

August 5, 2011

VIA COURIER

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

Re: *New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation, et al.*, No. ESX-L-9868-05 (PASR) –
Morton International Production of Documents

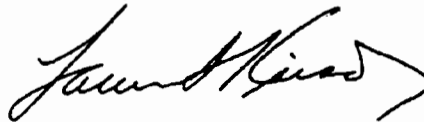
Dear Mr. Crout:

Enclosed please find the following on behalf of Third Party Defendant Morton International, Inc., pursuant to Case Management Order XII in the above-captioned action:

1. Written component of Supplemental Third-Party Disclosures;
2. Compact disc containing responsive, non-privileged documents bates numbered MORTON-PSC-0000001-0036253.

The password to the disc will be sent via email. If you have any questions regarding the enclosed or have difficulty accessing the documents, please do not hesitate to contact me.

Sincerely,



Laurence S. Kirsch
Counsel to Morton International, Inc.

cc: Kenneth H. Mack, Esq. (w/ enclosures)
Eric Rothenberg, Esq. (w/ enclosures)
All Counsel of Record (via electronic posting)

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NEW JERSEY DEPARTMENT OF	:	SUPERIOR COURT OF NEW
ENVIRONMENTAL PROTECTION and	:	JERSEY
THE ADMINISTRATOR OF THE NEW	:	LAW DIVISION: ESSEX
JERSEY SPILL COMPENSATION FUND,	:	COUNTY
	:	
Plaintiffs,	:	DOCKET NO. L-9868-05 (PASR)
v.	:	
	:	CIVIL ACTION
	:	
OCCIDENTAL CHEMICAL	:	
CORPORATION, TIERRA SOLUTIONS,	:	MORTON INTERNATIONAL,
INC., MAXUS ENERGY CORPORATION,	:	INC.'S SUPPLEMENTAL
REPSOL YPF, S.A., YPF, S.A., YPF	:	THIRD-PARTY DISCLOSURE
HOLDINGS, INC. and CLH HOLDINGS,	:	AS TO THE
INC.,	:	VENTRON/VELSICOL SITE
Defendants.	:	
	:	
MAXUS ENERGY CORPORATION and	:	
TIERRA SOLUTIONS,	:	
INC.,	:	
Third-Party Plaintiffs,	:	
vs.	:	
	:	
3M COMPANY, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

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

2. Morton’s investigation in this matter and its review of documents are continuing. Morton is presently making a production of documents that it has reviewed up to the present time, and intends to produce additional documents as they are reviewed, to the extent such documents may be subject to production under CMO XII. Moreover, Morton 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, Morton reserves the right to amend these disclosures to the extent the claims brought by or alleged against Morton in this litigation are amended.

3. In making this production, Morton does not admit there is any connection between the Newark Bay Complex and (a) actions relating to properties or operations at the Site, (b) any alleged discharges from the Site and/or (c) to or from Berry’s Creek, and

does not waive any objection related to the fact that no such connection exists or has been established.

4. Morton reserves its right to rely on any facts, documents or other evidence that may develop or come to Morton's attention during the course of this matter.

Morton's responses are set forth herein without prejudice to its right to assert additional objections or supplement its responses should Morton discover additional grounds for doing so during the course of this matter.

5. "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.

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

7. "Excepted Information" or "Excepted Information Categories" shall be defined as set forth in CMO VIII, paragraph 4. Morton interprets CMO VIII, paragraph 4(a) to include information produced under CMO XII, paragraph 21(a). Morton further interprets CMO VIII, paragraph 4(b) to include information produced to or from any branch, department, agency or instrumentality of the State of New Jersey or any other governmental agency or entity.

8. "Site," per CMO VIII, shall be defined as that site or properties with which Morton is allegedly associated in paragraphs 2935 through 2497 in Third-Party Complaint "B". In so defining the Site, Morton does not admit that there is any connection between the Newark Bay Complex and any alleged discharges (a) from the

Site and/or (b) to or from Berry's Creek, and does not waive any objection related to the fact that no such connection exists or has been established.

9. 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 and not to 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, Morton hereby objects to any such requirement.

10. The 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." Morton will not produce any documents to the extent they constitute Excepted Information. To the extent that any CMO document production requirement could be construed as requiring the production of any information or document that is "Excepted Information" or within an "Excepted Information Category," Morton hereby objects to any such requirement.

