UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG - 3 2017

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED & ELECTRONIC MAIL

To: See List of Addressees - Attachment A

Re: Conference Call to Discuss Framework for Implementation of the Operable Unit 2 Remedy, Diamond Alkali Superfund Site, Essex and Hudson Counties, New Jersey

Dear Sir/Madam:

As you know, on March 3, 2016 the U.S. Environmental Protection Agency (the "EPA") issued a Record of Decision ("ROD") selecting a remedy to address contaminated sediments in the lower 8.3 miles of the Lower Passaic River, which is Operable Unit 2 ("OU2") of the Diamond Alkali Superfund Site (the "Site").

Shortly thereafter, on March 31, 2016, EPA, among other things, notified you of your status as a potentially responsible party ("PRP") 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 OU2 for the Site, and described the Agency's framework for implementation and settlement of the remedy selected in the OU2 ROD. More specifically, EPA informed you that it intended to negotiate a remedial action consent decree pursuant to which Occidental Chemical Corporation ("OCC") and the other major PRPs would perform the OU2 remedial action, and encouraged OCC and the other major PRPs "to meet and discuss a workable approach to sharing responsibility for implementation and funding of the remedy." The Agency also informed you that some of the parties identified as PRPs for OU2 might be eligible for cash out settlements.

On March 30, 2017, the Agency notified you that it had "identified for immediate settlement those parties that are not associated with a disposal or release of any of the contaminants of concern ("COCs") for OU2, as identified in the OU2 ROD." EPA also informed you that "[f]or parties that are not one of the 20 early cash out parties and are also not associated with the release of dioxins, furans, or PCBs into the Lower Passaic River, a cash out settlement might be appropriate." The Agency noted that it expected "to use the services of a third party allocator before extending cash out settlement offers to any such party."

In a letter dated May 17, 2017, EPA informed you that while it would not expand the number of parties eligible for an early cash out settlement, it does intend "to use the services of a third party allocator with the expectation of offering cash out settlements to additional parties."

While the Agency did not hear objections to the framework laid out in its March 31, 2016 letter, since the March 30, 2017 letter we have received feedback from various parties, voicing concerns about EPA's intention to arrange for an allocation among just some of the PRPs, on the

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basis that such an approach may not be sufficient to result in a successful, approvable settlement. Similar concerns have been raised as to whether EPA's process will ensure full disclosure of pertinent information.

EPA developed its framework after much thought and consideration and in light of the history of the Site, and the Agency continues to believe that its framework for implementation of the remedy selected for OU2, including providing cash out settlement opportunities for some parties, is appropriate and sound. At the same time, we wish to be sure that all views can be expressed, and that all the OU2 PRPs have an opportunity to hear those views and discuss the Agency's enforcement framework.

Accordingly, Region 2 will host a meeting on August 28, 2017 to provide the OU2 PRPs an opportunity to share their views on EPA's framework for implementation of the remedy selected for OU2. The August 28 meeting will be held on the 27th floor of EPA's offices located at 290 Broadway, New York, NY 10007. The meeting, which is scheduled for two (2) hours, will start at 1:00 p.m. (EDT). Given the number of parties that might want to participate, only one (1) representative for each party is invited to attend the in-person meeting at EPA's New York offices. EPA has also established a conference line for those wishing to participate by calling into the meeting. The call-in number is 899-299-3188, and the conference code is 2126373136.

Please respond to EPA by Monday, August 21, 2017 with the following information: 1) name of person participating; 2) name of parties represented; and 3) whether participating in-person or by conference call.

Please feel free to contact Juan M. Fajardo at 212 637-3132 or at Fajardo.juan@epa.gov with any questions or concerns you may have regarding this matter.

Very truly yours,

Eric J. Wilson
Deputy Director for Enforcement and Homeland Security
Emergency and Remedial Response Division

Cc: Brian Donohue, U.S. Department of Justice
Laura Rowley, U.S. Department of Justice

Attachment A – List of Addressees

Diamond Alkali Superfund Site
Lower 8.3 Miles - Passaic River

Company	Contact Information	Facility
A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521-1578 Now Tate & Lyle Ingredients Americas LLC	John R. Holsinger, Esq. Two University Plaza, Suite 300 Hackensack, NJ 07601 201-487-9000 (T) johnh@jrholsinger.com Heidi R. Balsley, Esquire Corporate Counsel A.E. Staley Manufacturing Co., Inc. 2200 E. Eldorado Street Decatur, IL 62521 Heidi.Balsley@tateandlyle.com	320 Schuyler Avenue and 100 Third Avenue Kearny, NJ
Alden Leeds Inc. 55 Jacobus Ave. Kearny, NJ 07032	Mark Epstein, President Alden Leeds Inc. 55 Jacobus Ave. Kearny, NJ 07032 Joseph Fiorenzo, Esq. Sills Cummis & Gross The Legal Center One Riverfront Plaza Newark, NJ 07102 973-643-7000 (T) jfiorenzo@sillscummis.com	2145 McCarter Highway Newark, NJ 55 Jacobus Avenue Kearny, NJ
Alliance Chemical, Inc. Linden Avenue Ridgefield, NJ 07657	Fredi Pearlmutter, Esq. Lindabury, McCormick, Estabrook & Cooper, P.C. 53 Cardinal Drive Box 2369 Westfield, NJ 07091 908-233-6800 (T) fpearlmutter@lindabury.com	33 Avenue P Newark, NJ

