

August 9, 2011

Charles M. Crout, Esq.  
Andrews Kurth, LLP  
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. L-9868-05 (PASR)**

Dear Mr. Crout:

Enclosed are the Supplemental Third-Party Disclosure and document production (on the accompanying CD) for Third-Party Defendant Sun Chemical Corporation.

Sincerely,

MANATT, PHELPS & PHILLIPS



---

Kenneth D. Friedman, Esq.

Enclosures

cc: Counsel on attached list (w/ enc.)

**Passaic Litigation Liaison Counsel and Original Party Counsel  
January 26, 2011**

**Liaison Counsel**

Eric B. Rothenberg, Esq.  
O'Melveny & Myers, LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Tel: 212-326-2000  
Fax: 212-326-2061  
[erothenberg@omm.com](mailto:erothenberg@omm.com)

Lee D. Henig-Elona, Esq.  
Wolff & Samson  
One Boland Drive  
West Orange, NJ 07052  
Tel: 973-530-2178  
Fax: 973-530-2378  
[lhenigelona@wolffsamson.com](mailto:lhenigelona@wolffsamson.com)

John M. Scagnelli, Esq.  
Scarinci Hollenbeck  
1100 Valley Brook Avenue  
PO Box 790  
Lyndhurst, NJ 07071-0790  
Tel: 201-896-4100  
Fax: 201-896-8660  
[jscagnelli@scarincihollenbeck.com](mailto:jscagnelli@scarincihollenbeck.com)

Peter J. King, Esq.  
King & Petracca  
51 Gibraltar Drive, Suite 1D  
Morris Plains, NJ 07950-1254  
Email: [pjk@kingpetracca.com](mailto:pjk@kingpetracca.com)

**For the State**

Michael Gordon, Esq.  
Gordon & Gordon, PC  
505 Morris Avenue  
Springfield, NJ 07081  
Tel: 973-467-2400  
Fax: 973-467-0034  
[gordonlaw7@aol.com](mailto:gordonlaw7@aol.com)

**For Occidental**

Robert T. Lehman, Esq.  
Archer & Greiner  
One Centennial Square  
33 East Euclid Avenue  
Haddonfield, NJ 08033  
Tel: 856-354-3070  
Fax: 856-795-0574  
rlehman@archerlaw.com

**For YPF/Repsol**

Gregg H. Hilzer, Esq.  
Greenbaum, Rowe, Smith & Davis  
75 Livingston Avenue, Suite 301  
Roseland, New Jersey 07068-3701  
Tel: 973-577-1786  
Fax: 973-577-1787  
ghilzer@greenbaumlaw.com

**For Tierra/Maxus Complaint B Parties**

Charles M. Crout, Esq.  
Andrews Kurth LLP  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005  
Email: ccrou@andrewskurth.com

**For Tierra/Maxus Complaint C Parties**

William L. Warren, Esq.  
Drinker Biddle & Reath LLP  
105 College Road East  
Post Office Box 627  
Princeton, NJ 08542-0627  
Tel: 609-716-6603  
Fax: 609-799-7000  
william.warren@dbr.com

**For Tierra/Maxus Complaint D Parties**

Domenick Carmagnola, Esq.  
Carmagnola & Ritardi, LLC  
60 Washington Street  
Morristown, New Jersey 07960  
dcarmagnola@cr-law.net

Kenneth D. Friedman, Esq.  
**MANATT, PHELPS & PHILLIPS, LLP**  
7 Times Square  
New York, NY 10036  
Tel: (212) 790-4500  
Fax: (212) 790-4545  
Attorney for Third-Party Defendant SUN CHEMICAL CORPORATION

---

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE COMMISSIONER OF THE 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,	:	CIVIL ACTION
v.	:	
	:	<b>SUPPLEMENTAL THIRD-PARTY DISCLOSURE</b>
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,	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

---

Third-Party Defendant Sun Chemical Corporation (“Sun Chemical”), by and through undersigned counsel, hereby provides its Supplemental Third-Party Disclosures (“Supplemental Disclosures”) pursuant to Case Management Order (“CMO”) XII and prior CMOs incorporated therein by reference.

**OBJECTIONS, RESERVATIONS, AND COMMENTS**

1. Sun Chemical 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 Supplemental Disclosures are not intended to prejudice or waive any privileges or objections Sun Chemical may have with respect to any outstanding or subsequent requests for discovery.

2. Sun Chemical’s investigation in this matter is continuing. Accordingly, Sun Chemical reserves the right to supplement, clarify, and revise these Supplemental Disclosures any time prior to trial to the extent additional information becomes available or is obtained through discovery. Furthermore, Sun Chemical reserves the right to amend these Supplemental Disclosures to the extent the claims brought by or alleged against Sun Chemical in this litigation are amended.

