

WEINER LESNIAK LLP

Attorneys at Law

629 Parsippany Road

P. O. Box 0438

Parsippany, New Jersey 07054-0438

(973) 403-1100 / (973) 403-0010 (fax)

Richard L. Rudin

NJ BAR

rrudin@weinerlesniak.com

New York Location:

888 Veteran's Memorial Highway

Suite 540

Hauppauge, New York 11788

631-232-6130 631-232-6184 (fax)

Please respond to New Jersey Location

September 6, 2011

Via Federal Express, Email and E-Filing

Vincent E. Gentile, Esq.

Drinker Biddle & Reath, LLP

105 College Road East, Suite 300

Princeton, NJ 08542-0627

Re: NJDEP, et als. vs. Occidental Chemical Corporation, et als.

Docket No.: ESX-L-9868-05 (PASR)

Our File No.: 20195

Dear Mr. Gentile:

The purpose of this letter is to supplement the responses by Third-Party Defendant, Linden Roselle Sewerage Authority ("LRSA" or "Authority") pursuant to Case Management Order ("CMO") XII, ¶¶21(b) and (c).

LRSA previously made disclosures and supplemental discovery responses pursuant to CMO XII, ¶¶21(b) and (c), which are incorporated herein by reference. In addition to setting forth LRSA's objections, which include the absence of good faith compliance by Third-Party Plaintiffs, Maxus/Tierra, with their obligations pursuant to CMO XII, ¶21(a), LRSA produced all of the documents which it could identify from its files relating to the only specific allegation in the Third-Party Complaint against LRSA and in Maxus/Tierra's nexus documents regarding a bypass of a substation that took place on one day in September 1975. The Authority also disclosed whatever relevant insurance information that it was able to identify from its files.

Nevertheless, in order to attempt to resolve the outstanding discovery dispute between the Authority and Maxus/Tierra, which was a subject of the meeting with the Special Master on August 8, 2011, the Authority provides the following information from its files relating to the particular categories set forth in CMO XII, ¶¶21(b) and (c):

1. Monitoring Department File Inventory (LRSA1 to LRSA38)
2. Main Office File Inventory (LRSA39 to LRSA45)

3. Monitoring Department Archive Files - Items 1 through 103 (LRSA46 to LRSA70)
4. Agreements-Ordinances-Resolutions of City of Linden and Borough of Roselle relating to Creation and Authorization of LRSA (LRSA71 to LRSA111)

The indices for the four (4) items above contain the following subcategories:

1. Monitoring Department File Inventory (LRSA1 to LRSA 38)
 - a. Cabinet #1
 - i. Drawer #1 – LRSA Plant Conv. Profiles/LRSA Loadings/Monthly IU Report Checklists
 - ii. Drawer #2 – Monthly Industry Status Reports
 - iii. Drawer #3 – Roselle Flume/Roselle Industries/ Victory Corrugated
 - b. Cabinet #2
 - i. Drawer #1 – Regulated Industries
 - ii. Drawer #2 – Regulated Industries
 - iii. Drawer #3 - Regulated Industries
 - iv. Drawer #4 - Regulated Industries
 - c. Cabinet #3
 - i. Drawer #1 – Regulated Industries
 - ii. Drawer #2 – Regulated Industries
 - iii. Drawer #3 – Regulated Industries
 - iv. Drawer #4 – Regulated Industries
 - d. Cabinet #4
 - i. Drawer #1 – Other Regulated Industries
 - ii. Drawer #2 – Merck Removal Credits
 - iii. Drawer #3 – Merck Correspondence

- iv. Drawer #4 – Merck Weather Flow/Organic Profile/Misc. Permit/Merck Data
- e. Cabinet #5
 - i. Drawer #1 – Monthly/Annual Reports/Forms
 - ii. Drawer #2 – PCB Trackdown Phase IV
 - iii. Drawer #3 – PCB Trackdown Phase V
 - iv. Drawer #4 – Removal Credits/Merck Effluent Guidelines
- f. Cabinet #6
 - i. Drawer #1 – TRE 2003
 - ii. Drawer #2 – LAB Contracts/Info/Budget
 - iii. Drawer #3 – Monthly Reports to ED/LAB MTG Minutes/Personnel/Training
 - iv. Drawer #4 – NJHDG
- g. Cabinet #7
 - i. Drawer #1 – Title V Permits
 - ii. Drawer #2 – Title V Permit Application/Subchapter 8 Permits
 - iii. Drawer #3 – Air Emmissions [sic] Statements
 - iv. Drawer #4 – POTW/PHARM MACT Rule
- h. Cabinet #8
 - i. Drawer #1 – Title V Applic./Modifications
 - ii. Drawer #2 – VOA Study 1990/Misc. Air Regulations
 - iii. Drawer #3 – Sub-Chapter 8 Permits
- i. Cabinet #9
 - i. Drawer #1 – Industry RTA Reports
 - ii. Drawer #2 – Empty
 - iii. Drawer #3 – Empty

