

January 13, 2012

VIA FEDERAL EXPRESS

Michele R. Blythe, Esq.
Andrews Kurth LLP
10001 Woodloch Forest Dr.
Suite 200
The Woodlands, TX 77380

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

Dear Ms. Blythe:

We represent Third-Party Defendant Stanley Black & Decker, Inc. ("Stanley Black & Decker") in the above action.

Enclosed please find the Second Supplement to Third-Party Initial Disclosure of Stanley Black & Decker. In addition, enclosed is one (1) CD containing documents bearing bates stamped STAN0135039 - STAN0136035. Lastly, enclosed please find Stanley Black & Decker's privilege log.

Very truly yours,



Barry M. Kazan, Esq.

Enclosure

cc: All Counsel of Record Via Posting on CT Summation
(w/o enclosure)

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Attorney for Third-Party Defendant Stanley Black & Decker, 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.

: **SECOND SUPPLEMENT TO THIRD-PARTY INITIAL DISCLOSURE OF STANLEY BLACK & DECKER, INC.**

MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

vs.

3M COMPANY, *et al.*,

Third-Party Defendants.

Third-Party Defendant Stanley Black & Decker, Inc., (“Respondent”) hereby provides this Second Supplement to Third-Party Initial Disclosure pursuant to Case Management Order (“CMO”) XII and prior CMO’s incorporated therein by reference and, in accordance with terms of the January 31, 2011 Consent Order (“Consent Order”) applicable to certain of those Third-Party Defendants who have received written

confirmation that CMO XII paragraph 21(a) production of site files is complete from Drinker Biddle & Reath LLP, Andrews Kurth LLP, and/or Hannafan & Hannafan, Ltd. firms (counsel for Third-Party Plaintiffs) together with any written agreements as to terms for timing, scope and manner of production reached under the Consent Order, collectively the “Amended Production Requirements.”

Respondent filed its First Supplement to Third-Party Initial Disclosure on July 1, 2011. Subsequently, Respondent’s former consultant provided Respondent with additional documents to be disclosed. Thus, this Second Supplement to Third-Party Initial Disclosure supplements Respondent’s previous disclosures and provides these additional documents. Respondent’s previous Third-Party Initial Disclosure and First Supplement to Third-Party Initial Disclosure are hereby incorporated by reference.

General Objections and Statements

1. Respondent generally objects to the production of documents or other information on the following grounds: (i) the documents are not relevant to the issues in this case and are not reasonably calculated to lead to the discovery of admissible evidence; (ii) production of the documents creates an undue burden on Respondent; (iii) Respondent is not in the possession of the documents and/or the documents are not reasonably accessible by Respondent; (iv) the documents are a matter of public record which are equally accessible to Third-Party Plaintiffs; (v) the documents are specifically exempted from production pursuant to CMO VIII Paragraphs 4(a), 4(b), 4(c), 4(d), 4(e), 4(f) and 4(g), or other applicable Order; (vi) the documents are subject to an applicable privilege, including the attorney-client privilege, the work product doctrine, the joint

defense privilege, and/or the common interest doctrine; (vii) the documents are protected from discovery/disclosure because of 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 production of Documents shall not be construed to indicate that the Documents are or were maintained in Respondent's files or created or received by Respondent. Respondent's production of Documents shall not mean that Respondent concedes or agrees that any of the information or Documents provided in response to the Production Requirements are relevant to this litigation. Respondent reserves the right to object to the admissibility of any information or Documents produced if any party to this litigation seeks to use any such information or Documents as evidence.

3. "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.

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

5. "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.

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 those Documents are covered by a log that will be furnished as soon as practicable in accordance with the Amended Production Requirements. To the extent requirements set forth in the Amended Production Requirements 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 the Amended Production Requirements and CMO XII paragraph 21(c) unless otherwise noted and Respondent interprets paragraph 21(b) as not requiring Respondent to conduct any unreasonable inquiry or analysis regarding such other sites, including, but not limited to, any inquiry or analysis to determine which sites may be relevant. With respect to the 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. Except as otherwise provided, documents subject to claims of privilege or work product are detailed in a log that will be furnished as soon as practicable in accordance with the August 11, 2009 "Agreed Order Regarding Documents Withheld from Production" and/or "Confidential Information Order" as appended to CMO VIII as provided under the Amended Production Requirements.

8. In accordance with the Court's August 11, 2009 Agreed Order Regarding Documents Withheld from Production and CMO XII, paragraph 21(d) or to the extent it would cause an undue burden, Respondent has neither produced nor logged privileged Documents or attorney work-product materials created after the commencement of this action and with respect to this action, or those Documents which are communications regarding, or which reflect the activities of the Cooperating Parties Group, the Small Parties Group and/or the Joint Defense Group; for all such documents Respondent asserts confidentiality and/or attorney-client privilege and/or protection under the joint defense, common interest and/or work product doctrines. Likewise, in accordance with CMO XII, paragraph 21(d), Respondent has neither produced nor logged non-privileged confidential documents and objects to the production of the same.

9. Respondent makes these additional disclosures without waiver of, and with full reservation of rights with respect to, any arguments Respondent may have regarding the interpretation of CMO XIII, and other applicable Orders, and, specifically, those arguments relating to the scope, nature, and timing of production under CMO XII, and other applicable Orders.

10. 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 and other applicable Orders.

11. 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.

12. 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.

13. These General Objections and Statements apply to and are incorporated in each of Respondent's responses as if specifically set forth in each response below. The stating of a specific objection, reservation, comment, clarification or limitation, or the absence of any, shall not be construed as a waiver of any of these General Objections and Statements or of Respondent's right to supplement its production to state a further objection, reservation, comment, clarification or limitation.

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 – Respondent objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Stanley Tools Site at 140 Chapel Street, Newark, New Jersey ("former Stanley Tools Site"). Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production

Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

(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 – Respondent objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Stanley Tools Site at 140 Chapel Street, Newark, New Jersey (“former Stanley Tools Site”). Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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

Response - Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Based on the foregoing, Respondent is not producing any documents in response to this request.

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

Response - Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Respondent further objects to this request on the basis 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. Based on the foregoing, Respondent is not producing any documents in response to this request.

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 – Respondent objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Stanley Tools Site at 140 Chapel Street, Newark, New Jersey (“former Stanley

Tools Site”). Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 objects to this request to the extent that it assumes or concludes that any Hazardous Materials were stored or utilized at the former Stanley Tools Site for which Respondent has any liability, responsibility, and/or obligation. Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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

Response – Respondent objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Stanley Tools Site. Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 - Respondent objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Stanley Tools Site. Respondent limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 - Respondent objects to this request to the extent that it concludes that there was any release or discharge of Hazardous Materials into the Newark Bay Complex from the former Stanley Tools Site. Respondent limits its response in accordance with the

General Objections and Statements section above and in accordance with the Amended Production Requirements. Documents responsive to this request, to the extent available, are on the enclosed disc.

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 limits its response in accordance with the General Objections and Statements section above and in accordance with the Amended Production Requirements. Respondent has no Documents responsive to this request.

Dated: January 13, 2012

THOMPSON HINE LLP
Attorney for Third-Party Defendant
Stanley Black & Decker, Inc.

By: 
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