

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, 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 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. "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.

7. 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". The Amended Production Requirements are also answered with reference to the Alleged Discharges as defined in CMO VIII, and included documents under the Excepted Information Categories.

8. Respondent reserves the right to demand, on the basis of any privilege (including work product, trade secret, common interest doctrine or attorney-client or other applicable privilege or protection) and/or or an inadvertent production, that a document or documents be returned and/or otherwise stricken from the production.

9. To the extent a document or documents produced on the disk may fall into the "excepted information categories," such a production shall not be deemed to be a waiver of the Township's right to assert that the "excepted information," was not required to be produced pursuant to the Case Management Orders entered to date.

10. Documents are produced without any admission that Respondent is a "discharger" or has a "site" identified in the litigation, and without any admission that Respondent is otherwise responsible for costs attributed to hazardous substances in the Newark Bay Complex. Respondent specifically denies that it is a "discharger" or party in any way responsible for a discharge of a hazardous substance.

11. Respondent expressly reserves and does not waive any applicable privilege or any other protections by producing the documents within the disk containing documents stamped MAPLEWOOD000001 - MAPLEOOD0004084.

Production as to Paragraph 21.c Requests

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,

The allegations in this matter against the Township of Maplewood relate to the alleged discharge of sewage waste which was treated and/or handled by the Joint Meeting of Essex and Union Counties ("Joint Meeting"). As sewage waste is specifically excepted from the definition of "hazardous substance" under the New Jersey Spill Act, N.J.S.A.58:10-23.11b, the Township has no responsive documents. The Township of Maplewood denies any discharge or release of hazardous materials into the Newark Bay Complex. Notwithstanding this response, and without waiving this position, the parties are referred to the agreements between the member municipalities and the Joint Meeting.

The Township of Maplewood further states that there are no site(s), properties and/or operations with which the Third Party Defendant is associated in the pleadings, and objects to the extent the parties seek such information from third party defendant Township of Maplewood. While the Township of Maplewood believes that it is entitled to rely upon the definition of "Site," the Township of Maplewood has produced documents within the disk containing documents stamped MAPLEWOOD-0000001 - MAPLEWOOD 0004084, which are arguably within the scope of documents sought and not deemed to fall into "excepted information categories." Such production shall not be deemed a waiver of the Township's right to assert any objections, privileges or other arguments.

- ii. the operations, manufacturing and/or production processes, and 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;

The allegations in this matter against the Township of Maplewood relate to the alleged discharge of sewage waste which was treated and/ or handled by the Joint Meeting. There are no operations, manufacturing and/or production processes, or hazardous materials stored or utilized, nor was there any sampling that took place of the sewage waste by the municipality.

While the Township of Maplewood believes that it is entitled to rely upon the definition of "Site," the Township of Maplewood has produced documents within the disk containing documents stamped MAPLEWOOD-0000001 - MAPLEWOOD 0004084, which are arguably within the scope of documents sought and not deemed to fall into "excepted information categories." Such production shall not be deemed a waiver of the Township's right to assert any objections, privileges or other arguments.

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

The allegations in this matter against the Township of Maplewood relate to the alleged discharge of sewage waste which was treated and/ or handled by the Joint Meeting. There are no operations, manufacturing and/or production processes, or hazardous materials stored or utilized by the municipality.

While the Township of Maplewood believes that it is entitled to rely upon the definition of "Site," the Township of Maplewood has produced documents within the disk containing documents stamped MAPLEWOOD-0000001 - MAPLEWOOD 0004084, which are arguably within the scope of documents sought and not deemed to fall into "excepted information categories." Such production shall not be deemed a waiver of the Township's right to assert any objections, privileges or other arguments.

- iv. any communications involving that Third-Party Defendant and any branch, department, agency or instrumentality of municipal, State or federal government relating to any discharge or release of Hazardous Materials or this litigation.

The allegations in this matter against the Township of Maplewood relate to the alleged discharge of sewage waste which was treated and/ or handled by the Joint Meeting. Sewage waste is specifically excepted from the definition of "hazardous substance" under the New Jersey Spill Act, N.J.S.A.58:10-23.11b.

While the Township of Maplewood believes that it is entitled to rely upon the definition of "Site," the Township of Maplewood has produced documents within the disk containing documents stamped MAPLEWOOD-0000001 - MAPLEWOOD 0004084, which are arguably within the scope of documents sought and not deemed to fall into "excepted information categories." Such production shall not be deemed a waiver of the Township's right to assert any objections, privileges or other arguments.

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 the Third Party Defendant is associated in the Third Party Complaints.

While the Township of Maplewood believes that it is entitled to rely upon the definition of "Site," the Township of Maplewood has produced documents within the disk containing documents stamped MAPLEWOOD-0000001 - MAPLEWOOD 0004084, which are arguably within the scope of documents sought and not deemed to fall into "excepted information categories." Such production shall not be deemed a waiver of the Township's right to assert any objections, privileges or other arguments.

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.

The Township of Maplewood is continuing to endeavor to locate and confirm insurance coverage. Copies of any insurance policies which may be responsive and which have been located to date are within the disk containing documents stamped MAPLEWOOD-0000001 - MAPLEWOOD 0004084. Such production shall not be deemed a waiver of the Township's right to assert any objections, privileges or other arguments.

BENDIT WEINSTOCK, PA
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Defendant
Township of Maplewood

By: 
ROGER J. DESIDERIO, ESQ.

Dated: September 13, 2011