American Ref-Fuel Co. 155 Chestnut Ridge Road Montvale, NJ 07645 Now Covanta Essex Company	Nancy Tammi, Esq. VP, Associate General Counsel Covanta 445 South Street Morristown, NJ 07960 862-345-5133 Barbara Hopkinson Kelly, Esq. Wilson Elser Moskowitz Edelman & Dicker LLP 200 Campus Drive Florham Park, NJ 07932-0668 973.735.5765 (Direct) 609.213.8589 (Cell) 973.624.0808 (Fax) barbara.kelly@wilsonelser.com	183 Raymond Blvd & 66 Blanchard St Newark, NJ
Arkema Incorporated 2000 Market Street Philadelphia, PA 19103-3222	Paula Martin, Esq. Doug Loutzenhiser Legacy Site Services, LLC 468 Thomas Jones Way, Suite 150 Exton, PA 19341-2528 Paula.martin@total.com	Wallace & Tiernan 25 Main Street Belleville, NJ
Ashland, Inc. 5200 Blazer Parkway Dublin, OH 43017	Robin E. Lampkin Ashland Inc. 5200 Blazer Parkway Dublin, OH 43017 Telephone: 614-790-3019 realmpkin@ashland.com William S. Hatfield, Esq. Gibbons P.C. One Gateway Center Newark, NJ 07102 whatfield@gibbonslaw.com	221 Foundry St. Newark, NJ
Atlas Refining, Inc. 142 Lockwood Street Newark, NJ 07105 Now Atlas Refinery, Inc.	Steven Schroeder, Jr., President & CEO Atlas Refinery, Inc. 142 Lockwood Street Newark, NJ 07105 Thomas Ryan, Esq. Thomas H. Prol, Esq. Laddey, Clark & Ryan LLP 60 Blue Heron Road, Suite 300 Sparta, NJ 07871 tryan@lcrlaw.com tprol@lcrlaw.com	142 Lockwood St. Newark, NJ

Automatic Electro Plating Corp. 185 Foundry Street, Suite 3 Newark, NJ 07105	Michael O'Rourke, President Automatic Electro Plating Corp. 1017 Applegate Parkway Waxhaw, NC 28173-6738 Michael.orourke@aol.com	185 Foundry Street Complex Newark, NJ (Bldgs 19, 21, 22)
BASF Catalysts LLC 100 Campus Drive Florham Park, NJ	Karyllan D. Mack, Esq. (see below)	Engelhard Corporation One West Central Avenue East Newark, NJ
BASF Corp. 3000 Continental Drive Mount Olive, NJ 07828	Karyllan D. Mack, Esq. Environmental Counsel BASF Corporation 100 Park Avenue Florham Park, NJ 07932 Karyllan.mack@basf.com David Schneider, Esquire Bressler, Amery & Ross Post Office Box 1980 Morristown, NJ 07962 dschneider@bressler.com	50 Central Ave. Kearny, NJ & 150 Wagaraw Rd Hawthorne, NJ
Benjamin Moore & Co. 51 Chestnut Ridge Rd. Montvale, NJ 07645	Paul Sangillo, Esq. Benjamin Moore & Co. 101 Paragon Drive Montvale, NJ 07645 201.949.6318 (T) Paul.sangillo@benjaminmoore.com Eric S. Aronson, Esq. David G. Mandelbaum, Esq. GreenbergTraurig 500 Campus Drive Suite 400 Florham Park, NJ 07932 aronsone@gtlaw.com 973-360-7935	134 Lister Ave. Newark, NJ
Berol Corporation c/o Newell Rubbermaid Inc. 2707 Butterfield Road, Suite 100 Oak Brook, IL 60523	Andrew Sawula, Esq. Schiff Hardin LLP One Westminster Place, Suite 200 Lake Forest, IL 60045 847-295-4336 (T) asawula@schiffhardin.com	Faber-Castell Corporation 41 Dickerson Street Newark, NJ

