

# BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

P.O. Box 1980 ▪ Morristown, NJ 07962

Hand Delivery:

325 Columbia Turnpike ▪ Suite 301 ▪ Florham Park, NJ 07932

973.514.1200 ▪ fax 973.514.1660

www.bressler.com

Donald J. Camerson, II  
Member

direct: 973-660-4433  
djcamerson@bressler.com

March 23, 2011

**Via Federal Express**

Charles M. Crout, Esq.  
Andrews Kurth LLP  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005

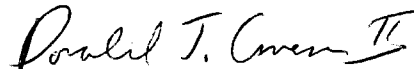
**Re: NJDEP, *et al.* v. Occidental Chemical Corporation, *et al.*  
Supplemental Disclosure of Third-Party Defendant Flint Group  
Incorporated**

Dear Mr. Crout:

This firm represents Flint Group Incorporated ("Flint") with respect to the above-referenced matter. In accordance with Case Management Order XII and the January 31, 2011 Consent Order executed by, among others, Third-Party Plaintiffs and Flint, I have enclosed herein Flint's Supplemental Disclosure, including two discs containing documents produced with the Disclosure. The first disc includes documents produced from Flint, Bates stamped FLINTGRP 000001 to FLINTGRP 000213. The second disc includes documents obtained through a regulatory file review conducted on behalf of the Joint Defense Group of private Third-Party Defendants, Bates stamped FLINTGRP 000214 to FLINTGRP 002363.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Donald J. Camerson, II

Encl.

March 23, 2011

Page 2

c: Eric B. Rothenberg, Esq. (w/ enclosure)  
Lee D. Henig-Elona, Esq. (w/ enclosure)  
John M. Scagnelli, Esq. (w/ enclosure)  
Peter J. King, Esq. (w/ enclosure)  
Michael Gordon, Esq. (w/ enclosure)  
Robert T. Lehman, Esq. (w/ enclosure)  
Gregg H. Hilzer, Esq. (w/ enclosure)  
William L. Warren, Esq. (w/ enclosure)  
Domenick Carmagnola, Esq. (w/ enclosure)  
All counsel of record (via electronic posting)

BRESSLER, AMERY & ROSS, P.C.  
A Professional Corporation  
325 Columbia Turnpike  
Florham Park, NJ 07932  
973-514-1200  
973-516-1660 (fax)  
Attorneys for Third-Party Defendant,  
Flint Group Incorporated

---

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.	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,	:	CIVIL ACTION
Defendants.	:	<b>SUPPLEMENTAL DISCLOSURE OF THIRD-PARTY DEFENDANT FLINT GROUP INCORPORATED</b>
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
Third-Party Plaintiffs,	:	
vs.	:	
3M COMPANY, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

---

Third-Party Defendant Flint Group Incorporated (“Flint”) hereby provides its Supplement to Initial Disclosure pursuant to Case Management Order (“CMO”) XII and prior CMO’s incorporated therein by reference and, in accordance with terms of the January 31, 2011 Consent Order (“Consent Order”) applicable to certain of those Third-

Party Defendants who have received written confirmation that CMO XII paragraph 21(a) production of site files is complete from Drinker Biddle & Reath LLP, Andrews Kurth LLP, and/or Hannafan & Hannafan, Ltd. firms (counsel for Third-Party Plaintiffs) together with any written agreement as to terms for timing, scope and manner of production reached under the Consent Order, collectively the “Amended Production Requirements.”

**Preliminary Statement**

Third-Party Plaintiffs have alleged in Third-Party Complaint B that Flint is liable as a “discharger” and/or person “in any way responsible” for the Hazardous Substances that were discharged at the Central Steel Drum Site (“Central Steel Drum Site”) and that allegedly discharged to the Newark Bay complex (see Third Party Complaint B, paragraph 3379). Flint denies all allegations asserted against it including, but not limited to, that it is responsible for any alleged discharges at the Central Steel Drum Site; that there have been alleged discharges to the Newark Bay Complex from Central Steel Drum Site; and that it has any liability or responsibility for any alleged discharges to the Newark Bay Complex from Central Steel Drum.

