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ICI Americas, Inc.

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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

**SUPPLEMENTAL THIRD-  
PARTY DISCLOSURE OF  
THIRD PARTY DEFENDANT  
ICI AMERICAS, INC.**

Third-Party Defendant ICI Americas, Inc. ("Respondent") hereby provides its  
Supplement to Initial Disclosure pursuant to Case Management Order ("CMO") XII and  
prior CMOs 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 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 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.

**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 noted above. See Response to Paragraph 21c 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 noted 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 noted above.

(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.

**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:** In addition to the Reservations stated above, and expressly subject to them, Respondent states that it is unaware of any documents that would show the existence of any discharge or release of Hazardous Materials into the Newark Bay Complex from Respondent's properties or operations. In an attempt to be responsive, Respondent provides the enclosed DVD with non-privileged documents related to environmental compliance, investigation, and remediation of 229 East 22<sup>nd</sup> Street, Bayonne, New Jersey (the "ICI Site"). Respondent further advises that documents that were maintained by Respondent's environmental technical consultant will be made available, if necessary and requested, at a time mutually agreeable to the parties.

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:** In addition to the Reservations stated above, and expressly subject to them, Respondent states that it is unaware of any documents that would show the existence of any discharge or release of Hazardous Materials into the Newark Bay Complex from Respondent's properties or operations. Respondent limits its response in accordance with the Reservations noted above. Documents responsive to this request, to the extent available, are provided on the enclosed DVD. In addition, Respondent advises that documents that were maintained by Respondent's environmental technical consultant will be made available, if necessary and requested, at a time mutually agreeable to the parties.

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

**Response:** Respondent limits its response to those documents as to the Alleged Discharges in accordance with Reservations noted above. In addition, Respondent states that it is unaware of any documents that would show the existence of any discharge or release of Hazardous Materials into the Newark Bay Complex from Respondent's properties or operations. In an attempt to be responsive, Respondent provides the enclosed DVD with non-privileged documents related to environmental compliance, investigation, and remediation of the ICI Site. Respondent further advises that documents that were maintained by Respondent's environmental technical consultant will be made available, if necessary and requested, at a time mutually agreeable to the parties.

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:** In addition to the Reservations stated above, and expressly subject to them, Respondent states that it is unaware of any documents that would show the existence of any discharge or release of Hazardous Materials into the Newark Bay Complex from Respondent's properties or operations. In an attempt to be responsive, Respondent provides the enclosed DVD with non-privileged documents related to environmental compliance, investigation, and remediation of the ICI Site. Documents responsive to this request are produced pursuant to the requirements of CMO XII, Paragraph 21(c) as to the Alleged Discharges. Respondent further advises that documents that were maintained by Respondent's environmental technical consultant will be made available, if necessary and requested, at a time mutually agreeable to the parties.

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:** In addition to the Reservations stated above, and expressly subject to them, Respondent states that it is unaware of any documents that would show the existence of any discharge or release of Hazardous Materials into the Newark Bay Complex from Respondent's properties or operations. In an attempt to be responsive, Respondent

provides the enclosed DVD with non-privileged documents related to environmental compliance, investigation, and remediation of the ICI Site. Respondent further advises that documents that were maintained by Respondent's environmental technical consultant will be made available, if necessary and requested, at a time mutually agreeable to the parties.

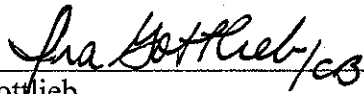
3. Any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy said judgment.

**Response:** Respondent has no documents responsive to this request.

Dated: April 11, 2011

Respectfully submitted,

McCarter & English, LLP  
Attorney for Third-Party Defendant  
ICI Americas, Inc.

  
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Ira Gottlieb