Campbell Foundry Company 800 Bergen Street Harrison, NJ 07029	Timothy J. Corriston, Esq. Connell Foley LLP 85 Livingston Avenue Roseland, NJ 07068 973-535-0500 (T) tcorriston@connellfoley.com	800 Bergen Street Harrison, NJ
Canning Gum LLC c/o MacDermid Incorporated 1401 Blake Street Denver, CO 80202	John Cordani, Esq. VP, General Counsel MacDermid Inc. 245 Freight Street Waterbury, CT 06702	Frederick Gumm Chemical Co. 538 Forest Street Kearny, NJ
Celanese Ltd. Route 202-206 P.O. Box 2500 Somerville, NJ 08876 CNA Holdings LLC participating on behalf of Celanese Ltd	Duke K. McCall, III, Esq. Bingham McCutchen LLP 2020 K Street, N.W. Washington, DC 20006-1806 202-373-6607 (T) duke.mccall@bingham.com James J. Dragna Morgan Lewis 300 South Grand Ave., 22nd Floor Los Angeles, CA 90071-3132 Jim.dragna@morganlewis.com James O'Toole, Esq. Buchanan Ingersoll & Rooney PC Two Liberty Place 50 S. 16th Street, Suite 3200 Philadelphia, PA 19102-2555 James.otoole@blpc.com	354 Doremus Ave Newark, NJ
Chargeurs, Inc. 178 Wool Road Jamestown, SC 29453	James. R. Brendel, Esq. Thorp Reed & Armstrong, LLP One Oxford Centre 301 Grant Street, 14th floor Pittsburgh, PA 15219-1425 412-394-2373 (T) jbrendel@thorpreed.com	United Piece Dye Works 199 and 205 Main Street and 42 Arnot Street Lodi, NJ

Chevron Texaco Corporation 6001 Bollinger Canyon Rd. K-2056 San Ramon, CA 94583 Chevron Environmental Management Company participating for itself, Texaco, Inc. and TRMI-H LLC	Shawn Raymond DeMerse Chevron U.S.A. Inc. Law Department 1400 Smith Street, Rm 07090 Houston, TX 77002 shawndemerse@chevron.com Louis M. DeStefano, Esq. Buchanan Ingersoll & Rooney, PC 550 Broad Street, Suite 810 Newark, NJ 07102-4517 973.273.9800 (T) louis.destefano@bipc.com	Getty Newark Terminal 86 Doremus Ave. Newark, NJ
Coats & Clark, Inc. 3420 Toringdon Way, Suite 301 Charlotte, NC 28277	Dan Riesel, Esq. Jeff Gracer, Esq. Sive Paget & Riesel, P.C. 460 Park Avenue New York, NY 10022 212-421-2150 driesel@spr.com	Clark Thread Co. 260 Ogden Street Newark NJ 900 Passaic Avenue East Newark NJ 735 Broad Street Bloomfield NJ
EnPro Holdings LLC as assignee of Coltec Industries Inc. 5605 Carnegie Boulevard Charlotte, NC 28209	Tom Price, Esq. EnPro Industries 5605 Carnegie Boulevard Charlotte, NC 28209 704-731-1525 (T) tom.price@enproindustries.com Charles E. Merrill, Esquire Husch Blackwell Sanders LLP 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105 314-480-1952 charlie.merrill@huschblackwell.com	Crucible Steel Co. 1000 South Fourth St. Harrison, NJ
Congoleum Corp. 3705 Quakerbridge Road Mercerville, NJ 08619	Russell Hewit, Esq. Dughi, Hewit & Domolewski, P.C. 340 North Avenue Cranford, NJ 07016 908-272-0200(T) rhewit@dughihewit.com	195 Belgrove Drive Kearny, NJ

Cooper Industries, Inc. 600 Travis Street Houston, TX 77002	Lisa D. Sutton Vice Present/Chief Counsel – EHS Eaton Corporation 1000 Eaton Boulevard Cleveland, OH 44122 440-523-4358 (T) John F. Cermak Sonja A. Inglin Baker Hostetler 11601 Wilshire Boulevard, Ste 1400 Los Angeles, CA 90025-0509 310-442-8889 (T) (Cermak) 310-442-8885 (T) (Inglin) jcermak@bakerlaw.com singlin@bakerlaw.com	J. Wiss & Sons Co 7, 13, 26 Bank Street and 33 Littleton Avenue (aka 400 West Market Street) Newark, NJ
Cooper Industries, LLC 600 Travis Street, Suite 5800 Houston, TX 77002	(see above)	Thomas A. Edison, Inc. Belleville Avenue & Sherman Avenue Bloomfield, NJ 75 Belmont Avenue Belleville, NJ
Croda Inc. 300-A Columbus Circle Edison, NJ 08837	Stephen Swedlow, Esq. Quinn, Emanuel, Urquhart & Sullivan, LLP 191 N. Wacker Drive, Suite 2700 Chicago, IL 60606 stephenswedlow@quinnemanuel.com	Hummel Lanolin 185 Foundry Street Complex Newark, NJ (Block 5005, Lot 21; Bld 39)
Curtiss-Wright Corp. 4 Becker Farm Road Roseland, NJ 07068	Diana Buongiorno Chiesa Shahinian & Giantomassi, PC One Boland Drive West Orange, NJ 07052 973-530-2075(T) dbuongiorno@csglaw.com	1 Passaic St. Woodridge, NJ
Darling International, Inc. 251 O'Connor Ridge Boulevard, Suite 300 Irving, TX 75038	Steven Singer, Esq. 34 Hillside Avenue Montclair, NJ 07042 973-744-6093 stsinger@verizon.net	Standard Tallow Corp. 61 Blanchard Street, Newark, NJ 1215 Harrison Avenue, Kearny, NJ
DII Industries, LLC c/o Halliburton 2101 City West Blvd. Houston, TX 77042-3021	Thomas C. Jackson, Esq. Joshua Frank, Esq. Baker Botts LLP 1299 Pennsylvania Ave., N.W. Washington, DC 20004-2400 202-639-7710 (T) Thomas.Jackson@bakerbotts.com Joshua.frank@bakerbotts.com	Worthington Corp. & Dresser Industries, Inc. 401 Worthington Avenue Harrison, NJ

