



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

100742
Kate Lose

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 27 1995

Harold A. Wagner, President
Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, PA 18195-1501

Re: Standard Chlorine of Delaware, Inc. Superfund Site:
Notice of Decision Not to Use "Special Notice"
Procedures for Negotiations for Remedial
Design/Remedial Action

Dear Mr. Wagner:

This letter relates to the liability of Air Products and Chemicals, Inc. ("Air Products") in connection with Standard Chlorine of Delaware, Inc. Superfund Site located in Delaware City, New Castle County, Delaware (the "Site").

INTRODUCTION

The United States Environmental Protection Agency ("EPA" or "Agency") has conducted and overseen activities undertaken at the Site in response to the release and/or threat of release of hazardous substances, pollutants, or contaminants into the environment. By letter dated July 21, 1993, EPA notified Air Products of its potential liability for such response action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9607. EPA is now contacting you in an attempt to resolve Air Products' liability with respect to the Site. Toward that end, this letter contains:

Notice that the EPA has determined not to use the special notice procedures described in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), for a remedial design and remedial action ("RD/RA").

DECISION NOT TO USE SPECIAL NOTICE PROCEDURES

Section 122(a) of CERCLA, 42 U.S.C. § 9622(a), directs EPA to employ the settlement procedures outlined therein "[w]henever practicable and in the public interest" to "facilitate agreements . . . that are in the public interest and consistent with the National Contingency Plan in order to expedite remedial action and minimize litigation." Section 122(e) of CERCLA, 42 U.S.C.

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§ 9622(e), provides that EPA shall negotiate settlements with responsible parties whenever the Agency determines that "a period of negotiation . . . would facilitate an agreement with potentially responsible parties for taking response action . . . and would expedite remedial action." Finally, section 122(a) of CERCLA, 42 U.S.C. § 9622(a), requires that EPA notify potentially responsible parties in writing if the Agency determines that the settlement procedures outlined in the section will not be used.

EPA has determined that use of the settlement procedures set forth in section 122 of CERCLA would not be in the public interest at this time, would not facilitate an agreement between EPA and potentially responsible parties ("PRPs") and/or would not expedite remedial action at the Site. EPA has decided not to use the settlement procedures provided in section 122 of CERCLA because, among other reasons, past dealings with the PRPs for the Site strongly indicates they are unlikely to negotiate a settlement. Accordingly, EPA will not issue "special notice" letters under section 122(e) of CERCLA, 42 U.S.C. § 9622(e), and does not plan to open a formal period of negotiations for an agreement under which the RD/RA will be conducted. EPA nevertheless reserves all rights under applicable statutes and regulations including, but not limited to, the right to perform response actions using Federal monies and to seek to recover all costs from responsible parties, and the right to seek Federal court orders directing responsible parties to perform response actions.

The decision not to use the "Special Notice" procedures described herein does not preclude you from entering into discussions with EPA regarding your participation in response actions at the Site. This decision simply means that EPA will not use the above-described procedures in conducting such discussions. EPA encourages all offers regarding settlement of this matter and cleanup of the Site.

PRP RESPONSE/EPA CONTACT PERSON

Air Products is encouraged to contact EPA as soon as possible to state its willingness to participate in negotiations relating to the Site. Specifically, Air Products has fourteen (14) calendar days from receipt of this letter to provide EPA with a letter stating Air Products' interest in participating in the RD/RA. If EPA does not receive a response within the said fourteen (14) calendar days, EPA will assume that Air Products does not wish to negotiate a resolution of its liabilities in this matter and that Air Products has declined any involvement in performing the response activities described above. In such event, EPA may, among other things, issue an administrative order directing Air Products to perform the response action and/or perform such response action and seek reimbursement from liable parties.

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Air Products therefore may be liable for performing the response action pursuant to a unilateral administrative order or court order and/or reimbursing EPA for the cost of response actions performed by EPA and for any damages to natural resources.

Your response to this letter should be sent to:

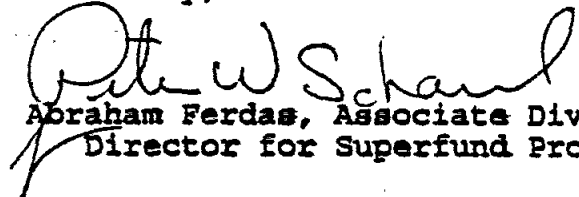
Katherine Lose (3HW23)
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-0910

Note that this letter may pertain to one of several operable units requiring response at the Site. Unless otherwise specified herein, this letter does not apply to any other operable unit at the Site or any other site.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you or your attorney have any questions of a legal nature pertaining to this matter, please direct them to Judith R. Hykel, Assistant Regional Counsel, at (215) 597-8253.

Sincerely,


Abraham Ferdas, Associate Division
Director for Superfund Programs

cc: Anne Hiller, DNREC
Bob Kuehl, Deputy Attorney General DNREC
Anthony Conte, Regional Solicitor
Northeast Region USDOJ
Sharon Shutler, Esquire
NOAA
Don Henne, Regional Environmental Coordinator
Northeast Region USDOJ
Peter Knight, Coastal Resource Coordinator
NOAA
Judith R. Hykel, Assistant Regional Counsel
EPA Region III

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Blind cc: Maxine Booker (3HW11)

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