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OUR FILE NO:
04668-0001

October 18, 2004

VIA OVERNIGHT MAIL

Mr. Bruce C. Amig
Director of Global Remediation
B.F. Goodrich Aerospace
Three Coliseum Centre
2550 West Tyvola Road
Charlotte, North Carolina 28217-3022

Re: City of Riverside – Agricultural Park ("Ag Park")
Potential Liability of B.F.Goodrich, Aerospace for former Rohr, Inc.
Riverside, California Manufacturing Plant

Dear Mr. Amig:

This firm has been retained as special litigation counsel by the City of Riverside ("City") in reference to the Agricultural Park site ("Ag Park" or "Site") located at the intersection of Crest Avenue and Rutland Avenue in the City. The Site is currently owned by the City. We are writing to provide B.F. Goodrich Aerospace ("Goodrich") with notice of its potential liability as successor in interest to Rohr, Inc. ("Rohr") with respect to this Site.

Release of Chemicals on the Site

In July, 2003, the City discovered the presence of polychlorinated biphenyls ("PCBs") in soil at the Ag Park. While grading the Ag Park property, a contractor retained by a potential developer of the site, punctured a subterranean digester that had been part of the historical sewage treatment facility at the Site. The puncture caused a substantial spillage of sewer sludge into soil at the Site. The City undertook immediate measures to remove the sludge.

Since July, 2003, the City has retained environmental engineers who, under the oversight of the Riverside County Department of Environmental Health, have been actively investigating the Site. The City has now positively identified the presence of PCBs, and specifically but without limitation, the PCB known as Aroclor 1248, in high concentrations in the vicinity of the digester sludge release, as well as at other locations throughout the Site. In accordance with the

requirements of federal and state law, the City has duly notified all necessary local and state agencies, as well as the public, and has taken steps to limit access to the Site by members of the public.

Site History and Potential Liability of Goodrich as Successor in Interest to Rohr for Liability at the Site

Based on the investigation and research undertaken to date, the City has concluded that Goodrich, as successor in interest to Rohr, is a major potentially responsible party ("PRP") for the PCB contamination at the Site.

The City has reached this conclusion after careful review of all the available evidence regarding the past history of the Site to determine how PCBs came to be disposed of in the sewage treatment system. This research has entailed: (1) reviewing historic aerial photographs; (2) reviewing City and County of Riverside records relating to the activities, permits and customers of the prior sewage treatment plant; (3) reviewing records from the Santa Ana Regional Water Quality Control Board regarding industrial activities in the vicinity of the Site, including activities of Rohr; (4) conducting a comprehensive EDR search; and (5) obtaining through the Freedom of Information Act ("FOIA") records from the U.S. Army regarding the former Army activities on the Site.

The Ag Park Site was formerly part of Camp Anza, a World War II-era staging ground for Army troops. Sometime during World War II, the U.S. Army constructed and operated a sewage treatment plant ("Plant") on the Site. Following the end of World War II, ownership of the Plant was taken over by several now-defunct community district organizations and the service area for the Plant expanded to include Rohr as an industrial user and commercial and residential customers located in the vicinity of the Site. The City took over ownership of the Site in 1962 and closed the plant in 1965.

Our research has disclosed that in 1952, Rohr purchased a separate 80-acre portion of former Camp Anza ("Rohr Site"). Rohr, and Goodrich as recent successor in interest, has used the Rohr Site for its aircraft component manufacturing operations since that time. Based on our present investigation, the City has established that Rohr was the major industrial customer of the sewage treatment plant from 1952 to 1965 and contracted with the operators of the Plant for the acceptance of Rohr's sewage from the Rohr Site. Historical records of the Plant do not disclose any Plant industrial customer other than Rohr that used PCBs. The other customers of the Plant were commercial and residential users within the boundaries of the Plant service area.

Rohr regularly used materials containing PCBs in its past operations at the Rohr Site. Specifically, there are public records which document that: (1) Rohr historically used the PCB

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known as Aroclor 1248 in its Rohr Site operations; (2) Rohr has been cited by the Santa Ana Regional Water Quality Control Board for PCB contamination including Aroclor 1248 in soil and in underground utility and other pipelines located on its Rohr Site property and in groundwater impacted by the Rohr Site; (3) Rohr periodically flushed out PCBs including Aroclor 1248 from its autoclave systems on site and disposed of it on the Rohr Site. Indeed, Rohr has expressly admitted its past use of Aroclor 1248 in its Rohr Site operations.

It appears that Rohr is the major, or only, source of the PCBs which have now been discovered at the Ag Park. The historic operations of the Plant from 1952 through 1965 followed accepted practices of wastewater treatment using digesters and then spreading the treated sludge onto various areas of the Ag Park in specifically defined drying beds throughout the Site. No operator of the Plant had knowledge that Rohr's waste contained PCBs.

The City has concluded that the PCBs used in Rohr's manufacturing operations are the source of not only the PCBs discovered in the digester from the accidental release in July 2003, but also of the PCBs which have been identified throughout the Ag Park Site, particularly in the areas of the sludge drying ponds. Based on Rohr's contractual relationship with the owners and operators of the Plant, its admission of the use of Aroclor 1248 in its manufacturing process during the subject time period, the discovery of the Aroclor 1248 in the soil and groundwater at the Rohr Site, as well as standard industrial disposal practices during the era for autoclaves and spent oil, the City believes that Rohr is the major or only source of the PCBs found at the Riverside Ag Park site. Therefore, Rohr's historic disposal activities are a proximate cause of the City's recently incurred costs of remedial investigation and of costs to be incurred in the future for remediation as set forth below.