Flint has undertaken a diligent investigation to locate non-privileged documents in its possession that are responsive to the document production requirements of CMO XII, paragraph 21 (as limited by the Reservations and Comments section below), other than those documents produced to Flint by Third-Party Plaintiffs and the documents provided to EPA in the form of PRP Data Extraction Forms for the Central Steel Drum Site.<sup>1</sup> As Flint did not own or operate the Central Steel Drum site, it is not required to respond to

---

<sup>1</sup> Flint does not admit that these documents are responsive to the document production request.

CMO XII, Paragraph 21(c)(1)(ii). However, subject to the Reservations and Comments section set forth below, Flint has provided herein copies of documents related to the Central Steel Drum Site that were obtained through a regulatory file review conducted on behalf of the Joint Defense Group of private Third-Party Defendants (“JDG”), which includes documents regarding the operations conducted at Central Steel Drum site. Those documents are included on a CD-ROM disk. All documents are provided by Flint with full reservation of rights, without any admission of liability, and subject to the objections and reservations set forth herein.

### **Reservations and Comments**

1. Flint 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 Flint has or may have with respect to any outstanding or subsequent requests for discovery, including Flint’s right to supplement its production of any documents if further information is discovered, and Flint reserves the right to supplement or amend its production of any documents.

2. Flint’s responses are made in good faith and based on its ongoing and diligent review of available information in its possession and information obtained from inquiry with various Flint personnel believed most likely to possess relevant and responsive information. Accordingly, Flint 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, Flint reserves the right to amend these disclosures to the extent the claims brought by or alleged against Flint in this litigation are amended.

3. Nothing contained herein, including the modification of any documents, shall be construed as an admission by Flint regarding the existence or nonexistence of any information, and no objection or answer shall be construed as an admission as to the relevance of admissibility of any information or document or the truth or accuracy of any statement or characterization contained in any document.

4. Flint objects to the requests to the extent they seek confidential, proprietary, trade secret or competitively sensitive information in the absence of any appropriate protective order.

5. Flint objects to the requests on the grounds that they are overly broad and unduly burdensome, seek to impose the obligations beyond those imposed by the New Jersey Court Rules, and seek documents that are not relevant to this case and not reasonably calculated to lead to the discovery of admissible evidence.

6. Flint reserves its right to rely on any facts, documents or other evidence that may develop or come to Flint's attention during the course of this matter. Flint's responses are set forth herein without prejudice to its right to assert additional objections or supplement its responses should Flint discover additional grounds for doing so during the course of this matter.

7. Flint responds to these requests on the condition that inadvertent

production of information or documents are covered by such privileges and production of privileged information by Flint shall not constitute waiver of any applicable privilege or doctrine.

8. By providing any response and/or producing any document, Flint does not admit the relevancy or admissibility of such information, and specifically reserves its right to object to the use of such information on the ground that it is not relevant, admissible, or in any way related to the issues in this action. Flint reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever, and reserves the right to supplement responses prior to trial.

9. Flint objects to these requests to the extent they seek information that is in the possession, custody or control of others, to which others have equal access.

10. Flint objects to these requests to the extent that they contain a characterization, including but not limited to a characterization of any fact. By responding to a request, Flint does not agree, and shall not be deemed to have agreed to any characterization alleged.

11. Each of the foregoing Reservations and Comments is hereby expressly incorporated by reference in Flint's response. To the extent Flint provides information in this response, Flint does so subject to and without waiving any of these Reservations and Comments.

12. "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.

13. "Alleged Discharges" shall have the meaning set forth in the Court's CMO VIII.

14. "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.

15. Document Production requirements set forth in CMO XII, paragraph 21 (as amended by the Amended Production Requirements 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 include documents under the Excepted Information Categories except to the extent of those documents are covered by logs that may be attached hereto. 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.

16. Documents subject to claims of privilege, work product, confidentiality or



trade secret, if any, will be detailed 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 as soon as practicable as provided under the Amended Production Requirements.

