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May 25, 2017

Via Email Wilson.ericj@epa.gov
Eric J. Wilson, Deputy Director for Enforcement and Homeland Security
Emergency and Remedial Response Division
US Environmental Protection Agency, Region II
290 Broadway
New York, NY 10007-1866

Re: **Response to May 17, 2017 Cash Out Letter**
Superfund Site: Diamond Alkali Superfund Site;
Lower 8.3 Miles of the Lower Passaic River ("LPR")
Essex and Hudson Counties, New Jersey
Our File No.: S3721-00001

Dear Mr. Wilson:

As you know, we represent STWB Inc. ("STWB") in connection with the above-referenced matter. We are in receipt of your May 17, 2017 letter setting forth the U.S. Environmental Protection Agency ("EPA") process for notifying 20 parties as candidates for early cash out settlements related to their potential liability for Operable Unit 2 (OU2) of the above-referenced Site.

Your letter provides information on the process EPA undertook and the factors considered in offering cash out settlements to those 20 parties. We understand that the EPA identified certain eligible parties for the cash out settlement but did not include certain others because it could not determine with confidence that the other PRPs met the criteria it had established for the early cash out settlement.

STWB assumes that it was not included with the original cash out parties based upon information provided to EPA by Tierra Solutions in its nexus documents. On prior occasions, we advised EPA that this information provided by Tierra was totally incorrect and based upon

unsubstantiated and false assumptions regarding operations at sites associated with STWB. Furthermore, we requested the opportunity to provide EPA with information and documentation which accurately reflect the operations associated with STWB and support its position that it is similarly situated to the proposed cash out parties and, thus, should have received one of the initial cash out offers. STWB also asserts that its legal exposure for the LPR is such that the transaction costs it has and continues to incur are disproportionate to its liability. While we understand that EPA does not desire at this time to engage in an additional round of document review and negotiations to expand the parties to whom the early cash out settlement is offered, we believe it is critical that STWB correct the misinformation provided by Tierra so that EPA fully appreciates that STWB is indeed similarly situated to those PRPs to whom EPA offered the early cash out opportunity.

By way of background, on behalf of STWB, we received the March 31, 2016 letter from Nicoletta Di Forte, Deputy Director for Enforcement for EPA's Emergency and Remedial Response Division, regarding potential liability of STWB related to two facilities identified as the former Thomasset Color/Sterling facility, previously located at 120 Lister Avenue, Newark, New Jersey ("Thomasset"), and the former Lehn & Fink Products Corp. facility that was located at 192-194 Bloomfield Avenue, Bloomfield, New Jersey ("L&F"). In that letter, Ms. Di Forte advised that EPA was seeking to determine whether Occidental Chemical Corporation would voluntarily perform the remedial design for the remedy selected in the Record of Decision for OU2 and that EPA believes some of the parties that have been identified as PRPs under CERCLA may be eligible for cash out settlements with EPA for the LPR and that it intended to provide separate notice of opportunity to discuss a cash out settlement at a later date.

By letter dated April 14, 2016 to Sarah Flanagan, Esq., Office of Regional Counsel, New Jersey Superfund Branch, USEPA Region 2, on behalf of STWB, we advised EPA that (i) nexus package submitted by Tierra/Maxus/Occidental Chemical ("TMO") connecting Thomasset to the LPR contained significant material and factual errors; and (ii) that STWB believed it was fully eligible for any cash out settlements offered by EPA. We further advised that neither the Thomasset facility nor L&F facility is associated with the primary risk drivers in the LPR; that is dioxins, furans or PCBs. We advised that our investigation showed that Thomasset used a ***solventless*** (dry) baked pigment manufacturing process which would not have degenerated PCBs or dioxins/furans. Similarly, we advised that L&F operations did not result in the discharge of PCBs or dioxins/furans. We indicated that we were happy to discuss this information in more detail with EPA at its convenience.

STWB did not receive any response to this April 14, 2016 letter, nor was it offered the opportunity to supply additional information which we believe would have provided EPA with the confidence it needed to determine that STWB met the criteria for the early cash out settlement. Instead, we were advised that EPA was not accepting additional information from PRPs regarding their alleged nexus to the LPR, but that STWB would be afforded the opportunity to do so in the future.

