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Attorneys for Third-Party Defendant, Prysmian Communications Cables
and Systems USA, LLC

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al.,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – ESSEX COUNTY
	:	DOCKET NO: ESX-L-9868-05
Plaintiffs,	:	
v.	:	CIVIL ACTION
OCCIDENTAL CHEMICAL CORPORATION, et al.,	:	INITIAL DISCLOSURE OF THIRD-PARTY DEFENDANT PRYSMIAN COMMUNICATIONS CABLES AND SYSTEMS USA, LLC
Defendants,	:	
MAXUS ENERGY CORPORATION, et al.,	:	
Third-Party Plaintiffs,	:	
v.	:	
3M COMPANY, et al.,	:	
Third- Party Defendants.	:	

To: Michele R. Blythe, Esq.
Andrews Kurth LLP
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The Woodlands, TX 77380
Attorneys for Defendants/Third-party Plaintiffs “Complaint B”

Third-party Defendant, Prysmian Communications Cables and Systems USA, LLC (“Prysmian”), in accordance with all applicable provisions of the Case Management Orders and the New Jersey Rules of Court, hereby provides its Initial Disclosure.

Reservations

1. This Disclosure is based upon information reasonably available to Prysman as of this date and do not purport to identify every witness or document possibly relevant to this case. Prysman 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, and any other applicable privilege or protection. These disclosures are not intended to prejudice or waive any privileges or objections Prysman may have with respect to any outstanding or subsequent requests for discovery.

2. Prysman's 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, Prysman reserves the right to amend these disclosures to the extent the claims brought by or alleged against Prysman in this litigation are amended.

3. The time period covered by the allegations in the Plaintiffs' Second Amended Complaint is quite long and encompasses at least six decades. The geographic scope of the Second Amended Complaint is also quite 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.' Second Amended Complaint, ¶ 1. The scope of inquiry required by Plaintiffs and Third-Party Defendants is accordingly quite broad and potentially burdensome. Prysman is therefore engaged in a continuing investigation and reserves the right to supplement and modify these disclosures.

Initial Disclosures

a. The name, address and telephone number, as may be known of each individual likely to have discoverable information, along with the subjects of that information, that relates to any alleged discharge or release of pollutants, contaminants and/or hazardous substances (“Pollutants”) into the Newark Bay Complex (as these terms are defined in the Second Amended Complaint and the Third-Party Complaints) from the site(s) and/or properties with which the disclosing party is associated in the Third-Party Complaint (“Alleged Discharges”);

Response

The time frame covered by the allegations in the Plaintiffs’ Second Amended Complaint spans many years and relate to a facility for which ownership changed a number of times during the relevant time period. Many individuals who may have knowledge or information responsive to the information sought in these Initial Disclosures are unknown or unavailable to Pysmian. Additionally, many of the documents that may be responsive to these Initial Disclosures may have never been in Pysmian’s possession, custody, or control.

Pysmian objects to the form of this Request to the extent that it assumes or concludes that there was an “alleged discharge or release of pollutants, contaminants and/or hazardous substances” to the Newark Bay Complex from the General Cable site (“the General Cable Site”).

Pysmian is in receipt of the alleged "nexus" documents produced by Defendants/Third-party Plaintiffs that purport to contain evidence of a potential release to the Second River. To the extent that the alleged "nexus" documents are viewed by Defendants/Third-party Plaintiffs as potential evidence of an indirect release from the General Cable Site to the Second River, Pysmian submits that any individuals identified in the alleged "nexus" documents may possess information that could be responsive to this disclosure.

Pysmian’s investigation regarding former employees at the General Cable Site is ongoing and Pysmian reserves the right to supplement its response as further information becomes available.

Name/Address/Phone	Subject

b. The name, address and telephone number, as may be known, of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses (unless the use would be solely for impeachment);

Response

The time frame covered by the allegations in the Plaintiffs' Second Amended Complaint spans many years and relate to a facility for which ownership changed a number of times during the relevant time period. Many individuals who may have knowledge or information responsive to the information sought in these Initial Disclosures are unknown or unavailable to Prysmian. Additionally, many of the documents that may be responsive to these Initial Disclosures may have never been in Prysmian's possession, custody, or control.

Prysmian's investigation is ongoing and Prysmian reserves the right to supplement its response as further information becomes available.

None at this time.

Name	Address	Phone Number

c. The name, address and telephone number, as may be known, of any and all past or present owners, lessees or operators at the site(s) and/or properties with which it is associated in the Third-Party Complaint and the dates of such ownership, lease or operation, as may be known;

Response

Name/Address/Phone	Site Address	Dates at Site: Ownership/Operator/Lease
The General Cable Company	236 West First Street Bayonne, NJ	Owner of General Cable site prior to 1978.
Texaco, Inc.	236 West First Street Bayonne, NJ	Owner of General Cable site after 1981.

d. With respect to any individual identified pursuant to paragraph (a), (b) or (c) above, (or any other individual known to have material knowledge of an alleged discharge or release of a Pollutant at or from a site and/or property, or into the Newark Bay Complex), any known inability to testify due to age, infirmity, or incompetency within 12 months following the date of the Initial Disclosure;

Response

None at this time.

Name/Address/Phone	Nature of Inability

e. A description by category and location (or copy at the discretion of the Third-Party Defendant) of all documents or electronically stored information that the disclosing party has in its possession, custody, or control with respect to Alleged Discharges including disclosure of the extent to which such documents or electronically stored information may fall within the Excepted Information.

Response

The time frame covered by the allegations in the Plaintiffs' Second Amended Complaint spans many years and relate to a facility for which ownership changed a number of times during the relevant time period. Many individuals who may have knowledge or information responsive to the information sought in these Initial Disclosures are unknown or unavailable to Prysmian. Additionally, many of the documents that may be responsive to these Initial Disclosures may have never been in Prysmian's possession, custody, or control.

Prysmian objects to the form of this Request to the extent that it assumes or concludes that there was an "alleged discharge or release of pollutants, contaminants and/or hazardous substances" to the Newark Bay Complex from the General Cable site. Prysmian's investigation regarding former employees at the General Cable site is ongoing and Prysmian reserves the right to supplement its response as further information becomes available.

None at this time.

Documents by Category	Location	Applicable Exception ¹

These Initial Disclosures are made without prejudice to the right of Prysmian to change or supplement its responses, its right to assert privileges or objections with

¹ Applicable Exception Codes are as follows:

a. 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; and

b. Information previously produced to any branch, department, agency or instrumentality of the State of New Jersey including to the New Jersey Department of Environmental 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");

c. 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 data system;

d. 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;

e. Information produced by a third-party defendant to any third-party plaintiff pursuant to the New Jersey Open Public Records Act or other freedom of information law or regulation; f. Information previously produced to Defendants and g. Information that falls within the attorney-client privilege and/or the attorney work product privilege.

respect to any subsequent requests for discovery, and its right to introduce at trial additional evidence and documents as warranted by the development of the facts underlying this litigation.

Respectfully submitted,
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Dated: April 15, 2010

By: Charles W. Miller, III
A Member of the Firm