Drum Service of Newark, Inc. 104 Lister Ave. Newark, NJ 07105	Ralph Foglia 104 Lister Ave. Newark, NJ 07105	Hilton-Davis 120 Lister Ave. Newark, NJ
Eden Wood Corporation 47 Parsippany Road Whippany, NJ 07981	Warren L. Dean, Jr. Thompson Coburn LLP 1909 K Street, N.W. Suite 600 Washington, D.C. 20006-1167 202.585.6908 (T) wdean@thompsoncoburn.com	Whippany Paper Board 1 Ackerman Avenue Clifton, NJ
E.I. duPont de Nemours & Co. 1007 Market Street Wilmington, DE 19898	Stephen Rahaim, Esq. Chief Environmental Counsel E.I. duPont de Nemours and Company Chestnut Run Plaza 721/1264 974 Centre Road P.O. Box 2915 Wilmington, DE 19805 302-996-8278(T) stephen.rahaim@dupont.com	Pitt Consol 191 Doremus Ave. Newark, NJ
Elan Chemical Co. 268 Doremus Ave. Newark, NJ 07105	Jocelyn Kapp Manship, CEO Elan Chemical Company Inc. 268 Doremus Avenue Newark, NJ 07105 Randy Schillinger, Esq. Saiber Schlesinger Staz & Goldstein One Gateway Center, 13th Fl Newark, NJ 07102 973-622-3333(T) rs@saiber.com	268 Doremus Ave. Newark, NJ
El Paso Tennessee Pipeline Co. 1001 Louisania Street Houston, TX 77002 EPEC Polymers Inc. participating on behalf of itself and EPEC Oil Company Liquidating Trust	Andrea A. Lipuma, Esquire Saul Ewing LLP 750 College Road East Suite 100 Princeton, NJ 08540-6617 Telephone: 609-452-5032 alipuma@saul.com	Tenneco, Inc. 290 River Drive Garfield, NJ

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Essex Chemical Corp. 2030 WMDC Midland, MI 48674	Kenneth Mack, Esq. Linda Mack, Esq. Fox Rothschild LLP Post Office Box 5231 Princeton, NJ 08543-5231 Princeton Pike Corp. Center 997 Lenox Drive, Bldg. 3 Lawrenceville, NJ 08648 609-896-3000(T) kmack@foxrothschild.com	330 Doremus Ave. Newark, NJ
Everett Smith Group, Ltd. 330 East Kilbourn Avenue, Ste 750 Milwaukee, WI 53202	Sarah A. Slack, Esq. Foley & Lardner, LLP Suite 500 150 East Gilman Street Madison, WI 53703-1482 608-258-4239 sslack@foley.com	Blanchard Bro. & Lane, Inc. 40 Bruen Street Newark, NJ
Foundry Street Corporation 67 Kettle Hole Road 2524 Montauk, NY 11954-5084	Gerald Borriello Foundry Street Corporation 67 Kettle Hole Road 2524 Montauk, NY 11954-5084 geraldborriello@gmail.com	185 Foundry Street Complex Newark, NJ (Block 5005, Lot 22 – Bldgs 19, 21, 22)
Fragrances North America 1775 Windsor Road Teaneck, NJ 07666 Now Givaudan Corp.	Richard Wroblewski, P.G. Environmental Specialist Givaudan Fragrances Corp. 300 Waterloo Valley Road Mount Olive, NJ 07828 richard.wroblewski@givaudan.com William Hatfield, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 973-596-4511 (T) whatfield@gibbonslaw.com	Givaudan Fragrances 125 Delawanna Avenue Clifton, NJ
Franklin Burlington Plastics, Inc. 113 Passaic Ave. Kearny, NJ 07032	Norman Spindel, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2514(T) nspindel@lowenstein.com	113 Passaic Ave. Kearny, NJ