11. To the extent Excepted Information Categories, such as publicly available documents, are nonetheless produced by Morton, Morton does not in any way waive or intend to waive its right to exclude these materials as Excepted Information under CMO VIII or withhold them from production. Morton reserves its right to withhold Excepted

Information Categories from any supplements, clarifications, and revisions to its Supplemental Disclosures and from any subsequent discovery requests.

12. In submitting its Supplemental Disclosures, Morton 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 and any objections based on the undue burden imposed thereby. Morton does hereby object to the document production requirements of CMO XII, paragraphs 21(b) and 21(c) as overly broad and unreasonably burdensome;

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, Morton 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 Morton 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 Morton's right to object to the use of such information contained therein during this action or in any other proceeding. Morton explicitly reserves the right to clawback of 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, Morton hereby objects to any such requirement.

13. 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.

14. Morton objects to the production of any insurance information as irrelevant to this litigation, as the New Jersey Supreme Court previously determined that Morton is not entitled to coverage related to the Ventron/Velsicol Site. *See Morton Int’l v. Gen. Accident Insurance Co.*, 629 A.2d 831 (N.J. 1993). Accordingly, Morton will not be producing insurance information as part of its production.

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

RESPONSES

Morton 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 Objections, Reservations and Comments, documents responsive to this request related to alleged discharges to

Berry's Creek, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII ("Excepted Information Categories").

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 Objections, Reservations and Comments, documents responsive to this request related to alleged discharges to Berry's Creek, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII ("Excepted Information Categories").

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 - In addition to the foregoing Objections, Reservations and Comments, Morton further objects to this request on the ground that no connection has been established between the Newark Bay Complex and (a) actions relating to properties or operations at the Site, (b) any alleged discharge from the Site and/or (c) to or from Berry's Creek. Subject to and without waiver of the foregoing Objections, Reservations and Comments, documents responsive to this request related to the environmental condition of Berry's Creek, to the extent available and non-privileged, are on the

enclosed disc subject to the exceptions set forth in CMO VIII (“Excepted Information Categories”).

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 – In addition to the foregoing Objections, Reservations and Comments, Morton further objects to this request on the basis 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. Based on the foregoing, Morton is not producing any documents in response to this request. To the extent that this request seeks documents concerning costs and damages sought by Plaintiffs or Third Party Plaintiffs, Morton objects on the basis that such request is vague and impracticable.

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 Objections, Reservations and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII (“Excepted Information Categories”).

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 Objections, Reservations and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII (“Excepted Information Categories”).

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 Objections, Reservations and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII (“Excepted Information Categories”).

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 Objections, Reservations and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII (“Excepted Information Categories”).

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 Objections, Reservations and Comments, documents responsive to this request, to the extent available and non-privileged, are on the enclosed disc subject to the exceptions set forth in CMO VIII (“Excepted Information Categories”).

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 –In addition to the foregoing Objections, Reservations and Comments, Morton further objects that the production of any insurance information is irrelevant to this litigation and not reasonably calculated to lead to the discovery of admissible evidence, as the New Jersey Supreme Court previously determined that Morton is not

entitled to coverage related to the Ventron/Velsicol Site. *See Morton Int'l v. Gen.*

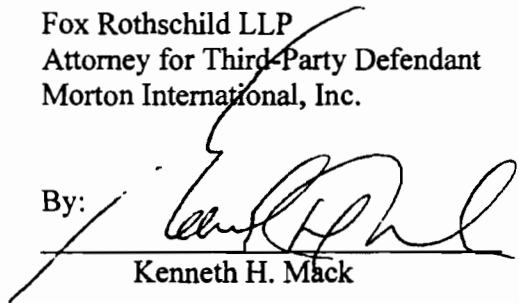
Accident Insurance Co., 629 A.2d 831 (N.J. 1993).

Dated: August 5, 2011

Respectfully submitted,

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Morton International, Inc.


By:



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Morton International, Inc.
(admitted Pro Hac Vice)

By:



Laurence S. Kirsch
Valerie E. Ross

New Jersey Dep't of Envir. Prot., et al.
v. Occidental Chemical Corp., et al.,
L-9868-05

Morton Int'l Inc.'s Supplemental Third-Party
Disclosure as to the Ventron/Velsicol Site

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August 5, 2011

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