



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

142832

JAN 03 1995

GENERAL NOTICE LETTER
URGENT LEGAL MATTER: PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Occidental Chemical Corporation
Occidental Towers
5005 LBJ Freeway
Dallas, Texas 75244

Attention: Ray R. Irani, Chairman of the Board

Re: Centre County Kepone Superfund Site, State College, Pa.

Dear Mr. Irani:

This letter notifies you that Occidental Chemical Corporation may incur, or may have incurred, liability under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), with respect to the Centre County Kepone Superfund Site ("Site"). This letter also notifies you of potential response activities at the Site, which you may be asked to perform or to finance at a later date. Finally, it requests additional information concerning the Site pursuant to the provisions of Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

BACKGROUND

CERCLA, more commonly known as Superfund, was enacted in 1980, reauthorized and amended in 1986, and reauthorized again in 1990. CERCLA has several key objectives, including setting priorities for cleanup of the worst hazardous waste sites in the country, and determining the parties potentially responsible for investigating, cleaning up or paying the costs of cleaning up such hazardous sites. These parties are referred to as "potentially responsible parties" or "PRPs".

In September 1983, the United States Environmental Protection Agency ("EPA") included the above Site on the National Priorities List ("NPL"), a list of the most serious uncontrolled or abandoned sites at which releases of hazardous substances have occurred or may occur.

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NOTICE OF YOUR POTENTIAL LIABILITY

EPA has evaluated information in connection with the investigation of the Site. Based on this information, EPA believes that your company may be a PRP for this Site. PRPs under CERCLA include: 1) current owners and operators of the site; 2) owners and operators of the site at the time hazardous substances were disposed; 3) persons who arranged for disposal or treatment of hazardous substances sent to the site; and 4) persons who accepted hazardous substances for transport to the site, and who selected the site for disposal. These categories are set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

Based on State and Federal records and/or other information, EPA has information indicating that Occidental Chemical Corporation is a PRP for this Site because it arranged for the disposal of hazardous substances at the Site. Specifically, Ruetgers-Nease Corporation has provided EPA with documents which show that your company -- under the name of Hooker Chemical Corporation -- entered into a custom manufacturing arrangement with Nease Chemical Company -- now known as Ruetgers-Nease Corporation -- involving the production of approximately 566,100 pounds of mirex at the Site between April 1973 and March 1974 and that the generation and disposal of wastes were inherent in the processing formula developed and controlled by your company.

The EPA has documented the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, as those terms are defined in Section 101(14) and 101(33) of CERCLA, 42 U.S.C. § 9601(14) and (33). EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a PRP or PRPs will properly perform or finance such actions, EPA may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or require them to be performed by responsible parties under Section 106 of CERCLA, 42 U.S.C. § 9606.

EPA may order PRPs, or any one of them, to perform response actions deemed necessary by EPA to protect the public health, welfare or the environment. Additionally, PRPs may be liable for all costs incurred by the government in responding to any release or threatened release at the Site, under Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a), and other laws. Such actions and costs may include, but are not limited to, expenditures for conducting a Remedial Investigation/Feasibility Study ("RI/FS"), conducting a Remedial Design/Remedial Action ("RD/RA"), and other investigation, planning, response, oversight, and enforcement activities related to the Site. In addition, potentially responsible parties may be required to pay

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for damages for injury to, destruction of, or loss of natural resources, including the cost of assessing the amount or extent of such damages related to a Site.

You should also be aware that once a Site is placed on the NPL pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, it cannot be deleted until after an RI/FS has been completed and the necessary remedial action has been conducted in accordance with EPA guidance and the National Contingency Plan ("NCP"), published at 40 C.F.R. Part 300.

By this letter, EPA notifies you of your company's potential liability with regard to this matter and encourages your company to perform or to finance voluntarily those response activities that EPA determines to be necessary at the Site.

SITE RESPONSE ACTIVITIES

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site.

The Ruetgers-Nease Corporation has conducted an RI/FS at the Site. The RI investigated the nature and extent of soil, air, surface water, ground water, and sediment contamination, local hydrological characteristics, and the impacts on biotic receptors at the Site. In the FS, potential remedial alternatives were evaluated and EPA developed a Proposed Plan which nominated a preferred remedial alternative. A public comment period was held on the RI/FS and the Proposed Plan. At present, EPA is in the process of drafting a Record of Decision (ROD) to be issued in January of 1995. The ROD will define the EPA-approved remedial alternative for the Site.

EPA may expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA anticipates that you will receive an additional notice from EPA in the future concerning this Site. The following four paragraphs are a detailed description of that future notice. You do not need to take any specific action regarding this future notice at this time. The description is provided to you here so that you can anticipate and understand the process.