Notice to Goodrich as Successor to Rohr of Potential Liability Under CERCLA

The City has undertaken a complete Site investigation and characterization to identify the extent of the plume of PCB contamination in soil. The City has incurred and will continue to incur substantial response costs, including but not limited to: (1) hiring environmental engineers to work with the County of Riverside to sample throughout the Site at various depths for presence of not only PCBs, but also other chemicals which could have been disposed by Rohr in the sewer systems; (2) obtaining laboratory testing results for the sampling; (3) retaining various subcontractors to dismantle the remainder of the concrete from the digester and other structures contaminated with PCBs in order to sample soil beneath these structures; (4) retaining contractors to remove, transport and dispose of PCB contaminated soils and other materials; and (5) retaining legal counsel to pursue potentially responsible parties.

The City is committed to remediation of the Site, and is working cooperatively with the County of Riverside who has been designated by the California Environmental Protection

Agency Department of Toxic Substances Control as the Lead Agency to oversee this process. The City will be seeking to recover its costs from PRPs, as defined in 42 U.S.C. 9607 (a), through the mechanisms afforded under Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for cost recovery and/or contribution.[1] To establish liability under CERCLA, four elements are needed, all of which are met with respect to Goodrich: (1) the site upon which hazardous substances are contained is a "facility;" (2) a release or threatened release of any hazardous substances from the facility has occurred; (3) such release or threatened release has caused the claimant to incur response costs that were necessary; and (4) the potentially responsible party is one of the four classes of person subject to CERCLA liability – namely, present owner or operator, past owner or operator, arranger of hazardous waste disposal and transporters of such waste.[2]

The evidence and investigation to date establish that: (1) the Ag Park is a facility; (2) the PCBs are a hazardous substance which has been released; (3) the City has in the past, and continues to incur response costs that are necessary; and (4) Goodrich is a potentially responsible party as the successor in interest to Rohr, who was an arranger of hazardous waste disposal and therefore subject to CERCLA generator liability.

The Site investigation process will shortly culminate in the preparation of a Remedial Action Plan ("RAP"), pursuant to Health & Safety Code §§ 25350, *et seq.*, the purpose of which will be to set forth a comprehensive remediation plan for the removal of PCBs and other chemicals to appropriate levels to ensure the health and safety of the public and to enable future development of the Site. The RAP will comply with all applicable state and federal laws and regulations, including the National Contingency Plan ("NCP").[3] As a part of the RAP process, the City seeks to identify any person affected by the remediation action and provide the opportunity to participate in the final RAP. Parties such as Goodrich that contributed to the hazardous waste at the Site will be given the opportunity to participate in the remediation action or to waive that right.

Accordingly, the City hereby provides notice that Goodrich is considered to be the primary PRP[4] under the CERCLA,[5] and the City hereby gives notice to Goodrich pursuant to

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1 42 U.S.C. § 9607(a) and 42 U.S.C. 9613(f).

2 42 U.S.C. §§ 9607(a)(1)-(4); *Carson Harbor Village Ltd. v. Unocal Corp.*, 270 F.3d 863, 872 (9th Cir. 2001); *W. Props. Serv. Corp. v. Shell Oil Co.*, 358 F.3d 678 (9th Cir. 2004).

3 National Contingency Plan, 40 C.F.R. 300, *et seq.*

4 42 U.S.C. 9607(a).

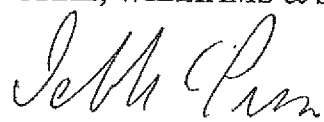
Health & Safety Code § 25356.1 to request that Goodrich participate in the RAP process for purposes of determining allocation of responsibility. While the use of PCBs for most uses was not outlawed until 1979, courts have uniformly held that CERCLA liability extends to acts committed before the enactment of CERCLA in 1980.[6] Furthermore, Goodrich may also be liable under a theory of continuing trespass and continuing nuisance, as well as other common law and statutory torts.

The City requests a meeting with you and other authorized representatives of Goodrich as soon as possible to discuss reaching an amicable resolution of responsibility and duties for the investigation and remediation of the Site, allocation of financial responsibilities for past and future costs, and the appropriateness of a tolling agreement for purposes of staying any applicable statutes of limitations for filing litigation in this matter. At such a meeting, the City will share with Goodrich the results of the Site investigation to date, the current plans for Site remediation, and will provide whatever other information Goodrich seeks in order to partner with the City in the resolution of the Ag Park contamination.

Please contact me within two weeks of the date of this letter so that we may set up a mutually convenient meeting. We look forward to discussing this matter with you at your earliest convenience.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP



Deborah C. Prosser

cc: Thomas P. Evans, Interim City Manager
Michael J. Beck, Assistant City Manager
Greg Priamos, Esq., City Attorney
Eileen M. Teichert, Esq., Assistant City Attorney
Siobhan Foster, Administrative Services Manager

(..continued)

5 42 U.S.C. 9601, *et seq.*

6 *See, United States v. Northeastern Pharmaceutical* (8th Cir. 1986), 810 F.2d 726, 732-737, *cert denied*, 484 U.S. 848.