**Production as to 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 -** See, Reservations and Comments section above. See also, Response to Paragraph 21(c)(1)(i) below, including objections.

(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, Reservations and Comments section above. See also, Response to Paragraphs 21(c)(1)(i) – (iv) below, including objections.

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

**Response -** See, Reservations and Comments above.

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

**Response -** See, Reservations and Comments noted above. Flint 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, it has made no such claim against parties in this action at this time.

**Production as to 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** – See, Reservations and Comments section above. Flint objects to this request since it did not own or operate the Central Steel Drum Site. Flint further objects to this request to the extent it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Central Steel Drum Site and/or that Flint has any liability, responsibility and/or obligation for any alleged discharge. Subject to the above and without admission or waiver of any kind, Flint has produced herein copies of documents obtained through a regulatory file review conducted on behalf of the JPG, as set forth above in the Preliminary Statement.

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** – See, Reservations and Comments section above. Flint objects to this request since it did not own or operate the Central Steel Drum Site. Flint further objects to this request to the extent it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Central Steel Drum Site and/or that Flint has any liability, responsibility and/or obligation for any alleged discharge. Subject to the above and without admission or waiver of any kind, Flint has produced herein copies of documents obtained through a regulatory file review conducted on behalf of the JPG, as set forth above in the Preliminary Statement.

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

**Response** – See, Reservations and Comments section above. Flint objects to this request since it did not own or operate the Central Steel Drum Site. Flint further objects to this request to the extent it assumes or concludes that a discharge of Hazardous Materials occurred from or at the Central Steel Drum Site and/or that Flint has any liability, responsibility and/or obligation for any alleged discharge. Subject to the above and without admission or waiver of any kind, Flint has produced herein copies of documents obtained through a regulatory file review conducted on behalf of the JPG, as set forth above in the Preliminary Statement.

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** – See, Reservations and Comments section above. Flint further objects to this request since it did not own or operate the Central Steel Drum Site. Flint further objects to this request to the extent it assumes or concludes that discharges or releases of Hazardous Materials occurred at Central Steel Drum Site and/or that Flint has any

liability or responsibility for any alleged discharges and/or releases. Subject to the above and without admission or waiver of any kind, Flint does not have any documents relating to “communications involving any branch, department, agency, or instrumentality of municipal, State or federal government relating to any discharges or releases of Hazardous Materials or this litigation.” While Flint denies that said communication relates to any “discharges or releases of Hazardous Materials” at the Central Steel Drum Site, Flint has produced herein a copy of its 104(e) response previously submitted to EPA. Flint has also produced herein copies of documents obtained through a regulatory file review conducted on behalf of the JPG, as set forth above in the Preliminary Statement.

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** – See Reservations and Comments Section above. Subject to the above and without admission or waiver of any kind, Flint objects to this request to the extent it assumes or concludes that “industrial waste containing Hazardous Materials [was] transported to, processed and treated at or discharged ...” from the Central Steel Drum Site and/or that Flint has any liability or responsibility for any alleged transportation, processing, treating and/or discharge of Hazardous Materials at the Central Steel Drum Site. Flint denies that it has any “documents relating to any industrial waste containing Hazardous Materials that was transported to, processed or treated at, or discharged from” the Central Steel Drum Site. While denying any liability or responsibility for the “transportation to, processing or treating and/or discharging of” any Hazardous Substances at Central Steel Drum Site or that said documents are responsive to this request, Flint has produced herein non-privileged documents in its possession relating to alleged transactions with Central Steel Drum. Flint has also produced herein copies of obtained through a regulatory file review conducted on behalf of the JPG, as set forth above in the Preliminary Statement.

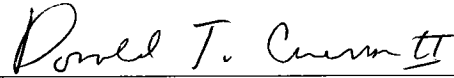
3. Any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy said judgment.

**Response** – Flint objects to this request to the extent it seeks information that is not relevant or in accordance with applicable law. Flint further objects to the extent it implies it has any liability relating to the claims in this matter. Subject to the Reservations and Comments and without waiving any objection, Flint continues to investigate whether any insurance or indemnity agreement is available and will supplement this response should Flint identify coverage or indemnification that may be available.

