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**Miller Environmental Group, Inc.**

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NEW JERSEY DEPARTMENT OF	:	
ENVIRONMENTAL PROTECTION, and THE:	:	SUPERIOR COURT OF NEW JERSEY
ADMINISTRATOR OF THE NEW JERSEY:	:	LAW DIVISION: ESSEX COUNTY
SPILL COMPENSATION FUND,	:	DOCKET NO.: ESX-L-9868-05 (PASR)
	:	
Plaintiffs,	:	
	:	
vs.	:	Civil Action
	:	
OCCIDENTAL CHEMICAL CORPORATION,:	:	
TIERRA SOLUTIONS, INC., MAXUS ENERGY:	:	<b>CMO XII SUPPLEMENTAL</b>
CORPORATION, REPSOL YPF, S.A., YPF, S.A.,:	:	<b>DISCLOSURE AND AMENDMENT</b>
YPF HOLDINGS, INC. and CLH HOLDINGS,:	:	<b>TO INITIAL DISCLOSURE OF</b>
INC.	:	<b>THIRD-PARTY DEFENDANT</b>
	:	<b>MILLER ENVIRONMENTAL</b>
	:	<b>GROUP, INC.</b>
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA:	:	
SOLUTIONS, INC.	:	
	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i>	:	
	:	
Third-Party Defendants.	:	

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Third-Party Defendant Miller Environmental Group, Inc. ("Respondent"), hereby provides its Supplemental Disclosure and Amendment to Initial Disclosure pursuant to Case

Management Order XII, prior case management orders incorporated therein, and the January 31, 2011 Order on Consent ("Consent Order") together with any written agreement us to terms for timing, scope and manner of production reached under the Consent Order, collectively the "Amended Production Requirements."

### **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, any other applicable privilege or protection, the fact that the Respondent is not in possession of the documents and/or the documents are not reasonably accessible by Respondent, the documents are a matter of public record which are equally as accessible to the Third-Party Plaintiffs, the documents are specifically excepted from production pursuant to CMO VIII Paragraphs 4(a-g) or other applicable Order. 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. The production pursuant to this Supplemental Disclosure of any document that is marked as privileged, confidential or otherwise protected from disclosure shall not be deemed a waiver of the attorney-client privilege, attorney work product doctrine or other protections applicable to it or to other documents. The documents are protected from discovery/disclosure because of confidentiality, trade secret, State and Federal Homeland Security confidentiality and other applicable protection.

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 alleged against Respondent in this litigation are amended.

3. Respondent's investigation in this matter is continuing. The time period covered by the allegations in plaintiff's Third Amended Complaint and quite long and encompasses at least six decades. The geographic scope of the Third Amended Complaint is also quite broad, covering the "Newark Bay Complex," which spans the "lower of seventeen miles of Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, and into adjacent waters and sediments." Third Amended Complaint, paragraph 1. Accordingly, 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 VII, paragraph 3(a) dated August 7, 2009.

6. "Sites," per CMO VIII, are defined as those site(s) or properties with which a Third-Party is associated in a Third-Party Complaint. The Site which Respondent is allegedly associated with in Third-Party Complaint is the Borne Chemical Site.

7. Document Production requirements set forth in CMO XII, paragraph 21 (as amended by the Amended Production Requirements) 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". The Amended Production Requirements are also answered with reference to the Alleged Discharges as defined in CMO VIII and include documents under the Excepted Information Categories except to the extent of those documents are covered by logs pursuant to Paragraph 4 of the Consent Order.

8. Documents subject to claims of privilege, work product, confidentiality or trade secret is detailed in a log to be furnished along with this submission, to the extent required under the August 11, 2009 "Agreed Order Regarding Documents Withheld from Production" or Consent Order.

9. Documents are produced pursuant to this Supplemental Disclosure without any admission that Respondent is a discharger, a party in any way responsible for a discharge of hazardous substance, or otherwise responsible for any costs attributed to hazardous substances in the Newark Bay Complex and subject to this Litigation, or that any action may have adversely impacted the environmental condition of the Newark Bay Complex.