3. Sun Chemical reserves its right to rely on any facts, documents or other evidence that may develop or come to Sun Chemical’s attention during the course of this matter. Sun Chemical’s responses are set forth herein without prejudice to its right to

assert additional objections or supplement its responses should Sun Chemical 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. "Sites," per CMO VIII, shall be defined as those site(s) or properties with which Sun Chemical is allegedly associated in Third-Party Complaint "B."

7. To the extent requirements set forth in CMO XII, paragraph 21 are repetitive, burdensome and/or unfairly place a duty of inquiry on Sun Chemical or any Third-Party Defendants as to the Newark Bay Complex locations other than the Sites, disclosures herein are provided with reference to the Sites defined above, pursuant to CMO XII paragraph 21(c). To the extent any CMO document production requirement could be construed as requiring the production of any information or document that is repetitive, burdensome, or unfairly places a duty of inquiry on Sun Chemical or any Third Party-Defendants, Sun Chemical hereby objects to any such requirement.

8. To the extent Excepted Information Categories, such as publicly available documents, are nonetheless produced by Sun Chemical, Sun Chemical does not in any way waive or intend to waive its right to exclude these materials as Excepted Information under CMO VIII. Sun Chemical reserves its right to withhold Excepted Information

Categories from any supplements, clarifications, and revisions to its Supplemental Disclosures and from any subsequent discovery requests.

9. In submitting its Supplemental Disclosures, Sun Chemical does not in any way waive or intend to waive, but rather intends to preserve and is preserving:

a. All objections, at or during any further proceeding in this action or any action, as to the credibility, accuracy, adoption, competency, relevancy, materiality, and admissibility of any of the non-privileged, responsive documents that are produced, or their subject matter;

b. All objections as to the vagueness, ambiguity, or other infirmity in the form of any of the CMO document production requirements;

c. All rights to object on the ground that the CMO document production requirements seek information or documents that are confidential, proprietary, financially sensitive, or contain trade secrets. To the extent that any CMO document production requirement could be construed as requiring the production of any information or document that is confidential, proprietary, financially sensitive, or a trade secret, Sun Chemical does hereby object to any such document production requirement;

d. All rights to object on any ground to the use of any of the non-privileged, responsive documents produced in any subsequent proceedings in this action or any other action;

e. All rights to object on any ground to any additional document

production requirement or discovery request made to Sun Chemical by any party;

f. Any and all privileges, including but not limited to 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 privilege, immunity, and/or rights under the applicable court rules, statutes, or the common law. Inadvertent disclosure of any information or documents protected by the foregoing privileges, immunities, and/or rights or any other applicable protection shall not constitute a waiver of any such privilege, immunity, and/or rights, nor shall inadvertent disclosure waive Sun Chemical's right to object to the use of such information contained therein during this action or in any other proceeding. Sun Chemical explicitly reserves the right to clawback inadvertently produced privilege documents pursuant to the August 11, 2009 "Agreed Order Regarding Documents Withheld from Production" as appended to CMO VIII, or pursuant to any other applicable law or rule governing inadvertent disclosure of privileged documents. To the extent that any CMO document production requirement could be construed as requiring the production of any information or document that is subject to the attorney-client privilege, the work product doctrine, the common interest doctrine, confidentiality, trade secret, State and Federal Homeland Security confidentiality, and/or any other applicable privilege, immunity, and/or rights under the applicable court rules, statutes, or the common law, Sun Chemical hereby objects to any such requirement.

10. 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," appended to CMO VIII.

11. Sun Chemical objects to the production of documents concerning other potentially responsible parties as impracticable, overbroad, and unduly burdensome. Sun Chemical will produce documents pertaining to other potentially responsible parties only to the extent that such documents are inextricably intertwined with responsive documents relating to Sun Chemical.

### **RESPONSES**

Sun Chemical incorporates by reference each of the foregoing Objections, Reservations, and Comments into each of the responses set forth below, as if fully set forth therein.

**CMO XII, 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**: Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

- (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**: Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent

available and non-privileged, are on the enclosed CD.

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

**RESPONSE:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

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

**RESPONSE:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD. Sun Chemical 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, Sun Chemical has made no such claim in this action at this time.

**CMO XII, 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:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

- (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:** Subject to and without waiver of the foregoing Objections,

Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

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

**RESPONSE:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

- (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:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, including, without limitation, the foregoing Objections, Reservations, and Comments as to the Excepted Information Categories, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

**CMO XII, PARAGRAPH 21(c)(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:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

**CMO XII, PARAGRAPH 21(c)(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:** Subject to and without waiver of the foregoing Objections, Reservations, and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

Dated: August 9, 2011

Respectfully submitted,

MANATT, PHELPS & PHILLIPS  
Attorneys for Third-Party Defendant  
Sun Chemical Corporation



---

Kenneth D. Friedman, Esq.  
7 Times Square  
New York, New York 10036  
Tel.: (212) 790-4500

200135588.3



SUN00000001 - SUN00000821

August 8, 2011