- iv. Drawer #4 – Special Projects & Inquiries
- j. Part of Cabinet #9
 - i. Industry RTA files archived in Barge Building.
- k. Cabinet #10
 - i. Drawer #1 – LRSA Rules & Regulations Modifications Truck-In Waste
 - ii. Drawer #2 – LRSA Rules & Regulations
 - iii. Drawer #3 – IPP Permit/Mass Limit Allocation/LIA/LIMAC
 - iv. Drawer #4 – IPP Categorical/IPP Awards/BMR, CWF
- l. Cabinet #11
 - i. Drawer #1 – Lab Audit/Certification/QA-QC Manual
 - ii. Drawer #2 – Lab Method Develop/Updates (SOP)/SOCR/ANN. Suitability Test/Lab Waste Removal
 - iii. Drawer #3 – NELAC/NJWEA Infor/Lab Schedule Training Records/Lab & Monitoring Upgrades
 - iv. Drawer #4 – Laboratory Equipment
- m. Cabinet #12
 - i. Drawer #1 – General IPP Issues
 - ii. Drawer #2 – Plant Studies/Investigations
 - iii. Drawer #3 – Field Manuals/Field Manual Training
 - iv. Drawer #4 – Removal Credits Study 2000-2001
- n. Cabinet #13
 - i. Drawer #1 – 2000-2003 RTA Annual Monitoring
 - ii. Drawer #2 – Chemical Hygiene Plan/Lab PEOPSHA/Right to Know
 - iii. Drawer #3 – Monitoring Department Purchase Orders

- iv. Drawer #4 – Miscellaneous
- o. Cabinet #14
 - i. Drawer #1 – Industry Data/Self-Monitoring (A-C)
 - ii. Drawer #2 – Industry Data/Self-Monitoring (C-M)
 - iii. Drawer #3 – Industry Data/Self-Monitoring (N-Z)
 - iv. Drawer #4 – Sewer Bills
- p. Cabinet #15
 - i. Drawer #1 – IPP Reports/Audits/NJDEP Corresp./SNC Notice
 - ii. Drawer #2 – Removal Credits Reports
 - iii. Drawer #3 – Industrial Profiles/Industry Loading
 - iv. Drawer #4 – Hardness/TDS/Industry MSDS
- q. Cabinet #16
 - i. Drawer #1 – Wastewater Regulations/SQAR/NJPDES/SPCC/DPCC
 - ii. Drawer #2 – State & Federal Compliance Regulations
 - iii. Drawer #3 – LRSA Regulatory Reports/3-Year History
 - iv. Drawer #4 – NJ Discharge Projects (File #2)
- r. Cabinet #17
 - i. Drawer #1 – Temp. Disch. Permits/Site Remediation Projects
 - ii. Drawer #2 – Plant Spills/Coll. System Reports/Old Sewer Maps
 - iii. Drawer #3 – PCB Trackdown Pilot Study/Workplan/Contract 1996-2003
 - iv. Drawer #4 – Empty
- s. Cabinet #2
 - i. Drawer #4 – NJPDES Permit Appeal