10. Respondent has produced under separate cover letter dated July 21, 2011 but as part of this Supplemental Disclosure, a disk containing 19,287 documents relating to the investigation remediation activities and communications with government representatives with respect to the Borne Chemical Company Site that have been collected by counsel (Rich Ricci, Esq.) for the Borne Chemical Company Site Participating Group ("Group's Counsel") purely as a

convenience to all parties and is not intended to waive any objections nor imply any obligation of Respondent to produce all documents in Group Counsel's possession. References in this Supplemental Disclosure to documents produced on this disk should be read to include the disk from the Group Counsel, as appropriate.

11. These disclosures are not intended to prejudice or waive any privileges or objections Respondents may have with respect to any outstanding or subsequent requests for discovery.

12. Respondent makes these additional disclosures without waiver of, and with full reservation of rights with respect to, any arguments Respondent may have regarding the sufficiency of Third Party Plaintiffs production under CMO XII or other applicable Orders.

13. As noted above (para.10), Documents produced by Group's counsel on July 21, 2011 are subject to these objections and comments; this also includes the nine documents (Miller Bates Numbers 1-9) produced as part of it 8-30-11 FTA submission.

### **Supplement to Initial Disclosures Pursuant to CMO XII**

#### **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:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, were forward by a disk on July 21, 2011 by Borne's Group Counsel and the nine documents (Miller 1-9) were attached to Respondent's FTA application, pursuant to the Amended Production Requirements.

(ii) the potential pathways and methods by which the Hazardous Materials may have been released to the Newark Bay Complex, as well as the quantity, nature and toxicity of such Hazardous Materials;

**Response:**

Unknown by Respondent. See documents provided in response to paragraph 21(b), which are the only relevant, non-privileged documents in Miller's possession or control

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

**Response:**

Unknown by Respondent. See documents provided in response to paragraph 21(b), which are the only relevant, non-privileged documents in Miller's possession or control.

(iv) the 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 claims 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:**

. Not applicable.

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:**

Unknown by Respondent. See documents provided in response to paragraph 21(b), which are

the only relevant, non-privileged documents in Miller's possession or control.

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

**Response:**

Unknown by Respondent. See documents provided in response to paragraph 21(b), which are the only relevant, non-privileged documents in Miller's possession or control.

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:**

Unknown by Respondent. See documents provided in response to paragraph 21(b), which are the only relevant, non-privileged documents in Miller's possession or control

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:**

Unknown by Respondent. See documents provided in response to paragraph 21(b), which are the only relevant, non-privileged documents in Miller's possession or control.

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

**Response:**

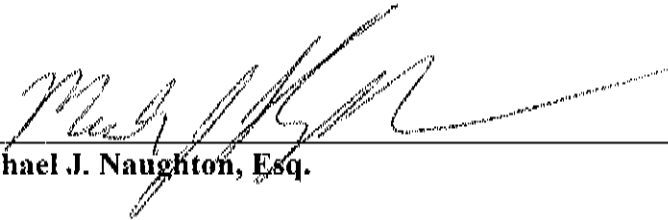
Respondent is presently not aware of any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimbursement for payments made to satisfy said judgment. Respondent's insurance carrier denied the coverage claim in this matter. These documents are confidential and will be provided for inspection under an agreement of confidentiality. Respondent reserves the right to supplement and amend this response in the future.

**Amendment to Initial Disclosures Dated May 12, 2010**

This CMO XII Supplemental Disclosure and Amendment to Initial Disclosure of Third-Party Defendant Miller Environmental Group, Inc. is made without prejudice to Respondent's

right to change or supplement its responses, its right to assert privileges or objections with respect to any subsequent requests for discovery, and its right to introduce at trial additional at trial additional evidence and documents as warranted by the development of the facts underlying this litigation.

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP  
Attorney for Third-Party Defendant  
Miller Environmental Group, Inc.



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**Michael J. Naughton, Esq.**

Dated: September 7, 2011