerated below.

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** - Subject to the reservations noted above, Documents responsive to this request as to the Alleged Discharge, to the extent available, will be made available for inspection and copying at the offices of Gibbons P.C. at a time mutually convenient to the Parties subject to the exceptions set forth in CMO VIII enumerated below.

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** - Documents responsive to this request, to the extent available, will be made available for inspection and copying at the offices of Gibbons P.C. at a time mutually convenient to the Parties subject to the exceptions set forth in CMO VIII enumerated below.

**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), as well as information produced under CMO XII, paragraph 21(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”). We believe information received from such agencies are included within the exception.

“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).



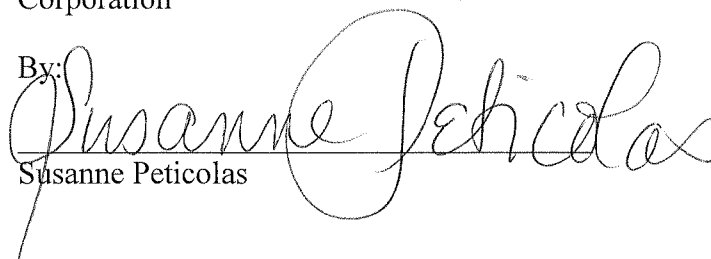
“Work product material created after the commencement of this action and with respect to this action.” See, Paragraph 2, Agreed Order Regarding Documents Withheld from Production.

Dated: March 25, 2011

Respectfully submitted,

Gibbons P.C.  
Attorneys for Third-Party Defendant ITT  
Corporation

By:

  
Susanne Peticolas