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July 18, 2011

**BY FEDERAL EXPRESS**

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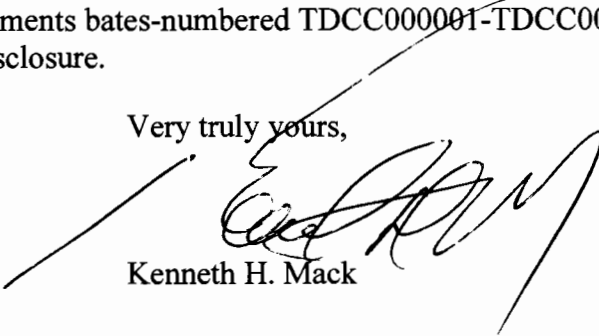
**Re: NJDEP v. Occidental Chemical Corp., et. al.**  
Docket No: ESX-L-9868-05(PASR)

Dear Mr. McGuinness:

Pursuant to our discussions (including last Friday), enclosed please find the following on behalf of Third Party Defendant The Dow Chemical Company with respect to the captioned action:

1. Written Component of Supplemental Third-Party Disclosure; and
2. CD containing documents bates-numbered TDCC000001-TDCC0002508 constituting such disclosure.

Very truly yours,

  
Kenneth H. Mack

KHM:cs  
Enclosures

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware Florida Nevada New Jersey New York Pennsylvania

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Attorneys for Third-Party Defendant The Dow Chemical Company

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
	:	
Plaintiffs,	:	DOCKET NO. L-9868-05 (PASR)
	:	
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.,	:	<b>THE DOW CHEMICAL COMPANY'S SUPPLEMENTAL THIRD-PARTY DISCLOSURE</b>
	:	
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

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Third-Party Defendant The Dow Chemical Company (“TDCC”), 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. Third Party Plaintiffs have failed to provide TDCC with a proper nexus package as required by, *inter alia*, CMO V, subparagraph 8(e), and TDCC is thus under no obligation to file its Supplemental Disclosures at this time. TDCC reserves its right to object to making any disclosures on this basis, and TDCC further reserves the right to amend its Supplemental Disclosures based on this continuing objection.

2. TDCC's investigation in this matter is continuing and the allegations against TDCC relate to a time frame which took place from 30 to 50 years ago. For these and other reasons, TDCC reserves the right to supplement, clarify, and revise these disclosures any time prior to trial to the extent additional information becomes available to it or is obtained through discovery. Further, TDCC reserves the right to amend these disclosures to the extent the claims brought by or alleged against TDCC in this litigation are amended.

3. TDCC reserves its right to rely on any facts, documents or other evidence that may develop or come to TDCC's attention during the course of this matter. TDCC's responses are set forth herein without prejudice to its right to assert additional objections or supplement its responses should TDCC 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. "Site," per CMO VIII, shall be defined as that site(s) or properties with which TDCC is allegedly associated in paragraphs 75 through 81 in Third-Party Complaint "D".

7. 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 the Sites defined above, pursuant to CMO XII paragraph 21(c). To the extent that 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 Third Party-Defendants, TDCC hereby objects to any such requirement.

8. To the extent Excepted Information Categories, such as publicly available documents, are nonetheless produced by TDCC, TDCC does not in any way waive or intend to waive its right to exclude these materials as Excepted Information under CMO VIII. TDCC 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, TDCC 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, TDCC 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 TDCC 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 or immunity, and/or rights under the applicable court rules, statutes, or the common law. Inadvertent disclosure of any information or documents protected by the attorney-client privilege, the work product doctrine, or any other applicable protection shall not constitute a waiver of any privilege or immunity, nor shall inadvertent disclosure waive TDCC's right to object to the use of such information contained therein during this action or in any other proceeding. TDCC 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 any other applicable privilege or immunity, and/or rights under the applicable court rules, statutes, or the common law, TDCC 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” as appended to CMO VIII.

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

### **RESPONSES**

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

**CMO XII, PARAGRAPH 21(b)(i):** 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 Reservations and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed CD.

**CMO XII, PARAGRAPH 21(b)(ii):** Copies of all non-privileged Documents other than electronic email discovery, that relate to

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

**CMO XII, PARAGRAPH 21(b)(iii):** Copies of all non-privileged Documents other than electronic email discovery, that relate to

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

**CMO XII, PARAGRAPH 21(b)(iv):** Copies of all non-privileged Documents other than electronic email discovery, that relate to

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

**RESPONSE** - Subject to and without waiver of the foregoing 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)(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:

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 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)(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:

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, byproducts or waste products used in connection therewith;

**RESPONSE** - Subject to and without waiver of the foregoing 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)(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:

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 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)(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:

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 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)(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 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** – TDCC has no such documents.

Dated: July 18, 2011

Respectfully submitted,

Fox Rothschild LLP  
Attorney for Third-Party Defendant The  
Dow Chemical Company

By: 

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Kenneth H. Mack