Garfield Molding Company, Inc. 1115 Inman Ave. #196 Edison, NJ 08820	Patrick J. McStravick, Ricci Tyrrell Johnson & Grey 1515 Market Street, Suite 700 Philadelphia, PA 19102 215-320-2087 (T) PMcStravick@rtjglaw.com	10 Midland Avenue Wallington, NJ
General Electric Company 3135 Easton Turnpike Fairfield, CT 06828-0001	Roger Florio, Esq. General Electric 640 Freedom Business Center King of Prussia, PA 19406 Roger.florio@ge.com Gary P. Gengel, Esq. Latham & Watkins, LLP One Newark Center, 16th floor Newark, NJ 07101 973-639-7287 (T) gary.gengel@lw.com	415 South 5th Street & 1000 South 2nd Street Harrison, NJ
Goodrich Corporation Four Coliseum Centre 2730 West Tyvola Road Charlotte, NC 28217	Earl W. Phillips, Jr., Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 860-275-8220 (T) ephillips@rc.com	Kalama Chemical 290 River Drive Garfield, NJ
Hexcel Corp. 2 Stamford Plaza Stamford, CT 06901	Steve Leifer, Esq. Baker Botts LLP 1299 Pennsylvania Ave., NW Washington, DC 20004 202-639-7723(T) sleifer@bakerbotts.com	205 Main St. Lodi, NJ
Hoffman-La Roche Inc. 340 Kingsland Street Nutley, NJ 07110	John Klock, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102 jklock@gibbonslaw.com Frederick Kentz, Esq. Vice President and General Counsel Hoffmann-La Roche Inc. 150 Clove Road, Little Falls, NJ 07424	340 Kingsland Road Nutley, NJ

Honeywell International, Inc. P.O. Box 2245 Morristown, NJ 07962	Jeremy Karpatkin, Esq. Arnold & Porter Kaye Scholer LLP 601 Massachusetts Ave., NW Washington, DC 20001 202-942-5564 (T) Jeremy.karpatkin@apks.com	General Chemical Co. 65 Lodi Street/8th Street Passaic, NJ
ISP Chemicals, Inc. 1361 Alps Road Wayne, NJ 07470 now ISP Chemicals LLC	Robin E. Lampkin Ashland Inc. 5200 Blazer Parkway Dublin, OH 43017 614-790-3019 (T) relampkin@ashland.com William Hatfield, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 973-596-4511 (T) whatfield@gibbonslaw.com	ISP Van Dyk, Inc. 1 Main St./11 William St. Wayne, NJ
ITT Industries, Inc. 77 River Road Clifton, NJ 07014 participating as Exelis Inc. for itself and ITT Industries, Inc	Susanne Peticolas, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 973-596-4751 (T) speticolas@gibbonslaw.com	100 Kingsland Drive Clifton, NJ
Kearny Smelting & Refining 936 Harrison Ave #5 Kearny, NJ 07032	Ms. Francine Rothschild, President Kearny Smelting & Refining 936 Harrison Ave Kearny, NJ 07032 201-991-7276 (T) Lee D. Henig-Elona, Esq. Gordon & Rees 18 Columbia Turnpike, Suite 220 Florham Park, NJ 07932 973-549-2520(T direct) 973-549-2500(T office) lhenig-elona@gordonrees.com	936 Harrison Ave. Kearny, NJ

Lucent Technologies 600 Mountain Avenue Murray Hill, NJ 07974 now Alcatel-Lucent USA, Inc.	James (Jay) Stewart, Esq. Lowenstein Sandler LLP 65 Livingston Avenue Roseland, NJ 07068 973-597-2522 (T) jstewart@lowenstein.com Gary M. Fisher, Esq. Alcatel-Lucent Environment, Health & Safety Corporate Center 600 Mountain Avenue Room 1F-102G Murray Hill, NJ 07974 gary.fisher@alcatel-lucent.com	AT&T/Western Electric 100 Central Ave. Kearny, NJ
Monsanto Co. 800 North Lindbergh Blvd. St. Louis, Missouri 63167 Pharmacia Corporation (f/k/a Monsanto Company)	John F. Gullace, Esq. Manko, Gold, Katcher & Fox, LLP 401 City Avenue, Suite 500 Bala Cynwd, PA 19004 484-430-2326(T) jgullace@mgkflaw.com	Monsanto Co. Foot of Pennsylvania Ave. Kearny, NJ
National-Standard Company 1618 Terminal Road Niles, MI 49120 Now National-Standard LLC	Susanne Peticolas, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 973-596-4751(T) speticolas@gibbonslaw.com	714-716 Clifton Avenue Clifton, NJ
Newark Morning Ledger 1 Star Ledger Plaza Newark, NJ 07102	Daryl Kessler, Esq. Sabin, Bermant & Gould, LLP One World Trade Center -44th Floor New York, NY 10007-2915 212-381-7026 dkessler@sabinfirm.com	1 Star Ledger Plaza Newark, NJ
Newell Rubbermaid, Inc. 29 E. Stephenson Street Freeport, IL 60132	Andrew Sawula, Esq. Schiff Hardin LLP One Westminster Place, Suite 200 Lake Forest, IL 60045 847-295-4336 (T) asawula@schiffhardin.com	Goody Products 969 Newark Turnpike Kearny, NJ
News America Inc. 767 Fifth Ave., 46th Floor New York, NY 10153 fka News Publishing Australia, Ltd., now Twenty-First Century Fox America	Peter Simshauer, Esq. Skadden, Arps, Slate, Meagher & Flom LLP 500 Boylston Street Boston, MA 02116 617-573-4880(T) psimshau@skadden.com	Chris-Craft Inc./Montrose Chemical Co. 100 Lister Ave. Newark, NJ

