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

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

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