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March 24, 2011

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

Re: New Jersey Department of Environmental Protection, et al. v. Occidental  
Chemical Corporation, et al.  
Docket No. ESX-L-9868-05 (PASR)

Dear Mr. Crout:

Enclosed please find Third-Party Defendant's Prysmian Communications Cables and  
Systems USA, LLC Supplemental Third-Party Disclosure and document production on the  
accompanying CD.

Very truly yours,

NORRIS, McLAUGHLIN & MARCUS

John A. Jakub

Enclosures

cc: All Counsel on the Attached List (w/enc.)



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## **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. Nothing contained herein, including the modification of any documents, shall be construed as an admission by Respondent regarding the existence or nonexistence of any information, and no objection or answer shall be construed as an admission as to the relevance of admissibility of any information or document or the truth or accuracy of any

statement or characterization contained in any document.

5. By providing any response and/or producing any document, Respondent does not admit the relevancy or admissibility of such information, and specifically reserves its right to object to the use of such information on the ground that it is not relevant, admissible, or in any way related to the issues of this action. Respondent reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever, and reserves the right to supplement responses prior to trial.

6. Respondent objects to these requests to the extent that they contain a characterization, including but not limited to a characterization of any fact. By responding to a request, Respondent does not agree, and shall not be deemed to have agreed to any characterization alleged.

7. Each of the foregoing Reservations and Comments is hereby expressly incorporated by reference in Respondent's response. To the extent Respondent provides information in this response, Respondent does so subject to and without waiving any of these Reservations and Comments.

8. "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.

9. "Alleged Discharges" shall have the meaning set forth in the Court's CMO  
VIII.

10. "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.

11. 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.

12. 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 and Comments section above. **See also**, 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 and Comments section above. See also, 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 and Comments section above.

(iv.) the costs and damages costs and damages sought in connection with any alleged discharge of Hazardous Materials.

**Response -** See, Reservations and Comments section 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 -** See, Reservations and Comments section above. Documents responsive to this request, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below.

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 -** Respondent limits its response in accordance with the reservations noted above. Responsive Documents to this request, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below.

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. Documents responsive to this request, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below.

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** - See, Reservations and Comments section above. Documents responsive to this request will be produced pursuant to the requirements of CMO XII, Paragraph 21(c) as to the Alleged Discharges, subject to the exceptions set forth in CMO VIII enumerated below.

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, Reservations and Comments section above. Documents responsive to this request as to the Alleged Discharge, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below.

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** - See, Reservations and Comments section above. Documents responsive to this request, to the extent available, are on the enclosed disc subject to the exceptions set forth in CMO VIII enumerated below.

## **August 11, 2009 CMO VIII Excepted Information Categories**

Excepted Information includes the following:

“Information, (“Information”), including, but not limited to, environmental, chemical and/or biological testing of groundwater, surface water, soil or sediment (hereinafter “Sampling Information”) contained in the nexus packages produced pursuant to paragraph 8(e) of CMO V”. See, Paragraph 4(a), as well as information produced under CMO XII, paragraph 21(a).

“Information previously produced to any branch, department, agency or instrumentality of the State of New Jersey including to the New jersey Department of Environment Protection (“NJDEP”) or Information produced to any other governmental agency or entity whose responsibility it is to oversee environmental compliance in the Newark Bay Complex Area, including, but not limited to, the United States Environmental Protection Agency and the United States Army Corps of Engineers (hereinafter “Governmental Recipients”). We believe information received from such agencies are included within the exception.

“Information produced to any Licensed Site Remediation Professional (hereinafter “LSRP”) who is duly licensed by the State of new Jersey at the time of receipt of such Information where such disclosure of Information is intended to be used in connection with any remedial investigation or remedial action having an assigned case number in the NJDEP’s NJEMS system;” See, Paragraph 4(c).

“Sampling Information compiled with the expectation of being produced to a Governmental Recipient or an LSRP under Paragraphs 4(b) or 4(c) but which Sampling

Information has not yet undergone quality assurance/ quality control or similar analysis;”  
See, Paragraph 4(d).

“Information produced by a third-party defendant to any third-party plaintiff pursuant to the New jersey Open Records Act or other freedom of information law or regulation;” See, Paragraph 4(e).

“Information previously produced to Defendants” See, Paragraph 4(f).

“Information that falls within the attorney-client privilege and/or the attorney work product privilege.” See, Paragraph 4(g).

Dated: March 24, 2011

Respectfully submitted,

NORRIS, McLAUGHLIN & MARCUS, PA  
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By: 

John A. Jakub