Occidental Chemical Corp. Occidental Tower 5005 LBJ Freeway Dallas, TX 75244	Dennis F. Blake Senior Vice President Occidental Chemical Corp. 5005 LBJ Freeway Dallas, TX 75244 Larry Silver, Esq. Langsam Stevens Silver 1818 Market Street, Suite 2610 Philadelphia, PA 19103-5319 215- 239.9023 lsilver@lssh-law.com	Diamond Shamrock Chemicals Co. 80 and 120 Lister Ave. Newark, NJ
The Okonite Company, Inc. 102 Hilltop Road Ramsey, New Jersey 07446	David Brook, Esq. McCullough Ginsberg Montano & Partners LLP 55 Bleeker Street Millburn, NJ 07041 dbrook@mgpllp.com	Canal and Jefferson Streets Passaic, NJ
Otis Elevator Co. North America Operations 10 Farm Springs Road Farmington, CT 06032	Earl W. Phillips, Jr., Esq. Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103-3597 860-275-8220(T) ephillips@rc.com	1000 First St. Harrison, NJ
Pabst Brewing Company 9014 Heritage Parkway Suite 308 Woodridge, IL 60517	Eugene Kashper, Chairman & CEO Pabst Brewing Company 10635 Santa Monica Blvd Ste 350 Los Angeles, CA 90025	400 Grove Street Newark, NJ
Palin Enterprises	Diana Buongiorno, Chiesa Shahinian & Giantomasi PC One Boland Dr. West Orange, NJ 07052 dbuongiorno@csgl aw.com 973 530-2075 Mr. Michael Palin Palin Enterprises 235 Park Avenue South, #8 New York, NY 10003-1045	American Modern Metals 44 Passaic Ave. (a/k/a 25 Belgrove Drive) Kearny, NJ
Passaic Pioneer Properties PO Box 327 35 Eighth Street Passaic, NJ 07055	Timothy J. Corriston, Esq. Connell Foley LLP 85 Livingston Avenue Roseland, NJ 07068 973-535-0500 (T) tcorriston@connellfoley.com	35 Eighth Street Passaic, NJ

PMC, Inc. 12243 Branford Street Sun Valley, CA 91352	Phillip Kamins, President & CEO PMC Global, Inc. 12243 Branford St Sun Valley, CA 91352 818-896-1101(T)	Kleer Kast 450 Schuyler Avenue Kearny, NJ
Power Test of New Jersey, Inc. 125 Jericho Turnpike Jericho, NY 11753 now Leemilt's Petroleum, Inc., successor to Power Test of NJ, Inc.	Christine Fitter, Asst Secretary Leemilt's Petroleum, Inc. 125 Jericho Turnpike, Suite 103 Jericho, NY 11753 cfitter@gettyrealty.com Nicole Moshang, Esq. Manko, Gold Katcher & Fox LLP 401 City Avenue, Ste. 500 Bala Cynwyd, PA 19004 484-430-2324 (T) nmoshang@mgkflaw.com	Getty Newark Terminal 86 Doremus Ave. Newark, NJ
PPG Industries, Inc. One PPG Place Pittsburgh, PA 15272	Gary P. Gengel, Esq. Latham & Watkins, LLP 885 Third Avenue New York, NY 10022-4834 gary.gengel@lw.com	29 Riverside Ave. Newark, NJ
PSE&G Corp. P.O. Box 570 Newark, NJ 07101	John F. Doherty, Esq. Associate General Litigation Counsel PSE&G Services Corporation 80 Park Plaza, T5D Post Office Box 570 Newark, NJ 07102 973-430-6478(T) John.doherty@pseg.com Kevin R. Gardner, Esq. Connell Foley 85 Livingston Avenue Roseland, NJ 07068 973-535-0500(T) kgardner@connellfoley.com	155 Raymond Blvd. Newark, NJ & 4th St. Harrison, NJ
Purdue Pharma Technologies, Inc. One Stamford Forum Stamford, CT 06901	James (Jay) Stewart, Esq. Lowenstein Sandler PC 65 Livingston Avenue Roseland, NJ 07068 973-597-2522(T) jstewart@lowenstein.com	Napp Technologies 199 Main St. Lodi, NJ

