

Morgan, Lewis & Bockius LLP  
502 Carnegie Center  
Princeton, NJ 08540  
Tel: 609.919.6600  
Fax: 609.919.6701  
www.morganlewis.com

**Morgan Lewis**

C O U N S E L O R S   A T   L A W  
A Pennsylvania Limited Liability Partnership

RANDALL B. SUNBERG  
Partner-in-Charge

**Christopher J. McAuliffe**  
609.919.6619  
cmcauliffe@morganlewis.com

July 22, 2011

**VIA FEDERAL EXPRESS**

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

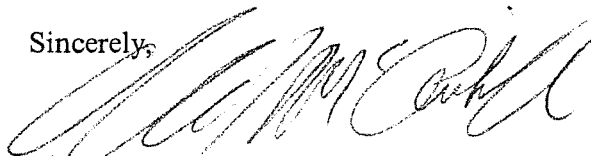
Re: NJDEP, et al. v. Occidental Chemical Corporation, et al.  
Docket No. ESX-L-009868-05 (PASR)

Dear Charles,

We represent third-party defendant Phelps Dodge Industries, Inc. ("Phelps Dodge") in the above-referenced matter. Pursuant to the January 31, 2011 Consent Order, our conversation on July 5, 2011 and your letter to Eric Rothenberg dated July 6, 2011, enclosed please find Phelps Dodge's Supplemental Disclosure and Amendment to Initial Disclosure and a disk containing the referenced documents.

Please do not hesitate to call me if you have any questions.

Sincerely,



Christopher J. McAuliffe

CJM/cmf  
Enclosure

c: Counsel for all parties (via CT Summation)

DBI/67745181.1

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MORGAN, LEWIS & BOCKIUS LLP  
502 Carnegie Center  
Princeton, NJ 08540  
Tel: 609.919.6619  
Fax: 609.919.6701  
Attorney for Third-Party Defendant Phelps Dodge Industries, Inc.

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

Third-Party Defendant Phelps Dodge Industries, 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 as 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, and any other applicable privilege or 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. 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.

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 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.

6. 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. With respect to Amended Production Requirements as to CMO XII, paragraph 21(b), reference is made to information previously furnished by the JDG in connection with CMO V, paragraph 8.

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

8. Documents are produced pursuant to this Supplemental Disclosure without any admission that Respondent is a discharger, 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.

9. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint is quite long and encompasses at least six decades. The geographic scope of the Second Amended Complaint is also quite broad, covering the "Newark Bay Complex," which spans the "lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, and into adjacent waters and sediments." Second Amended Complaint, ¶ 1. The time period covered by Third-Party Defendants' Third-Party Complaint "B" is also quite long and encompasses over 100 years. The scope of inquiry, accordingly, is quite broad and potentially burdensome. Respondent is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

10. Respondent is producing, under separate cover letter dated July 21, 2011 but as part of this Supplemental Disclosure, a disk containing documents relating to the clean-up activities and communications with government representatives with respect to the Borne Chemical Company Site that have been collected by counsel for the Borne Chemical Company Site PRP 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 a disk should be read to include the

disk from the Group Counsel, as appropriate, as well as the disk enclosed with this document.

**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, are on the enclosed disk 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:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements.

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

**Response:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements.

(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 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:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements.

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:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, and further subject to reservation and objection as to Documents relating to “operations, manufacturing and/or production processes” and “sampling” or “testing” not related to an alleged or potential release or discharge of a Hazardous Substance, are on the enclosed disk pursuant to the Amended Production Requirements.

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

**Response:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements.

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:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements.

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:**

Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements.

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's investigation and evaluation with regard to any insurance or indemnity agreement that may be applicable to any judgment in this matter is on-going. Documents responsive to this request, to the extent available and subject to the above-noted reservations, are on the enclosed disk pursuant to the Amended Production Requirements. Respondent reserves the right to supplement and amend this response in the future.

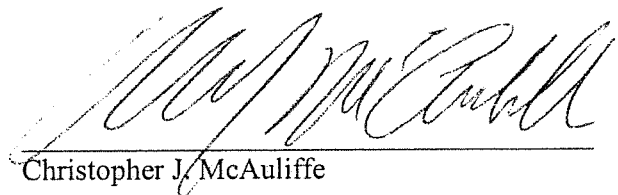
**Amendment to Initial Disclosures Dated May 12, 2010**

All responses in the Initial Disclosure of Third-Party Defendant Phelps Dodge Industries, Inc. dated May 12, 2010 are hereby amended to delete references to the address at One North Central Avenue in Phoenix, Arizona 85004, and, in its place, to reference the address at 333 North Central Avenue in Phoenix, Arizona 85004.

This CMO XII Supplemental Disclosure and Amendment to Initial Disclosure of Third-Party Defendant Phelps Dodge Industries, 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 evidence and documents as warranted by the development of the facts underlying this litigation.

Dated: July 22, 2011

MORGAN, LEWIS & BOCKIUS LLP  
Attorney for Third-Party Defendant  
Phelps Dodge Industries, Inc.



Christopher J. McAuliffe



NJDEP v. Occidental Chemical Corp., et al.,  
Docket No. L-9868-05 (PASR)

Phelps Dodge Industries Supplemental Disclosure  
PDI-0000001 to PDI-0028865