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PLEASE REPLY TO ROSELAND, NJ

September 2, 2011

**VIA FEDERAL EXPRESS**

Charles M. Crout, Esq.  
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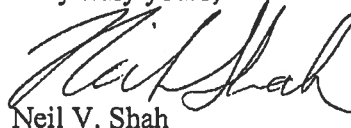
Re: **Third-Party Defendants PSE&G and PSEG Fossil LLC's Document Production and Supplemental Third-Party Disclosure in *NJDEP v. Occidental Chemical Corp., et al. and Maxus Energy Corporation and Tierra Solutions, Inc. v. 3M Company, et al.* (Docket No. L-9868-05)**

Dear Mr. Crout:

Pursuant to Case Management Order XII, the January 31, 2011 Consent Order, and the directive of the Special Discovery Master at the July 27, 2011 hearing, enclosed are Third-Party Defendants PSE&G's and PSEG Fossil LLC's Document Production and Supplemental Third-Party Disclosure. Also enclosed is an index of boxes being produced for inspection and a hard drive containing readily accessible ESI that is identified by production numbers PSEG0000000001 to 267831. The password for the TrueCrypt volumes on the hard drive is "IKON2009."

Please feel free to contact me if you have any trouble accessing the enclosed hard drive.

Very truly yours,

  
Neil V. Shah

Enclosures

cc: All Counsel (via CT Summation w/o enclosures)

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*Attorney for Third-Party Defendants PSE&G and PSEG Fossil LLC*

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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,

v.

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 Defendants PSE&G and PSEG Fossil LLC (“Respondents”) hereby provide their Document Production and Supplemental Initial Disclosures pursuant to Case Management Order (“CMO”) XII and prior CMO’s incorporated therein by reference; pursuant to the January 31, 2011 Consent Order (“Consent Order”) applicable to certain of those Third-Party Defendants who have received written confirmation that counsel for Third-Party Plaintiffs Maxus Energy

Corporation and Tierra Solutions, Inc. (“Maxus and Tierra”) have completed their production of documents pursuant to CMO XII, ¶ 21(a); and pursuant to the directive of the Special Discovery Master at the July 27, 2011 hearing (collectively, the “Amended Production Requirements”).

**Reservations, Comments, and Definitions**

1. Respondents reserve the right to object to the production of any documents or other information on any ground, including relevance, unreasonableness, or undue burden, and to assert any applicable privilege, including the attorney-client privilege, the work product doctrine, or the common interest doctrine, as well as confidentiality, trade secret, State and Federal Homeland Security confidentiality, or any other applicable privilege or protection. In making these disclosures, Respondents do not intend to waive any privileges or objections they may have with respect to any deficient, outstanding, or subsequent requests for discovery.

2. Respondents’ investigation in this matter is continuing. Accordingly, they reserve the right to supplement, clarify, or revise these disclosures at any time prior to trial to the extent additional information becomes available or is obtained through discovery. Further, Respondents reserve the right to amend these disclosures to the extent the claims brought by, or alleged against, Respondents in this litigation are amended and/or clarified by documents produced by any or all other parties.

3. Respondents reserve the right to rely on any facts, documents, or other evidence that may develop or come to Respondents’ attention during the course of this litigation. Respondents’ responses are set forth without prejudice to their right to assert additional objections, including, but not limited to, the scope, nature, timing, or manner of production, or to supplement their responses should Respondents discover appropriate grounds during the course of this litigation.

4. Respondents reserve the right, pursuant to Rule 4:18-1(b), to produce documents for inspection as they are maintained in the ordinary course of business.

5. "Documents," excluding Electronically Stored Information and email, shall have the meaning set forth in the Court's August 11, 2009 Order for Preservation of Documents and Data.

6. "Alleged Discharges" shall have the meaning set forth in CMO VIII.

7. "Electronically Stored Information" or "ESI" shall have the meaning set forth in the Court's August 11, 2009 Order for Preservation of Documents and Data.

8. "Sites," as 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.

9. The document production requirements set forth in CMO XII, ¶ 21 (as amended by the Amended Production Requirements) are read in concert with CMO VIII, ¶ 3 and CMO V, ¶ 8 (incorporated by reference in CMO XII, ¶ (1)). CMO VIII, *inter alia*, call for a listing of those documents to be produced by Third-Party Defendants with certain excepted categories, the "Excepted Information Categories."

10. To the extent any requirements set forth in the Amended Production Requirements are repetitive, burdensome, and/or unfairly place a duty of inquiry on Respondents as to Newark Bay Complex locations other than the Sites, unless otherwise noted, these disclosures are provided with reference to the Amended Production Requirements and CMO XII, ¶ 21(c). With respect to the Amended Production Requirements as to CMO XII, ¶ 21(b), Respondents reference the information previously furnished by the Joint Defense Group of Private Third-Party Defendants ("JDG") in connection with CMO V, ¶ 8. Further, this production is without prejudice to Respondents' position that CMO XII does not require the

production of ESI in the absence of an Electronic Discovery Protocol (as required under CMO V).