Quality Distribution, Inc. 150 East Pennsylvania Avenue Suite 450 Downingtown, PA 19335 Quality Carriers, Inc.	Bonni Kaufman, Esq. Holland & Knight, LLP 800 17th Street N.W. Suite 1100 Washington, DC 20006 202-419-2547 Bonni.kaufman@hklaw.com	Chemical Leaman Tank Lines 80 Doremus Avenue Newark, NJ
Royce Associates 366 N. Broadway, Ste. 400 Jericho, NJ 11753	A.J.Royce, President Royce Associates, ALP 35 Carlton Ave East Rutherford, NJ 07073 201-438-5200(T) Ronald Bluestein, Esq. Flamm Walton 794 Penllyn Pike Blue Bell, PA 19422 267-419-1500 (T) rbluestein@flammlaw.com	Royce Chemical Company 17 Carlton Avenue East Rutherford, NJ
RSR Corp. 2777 Stemmons Freeway Suite 1800 Dallas, TX 75207 now Revere Smelting and Refining Corporation	Jane C. Luxton, Esq. Christopher Clare, Esq. Clark Hill PLC 1001 Pennsylvania Avenue NW, Suite 1300 South Washington, DC 20004 202-572-8674(T) 703-598-3275(M) jluxton@clarkhill.com cclare@clarkhill.com	Revere Smelting & Refining 387 Avenue P Newark, NJ
Safety Kleen Envirosystems Co. 1301 Gervais St. Columbia, SC 29201 McKesson Corporation for itself and for Safety-Kleen Envirosystems, Inc.	John Edgcomb, Esq. Edgcomb Law Group, LLP One Post Street, Suite 2100 San Francisco, California 94104-5225 415-399-1555 (T) jedgcomb@edgcomb-law.com	600 Doremus Ave. Newark, NJ
Schiffenhaus Packaging Corp. c/o Rock-Tenn Company 504 Thrasher Street Norcross, GA 30071	Camille V. Otero, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 cotero@gibbonslaw.com	204 Academy Street 49 Fourth Street 2013 McCarter Highway Newark, NJ

Sequa Corporation 200 Park Avenue New York, NY 10166	Brian L. Buniva, Esq. Senior Counsel & Senior Director Environment, Health & Safety Sequa Corporation 707 E. Main Street, Suite 1450 Richmond, VA 23219 845-230-7374 (Direct) 804-873-0610 (Mobile) Brian_Buniva@sequa.com Gary P. Gengel, Esq. Kegan A. Brown, Esq. Latham & Watkins, LLP 885 Third Avenue New York, NY 10022-4834 gary.gengel@lw.com	Sun Chemical Corporation 185 Foundry Street Newark, NJ (prior to 1987)
Seton Company, Inc. 1000 Madison Avenue Norristown, PA 19403\ now Seton Tanning	David M. Kohane, Esq. Cole Schotz, PC PO Box 800 25 Main Street Hackensack, NJ 07601-7015 201-525-6267(T) lbradford@coleschotz.com	Seton Leather Company 849 Broadway Newark, NY 07104
SpectraServ, Inc. 75 Jacobus Avenue Kearny, NJ 07032	Diana Buongiorno, Esq. Chiesa Shahinian & Giantomassi, PC One Boland Dr West Orange, NJ 07052 973-530-2075(T) dbuongiorno@csglaw.com	75 Jacobus Ave. Kearny, NJ
STWB, Inc. c/o Bayer Corporation 100 Bayer Road Pittsburgh, PA 15205	Timothy I. Duffy, Esq. Coughlin Duffy LLP Post Office Box 1917 350 Mount Kemble Avenue Morristown, NJ 07962-1917 973-631-6002(T) tduffy@coughlinduffy.com lhall@coughlinduffy.com (Assistant)	Lehn & Fink Products Corp. 192-194 Bloomfield Avenue Bloomfield, NJ 07003 Thomasett Colors/Sterling 120 Lister Ave. Newark, NJ