Dated: March 23,2011

Respectfully submitted,

Bressler, Amery & Ross, P.C.  
Attorney for Third-Party Defendant,  
Flint Group Incorporated

A handwritten signature in cursive script that reads "Donald T. Camerson II". The signature is written in black ink and is positioned above a horizontal line.

---

Donald J. Camerson, II, Esq.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Third-Party Defendant Flint Group Incorporated's ("Flint") Supplemental Disclosure, along with two discs containing documents produced by Flint (Bates stamped FLINTGRP 000001 to FLINTGRP 000213) and from a regulatory file review (Bates stamped FLINTGRP 000214 to FLINTGRP 002363), was served on counsel for Third-Party Plaintiffs Tierra Solutions, Inc. and Maxus Energy Corporation via Federal Express on March 24, 2011 at the following address:

Charles M. Crout, Esq.  
Andrews Kurth LLP  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005

The undersigned hereby certifies that a true and correct copy of the documents set forth above was served on the following counsel via regular mail on March 24, 2011 at the following addresses:

Eric B. Rothenberg, Esq.  
O'Melveny & Myers, LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036

Lee D. Henig-Elona, Esq.  
Wolff & Samson  
One Boland Drive  
West Orange, New Jersey 07052

John M. Scagnelli, Esq.  
Scarinci & Hollenbeck  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, New Jersey 07071-0790

Peter J. King, Esq.

King & Petracca  
51 Gibraltar Drive, Suite 1D  
Morris Plains, New Jersey 07950-1254

Michael Gordon, Esq.  
Gordon & Gordon, P.C.  
505 Morris Avenue  
Springfield, New Jersey 07081

Robert T. Lehman, Esq.  
Archer & Greiner  
One Centennial Square  
33 Euclid Avenue  
Haddonfield, New Jersey 08033

Gregg H. Hilzer, Esq.  
Greenbaum, Rowe, Smith & Davis  
75 Livingston Avenue, Suite 301  
Roseland, New Jersey 07068-3701

William L. Warren, Esq.  
Drinker Biddle & Reath LLP  
105 College Road East  
P.O. Box 627  
Princeton, New Jersey 08542-0627

Domenick Carmagnola, Esq.  
Carmagnola & Ritardi, LLC  
60 Washington Street  
Morristown, New Jersey 07960

The undersigned hereby certifies that a true and correct copy of Third-Party Defendant Flint's Supplemental Disclosure (without discs) was served on all other counsel of record on March 23, 2011 via electronic posting.



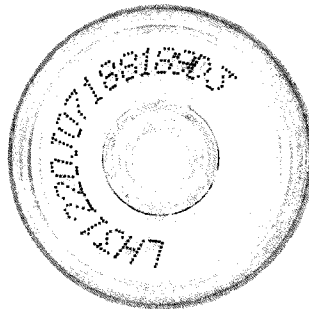
Donald J. Camerson II, Esq.

Dated: March 23, 2011

BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

REGISTERED IN NJ



NJDEP, et al. v. Occidental Chemical Corporation, et al.  
Docket No. ESX-9869-05 (PASR)

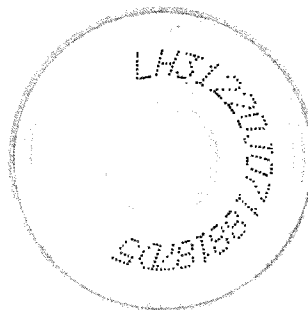
Documents produced from regulatory file review.  
FLINTGRP 00214 - FLINTGRP 02363

(Disk 2 of 2)

BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

REGISTERED IN NJ



NJDEP, et al. v. Occidental Chemical Corporation, et al.  
Docket No. ESX-9869-05 (PASR)

Documents produced by Flint Group Incorporated  
pursuant to CMO XII

FLINTGRP 00001 - FLINTGRP 00213  
(Disk 1 of 2)