- t. Cabinet #2
 - i. Drawer #5 – NJPDES Permit History 1981-2007
- 2. Main Office File Inventory (LRSA39 to LRSA45)
 - a. Cabinet #1 (Left Side)
 - i. Drawer #1 (consent decree reporting, etc.)
 - ii. Drawer #2 (alternative methods to sludge disposal, etc.)
 - iii. Drawer #3 (grit and screening and sludge/landfill disposal, etc.)
 - iv. Drawer #4 (ACO – effluent toxicity – TRE/Status Reports, etc.)
 - b. File Cabinet #5
 - i. Drawer #2 – Sludge Management – Annual Residual Management Reports – LRSA Monthly Sludge Barge Rec. – J.G. Ries vs Spectraserve – Sludge Management Plans
 - c. File Cabinet #5
 - i. Drawer #3 – Sludge Management / Contracts #1 & #2 Long-Term Consent Decree – Historical Background – Ocean Dumping / Sludge Incinerator Air Permits 1990
- 3. Monitoring Department Archives Files (1 through 133, inclusive) (LRSA46 to LRSA70) – includes data on industrial and domestic dischargers, documents, correspondence, monthly industry status reports, monitoring reports, lab inspections, LRSA Annual Reports and Audits, Annual IPP Reports, toxicity reduction programs, annual sludge reports, various reports, analysis and studies, other monitoring reports, testing reports, removal credits programs; etc.).
- 4. Agreements-Ordinances-Resolutions of City of Linden and Borough of Roselle Relating to Creation and Authorization of LRSA (LRSA71 to LRSA111) (copies of all of these documents are provided) -
 - a. Agreement – Dated: December 6, 1949.
 - b. City of Linden Past Ordinance – Creating the LRSA December 2, 1947.
 - c. Borough of Roselle Ordinance #844 – Creating the LRSA December 9, 1947.

- d. Agreement amending the Municipal Contract dated December 6, 1949 as amended by Agreement, dated June 5, 1975.
- e. City of Linden Resolution approving amended Agreement dated June 5, 1975 and passed on December 16, 1980.
- f. City of Linden Ordinance – Amendment of Contract, passed on June 4, 1975.
- g. Agreement amending Municipal Contract, dated December 6, 1949, as amended by Agreement dated June 5, 1975 and as amended by Agreement dated November 20, 1979. Dated September 19, 2001.
- h. Borough of Roselle Resolution #01-245. Dated on September 19, 2001.
- i. City of Linden Ordinance #430-35, passed on May 15, 2001.

Each of the categories listed above are further broken down into itemized subcategories, some of which may fall within CMO XII, ¶¶21(b) and (c), if they are considered to involve the discharge of "hazardous materials", or "alleged hazardous materials", as that term is used in the CMO and is not otherwise exempt by law.

The documents referenced in the indices consist of hundreds of thousands, if not millions of pages of documents. The more recent documents are located in the Authority's Administration Building; the older documents are archived in the Authority's Barge Building.

Due to the fact that the overbroad and non-specific allegations of the Third-Party Complaint against LRSA by Maxus and Tierra, which, except for the one incident referenced above in September 1975, were not delimited by Maxus and Tierra in their "nexus" documents, or in the documents later indexed by Maxus and Tierra, it will be a nearly impossible and cost prohibitive task for LRSA to review over 60 years of documents to determine which might fall within the categories set forth in CMO XII, ¶¶21(b) and (c) and then copy those documents for Maxus and Tierra. In contrast, when Maxus and Tierra made a specific allegation, such as the September 1975 incident, the Authority's personnel were able to identify the specific documents relating to that allegation, which were produced as part of the Authority's previous disclosures.

The task of deciding which of these related documents listed in the indices fall into which subcategories would be oppressive, overly burdensome, unreasonably costly and time consuming and would probably not lead to relevant evidence due to the highly subjective nature of such an undertaking. For these reasons, the Authority hereby advises Maxus and Tierra that an inspection by Maxus' and Tierra's attorneys of the items listed in the indices will be permitted during regular business hours and with reasonable advance notification pursuant to R. 4:18-1(b)(2). During such inspection,

Maxus and Tierra will be permitted to identify those documents which they would like duplicated, and the Authority will copy the same for the fees set forth in the Authority's public information regulation.

Please advise me how you would like to proceed in connection with such inspection.

Finally, please be advised that, in an effort to resolve the discovery dispute, this letter is being submitted without prejudice and subject to the objections set forth by the Authority in its previous responses pursuant to CMO XII, ¶¶21(b) and (c). In that connection, please be advised that Mr. Ertle of your office has still not contacted me to schedule a meeting to discuss Maxus' and Tierra's compliance with CMO XII, ¶21(a), and to clarify the Maxus/Tierra Index relating to the LRSA "nexus" documents, despite the fact that the Special Master specifically directed that to be done.

Very truly yours,

WEINER LESNIAK LLP

By: 

Richard L. Rudin

A Member of the Firm

RLR:eac

Enclosures

Cc: Hon. Marina Corodemus, J.S.C. (Ret.) (w/out enc.) (via Federal Express)
John M. Scagnelli, Esq., Liaison Counsel (w/out enc.) (via Federal Express)
All Counsel via CaseVantage (w/enc.)