Enclosed is a memorandum prepared by the ELM Group, Inc., STWB's environmental consultant, which provides a summary of information which forms the basis for STWB's request for an early cash out settlement offer from EPA. The document presents evidence that STWB has obtained which satisfies EPA's stated criteria for the cash out offer; specifically, that the historical operations of Thomasset were not associated with the disposal or release of any of the hazardous substances identified as primary contaminants of concern for OU2. As described in the ELM memorandum, unlike some of the 20 Cash Out Parties, the historical operations of Thomasset and L&F are not associated with the disposal or release of any dioxin, furans or PCBs or any of the other primary OU2 remedy drivers. STWB respectfully requests the opportunity to provide EPA with additional detailed documentation in order to satisfy EPA that STWB should be provided an early cash out offer.

We look forward to working with EPA to ensure an opportunity is provided to STWB for such a cash out settlement.

Thank you for your courtesies and consideration.

Very truly yours,

COUGHLIN DUFFY LLP

Timothy I. Duffy
Heidi S. Minuskin

TID:jsb
Enclosure
cc: STWB Inc. (via e-mail)
Juan Fajardo, Esq. (via e-mail Fajardo.juan@epa.gov)
ELM Group, Inc. (via e-mail)

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STWB Inc. Submission in support of its Request for Early Cash-Out Settlement Offer from USEPA Pertaining to the Diamond Alkali Superfund Site, Lower 8.3 miles of the Lower Passaic River

This memorandum presents the basis for the STWB Inc. (STWB) request for an Early Cash-Out Settlement Offer (Offer) from USEPA pertaining to the Diamond Alkali Superfund Site, Lower 8.3 miles of the Lower Passaic River (OU2). STWB's alleged responsibility for OU2 arises from the historical operations of its predecessor, Thomasset Colors, Inc. (TCI) at the former Hilton Davis (HD) site located at 104-112 Lister Avenue (historically 120 Lister Avenue), Newark, New Jersey (Site). This document shows that STWB satisfies the USEPA stated criteria for the Offer: that the historical operations of TCI were not associated with disposal or release of any of the primary remedy drivers for OU2, as identified in the OU2 Record of Decision (ROD). Furthermore, at least nine of the twenty companies offered the early cash out settlement have documented releases of primary remedy drivers for OU2.

Presented below is the summary of the production processes employed, supported by sworn testimony and evidence, including the resultant chemical compounds used and produced during TCI's operations. In addition to testimony and Site documents, the information and conclusions presented in this memorandum are corroborated and substantiated by an expert report prepared by an industrial chemist with extensive experience in the former production processes utilized at this Site. The industrial chemist performed an independent review of the testimony, Site documents, and relevant information to evaluate the industrial operations, the chemical processes employed, and the chemical constituency of resultant waste streams from TCI's operations. A complete presentation of all the details and facts supporting the statements in this memorandum will be provided in a comprehensive report to be submitted to USEPA.

SUMMARY

STWB, as the successor in interest to TCI, was named as a potentially responsible party (PRP) for the Lower Passaic River Study Area (LPRSA), which includes OU2. The responsible party of the Diamond Alkali Superfund Site, Tierra/Maxus/Occidental Chemical (T/M/O) previously presented to USEPA information that erroneously identified TCI as a PRP for the generation and discharge of polychlorinated biphenyls (PCBs), polychlorinated dibenzodioxins (PCDDs), and/or polychlorinated dibenzo furans (PCDFs). Based on the evidence and site-specific data, TCI's operations could not have resulted in the production or the discharge of PCBs, PCDDs, and/or PCDFs. The only LPRSA compound of concern (COC) that TCI used and/or produced during its operation was copper. During most of TCI's operational history, all copper containing wastewater was discharged to the sanitary sewer and underwent primary treatment.

From circa 1955 until 1986, TCI operated a pigment manufacturing plant Site, which is also known as the former HD Site. TCI produced three primary types of pigments at the Site: 1) phthalocyanine (phthalo) pigments; 2) transoxide-based textile pigments; and 3) pigments for the cosmetics and pharmaceutical industries (i.e., drug and cosmetic (D&C) colors). While the *quantities* of raw materials present on the Site varied during the facility's operational history, the *types* of raw materials remained consistent, as did the manufacturing equipment and production

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processes. TCI's primary product line was phthalo pigments (i.e., blue and green phthalo), for which the raw materials were dry, powdered reagents and soluble salts; no solvents were ever used in the phthalo production process. Based on testimony and information on the specific production processes employed and raw material inventories associated with the Site, the raw materials/reagents used in the production of these three product lines specifically did not contain any polychlorinated biphenyls (PCBs), polychlorinated dibenzodioxins (PCDDs), or polychlorinated dibenzo furans (PCDFs), or their precursors.