Sun Chemical Corporation 35 Waterview Boulevard Parsippany, NJ 07054-1285	Warren W. Faure, Esq. EH&S Counsel Sun Chemical Corporation 35 Waterview Boulevard Parsippany, NJ 07054 973-404-6590(T) Warren.faure@sunchemical.com Ted Wolff, Esq. Manatt, Phelps & Phillips, LLP 7 Times Square New York, NY 10036 twolff@manatt.com	Sun Chemical Corporation 185 Foundry Street Newark, NJ (1987 to present)
Teval Corporation 99 Cherry Hill Road, Suite 105 Parsippany, NJ 07054	Lee D. Henig-Elona, Esq. Gordon & Rees 18 Columbia Turnpike, Suite 220 Florham Park, NJ 07932 973-549-2520(T direct) 973-549-2500(T office) lhenig-elona@gordonrees.com	Guyon Pipe 900-1000 South 4th Street Harrison, NJ
Textron, Inc. 40 Westminster Street Providence, RI 02903	Jamie Schiff, Esq. Textron, Inc. 40 Westminster Street Providence, RI 02903 401-457-2422 (T) jschiff@textron.com Bonni Kaufman, Esq. Holland & Knight 800 17th Street, NW Suite 1100 Washington, DC 20006 202-955-3000 bonni.kaufman@hklaw.com	Spencer Kellogg Division 400 Doremus Avenue Newark, NJ
The Hartz Mountain Corporation 400 Plaza Drive Secaucus, NJ 07094 The Hartz Consumer Group, Inc. on behalf of The Hartz Mountain Corporation	Curtis L. Michael, Esq. Horowitz, Rubino & Patton 400 Plaza Drive PO Box 2038 Secaucus, NJ 07094-2038 Curt.michael@hrplaw.com	600/700 South 4th Street Harrison, NJ

The Newark Group, Inc. 20 Jackson Drive Cranford, NJ 07016	David M. Meezan, Esq. Kazmarek Mowrey Cloud Laseter LLP 1230 Peachtree Street N.E. Suite 3600 Atlanta, GA 30309 404-969-0733 dmeezan@kmcllaw.com	The Newark Boxboard Co. 17 Blanchard Street Newark, NJ
The Sherwin Williams Co. 101 Prospect Ave., N.W. Cleveland, OH 44115	Herbert (Bart) Bennett, Esq. Sokol, Behot & Fiorenzo 229 Nassau Street Princeton, NJ 08542-4601 609-279-0900(T) hbbennett@sbflawfirm.com	60 Lister Ave. Newark, NJ
The Stanley Works 1000 Stanley Drive New Britain, CT 06053 now Stanley Black & Decker, Inc.	Andrew Kolesar, Esq. Thompson Hine LLP 312 Walnut Street, 14th Floor Cincinnati, OH 45202 513-352-6545(T) andrew.kolesar@thompsonhine.com	Stanley Tools 140 Chapel St. Newark, NJ
Tiffany & Co. 727 Fifth Avenue New York, NY 10022	John Klock, Esq. Gibbons, PC One Gateway Center Newark, NJ 07102-5310 973-596-4757 (T) jklock@gibbonslaw.com	820 Highland Avenue Newark, NJ
Unilever Bestfoods International Plaza Sylvan Avenue Englewood Cliffs, NJ 07632 Conopco, Inc., d/b/a Unilever (as successpr to CPC/Bestfoods, former parent of the Penick Corporation	Joshua Frank, Esq. Baker Botts 1299 Pennsylvania Ave., N.W. Washington, DC 20004-2400 202-639-7710 (T) Joshua.frank@bakerbotts.com Andrew Shakalis, Esq. Associate General Counsel – Environmental & Safety Unilever 700 Sylvan Avenue Englewood Cliffs, NJ 07632 201-894-2763 (T) 201-894-2727 (F) Andrew.shakalis@unilever.com	Penick Corporation 540 New York Avenue Lyndhurst, NJ

Viacom Inc. 11 Stanwix St. Pittsburgh, PA 15222 Now CBS Corporation	Jeffrey B. Groy, Esq. VP, Sr. Counsel/ Environmental CBS Law Department CBS Corporation 2 East Mifflin Street, Suite 200 Madison, WI 5 3 7 0 3 262-705-0579(T) jeff.groy@cbs.com	Westinghouse Electric 95 Orange St. Newark, NJ
Vulcan Materials Co. 1200 Urban Center Drive Birmingham, AL 35242 Now Legacy Vulcan Corp.	Eva Fromm O'Brien, Esq. Fulbright & Jaworski Fulbright Tower 1301 McKinney Suite 5100 Houston, TX 77010-3095 713-651-5321 (T) 713-651-5246 (F) eobrien@fulbright.com John M. Floyd, Esq. Senior Attorney Vulcan Materials Company 1200 Urban Center Drive Birmingham, AL 35242 205-298-3745 (Direct) 205-492-4219 (Cell) 205-298-2960 (F) floydj@vmcmail.com	600 Doremus Ave. Newark, NJ