The future notice will either inform you that EPA is using the CERCLA Section 122(e) special notice procedure to formally negotiate terms of a consent order or consent decree to conduct

or to finance Site response activities, or it will inform you that EPA is electing not to utilize that procedure. If EPA does not use the Section 122(e) special notice procedure, the notice will specify why special notice was not considered appropriate in this case.

Under Section 122(e), 42 U.S.C. § 9622(e), EPA has discretionary authority to use the special notice procedure if EPA determines that such procedure would facilitate an agreement between EPA and the PRPs and would expedite response action at the Site. Use of this special notice procedure triggers a moratorium on certain EPA activities at the Site. The purpose of the moratorium is to provide a period of time when PRPs and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the Site.

Following the completion of the RI/FS, a moratorium period during which EPA will not initiate response activities occurs with regard to the RD/RA. The RD/RA moratorium lasts for 60 days after the RD/RA special notice. If EPA determines that a good faith offer is submitted by the PRPs within those 60 days, the statute provides a 60-day extension for further negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of the moratorium period, EPA may terminate the negotiation moratorium pursuant to Section 122(e)(4) of CERCLA, 42 U.S.C. § 9622(e)(4). EPA then may commence response activities or enforcement actions as it deems appropriate. In the absence of an agreement with the parties to perform or to finance the necessary response activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of Site expenditures. Alternatively, EPA may issue a unilateral administrative order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to require PRPs to initiate response activities, or may commence civil litigation pursuant to Section 106(a) of CERCLA to obtain similar relief. Failure to comply with an administrative order issued pursuant to Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day, pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b) or imposition of treble damages, pursuant to Section 107(c)(3), 42 U.S.C. § 9607(c)(3).

INFORMATION TO ASSIST RESPONSIBLE PARTIES

EPA encourages good faith negotiations between the PRPs and EPA, as well as among the PRPs. Therefore, EPA is providing the following information as an Attachment to this letter: a list of the names and addresses of PRPs to whom this notification is being sent or who have previously been notified. This list

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represents EPA's preliminary findings on the identities of the PRPs for this Site. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at or from the Site.

PRP STEERING COMMITTEE

EPA recommends that all PRPs meet to select a Steering Committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with EPA. Alternatively, EPA encourages each PRP to select one person from its company or organization who will represent its interests in negotiations with EPA.

EPA representatives are available to meet or confer with the PRPs or a steering committee on a mutually convenient date.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA must establish an administrative record that contains documents which form the basis for EPA's decision on the selection of each response action for a site. The administrative record will be available to the public for inspection and comment before any remedy is selected by EPA. A copy of the record will be located near the Site, and another copy will be located at the EPA Regional office in Philadelphia. The contact person for comments on the record will be provided with the record when such record is available for review at these locations.

Upon completion of EPA's review of the public comments on the Proposed Plan, EPA will select the remedy for the Site. The selection of the remedy will be documented in a Record of Decision (ROD), which will also become part of the administrative record.

The preceding explanation of special notice and the negotiation moratorium procedure, is for your general information about the Superfund process. It does not require any specific action on your part at this time. However, see the PRP Response and EPA Contact Section below.

PRP RESPONSE AND EPA CONTACT

You are encouraged to contact EPA in writing by January 13, 1995, to express your willingness or unwillingness to participate in future negotiations concerning this Site. Your response will be considered by EPA in determining whether the special notice procedure should be used for this Site.

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If you are already involved in discussions with State or local authorities, engaged in voluntary action or involved in a lawsuit regarding this site you should not interpret this letter as advising or directing you to restrict or to discontinue any such activities. You should however, report the status of those discussions or activities in your letter to EPA. Please provide EPA with a copy of your letter to any other party involved in those discussions.


Your response should be addressed to:

Mr. Frank Klanchar
U.S. Environmental Protection Agency
Central PA Section (3HW24)
841 Chestnut Building
Philadelphia, Pennsylvania 19107

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 a final Agency position on any matter set forth herein.

If you have any technical questions concerning the foregoing, please contact Frank Klanchar, Remedial Project Manager, at (215) 597-8186. Legal questions may be referred to Pamela Lazos, Assistant Regional Counsel, at (215) 597-8504. Questions pertaining to the PRP search process should be directed to Joan Armstrong, Civil Investigator, at (215) 597-0531.

Sincerely,


Abraham Ferdas
Associate Division Director
for Superfund Programs
Hazardous Waste Management Division

Enclosure

cc: Pamela Lazos (3RC22)
Frank Klanchar (3HW24)
Joan Armstrong (3HW11)
Don Becker, PADER
Michael A. James, Assistant General Counsel of OxyChem

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CENTRE COUNTY KEPONE LIST OF POTENTIAL RESPONSIBLE PARTIES

Ruetgers-Nease Corporation
201 Struble Road
State College, PA 16801

Occidental Chemical Corporation
Occidental Towers
5005 LBJ Freeway
Dallas, Texas 75244

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