11. Documents subject to claims of privilege, work product, confidentiality, trade secret, or any other privilege or protection will be detailed in a log to be furnished in accordance with the August 2009 Agreed Order Regarding Documents Withheld from Production and/or the Confidential Information Order appended to CMO VIII as soon as practicable pursuant to the Amended Production Requirements.

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

**(i) Copies of all non-privileged Documents other than electronic email discovery, that relate to the alleged discharge of any hazardous wastes, hazardous substances, pollutants or contaminants (“Hazardous Materials”) to the Newark Bay Complex.**

Response: Respondents incorporate by reference the Reservations, Comments, and Definitions above, specifically ¶ 10, as well as their Response to ¶ 21(c)(1)(i) below.

**(ii) Copies of all non-privileged Documents other than electronic email discovery, that relate to the potential pathways and methods by which Hazardous Materials may have been released to the Newark Bay Complex, as well as the quantity, nature and toxicity of such Hazardous Materials.**

Response: Respondents incorporate by reference the Reservations, Comments, and Definitions above, specifically ¶ 10, as well as their Response to ¶¶ 21(c)(1)(i) below.

**(iii) Copies of all non-privileged Documents other than electronic email discovery, that relate to other actions relating to properties or operations that may have adversely impacted the environmental condition of the Newark Bay Complex.**

Response: Respondents incorporate by reference the Reservations, Comments, and Definitions above, specifically ¶ 10, as well as their Response to ¶¶ 21(c)(1)(i) below.

**(iv) Copies of all non-privileged Documents other than electronic email discovery, that relate to the costs and damages sought in connection with any alleged discharge of Hazardous Materials.**

Response: Respondents incorporate by reference the Reservations, Comments, and Definitions above, specifically ¶ 10. Respondents further note that the filing of all cross-claims and counterclaims asserting statutory or common law contribution or indemnification and Fourth Party claims has been deferred. Accordingly, Respondents have asserted no such claims against any parties in this action at this time.

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

**(1)(i) 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: the release or discharge of Hazardous Materials from or at that Third-Party Defendant's properties or operations.**

Response: Respondents incorporate by reference the Reservations, Comments, and Definitions above, specifically ¶ 10. Subject to these reservations, 1040 bankers' boxes containing Documents responsive to this request will be made available for inspection at Respondents' headquarters at 80 Park Plaza, Newark, New Jersey 07102 upon two weeks' prior notice, at a time that is mutually convenient to the Parties. Enclosed is an index of the boxes being produced for inspection. Although CMO XII does not contemplate the production of ESI in the absence of an Electronic Discovery Protocol (as required under CMO V), pursuant to the directive of the Special Discovery Master at the

July 27, 2011 hearing, enclosed is a hard drive containing readily accessible ESI that is identified by production numbers PSEG000000001 to 267831 that is responsive to this request. Additional documents responsive to this request will be produced in accordance with the directive of the Special Discovery Master at the July 27, 2011 hearing.

**(1)(ii) 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: 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: See response to ¶ 21(c)(1)(i) above.

**(1)(iii) 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: sampling results from environmental, chemical, or biological testing conducted at that Third-Party Defendant's properties.**

Response: See response to ¶ 21(c)(1)(i) above.

**(1)(iv) 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: 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: See response to ¶ 21(c)(1)(i) above.

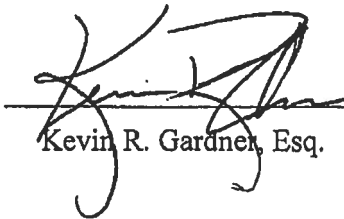
**(2) Any Documents relating to any industrial waste containing Hazardous Materials that was transported to, processed or treated at, or discharged from any of the sites and/or properties with which a Third-Party Defendant is associated in the Third-Party Complaints.**

Response: See response to ¶ 21(c)(1)(i) above.

**(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: Respondents incorporate by reference the Reservations, Comments, and Definitions above. Subject to these reservations, documents responsive to this request will be made available.

Respectfully submitted,



Kevin R. Gardner, Esq.

Dated: September 2, 2011

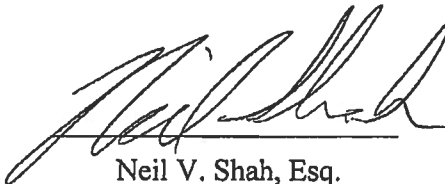


**CERTIFICATE OF SERVICE**

I certify that, on September 2, 2011, I caused to be served via Federal Express, a true and correct copy of Third-Party Defendants PSE&G's and PSEG Fossil LLC's Document Production and Supplemental Third-Party Disclosure, an index of bankers' boxes containing responsive documents, and an external hard drive containing readily accessible ESI that is identified by production numbers PSEG0000000001 to 267831, to counsel for Third-Party Plaintiffs Maxus and Tierra at the following address:

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

I hereby certify that the foregoing statements made by me are true. I am aware that if any of these statements are willfully false, that I am subject to punishment.

  
Neil V. Shah, Esq.

Dated: September 2, 2011