There are two methods commonly used to make pthalo pigments, the "wet method" and the "dry bake method." T/M/O's[1] assertion that TCI's manufacturing of phthalo pigments (i.e., blue and green phthalo) resulted in the inadvertent generation of PCBs, PCDDs, and/or PCDFs was based solely on the erroneous assumption that TCI employed the "wet method" for producing phthalo pigments, which utilized a solvent. Importantly, T/M/O's assertion was based on pure speculation and not supported by any factual information pertaining to the Site. To the contrary, site documents, testimony, and expert analysis confirms that TCI exclusively employed the "dry bake method" for production of phthalo pigments for its entire tenure at the Site.

Furthermore, peer-reviewed literature[2] (including the literature cited by T/M/O[3]) and the expert reports prepared on behalf of TCI/STWB all agree that the production of phthalo pigments by the process employed by TCI could not possibly generate PCBs, PCDDs, and/or PCDFs. Generation of those by-products is only possible via the wet method when a chlorinated solvent is used as the reaction medium. Because the wet method was never employed by TCI at the Site, it is not possible for TCI to have generated PCBs, PCDDs, and/or PCDFs as part of its manufacturing activities at the HD Site. This conclusion is further supported by the laboratory results from analyses of samples from wastewater, air filters, neutralization pits, groundwater and soil from the Site, which did not identify PCBs or PCDD/PCDF where tested.

As noted above, TCI also manufactured inorganic pigments, specifically transoxide (metal oxide) pigments and D&C colors, at the Site during its operational period (1955 until 1986). Expert review of the raw materials required to produce both transoxides and D&C colors confirms that the materials listed on Site documents and inventories are consistent with what is necessary for the production of those colorants. TCI's production of transoxide pigments and D&C colors would not have used, produced, or inadvertently generated any PCBs, PCDDs, and/or PCDFs or other LPRSA COCs.

Based on a review of facility-specific batch records, the stoichiometry of production chemistry (e.g., phthalo production chemistry), and analytical wastewater data from the Site, the only LPRSA COC present in TCI's wastewater in any appreciable amount was copper. In the ecological risk

[1] ChemRisk, 1996
[2] Buchta et al., 1985; Uyeta et al., 1976; and Litten et al., 2002.
[3] Heindl and Hutzinger, 1989.

assessment, copper accounts for only 0.7% of the total lower bound hazard index for benthic invertebrates[4]. Copper is not a human health risk or remedy driver based upon the extensive RI/FS and FFS documentation[5] generated for the LPRSA. During TCI's operational timeframe (i.e., circa 1955-1986), the Site was connected and discharged wastewater to the municipal sewer line (i.e., the sewer system connected to the PVSC), except for two limited interruptions (i.e., 1954 to 1958 and 1963 to 1971). Even during those brief intervals, only a portion of the wastewater generated from the production of phthalo blue, just the decant liquid from strike tanks, was discharged to the LPR. Even during these two intervals, all other production wastewater (e.g., phthalo filtrate and wastewater from production of transoxides and D&C colors) continued to be discharged to the Passaic Valley Sewerage Commission's (PVSC's) municipal sewer.

In sum, all of the production processes employed by TCI, and in particular its exclusive use of the dry bake method for phthalo production, precluded the use of material containing and inadvertent production of PCBs, PCDDs, and/or PCDFs, and thereby completely eliminates the TCI Site as a potential source of these COCs to the LPRSA. In fact, it was only because of T/M/O's incorrect and unsupported assumption regarding TCI's manufacturing process of phthalo pigments that TCI was considered to be a potential generator of PCBs, PCDDs, and/or PCDFs at this Site. Furthermore, based on expert review of production information, Site inventories, and wastewater analyses, the only LPRSA COC contained in TCI's wastewater was copper, which is not a primary remedy driver for OU2. Nine of the companies listed in the USEPA's original settlement offer have documented releases of PCBs, PCDDs, and/or PCDFs; whereas, STWB qualifies for and should be offered the early cash out settlement based upon the lack of a release of remedy drivers for OU2.

[4] USEPA, 2014, Appendix D, Table 4-15.
[5] USEPA, 2014; USEPA, 2016