

SAIBER LLC

18 Columbia Turnpike, Suite 200

Florham Park, New Jersey 07932

(973) 622-3333

(973) 622-3340

Attorneys for Third-Party Defendant EPEC Polymers, 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.,	:	SUPPLEMENTAL THIRD-PARTY DISCLOSURE
	:	
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
	:	
Third-Party Plaintiffs,	:	
	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	

Third-Party Defendant EPEC Polymers, Inc., (“EPEC Polymers”), by and through its undersigned counsel, and for its Supplement to Initial Disclosure in accordance with the January 31, 2011 Consent Order (“Consent Order”) applicable to those Third-Party Joint Defense Group

members who have received completed site files as represented by the Drinker Biddle & Reath LLP or Hannafan & Hannafan, Ltd. firms (counsel for Third-Party Plaintiffs) provides the following specific information:

Reservations and Comments

1. EPEC Polymers 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 EPEC Polymers may have with respect to any outstanding or subsequent requests for discovery.

2. EPEC Polymers' investigation in this matter is continuing. Accordingly, it reserves the right to supplement, clarify, and revise these disclosures to the extent additional information becomes available or is obtained through discovery. Further, EPEC Polymers reserves the right to amend these disclosures to the extent the claims brought by or alleged against EPEC Polymers in this litigation are amended.

3. The time period covered by the allegations in the Plaintiffs' Third Amended Complaint is long and encompasses at least six decades. The geographic scope of the Third Amended Complaint is also broad, covering the 'Newark Bay Complex,' which spans the 'lower 17 miles of the Passaic River, Newark Bay, the lower reaches of the Hackensack River, the Arthur Kill, the Kill van Kull, and into adjacent waters and sediments.' Third Amended Complaint, ¶ 1. The scope of inquiry required by Plaintiffs and Third-Party Plaintiffs is

accordingly broad and potentially burdensome. EPEC Polymers is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

4. "Documents", excluding electronic e-mail, 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 (as amended by the Consent Order ("Amended Production Requirements")) are read in concert with CMO VIII, paragraph 3 and CMO V, paragraph 8 ("Additional Discharger") 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. The Amended Production Requirements are answered with reference to the Alleged Discharges as defined in CMO VIII. To the extent requirements set forth in 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. With respect to 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 ("Additional Dischargers").

8. Documents subject to claims of privilege will be detailed in a log to be furnished in

accordance with the August 11, 2009 “Agreed Order Regarding Documents Withheld from Production” as appended to CMO VIII, and provided under the Amended Production Requirements.

Production as to Paragraph 21(c) Requests as Amended by the Amended Production Requirements

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 - Documents responsive to this request, to the extent available, are provided on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

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 – EPEC Polymers limits its response to those documents in accordance with the Amended Production Requirements. Responsive Documents to this request, to the extent available, are provided on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

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

Response – EPEC Polymers limits its response to those documents as to the Alleged Discharges. Documents responsive to this request, to the extent available, are provided on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

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 - EPEC Polymers limits its response to those documents as to the Alleged Discharges. Documents responsive to this request, to the extent available, are provided on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

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 - Documents responsive to this request as to the Alleged Discharge, to the extent available, are provided on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

c. 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 - Documents responsive to this request, to the extent available, are provided on the enclosed discs subject to the exceptions set forth in CMO VIII enumerated below or as provided under the Amended Production Requirements.

Production as to Paragraph 21(b) Requests as Amended by the Amended Production Requirements

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, Paragraph 7, above. See, Response to Paragraph 21c 1, i., above.

(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, Paragraph 7, above. See, 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, Paragraph 7, above.

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

Response - See, Paragraph 7, above. Third-Party Defendant further notes that all cross-claims and counterclaims 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.

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).

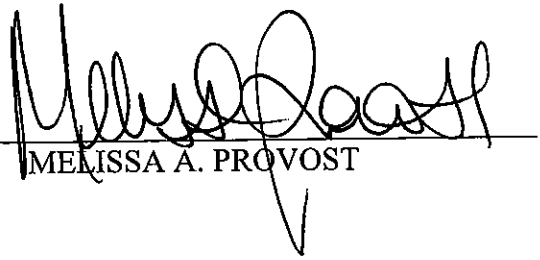
“Information previously produced to Defendants” See, Paragraph 4(f).

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

Dated: February 9, 2011

SAIBER LLC
Attorneys for Third-Party Defendant
EPEC Polymers, Inc.

By: _____



MELISSA A. PROVOST